

A Citizen's Guide

To Shaping Council Decisions

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Introduction

The Municipalities Act sets out the framework that municipalities, other than cities or northern municipalities must use to reach decisions that affect property owners and residents. Saskatchewan cities function under *The Cities Act* which closely parallels *The Municipalities Act*.

Provincial laws intend for municipalities to encourage and enable public participation in the governance process. This guide is intended to help citizens understand the options available to people who want to be involved in decisions made by municipalities.

NOTE: The information in this document is not a substitute for legislation. It is important to examine the exact wording of legislative references. Legislation is available online at <http://www.publications.gov.sk.ca/>. Questions of a legal nature should be directed to a solicitor.

Definitions

1. “Act” means *The Municipalities Act* and unless otherwise indicated, *The Cities Act*.
2. “Administrator” means the person appointed to the office of Administrator (for ease of reference only in this document it also refers to City Clerk, Village Clerk and other similar persons).
3. “CA” means *The Cities Act*.
4. “Council” means the duly elected council of the municipality.
5. “Elected official” means a person who has been elected to council including mayors, reeves, councillors and aldermen. They may also be referred to as “member of council” or simply “member”.
6. “LGEA” means *The Local Government Election Act, 2015*.
7. “MA” means *The Municipalities Act*.
8. “Ministry” means the Ministry of Government Relations.
9. “Municipality” unless otherwise specified, means rural and urban municipalities including cities, towns, villages and resort villages.
10. “Plebiscite” means a vote to provide council with non-binding direction.
11. “Referendum” means a vote to provide council with binding direction.
12. “Statutory” means enacted, regulated or authorized by legislation or regulation.

Your Municipality

Saskatchewan legislation recognizes municipalities as a level of government with considerable autonomy to govern local matters. Municipal council members are elected to make decisions that they consider appropriate and in the best interests of the municipality. These decisions may be based, in part, on citizen’s expectations. They can also be based, in part, on a council member’s judgment.

Decisions of council affect the services that people rely on every day, which can include:

- drinking water;
- sewer and waste;
- streets;
- garbage removal; and
- recycling.

Municipalities act according to their own discretion regarding the majority of matters within their jurisdiction. Very few bylaws or policies require provincial approval.

Municipal councils and the individual members of council are accountable to the people who elect them. If you feel your council should consider or change a particular policy or decision, there are steps you can take in an effort to bring about change.

Municipal Responsibilities

Role of Elected Officials

Elected officials are responsible for developing public policy and for making decisions affecting the day-to-day affairs of their municipality. Members of council have a duty to represent the public and to consider the well-being and interests of the municipality.¹

Public Participation

Legislation, for the most part, does not describe how a municipality is to encourage and enable public participation. It is up to council to determine how it might engage the public when developing public policy. Public participation might include public meetings, surveys or simply talking to voters. The activities may be more formal such as plebiscites and referendums.

Municipalities are required to formally advise the public of their intention to consider certain matters.² Some, but not all, of the matters for which notice must be provided include:

- borrowing money;
- selling or leasing land for less than fair market value unless there was a public offering; and
- setting the remuneration payable to members of council.

The municipality's *Public Notice Bylaw* lays out the minimum notice requirements. This bylaw also describes how the public will be informed of impending action. Unless a longer time is specified, public notice must be given at least seven days before the council meeting at which the matter will be discussed. A list of matters that require public notice in municipalities other than cities is available on the Government of Saskatchewan website. Search "Public Notice Obligations" to access the list online.³

¹ Section 92 MA; Section 65 CA

² Section 128 MA; Section 102 CA

³ www.saskatchewan.ca

Public notice does not mean that citizens are automatically able to provide input regarding the proposed agenda item. For some issues such as permanent road closures⁴ or zoning bylaw amendments⁵, voters have an opportunity to address council. You should contact the municipal administrator if you want to formally address council at an upcoming meeting as rules respecting delegations, presentations and submissions will be outlined in a council procedures bylaw.⁶

Accountability to Voters

Municipalities are recognized by legislation as a level of government within their jurisdiction. Municipal council members are accountable to the people who elect them.⁷ Citizens may hold their municipal government accountable through three different mechanisms:

- political pressure;
- electoral process; and/or
- legal action.

