

LOCAL GOVERNMENT ADMINISTRATION ASSOCIATION

BYLAW DRAFTING MANUAL

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Prepared by

Donald Lidstone
LIDSTONE YOUNG ANDERSON
lidstone@lya.bc.ca

**BYLAW DRAFTING MANUAL
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I. INTRODUCTION

The effect of a local government bylaw is parallel to the effect of provincial legislation. Under Section 1 of the *Interpretation Act*, R.S.A. 2000, Chapter I-8, a bylaw is a “regulation enacted in execution of a power conferred under an Act”. “Enactment” is defined as an Act or a regulation. Accordingly, a bylaw is a form of regulation that, like an Act, is an enactment.

A bylaw has the same affect on persons to whom it is directed as a federal or provincial statute has on such persons [*Re Tanenbaum and Local Board of Health for Toronto* [1955] O.R. 622 (Ont.C.A.)]. In *Garfield v. Toronto* (1895) 22 O.A.R. 128, Burton J.A. stated at page 34 that:

“... the municipal councils are granted legislative powers; ... the Legislature has largely delegated to them the power of enacting laws within their respective limits, and a law passed by them within jurisdiction thus conferred is as binding as an act of Parliament”.

The word “bylaw”, according to the Oxford English Dictionary, derives from the obsolete Middle English word “bylaw”, which in the 1500’s meant “local custom”. Lord Coke has a different theory. “Bye” is indicative of “place” (e.g., “Hornby”, “Gatsby”, etc.) such that a bylaw constitutes an enactment of a community.

Montreal was incorporated in 1642 and claims to have the oldest bylaws in Canada. On the other hand, some argue that the 1606 rules of the “Order of Good Cheer” in the community of Port Royal, Nova Scotia may well have constituted the first local government laws in Canada.

II. WHEN BYLAW REQUIRED

Provincial legislation stipulates when a local government council may act only by bylaw. Section 180(2) of the *Municipal Government Act (Alberta)* provides that where a council or a municipality is required or authorized under any enactment or bylaw to do something by bylaw, it may only be done by bylaw. If the Act does not require a bylaw, the council may act by resolution.

If an act can be carried out by resolution, it may also be carried out by bylaw {Section 180(3) *Municipal Government Act*}.

The statutory provisions governing the enactment of bylaws are attached as Appendix A.

III. BYLAW VALIDITY

A. Introduction

Although a bylaw has the effect of an Act, a bylaw is different from an Act to the extent a court may set it aside on a number of grounds arising from the fact that a local government's authority to enact the bylaw is derived from empowering legislation delegated by a provincial government.

B. Bylaw Validity Checklist

For a bylaw to be valid, it must satisfy the following requirements:

- the local government corporation must be validly established
- the Council/Board must be qualified to act (eg., member not disqualified, or subject to disqualification as a result of not satisfying the prerequisites for nomination or not having a direct or indirect pecuniary interest in the subject matter of the bylaw, etc.)
- the bylaw must be enacted by the council/board at a validly constituted meeting
- there must be a quorum
- statutory conditions precedent must be satisfied (eg., approval of a minister, the Lieutenant Governor in Council or the electors)
- the bylaw must be signed (or in some cases sealed) as required by provincial statute
- the bylaw must be enacted within the jurisdiction and authority of the local government
- the bylaw must not render compliance with a federal or provincial enactment impossible, or be prohibited by provincial enactment
- the bylaw must be enacted in good faith
- the bylaw must not be unreasonable
- the bylaw must not be so nebulous as to permit of no definite meaning
- the bylaw must be published to the extent required
- the bylaw must be enacted in a meeting open to the public

A bylaw is deemed to be valid unless and until

- it is set aside by a court of competent jurisdiction (after all appeals and subject to stays)

- it is declared invalid by a provincial statute or a provincial order made under the authority of a provincial enactment, or
- it has been repealed or amended by the local government that enacted it

C. Bylaw Attacks

A bylaw may come under attack in the courts

- as a result of an application to a superior court for judicial review (eg., the Alberta Court of Queen's Bench under the *Judicial Review Procedure Act*)
- further to a petition or action in a superior court to set aside or declare invalid the bylaw for illegality, or
- as a result of a collateral attack on a bylaw by an accused in the context of an enforcement action, proceeding or prosecution (noting that although a provincial court, unlike a superior court, cannot set aside a bylaw, if it finds the accused innocent by virtue of an invalid bylaw, this may be upheld in a superior court on appeal or, at the very least, other citizens may take cognizance of the invalidity and unenforceability)

D. Substantive Grounds for Setting Aside Bylaw

When drafting a bylaw it is necessary to be aware of the substantive grounds, as opposed to the procedural defects, that may result in a court setting aside a bylaw. These substantive grounds include unlawful delegation, reference to council, repeating the statutory power, the absence of statutory authority, uncertainty and unreasonableness.

1. Powers

A local government is a corporation created by the provincial government to carry out powers delegated to it by the provincial government. Therefore, a local government may exercise only those powers delegated to it. The local government has no inherent powers or jurisdiction. The Courts may determine that the powers exercised by a municipality of authority not delegated to it by the provincial government is beyond its powers. It is therefore necessary for the bylaw to contain only matters falling within the powers and authority delegated to the local government under the enabling statute.

A bylaw passed without enabling legislation is invalid and no rights or liabilities arise under it. A bylaw which is beyond the powers of the local government in this sense is void from the outset.

The Supreme Court of British Columbia in *Delsom Estates Limited v. Corporation of Delta* (1981) 14 M.P.L.R. 239 (S.C.) declared a number of provisions of the Delta Development Permit Procedures Bylaw No. 2970 *ultra vires* of the municipal council.

On page 2 of the Reasons for Judgment Mr. Justice Munroe stated that:

“a municipal corporation has only the powers vested in it by statute and especially where a power is conferred to enact bylaws directed against the common law right of an owner to use and dispose of his land as he pleases, the municipality must keep strictly within the powers conferred: *Picadilly Estates Ltd. v. The Corporation of Delta* (1973) 3 W.W.R. 349”.

Mr. Justice Munroe held that those provisions of the bylaw requiring that an applicant for a development permit provide at his expense off-site facilities were *ultra vires* the municipal council. As well, the provision of the bylaw requiring the applicant for a permit to maintain the facilities for the term of one year following completion of construction were *ultra vires* the municipal council because the Court could find no authority in the *Municipal Act*, R.S.B.C. 1979, c. 290 for such a requirement. No authority could be found in the *Municipal Act* for an administration charge and so the Court found that provision to be *ultra vires*.

A bylaw may also be *ultra vires* when it attempts to extend the powers of the council beyond the municipal boundaries where this is not authorized by statute. See *Sifton v. Toronto* (1929) S.C.R. 484 (Supreme Court of Canada).

The Courts may also find a bylaw to be *ultra vires* if the provisional legislature did not have the power to delegate authority to the municipality. For example, provincial legislation authorizing a municipal council to enact a bylaw prohibiting disorderly houses and providing for the punishment of a person in relation thereto is *ultra vires*. Prohibiting disorderly houses and providing punishment of the inmates thereof are criminal law matters and may be regulated only by the federal government pursuant to the division of powers under the *Constitution Act*, 1867. See *R. v. McGregor* (1902) 4 O.L.R. 198 (Ontario Court of Appeal).

The power exercised by bylaw cannot exceed the power granted by provincial legislation. In *Howison Amusements Ltd. v. City of Gloucester* (1989) 46 M.P.L.R. 206 the Ontario Supreme Court found the City's video game and pin ball machine bylaw invalid. The City passed a bylaw requiring that all “premises where mechanical or electronic games are operated” be licenced. The Ontario *Municipal Act* only authorized the municipality to regulate and licence all places of amusement. The bylaw controlled “all premises” in the City which had one or more video games. The purpose of the bylaw was to regulate video arcades. The wording of the bylaw suggested that places other than video arcades could be regulated provided they operated at least one video game. Accordingly, the City exceeded its jurisdiction by attempting to broaden its definition of “place of amusement”.

In *Clark v. Fairvale (Village)* (1990) 47 M.P.L.R. 230 the New Brunswick Court of Appeal set aside a water rate bylaw. The legislation provided that the rate should be calculated on the basis of usage. The Court held that the classes of the user provided under the bylaw were required to be distinguishable on the basis of usage. However, the bylaw did not establish different classes of water service users in relation to usage, but set up a scheme of different types of units related to types of entrances of the premises for either residential or commercial purposes. As a result of

this arbitrary distinction which went beyond the authority set out in the legislation, the bylaw was held to be invalid.

In the first major court case addressing the validity of a municipal bylaw under the recently enacted *Municipal Government Act* of Alberta, the Alberta Court of Appeal has found that the new legislation fails to grant the authority to municipalities to limit the number of taxi business licences. The Court of Appeal stated that the licence limitation likely would have been upheld under the former express, detailed legislation.

This case raises a number of serious questions about the efficacy of the “spheres of jurisdiction” language in the Alberta *MGA* and in the Yukon, Nunavut, Saskatchewan, Manitoba and Ontario municipal legislation which is modelled on the Alberta *MGA*.

In the recent case of *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary*, the Alberta Court of Appeal held that a number of portions of the City of Calgary *Taxi Business Bylaw* were beyond the powers of the City under the *MGA*. In effect, the Court found that the City acted beyond its jurisdiction by making laws to freeze and limit the number of taxi plate licences and transfers or assignments of them in a manner that was not authorized by the *MGA*.

The Court of Appeal found that it could not sever the bad portions of the bylaw from the remainder, so the entire bylaw was initially declared invalid until October 1, 2002 to allow the City to “reconsider and determine its course with respect to the impugned portions”. In September, 2002 the City obtained a stay of proceedings pending an appeal to the Supreme Court of Canada.

The City is concerned that the new *MGA* repealed the express, detailed provisions of the old *MGA* which likely would have allowed the enactment of the bylaw. Since the old *MGA* is gone and the new *MGA* does not grant adequate powers, the City cannot provide for the freezing and limiting of the taxi business licences or control the transfer or assignment of the licences. Accordingly, the City has appealed to the Supreme Court of Canada. Officials from the other provinces and territories where the new legislation is modelled on the Alberta *MGA* have filed affidavits in the Supreme Court of Canada to confirm the significant national importance of the appeal. Three justices of the Supreme Court of Canada considered the leave application on February 17, 2003. The decision on the leave to appeal will likely be released before the end of March, 2003.

The Court of Appeal construed the bylaw in accordance with the interpretation rules laid down by the Supreme Court of Canada. First, courts should not find that a municipal bylaw is beyond the Council’s powers in the absence of a clear demonstration to the contrary. Second, a court may imply powers that are not expressly conferred, in which case the courts must apply the “benevolent construction” approach and confer adequate powers by implication. Third, rules of interpretation do not allow the courts to substitute their views for those of elected council members: *Spraytech et al v. Hudson (Town)* (S.C.C.).

Applying these rules of construction, the Court considered whether it could interpret the phraseology of the new *MGA* to allow a bylaw to limit the number of taxi plate licences in the City of Calgary. In the absence of express, detailed powers to limit the number of licences (as

existed under the old *MGA*), the question was whether a benevolent construction of the new *MGA* would allow the bylaw to limit the number of licences by implication. The trial judge, and O’Leary, J.A. in dissent, found that the new *MGA* provisions are broad enough to empower the City to limit the number of licences on the basis of the legislature’s intent that the general powers in the *MGA* are to be given a broad and generous interpretation, and that the City Council has the discretion to determine how to exercise its power to prohibit.

