

Municipal Government Act
Public Participation Regulation

Discussion Guide

June 2016

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Introduction

The *Municipal Government Act (MGA)* is the law under which all Alberta municipalities are empowered to shape their communities. The *MGA* was introduced in the mid-1990s and was considered a model for municipal legislation in Canada. However, after nearly 20 years, it was determined the *MGA* should be revisited in order to meet the changing needs of Alberta's communities and an extensive review and public consultation took place throughout 2014.

In the spring of 2015, Bill 20 was passed by the Legislature. The Bill addressed issues that have received broad support from the rural and urban municipal associations, the cities of Calgary and Edmonton, and business and industry associations representing key economic sectors. These changes fall under four broad categories:

- enhancing municipal accountability;
- enabling more efficient municipal operations;
- enhancing municipal viability; and
- strengthening municipal and intermunicipal planning.

Bill 20 also approved legislative amendments to address emerging issues, as well as housekeeping matters to update minor items such as definitions, references, and terminology.

The Bill will add a new Section 216.1 to the *MGA* which will require councils to establish a public participation policy for the municipality. The section also provides the Minister with the authority to make regulations respecting the contents of public participation policies, respecting the considerations to be taken into account by a council in establishing its public participation policy, setting a date by which every municipality must have its first public participation policy in place, respecting requirements for a council to review its public participation policy periodically and consider whether any amendments should be made, and respecting requirements to make publicly available a public participation policy and any amendments made to it.

These changes are not yet in effect, but will come into effect when proclaimed.

Public Participation Legislation and Regulation-Making Authority

The *MGA* generally permits municipalities to determine their own public participation practices, with the exception of specific circumstances where legislated procedures are specified. For example, a municipality can choose to inform its residents of an upcoming capital project and provide them with an opportunity to identify features and outputs that are important to them using any engagement process that it considers to be appropriate. However, in the case where a municipality is amending a land-use bylaw,

the *MGA* requires council to hold a public hearing after providing notice following a prescribed process.

Albertans have indicated that there is a lack of clarity around the scope of municipalities' responsibility to engage with their constituents, particularly on matters that do not have a prescribed legislated process. Due to the existing flexibility of public participation provisions in the *MGA* and reliance on the engagement processes prescribed in legislation for specific decisions, municipal approaches to general public participation practices are inconsistent across the province.

Once proclaimed, the amendments contained in Bill 20 will require municipalities to adopt public participation policies that outline their approaches for engaging with stakeholders.

Bill 20 added the following to the *MGA*:

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;

(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.

(5) No resolution or bylaw of a council may be challenged on the ground that it was made without complying with a public participation policy established by a resolution of the council.

These amendments will come into effect when proclaimed later in 2016 or 2017.

The intended outcomes of the public participation legislation are that municipalities will take a more intentional approach to public engagement, and that their residents will

have an improved awareness of how they can influence municipal decisions. Municipalities will continue to have the flexibility to determine their local approach to public participation, and new public participation policies will help citizens and stakeholders understand how they will be engaged.

Purpose of This Discussion Paper

This discussion paper has been developed to seek your input into the development of the regulation for public participation policy. Your comments and observations will be important in ensuring that the new legislation and regulations accomplish their intended objectives.

Development of a Public Participation Policy

Existing public participation provisions in the *MGA*, as well as those added through this new section, acknowledge the rights of the public to influence municipal decisions that affect them. These provisions also acknowledge the impact that effective public engagement can make in improving the quality of municipal decision-making. However, the development of public participation policy must be balanced with the understanding that councils are elected to make decisions that set the direction for the municipality. While taking into account all of the information available to them, including the input of the public, councils must ultimately bear the burden of making significant and often difficult choices. Furthermore, to allow for timely and efficient governance, public participation policies must be proportional to the scope of the decision to be made.

Public Participation Process

A number of municipalities have developed approaches to public participation. In many cases, these approaches are based on the Public Participation Spectrum developed by the International Association for Public Participation¹. The Spectrum shows that differing levels of participation are legitimate and depend on the goals, time frames, resources, and levels of concern in the decision to be made.

	INFORM	CONSULT	INVOLVE	COLLABRATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.	To obtain public feedback on analysis, alternatives and/or decision.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

The Spectrum developed by the International Association for Public Participation is intended for a broad community of users, and is not specific to municipalities. Given the

responsibility of elected councils to make decisions on matters within their legislated authority, it is acknowledged that public participation in the municipal context will more frequently operate at the level of “inform”, “consult”, and “involve”, and less frequently or rarely at the levels of “collaborate” and “empower”.

Core Values of Public Participation

The International Association for Public Participation¹ has also developed the following Core Values of Public Participation for use in the development and implementation of public participation processes:

- Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
- Public participation includes the promise that the public’s contribution will influence the decision.
- Public participation promotes sustainable decisions by recognizing and communicating the needs and interest of all participants, including decision makers.
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- Public participation seeks input from participants in designing how they participate.
- Public participation provides participants with the information they need to participate in a meaningful way.
- Public participation communicates to participants how their input affected the decision.

