

Municipal Bylaw Guide



October 2013

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“...people continually try to misunderstand [legislation]..., therefore, it is not enough to attain a degree of precision which a person reading in good faith can understand, but you must attain, if you can, a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it”

Stephen, J., *Re Castioni* (1890)

Introduction

This manual has been prepared by Saskatchewan Government Relations, Advisory Services and Municipal Relations Branch. It is designed to serve as a guide for municipalities preparing municipal bylaws. For complicated bylaws it is recommended that you seek legal advice. This will help ensure council has the authority to enact and enforce a proposed bylaw.

Authority to Pass Bylaws

Municipalities may pass bylaws only within the authority provided through legislation. This authority may be specific or general depending on whether the legislation is permissive or prescriptive. *The Municipalities Act*, *The Cities Act* and *The Northern Municipalities Act, 2010* give municipalities general authority to pass bylaws within their areas of jurisdiction in addition to specific areas such as taxation.

The “general power to pass bylaws” provisions of municipal legislation seem to provide unlimited autonomy to council however; such all-encompassing powers can be deceptive. Municipal bylaws shall not conflict with or infringe upon legislation or regulations enacted by government. Provincial and federal levels of government have passed many laws dealing with public order, health, safety and so on. These provincial and federal rules (e.g. *The Criminal Code of Canada*) take precedence over local bylaws.

Bylaw or Resolution?

The formalities of passing of a resolution are less restrictive than those for the passing of a bylaw. Resolutions typically deal with matters of a routine, administrative nature such as adjourning a meeting or appointing an auditor.

Council will use a bylaw for more important matters such as those affecting the public or regulating an activity. A bylaw is advisable for matters that may require the intervention of the courts for enforcement. Bylaws may also be the appropriate mechanism to authorize a municipality to collect a fee or enter into an agreement.

Provincial legislation will define those powers which must only be exercised by bylaw.

Points to Consider

Government Relations has provided several sample bylaws on its website at www.saskatchewan.ca/government/municipal-administration/tools-guides-and-resources/bylaw-samples. Another resource is the [Offsite Library](#) which provides links to municipalities which have some or all of their bylaws posted on their web sites.

- Discuss your proposed bylaw with experienced administrators of other municipalities and obtain copies of their bylaws for reference. Consult a solicitor if the bylaw is complex or if you are uncertain of its validity.
- Use plain language. Avoid legal jargon and words from languages other than English. Stick to terminology used in the authorizing statute or in the definition section of the bylaw. Do not use different words to mean the same thing.
- Use “shall” to show that a certain action must or must not be done. Use “may” to show an action that is permissive.

- Schedules and forms should be designated with numbers and letters (e.g. “Schedule 1” or “Form A”).

Distribute copies of the draft bylaw to all members of council prior to the meeting at which the bylaw will be discussed. Depending on the issue, public participation may be a prudent option before final reading. Note that public notice is a legislative requirement for certain bylaws.

Adoption Procedures

The procedure to adopt a bylaw involves the following steps:

1. At the direction of council the administrator will prepare a draft bylaw. Members of council must be provided with the opportunity to review the full text of the draft bylaw before it receives first reading.
2. Provide public notice of the proposed bylaw if:
 - legislation requires public notice to be provided;
 - local policies require public notice of proposed bylaws; or
 - it is deemed desirable to inform the public of a proposed bylaw.
3. First reading of the bylaw is moved, discussed and a vote is taken at a duly convened meeting of council. A “reading” of a bylaw means “a stage of consideration” and therefore the bylaw is not necessarily read aloud at the meeting. Members of council must be provided the opportunity to read the full text of the proposed bylaw before the first reading at a council meeting.
4. Second reading of the bylaw is moved, discussed and again, a vote is taken.
5. Amendments after first or second reading are proposed by resolutions. If they are carried they become part of the proposed bylaw. Members of council must be provided with the opportunity to review the full text of the amended bylaw before it receives third reading.
6. Third reading of the bylaw will typically occur during a subsequent meeting. This provides council with an opportunity to solicit or receive public input regarding the proposed bylaw.
7. Council may expedite passage of a bylaw by giving all three readings at the same meeting. A resolution to give a bylaw three readings in a single meeting must be passed unanimously by all members of council present at the meeting. In the event that the resolution to proceed is not unanimously passed then third reading must be deferred to a subsequent meeting. It is not necessary to redo first and second readings when the third reading is held during a subsequent meeting.
8. Third reading of the bylaw is moved, discussed and voted upon. If the vote is carried, the bylaw is considered passed and adopted. Note that third reading requires only a simple majority of council to pass, regardless of whether all three readings are heard in a single meeting.
9. Signing and sealing of the bylaw should occur immediately after the adoption of the bylaw.