The majority decision of the Court of Appeal turns on its finding that the power to prohibit does not encompass the power to limit the number of licences; the *MGA* does not by implication give the City the authority to limit the number of business licences issued. Further, the statutory power to prohibit carrying on a trade without a licence does not go so far as to confer the authority to prohibit the business activity. The Alberta Court of Appeal referred to the Supreme Court of Canada decision in *Greenbaum v. Toronto*. In that case, the Supreme Court of Canada found that a municipality’s jurisdiction is limited to authority expressly delegated by the provincial Legislature and that the benevolent construction is to be employed *except* where the power restricts common law or civil rights. In the *Greenbaum* case, the Supreme Court of Canada quoted Davies J. in *Hamilton v. Hamilton Distiller Co.* (1907) 39 S.C.R. 239, at p.249:

In interpreting this legislation I would not desire to apply the technical or strict canons of construction sometimes applied to legislation authorizing taxation. I think the sections are, considering the subject matter and the intention obviously in view, entitled to a broad and reasonable if not, as Lord Chief Justice Russell said in *Cruse v. Johnson* [[1898] 2 Q.B. 91], at p.99, a “benevolent construction”, and if the language used fell short of expressly conferring the powers claimed, but did not confer them by a fair and reasonable implication I would not hesitate to adopt the construction sanctioned by the implication.

As a result, the Alberta Court of Appeal looked at the purpose and wording of the Alberta *Municipal Government Act* to determine whether or not Calgary had been empowered to enact the bylaw, and applied the stricter rule of construction as Calgary was attempting to use a power which restricts common law or civil rights.

This “somewhat stricter rule” was also applied by the British Columbia Court of Appeal in *Denman Island Local Trust Committee v. 4064 Investments Ltd.* (2001) BCCA 736.

The Court of Appeal considered and dismissed two arguments under Sections 7 and 15, respectively, of the *Charter of Rights and Freedoms* (“*Charter*”). The taxi drivers argued that the bylaw violated Section 7 of the *Charter* by denying them the liberty or security of the person to pursue their chosen profession. The Court of Appeal found that the right to security of the person was not affected by the bylaw in the absence of a finding of a serious and profound effect on the driver’s psychological integrity. The drivers also argued that the bylaw violated Section 15 of the *Charter* by discriminating on the basis of grounds analogous to the enumerated grounds. The Court of Appeal held that the bylaw did not restrict access to a fundamental institution, affect a basic aspect of full membership in Canadian society, or constitute a complete non-recognition of a particular group.

If the Supreme Court of Canada grants leave, the case will not be heard and a decision will not be rendered until at least next year.

2. Delegation

A local government may not delegate authority or discretion to any of its officers or employees unless the empowering statute clearly provides for delegation of authority or discretion. Section 142 of the *Municipal Government Act* provides that it is the Council that is the governing body, and Section 202(2) provides that only a council may pass bylaws.

In *Regina v. Horback* (1967) W.W.R. 129 (British Columbia Supreme Court) Mr. Justice McIntyre held that a bylaw provision constituting a delegation of the council's judicial or legislative function to a municipal official is invalid. In that case, the City of Vancouver by its Charter was authorized to enact bylaws to regulate the safety and repair of vehicles operated on any City street. Pursuant to this power the City enacted a bylaw authorizing the Superintendent of the motor vehicle inspection station to require any vehicles to be inspected. Under the bylaw, the Superintendent enjoyed the absolute discretion to forbid the use of a vehicle if it did not satisfy safety standards he established.

Mr. Justice McIntyre stated on page 135 that:

“Section 6 of the bylaw purports to delegate a judicial power unto the Superintendent and is therefore *ultra vires*. If Section 6 fails, then no attempt whatever is made in the bylaw to fix standards of safety as required by Section 317(p) of the *Vancouver Charter* ... I might add that this bylaw does more than delegate judicial or legislative powers. It amounts to a complete abdication of the legislative power given Section 317(p) to the Council. That power to create standards of safety is one to be exercised by the Council as one deliberative body and not to be delegated to one employee.”

In arriving at this conclusion, Mr. Justice McIntyre relied upon the decision of the British Columbia Supreme Court in *Re Summary Convictions Act; Re Pride Cleaners and Dyers Ltd.* (1965) 50 W.W.R. 645. In that case, Mr. Justice Branca held that a bylaw which prohibited noise-making during certain hours and then gave the mayor power to relieve against the bylaw, where he could conclude that it was either impossible or impractical to comply with the bylaw, was invalid as a delegation of judicial powers.

In *Regina v. Sandler* (1971) 3 O.R. 614 the Ontario High Court of Justice review a fire safety regulation bylaw. The Ontario *Municipal Act* empowered the council to enact a bylaw requiring buildings to be put in a safe condition to guard against fire, authorizing appointed officers to inspect the premises and to enforce the bylaw and making such other regulations for preventing fires as the council should deem necessary. The City of Toronto enacted a bylaw under this Section empowering the fire chief:

“to inspect the fire protection equipment in any premises and to make such orders for the installation, repair or replacement of fire protection equipment as he deems necessary.”

The judgment of the Court was delivered by Mr. Justice Kelly who stated at page 619 that:

“it is my view that when the Legislature gave to the municipal councils a wide discretion as to the formulation of regulations for the prevention or spread of fires, it did not contemplate that any municipal council would attempt to evade its responsibility for making regulations, by substituting for its judgment that of a non-elected official in its fire department ... When, as here, the bylaw itself denies (the citizen) that exposition of his obligations and purports to make him liable for noncompliance with any order the Chief may make, even if that order applies solely to his particular premises, I consider the bylaw to be an unwarranted delegation of a legislative power, the exercise of which was confined by the Legislature to the Municipal Council itself.”

There are a number of exceptions to the rule against delegation of authority and discretion. If the enabling statute specifically provides for such delegation, it is valid.

3. Reference to Council

A council may not by bylaw reserve to itself any discretion when the empowering statute authorizes the council by bylaw to enact a regulation. The bylaw creating obligations to be observed by citizens legislated under powers set out in the enabling statutes must be sufficiently explicit that the citizen seeking to observe the provisions of the bylaw may from a reading of the bylaw satisfy himself that he has complied with its requirements. The requirements should not be left to the whim of the council.

In *British Columbia Electric Company Limited v. Corporation of the District of Surrey* (1956) 18 W.W.R. 462 (British Columbia Supreme Court) Mr. Justice McInnes held that the words “subject to the approval of the municipal council” were invalid. The provincial statute authorized the council to make by bylaw regulations regulating, restricting and prohibiting in any district the location of buildings or property designed for specific uses. The District of Surrey enacted a bylaw providing that utility transmission lines could be established in any district “subject to the approval of the municipal council”. At page 467 of the Reasons for Judgment Mr. Justice McInnes stated that:

“I must and do find on the authorities that the words ‘subject to the approval of the municipal council’ are (1) not a regulation; (2) discriminatory in that the rights of the applicant are subject to the whim or caprice of the council”.

4. Repeating Statutory Power

A council may not wrongfully redelegate to itself any discretion by merely reciting in a bylaw the empowering provisions of the enabling statute while leaving the details to be negotiated on an ad hoc basis.

In *Canadian Institute of Public Real Estate Companies v. City of Toronto* (1979) O.P.M.B.R. 385 the Supreme Court of Canada determined that a municipal council in a bylaw may not merely repeat the power set out in the statute but must exercise the power by enacting a bylaw defining the desired regulations. In that case, the City of Toronto by bylaw established development controls in the core area. The bylaw did not establish specific and objective standards to be followed by landowners but repeated the empowering provisions of the enabling statute leaving the details to be negotiated on a site-by-site basis.

In determining that the bylaw as *ultra vires*, the Supreme Court of Canada relied upon its decision in *Brant Dairy Company Ltd. et. al v. Milk Commission of Ontario et. al.* (1973) S.C.R. 131. In that case, Mr. Justice Laskin stated:

“a statutory body which is empowered to do something by regulation does not act within its authority simply repeating a power in a regulation in the words in which it was conferred. That evades exercise of the power and, indeed, turns a legislative power into an administrative one. It amounts to a redelegation by the board to itself in a form different from that originally authorized.”

In *Doman Industries Limited v. The Corporation of the District of North Cowichan* (Supreme Court of British Columbia unreported decision, Victoria Registry No. 80/1501, September 26, 1980) Mr. Justice Bouck determined that in a zoning bylaw or an amendment to an existing zoning bylaw the council may not provide for the issuance of development permits by merely repeating the contents of then Section 717(2)(a) to (k) of the *Municipal Act*. Mr. Justice Bouck stated that the precise details a landowner must meet when he is asking for a development permit must be spelled out in the bylaw itself and not reserved to the discretion of council. Mere repetition of the *Municipal Act* provisions is insufficient because each application for a development permit is then decided on an ad hoc basis.

In determining that the development permit section of the bylaw was invalid, Mr. Justice Bouck stated at page 20 that:

“just because there may be enormous variations in the circumstances of each individual piece of property does not make any difference with respect to the necessity of having such a bylaw. Where it is called for in the legislation, it must be enacted no matter how difficult it may be to prepare”.

In arriving at this conclusion, Mr. Justice Bouck relied upon the decision of the Supreme Court of Canada in the *Canadian Institute of Public Real Estate Companies* case (*supra*).

5. Uncertainty

If a provision in a bylaw has no definite meaning in law and is too uncertain to be enforceable the provision is invalid. A bylaw is uncertain when it is “too general and nebulous to admit of any definite interpretation”. See *Barthrop et. al. v. Corporation of the District of West Vancouver and Field* (1979) 17 B.C.L.R. 202 (British Columbia Supreme Court). In that case, the impugned bylaw referred to structures which were “near the bank of any water course” and at

“variance with the technical standards of ... the drainage survey of Dayton and Knight Ltd.”. The Court held that it would be impossible for the landowner to determine whether his residence was near a water course or whether there was a variance with the technical standards set out in the 238 page report. The technical report was written in “non-legal language” and contained reference to hypothetical cases based on “estimated channels”. Mr. Justice Murray stated at page 205 that “the mere fact that the channels are estimated is sufficient to create “uncertainty”.

In the Alberta Court of Queen’s Bench decision in *London Drugs Ltd. v. Red Deer*, the court considered a bylaw that was intended to restrict the hours of business. London Drugs argued that the bylaw was uncertain. The court reaffirmed the proposition that a bylaw should be construed “benevolently” unless common law or civil rights are being derogated from: in other words, if the bylaw does not restrict common law or civil common rights, it should be set aside only if it is truly uncertain and not merely vague or difficult to interpret. Based on the “clearly expressed intention and purpose of the bylaw” the court was satisfied that it should receive a benevolent interpretation and that the provisions of the bylaw were capable of definition within the intent and purpose of the bylaw.

In the *British Columbia Electric Company Limited* case (*supra*) Mr. Justice McInnes stated after referring to the authorities at page 428 and 429 that:

“applying the test of those decisions to the particular wording under attack, viz, “provided that the establishment of such utility transmission line in no way shall adversely affect the orderly development of the area through which it passes”, the first question that naturally arises is, when is the test contemplated by the words in question to be applied? Secondly, who is to apply the test, and what will be the basis upon which the test will be applied? The words of the bylaw presently drafted are far too general and nebulous to admit of any definite interpretation being put upon their meaning. As one example, namely, the question of who is to apply the test, is it to be the municipal council itself, is it the municipal engineer, the building inspector, or the chairman of the town planning commission, or some other authority?”

On the other hand, in *Farkas v. Corporation of the City of White Rock* (1979) 13 B.C.L.R. 372 (British Columbia Supreme Court) Mr. Justice Meredith dismissed an application to quash a bylaw on the basis of uncertainty. In that case, the City’s bylaw limited the height of dwellings in a particular area. The Petitioner was building a house in an area covered by the bylaw and received notice from the City that the structure contravened the terms of the bylaw. The bylaw provided that the height of a building is the “vertical distance between the highest point of the building and the coverage of the natural ground elevation within ten feet of the center point of each wall”.

