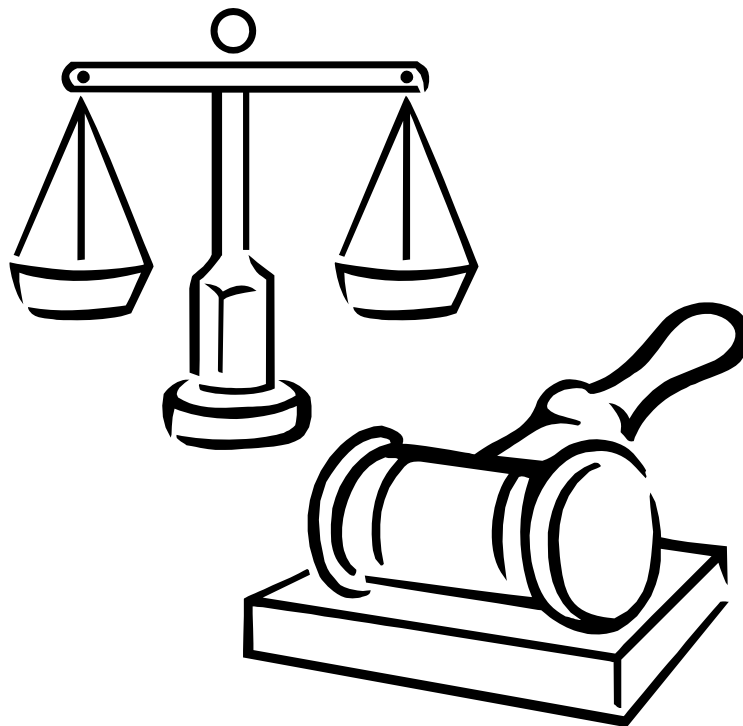




Saskatchewan
Ministry of
Municipal
Affairs

Municipal Bylaw Guide



March 2010

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Introduction

This manual has been prepared by Saskatchewan Municipal Affairs, Strategy and Sector Relations Branch, to act as a guide for municipalities in the preparation of municipal bylaws. For complicated issues it is always a good idea to obtain legal advice to ensure council has the authority for the action set out in the bylaw and can enforce the bylaw.

Definitions

“Bylaw” – means a law of the municipality passed by the municipal council.

“Municipal Acts” or “Municipal Legislation” – refers to The Municipalities Act; The Northern Municipality Act and The Cities Act.

“Municipality” – for the purpose of this manual, municipality refers to an urban municipality, including a town, village, and resort village, a rural municipality, a restructured municipality, a northern municipality or a city.

Authority to Pass Bylaws

Under the Canadian Constitution, the provinces have the authority to create municipalities and to delegate to them certain law-making powers. Laws which municipalities are permitted to pass are called bylaws.

Municipalities may pass bylaws within the authority provided through legislation. This authority may be specific or general depending on whether the legislation is permissive or prescriptive. *The Municipalities Act* and *The Cities Act* provide municipalities with general powers to pass bylaws within the areas of jurisdiction, in addition specific areas like taxation etc.

When statutory authority does not support a bylaw, expressed or implied, it is *ultra vires* (beyond the power of the municipality). If such a bylaw is challenged, the courts will strike it down. If such a bylaw requires the approval of a provincial ministry or agency, it will not be approved and, therefore, it will have neither force nor effect.

Where provisions in a local bylaw conflict with a provincial Act, the provincial statutory provision normally takes precedence.

The authority to pass bylaws is limited in some cases by requiring the approval of a provincial government ministry or agency (ex. zoning bylaws). In other cases, the authority is limited by the fact that some bylaws must be advertised before taking effect (ex. closing of streets).

The authority of council to pass bylaws may be further controlled or limited. Electors may require the council to submit a bylaw to a vote of the electors. When a bylaw is put to a vote in this fashion, the results of the vote are binding. A bylaw passed under these circumstances can only be amended or repealed by following very specific procedures. Also, the Saskatchewan Municipal Board, the municipal acts or other legislation sometimes require that council submit a bylaw to a vote of the electors. When approved by the electors, it is binding on council.

