

Amendments to the Environmental Powers of Municipalities

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Amendments to the Environmental Powers of Municipalities: What has Changed? What Changes are on their Way?

Municipalities play a key role in managing and protecting Alberta's environment through regulation of private land uses and through local land use planning. Because of this, we at the ELC have been actively involved in the review of the *Municipal Government Act* (the MGA) which has been ongoing since 2014. The ELC will continue its work toward improving municipal powers for environmental protection and stewardship. An excellent resource in this regard is the [Community Conserve](#) website, a collaboration between the ELC and the Miistikis Institute.

A Brief Overview of the Amending Legislation

As might be expected with such a lengthy process, the amendments have not occurred in a simple process. Amendments to the MGA have been made (and several more are pending) through the passage of three separate acts:

- [*Municipal Government Amendment Act, 2015, S.A. 2015, c. 8;*](#)
- [*Modernized Municipal Government Act, S.A. 2016, c. 24;*](#) and
- [*Act to Strengthen Municipal Government, S.A. 2017, c. 13.*](#)

While these 3 pieces of legislation have been passed into law, not all the provisions have come into force yet (the above links take you to the provisions not yet in force, see [MGA Review Summary Chart of Amendments](#) below). A look at [recent proclamations](#) indicates when some of these pending provisions will come into force. Of course, any changes that are currently in force will appear in the most recent version of the [MGA](#).

Another complicating factor is the existence of draft [*City Charter Regulations*](#) which were released earlier this year. The City Charter Regulations will apply to the [*Cities of Calgary and Edmonton*](#) and will result in modified application of specified provisions of the MGA to those cities.

Significant Changes to the MGA (from an Environmental Perspective)

At the outset and throughout the MGA review process, we have stated that environmental management and protection should be a priority in the activities of municipalities. Amendments to the MGA certainly have placed more emphasis on the municipal role in environmental management and protection (although not to the extent we have recommended).

For instance, the role of municipalities in environmental matters is now clearly expressed in the

MGA via the revised preamble which includes a statement that “Alberta’s municipalities play an important role in Alberta’s economic, environmental and social prosperity today and in the future” and a new municipal purpose to “foster the well-being of environment” (s. 3).

Of significance are some changes relating to land management and planning. Effective January 1, 2018, there are changes increasing clarity around brownfield tax incentives to encourage development of these sites (s. 364.1). Also effective April 1, 2018, every municipality (not just those with a population greater than 3,500) will be required to adopt a Municipal Development Plan which may address environmental matters (s.632).

As well, a new type of land reserve – the conservation reserve – has been added in the MGA (Part 17). Conservation reserves are meant to facilitate the protection of environmentally significant areas (although it involves compensation which we would have preferred not be included). The ELC will be pursuing additional work on conservation reserves (along with other municipal issues such as intermunicipal planning and collaboration).

In addition to the creation of the mechanism of conservation reserves, the language pertaining to environmental reserves has been modified (new language in **bold**):

664(1) Subject to section 663 and subsection (2), a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

- (a) a swamp, gully, ravine, coulee or natural drainage course,
- (b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or
- (c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water.**

(1.1) A subdivision authority may require land to be provided as environmental reserve only for one or more of the following purposes:

- (a) to preserve the natural features of land referred to in subsection (1)(a), (b) or (c) where, in the opinion of the subdivision authority, those features should be preserved;**
- (b) to prevent pollution of the land or of the bed and shore of an adjacent body of water;**
- (c) to ensure public access to and beside the bed and shore of a body of water lying on or adjacent to the land;**
- (d) to prevent development of the land where, in the opinion of the subdivision authority, the**

natural features of the land would present a significant risk of personal injury or property damage occurring during development or use of the land.

(1.2) For the purposes of subsection (1.1)(b) and (c), “bed and shore” means the natural bed and shore as determined under the *Surveys Act*.

Effectively, the language in s. 664(1.1)(a) and (d) is new while the remainder is (at most) rearranged. We would have preferred to see the purpose of environmental reserves to be expanded to include conservation purposes (without requiring compensation) as opposed to the creation of a new type of reserve (i.e. the conservation reserve).

Also of note is a change to the definition of water bodies as being (s. 1(1.2)):

- (a) a permanent and naturally occurring water body, or
- (b) a naturally occurring river, stream, watercourse or lake.

This definition change is carried through to other parts of the MGA (s. 60) and aligns with the *Public Lands Act*. By not adopting a more comprehensive definition (like the definition in the *Water Act*), some aspects of municipal over water is still a bit unclear. For example, the scope of protection for semi-permanent or seasonal wetland does not clearly fall into the scope of the MGA.

Another highlight is changes to the MGA – coming into force on April 1, 2018 – which will significantly increase the importance of intermunicipal planning. Section 631 will be amended to make development of an intermunicipal development plan (IDP) mandatory for those municipalities which are not part of a growth management board. An IDP will be required to address, among other things, environmental matters within the area. In addition, adjoining municipalities will be required to develop an intermunicipal collaboration framework (ICF). The ICF is meant to address issues such as transportation, water and wastewater, solid waste, emergency services, recreation, and other services.

Significant Aspects of the draft *City Charter Regulations* (from an Environmental Perspective)

While still at a draft stage, the *City Charter Regulations* promise expanded environmental powers for the Charter Cities. One of the most significant expansions is allowing bylaws for:

the well-being of the environment, including bylaws providing for the creation, implementation and management of programs respecting any or all of the following:

- (i) contaminated, vacant, derelict or under-utilized sites;

- (ii) climate change adaptation and greenhouse gas emission reduction;
- (iii) environmental conservation and stewardship;
- (iv) the protection of biodiversity and habitat;
- (v) the conservation and efficient use of energy; and
- (vi) waste reduction, diversion, recycling and management

As well, Charter Cities will have the ability to make loans and guarantees for the “purposes of ensuring or improving energy conservation or energy efficiency, or both, with respect to property” under s. 264 of the MGA. This may allow the Charter Cities some flexibility to implement more creative financing arrangements to encourage the use of higher efficiency technology in private residences (although this may not go far enough to create a highly effective property assessed clean energy program).

As a consequential amendment, the application of s. 66 of the Safety Codes Act will be modified to allow municipalities to supplement the safety codes to address environmental matters (mentions, without limitation, heat retention and energy consumption). This will enable the Charter Cities to put energy efficiency requirements for building that go above and beyond those in the provincial requirements.

[MGA Review Summary Chart of Amendments](#)

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