Mr. Justice Meredith stated at page 374 that:

“I think a “natural ground elevation” must mean an elevation of the ground before it has been artificially disturbed either by placement

of fill or by excavation ... I think what is clearly meant is that the elevations must be taken at the center point of each wall or at a point outside the wall not greater than ten feet away and on a line perpendicular to the center. The building inspector could not complain if elevations were selected at any point on the line. In *Re. Bent* (1940) 2 W.W.R. 697 at 702 (B.C.), Fisher, J. said at page 702:

“I think it is apparent from these cases that a bylaw should not be held bad for uncertainty if the intention of the enacting body is reasonably clear”.

“One of the cases referred to a was *Esquimalt Waterworks Company v. Victoria* (1904) 10 B.C.R. at 194, affirmed 10 B.C.R. 193 (C.A.) where Drake, J. the trial judge, said (at page 195):

“every bylaw must be reasonably clear and unequivocal: *Crowe v. Steeper et al.* (1881), 46 U.C.Q.B. 87. It is ambiguous or of doubtful import, it will be quashed but the Court should always endeavour to give a reasonable effect to a bylaw. If that is impossible the bylaw is bad”.

“and Martin, J. (later C.J.B.C.), on appeal, said (at page 197):

the learned Judge appealed from considered that the bylaw in question is “insensible” and “meaningless”, but this is a conclusion only open to us when it has been found impossible to attach any reasonable meaning to it”.

Words and phrases which have been held to be uncertain (resulting in the bylaw being unenforceable) include:

- (i) "small articles": *Re Bunce and Cobourg* (1963) 39 D.L.R. (2d) 513 (Ont. C.A.);
- (ii) "seasonal dwelling": *Mueller v. Tiny* (1976) 72 D.L.R. (3d) 28 (Ont. S.C.);
- (iii) "dangerous goods": *Can. Occidental Petroleum v. North Vancouver* (1983) 46 B.C.L.R. 179 (S.C.B.C.);
- (iv) "within a reasonable time": *Long Branch v. Hogle* [1947] O.R. 436 (Ont. S.C.);
- (v) "reasonable efforts": *Re Weir* (1979) 102 D.L.R. (3d) 273 (Ont. S.C.);
- (vi) "sex-oriented products": *Red Hot Video Ltd. v. Vancouver* 91985) 29 M.P.L.R. 211 (B.C.C.A.);

- (vii) "environmental impact study": *Doman Industries Ltd. v. North Cowichan* (1980) 111 D.L.R. (3d) 358 (S.C.B.C.).

If there are two possible meanings for a term in a bylaw, the meaning which favours the property owner or resident (as opposed to the local government) must be applied: *Wilson v. Jones* [1968] S.C.R. 258 (S.C.C.).

E. Procedural Requirements and Conditions Precedent

In addition to substantive grounds, a person attacking a bylaw may also question compliance with procedural requirements and satisfaction of conditions precedent. Conditions precedent are statutory formalities that must be satisfied prior to adoption. These include approval of an external authority (eg., Minister, Lieutenant Governor in Council, assent of the electors); notice; publication; or a public hearing.

The general rule is that a failure to comply with statutory conditions precedent to bylaw enactment is fatal. The satisfaction of the condition is a constitutional prerequisite to validity of the bylaw (*Victoria v. Mackay* (1918) 56 S.C.R. 524 (S.C.C.)).

On the other hand, failure to comply with a formal requirement imposed by statute respecting how the bylaw is to be adopted will make the bylaw voidable (i.e., liable to be quashed for illegality).

Examples of conditions precedent that must be satisfied are notice, publication or hearing requirements related to bylaws that interfere with common law or civil rights (e.g., zoning, taxing or expropriation bylaws); [see *Riopelle v. Montreal* (1911) 44 S.C.R. 579 (S.C.C.)]. In *Costello v. Calgary* (1983), 1 S.C.R. 14, the Supreme Court of Canada considered the validity of an expropriation bylaw in respect of which Calgary failed to serve one of the joint tenants with notice within the time limits required by the legislation. The question was whether the failure to comply strictly with the notice requirement rendered the bylaw void. The court set aside the bylaw because the City failed to comply with the statutory requirements relating to the service of a notice of the council meeting where a council was to consider the expropriation bylaw. The court stated that:

“The courts have endeavored to avoid interference with municipal enactments by an overly strict approach to their construction, but have generally insisted upon strict compliance with enabling legislation that authorizes municipalities to exercise extraordinary powers or pass bylaws concerning taxation, expropriation, or other interference with private rights.”

The *Costello* case was considered in *Thierman v. Itaska Beach (Summer Village)* (2002) A.J. 495, 2002 A.B.Q.B. 343. In *Thierman*, the Alberta Court of Queen’s Bench considered whether bylaws adopted in respect of the use of municipal reserve land were invalid due to defects in the notice of public hearing given under the *Municipal Government Act*. The *Act* requires that a notice must contain a statement of the general purpose of the proposed bylaw. The court found that the Village failed to comply strictly with the requirements of the statute. The question then arose whether these defects in the notice rendered the bylaw void. The court considered *Costello*

and concluded that in this case, the Village council was not exercising extraordinary powers or interfering with private rights of the nature contemplated in *Costello*. As a result, the court found that the deficiencies in the notice of the proposed bylaws were not fatal to the bylaws.

Examples of merely formal statutory requirements as to the manner of enacting a bylaw are notice deadlines or bylaw adoption limitations that do not relate to an interference with common law or civil rights [*Belrose v. Chilliwack* (1893) 3 B.C.R. 115 (B.C.C.A.)].

The general rule is that non-compliance with the Council or Board procedure bylaw does not invalidate a bylaw [*Brentwood Lakes Golf Course Ltd. v. Central Saanich* (1991) 6 M.P.L.R. (2d) 1 (B.C.S.C.)].

Councils and boards would be well-advised to prepare checklists of statutory conditions precedent and formal procedural requirements for each bylaw, with an officer (such as the person fulfilling the role of the clerk) initialing each item on the checklist prepared for the bylaw.

IV. INTERPRETION ACT

Since the bylaw is a regulation which is an enactment, the *Interpretation Act* applies. Accordingly, when drafting or interpreting a bylaw it is necessary to consider the provisions of the *Interpretation Act*.

Section 12(1) of the *Interpretation Act* (Alberta) provides that the preamble of a bylaw is a part of the bylaw intended to assist in explaining the bylaw. Accordingly, a court may determine the effect of a provision of a bylaw (e.g., a land use control bylaw) on the basis of the intent of Council as expressed in the preamble.

Section 12(2) of the *Interpretation Act* (Alberta) provides that the table of contents, marginal notes and references after the end of a section or other division form no part of the enactment but shall be construed as being inserted for convenience only.

Further to Section 11 of the *Interpretation Act* (Alberta), the enacting clause of a bylaw is suggested to be:

“NOW THEREFORE the Council (Board) of the Town (etc.) of ...
in open meeting assembled enacts as follows:”.

Section 14 of the *Interpretation Act* provides that a bylaw does not bind or affect the Crown unless the enactment expressly states that it binds the Crown. For example, a zoning bylaw does not affect Her Majesty.

Section 26(2) of the *Interpretation Act* (Alberta) provides that gender specific terms include both genders and include corporations. Section 26(3) of the *Interpretation Act* (Alberta) provide that in a bylaw words in the singular include the plural and words in the plural include the singular. For example, if an owner in a building bylaw is entitled to apply for a building permit, then two owners under a joint tenancy arrangement may apply for the building permit.

Section 26(4) of the *Interpretation Act* (Alberta) provides that if a word or expression is defined in the *Interpretation Act*, the municipal legislation, or the bylaw itself, other parts of speech or grammatical forms of the same word or expression in the bylaw have corresponding meanings.

Section 31 of the *Interpretation Act* provides that a reference to another enactment of the provincial government or of Canada is a reference to another enactment (as amended). This does not apply to local government bylaws. Accordingly, when repealing a bylaw it is necessary to recite the bylaw and add the words “as amended”.

V. DEFINITIONS

The terms in a bylaw that need to be expressly defined depend on whether the words or term have a single common sense meaning in the context in which they appear. The Court normally first attempts to adhere to the ordinary meaning of the words used and to the grammatical construction, unless that is a variance with the intention of the legislature, to be collected from the statute itself [*Beck v. Smith* (1936) 2 M.W. 191]. When drafting, one should ask whether the term in question has in its context an ordinary meaning which could not reasonably be disputed. If so, no definition is necessary. If there is more than one ordinary meaning, or if the term is an esoteric one, with no generally known ordinary meaning, then it should be defined. For example, the word “municipality” does not need to be defined, because it is defined in the *Interpretation Act*, and that definition applies to the bylaw.

An expression should be defined only where it is not being used in its dictionary meaning or is being used in one of several dictionary meanings, where it is used as an abbreviation of a longer expression, where defining it would avoid repetition of words or where the definition is intended to limit or extend the provision of the bylaw.

A definition should solely explain the meaning of a word or expression and should not include any regulation.

An expression should not be defined in such a way that it is given an artificial or unnatural sense. For example, one municipality passed an animal control bylaw that provided that “in this bylaw” ‘dog’ includes ‘cat’.

The expression “means and includes” should not be used as a definition. Similarly, the phrase “unless the context allows” should never be used in a bylaw because a Court has already taken advantage of such phraseology to enable it to creatively interpret a bylaw in a way that would have made sense in the absence of the expression.

Definitions should be used sparingly and in response to a specific need.

Section 13(a) of the *Interpretation Act* (Alberta) provide that definitions in a bylaw (unless otherwise stated) are applicable to the entire bylaw including the section containing the definitions. Section 13(b) of the *Interpretation Act* (Alberta) provide that definitions in the *Municipal Government Act* (Alberta) are deemed to apply to bylaws made under that *Act*.

Section 28 of the *Interpretation Act* (Alberta) and Section 29 of the *Interpretation Act* (British Columbia) provide that all of the definitions listed in those sections apply to every bylaw enacted

by a local government even if the words or phrases are not again defined in the bylaw. Some of the words or phrases have specific meanings that must be carefully considered when drafting a bylaw. For example, “holiday” is expressly defined. “Shall” is to be construed as imperative. This is important when considering whether a bylaw imposes a private law duty of care on the local government. Useful words or terms defined in the Alberta legislation include “adult”, “minor”, “municipality”, “person”, “police”, “police officer” and “offence”. Under Section 3(1) of the *Interpretation Act* (Alta), a contrary intention can appear in the bylaw.

The effect of some of the definitions in the *Municipal Government Act* (Alberta) is that the interpretation section of that *Act* extends to all bylaws relating to municipal matters.

The effect of some of the definitions in the municipal legislation may be unexpected in relation to a bylaw that is being drafted. “Owner” is defined in relation to real property and includes a person in lawful possession, (eg., tenant for life). It is not defined to include an agent of the owner (such as a contractor on behalf of an owner who is building or a lawyer on behalf of an owner who is applying for an approval) unless the bylaw so states. “Parcel” means any lot, block or other area in which land is held or subdivided (other than a highway). It therefore makes no sense to refer to “lot” throughout a zoning or subdivision bylaw instead of “parcel”, especially in light of the existence of district lots and strata lots. It is interesting to note that “road” in Alberta includes a bridge.

VI. CONTENT OF A BYLAW

None of the provincial municipal acts require bylaws to adopt any particular form, content or ordering of content. It is interesting to note, therefore, that bylaws from Newfoundland to Yukon Territory appear to have more or less the same form and content.

Generally speaking, the items contained in bylaws include the following:

- Name of municipality
- Statement as to whether document is an office consolidation
- Title
- Subtitle to describe purpose
- List of amendments, if applicable
- Substantive purpose statement
- Preamble
- Enactment clause
- Citation
- Principles

- Definitions
- Interpretation
- Substantive provisions
- Offence provisions
- Severability clause
- Repeal
- Date bylaw in force
- Readings
- List of conditions
- Authentication
- Schedule

A sample bylaw containing these items is attached as Appendix B.