The authority either specific or general to pass a bylaw must be found in the applicable legislation (e.g. *The Municipalities Act*, *The Northern Municipalities Act* or *The Cities Act* or other legislation such as *The Planning & Development Act, 2007*).

The “general power to pass bylaws” provisions of municipal legislation seem to provide unlimited autonomy to council; however such all-encompassing powers can be deceptive.

Municipal bylaws shall not conflict with or infringe upon legislation or regulations enacted by government. Provincial and federal levels of government have passed many laws dealing with public order, health, safety, and so on. These provincial and federal rules (e.g. *The Criminal Code of Canada*) would take precedence over any local bylaws.

Bylaw or Resolution?

The formalities leading to the passing of a resolution are less restrictive than those for the passing of a bylaw.

The powers of council are exercised by bylaw in more important matters, particularly those affecting the public or a section of the public. Resolutions usually deal with matters of a minor, administrative nature such as adjourning a meeting or appointing an auditor.

Legislation will define those powers which may only be exercised by bylaw. Bylaws should be used to address important, ongoing matters which have general application, or where a penalty is involved (e.g. licensing). It is always good practice to consult the municipality's solicitor when drafting new bylaws.

Points to Consider

Obtain draft bylaws from Municipal Affairs and various other government ministries if they are available. Municipal Affairs has posted sample bylaws on its website at www.municipal.gov.sk.ca. Another option is the Offsite Library which provides links to municipalities who have some or all of their bylaws on local web sites.

Discuss your proposed bylaw with experienced Administrators of other municipalities and obtain copies of their bylaws.

Consult a solicitor if the bylaw is complex or if you are uncertain of its validity.

If the bylaw is long, break it up into numbered sections and use headings.

Try to stick to terms, phrases and wording used in the statute or in the definition section of the bylaw.

Avoid legal jargon and words other than from the English language.

Do not use different words to mean the same thing.

Use "shall" to show that a certain action must or must not be done.

Use "may" to show an action that is permissive.

Use only those clauses that are necessary (e.g. if no penalty is required, do not use a penalty clause).

Schedules and forms should be designated with numbers and letters (e.g. "Schedule 1" or "Form A").

Distribute copies of the draft bylaw to all members of council prior to the meeting.

Depending on the issue, public participation may be a wise option before the final reading.

Components of a Bylaw

Corporate Name

This is the full name of the municipality. Municipalities may include a coat of arms on bylaws.

Examples:

“Rural Municipality of ____ No. ____.”

“Village of ____.”

Bylaw Number

The bylaw number should include the number of the bylaw and the year it is passed.

Bylaws should be numbered consecutively.

Example:

“Bylaw No.4/2010” means the fourth bylaw passed in 2010.

Bylaw Title

The bylaw title states the purpose of the bylaw.

Example:

“A Bylaw to Establish a Recreation Board.”

Enacting Clause

This clause states that the council is the body that enacts the bylaw.

Example:

“The council of the Town of _____, in the Province of Saskatchewan, enacts as follows:”

Interpretation Clause

This clause contains a statement of the meaning of a word or a group of words.

Example:

“land - does not include improvements”.

When using an interpretation clause in your bylaw, ensure uniformity by listing definitions that are identical to what is in the enabling Act.

Operative Clause(s)

The operative clause or clauses state what the bylaw is intending to do and how it is to be done.

Examples:

“1. A Recreation Board for the Rural Municipality of ____ No ____ is hereby established.

2. The Recreation Board is to be named the _____ Recreation Board.

3. The _____ Recreation Board shall consist of six (6) members appointed by resolution of the council of the Rural Municipality of ____ No ____.”

Schedule Clause

The schedule clause identifies or refers to an attached schedule such as a schedule of water rates, licence fees, etc.

Example:

“The water rates shall be set out in Schedule 1, attached to and forming a part of this bylaw.”

Attachment would read:

“Schedule 1 to Bylaw No. ____ / ____.”