Principles of Public Participation

The Institute For Local Government² has identified the following principles to help guide the design of public engagement processes and strategies:

- Inclusive Planning – the planning and design of a public engagement process includes input from appropriate local officials as well as from members of intended participant communities.
- Transparency – there is clarity and transparency about public engagement process sponsorship, purpose, design, and how decision makers will use the process results.
- Authentic Intent – a primary purpose of the public engagement process is to generate public views and ideas to help shape local government action or policy, rather than persuade residents to accept a decision that has already been made.
- Breadth of Participation – the public engagement process includes people and viewpoints that are broadly reflective of the local agency’s population of affected residents.
- Informed Participation – participants in the public engagement process have information and/or access to expertise consistent with the work that sponsors and conveners ask them to do.

- Accessible Participation – public engagement processes are broadly accessible in terms of location, time, and language, and support the engagement of residents with disabilities.
- Appropriate Process – the public engagement process utilizes one or more discussion formats that are responsive to the needs of identified participant groups, and encourages full, authentic, effective and equitable participation consistent with process purposes. This may include relationships with existing community forums.
- Authentic Use of Information Received – the ideas, preferences and/or recommendations contributed by the public are documented and seriously considered by decision makers.
- Feedback to Participants – local officials communicate ultimate decisions back to process participants and the broader public, with a description of how the public input was considered and used.
- Evaluation – sponsors and participants evaluate each public engagement process with the collected feedback and learning shared broadly and applied to future engagement efforts.

Benefits of a Public Participation Policy

A public engagement policy and process can result in a number of benefits which include:

- Communication and sharing of ideas with residents and businesses.
- Wider spectrum of viewpoints and options for solving problems.
- Understanding of the values and opinions of residents and businesses.
- Community understanding of the issues facing the municipality.
- Community understanding of the municipal governance process, and how public input can influence decision-making through a defined process.
- Public confidence in municipal processes and decisions.
- Civic participation and leadership development.

Matters to Consider in the Development of a Public Participation Regulation

New *MGA* Section 216.1(3) provides the Minister with the authority to make regulations respecting the contents of public participation policies; respecting the considerations to be taken into account by a council in establishing its public participation policy; setting a date by which every municipality must have its first public participation policy in place; respecting requirements for a council to review its public participation policy periodically and consider whether any amendments should be made; and respecting requirements to make publicly available a public participation policy and any amendments made to it.

To the extent that these matters are set out in regulation, the regulation will set a standard requirement that all municipalities must adhere to. This has the benefit of setting a consistent standard of practice across Alberta. However, individual municipalities might benefit from taking a more tailored local approach that complies with the new *MGA* requirement in the absence of standardized regulated requirements. A balanced approach might be to establish basic minimum standards in the regulation and allow municipalities to tailor their policies to meet or exceed this benchmark.

The following sample regulation is based on a balanced approach that sets a minimum standard and allows individual municipalities substantial discretion in determining how the *MGA* requirements can be satisfied.

Sample Regulation

The following sample regulation is intended to provide context and facilitate discussion about what the final regulation should contain. It is not intended to represent a recommended approach.

ALBERTA REGULATION ###/2015

Municipal Government Act

PUBLIC PARTICIPATION POLICY REGULATION

Table of Contents

- 1** Definitions
- 2** Policy Content
- 3** Available to Public
- 4** Review Date
- 5** Implementation Date

Definitions

- 1** In this Regulation,
 - (a) “Act” means the *Municipal Government Act*;
 - (b) “municipal stakeholder” means any individual, organization, or enterprise that lives, owns property, or operates within the corporate limits of a municipality;
 - (c) “public participation policy” means a policy established under section 216.1 of the Act or that meets the requirements set out in that section.

Policy Content

- 2** A public participation policy established for a municipality must
 - (a) identify the types or categories of approaches that will be used to engage municipal stakeholders; and

- (b) identify the types or categories of circumstances in which the municipality will engage municipal stakeholders.

Available to Public

- 3** Each municipality must make their public participation policy available to the public in the manner the council considers appropriate.

Review Date

- 4** Each municipality must review their public participation policy at least once every 3 years.

Implementation Date

- 5** A municipality must establish a public participation policy within 270 days of the day that Section 216.1 of the *Act* is proclaimed.

Questions About the Public Participation Regulation

We would appreciate your responses to the following questions about the Public Participation Policy Regulation.

Policy Content

The regulation could set out the minimum requirement for the contents of a municipality's public participation policy, leaving the municipality with the option of addressing additional items above the minimum requirement at its discretion. Alternatively, the decision of what contents are to be included in the policy could be left entirely to the municipality.

- 1. Should the regulation set out the minimum requirements for the contents of a municipality's public participation policy?** **Yes** **No**
- 2. If the regulation does set out the minimum requirement for the contents of a municipality's public participation policy, what matters would you add or remove from Section 2 (Policy Content) of the sample regulation?**

Review Date

- 3. Should the regulation set out the minimum frequency for reviews of the public participation policy? Yes No**
- 4. If the regulation does set out the minimum frequency for reviews of the public participation policy, how often should the review be required?**

Other

- 5. Are there any other matters that should be addressed in the regulation, or any other changes you would suggest to the sample regulation?**

Next Steps

After Municipal Affairs has concluded the consultation, feedback received will be assessed and taken into consideration when developing recommendations for government.

Thank you for providing your comments. Your feedback is very important and will be essential to improving municipal governance, administration and accountability.

Acknowledgements

1. Permission was received from the International Association for Public Participation for the use of material from their Public Participation Spectrum and Core Values of Public Participation.



2. Permission was received from the Institute for Local Government for the use of material from their Principles of Local Government Public Engagement.