A. Name of Municipality

The entire corporate name of the local government should be set out at the top of the bylaw. Under the *Evidence Act*, a court must take judicial notice of a bylaw and so the name of the local government should be the correct legal name of the entity taken from its incorporating documents (the same as would appear on pleadings).

B. Office Consolidation

If the bylaw is a consolidation of the original bylaw and amendments, this should be stated clearly near the top or beginning of the first page. It is useful to the user to identify amendments throughout the bylaw. Some municipalities also list the amendments after the subtitle.

C. Title

The words used in the title of a bylaw generally derive from the words contained in the empowering legislation. For example, if the legislation empowers the council or board to adopt a bylaw to regulate or prohibit businesses, business activities or persons carrying on business, then the plain language version of the title could be “Business Regulation Bylaw”.

D. Subtitle

Some bylaws contain subtitles to provide in greater detail the nature of the bylaw. This may be useful when searching for a bylaw in electronic format using a search engine. It is also useful when a person reading the bylaw is attempting to determine nature of the bylaw in greater detail

than would be allowed by the simple title. An example of a subtitle for a business regulation bylaw would be “A bylaw to regulate or prohibit businesses or business activities.”

E. Purpose

Some bylaws contain a clause setting out the purpose of the bylaw. This is more common in land use bylaws than in other cases. Some statutes contain purpose clauses as well: see, for example, the *Heritage Conservation Act* (British Columbia). A purpose clause is intended to help the reader, and a court if applicable, to interpret the legislation in a “purposive” manner that is based on the legislator’s purposes, and not the “subjective objectives” of the reader. A purpose statement sets out the moral basis on which the sections of the bylaw are based.

The advantages of a purpose statement are:

1. better understanding of the legislative intent of the council or board,
2. resolution of ambiguities in the bylaw.

The disadvantages of a purpose statement arise where:

1. the statement is a mere manifesto that obscures the precision of the other sections,
2. under the doctrine of ultra vires a court uses a purpose clause as a tool to limit the effect of a subsequent empowering provision.

The purpose section must be elastic enough to meet future needs. It should not limit or restrict the ambit of the substantive provisions unless that is what the council or board intends.

F. Preamble

Federal and provincial legislative counsel have always taken the view that a preamble to a statute should be limited to a recitation of facts. This is for two reasons. First, the *Interpretation Act*, which governs all legislation and bylaws, provides that a court must consider a preamble part of the bylaw intended by the council or board to assist in explaining the meaning and object of the bylaw. Second, if the preamble contains principles or policies, there will be a collision between the principles or policies set out in the preamble on the one hand and the principles inherent in the provisions in the body of the bylaw on the other hand.

It is not advisable to include in the preamble the statutory authority for the enactment of the bylaw. Noting that the preamble is part of the bylaw and intended to assist the court in explaining the meaning and object of the bylaw, it is dangerous to include the statutory authority for two reasons:

1. the section numbers and the substantive authority change from time to time, and it is not possible for local governments to update their bylaws every time statutes are amended, revised or repealed.

2. when a municipal lawyer goes to court to defend your bylaw, the lawyer will often rely upon a number of sections in the municipal legislation or other legislation that may not have been in contemplation by the drafter of the bylaw. For example, provisions in a sign bylaw may be defended on the basis of authority relating to land use, structures or signs, and not merely the “sign” provision expressly set out in provincial legislation.

G. Enactment Clause

As stated, Section 11 of the *Interpretation Act* (Alberta) suggest there needs to be an enacting clause for an enactment. An enacting clause of a bylaw is suggested to be as follows:

“NOW THEREFORE the Council of the City (etc) of ... enacts as follows: ...”.

H. Citation

It is valuable to have a formal citation for the bylaw because the bylaw is often referred to or incorporated by reference in other documents or proceedings. For example, it is necessary to refer to a bylaw in the minutes of a council or committee meeting, in a court proceeding, in a contract, in another bylaw, on a website, or in a media release. There is no rule of law or accepted standard governing the naming of a bylaw. Some municipalities include in the name of the bylaw information about what it does; the year of enactment or amendment, as the case may be; and a number based on a numbering system used by the office of the person acting in the nature of a clerk. Accordingly, an example of a citation is as follows:

“This bylaw may be cited as “the Business Regulation Bylaw”.

When referring to a bylaw that has been amended, it is desirable to refer to a citation and add the words “as amended”.

I. Principles

A court may consider the principles section of a bylaw when interpreting the legislation. Another objective of the principles section is to guide the relationship between the local government and the entity or persons affected by the bylaw.

Principles in bylaws are rare. If they are included, they should be simple, but meaningful.

There are a number of examples of principles in provincial legislation. For example, Section 4 of the *Local Government Act* (British Columbia) provides that the relationship between local governments and the provincial government in relation to the statute is based on a number of principles, including cooperative relations between the provincial government and local governments that must be fostered in order to efficiently and effectively meet the needs of the citizens.

J. Definitions

Comments respecting “definitions” are set out in Section V of this paper.

K. Interpretation

Bylaws often contain interpretation sections. There is no advantage to repeat the provisions of the *Interpretation Act* (e.g., dealing with the plural and the singular, gender, calculation of time, etc.) because, as stated, these provisions are deemed to apply to the bylaw in any event and the public is deemed to have knowledge of the provisions of the *Interpretation Act* when using a bylaw. It is necessary in some cases, however, to amplify or expand on the *Interpretation Act* provisions in order to make the bylaw more accessible (e.g., where a contrary intention appears in the bylaw).

L. Substantive Provisions

The substantive provisions must be drafted carefully to ensure they do not provide grounds for setting aside the bylaw. For example, there must be authority in a provincial statute or regulation for each provision in the bylaw. The grounds for setting aside the substantive provisions of a bylaw are discussed in Section III entitled “Bylaw Validity”.

M. Severability

A regulatory bylaw may contain a provision to the effect that if any portion of the bylaw is found by a court of competent jurisdiction to be invalid, the invalid portion is to be severed and the remainder is to remain valid. This may have the effect of saving a bylaw if a court finds a portion of the bylaw to be invalid on one of the substantive grounds. If, however, a court finds that the council must have intended that the invalid portion is an integral part of the remainder, the court may set aside the entire bylaw despite a severability clause.

N. Repeal

It is customary when adopting a new bylaw to repeal the bylaw or bylaws that it replaces. Although it is trite common law that a new enactment supersedes an enactment that is already on the books, it is not often possible to identify with precision which portions of a new bylaw supersede which provisions of an old bylaw. It is preferable to take control of the matter by repealing the old bylaw. It is also important to repeal the amendments that may have been made between the date of the original date of enactment and the date the new bylaw is being enacted.

O. Readings

Most bylaws list the readings and the dates of the readings.

P. Conditions Precedent

If there are statutory conditions precedent, such as the necessity for approval by an external authority, it is advisable to set out the date of the satisfaction of the condition precedent on the last page of the bylaw under the “readings”.

Q. Authentication

Section 213 of the *Municipal Government Act* (Alberta) provides for the signing or authorization of municipal documents. It is significant that Section 189 of that Act provides that a bylaw is passed when it receives third reading and it is signed in accordance with Section 213. Accordingly, it is recommended that the last page of the bylaw contain the authentication.

R. Schedule

It is often necessary or advisable to place portions of a bylaw in a schedule. The schedule is part of the bylaw, so the definitions and interpretation provisions apply to the schedule.

Examples of matters that are customarily included in schedules include application forms, fees, technical specifications or standards, drawings, plans, schematics or provisions that are incorporated from another document.

VII. BYLAW DRAFTING FUNDAMENTALS**A. Canadian Legislative Drafting Conventions**

The Canadian Legislative Drafting Conventions (Uniform Law Conference of Canada, 1978, p. 24), set out the following fundamental rules when drafting enactments:

- consistency in the form and style is a valuable tool for achieving consistency in the use of language
- precedents, in the form of comparable bylaws from other municipalities, may be useful to identify issues that should be dealt with but should not be copied and should not be relied on as a substitute for thinking
- provisions which have no legal effect should be avoided, since a Court may try to give them an unwanted effect
- each section which creates an offence should be identified and accompanied by an appropriate penalty—while this may be redundant and overly time consuming in a bylaw a separate offence section for each page or part of the bylaw would increase flexibility
- the most frequent mistakes made when drafting bylaws are unlawful attempts to delegate discretionary powers or to use regulatory powers for a purpose to which is not intended—creative interpretation of the enabling statute is not rewarded with enforceability
- The most important thing to remember when drafting is to keep it brief and simple.

B. How the Courts Construe a Bylaw

It is important to know how the courts construe a bylaw (*i.e.*, how statutory interpretation works) in order to draft a bylaw in a manner that will allow the court to interpret it the way the drafter intended. There are a number of principles of bylaw construction. The principal rules are that

- the *Interpretation Act* applies
- every word has significance
- different words mean different things, and
- words must be read in their entire context.

1. Interpretation Act

The implications of the *Interpretation Act* are discussed in detail in Section IV of this paper. In summary, every provision of the *Interpretation Act* applies to every bylaw (unless a contrary intention is evident).

The *Interpretation Act* provides that definitions in the provincial “municipal acts” apply to the bylaws; provides that words defined in the *Interpretation Act* have the same definitions in the bylaws; governs the calculation of time; codifies the law respecting the repeal of one provision and the enactment of a subsequent provision; and gives the courts direction on how to construe bylaws.

2. Each Word is Significant

The courts have approached the construction of enactments from the perspective that every word is intended by the legislator to have some meaning. There are three rules in this regard:

1. Words in one provision and not another are intended to have a different legal effect.

If a zoning bylaw permits “highway commercial” and “convenience store” in a different zone (where the definition of “highway commercial” does not contain the words “convenience store”), a court may find that a convenience store is not permitted in the highway commercial zone.

2. Bylaws should not repeat something that has already been said.

The British Court of Appeal stated in *Hill v. William Hill (Park Land) Ltd.*:

“... though a parliamentary enactment (like parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what has been said once, this repetition in the case of an Act of Parliament is not to be assumed. When the legislature enacts a particular phrase in a statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to

every word in the statute implies that, unless there is a good reason to the contrary, the words add something which would not be there if the words were left out.”

3. Every word has legal effect.

A court will approach the interpretation of a bylaw on the basis that the bylaw is not repeating what is already provided for in the same or another bylaw.

3. Different Words Intend Different Legal Effects

The courts assume that different words in a bylaw mean different things. The most common mistake made in bylaws is to refer to a “lot” in one section and then a “parcel” in another section, or to “real property” or “property” in one provision and then “land” in another provision. There are many examples, including “road” and “highway”. A court will look at the bylaw on the basis that the council or board intended the words to have different meanings from each other.

4. Ordinary Meaning

The godfather of statutory interpretation, E. Driedger wrote in a book called *Construction of Statutes* that:

“Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

This statement was applied by the Supreme Court of Canada in *Rizzo and Rizzo Shoes* [1998] 1 S.C.R. 27.

If a word is not defined in the *Interpretation Act*, the local government legislation or the bylaw, the court will give the word its ordinary meaning. This may be determined by looking at dictionaries. As well, a word or a provision of a bylaw will be read in the context of the entire bylaw, not in isolation. In this regard, the court will look at the “purpose” section or preamble (if they exist) as well as the content of the bylaw as a whole before construing the meaning.