Form Clause

The form clause refers to an attached form.

Example:

“The Notice of Violation shall be in Form "A", attached to and forming part of this bylaw.”

Attachment would read:

“Form A to Bylaw No. / .”

Penalty Clause

Do not exceed the authority in the Act in setting penalties. A bylaw may contain specific provisions describing the penalty for contravention of the bylaw, or it may reference a general penalty bylaw established by the municipality. Municipalities may include provisions enabling accused offenders to voluntarily pay a specified amount of money to avoid prosecution for contravening the bylaw.

Note: The municipal acts, and most other statutes, do not provide council with authority to set minimum fines or penalties, only maximums.

Example:

“The penalty for an infraction against Section 4 of this bylaw shall be \$100.00 (one hundred dollars).”

Repeal Clause

If a new bylaw replaces an outdated one, the old bylaw must be repealed by inserting a repeal clause in the new bylaw.

Example:

“Bylaw No.21/1952, passed March 15, 1952, being a bylaw to license dogs, is hereby repealed.”

If bylaws are no longer being used, it is best to officially cancel them by passing a separate repealing bylaw.

Repealed bylaws should be removed from the active bylaw register and placed in a separate file or register. Dispose of copies of repealed bylaws in accordance with the

municipality's record retention and disposal schedule. Do not remove repealed bylaws from the minutes.

Effective Date Clause

No effective date clause is needed if the bylaw is to take effect immediately; it becomes effective when it has received third reading. Council may, however, wish to have the bylaw come into effect later or the Act may require provincial approval for the bylaw before it takes effect. In these cases, the clause should state the intended effective date. No authority exists for bylaws to be passed retroactively.

Example:

“This bylaw shall come into force and take effect on September , .”

or

“This bylaw shall come into force and take effect when approved by the Minister of (applicable Provincial Ministry).”

or

“This bylaw shall come into force and take effect when approved by the Saskatchewan Municipal Board.”

Signing and Sealing

After third reading, the Administrator and Mayor/Reeve must sign the bylaw. If the Deputy Mayor/Reeve is presiding at the time the bylaw receives third reading, the bylaw would be signed by the Deputy Mayor/Reeve.

The Administrator at this time should affix the seal to the bylaw.

Example:

Adm inistrator

{SEAL} _____
Mayor/Reev e

Dating the Bylaw

Although there is no legislative requirement that the bylaw be dated, the date of third reading and adoption may be shown on the bylaw under the seal and signatures.

Example:

“Read a third time and adopted this ___ day of ____, 20___.”

Adoption Procedures

The procedure to adopt a bylaw will involve the following steps:

1. Preparation of a draft bylaw by the Administrator at the direction of council. Members of council must be provided with the opportunity to review the full text of the draft bylaw before it receives first reading.
2. Provide public notice of the proposed bylaw if:
 - legislation requires public notice to be provided; or
 - local policies require public notice of proposed bylaws.
3. First reading of the bylaw is moved, discussed and a vote is taken. A “reading” of a bylaw means “a stage of consideration” and therefore the bylaw is not necessarily read aloud at the meeting. Members of council must be provided the opportunity to read the full text of the proposed bylaw before the first reading at a council meeting.
4. Second reading of the bylaw is moved, discussed and again a vote is taken.
5. Amendments after first or second reading are proposed by resolution which, if carried, becomes part of the proposed bylaw. If there are amendments to the bylaw, members of council must be provided with the opportunity to review the full text of the amended bylaw before it receives third reading.
6. Third reading of the bylaw will typically occur at a subsequent meeting. This provides Council with an opportunity to solicit or receive public input regarding the proposed bylaw.

7. Council may expedite passage of a bylaw by allowing all three readings at the same meeting. This resolution must be passed unanimously by all members of council present at the meeting.
8. Third reading of the bylaw is moved, discussed and voted upon. If the vote is carried, the bylaw is considered passed and adopted.
9. Signing and sealing of the bylaw should take place immediately or very soon after the adoption of the bylaw.