If any of the resolutions moving first, second or third readings are not carried, the bylaw does not proceed beyond that point. If council wishes to reintroduce the bylaw, the entire adoption procedure must start over.

In certain cases, legislation sets out steps that differ from the above procedures that must be followed when passing a bylaw. For example, *The Planning and Development Act, 2007* requires a notice of intention be published when a zoning bylaw amendment is being proposed.

All council members including the mayor or reeve, must vote on each motion unless a member is precluded from voting due to a pecuniary interest. Generally, a majority vote of the council members present is sufficient to pass each reading. The only time that a majority is not sufficient is if legislation indicates otherwise.

Assent or Approval

Some bylaws require approval or assent of outside parties before they are deemed to be “in force”. For example, certain bylaws may require the approval of the Minister of Government Relations (or another ministry) or of the Saskatchewan Municipal Board.

An example of a bylaw requiring such assent is a building bylaw which requires approval from the Building Standards and Licensing Branch of the Ministry of Government Relations before it is enforceable. Similarly, long-term borrowing may require approval of the Saskatchewan Municipal Board.

Amending or Repealing

The same power that applies to the passage of bylaws also applies to amending or repealing bylaws.

The Amending Bylaw

A bylaw that is in effect may only be amended by another bylaw. The purpose of an amending bylaw is to create a desired change to an existing bylaw. Amending bylaws take several forms such as adding sections or words, replacing a section or deleting part of the original bylaw. An amending bylaw is subject to the same procedures for adoption as the original bylaw (e.g. if the original bylaw required the assent of a Minister, so will the amendment).

Rather than making multiple amendments to a bylaw consideration should be given to drafting a new bylaw incorporating the required changes. This will avoid confusion or the need to consult multiple bylaws to get the full text.

The Repealing Bylaw

A bylaw that is in effect may only be cancelled by a repealing bylaw. When a bylaw has no further need, action or consequence it is redundant and should be repealed. An example is a bylaw entering into a lease agreement and the lease is no longer in force.

There should only be one repealing bylaw in the bylaw register at any given time. The most current repealing bylaw should include provisions to cancel any other repealing bylaw(s). When a repealing bylaw is itself subsequently repealed it will not restore those bylaws which it had previously repealed.

Retention of Bylaws

The original bylaw must be attached to and form a part of the minutes of the meeting at which the bylaw received third reading. **A bylaw is never removed from the minutes** even if it has been subsequently repealed.

A bylaw register is a collection of current bylaws of the municipality which is maintained separate from the minutes. A **certified true copy** of the bylaw must be kept in the bylaw register. This copy must display the corporate seal and it must be certified to be a true copy by the administrator or the mayor/reeve. When a bylaw is repealed ensure that it is removed from the bylaw register in accordance with the municipality's records retention schedule.

Quashing

An action may be taken in court to quash a bylaw or resolution, in whole or in part, for illegality. The petitioner must challenge the bylaw on some ground of illegality not just because he/she does not like it. An application to quash must be submitted within 60 days after the adoption of the bylaw.

Further Information

Further information may be obtained from reference works such as:

- Various parliamentary procedures publications
- *Law of Municipal Corporations* by I.M. Rogers

Or contact the Ministry of Government Relations:

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Disclaimer: This publication is a guide for municipalities drafting bylaws. It is not intended to be a legal reference. Municipalities are advised to consult a solicitor to obtain legal advice regarding bylaws. Examples contained in this publication are not based on actual bylaws or situations and are for illustrative purposes only.