C. Plain Language

The legislature in Alberta has moved in the direction of plainer language. The following rules (further to the Canadian Legislative Drafting Conventions) are helpful:

- do not use Latin
- use “despite” instead of “notwithstanding”
- short, familiar words and phrases should be used that best express the intended meaning in accordance with common and approved usage

- different words should not be used to express the same meaning
- the same words should not be used in an act in different meanings
- pronouns should be used only if their antecedents are clear from the context
- possessive nouns and pronouns may be used but with care
- the words said, aforesaid, same, before mentioned, whatever, whatsoever, whomsoever, such and similar words of reference or emphasis should not be used
- use an article instead of the words “such”
- the device “and/or” should never be used
- the expression “provided that” in its various forms to denote a provision should not be used
- unnecessary adjectives and adverbs should be avoided
- a formula to describe mathematical processes should not be avoided

Plain language takes longer to prepare and may take up more space on the page. Here is an example of traditional language versus plain language:

“10. Where a person who does not reside, ordinarily reside or carry on business in the municipality sells or transfers a chattel to a person in the municipality, the person shall immediately apply for and obtain a business licence, complete a business licence application in the form of Schedule “B” attached to and forming part of this bylaw and pay to the treasurer the fee set out in Schedule “C” which is attached to and forms part of this bylaw.

10(1) This section applies to every person who:

(a) does not reside, ordinarily reside, or carry on business in the municipality; and

(b) sells personal property in the municipality.

(2) A person referred to in subsection (1) must:

(a) apply for a business licence on the form attached as Schedule B; and

(b) pay the fee set out in Schedule C,

and obtain a business licence before selling the personal property.”

VIII. Organization Of Bylaw

Lawyers find it useful to structure and organize a bylaw on the same basis as the provincial government structures and organizes legislation. It is not uncommon for a lawyer in our law firm to prepare a bylaw using the same structure and numbering (parts, divisions, sections, subsections, paragraphs and subparagraphs) as may be found in the provincial statute.

IX. APPENDICES**A. APPENDIX A – *Municipal Government Act* and *Interpretation Act* provisions****APPENDIX A****PROVISIONS OF MUNICIPAL GOVERNMENT ACT**

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) "business" means
 - (i) a commercial, merchandising or industrial activity or undertaking,
 - (ii) a profession, trade, occupation, calling or employment, or
 - (iii) an activity providing goods or services, whether or not for profit and however organized or formed, including a co-operative or association of persons;
- (b) "by-election" means an election to fill a vacancy on a council other than at a general election;
- (c) "chief administrative officer" means a person appointed to a position under section 205;
- (d) "chief elected official" means the person elected or appointed as chief elected official under section 150;
- (e) "council" means
 - (i) the council of a city, town, village, summer village, municipal district or specialized municipality,
 - (ii) repealed 1995 c24 s2,
 - (iii) the council of a town under the Parks Towns Act, or
 - (iv) the council of a municipality incorporated by a special Act;
- (f) "council committee" means a committee, board or other body established by a council under this Act;
- (g) "councillor" includes the chief elected official;
- (h) "designated officer" means a person appointed to a position established under section 210(1);
- (i) "elector" means a person who is eligible to vote in the election for a councillor under the Local Authorities Election Act;
- (j) "enactment" means
 - (i) an Act of the Legislature of Alberta and a regulation made under an Act of the Legislature of Alberta, and
 - (ii) an Act of the Parliament of Canada and a statutory instrument made under an Act of the Parliament of Canada,

- but does not include a bylaw made by a council;
- (k) "general election" means an election held to fill vacancies on council caused by the passage of time, and includes a first election;
- (l) "Land Compensation Board" means the Land Compensation Board established under the Expropriation Act;
- (m) "local authority" means
- (i) a municipal authority,
- (ii) a regional health authority under the Regional Health Authorities Act,
- (iii) a regional services commission, and
- (iv) the board of trustees of a district or division as defined in the School Act;
- (n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;
- (o) "Minister" means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;
- (p) "municipal authority" means a municipality, improvement district and special area and, if the context requires, in the case of an improvement district and special area,
- (i) the geographical area of the improvement district or special area, or
- (ii) the Minister, where the improvement district or special area is authorized or required to act;
- (q) "Municipal Government Board" means the Municipal Government Board established under Part 12, and includes any panel of the Board;
- (r) "municipal purposes" means the purposes set out in section 3;
- (s) "municipality" means
- (i) a city, town, village, summer village, municipal district or specialized municipality,
- (ii) repealed 1995 c24 s2,
- (iii) a town under the Parks Towns Act, or
- (iv) a municipality formed by special Act, or, if the context requires, the geographical area within the boundaries of a municipality described in subclauses (i) to (iii);
- (t) "natural person powers" means the capacity, rights, powers and privileges of a natural person;
- (u) "owner" means
- (i) in respect of unpatented land, the Crown,
- (ii) in respect of other land, the person who is registered under the Land Titles Act as the owner of the fee simple estate in the land, and
- (iii) in respect of any property other than land, the person in lawful possession of it;
- (v) "parcel of land" means
- (i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;
- (ii) where a building affixed to the land that would without special mention be transferred by a transfer

of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;

(iii) a quarter section of land according to the system of surveys under the Surveys Act or any other area of land described on a certificate of title;

(w) "pecuniary interest" means pecuniary interest within the meaning of Part 5, Division 6;

(x) "population" means population as defined and determined in accordance with the regulations;

(y) "public utility" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste management;

(x) residential and commercial street lighting, and includes the thing that is provided for public consumption, benefit, convenience or use;

(y.1) "regional services commission" means a regional services commission under Part 15.1;

(z) "road" means land

(i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or

(ii) used as a public road, and includes a bridge forming part of a public road and any structure incidental to a public road;

(aa) "tax" means

(i) a property tax,

(ii) a business tax,

(iii) a business revitalization zone tax,

(iv) a special tax,

(v) a well drilling equipment tax, and

(vi) a local improvement tax;

(bb) "taxpayer" means a person liable to pay a tax;

(cc) "whole council" means

(i) all of the councillors that comprise the council under section 143,

(ii) if there is a vacancy on council and the council is not required to hold a by-election under section 162 or 163, the remaining councillors, or

(iii) if there is a vacancy on council and the Minister orders that the remaining councillors constitute a quorum under section 160 or 168, the remaining councillors.

Application of Act

2(1) This Act applies to all municipalities and improvement districts.

(2) If there is an inconsistency between this Act and

- (a) repealed 1995 c24 s3,
- (b) the Parks Towns Act, or
- (c) a special Act forming a municipality,

the other Act prevails.

1994 cM-26.1 s2;1995 c24 s3

Part 1

Purposes, Powers and Capacity

of Municipalities

Municipal purposes

3 The purposes of a municipality are

- (a) to provide good government,
- (b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and
- (c) to develop and maintain safe and viable communities.

1994 cM-26.1 s3

Corporation

4 A municipality is a corporation.

1994 cM-26.1 s4

Powers, duties and functions

5 A municipality

- (a) has the powers given to it by this and other enactments,
- (b) has the duties that are imposed on it by this and other enactments and those that the municipality imposes on itself as a matter of policy, and
- (c) has the functions that are described in this and other enactments.

1994 cM-26.1 s5

Part 2

Bylaws

Division 1

General Jurisdiction

General jurisdiction to pass bylaws

7 A council may pass bylaws for municipal purposes respecting the following matters:

- (a) the safety, health and welfare of people and the protection of people and 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;
- (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;
- (h) wild and domestic animals and activities in relation to them;
- (i) the enforcement of bylaws made under this or any other enactment, including any or all of the following:
 - (i) the creation of offences;
 - (ii) for each offence, imposing a fine not exceeding \$10 000 or imprisonment for not more than one year, or both;
 - (iii) providing for the imposition of a penalty for an offence that is in addition to a fine or imprisonment so long as the penalty relates to a fee, cost, rate, toll or charge that is associated with the conduct that

gives rise to the offence;

(iv) providing that a specified penalty prescribed under section 44 of the Provincial Offences Procedure Act is reduced by a specified amount if the penalty is paid within a specified time;

(v) providing for imprisonment for not more than one year for non-payment of a fine or penalty;

(vi) providing that a person who contravenes a bylaw may pay an amount established by bylaw and if the amount is paid, the person will not be prosecuted for the contravention;

(vii) providing for inspections to determine if bylaws are being complied with;

(viii) remedying contraventions of bylaws.

1994 cM-26.1 s7

Powers under bylaws

8 Without restricting section 7, a council may in a bylaw passed under this Division

(a) regulate or prohibit;

(b) deal with any development, activity, industry, business or thing in different ways, divide each of them into classes and deal with each class in different ways;

(c) provide for a system of licences, permits or approvals, including any or all of the following:

(i) establishing fees for licences, permits and approvals, including fees for licences, permits and approvals that may be in the nature of a reasonable tax for the activity authorized or for the purpose of raising revenue;

(ii) establishing fees for licences, permits and approvals that are higher for persons or businesses who do not reside or maintain a place of business in the municipality;

(iii) prohibiting any development, activity, industry, business or thing until a licence, permit or approval has been granted;

(iv) providing that terms and conditions may be imposed on any licence, permit or approval, the nature of the terms and conditions and who may impose them;

(v) setting out the conditions that must be met before a licence, permit or approval is granted or renewed, the nature of the conditions and who may impose them;

(vi) providing for the duration of licences, permits and approvals and their suspension or cancellation for failure to comply with a term or condition or the bylaw or for any other reason specified in the bylaw;

(c.1) establish and specify the fees, rates, fares, tariffs or charges that may be charged for the hire of taxis or limousines;

(d) provide for an appeal, the body that is to decide the appeal and related matters.

1994 cM-26.1 s8;1998 c24 s2

Guides to interpreting power to pass bylaws

9 The power to pass bylaws under this Division is stated in general terms to

(a) give broad authority to councils and to respect their right to govern municipalities in whatever way the councils

consider appropriate, within the jurisdiction given to them under this or any other enactment, and

(b) enhance the ability of councils to respond to present and future issues in their municipalities.

1994 cM-26.1 s9

Bylaw passing powers in other enactments

10(1) In this section, "specific bylaw passing power" means a municipality's power or duty to pass a bylaw that is set out in an enactment other than this Division, but does not include a municipality's natural person powers.

(2) If a bylaw could be passed under this Division and under a specific bylaw passing power, the bylaw passed under this Division is subject to any conditions contained in the specific bylaw passing power.

(3) If there is an inconsistency between a bylaw passed under this Division and one passed under a specific bylaw passing power, the bylaw passed under this Division is of no effect to the extent that it is inconsistent with the specific bylaw passing power.

1994 cM-26.1 s10

Relationship to natural person powers

11(1) Despite section 180(2), a municipality may do something under its natural person powers even if the thing could be done under a bylaw passed under this Division.

(2) Section 7(i) does not apply to a bylaw passed under a municipality's natural person powers.

1994 cM-26.1 s11

Division 2

Scope of Bylaws

Geographic area of bylaws

12 A bylaw of a municipality applies only inside its boundaries unless

(a) one municipality agrees with another municipality that a bylaw passed by one municipality has effect inside the boundaries of the other municipality and the council of each municipality passes a bylaw approving the agreement, or

(b) this or any other enactment says that the bylaw applies outside the boundaries of the municipality.

1994 cM-26.1 s12

Relationship to Provincial law

13 If there is an inconsistency between a bylaw and this or another enactment, the bylaw is of no effect to the extent of the inconsistency.

1994 cM-26.1 s13

Division 7

Revision and Consolidation of Bylaws

Revision authorized

63(1) A council may by bylaw authorize the revision of all or any of the bylaws of the municipality.

