



328, 9707 - 110 Street
Edmonton, AB T5K 2L9
www.chbaalberta.ca

780 424 5890
800 661 3348
info@chbaalberta.ca
@CHBA_Alberta

Vision: A Home for Every Albertan

Mission: Advocate for Housing Choices

Philosophy: One Voice – One Industry

July 29, 2016

Honourable Danielle Larivee
Minister of Municipal Affairs

Dear Minister Larivee:

Thank you for the work completed to date on the review of the Municipal Government Act. The substantial consultation process has allowed CHBA – Alberta members to engage with your office and department throughout. We are pleased to have been heard on many of the issues.

The majority of the proposed changes to the Act are encouraging and will represent a substantial improvement in the accountability and transparency of local governments. This will benefit every Albertan. The intent of other proposed changes - such as environmental reserves, conservation reserves, growth management boards and intermunicipal collaboration initiatives also represent positives for Albertans. There is some refinement needed in these areas and CHBA – Alberta is eager to assist in this process.

A core focus of CHBA – Alberta is on housing affordability and ensuring a home for every Albertan. Our review of the proposed changes is based on these principles, and we do have some concerns on how elements of the proposed changes could impact housing affordability. Specifically, the proposed changes to development (offsite) levies and inclusionary housing could substantially increase costs. We are confident that we can work with Municipal Affairs and other stakeholders in refining policies and regulations that will achieve the desired outcome while limiting the impact on housing affordability.

Our members and staff look forward to being actively involved in consultations on the regulations that impact our industry and home buyers. We trust that this same level of involvement will occur with City Charters - which we understand are currently being prepared. It is important that those who helped shape the MGA amendments be involved in this process as early as possible to ensure policy is developed that works for cities, industry and all Albertans.

As an association that represents builders, developers, trades and suppliers across the province, we are committed to being an active resource and advocate throughout the remaining phases of the review. Attached are some suggestions relating to both the Act and associated regulations that are aimed at strengthening the likelihood of positive outcomes for those specific issues. Should you have any questions or require clarification, please do not hesitate to contact us. We look forward to meeting with you in August and speaking about the MGA and other issues further.

Sincerely,

Jim Rivait

Chief Executive Officer

CC: Ryan Scott (President of CHBA – Alberta); Keith McLaughlin (Chief of Staff - Municipal Affairs); Brad Pickering (Deputy Minister – Municipal Municipal Affairs); Gary Sandberg (Assistant Deputy Minister – Municipal Services and Legislation Division, Municipal Affairs).



Modernized Municipal Government Act

1. INTRODUCTION

The Canadian Home Builders Association – Alberta is supportive of the intent and direction of the majority of amendments proposed for the Municipal Government Act (MGA). The purpose of this document is to provide some suggestions regarding additional clarity in the legislation. Specifically, we are encouraged by the policy direction on the following items:

- Increased transparency for non-statutory planning documents;
- Incenting brownfield developments;
- Strategic planning for all municipalities;
- Increased transparency and accountability requirements through the introduction of an expanded role for the Ombudsman;
- Increased collaboration amongst municipalities;
- Elected official training; and
- Refinements to the definition of environmental reserve and creation of a new conservation reserve.

The following sections outline some suggested amendments or considerations we would like examined in the preparation of the final version of the Act and its associated regulations. The purpose of our suggestions is to maintain the government's policy direction and intent while focussing on increasing transparency, accountability and maintaining housing affordability. We do not see the need for any amendments that fall outside of the scope of the items discussed throughout the lengthy MGA Review process.

2. FEEDBACK / SUGGESTIONS

2.1 Funding New Developments (Offsite Levies)

Though the regulations related to these policies are not yet available for review, the additional proposed levies will represent a considerable increase in housing costs for Albertans. While these additional costs being levied on new home buyers is not a positive step, the use of a proportional criteria for determining when and how much levy can be applied is a fair approach.

In order to ensure that any new policies on levies are clear, transparent, and limit the impact on housing affordability, please consider the following items which could be addressed either in the MGA or as part of the regulation.