Political Pressure

Decisions by government at any level, including municipalities, are by their very nature, political. There is generally more than one side or one view with respect to most matters addressed by council. Members of council will often consider matters in the face of competing, and even sometimes conflicting interests. Municipalities will typically search for solutions where all or at least the majority of interests can be satisfied; however, there will be instances where this may be unattainable.

In situations where you feel the municipality failed to take certain views into sufficient consideration prior to making a decision, you may attempt to persuade one or more members of council to reconsider the matter. You may lobby individual members of council by discussing the matter with them informally, or request attendance at an upcoming council or council committee meeting to discuss the matter more formally.

Building political pressure may also include activities designed to gauge the level of support from other citizens. These activities include discussing the matter with other citizens, encouraging them to talk to members of council, or writing letters to the editor of local newspapers.

Building political pressure is, in essence, undertaking activities at the local level to elevate the consideration of a specific point of view with respect to a matter where there may be competing interests.

Electoral Process

Elected officials hold office with the support of their citizens and ratepayers.

- If you are a voter in an urban municipality, you have an opportunity every four years to elect members of council, including the mayor.

⁴ Subsection 13(5) MA; Subsection 13(3) CA

⁵ Subsection 207(2), *The Planning and Development Act, 2007*

⁶ Section 81.1 MA; Section 55.1 CA

⁷ Section 3 MA; Section 3 CA

- If you are a voter in a rural municipality, you vote for your division councillor and your reeve every four years:
 - Elections for reeve will be held in 2020, and every four years thereafter.
 - Elections for members of council representing an odd-numbered division will be held in 2020, and every four years thereafter.
 - Elections for members of council representing an even-numbered division are held in 2022, and every four years thereafter.

The Government of Saskatchewan website contains information regarding election dates and qualifications of voters and candidates.

You have the opportunity to effect electoral change, either by supporting a candidate or seeking office yourself.

Legal Challenge

In situations where the municipality has allegedly acted contrary to the Act or other legislation, citizens may influence municipal policy through the courts. This may involve quashing (also called overturning) a bylaw or a resolution of council. This option should be considered only when all other alternatives have been exhausted and after consulting legal counsel.

Citizen Initiatives

An effective method of affecting municipal policy, from a cost standpoint as well as achieving results, may be the citizens' ability to influence public opinion.

In order to address concerns regarding municipal decisions, you may need:

- courage;
- persistence;
- persuasive skills; and
- time.

It is one thing to discuss municipal matters at "coffee row" where the consensus is "somebody" should do "something". It takes courage to be that "somebody" to come up with "something," which may then be critiqued by others in the community. Persistence and your ability to persuade others will enable you, either alone or with others, to overcome possible resistance to proposed changes. This persistence, however, should not overshadow recognition that there may be little public support for alternative proposals. You should be prepared to further recognize that it may take some time to achieve your goal of building political support for a proposed policy.

To build public opinion or raise awareness of an issue, you are encouraged to consider the following strategies:

- become informed;
- research the issue;
- meet with council;
- facilitate a public meeting of voters;
- promote a plebiscite; and
- request a referendum.

Become Informed

Municipal issues can rarely be classified as “black and white” topics. There may often be competing interests for scarce resources. For example, a municipality may choose to devote fewer resources to recreation programs in favour of providing more funds to the fire department. Citizens may generally agree that the fire department may need more funding. Others may suggest that these additional funds should be redirected from other activities, such as economic development initiatives, rather than recreation. Yet others might suggest that a modest tax increase is the appropriate response.

To become informed of the various aspects of municipal affairs, you are encouraged to exercise your right to attend council meetings to observe your members of council debate municipal issues.⁸ Information can be obtained by requesting or viewing public documents such as meeting minutes and financial statements.⁹ Copies of these documents may be obtained from the municipal office at a reasonable cost, which is established by council.

Research the Issue

As noted above, competing interests are not uncommon when discussing municipal matters, such as the type and quantity of municipal services or facilities.

If you want to know why council acted on an issue in a particular way, ask the administrator. This discussion should focus on the technical aspects, such as:

- factors considered;
- all options examined by council;
- the expected outcomes; and
- possible implications of council’s direction.