(2) The bylaw may authorize the following:

(a) consolidating a bylaw by incorporating all amendments to it into one bylaw;

(b) omitting and providing for the repeal of a bylaw or a provision of a bylaw that is inoperative, obsolete, expired, spent or otherwise ineffective;

(c) omitting, without providing for its repeal, a bylaw or a provision of a bylaw that is of a transitional nature or that refers only to a particular place, person or thing or that has no general application throughout the municipality;

(d) combining 2 or more bylaws into one, dividing a bylaw into 2 or more bylaws, moving provisions from one bylaw to another and creating a bylaw from provisions of another or 2 or more others;

(e) altering the citation and title of a bylaw and the numbering and arrangement of its provisions, and adding, changing or omitting a note, heading, title, marginal note, diagram or example to a bylaw;

(f) omitting the preamble and long title of a bylaw;

(g) omitting forms or other material contained in a bylaw that can more conveniently be contained in a resolution, and adding authority for the forms or other material to be prescribed by resolution;

(h) correcting clerical, grammatical and typographical errors;

(i) making changes, without changing the substance of the bylaw, to bring out more clearly what is considered to be the meaning of a bylaw or to improve the expression of the law.

1994 cM-26.1 s63

Bylaw adopting revised bylaws

64(1) Revised bylaws have no effect unless a bylaw adopting them is passed.

(2) The bylaw adopting the revised bylaw may not be passed unless the chief administrative officer certifies that the proposed revised bylaws have been revised in accordance with the bylaw authorizing the revision.

(3) An amendment to the proposed revised bylaws may be made only if the change under the amendment is in accordance with the bylaw authorizing the revision.

(4) The bylaw adopting the revised bylaws must specify the date or dates that the revised bylaws are to come into force and the date or dates that the bylaws being repealed are repealed.

1994 cM-26.1 s64

Requirements relating to substituted bylaws

65 Revised bylaws that are in effect are deemed to have been passed as if all the requirements respecting the passing and approval of the bylaws for which the revised bylaws are substituted have been complied with.

1994 cM-26.1 s65

Effects of revised bylaws

66(1) The provisions of the revised bylaws substituted for the previous bylaws, when they have the same effect, operate retrospectively as well as prospectively and are deemed to come into force on the days on which the corresponding previous bylaws came into force.

(2) If the provisions of the revised bylaws do not have the same effect,

(a) the provisions of the revised bylaws prevail with respect to all transactions, matters and things occurring on or after the day the revised bylaws come into force, and

(b) the provisions of the previous bylaws prevail with respect to all earlier transactions, matters and things.

1994 cM-26.1 s66

References to repealed bylaws

67 A reference in a bylaw, enactment or document to a bylaw that has been repealed by the revised bylaws is, in respect of any subsequent transaction, matter or thing occurring after the revised bylaws come into force, to be considered to be a reference to the bylaw in the revised bylaws that has been substituted for the repealed bylaw.

1994 cM-26.1 s67

Mistakes made during revision

68(1) If a mistake is made during the revision of a bylaw and the bylaw adopting the revised bylaw has been passed, the mistake may be corrected by bylaw.

(2) The bylaw correcting the mistake is deemed to have been made as if all the requirements respecting the passing and approval of the bylaw for which the revised bylaw was substituted have been complied with.

1994 cM-26.1 s68

Consolidation of bylaws

69(1) A council may by bylaw authorize a designated officer to consolidate one or more of the bylaws of the municipality.

(2) In consolidating a bylaw, the designated officer must

(a) incorporate all amendments to it into one bylaw, and
(b) omit any provision that has been repealed or that has expired.

(3) A printed document purporting

(a) to be a copy of a bylaw consolidated under this section, and
(b) to be printed under the authority of a designated officer, is proof, in the absence of evidence to the contrary, of the original bylaw, of all bylaws amending it, and of the fact of the passage of the original and all amending bylaws.

1994 cM-26.1 s69

Division 9

Council Proceedings

Requirements for Valid Action

Methods in which council may act

180(1) A council may act only by resolution or bylaw.

(2) Where a council or municipality is required or authorized under this or any other enactment or bylaw to do something by bylaw, it may only be done by bylaw.

(3) Where a council is required or authorized under this or any other enactment or bylaw to do something by resolution or to do something without specifying that it be done by bylaw or resolution, it may be done by bylaw or resolution.

1994 cM-26.1 s180

Requirements for valid bylaw or resolution

181(1) A bylaw or resolution of council is not valid unless passed at a council meeting held in public at which there is a quorum present.

(2) A resolution of a council committee is not valid unless passed at a meeting of that committee held in public at which there is a quorum present.

1994 cM-26.1 s181

Voting

Restriction to one vote per person

182 A councillor has one vote each time a vote is held at a

council meeting at which the councillor is present.

1994 cM-26.1 s182

Requirement to vote and abstentions

183(1) A councillor attending a council meeting must vote on a matter put to a vote at the meeting unless the councillor is required or permitted to abstain from voting under this or any other enactment.

(2) The council must ensure that each abstention and the reasons for the abstention are recorded in the minutes of the meeting.

1994 cM-26.1 s183

Abstention from voting on matter discussed at public hearing

184 When a public hearing on a proposed bylaw or resolution is held, a councillor

(a) must abstain from voting on the bylaw or resolution if the councillor was absent from all of the public hearing, and

(b) may abstain from voting on the bylaw or resolution if the councillor was only absent from a part of the public hearing.

1994 cM-26.1 s184

Recording of votes

185(1) Before a vote is taken by council, a councillor may request that the vote be recorded.

(2) When a vote is recorded, the minutes must show the names of the councillors present and whether each councillor voted for or against the proposal or abstained.

1994 cM-26.1 s185

Secret ballot

185.1(1) Despite sections 185 and 197, at a meeting at which a council

(a) establishes a council committee or other body under section 145, or

(b) appoints a chief elected official under section 150, a secret ballot must be held if requested by any councillor present at the meeting.

(2) A vote by secret ballot under subsection (1) must be confirmed by a resolution of council.

1998 c24 s8

Tied vote

186 If there is an equal number of votes for and against a resolution or bylaw, the resolution or bylaw is defeated.

1994 cM-26.1 s186

Passing a Bylaw

Bylaw readings

187(1) Every proposed bylaw must have 3 distinct and separate readings.

(2) Each councillor present at the meeting at which first reading is to take place must be given or have had the opportunity to review the full text of the proposed bylaw before the bylaw receives first reading.

(3) Each councillor present at the meeting at which third reading is to take place must, before the proposed bylaw receives third reading, be given or have had the opportunity to review the full text of the proposed bylaw and of any amendments that were passed after first reading.

(4) A proposed bylaw must not have more than 2 readings at a council meeting unless the councillors present unanimously agree to consider third reading.

(5) Only the title or identifying number has to be read at each reading of the bylaw.

1994 cM-26.1 s187

Rescission of previous bylaw readings

188 The previous readings of a proposed bylaw are rescinded if the proposed bylaw

(a) does not receive third reading within 2 years after first reading, or

(b) is defeated on second or third reading.

1994 cM-26.1 s188

Passing of bylaw

189 A bylaw is passed when it receives third reading and it is signed in accordance with section 213.

1994 cM-26.1 s189

Coming into force

190(1) A bylaw comes into force at the beginning of the day that it is passed unless otherwise provided in this or any other enactment or in the bylaw.

(2) If this or any other enactment requires a bylaw to be approved, the bylaw does not come into force until the approval is given.

(3) No bylaw may come into force on a day before it is passed unless the enactment authorizing the passing of the bylaw specifically allows for the bylaw to come into force on a day before it is passed.

1994 cM-26.1 s190

Amendment and repeal

191(1) The power to pass a bylaw under this or any other enactment includes a power to amend or repeal the bylaw.

(2) The amendment or repeal must be made in the same way as the original bylaw and is subject to the same consents or conditions or advertising requirements that apply to the passing of the original bylaw, unless this or any other enactment provides otherwise.

1994 cM-26.1 s191

Meetings

Regular council meetings

193(1) A council may decide at a council meeting at which all the councillors are present to hold regularly scheduled council meetings on specified dates, times and places.

(2) Notice of regularly scheduled meetings need not be given.

(3) If council changes the date, time or place of a regularly scheduled meeting, the municipality must give at least 24 hours' notice of the change

(a) to any councillors not present at the meeting at which the change was made, and

(b) to the public.

1994 cM-26.1 s193

Special council meetings

194(1) The chief elected official

(a) may call a special council meeting whenever the official considers it appropriate to do so, and

(b) must call a special council meeting if the official receives a written request for the meeting, stating its purpose, from a majority of the councillors.

(2) A special council meeting called under subsection (1) (b) must be held within 14 days after the date that the chief elected official receives the request or any shorter period provided for by bylaw.

(3) The chief elected official calls a special council meeting by

giving at least 24 hours' notice in writing to each councillor and the public stating the purpose of the meeting and the date, time and place at which it is to be held.

(4) A special council meeting may be held with less than 24 hours' notice to all councillors and without notice to the public if at least 2/3 of the whole council agrees to this in writing before the beginning of the meeting.

(5) No matter other than that stated in the notice calling the special council meeting may be transacted at the meeting unless the whole council is present at the meeting and the council agrees to deal with the matter in question.

1994 cM-26.1 s194

Method of giving notice

196(1) Notice of a council or council committee meeting is deemed to have been given to a councillor or member of a council committee if the notice is delivered to an adult person at the councillor's or member's home or place of business.

(2) Notice of a council or council committee meeting to the public is sufficient if the notice is given in a manner specified by council.

1994 cM-26.1 s196

Public presence at meetings

197(1) Councils and council committees must conduct their meetings in public unless subsection (2) or (2.1) applies.

(2) Councils and council committees may close all or part of their meetings to the public if a matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the Freedom of Information and Protection of Privacy Act.

(2.1) A municipal planning commission, subdivision authority, development authority or subdivision and development appeal board established under Part 17 may deliberate and make its decisions in meetings closed to the public.

(3) When a meeting is closed to the public, no resolution or bylaw may be passed at the meeting, except a resolution to revert to a meeting held in public.

1994 cM-26.1 ss197,738;1995 c24 s23

Right of public to be present

198 Everyone has a right to be present at council meetings and council committee meetings conducted in public unless the person chairing the meeting expels a person for improper conduct.

1994 cM-26.1 s198

Meeting through electronic communications

199(1) A council meeting or council committee meeting may be conducted by means of electronic or other communication facilities if

(a) notice is given to the public of the meeting, including the way in which it is to be conducted,

(b) the facilities enable the public to watch or listen to the meeting at a place specified in that notice and a designated officer is in attendance at that place, and

(c) the facilities enable all the meeting's participants to watch or hear each other.

(2) Councillors participating in a meeting held by means of a communication facility are deemed to be present at the meeting.

1994 cM-26.1 s199

Signing or authorization of municipal documents

213(1) Minutes of council meetings must be signed by

(a) the person presiding at the meeting, and

- (b) a designated officer.
 - (2) When council has delegated a power, duty or function to a council committee, the minutes of a council committee meeting that deal with the power, duty or function must be signed by
 - (a) the person presiding at the meeting, and
 - (b) a designated officer.
 - (3) Bylaws must be signed by
 - (a) the chief elected official, and
 - (b) a designated officer.
 - (4) Agreements and cheques and other negotiable instruments must be signed or authorized
 - (a) by the chief elected official or by another person authorized by council to sign them, and
 - (b) by a designated officer,or by a designated officer acting alone if so authorized by council.
 - (5) A signature may be printed, lithographed or otherwise reproduced if so authorized by council.
- 1994 cM-26.1 s213

PROVISIONS OF INTERPRETATION ACT

Interpretation

1(1) In this Act,

- (a) "enact" includes issue, make, establish or prescribe;
 - (b) "public officer" includes any person in the public service of the Province
 - (i) who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power, or
 - (ii) on whom a duty is imposed by or under an enactment;
 - (c) "regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation, bylaw or resolution enacted
 - (i) in the execution of a power conferred by or under the authority of an Act, or
 - (ii) by or under the authority of the Lieutenant Governor in Council,but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between 2 or more persons;
 - (d) "repeal" includes strike out, revoke, cancel or rescind.
- (2) For the purposes of this Act, an enactment that has expired or lapsed or otherwise ceased to have effect is deemed to have been repealed.

