

| | | | |
|-------------------|---|--------------------------------------|--|
| FACT SHEET | SUBJECT: <h1 style="text-align: center;">BYLAWS</h1> | UBCM ADVISORY SERVICE | SERIES No. <h1 style="text-align: center;">6</h1> |
|-------------------|---|--------------------------------------|--|

| | |
|--------------------|--|
| DEFINITION | A bylaw is a regulation made by a local government council or board and formalized in a document known as a bylaw. |
| REQUIRED | Bylaws are required by the <i>Community Charter</i> (CC) for a great number of purposes. If the <i>Community Charter</i> specifies that a thing be done “by bylaw”, it may only be done by bylaw. If the <i>Community Charter</i> does not specify how a power is to be exercised, council may use a bylaw or a resolution. |
| ANATOMY OF A BYLAW | <p>A bylaw typically contains a number of component parts:</p> <ul style="list-style-type: none"> Bylaw number Name of the municipality Title or brief precis of the purpose [“A bylaw to ... ”] Recitals quoting authority [“Whereas ...”] Enactment [Now, therefore ...] Definitions (if necessary) Operative clauses/body of the bylaw Penalties (if any) Transitional clauses (if necessary) Repeal clauses (if necessary) Effective date Date of first, second, third readings and final adoption Signature of mayor and officer responsible for corporate administration Seal of the municipality (no longer required) Schedules (if necessary) Severance clause |

**ADOPTION
PROCEDURES**

Council shall, by bylaw, provide for the procedure to be followed in the passing of bylaws [CC s. 124 & 135-140].

A bylaw must have three readings and final adoption. The normal procedure on passing a bylaw is to introduce the bylaw, give it first, second and third reading, all by resolution, at one meeting of council. The various “readings” are taken to mean:

- First Reading: Tabling
- Second: Discussion
- Third Reading:
- Final Adoption: Assent

A council must not vote on the reading or adoption of a bylaw when its meeting is closed to the public [CC s. 89(2)].

**ASSENT OR
APPROVALS**

If a bylaw requires:

- voting by the electors or an alternative approval opportunity; or
- requires the approval of the Lieutenant Governor in Council (Provincial Cabinet); or
- the approval of the Minister; or
- the approval of the Inspector of Municipalities;

such approval must be obtained after third reading and before final adoption [CC s. 135(4)].

If a bylaw is a land use bylaw that requires a public hearing, the public hearing must be held after first reading and before third reading [LGA s. 890].

**FINAL ADOPTION:
“ONE CLEAR DAY”**

Council shall reconsider and finally adopt a bylaw not less than one day after the bylaw received third reading [CC s. 135]. Council does not have to adopt it at that time; it could be tabled for one reason or another. If council has an urgent need to pass a bylaw it can give it three readings on a Monday, for example and adopt it on a Wednesday. Council cannot adopt the bylaw on Tuesday, as there must be one clear day before third reading and final adoption. The bylaw, when adopted, is signed by the mayor or whoever is presiding at the meeting, at which the bylaw was adopted and by the officer responsible for corporate administration. The officer may then affix the municipal seal to the bylaw (although this is not necessary).

EFFECTIVE DATE

Any bylaw adopted by the council becomes effective on the date it is adopted, unless there is a subsequent date for it to be effective, which must be set in the bylaw. For example, council may wish to increase the water rates for next year, and in order for the administration to get everything in order, they may pass the bylaw in November and make it effective January 1 of the following year [CC s. 136].

| | |
|-----------------------|---|
| AMENDING OR REPEALING | The same power that applies to passage of bylaws and resolutions also applies to amending, repealing, consolidating, or rescinding or revoking such bylaws or resolutions. Amendments can only be made by an amending bylaw or, in the case of a resolution, by an amending resolution, adopted by the council [CC s. 137]. |
| MUNICIPAL CODE | Sections 139-140 of the <i>Community Charter</i> also provide for the comprehensive consolidation and revision of municipal bylaws. These are adopted by bylaw. Section 138 also specifically provides for the municipality to consolidate and revise bylaw provisions respecting any or all matters within the jurisdiction of the municipality into a comprehensive general bylaw known as a Municipal Code. Section 138(2) provides councils with the authority to exercise powers through a Municipal Code, which is subject to all requirements that would apply to the exercise of powers by separate bylaws. |
| ENFORCEMENT | The <i>Police Act</i> [s. 36] makes provision for appointing bylaw enforcement officers. Enforcement officers such as building inspectors, health officers and animal control officers, are charged with the day-to-day administration of the bylaws that are under their jurisdiction, and they have no authority to waive or lessen the requirements to accommodate special circumstances. |
| SEVERABILITY | While a bylaw must be adopted as a whole, provision can be made for different sections of the bylaw to come into effect at different times. |
| QUASHING | <p>An action may be taken in court to quash a bylaw or resolution, in whole or in part for illegality [LGA s. 262-265]. The petitioner must attack the bylaw on some ground of illegality, not just because the petitioner doesn't like a particular bylaw.</p> <p>Notice of an application to set aside a bylaw must be served on the municipality within one month of its being adopted and at least 10 days before the hearing, unless:</p> <ul style="list-style-type: none"> • the bylaw required assent of the electors and council adopted it without consent – longer than one month, but at least 10 days before hearing. • security issuing bylaw – 10 days after adoption and five days before hearing. <p>A declaratory order respecting a bylaw must be applied for within one month of adoption if brought on grounds of irregularity in method of enactment or form of bylaw. Except in the case of a challenge based on adoption without assent, an application for a declaratory order respecting a bylaw must be heard within two months of adoption.</p> |