Suggested Amendments:

- a) Consider requiring municipalities to contribute at least a percentage of the capital costs of a facility to ensure facilities are designed and constructed as cost effectively as possible. British Columbia does this through what is referred to as the Assist Factor, which requires municipalities to contribute, at a minimum, 10% of the capital costs for these types of facilities.
- b) Provide clarity in the legislation on how shared funding arrangements under intermunicipal collaboration frameworks or growth management boards will or should impact the funding, construction and management of these facilities.
- c) Apply the same requirements for transparency, accountability and dispute resolution processes to all levies, not just the new levies being proposed in the amendments to the MGA.

Suggested Considerations for the Regulation:

- d) That any levies collected be allocated and distributed in a fair and transparent manner. There needs to be clear accounting showing that the funds collected through levies on a new neighbourhood are spent in the same catchment area.
- e) Clear requirements and criteria for determining the 30% threshold are needed. It is currently unclear how the 30% threshold and degree of benefit (percentage of levy to be paid) will be calculated. The legislation also does not state that the maximum amount of the levy to be charged is based on the percentage (proportion) that the development benefits.
- f) Provide a clear definition of “community recreation facility” and “capital facilities” in consultation with industry. It is important that the legislation clearly outline that these facilities be constructed based on needs or minimums. If extra amenities or higher end treatments are desired, these should be the responsibility of the municipality. The definition should also clearly exclude land.
- g) Levies for a community recreation facility should only be based on regional needs and not for a specific neighbourhood as these are typically provided by a developer.

- h) Provide clear definitions or language in the regulation that outlines the difference between capital costs and operating costs and make it clear in the language that operating costs cannot be included as part of the levy.

2.2 Conservation and Environmental Reserve

The intent of the proposed amendments is a positive step towards providing clear and fair rules to preserve lands not suitable for development while providing municipalities the flexibility to purchase, at their discretion, other pieces of property. We are also appreciative of the legislative recognition that Environmental Reserve will now need to be identified earlier in the planning process. The suggestions below are designed to help the policy in the MGA meet the desired outcome on conservation and environmental reserve. We understand the complexities of this particular policy issue and would be pleased to assist the province in drafting language that helps achieve their goal.

Suggested Amendments:

Environmental Reserve

- a) The definition of environmental reserve needs to clearly state “lands not suitable for development”.
- b) Clear or revised definitions are needed for “body of water”, “swamp”, “gully”, “ravine”, “coulee” and “natural drainage course”.

Conservation Reserve

- c) Require Conservation Reserve to be identified at the same point in the process as Environmental Reserve.
- d) Provide either a clear definition or criteria of what can be considered eligible as conservation reserve.
- e) Compensation value needs to be acknowledged as the market value of developable land plus the cost of servicing the land. Without this important distinction municipalities will be able to take land at a substantial discount which will further encourage fragmented and less sustainable development. If the price is not set in this manner, the option to sell should be at the discretion of the developer.
- f) If land is purchased by a municipality as conservation reserve it should be exempt from levies, and the aggregate amount of land or cash-in-lieu provided for reserves should not exceed 10% of the parcel of land less all land required to be provided as conservation reserve, environmental reserve or made subject to an environmental reserve easement.

2.3 Inclusionary Housing

We fully support initiatives aimed at providing housing for Alberta’s most vulnerable. However, our research indicates that inclusionary housing is an ineffective tool in achieving this. Inclusionary housing policies fail to provide the housing for those who most need it, those people and families at or below the poverty line. It also fails to address the underlying reason why many individuals and families cannot afford a home - the down payment. Inclusionary housing policies have been shown to raise housing prices across a municipality as the cost of the inclusionary units are ultimately paid for by new home buyers. In addition, the following questions / concerns that have yet to be answered:

- Where will the funding for the newly created municipal departments / staff needed to oversee this program come from? We would be concerned if money gathered through cash-in-lieu of inclusionary units was being used for salaries instead of providing homes for Albertans.
- How will applicants be able to afford the down payment that will still be required? This will likely be in the range of \$15,000 - \$20,000 in Alberta's larger centres.
- Will the municipalities be collecting property taxes from these individuals / families?
- The Minister referred to studies which indicated the benefits of inclusionary housing. Would it be possible to be provided with a copy of those studies for our reference?