Administrators do not have voting privileges on questions coming before council, nor do they have responsibility to defend or rationalize a council’s decision. Their role is to explain the decision. The advice or recommendations provided by the municipal administrator or other employees to council is considered to be information which may not be accessible by the public.¹⁰ Your discussion should be limited to the “what” of the matter.

The question of “why” should be directed to members of council. The member should be able to explain why they felt the selected option was superior to others. While you might not be swayed to the member’s position, you should come away with a sense of why that member of council thought the public interest was served.

⁸ Section 120 MA; Section 94 CA

⁹ Section 117 MA; Section 91 CA

¹⁰ Section 16, *The Local Authority Freedom of Information and Protection of Privacy Act*

Determine the Public Interest

Citizens may identify the public interest regarding a matter by discussing it with others in the community, including stakeholders who may be impacted both positively and adversely by council's decision. Sending letters to the editor of the local newspaper may be another way to create awareness and promote discussion regarding the decision.

It is important to keep an open mind during these discussions with others. Some people may support council's decision, and if you find there is a significant level of support for council's position, it may be more difficult for you to convince council to change the policy.

Explore Options/Develop Alternatives

Part of a citizen's research should include exploring options or alternatives. The discussions with the administrator and/or members of council may identify alternative options which were set aside for a variety of reasons. It may be beneficial to council and the community in general to identify choices which may enjoy greater public support.

These new options or alternatives may be identified through discussions with the administrator, members of council, or other citizens. Using the Internet or other media to examine how other municipalities have dealt with similar situations may result in solutions which council might not have considered.

Proposing choices or options may enhance your efforts to influence council's policies.

Meet With Council

Talking with individual council members at the local restaurant, skating rink, or other places is not the same as meeting with council. Municipal decisions are made collectively by members of council at a council meeting. Citizens who want to influence policy should be prepared to attend a council meeting to address all members of council at one time.

Getting on the Agenda

Contact the administrator to identify the municipality's requirements to be placed on the agenda to meet with council. The municipality's Council Procedures Bylaw sets out these rules. These rules may address some or all of the following:

- a deadline by which a request to be placed on the agenda must be filed with the administrator;
- the requirement for a written summary of the major items being addressed in the presentation to council; or
- a time limit to present the matter to council.

Prepare for the Meeting

Preparing for the meeting with council will enhance, but not guarantee, the success of your presentation. You should ensure that you are fully knowledgeable regarding the matter at hand. Consider the following points:

- Clearly identify the issue. If there are other non-relevant matters which you wish to address, it may be beneficial to deal with those at another time. Including too many items at one time may minimize action on any of the items;

- Outline the research procedures and outcomes. Withholding the identity of those persons with whom you have discussed the issue may cast doubt on the credibility of the results of those discussions. Include the source of external data to enable others to compare the current situation with the other situations you have identified;
- Propose alternatives to council. It should be presumed that council carefully considered the matter and made its decision based on a long-term benefit to the municipality. Proposing constructive alternative ideas may be viewed positively by council, particularly in those circumstances where action should be taken by council and where the status quo is not a publicly acceptable option;
- Rationalize the alternatives. Just as members of council should be prepared to provide reasoning for their decisions, be prepared to provide reasons for your suggestions. You may wish to constructively offer reasons why council's position may not be the best option;
- Be prepared to answer questions. The presentation, and the written summary if one was provided, may not have adequately addressed all of the considerations associated with the issue; and
- Be aware there may be resistance to new proposals. Try to keep the discussion focussed on the matter at hand.

At the Meeting

The delegation to the council meeting may be comprised of one citizen or a group of citizens. Where there are multiple attendees, it is important that a single person is designated as the spokesperson for the group. Among other things, there are two important considerations which the group may wish to think about when determining its spokesperson.

- Does the person have good speaking skills? If not, the presentation may drift from its main intention, or the speaker may be unable to maintain council's focus on the issue.
- Does the person have a poor social or business relationship with one or more members of council? If so, these biases may emerge during the discussion and may compromise the merits of the points being raised.

