

6 Bylaws

Definition	A bylaw is a document that formalizes a regulation made by a local government council or board.
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 must 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 or board may use a bylaw or a resolution.
Anatomy of a Bylaw	<p>A bylaw includes the following elements:</p> <ul style="list-style-type: none">(a) Bylaw number(b) Name of the local government(c) Title or brief precis of the purpose [“A bylaw to ... ”](d) Recital clauses quoting authority [“Whereas ...”](e) Enactment clause [Now, therefore ...](f) Definitions (if necessary)(g) Operative clauses/body of the bylaw(h) Penalties (if any)(i) Transitional clauses (if necessary)(j) Repeal clauses (if necessary)(k) Effective date(l) Date of first, second, third readings and final adoption(m) Signature of mayor and officer responsible for corporate administration(n) Seal of the municipality (no longer required)(o) Schedules (if necessary)(p) Severance clause
Adoption Procedures	<p>Council must set out, by bylaw, the procedure to be followed in the passing of bylaws [CC s. 124 & 135-140].</p> <p>A bylaw must have three readings and final adoption. The normal procedure on passing a bylaw is to introduce the bylaw and hold first, second, and third readings, all by resolution, at one meeting of council.</p>

The various “readings” are taken to mean:

- First Reading: Tabling
- Second: Discussion in principle
- Third Reading: Final discussion including any changes
- Final Adoption: Assent

Council cannot vote on the reading or adoption of a bylaw during a meeting that 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;
- the approval of the Lieutenant Governor in Council (Provincial Cabinet);
- 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)].

For land use bylaws that require a public hearing, the public hearing must be held after first reading and before third reading [*Local Government Act* (LGA) s. 465].

Final Adoption: One Clear Day

There must be at least one day between third reading and final adoption of a bylaw [CC s. 135(3)]. If council has an urgent need to pass a bylaw they can hold three readings on a Monday, for example, and adopt the bylaw on the Wednesday. However, council cannot adopt the bylaw sooner than the Wednesday, as there must be one clear day between third reading and final adoption. There is no maximum limit on the time between third reading and final adoption.

The bylaw, when adopted, is signed at that meeting by the mayor or presiding member and by the officer responsible for corporate administration [CC s. 135(6)]. The officer may then affix the municipal seal to the bylaw, although this is not required.

Effective Date

Any bylaw adopted by council becomes effective on the date it is adopted, unless the bylaw specifies a subsequent effective date. For example, council may wish to increase the water rates for next year, and to give the administration time to get everything in order, they may adopt the bylaw in November but 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, 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

Section 138 of the *Community Charter* authorizes council to combine and revise bylaw provisions respecting any or all matters within municipal jurisdiction into a comprehensive general bylaw known as a Municipal Code.

Consolidation & Revision

Sections 139-140 of the *Community Charter* provide for the comprehensive consolidation and revision of municipal bylaws. These consolidations or revisions must be adopted by bylaw.

Enforcement

The *Police Act* [s.36] makes provisions for appointing bylaw enforcement officers. Enforcement officers are charged with the day-to-day administration of the bylaws that are under their jurisdiction. However, these enforcement officers are not authorized to waive or lessen bylaw 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

An action may be taken in court to quash (set aside) a bylaw or resolution, in whole or in part, for illegality [LGA Part 16 Division 1 and s. 425(1)].

Notice of an application to set aside a bylaw must be served to the local government within one month of the bylaw’s adoption and at least ten days before the hearing, with the following exceptions [LGA s. 624(4) and s.425(2)]:

- if the bylaw required elector assent, but council adopted it without assent, notice may be served any time after the bylaw was adopted, but must be at least ten days before the hearing [LGA s. 623(4)(a)]; or
- if the application pertains to a security issuing bylaw of a regional district, notice must be served within ten days of bylaw adoption and at least five days before the hearing [LGA s. 425(2)].

An application for a declaratory order relating to a bylaw, if brought on grounds of irregularity in method of enactment, or form, must be made within one month of adoption. Except in the case of a challenge based on adoption without assent, a declaratory order may be made only within two months of adoption of the bylaw [LGA s. 624].

Grounds for Quashing

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

Ultra Vires

The *Community Charter* s. 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 of the *Community Charter* (general authority in relation to buildings and other structures), 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 benefit or restriction rather than acting in the general interest of all residents. 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, 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 easily understand what he or she needs to do to avoid breaching it or to obtain 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

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 *BC Human Rights Code*, which has priority over other enactments, or the *Canadian Charter of Rights & Freedoms*, which applies to local governments. 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. 479].

Improper Delegation

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.

The *Community Charter*, 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 *Motor Vehicle Act*, [s. 124(4)], whereby an officer or employee may make orders regarding certain matters [see also CC s. 36].

Uncertainty

The wording of the bylaw is important. If the language is 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.

For example, a bylaw that referred to buildings “near a watercourse” was held uncertain because it required the discretion of the administrator of the bylaw to determine the meaning of “near”. A bylaw that measured a setback “from the road” was uncertain because there were a number of roads in the area and a specific road was not specified.

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