If any of the resolutions authorizing first, second or third readings are not carried, the bylaw does not proceed beyond that point. If council wishes to reintroduce the bylaw, the entire adoption procedure must start over.

Sometimes legislation sets out special steps that must be followed in passing a bylaw that differ from the above procedures. For example, *The Planning and Development Act, 2007* requires a notice of intention to be published when a zoning bylaw amendment is being proposed.

All council members, including the mayor or reeve, must vote on each motion provided that members are not precluded from voting because of pecuniary interest. Generally, a majority vote of the council members present is sufficient to pass each reading. The only time that a majority is not sufficient is when legislation indicates otherwise.

Assent or Approval

Some bylaws require approval or assent of outside parties such as of the municipality, the Minister of Saskatchewan Municipal Affairs or another ministry, or the approval of the Saskatchewan Municipal Board

Bylaws requiring approval are not valid if the municipality fails to obtain a needed approval. Examples of bylaws requiring approval include:

- building bylaw, requires approval from Building Standards Branch (Saskatchewan Ministry of Corrections, Public Safety and Policing;)
- borrowing by way of debenture, requires approval by Saskatchewan Municipal Board.

Amending or Repealing

The same power that applies to passage of bylaws also applies to amending or repealing bylaws.

The Amending Bylaw

A bylaw that is in effect may only be amended by another bylaw.

The purpose of an amending bylaw, therefore, is to reflect a desired change in an existing bylaw.

Amending bylaws take several forms such as adding sections or words, replacing a section, or deleting a part of the old bylaw.

Example:

“Bylaw No.2/2010 is amended by deleting clause 2 and by substituting the following:

2. The sum payable for a licence under this bylaw shall be \$30.00 per year.”

Rather than amend a bylaw too often, consideration should be given to drafting a new bylaw incorporating the required changes to avoid confusion.

The Repealing Bylaw

A bylaw that is in effect may only be cancelled by a repealing bylaw. When a bylaw has no further action or consequence it becomes redundant and should be repealed. An example is a bylaw entering into a lease agreement, and the lease is no longer in force.

There should only be one repealing bylaw in the bylaw register at any given time. The most current repealing bylaw should include provisions to cancel any other repealing bylaw(s). When a repealing bylaw is subsequently repealed, it does not restore bylaws which were previously repealed.

The content of the bylaw is usually in list form.

Example:

“The following bylaws are hereby repealed:

1. Bylaw No.57/63, a bylaw to eradicate rats;
2. Bylaw No.3/64, a bylaw to control grasshoppers; and
3. Bylaw No.12/77, a bylaw for the general maintenance of properties.”

Retention of Bylaws

The original bylaw must be attached to and form a part of the minutes of the meeting at which the bylaw received third reading.

A certified true copy of the bylaw must be kept in the bylaw register. This copy must have the corporate seal on it and it must be certified to be a true copy by the Administrator or the Mayor/Reeve.

Example:

“

{SEAL} _____ (copied signature)
Adm inistrator”

or

“

{SEAL} _____ (copied signature)
Mayor/Reeve e

and

“Certified to be a true copy of Bylaw No. ____ adopted by the council of the [full name of municipality] on the ____ day of ____, ____.

{SEAL} _____ (original signature)
Adm inistrator/Mayor/Reeve”

The public should be informed of the adoption of bylaws that may have some direct or indirect impact on them. Council should consider ways of publicizing new or amended bylaws (notice in newspaper, general mail-out, newsletter, posting to your website, etc.).

Enforcement

Municipal Legislation provides for appointing bylaw enforcement officers. Enforcement officers are charged with the day-to-day administration of the bylaws. They have no authority to waive or lessen the bylaw's requirements to fit special circumstances.

Council does not have authority to deem a person guilty of contravening a bylaw. Allegations of contravention must be brought before courts of competent jurisdiction. If the courts determine the bylaw is valid and the municipality proves the contravention, the courts may then proceed to impose a fine on the person. Municipalities may include voluntary payment provisions in the bylaw allowing accused individuals to pay a fine to avoid prosecution. The voluntary penalty may be less than the amount to be imposed following successful prosecution.