Citizens attending the meeting, but not actively participating in the presentation, should refrain from cheering, applauding, or other such actions. These actions may detract from the merits of the views being expressed to council, generating unwarranted resistance. The attendance of supporters should by itself clearly demonstrate there is support for alternative actions.

Following the presentation, members of council may pose a question to which the spokesperson may not be the best respondent. In this case, you should ask council's approval to defer the question to one of the other citizen delegates.

When the presentation and questions have concluded, your status will shift from a delegate to an observer. You are entitled to observe council's deliberations with certain exceptions.¹¹ Your attendance, however, is on the condition that you do not disrupt members' debate.¹² Consider

¹¹ Section 120 MA; Section 94 CA

¹² Subsection 119(3) MA; Subsection 93(3) CA

the effect your continued presence may have on those deliberations. While some councillors may be comfortable debating publicly, many have difficulty with this aspect of their role.

In some specific instances council can close a meeting to the public. If this should occur, you may be asked to leave the council chambers; however, you are entitled to return when council reconvenes the open meeting following those confidential discussions. Council may then pass a motion regarding the issue. Alternatively, there may be no resolution, signifying that council intends to take no immediate action regarding the matter.

Following the Meeting

In the days following the meeting, the municipality may provide you with written confirmation on the outcome of the meeting with council. A written response signifies conclusion of this phase of citizen involvement and ensures that all parties are aware of council's decision. You may wish to clarify your expectation of a written follow-up either during the presentation to council or afterwards with the administrator.

Public Meeting of Voters

A public meeting of voters is not the same as a meeting of council. This public meeting is typically convened to discuss a specific matter and serves to create awareness and build community understanding of the topic.

The outcome of this meeting is not binding on council – it will simply provide council with an opinion poll of those who attended, and possibly a recommended course of action. The final decision regarding the matter resides with council.

Public meetings may be initiated by council¹³ or they may arise from a petition.

- For information regarding a petition for a public meeting, please refer to Appendix “A”.
- For information regarding conducting a public meeting, please refer to Appendix “B”.

If you feel a public meeting of voters is warranted consider the question of timing.

- A public meeting of voters held prior to meeting with council as a delegation provides council with community input.
- Calling for a public meeting following the meeting with council as a delegation is a strategy that could be used to compel council to reconsider a matter if you were initially unsuccessful.

Plebiscites and Referendums

Plebiscites and referendums are forms of direct democracy where the voters of a municipality are entitled to vote to signify their acceptance or rejection of particular proposals. Voting on bylaws, resolutions and questions must be conducted in accordance with *The Local Government Election Act, 2015*.¹⁴

¹³ Subsection 129(1) MA

¹⁴ Part IX LGEA applies to referenda

Promote a Plebiscite

Plebiscites may be initiated only by council.¹⁵ Council may respond to formal or informal requests to hold a plebiscite regarding a proposed policy. A petition cannot compel council to move forward with a plebiscite. The outcome of a plebiscite does not bind council to a course of action.

Request a Referendum

Council may choose to hold a referendum or it may be required to hold a referendum as the result of a petition of voters.¹⁶ There are prescribed technical requirements for these petitions.

The outcome of a referendum is binding on council if the voters approve the measure or question being asked. On the other hand, if the majority of persons voting do not approve the proposed resolution or bylaw, council may exercise its discretionary authority to pass the proposed resolution or bylaw if it wishes to do so.¹⁷

In those situations where a municipality is required to pass a bylaw or resolution – that is to say, where the referendum result approves the proposed bylaw or resolution – the municipality’s ability to amend or repeal the bylaw or resolution is limited. The municipality may proceed with this action if any of the following conditions are met:

- The voters approve the proposed amendment or repeal of a bylaw or resolution through a plebiscite or a referendum;
- Amendment or repeal is necessary to avert an imminent danger to the health or safety of the residents of the municipality; or
- The bylaw or resolution to be amended or repealed has been in place for at least three years and the council provides a minimum of 21 days public notice of its intention to amend or repeal the bylaw or resolution.

If the amendment is non-substantive, the above conditions may not apply.

