

Municipalities and Environmental Law

Part 1: The scope of municipal powers and the environment



Environmental
Law Centre

A Community Conserve Project
Building environment and conservation
capacity for municipalities

November 2017

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the environment

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This resource was created as part of **Community Conserve**.



Building environment and conservation capacity for municipalities

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Acknowledgements

The **Municipalities and Environmental Law Part #1: The scope of municipal powers and the environment** was made possible through the generous support of the Max Bell Foundation and an anonymous foundation and was produced under the Community Conserve collaboration (www.communityconserve.ca) led by the Environmental Law Centre and the Miistakis Institute, with the support of the Alberta Urban Municipalities Association, and the Alberta Association of Municipal Districts and Counties.

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The scope of municipal powers and the environment

Municipal decision-making is vital to effective environmental management. Municipalities play a central role in developing human settlements and green spaces, managing water bodies, and regulating the ways in which these are impacted.

In turn, municipal governments rely on a variety of legislation to empower them to make decisions and take action in this regard.

This publication is intended to clarify the scope of municipal authority with respect to the environment.

Municipal Powers under the Municipal Government Act

a) General Sources of Authority

In Alberta, municipalities are created by, and derive their powers primarily from, the *Municipal Government Act (MGA)*.¹ Municipalities can only exercise their powers for municipal purposes, which are broadly stated by the *MGA*:

- to provide good government,
- to provide public services and infrastructure, and
- to develop and maintain safe and viable communities.²

Municipalities play a central role in developing human settlements and green spaces, managing water bodies, and regulating the ways in which these are impacted.

¹ R.S.A. 2000, c. M-26 [MGA].

² MGA, s. 3.

On October 26, 2017 this provision was expanded to include “to foster the well-being of the environment”.³

This change is intended to give municipalities explicit authority to take a leadership role in environmental stewardship and to encourage them to consider the environment in their operational and land-use decisions.⁴

The *MGA* provides municipalities with two main sources of power to accomplish the above-noted purposes. First, Alberta municipalities have “natural person powers”, meaning they have all the rights that the common law attributes to a natural person. This includes the power to borrow and lend money, buy and sell land, make investments, negotiate contracts, restrict activities on land that they own, etc. even where not specifically authorized.⁵ These natural person powers are subject to any express restrictions set out in the *MGA* or other legislation.

The second main source of municipal authority is the general power to pass and enforce bylaws. Municipalities may pass bylaws respecting a variety of municipal issues, including:

- (a) the safety, health and welfare of people and the protection of people or property;
- (b) people, activities and things in, on or near a public place or place that is open to the public;
- (c) nuisances, including unsightly property;

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³ *MGA*, s. 3 as amended by Bill 8, *An Act to Strengthen Municipal Government*, 3rd Session, 29th Leg, Alberta, 2017, cl. 3 (proclaimed into force October 26, 2017).

⁴ Government of Alberta (2017), online: Building Better Communities Municipal Government Act Review https://mgareview.alberta.ca/whats-changing/empowered-to-govern/#Environmental_Well-Being

⁵ *MGA*, s. 6.

- (d) transport and transportation systems;
- (e) businesses, business activities and persons engaged in business;
- (f) services provided by or on behalf of the municipality;
- (g) public utilities; and
- (h) wild and domestic animals and activities in relation to them.⁶

The above powers were purposely stated in general terms to give broad authority to councils to respond flexibly to present and future issues in their municipalities.⁷

In addition to these general powers, the *MGA* provides municipalities with specific land use planning powers, control and management of roads and water bodies, authority to expropriate and annex land, and the power to raise revenues through property, business and other taxation.⁸ These powers and those listed above are exercised pursuant to the *MGA* and through the passing of bylaws, resolutions, and related municipal policies.



⁶ *MGA*, s. 7.

⁷ *MGA*, s. 9.

⁸ *MGA*, ss. 14-15, 16-27.6, 60, 112.1-128, 326-452, 616-697.

b) Environmental Sources of Authority

Bylaw-Making Powers

An important source of municipal environmental authority is the ability to enact bylaws that address local environmental issues, either directly or indirectly. Many times, environmental issues fall within a municipality's general jurisdiction, including the issues listed below.