Severability

Municipalities are advised to include a severability clause in regulatory bylaws. This clause would state that if a portion of the bylaw is found by a court of competent jurisdiction to be invalid, the invalid portion will be voided, and the rest of the bylaw remains valid and effective.

Quashing

An action may be taken in court to quash a bylaw or resolution, in whole or in part, for illegality. The petitioner must challenge the bylaw on some ground of illegality, not just because he/she does not like it. An application to quash must be taken within 60 days after adoption of the bylaw. The grounds for quashing or declaring bylaws invalid are:

1. Ultra Vires – The municipality may exercise authority only when the Provincial Government delegates it. Otherwise, the municipality is acting beyond its powers (ultra vires) and the proposed action of the municipality is invalid. If the municipality passes an unauthorized bylaw, the bylaw is invalid and is of no force and effect. The courts will strike down such a bylaw.

2. Bad Faith – Attacks are sometimes made against bylaws based on bad faith. To establish bad faith, it must be shown that the council was directing its action against certain persons and was not generally acting in the public interest.
3. Discretion – The council may provide certain discretionary powers within a bylaw. By means of these powers, the council would reserve the right to make certain future decisions by resolution. For example, a bylaw establishing a committee may legitimately contain a provision authorizing council to appoint committee members by resolution.
4. However, council cannot make future decisions by resolution that are beyond the authority granted in the bylaw or statute or that should have been passed in the bylaw. For example, a bylaw cannot contain a clause stating that council will set the penalty for an infraction against the bylaw at the time of the violation.
5. Discrimination – Council cannot, in passing a bylaw, show prejudice against or favouritism toward an individual or a group of individuals.
6. Improper Delegation – In a bylaw, authority cannot be delegated to any other person if council is required to pass the legislation by bylaw. For example, a council cannot delegate to an employee the right to set standards if the enabling authority says that council must set the standards.
7. Uncertainty – Grounds on which a bylaw could be struck down because of uncertainty are:
 - vagueness;
 - lack of substance or form in the bylaw;
 - lack of substance or form in the proceedings prior to its adoption or in the timing or manner of its adoption; or
 - because it was procured through a violation of *The Controverted Municipal Elections Act* (e.g. bribery and threats).

8. Infringement – Bylaws may be found inoperative because it:
- appears to supplant or duplicate federal or provincial legislation;
 - may create a situation in which compliance with its terms constitutes a breach of federal or provincial legislation; or
 - may undermine rights provided by *The Canadian Charter of Rights and Freedoms*.

Further Information

Further information may be obtained from:

Reference works such as:

Parliamentary procedure publications

Law of Municipal Corporations by I.M. Rogers

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Appendix A – Bylaw Checklist

1. The full name of the municipality should on the top of the first page of the bylaw.
2. The bylaw should be numbered.
3. The title should be short and to the point.
4. There should be no preamble.
5. The words passing the bylaw should name the municipality and indicate that it is in the Province of Saskatchewan.
6. The wording should be clear and easily understood. Avoid legal jargon and words other than from the English language.
7. The bylaw must not exceed the powers of the municipality.
8. The definitions used in the bylaw must conform to the definitions set out in the enabling provisions of the Act. Definitions in a bylaw cannot expand on the definitions contained in the Act.
9. If there is a schedule attached to the bylaw, there must be a “schedule clause” in the body of the bylaw.
10. If there are forms attached to the bylaw, there must be a “form clause” in the bylaw.
11. There should be an enforcement or “penalty clause”. (Council should consider a voluntary payment option if a penalty clause is included.)
12. An effective date may be included, as necessary (retroactive date not allowed).
13. If the bylaw is to repeal or replace an existing bylaw, a “repealing clause” is required.

14. The bylaw must be signed by the Administrator and by the Mayor/Reeve.

15. The bylaw should be sealed with the municipality's seal.

16. A certified true copy of the bylaw must be produced for the bylaw register