Petition for Referendum

The subject matter of a petition to conduct a referendum must address matters within the jurisdiction of council pursuant *The Municipalities Act*. A petition to conduct a referendum cannot address matters enabled by other legislation such as *The Local Improvements Act, 1993*, or *The Planning and Development Act, 2007*. Under *The Cities Act*, a petition to conduct a referendum may address any matter within the jurisdiction of the council.

The subject matter cannot involve the adoption of an operating budget or a capital budget or the authorization of the municipal tax levy.¹⁸ For example, a referendum regarding upgrades to the water treatment plant may be considered as part of the capital budget and, therefore, beyond the reach of a referendum petition; whereas citizens might petition for a referendum to pass a new bylaw respecting management of the waterworks system.

¹⁵ Section 130 MA; Section 104 CA

¹⁶ Sections 131 & 132 MA; Sections 105 & 106 CA

¹⁷ Section 137 MA; 111 CA

¹⁸ Section 132 MA; Section 106 CA

Technical Requirements

Only persons who are eligible to vote within the municipality are qualified to sign petitions requesting a referendum.

The minimum number of petitioners required for a valid petition is:¹⁹

- in cities, voters representing at least 10 per cent of the population; and
- in other municipalities, the greater of:
 - 25 voters, or
 - voters representing at least 15 per cent of the population.

Each page of the petition must contain the same statement of purpose and a statement indicating that each petitioner by signing the petition attests he or she is an eligible voter and has not previously signed the petition.²⁰ For the purposes of a petition it is important that the petitioners are appropriately identified as a voter.

In addition to his or her signature each petitioner must include:

- printed surname and given names or initials;
- civic address or legal description of land on which his or her status as a voter is based; (this cannot be a post office box number).
- the date on which the petitioner signed the petition; and
- the signature of a person who witnessed the petitioner signing the petition.

The petition must be accompanied by a signed statement of an individual who indicates:

- he or she is the representative of the petitioners;
- the date on which the first signature was collected; and
- the address to whom the municipality may direct any inquiries about the petition.

Overlooking any of the above requirements may compromise the validity of the petition.

A sample petition and representative's statement can be found here:

- voters in cities see Appendix "C"; and
- voters in other municipalities see Appendix "D".

Presentation to Municipality

A petition must be presented to the municipality within 90 days after the first person signs the petition. The petition is deemed to be presented to the municipality when it is filed with the administrator. If you present it to council at a meeting rather than filing it with the administrator, make sure that this happens before the 90 day deadline.

¹⁹ Section 132 MA; Section 106 CA

²⁰ Section 133 MA; Section 107 CA

Post-Presentation Obligations

Within 30 days after the date on which it is filed, the administrator is responsible for determining the sufficiency or validity of a petition for a referendum. Names may not be added to or removed from the petition after it has been filed with the municipality.

When counting the number of petitioners the following circumstances will result in the signatory being excluded:

- the petitioner’s signature was not witnessed;
- the petition page contains a statement of purpose different from that contained on the other pages;
- missing or incorrect printed name of petitioner;
- missing or incorrect civic or legal address of petitioner;
- no date indicating when the petitioner signed the petition; or
- a date indicating the petitioner signed the petition earlier than that specified on the representative’s declaration.

Insufficient Petition

If the administrator reports that the petition is insufficient council is not required to proceed with the referendum.²¹

Sufficient Petition

If the petition is valid, council is required to take the following steps in a timely fashion to submit the proposed bylaw or resolution to the voters²²:

- determine the date for the vote;
- finalize the wording of the draft bylaw or resolution;
- enact an election procedures bylaw or resolution;
- provide notice of the date of the vote; and
- provide for the appointment of representatives to observe voting and ballot counting procedures.

Appendix “E” contains detailed information regarding the actions that will be taken by the municipality after it receives a valid petition for a referendum.

Petition for Audit

In the case of a municipality other than a city, voters of a municipality may petition council to undertake a financial audit or a management audit of:

- the municipality;
- a council committee or other body established by the council; or
- a controlled corporation established by council.²³

²¹ Section 135 MA; Section 109 CA

²² Section 136 MA; Section 110 CA

²³ Section 140.1 MA

Clarify Type of Audit

Financial audits and management audits are different from the annual financial statement audit. The annual financial statement audit determines if the municipality's financial statements are prepared in accordance with generally accepted accounting principles. In so doing, the auditor is also required by the Act to report any impropriety found during the course of the audit and report to the mayor/reeve of the municipality with a copy to the Minister. Auditors use their professional discretion in determining the materiality of any items mentioned in the management letter.