An important source of municipal environmental authority is the ability to enact bylaws that address local environmental issues

i) Safety, health and general welfare

This power, referred to as a general welfare power, has been interpreted broadly by the courts. It is recognized as granting municipalities a residual authority to deal with unforeseen or changing circumstances, and to address emerging or changing issues concerning the welfare of the local community living within their territory, including the use and protection of the local environment.⁹

This general welfare power has been used by various Canadian municipalities to control smog, greenhouse gas emissions, the non-essential use of pesticides, smoking, and other health and environmental concerns.¹⁰ Moreover, given the recent inclusion of environmental well-being to the list of municipal purposes under the *MGA*, it is foreseeable that this power could be used even more expansively going forward.

ii) Nuisances

Nuisance bylaws may be used to address dangerous or bothersome conditions in a community, including environmental conditions. Municipalities have enacted nuisance by-laws to restrict noise, light, smoke, dust and other airborne matter, yard debris, fires, waste dumping and excessive idling, among others. The term

⁹ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 [*Hudson*] at para. 53.

¹⁰ Marcia Valiente, "Turf War: Municipal Powers, the Regulation of Pesticides and the *Hudson* Decision" (2002) 11 J.E.L.P. 325.

“nuisance” is not defined in the *MGA*, which gives municipalities some flexibility to determine it for themselves.

iii) Transportation

Municipalities may make bylaws respecting transport and transportation services, including the establishment of transit systems and the regulation of taxi and limousine services. These powers can be used to promote environmentally friendly forms of public transit, such as the adoption of electric buses, or to require the implementation of low emission or electric taxi vehicles.

iv) Businesses and Business Activities

Municipalities are authorized to license and regulate businesses within their boundaries. This includes the ability to restrict or prohibit businesses that may have deleterious health or environmental effects on a community, insofar as they do not conflict with federal or provincial law.

Perhaps the most significant way in which municipalities can regulate the environment is through their land planning powers.

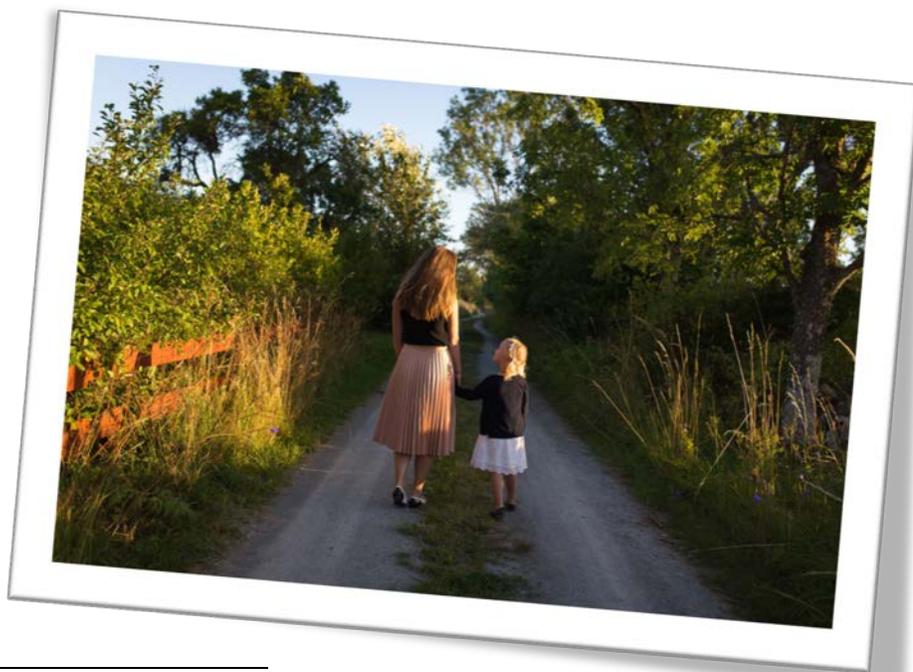
Land Planning Powers

Perhaps the most significant way in which municipalities can regulate the environment is through their land planning powers, established in Part 17 “Planning and Development” of the *MGA*. Part 17 authorizes municipalities to, among others things, establish land-use policies, create land-use bylaws, exercise subdivision and development powers, and reserve lands for roads and utilities. The stated purpose of these powers is to achieve the orderly, economical and beneficial development

of land, as well as to maintain and improve the quality of the physical environment within the municipality.¹¹