Some of the grounds for quashing or declaring bylaws invalid are:

ULTRA VIRES The municipality cannot exercise any authority that is not delegated to it by the provincial government (see Fact Sheet #1). Otherwise the municipality is acting beyond its powers (*ultra vires*) and the proposed action of the municipality is invalid. Therefore, if the municipality purports to do something by bylaw or resolution that it is not authorized to do, the bylaw or resolution is void from the very beginning and is of no force and effect and the courts will strike down a bylaw that is so enacted.

The *Community Charter*, section 114, gives council the necessary power to do anything incidental or conducive to exercising or performing its powers, duties and functions. The power must still be authorized, expressly or by necessary implication, by statute. For example, the power to issue stop work orders is not expressly stated in section 53 (General authority in relation to buildings and other structures) of the *Community Charter* but is considered incidental to exercising section 53 regulatory powers.

BAD FAITH Bad faith can involve dishonesty, unfair discrimination, malice, and corruption; or sinister, spiteful or otherwise improper motives, such as targeting individuals or an unpopular group with a restriction (or benefit) rather than acting in the interest of the residents generally. More subtle examples of bad faith would be attempting to circumvent a restriction on power or to do something indirectly that is not authorized directly; or otherwise acting beyond the powers or purposes set out in legislation. Failure to observe the rules of procedural fairness may also give rise to allegations of bad faith.

It is up to the person alleging bad faith to prove it. This task is easier where procedural fairness rules are violated and the common law rights of individuals are at stake.

DISCRETION Discretionary powers must always be exercised within the law. This includes bylaws as well as all applicable statutes, regulations and common law doctrines. Bylaws should avoid uncertainty and any potential for arbitrary decision-making. For example, they should not state that something is “subject to the approval of council” or prohibited “except with approval or a permit from council”. A person who is subject to a bylaw should be able to understand from reading it what he or she needs to do to avoid breaching it or to obtain a permission or benefit from it. Council cannot reserve to itself the right to make additional decisions on matters that are enacted, or should have been enacted, in the bylaw.

| | |
|---------------------|--|
| DISCRIMINATION | <p>Any power to discriminate must be expressly stated in authorizing legislation because the courts will not “read it in” as implicit. Authority to discriminate does not include violation of the <i>B.C. Human Rights Code</i>, which has priority over other enactments, or the <i>Canadian Charter of Rights & Freedoms</i>, which applies to local governments.</p> <p>Discrimination against unpopular groups or individuals or for an improper purpose will be seen as bad faith or an improper exercise of discretion. Examples of lawful discrimination include municipal fees (requires justification) [CC s. 194], service bylaws [CC s. 8(3)(a)] and zoning [LGA s. 903].</p> |
| IMPROPER DELEGATION | <p>Council cannot, in a bylaw, delegate council's authority to any other person if council is required to enact the legislation by bylaw. In other words, a council could not enact a subdivision bylaw that “all highways in a subdivision will be constructed to a standard specified by the municipal engineer” because council would be delegating to the engineer the right to set the standard to which highways within a subdivision must be constructed. The power to act by bylaw cannot be delegated to staff.</p> <p>The <i>Community Charter</i>, s. 154, places general limitations on delegation of authority. Restrictions apply in other provisions throughout the Act. Authority may also appear in another Act, such as the <i>Motor Vehicle Act</i>, [s. 124(4)], whereby an officer or employee may make orders regarding certain matters [see also CC s. 36].</p> |
| UNCERTAINTY | <p>The words in the bylaw are important. If they are too vague, so that the average well-intentioned citizen would not be able to discern whether he or she was conforming to the bylaw, then the bylaw will be struck down, being too uncertain to be enforceable.</p> <p>For example, a bylaw that referred to buildings “near a watercourse” was held uncertain because it requires the discretion of the administrator of the bylaw to determine the meaning of “near”. A bylaw that measured a set back “from the road” was uncertain because there were a number of roads and it wasn't clear which was meant.</p> |

Updated January 2006