A financial audit is an audit which identifies:

- instances of fraud, theft, or other financial misappropriation;
- improper or unauthorized transactions;
- non-compliance with provincial or federal statutes; and
- non-compliance with municipal bylaws.

A management audit is an audit to:

- review the performance and operations of a municipality to evaluate whether its operations are undertaken economically, efficiently and effectively;
- investigate and identify issues related to the policy, organization, operation or administration of the municipality; and
- propose appropriate solutions to any issues identified during the course of the audit.

It is important to further outline the scope of the audit requested. The statement of purpose at the top of each page of the petition must be identical and must clarify the type of audit voters are requesting (financial or management). You may find it helpful to contact an auditor to provide information about the type of audit that would best address your concerns.

Technical Requirements

To be deemed sufficient, a petition for a financial audit or a management audit must be signed by voters representing at least one-third of the population of the municipality. Further, the petition must also meet the technical requirements of a petition for a referendum. These technical requirements are discussed earlier in this guide – see Plebiscites and Referendums, Technical Requirements.

Presentation to Municipality

A petition must be presented to the municipality within 90 days after the first person signs the petition. The petition is deemed to be presented to the municipality when it is filed with the administrator. If you present it to council at a meeting rather than filing it with the administrator, make sure that this happens before the deadline.

Post-Presentation Obligations

Within 30 days after the date on which it is filed, the administrator must inform council if the petition for a financial audit or a management audit is or is not sufficient.

At the meeting following the administrator's determination that a petition for a financial audit or a management audit is sufficient, council must pass a resolution to appoint an auditor to conduct the requested audit. The auditor must be someone other than the auditor appointed to undertake the municipality's annual financial audit.

Council is required to co-operate with the auditor during the audit. The audit must be completed within 180 days from the date the petition for a financial audit or a management audit is received by council. The audit must be conducted in accordance with the guidelines and standards as recommended from time to time by the Chartered Professional Accountants of Canada.

The municipality is responsible for all costs of the audit.

Within 30 days of receiving the auditor's report, the municipality shall publicize a notice in the municipal office and in a newspaper circulating within the municipality that the report is available to the public by mail or personal delivery to any person that requests a copy. The exception to this is where misconduct is identified. In this situation, the auditor will send the report to the Deputy Minister of Justice and the municipality cannot make the report public.

Ombudsman Saskatchewan

The Ombudsman is an officer of the Legislative Assembly whose role is to investigate complaints about the administrative actions and decisions of municipalities and their council members, officers and employees.

The Ombudsman is neutral, impartial and independent. Unlike a lawyer, the Ombudsman does not advocate for individuals. Unlike a judge, the Ombudsman has no authority to overturn municipal decisions. Unlike an elected representative, the Ombudsman does not promote or take a position on matters of public policy.

After an investigation, the Ombudsman can make recommendations to a municipality if the Ombudsman finds that a municipality:

- has made a decision or acted in a way that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or based on a mistake of law or fact.
- has exercised a statutory power, duty or function for an improper purpose, on irrelevant grounds, or by taking into account irrelevant considerations.
- should have given reasons for a decision or action.

The Ombudsman can also investigate allegations that a council member is in a conflict of interest or has violated a code of conduct.

If you think you have been treated unfairly by your municipal government, you should first try to resolve the matter directly with the municipality. Depending on the issue, you may raise it by contacting the administration or by meeting with council. If you still feel you are being treated unfairly, you may contact Ombudsman Saskatchewan²⁴ at 1-800-667-9787.

Electoral Process

Members of council are elected and hold office for a fixed period of time in accordance with *The Local Government Election Act, 2015*. From a citizen's viewpoint the election process will consist of a call for nominations followed by voting for candidates.

²⁴ <https://www.ombudsman.sk.ca/>

Incumbent members of council may view re-election as approval of their performance during their last term. In many cases, individuals who seek office as a member of council including the reeve or mayor may be unchallenged and therefore they are acclaimed to office. Acclamations may also be viewed as approval of past performance or support of an individual's leadership abilities.