By way of example, land-use bylaws permit municipalities to prohibit or regulate the use and development of land and buildings within their boundaries through, among other things, creating districts according to use and establishing a system of development permits. Land-use bylaws can also limit landscaping, prescribe setbacks, and establish the percentage of impervious surface area allowed on a given property. Note that municipalities have broad discretion with respect to zoning. Where zoning decisions are made in good faith, efforts to overturn or change the zoning or claim compensation are typically not successful.¹²

Also worth noting is s. 664 of the *MGA*, which permits municipalities to create environmental and conservation reserves. A municipality may require a developer to create an **environmental reserve** where land in a proposed subdivision contains a swamp, gully, ravine, coulee or natural drainage course, land subject to flooding, unstable land, and land abutting a body of water. A municipality is not required to compensate a developer for an environmental reserve. Recent changes



¹¹ *MGA*, s. 617.

¹² *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, [2004] 3 S.C.R. 304, 2004 SCC 61.

to the *MGA* clarify that the purpose of creating an environmental reserve is to preserve natural features, prevent pollution, ensure safe use of land, and/or maintain access to a body of water.¹³

Meanwhile, a municipality may create a **conservation reserve** where land in a proposed subdivision contains environmentally significant lands such as wildlife corridors, tree stands or other features worthy of conservation, but that do not meet the narrower requirements for an environmental reserve.¹⁴ Municipalities must compensate developers for conservation reserves, as the land is set aside and therefore unable to be sold or developed. Municipalities should include conservation goals and objectives in their municipal development plans and area structure plans. The *MGA* also permits municipalities to dispose of conservation reserve lands, through a public process, when substantive changes occur that eliminate the land's conservation value.¹⁵

Through exercising their land planning powers, municipalities can play a critical role in promoting environmental quality and “smart growth” in the community. In particular, municipalities can facilitate the creation of compact, higher density communities, accessible public transit, bike paths and walking trails, limit sprawl, and conserve agriculture land, green spaces, and ecologically sensitive areas.

Note that the planning provisions of the *MGA* do not apply to subdivision or development for highways or roads, oil and gas wells or batteries, or pipelines and related facilities. They also do not apply on Métis settlements or designated Crown lands, or to any action, person, or thing that the provincial Cabinet has exempted by regulation.

¹³ *MGA*, s. 664(1.1) as amended by Bill 21, *Modernized Municipal Government Act*, 2nd session, 29th Leg, Alberta, 2016, cl 112 (proclaimed into force October 26, 2017).

¹⁴ *MGA*, s. 664.2(1) as amended by Bill 21, *Modernized Municipal Government Act*, 2nd session, 29th Leg, Alberta, 2016, cl 113 (proclaimed into force October 26, 2017).

¹⁵ *MGA*, s. 664.2(1), 674.2(1) as amended by Bill 8, *An Act to Strengthen Municipal Government*, 3rd Session, 29th Leg, Alberta, 2017, cl. 20 (proclaimed into force October 26, 2017).



Management of Water Bodies

The *MGA* also grants municipalities the direction, control and management of all water bodies within the municipality.¹⁶ The *MGA* defines “water body” as (i) a permanent and naturally occurring body of water, or (ii) a naturally occurring river, stream, watercourse or lake.¹⁷ Municipal authority to manage water is, however, subject to other provincial enactments, most relevantly the *Water Act*.¹⁸ In addition, the federal government has clear jurisdiction over, among others, waterways in relation to fisheries and navigable waterways. Municipal jurisdiction over water bodies is discussed in greater detail in the forthcoming *Part 2: Municipal Management of Water Bodies*.

¹⁶ *MGA*, s. 60 as amended by Bill 21, cl 11 *Modernized Municipal Government Act*, 2nd session, 29th Leg, Alberta, 2016, cl 11 (proclaimed into force October 26, 2017).