There are viable solutions to address the housing needs of vulnerable Albertans. Rental and down payment assistance programs would provide substantially more benefit to Albertans who need housing. Through CHBA – Alberta's Affordable Housing Symposium and initiatives such as Bill 202 (Affordable Housing Committee) we are committed to working with the province in identifying solutions. We have gathered together a group of committed stakeholders who can formulate the most practical and effective programs to address affordability in Alberta.

Our concern is that inclusionary housing is a tool that is easily identifiable but not effective outside of a very narrow scope, and does not reflect the conditions of Alberta's communities.

It is critical to keep the impact that inclusionary housing policy has on the cost of housing at the top of mind as we proceed. We have outlined a number of suggestions for the regulation that will accompany the inclusionary housing policy. If these are followed, the policy can be somewhat helpful for a specific type of housing and specific market. In terms of addressing the broader issue of affordability, we would propose that a proactive approach led by the group of stakeholders assembled as part of our Affordability Matters event and in consultation with the Minister be used to address the issue. This group includes municipal, non-profit, industry and other representatives from across the housing spectrum.

Suggested Considerations for the Regulation:

- a) Municipalities prepare a detailed study assessing the affordability of the local housing market. This should include a modelling of the potential cost of inclusionary units (based on the requirements under consideration) against the availability of similarly priced market units currently available within the municipality.
- b) Make inclusionary housing requirements only applicable for large scale housing projects (200 units or more) so the additional cost for non-inclusionary units can be better absorbed and has less risk of raising overall housing costs.
- c) Establish a maximum threshold of 5% of all units be provided as inclusionary. Allow developers to provide these units throughout the development and in whichever form they would prefer (single detached, semi-detached, townhouse or multi-family condos).
- d) Establish a maximum / minimum income threshold at the provincial level (i.e. 80% - 120% of the median family income) and require municipalities to provide detailed statistics on an annual basis demonstrating median family income, average housing costs and housing availability at different income levels. This is critical in measuring the effectiveness of any program put in place.

- e) Limit the ability for municipalities to take inclusionary units if the pre-requisite number of units are already being built and sold within the inclusionary threshold as part of the development.
- f) Allow developers to provide land either on the development site or a different property instead of units. This will create opportunities for the municipality, province and potentially the private sector to partner and build housing for Alberta's most vulnerable. This is the model that has been used effectively in Vancouver.
- g) Cost offsets should include a reduction in levies and either an increase or decrease (at the developer's discretion to reflect the housing choice Albertans seek) in the allowable density.

2.4 Provincial Oversight (Expanded Role of the Ombudsman)

We fully support the expansion of the role of the Ombudsman to enforce the MGA. The introduction of this mechanism will allow for increased transparency and accountability at the local level which benefits all Albertans. It is important that this be in place for all municipalities, including large cities. Many of the past disputes over municipal law have come in the larger cities and it is critical to have an unbiased third party review of any of these cases in the future. While some municipalities have installed ethics commissioners or auditors, their direction comes from Council who often relay this direction through in-camera sessions. It should also be noted that the role of Ombudsman is not to look at strictly ethical considerations but also to be able to review municipal practises which appear to be contrary to the intent of the Municipal Government Act.

The changes proposed below will help further assure local governments are transparent and accountable with regards to their responsibilities under the MGA. Our concern would be that if this is not strengthened then the process will remain uncertain and not have the positive impact intended by the broad policy direction. If enacted in a well thought out fashion through regulations, this expanded role for the Ombudsman will benefit municipalities, industry, and most importantly Albertans.