Citizens who desire change may offer their services by running for office or by supporting other candidates. The nomination period begins when the returning officer posts the Call for Nominations. It ends five weeks before Election Day.²⁵

The deadline for posting the Call for Nominations is 10 business days before the close of the nomination period.²⁶

Elected members are entitled to serve their full term unless they become disqualified from holding office as provided by legislation. A member may resign from council or in certain situations the courts may remove a member from office. When a member becomes disqualified from holding municipal office, he or she is required to resign from council immediately and is ineligible to run for municipal office for 12 years. Other than by-elections, the general election is your only opportunity to effect change regarding the makeup of council.

Legal Challenge

Citizens retain the right to proceed through the courts to challenge decisions of municipal council. However, this option is generally not viewed as simple, inexpensive or quick.

As with the efforts to apply political pressure to members of council, your intent to consider a legal challenge involves some initial preparations. You may wish to gather copies of correspondence relating to the matter along with copies of council minutes, bylaws or other relevant documents. Consider researching the legislation particularly *The Municipalities Act* or *The Cities Act* or any other legislation dealing with the activity which is being called into question. Consult with your lawyer to obtain legal advice regarding this process.

You have the right to challenge the validity of bylaws or resolutions within six months of their passage.²⁷ The challenge may focus on three main areas:

1. Is the bylaw or resolution illegal due to a lack of substance or form? Did council contravene legislation and/or exceed its legislative powers? The legislation provides guidance to the courts that the municipality's power to pass bylaws is to be "interpreted broadly"²⁸ and therefore, narrow interpretations may be less likely to succeed;
2. Were the proceedings before the passing of the resolution or bylaw non-compliant with the Act or other legislation? In some cases council may be required to provide notice or hold a hearing prior to making a final decision regarding the matter. Proceeding in a manner

²⁵ Sections 73 LGEA

²⁶ Sections 66 LGEA

²⁷ Section 358 MA; Section 320 CA

²⁸ Section 6 MA; Section 6 CA

contrary to that provided by legislation may render the bylaw or resolution susceptible to a challenge; and/or

3. Was the process flawed? Failure to provide notice or to ensure that meetings were properly convened or held may compromise a municipality's ability to defend its bylaw or resolution.

Applications to quash bylaws or resolutions of council are heard by the Saskatchewan Court of Queen's Bench.²⁹ You are strongly advised to obtain the services of legal counsel before proceeding.

Bylaws or resolutions which are passed in good faith by the council may not be challenged on the grounds that the bylaw or resolution is unreasonable.³⁰ Likewise, bylaws or resolutions may not be challenged on the basis of the qualifications of members of council.³¹

You may initiate legal action if you feel you have been civilly harmed or personally wronged or injured by the municipality. Legal actions may be pursued through Small Claims Court³² or through the Saskatchewan Court of Queen's Bench. The Law Society of Saskatchewan maintains a freely accessible database of judgments which is fully searchable.³³

Municipalities enjoy statutory immunity or non-liability, in certain circumstances including, but not limited to:

- situations where the municipality acts in accordance with its statutory authority unless it is negligent;³⁴
- most nuisances arising from public works or utilities;³⁵ and
- exercising good faith discretionary authority to not take action.³⁶

Conclusion

It has been said "democracy is a messy form of government"; however, it is a form of government that is clearly accountable to its voters. Municipal government is a form of democracy and accountability, and citizens' ability to influence decisions made by their elected officials is enshrined in this form of government and its legislation.

Open communication is one of the most effective ways to lobby your members of council for specific decisions. Debate the matter with elected members, municipal officials and other citizens. Define the public interest and build political support.

²⁹ <http://www.sasklawcourts.ca>

³⁰ Section 360 MA; Section 322 CA

³¹ Section 361 MA; Section 323 CA

³² <http://www.sasklawcourts.ca/>

³³ <http://www.lawsociety.sk.ca/>

³⁴ Section 339 MA; Section 302 CA

³⁵ Section 340 MA; Section 303 CA

³⁶ Section 341 MA; Section 304 CA

The cliché “it is not possible to please all of the people all of the time” is a lesson quickly learned by many members of council. Likewise councillors, mayors and reeves who consistently disregard public opinion soon discover that they may have little support from voters when seeking re-election. Concerned citizens have opportunities to seek office or to support other candidates who may enjoy more support.