¹⁷ *MGA*, s. 1(1)(bb.1) as amended by Bill 21, *Modernized Municipal Government Act*, 2nd session, 29th Leg, Alberta, 2016, cl 4(a)(iii) (proclaimed into force October 26, 2017).

¹⁸ RSA 2000, c W-3.



City Charters

The Government of Alberta has recently recognized that, as the two largest cities in the province, the City of Edmonton and the City of Calgary have unique needs that are not always adequately met by the *MGA*. Accordingly, they have entered into discussions to potentially enact charters to provide these cities with increased legislative authority and flexibility. The city charters would enable Edmonton and Calgary to modify or replace provisions in the *MGA* or any other provincial Act or regulation, where the province has specifically granted it authority to do so.

The city charters currently exist in draft form and are undergoing consultation. They are expected to be enacted as regulations to the *MGA* on January 1, 2018. The city charters purport to provide additional environmental authority to Edmonton and Calgary. The anticipated changes include:

- Power to make bylaws for the “well-being of the environment”, including bylaws for the creation, implementation and management of programs respecting i) contaminated or derelict 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 (addition of s. 7(1)(h.1) to *MGA*);
- Power to give loans for energy and conservation efficiency initiatives (modifying s. 264 of *MGA*);

- Duty to develop climate change mitigation and adaptation plans (addition of Part 16.1 to *MGA*);
- Power to exercise Part 17 Planning and Development tools for “purpose” of promotion of environmental sustainability and stewardship (modifying s. 617(b) of *MGA*); and
- Power to supplement existing safety code requirements in order to help achieve environmental objectives (addition of s. 66(4) to *Safety Codes Act*).¹⁹

It remains to be seen whether these additional environmental powers are necessary given the recent changes to s. 3 of the *MGA*, which already grants municipalities the ability to exercise their powers in furtherance of environmental well-being.

Note that, unless explicitly outlined in the charters, all other legislation continues to apply.



¹⁹ *Draft City Charters Regulation*, online: Alberta Government <http://municipalaffairs.alberta.ca/documents/draft-city-charters-regulation.pdf>.

Municipal Powers under other Statutes

A number of other provincial acts provide municipalities with additional powers that may impact the environment. These include:

- **Alberta Land Stewardship Act** – This Act grants municipalities and other qualified organizations the ability to hold and enforce a conservation easement, as well as to establish a transfer of development credits (TDC) scheme which designates conservation areas.²⁰ For more information see the Community Conserve *ALSA's Conservation Tools for Municipalities: A Webinar Series*.
- **Historical Resources Act** - This Act gives municipalities the power to make designations or enter into agreements with landowners to protect historic resources. The Act's definition of "historic resource" is very broad and includes sites and features of historic, cultural, natural, scientific or esthetic interest.²¹ Although the Act has primarily been used to protect historic and cultural sites, it could be used to designate or establish agreements to protect important natural sites, such as a significant wetland.²²
- **Traffic Safety Act** - This Act gives municipalities broad powers to regulate the use of highways and roads under their jurisdiction and related traffic management issues.²³ Powers most likely to affect the environment include the ability to regulate vehicle noise and the use of road allowances.

²⁰ SA 2009, c A-26.8, ss. 28-36, 48-50. The ELC has explored market based instruments such as tradable development credits in its series of online reports. The can be found online at <http://elc.ab.ca/our-focus/sustainable-communities/>.

²¹ R.S.A. 2000, c. H-9.

²² Arlene J. Kwasniak, *Reconciling Ecosystem and Political Borders: A Legal Map* (Edmonton: Environmental Law Centre, 1997) at 159-161.

²³ R.S.A. 2000, c. T-6, ss. 13-14. The power to manage and control roads within a municipality is provided by the *MGA* at ss. 16-27.6.

- ***Dangerous Goods Transportation and Handling Act*** - This Act provides municipalities with a limited authority to designate dangerous goods routes.²⁴

Future ELC publications will deal with municipal jurisdiction questions in greater detail, including matters related to water bodies, business activities and brownfield management.



²⁴ R.S.A. 2000, c. D-4, s. 17.