RSA 1980 cI-7 s1

Application to all enactments

2 This Act applies to every enactment whether enacted before or after the commencement of this Act.

RSA 1980 cI-7 s2

Extent of application

3(1) This Act applies to the interpretation of every enactment

except to the extent that a contrary intention appears in this Act or the enactment.

(2) The provisions of this Act apply to the interpretation of this Act except to the extent that a contrary intention appears in this Act.

(3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable to it and not inconsistent with this Act.

RSA 1980 cI-7 s3

Time of commencement or repeal

5(1) An enactment has effect immediately at the beginning of the day on which it comes into force.

(2) An enactment that is repealed and replaced ceases to have effect at the time the new enactment commences.

(3) Subject to subsection (2), where

(a) an enactment is expressed to be repealed on a particular day, or

(b) an enactment is expressed to expire or otherwise cease to have effect on a particular day, that enactment is repealed, expires or otherwise ceases to have effect at the end of that day.

RSA 2000 cI-8 s5;2002 c17 s3

Enactments always speaking

9 An enactment shall be construed as always speaking and shall be applied to circumstances as they arise.

RSA 1980 cI-7 s9

Enactments remedial

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

RSA 1980 cI-7 s10

Enacting clause

11 The words "HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:" indicate the authority by virtue of which an Act is passed.

RSA 1980 cI-7 s11

Preambles and reference aids

12(1) The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.

(2) In an enactment,

(a) tables of contents,

(b) marginal notes and section headers, and

(c) statutory citations after the end of a section or schedule

are not part of the enactment, but are inserted for convenience of reference only.

RSA 2000 cI-8 s12;2002 c17 s3

Definitions and interpretation provisions

13 Definitions and other interpretation provisions in an enactment

(a) are applicable to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment, and

(b) apply to regulations made under the enactment except to the extent that a contrary intention appears in the enactment or in the regulations.

RSA 1980 cI-7 s13

Crown not bound

14 No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, unless the enactment expressly states that it binds Her Majesty.

RSA 1980 cI-7 s14

Majority and quorum

17(1) If in an enactment an act or thing is required or authorized to be done by more than 2 persons, a majority of them may do it.

(2) If an enactment establishes or continues a board,

(a) at least 1/2 of the number of members provided for under the enactment constitutes a quorum at a meeting of the board;

(b) an act or thing done by a majority of the members of the board present at a meeting, if the members present constitute a quorum, is deemed to have been done by the board;

(c) a vacancy in the membership of the board does not invalidate the constitution of the board or impair the right of the members of the board to act, if the number of members is not less than a quorum.

(3) In subsection (2), "board" means a board, commission or other body, whether incorporated or not, consisting of 3 or more members.

RSA 1980 cI-7 s17;1991 c21 s14

Ancillary powers

25(1) If in an enactment anything is required or authorized to be done by or before a justice of the peace or public officer, it shall be done by or before one whose jurisdiction or powers extend to the place where the thing is to be done.

(2) If in an enactment power is given to a person to do or enforce the doing of any act or thing, all other powers that are necessary to enable the person to do or enforce the doing of the act or thing are deemed to be given also.

(3) If in an enactment a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(4) If in an enactment a power is conferred to make regulations, the power shall be construed as including a power exercisable in a similar manner, and subject to a similar consent and conditions, if any, to repeal or amend the regulations and to make others.

(5) If in an enactment the doing of an act that is expressly authorized is dependent on the doing of any other act by the Lieutenant Governor in Council or by a public officer, the Lieutenant Governor in Council or public officer, as the case may be, has the power to do that other act.

RSA 1980 cI-7 s23

Use of forms and words

26(1) When a form is prescribed by or under an enactment, deviations from it not affecting the substance and not calculated to mislead do not invalidate the form used.

(2) In an enactment, words importing male persons include female persons, words importing female persons include male persons and words importing either sex include corporations.

(3) In an enactment, words in the singular include the plural, and words in the plural include the singular.

(4) When a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.

RSA 1980 cI-7 s24

General definitions

28(1) In an enactment,

- (a) "Act" means an Act of the Legislature and includes an Ordinance of the North-West Territories in force in Alberta;
- (b) "adult" means a person 18 years of age or older;
- (c) "authorized trustee investment" means an investment authorized under the Schedule to the Trustee Act;
- (d) "bank" means a bank named in Schedule I or II of the Bank Act (Canada);
- (e) "civil enforcement agency" means a civil enforcement agency under the Civil Enforcement Act;
- (f) "civil enforcement bailiff" means a civil enforcement bailiff appointed under the Civil Enforcement Act;
- (g) "civil enforcement proceedings" means civil enforcement proceedings as defined in the Civil Enforcement Act;
- (h) "commencement", when used with reference to an enactment, means the time at which that enactment comes into force;
- (i) "conservation officer" means a person holding office as a conservation officer under section 7 of Schedule 5 to the Government Organization Act;
- (j) "Court of Appeal" means the Court of Appeal of Alberta;
- (k) "Court of Queen's Bench" means the Court of Queen's Bench of Alberta;
- (l) "credit union" means a credit union incorporated under the Credit Union Act;
- (m) "enactment" means an Act or a regulation or any portion of an Act or regulation;
- (n) "enforcement creditor" means an enforcement creditor as defined in the Civil Enforcement Act;
- (o) "enforcement debtor" means an enforcement debtor as defined in the Civil Enforcement Act;
- (p) "Executive Council" means the Executive Council of Alberta;
- (q) "Gazette" means The Alberta Gazette;
- (r) "Government" or "Government of Alberta" means Her Majesty in right of Alberta;
- (s) "Government of Canada" means Her Majesty in right of Canada;
- (t) "Governor General" means the Governor General of Canada and includes the Administrator of Canada;
- (u) "Governor General in Council" means the Governor General acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Queen's Privy Council for Canada;
- (v) "Great Seal" means the Great Seal of the Province;
- (w) "Her Majesty", "His Majesty", "the Queen", "the King", "the Crown" or "the Sovereign" means the Sovereign of the United Kingdom, Canada and Her other realms and territories, and Head of the Commonwealth;
- (x) "holiday" includes
 - (i) every Sunday,
 - (ii) New Year's Day, Alberta Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Labour Day, Remembrance Day and Christmas Day,

- (iii) the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign,
- (iv) December 26, or when that date falls on a Sunday or a Monday, then December 27,
- (v) any day appointed by proclamation of the Governor General in Council or by proclamation of the Lieutenant Governor in Council for a public holiday or for a day of fast or thanksgiving or as a day of mourning, and
- (vi) with reference to any particular part of Alberta, the day in each year that may by proclamation of the Lieutenant Governor in Council be appointed as a public holiday for that part of Alberta for the planting of forest or other trees;
- (y) "justice" means a justice within the meaning of the Provincial Offences Procedure Act;
- (z) "lawyer" means an active member of The Law Society of Alberta;
- (aa) "Legislative Assembly" or "Assembly" means the Legislative Assembly of Alberta;
- (bb) "Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly;
- (cc) "Lieutenant Governor" means the Lieutenant Governor of the Province of Alberta and includes the Administrator of the Province of Alberta;
- (dd) "Lieutenant Governor in Council" means the Lieutenant Governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Executive Council;
- (ee) "loan corporation" means a loan corporation registered under the Loan and Trust Corporations Act;
- (ff) "medical examiner" means a medical examiner appointed under the Fatality Inquiries Act;
- (gg) "Metis settlement" means a settlement corporation established under the Metis Settlements Act or the geographic area of a settlement corporation, depending on the context in which "Metis settlement" is used;
- (hh) "Metis Settlements Land Registry" means the Metis Settlements Land Registry established under the Metis Settlements Act;
- (ii) "minor" means a person under the age of 18 years;
- (jj) "municipal police service" means a municipal police service or a regional police service under the Police Act;
- (kk) "municipality" means a city, town, village, municipal district, specialized municipality, improvement district or special area;
- (ll) "oath" or "affidavit" includes a solemn affirmation or solemn declaration whenever the context applies to any person by whom a solemn affirmation or declaration may be made instead of an oath; and in similar cases the expression "sworn" includes the expression "affirmed" or "declared";
- (mm) "offence" means an offence punishable on summary conviction;
- (nn) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;

- (oo) "Personal Property Registry" means the Personal Property Registry under the Personal Property Security Act;
- (pp) "physician", or any similar word or expression implying legal recognition of any person as a medical practitioner, means a person who is registered under the Medical Profession Act as a medical practitioner and who is not under suspension;
- (qq) "police officer" means a member of a police service and includes a member of the Royal Canadian Mounted Police;
- (rr) "police service" means a police service under the Police Act;
- (ss) "prescribed" means prescribed by or under the enactment in which the word occurs;
- (tt) "proclamation" means a proclamation of the Lieutenant Governor under the Great Seal issued pursuant to an order of the Lieutenant Governor in Council;
- (uu) "Province" means the Province of Alberta;
- (vv) "province", when used as meaning a part of Canada other than Alberta, includes the territories;
- (ww) "provincial analyst" means a person appointed by the Minister of Justice and Attorney General as a provincial analyst;
- (xx) "Provincial Court" means The Provincial Court of Alberta;
- (yy) "provincial judge" means a judge of the Provincial Court;
- (zz) "Registrar of Land Titles" means a Registrar within the meaning of the Land Titles Act;
- (aaa) "statutory declaration" or "solemn declaration" means a solemn declaration made under section 18 of the Alberta Evidence Act or section 14 of the Canada Evidence Act (Canada);
- (bbb) repealed RSA 2000 c16(Supp) s49;
- (ccc) "territories", when used as meaning the territories of Canada, means the Northwest Territories, the Yukon Territory and Nunavut;
- (ddd) "treasury branch" means a treasury branch within the meaning of the Alberta Treasury Branches Act;
- (eee) "trust corporation" means a trust corporation registered under the Loan and Trust Corporations Act;
- (fff) "village" includes summer village;
- (ggg) "will" means a will as defined in the Wills Act;
- (hhh) "writ of enforcement" means a writ of enforcement under the Civil Enforcement Act;
- (iii) "writ proceedings" means writ proceedings as defined in the Civil Enforcement Act;
- (jjj) "writing", "written" or any similar term includes words represented or reproduced by any mode of representing or reproducing words in visible form.
- (2) In an enactment,
- (a) "hereafter" shall be construed as referring to the time after the commencement of the enactment containing that word;
- (b) "herein" used in a section or part of an enactment shall be construed as referring to the whole enactment and not to that section or part only;
- (c) "may" shall be construed as permissive and empowering;

- (d) "must" is to be construed as imperative;
- (e) "now" and "next" shall be construed as referring to the time of commencement of the enactment containing the word;
- (f) "shall" is to be construed as imperative.

Reference by common name

30 In an enactment a reference by name to any country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which that name is commonly applied, notwithstanding that the name is not its formal or extended designation.

RSA 1980 cI-7 s26

Citation includes amendments

31 In an enactment a citation of or reference to another enactment of the Province, of another province or territory or of Canada is a citation of or reference to the other enactment as amended, whether amended before or after the commencement of the enactment in which the citation or reference occurs.

RSA 1980 cI-7 s27;1990 c29 s13

References in enactments

32(1) A reference in an enactment to a series of numbers or letters by the first and last numbers or letters of the series shall be construed as including the number or letter first mentioned and the number or letter last mentioned.

(2) A reference in an enactment to a part, subpart, division, section, schedule, appendix or form shall be construed as a reference to a part, subpart, division, section, schedule, appendix or form of the enactment in which the reference occurs.