Suggested Amendments:

- a) We would like to see the Ombudsman's role further strengthened so that his / her recommendations are binding. Presently, nothing will require municipalities to comply with the findings of the Ombudsman. While the Ombudsman can refer matters to the Minister of Municipal Affairs, it is unclear how long this process would take and the specific infractions that Minister would take action on.
- b) Section 13(1)(a) of the *Ombudsman Act* stipulates that the Ombudsman could refuse to hear a complaint until all other appeal processes have been exhausted. This is also mentioned on the Ombudsman's [website](#). This could potentially mean that a complainant would have to take their concern to the Court of Queen's Bench before the Ombudsman would investigate. This would eliminate much of the potential time and overall benefit of this improved enforcement process as industry and residents would need to go through the same lengthy process that currently exists. The Minister has indicated that this will not be the case but we would appreciate it if the legislation were modified to make this clearer.

- c) With the new responsibilities of the Ombudsman's office it is important for industry and residents to have an understanding of the formal process and timelines for reviews of complaints. Based on a review of the *Ombudsman Act* and the Ombudsman's website this information is presently unclear.

2.5 Growth Management Boards & Intermunicipal Collaboration

We are fully supportive of increased collaboration amongst municipalities on all matters. Similar to our comments throughout the initial consultation process, we have only a few concerns which are outlined below. These items may be addressed as part of the regulation but their importance is worth repeating as they are key to achieving successful intermunicipal collaboration.

Suggested Considerations for the Regulations:

- a) Establish a fair, balanced and predictable process that includes engagement with industry and the public in preparing planning documents and require disclosure of any reports or research conducted by the regional authorities.
- b) Ensure one municipality does not hold a majority vote or effective veto allowing it to dictate what can occur in other municipalities. This can lead to less competitive housing markets and erode housing affordability.
- c) Legislate review and approval process for applications to prevent project delays which ultimately result in higher housing costs.

2.6 Assessment of Farmland Intended for Development

The protection of farmland through a fair taxation process that is based on the present land use and services being provided to that property is a positive step. CHBA – Alberta looks forward to working with the province in establishing the regulation that specifically looks at the triggers which will convert land from agriculture to other uses in terms of taxes required. Below are a few specific situations that can be addressed in the regulation which will allow for the preservation of farmland for as long as possible.

Suggested Considerations for the Regulation:

- a) Apply the revised assessment only to the portion of land that is no longer being farmed. The phasing of development allows for only portions of a large development site to be converted at a given time. This will allow and incent developers to maintain the agricultural activities on the remaining portions of land for as long as possible.
- b) Stripping of portions of topsoil should not immediately result in the conversion of an entire property from agricultural to residential tax rate. Developers often require topsoil to construct the necessary infrastructure (i.e. roads, stormwater management ponds) and early phases of a development. Using soils from the same property reduces the need to transport soil from sometimes considerable distances helping reduce the overall environmental impact while reducing construction costs. This does not preclude them from still planting crops on the land and often times they are still able to farm that land the very same season. The criteria for conversion should be based on whether the land was farmed / used for agricultural purposes in that given year.

2.7 Municipally Controlled Corporations

The proposed changes are a positive step if the regulation requires municipally controlled corporations to operate on a level playing field with industry. If this is not in place, competition will erode and this impacts the affordability of products / services in any field these corporations are allowed to operate in.

Suggested Considerations for the Regulation:

- a) Clear requirements related to accountability and transparency.
- b) Any municipal development corporation be subject to application reviews by independent third parties to prevent internal conflicts of interest.
- c) Subsidiaries are not established to circumvent the requirements and are subject to issues of liability in the same manner that non-municipal corporations are.
- d) These corporations do not compete directly with industry and that any utility corporations/subsidiaries do not control settlement patterns.

2.8 Decision Making Timelines for Development Permits

The proposed timelines for most municipalities represent an improvement, but the legislation fails to address the systemic issue with application timelines in general – enforcement of the timelines. Additionally, while we understand the challenges of cities and some municipalities, it is important that all municipalities have some form of a legislated time limit. This is not just an issue for industry, but one that affects anyone trying to build a structure. Time is indeed money – for every Albertan. These delays are not innocuous and drive up costs, making things less affordable.

Suggested Amendments:

- a) Include clear enforcement / compliance measures. If enforcement / compliance is not in place it will lead to the same delays and contravention of the Act experienced presently.
- b) Establish criteria for how the Bylaws relating to timelines must be prepared. Specifically, cities and specialized municipalities be limited to not exceed the newly established timelines (applicable to all other municipalities) by more than 30%
- c) Prohibit the practice of municipalities requiring applicants to sign a waiver that eliminates their right to the legislated timeframes.

