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# A stronger and more modern municipal government: Coming soon to your nearest Alberta municipality

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In the last few years, the Government of Alberta has been reviewing the *Municipal Government Act* (*MGA*), a powerful piece of legislation that grants powers to municipalities to govern, raise revenue and plan for development. The last major review of the *MGA* took place in 1995 and the Province states that it wants to "update the *MGA* so that it can continue to help build strong, prosperous and sustainable communities throughout Alberta."

The review process and the sheer number of proposed amendments have been considerable. In 2015, the legislature passed the *Municipal Government Amendment Act* (Bill 20); in 2016, there was the *Modernized Municipal Government Act* (Bill 21). Most recently, *An Act to Strengthen Municipal Government* (Bill 8) was introduced in the legislative assembly. The Province has categorized the amendments into three broad categories: (1) how municipalities are empowered to govern; (2) how municipalities work together and plan for growth; and (3) how municipalities are funded.

While we briefly touch upon governance and funding, most of this commentary relates to the second category concerning amendments to the planning and development regime. The Province has published a review website that outlines a rationale for the amendments in greater detail.

## Governance

Many of the governance amendments refine existing municipal powers and improve the transparency and accountability of local government. For example, all municipalities will be required to adopt a code of conduct of elected officials, and the role of the Alberta Ombudsman will be expanded to include municipalities. Other notable changes include the ability of municipalities to establish for-profit municipally controlled corporations without ministerial approval, and the ability to collaborate with and enter into servicing agreements with neighboring Indigenous communities.

## Funding and taxation

Some of the proposed changes include the following:

- the centralization of industrial machinery and equipment property assessments at the provincial level
- the provision of more assessment classes for non-residential property so that they can be taxed at different rates

- the linking of non-residential property tax rates with residential property tax rates such that non-residential property tax will not be permitted to be more than five times higher than the lowest residential property tax rate

With respect to property assessment complaints, amendments are proposed to provide for clarity and efficiency and quicker resolution of appeals at the Alberta Court of Queen's Bench through judicial review.

## Planning and development

Land use planning is one of the major functions of municipal government, so it is not surprising that there are significant amendments proposed to the planning and development provisions contained in Part 17 of the *MGA*. Some of the more significant changes are described below.

### 1. Off-site levies

The amendments propose expansions to the type of infrastructure costs development proponents may be required to pay for as a condition of development or subdivision approval. The *MGA* refers to these as off-site levies, although they are also better known as development charges. Traditionally, off-site levies could be imposed to provide for the capital cost of transportation and utility infrastructure (e.g., water, sewer and stormwater facilities); however, the amendments will allow levies to also be imposed for the capital costs of fire halls, police stations, libraries and recreation facilities.

Other proposed changes allow for provincial transportation systems to be included in transportation infrastructure levies as well as permit municipalities to levy for infrastructure located outside of municipal boundaries, when the benefitting area of the infrastructure is located in more than one municipality. In addition, a development proponent will be able to appeal the imposition of an off-site levy directly to the Municipal Government Board.

### 2. Inclusionary housing

Municipalities will now have the power to require development proponents to build and set-aside non-market housing as part of their development proposals, or to provide municipalities money for the purpose of doing so. Many of the details of this new power are expected to be clarified in a provincial regulation, but it is widely expected that a municipality will have to provide some type of off-set (e.g., additional density) if it requires a development proponent to provide for inclusionary housing.

### 3. Reserve land assembly area

The Province is providing the ability for a municipality to use the current land dedication model for municipal reserves (e.g., lands for public parks, schools and recreation facilities), which is triggered during subdivision approval, to fund the assembly of areas of land located outside of the proposed subdivision. To use this ability, a municipality will be required to adopt a land assembly area bylaw to define a geographical area, which would then allow it to require payment for 5% of the value of the land proposed for subdivision if the land falls within that pre-determined area. It is not clear if a regulation will be put in place to further define how this will be implemented, but conceptually it appears that this new power could be used in both new development areas and inner-city redevelopment

sites that are greater than 0.8 hectares (around 2 acres), which is the current threshold in which municipalities can require reserve dedications when a subdivision application is submitted.