Limitations to Municipal Powers under the MGA

As set out above, municipalities have no authority beyond those powers expressly granted by legislation. In addition, many areas that fall under municipal jurisdiction have the potential to overlap with other levels of government (ie. roads, water bodies, etc.). To the extent a bylaw is inconsistent with federal or provincial law, the bylaw is invalid. Generally, there is no conflict unless there is an “express contradiction” between the bylaw and the statute in question, where obeying one necessarily means disobeying the other. The *MGA* also specifically sets out various limitations to municipal jurisdiction, including the following:

a) Municipal power over Crown Land

Municipalities exercise very little, if any, in the way of power over Crown lands. The *MGA* does not apply to the Crown in right of Alberta. For a municipality to legally bind the government the *MGA* would have to expressly state that the Crown is bound (as required by the *Interpretation Act*).²⁵ Further, the *MGA* states that its planning and development powers do not apply to “a designated area of Crown land in a municipal district”.²⁶ The *MGA* also provides that the Minister responsible for public land may prescribe the areas of public land where Part 17 does not apply.²⁷ Agents of the Crown (i.e., Alberta Liquor Control Board) are similarly immune from the application of Part 17.²⁸ While not clear, these provisions do imply that Crown lessees and third parties operating on Crown lands are unlikely to be exempt from planning requirements and may be bound by municipal bylaws impacting their activity on public lands.²⁹

The Federal Crown is also not bound by Part 17 of the *MGA*. However, from a practical perspective the Federal Government will, on occasion, seek to incorporate

²⁵ Frederick A. Laux, *Planning Law and Practice in Alberta*, 3rd ed., looseleaf (Edmonton: Juriliber Limited, 2013) at §4.1. See also section 14 of the *Interpretation Act*, R.S.A. 2000, c.1 -7.

²⁶ *MGA*, s. 618.

²⁷ *MGA*, s. 618.

²⁸ A corporate entity is an “agent of the Crown” when expressly deemed as such in an incorporating statute or where the Crown exercises a sufficient degree of control over the entity.

²⁹ Laux, *supra* note 22 at §4.1(5)(c).

municipal jurisdiction by reference as is the case for the Towns of Banff and Jasper.³⁰

b) Sector and authorization specific limitations on municipal authority

Energy Development

Section 619 of the *MGA* provides that a license, permit, approval or other authorization granted by the Natural Resources Conservation Board (NRCB), Alberta Energy Regulator (AER), or Alberta Utilities Commission (AUC) prevails over any municipal planning authorization. Municipalities must approve development applications issued by these bodies. The effect of these requirements is to prevent a municipality from interfering with a decision of the NRCB, AER and AUC in respect of issues that have already been addressed by the Board(s). Nevertheless, in issuing a development permit, a municipality retains the jurisdiction to address planning considerations not addressed by the Board(s).

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authorization*

³⁰ Laux, *supra* note 22 at §.4.1(2) and §.4.3. See the memorandum of understanding, *The Government of Canada and the Government of Alberta Town of Banff Incorporation Agreement*, made the 12th day of December 1989, online: <https://banff.ca/DocumentCenter/View/154> and Agreement for the Establishment of Local Government In the Town of Jasper , Effective July 20, 2001, the Lieutenant Governor in Council amends Order in Council numbered O.C. 2791/ 2001 http://www.municipalaffairs.gov.ab.ca/cfml/pdf_search/pdf/SMUN/0418/jasper_OC_253_2002_No3.pdf

Agricultural Development

Confined feeding operations and manure storage facilities are also exempt from the planning provisions of the *MGA* and are not required to obtain subdivision approvals or development permits. Instead, they are subject to approval, registration or authorization by the NRCB pursuant to the terms of the *Agricultural Operation Practices Act*.³¹ Nevertheless, an approval officer with the Board must consider whether the application is in line with the relevant municipal development plan land use provisions and, if there is an inconsistency, it must deny the application.

The intersection between municipal and industrial development will be discussed further in a forthcoming publication.

Conclusion

In short, municipalities have a tremendous ability to regulate, and therefore impact, the environment around them. They are also in the best position to understand the needs, challenges and solutions required within their boundaries.

Going forward, it is hopeful that recent amendments to the *MGA* will empower municipalities to take an even greater role in protecting and fostering environmental well-being in Alberta.

³¹ RSA 2000, c A-7.