(3) A reference in an enactment to a subsection, clause, subclause, paragraph or subparagraph shall be construed as a reference to a subsection, clause, subclause, paragraph or subparagraph of the section, subsection, clause, subclause or paragraph, as the case may be, in which the reference occurs.

(4) A reference in an enactment to regulations shall be construed as a reference to regulations made under the enactment in which the reference occurs.

RSA 2000 cI-8 s32;RSA 2000 cI-3 s859

Application of other enactments

33 If an enactment provides that another enactment of Alberta, Canada or another province or territory applies, it applies with the necessary changes and so far as it is applicable.

RSA 1980 cI-7 s29

Amending enactments

34 An amending enactment shall be construed as part of the enactment that it amends.

RSA 1980 cI-7 s30

Repeal

35(1) When an enactment is repealed in whole or in part, the repeal does not

- (a) revive an enactment or thing not in force or existing immediately before the time when the repeal takes effect,
- (b) affect the previous operation of the enactment so repealed or anything done or suffered under it,
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so

repealed,

(d) affect any offence committed against or a contravention of the enactment so repealed, or any penalty, forfeiture or punishment incurred in respect of or under the enactment so repealed, or

(e) affect any investigation, proceeding or remedy in respect of the right, privilege, obligation, liability, penalty, forfeiture or punishment.

(2) An investigation, proceeding or remedy described in subsection (1)(e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.

RSA 1980 cI-7 s31

Repeal and replacement

36(1) If an enactment is repealed and a new enactment is substituted for it,

(a) every person acting under the repealed enactment shall continue to act as if appointed or elected under the new enactment until the person is reappointed or another is appointed or elected in the person's place;

(b) every proceeding commenced under the repealed enactment shall be continued under and in conformity with the new enactment so far as may be consistent with the new enactment;

(c) the procedure established by the new enactment shall be followed as far as it can be adapted

(i) in the recovery or enforcement of penalties and forfeitures incurred under the repealed enactment,

(ii) in the enforcement of rights existing or accruing under the repealed enactment, and

(iii) in a proceeding in relation to matters that have happened before the repeal;

(d) if any penalty, forfeiture or punishment is reduced or mitigated by the new enactment, the penalty, forfeiture or punishment, if imposed or adjudged after the repeal, shall be reduced or mitigated accordingly;

(e) all regulations made under the repealed enactment remain in force and are deemed to have been made under the new enactment, insofar as they are not inconsistent with the new enactment;

(f) any reference in an unrepealed enactment to the repealed enactment shall, with respect to a subsequent transaction, matter or thing, be construed as a reference to the provisions of the new enactment relating to the same subject-matter as the repealed enactment, but if there are no provisions in the new enactment relating to the same subject-matter, the repealed enactment shall be construed as being unrepealed insofar as is necessary to maintain or give effect to the unrepealed enactment.

(2) If a statute or regulation of any province or territory or of Canada is repealed in whole or in part and other provisions are substituted for it, a reference in an enactment of Alberta to the repealed statute or regulation shall, with respect to a subsequent transaction, matter or thing, be construed to be a reference to the substituted provisions relating to the same subject-matter as the repealed statute or regulation.

RSA 1980 cI-7 s32

No implications from repeal, amendment, etc.

37(1) The repeal of an enactment in whole or in part, the repeal of an enactment and the substitution of another enactment or the amendment of an enactment shall not be construed to be or to involve

(a) a declaration that the enactment was or was considered by the Legislature or other body or person by whom it was enacted to have been previously in force, or

(b) a declaration as to the previous state of the law.

(2) The amendment of an enactment shall not be construed to be or to involve a declaration that the law under the enactment prior to the amendment was or was considered by the Legislature or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

(3) A re-enactment, revision, consolidation or amendment of an enactment shall not be construed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

RSA 1980 cI-7 s33

B. APPENDIX B – MODEL BYLAW

APPENDIX B – MODEL BYLAW**CITY OF SMALLVILLE****OFFICE CONSOLIDATION****The Smoking Bylaw
Bylaw No. 3274, 2002**

A bylaw of the City of Smallville to Regulate Smoking

(As Amended by Bylaw Number 3299, 2003, Effective January 2, 2003)

GIVEN THAT Council considers it expedient and desirable for the health, safety, and welfare of the residents to regulate smoking in the City of Smallville;

The Council of the City Of Smallville enacts as follows:

Citation

1. This bylaw may be cited as “The Smoking Bylaw”.

Definitions

2. In this bylaw
 - (a) “City” means the City of Smallville, a municipal corporation of the Province of Alberta and includes the area contained within the boundaries of the City;
 - (b) “educational institution” means:
 - (i) a school as defined by the *School Act*,
 - (ii) a university and private college as defined by the *Universities Act*,
 - (iii) a public and private college as defined by the *Colleges Act*;
 - (c) “employee” includes a person who
 - (i) performs work for or supplies services to an employer, or
 - (ii) receives instruction or training in the activity, work, undertaking, calling, service, trade, occupation or profession of the employer;

- (d) “employer” includes a person who as the owner, proprietor, manager, superintendent or overseer of an activity, work, undertaking, trade, calling, service, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of, an employee;
- (e) “hospital” includes a hospital, auxiliary hospital or nursing home as defined in the *Hospitals Act* and a health clinic;
- (f) “licensed gaming events” means a lottery scheme as defined by the *Criminal Code* of Canada which takes place in a building or part of a building or in or under a structure;
- (g) “licensed premises” means premises licensed under the *Liquor Control Act*;
- (h) “place of public assembly” means public premises where members of the public assemble for the purpose of worship, entertainment, recreation, business or amusement and includes places listed in Schedule A;
- (i) “public premises” includes all or part of a building, structure or passenger conveyance to which the public has access as a right or by invitation, express or implied, and includes premises listed on Schedule B;
- (j) “retail shop” does not include
 - (i) “licensed premises” as defined in the *Liquor Control Act*, and
 - (ii) a place where the only trade or business carried on is that of custom blending of tobaccos or the sale of tobacco, pipes, cigars, cigarettes or smokers sundries;
- (k) “workplace” includes the whole or any part of a building, structure, vehicle or passenger conveyance in which a business is carried on, except in a private residence.

Prohibition and Exceptions

3. No person may carry or have in their possession a burning cigarette, cigar or pipe containing burning tobacco, or burn tobacco in any other manner, in
 - (a) public premises,
 - (b) an educational institution,
 - (c) a workplace.

Offence and Fine

- 4. Every person who contravenes a provision of this bylaw is guilty of an offence and is liable on summary conviction to a fine of not more than FIVE HUNDRED DOLLARS (\$500.00).

Severability

- 5. If any portion of this bylaw is declared invalid by a court of competent jurisdiction, then the invalid portion must be severed and the remainder of the bylaw is deemed valid.

Repeal

- 6. Bylaw No. 1741, 2001, The Lung Cancer Prevention Bylaw, as amended, is repealed.

READ A FIRST TIME this ___ day of _____, 2003.

READ A SECOND TIME this ___ day of _____, 2003.

READ A THIRD TIME this ___ day of _____, 2003.

SIGNED by the Mayor and Clerk this ___ day of _____, 2003.

Mayor

Clerk

SCHEDULE A**Place of Public Assembly**

For the purposes of the definition of “place of public assembly” in Section 2(h), the public premises include, without limitation, a theatre, convention centre, arena, recreation centre, video arcade, pool and billiard hall, dance hall, church, church hall, concert hall, auditorium, swimming pool, movie house, premises of licensed gaming events, lecture hall, library, museum, art galley.

SCHEDULE B**Public Premises**

The definition of “public premises” in Section 2(i) includes, without limitation, the following areas: reception area, elevator, escalator or stairwell, corridor or lobby of a theatre, hotel or office building, place of public assembly, personal service establishment, restaurant, licensed premises, retail stop, shopping mall, hospital, financial institution, laundromat, bus shelter, public washroom.

c. APPENDIX C – MODEL BYLAW BEFORE REVISIONS

APPENDIX C – MODEL BYLAW BEFORE REVISIONS

[Invalid portions highlighted]

CITY OF SMALLVILLE**OFFICE CONSOLIDATION****THE SMOKING BYLAW
BYLAW NO. 3274, 2002**

A bylaw of the City of Smallville to Regulate Smoking

(As Amended by Bylaw Number 3299, 2003, Effective January 2, 2003)

GIVEN THAT Council considers it expedient and desirable for the health, safety, and welfare of the residents to regulate smoking in the City of Smallville;

AND GIVEN THAT under Section 42 of the *Municipal Act* a Council may regulate persons in respect of health matters; (incorrect or outdated authority)

The Council of the City Of Smallville enacts as follows:

Citation

1. This bylaw may be cited as “The Smoking Bylaw”.

Definitions

2. In this bylaw, unless the context otherwise requires, (uncertainty)
 - (a) “City” means the City of Smallville, a municipal corporation of the Province of Alberta and includes the area contained within the boundaries of the City and the rural area around the City (ultra vires);
 - (b) “educational institution” means:
 - (i) a school as defined by the *School Act*,
 - (ii) a university and private college as defined by the *Universities Act*,
 - (iii) a public and private college as defined by the *Colleges Act*;

- (c) “employee” includes a person who
- (i) performs work for or supplies services to an employer,
 - (ii) receives instruction or training in the activity, work, undertaking, calling, service, trade, occupation or profession of the employer; or
 - (iii) is otherwise in a class of persons designated by the Council; (unlawful delegation)
- (d) “employer” includes a person who as the owner, proprietor, manager, superintendent or overseer of an activity, work, undertaking, trade, calling, service, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of, an employee;
- (e) “hospital” includes a hospital, auxiliary hospital or nursing home as defined in the *Hospitals Act* and a health clinic;
- (f) “licensed gaming events” means a lottery scheme as defined by the *Criminal Code* of Canada which takes place in a building or part of a building or in or under a structure;
- (g) “licensed premises” means premises licensed under the *Liquor Control Act* except as permitted by the Mayor (unlawful delegation);
- (h) “place of public assembly” means public premises where members of the public assemble for the purpose of worship, entertainment, recreation, business or amusement and includes places listed in Schedule A;
- (i) “public premises” includes all or part of a building, structure or passenger conveyance to which the public has access as a right or by invitation, express or implied, and includes premises listed on Schedule B or other premises designated by the Clerk (unlawful delegation);
- (j) “retail shop” does not include
- (i) “licensed premises” as defined in the *Liquor Control Act*, and
 - (ii) a place where the only trade or business carried on is that of custom blending of tobaccos or the sale of tobacco, pipes, cigars, cigarettes or smokers sundries;
- (k) “workplace” includes any area that is in or near (uncertainty) the whole or any part of a building, structure, vehicle or passenger conveyance in which a business is carried on, except in a private residence.

Prohibition and Exceptions

3. No person may carry or have in their possession a burning cigarette, cigar, joint (ultra vires – federal) or pipe containing burning tobacco, cannabis sativa (ultra vires – federal) or burn tobacco, cannabis sativa (ultra vires – federal) in any other manner, in
- (a) public premises,
 - (b) an educational institution,
 - (c) a workplace,
 - (d) other place designated by the Canadian Cancer Society (unlawful delegation).

Offence and Fine

4. Every person who contravenes a provision of this bylaw is guilty of an offence and is liable on summary conviction to a fine of not more than FIVE HUNDRED DOLLARS (\$500.00).

[Need to insert severability clause.]

Repeal

5. Bylaw No. 1741, 2001, The Lung Cancer Prevention Bylaw, (need to insert the words “as amended” or list amendments to be repealed) is repealed.

READ A FIRST TIME this ___ day of _____, 2003.

READ A SECOND TIME this ___ day of _____, 2003.

READ A THIRD TIME this ___ day of _____, 2003.

IN FORCE June 30, 2002 – (retroactivity)

Mayor

Clerk

[Need to insert date bylaw signed by Mayor and Clerk]