2.9 Community Organization Property Tax Exemption Regulation (COPTER)

The creation of privately funded amenities as part of developments has become increasingly popular as a tool in building attractive, complete communities. Albertans want more of these communities, not fewer. The initial cost of constructing these facilities is paid by the developer and ultimately the home buyer, with the ongoing maintenance funded by a not-for-profit residents association. These enhanced amenities cost a municipality nothing. The exemption of these facilities provides developers with an incentive to design increasingly unique communities that reflect what Albertans are asking for. Additionally, homes that border amenities such as lakes have considerably higher assessments, generating significantly increased property tax revenue for the municipality. Taxing these amenities will discourage and likely end the construction of them in the future, eliminating a choice many Albertans are making.

Suggested Considerations for the Regulation:

- a) Residents Association facilities and amenities should be encouraged within new developments and the regulation should make it clear that these facilities are tax exempt, provided they are made available to the entire community in which they are located.

2.10 Provincial-Municipal Relationship

The preamble should articulate the roles and responsibilities of the two levels of government so that it is clear to every Albertan. The preamble as proposed is broad and fails to mention the roles and responsibilities of both levels of government. As per Section 201(2) of Bill 21, the province believes this is important enough that they will require newly elected councillors to undertake training that includes:

- role of municipalities in Alberta; and
- roles and responsibilities of council and councillors.

Suggested Amendments:

- a) Outline the roles and responsibilities of the local and provincial governments within the legislation.

2.11 Strengthening the Impartiality of Appeal Boards

Most of the proposed amendments are a positive step, though we would like them to be modified for cities and specialized municipalities. Given the larger pool of potential appeal board members in cities and specialized municipalities, it should not be difficult to remove even more of the inherent conflict of interest from their appeal bodies. Other instances in the proposed amendments to the MGA provide different rules for different types of municipalities (i.e. permit timelines) and we feel the same should be the case for appeal bodies.

Suggested Amendments:

- a) That cities and specialized municipalities not be permitted to have more than 30% of appeal bodies comprised by councillors.

2.12 Elected Official Training

The comprehensive training of elected officials will be a major win for Albertans as it will result in more effective local government. There would be some benefit to expanding this training to include matters of business and economics as well as land development / home construction. Our association would be pleased to assist Municipal Affairs in preparing training materials related to this. Currently, the training topics do not explicitly include the MGA. It is critical that Councillors understand the rules which local municipalities must operate under as it will allow them to more effectively govern while hopefully helping to reduce the need for complaints to the Ombudsman.

Suggested Amendments:

- a) Explicitly state the Municipal Government Act as a required training topic.
- b) Expand the list of training to include items such as economics, land development and home construction.

3. ADDITIONAL CONSIDERATIONS

3.1 Land Dedication and Permitted Uses of Reserve Lands

We understand that this matter may be subject to change depending on the outcome of the review of the *Education Act*. If any changes related to reserves are being contemplated as part of this process, we would appreciate involvement.

3.2 City Charters

It is possible that City Charters could introduce policies that are different from what has been proposed as part of the MGA Amendments. In essence, there could be two sets of rules. We understand that we will be consulted on the Charters and continue to express our need to be at the table to provide our direct input into the regulations.

Additionally, we understand a variety of items are being considered as part of the charters and that nothing has been ruled out to-date. Some items under consideration, such as independent building codes, would have substantial implications for our industry and Albertans. If enabling policies for this are introduced, they will require considerable time to review the proposed change, understand its implications and respond to the government with thoughtful, research-based advice. Involvement late in the Charter process would not be near as valuable as it could be if this process starts earlier.

4. SUMMARY

We are encouraged by the direction and progress the government has made on MGA Review. Our suggestions are not designed to alter the intent of the legislation but rather strengthen it in a manner that helps avoid unintended consequences. We look forward to working with the government in preparing the regulations, City Charters and finalizing amendments to the MGA.