



Environmental  
Law Centre

**March 23, 2017**

**Our File: 530-5320**

Municipal Affairs City Charters Team  
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Minister Shaye Anderson  
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**RE: The Environmental Law Centre's Comments on the MGA Regulations Review**

The Environmental Law Centre (ELC) is a charitable organization established in 1982 to provide Albertans with an objective source of information about environmental and natural resources law and policy. The ELC is a registered charity that champions laws and policies that ensure environmental sustainability for future generations.

Attached please find our written submissions in the MGA Regulations Review consultation process. We wish to highlight the important role of municipalities in environmental protection, management and stewardship. It is the ELC's view that regulations should be designed to provide clarity and guidance to municipalities in fulfilling these important roles.

We were very pleased to meet with the Minister Anderson and his staff on February 2, 2017. We would be happy to meet again to discuss these or previous submissions. Please feel free to contact the undersigned with any questions or comments.

Sincerely,

**Brenda Heelan Powell**  
Staff Counsel  
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## **MGA Regulations Review**

Throughout the MGA Review Consultation, one of our key recommendations has been to enhance opportunities for public participation in municipal planning processes. It is our view that current opportunities for public participation in municipal planning and decision-making are too limited. Early, meaningful engagement of the public in planning and decision-making processes leads to better decisions.

Accordingly, we were pleased to see the addition of a requirement for a municipal public participation policy in s. 24 of the *Municipal Government Amendment Act, 2015*, SA 2015, c. 8 (this provision is not yet in force):

### **Public participation policy**

**216.1(1)** Every council of a municipality must establish a public participation policy for the municipality.

(2) A council may amend its public participation policy from time to time.

(3) The Minister may make regulations

- (a) respecting the contents of public participation policies; [emphasis added]
- (b) respecting the considerations to be taken into account by a council in establishing its public participation policy;
- (c) setting a date by which every municipality must have its first public participation policy in place;
- (d) respecting requirements for a council to review its public participation policy periodically and consider whether any amendments should be made;
- (e) respecting requirements to make publicly available a public participation policy and any amendments made to it.

(4) Nothing in a public participation policy established under this section affects any right or obligation that a municipal authority or any person has under any other provision of this Act.

The *Public Participation Policy Regulation* has been proposed in support of the above provision.

The ELC is disappointed to see the sparse nature of the proposed regulation. We recommend that the regulation be used to set a **minimum standard** for municipal public participation requirements. In order to meet the requirements of procedural fairness and natural justice, we recommend that the regulation, at a minimum, require a municipal public participation policy to incorporate the following:

1. notice be provided in sufficient form and detail to allow the preparation of public input on the proposed statutory plan or bylaw,
2. full and convenient access to information,
3. a reasonable period of time to prepare public input,
4. an opportunity to present public input,
5. public input is considered by the municipality in a reasonable manner and in good faith, and
6. if formal decision statements are issued, there must be explicit consideration of information, comments and evidence provided by the public.

This will ensure meaningful public participation and engagement in municipal planning and decision-making.

We also recommend that the regulations expand the opportunities for public participation, namely:

1. Public participation must be accommodated at the early stages of municipal planning. The current approach invites public participation at a late stage of decision-making (i.e. the second reading of a proposed bylaw). The ELC recommends that efforts also be made to engage the public at an early stage of development for both new statutory plans and amendments thereto.
2. The right of public participation should be expanded to include those persons with a genuine public interest (as opposed to only those “affected” or on “adjacent property”). The “genuine interest” approach to standing requires that the participant demonstrate a genuine, legitimate, tangible, or bona fide interest or concern in the matter to be decided. The genuine interest test strikes a balance between bringing issues forward and screening out frivolous, unmeritorious challenges.<sup>1 2</sup>

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<sup>1</sup> *Canadian Council of Churches v. R.*, [1992] 1 S.C.R. 236.

<sup>2</sup> *Finlay v. Canada*, [1986] 2 S.C.R. 607 and *Canada (AG) v. Downtown Eastside Sex Workers*, [2012] 2 S.C.R. 524.

The ELC recommends that genuine interest standing be extended to ss. 678 and 685 in order to provide the opportunity for appeals on subdivision and development permit decisions raising concerns of genuine public interest. In addition, it is recommended that the *MGA* acknowledge that genuine public interest concerns are valid considerations in municipal planning, including the development of statutory plans.

The ELC considers the new requirement for a municipal public participation policy to be a positive step forward. However, this step needs to be supported with a strong regulation that outlines minimum requirements for meaningful public participation and engagement.