### 4. Regional growth management

There will be a mandatory growth management board and growth plan required for the Calgary region (the Edmonton Capital Region has had a regional growth board and plan for quite some time). Other regions may voluntarily create growth management boards. These amendments effectively mandate regional co-operation for the Province's two largest metropolitan areas. Much of how this will be administered will be set out in a future regulation, but if what has occurred in Edmonton is any indication of what is to come, there will likely be a role for a growth management board to approve statutory plans as well as to manage disputes between municipalities.

### 5. Indigenous consultation

For those municipalities that are adjacent to existing Indian reserves (as defined in the *Indian Act* [Canada]) or Métis settlements, there will be new requirements to notify those nearby Indian reserves or Métis settlements during the preparation of municipal development and area structure plans and provide them opportunities to make suggestions or representations concerning those plans. These new statutory "duty to notify" requirements will be followed with interest by those who are more familiar with the Crown's constitutional duty to consult with Aboriginal peoples before making decisions that may affect Aboriginal or treaty rights.

## Charter cities

In addition to all of the above, two new regulations will be adopted to establish charters for the cities of Calgary and Edmonton, whereby they will each be granted additional statutory tools to respond to matters unique to their status as the Province's largest cities. It is expected these regulations will give the cities greater authority respecting non-market housing, environmental management and land use planning.

## Looking ahead

The Province's review of and amendments to the *Municipal Government Act* represent much more than an update of an existing piece of legislation. In fact, many of the amendments have the potential to be transformative in nature. While some of the proposed amendments are already effective, the most significant changes will be in force later this year, likely around the time municipal elections will be held in Alberta.

With respect to the governance and funding changes, the overall thrust of these amendments appears to improve accountability, transparency and fairness, and many of those who have previously participated in the assessment complaint process will likely be pleased with a more streamlined appeal and judicial review process.

A greater emphasis on regional planning and inter-municipal co-operation in these proposed amendments is notable. This is not too surprising considering the overall policy shift of the Province in the last several years towards regional land use planning, which started with the adoption of the *Alberta Land Stewardship Act*. What is less certain is whether these new statutory tools will truly encourage municipalities to work together to achieve regional goals,

or whether municipalities will compete with one another for development at the fringes. For the Calgary region at least, the imposition of a new growth management board will likely result in some "growing pains" in a region that has had challenges with regional co-operation to date.

The perennial question of "who should pay for the costs of growth" appears to now be pointed closer to the developer than before. Traditionally, municipalities could only impose development charges to help pay for the costs of hard infrastructure (e.g., roads and utility infrastructure); however, with the ability for municipalities to now impose charges/levies to help pay for community and social infrastructure (e.g., policy, fire, libraries, etc.), it is clear the Province intends for development proponents to share more of the costs involved with creating complete communities. When coupled with the possibility of also having to provide for inclusionary housing, the cost burden for developers is likely to increase unless off-sets or other benefits are provided to minimize this impact.

One of the biggest roles of municipal government is to make decisions about land use planning, and municipalities exercise significant power in this regard. The current planning and development framework was largely put in place by the 1977 *Planning Act* and later incorporated into the *MGA* in 1995. Despite that it may be time to revisit the policy decisions underpinning the current planning provisions of the *MGA*, the advantage of long-term legislative stability is that it provides tremendous certainty and predictability for municipalities, citizens and development proponents, and will be beneficial at a time when Alberta emerges from a sustained period of low growth. These amendments, if implemented in their current form, will unquestionably inject some uncertainty into this stability. In the long term, whether these changes achieve the prosperous and sustainable outcomes the Province hopes for will remain to be seen.