Municipal policies may be challenged through the courts. Saskatchewan courts have demonstrated their willingness to overturn decisions made in bad faith or where procedural fairness has been compromised.

This document provides information regarding options to influence decisions made by council. The initiatives described in this document do not guarantee success in every instance. More than anything else the success of your efforts will be a reflection of your:

- courage;
- persistence;
- persuasive skills; and
- support from other citizens.

Further Information

For further information, contact a Municipal Advisor at:

Ministry of Government Relations
Advisory Services and Municipal Relations
1010 - 1855 Victoria Avenue
REGINA SK S4P 3T2
Phone: (306) 787-2680 or
Email: muninfo@gov.sk.ca

Appendix A – Petition for a Public Meeting

Citizens in every municipality have the right to petition the municipality to call a public meeting of voters.³⁷ The minimum number of signatures of voters required to compel the municipality to proceed with this action depends on the type of municipality:

- In cities, a petition is to be signed by at least five per cent of the population.
- In resort villages, the petition is to be signed by at least eight per cent of the voters. The petition organizers are encouraged to consult with the administrator to estimate the total number of voters. Few municipalities including resort villages use voters' lists so the exact number of voters and more importantly the minimum number of petitioners, should be clarified.
- In all other municipalities, the petition is to be signed by the greater of:
 - 20 voters; or
 - five per cent of the population.

Additional legislative requirements for a petition for a public meeting are:

- Persons signing the petition must be eligible to vote within the municipality; and
- The petition must state the municipal matter(s) the voters wish to be discussed.

When sufficient signatures have been obtained, the petition may be delivered to the administrator or formally presented to council. The administrator is responsible to determine the sufficiency of the petition and that determination is final. If the petition is sufficient, a public meeting must be held within 30 days of its receipt by council. Council has the right to refuse the petition if it concerns the same or similar subject of a public meeting held as the result of a petition within the past 12 months.

Council is required to provide public notice of this meeting in accordance with its Public Notice Bylaw. The minimum amount of public notice is seven days.³⁸

³⁷ Subsection 129(2) MA; Subsection 103(1) CA

³⁸ Section 128 MA; Section 102 CA

Appendix B – Conducting a Public Meeting

The mayor or reeve, when, authorized by resolution of the council, or as a result of the municipality receiving a sufficient petition, is responsible for calling the public meeting and notification of its location, date and time. Legislation does not address the manner in which the public meeting is to be conducted.

In the absence of statutory requirements, one has to rely on generally accepted rules of parliamentary procedure when conducting a public meeting of the voters. Authorities on parliamentary procedure have written many books on the topic most of which are available at book stores or libraries. Potential research documents include *Roberts' Rules of Order*, *Bourinot's Rules of Order* and *Parliamentary Procedure at a Glance* by O. Garfield Jones.

A public meeting of the voters may be held to provide participants with information or to gather public input regarding a particular municipal matter or concern. When such a meeting is held as the result of a petition the petition generally indicates the topic to be discussed. Attendees are usually given the opportunity to ask questions and voice their opinions.

As these meetings are not council meetings, decisions affecting the municipality cannot be made. Only council at a duly held council meeting can make decisions affecting the municipality. The attendees may make suggestions and recommendations but these are not binding on council. Since this is a public meeting of the voters, the voters may run the meeting with council being present to answer questions and listen to concerns.

One issue to be addressed is that of meeting officials – a chairperson and perhaps a secretary. If a secretary is appointed consideration should be given to the following:

- What information is to be recorded?
- What is to be done with the “minutes” after the meeting?

In many situations the municipal administrator may prepare notes for council’s consideration at a future council meeting. If a municipal record of the meeting is prepared it should avoid verbatim comments and instead focus on key discussion points. Verbatim comments may be repetitious, irrelevant, inflammatory or incomplete and attempts to capture every word may lead to missing critical points.

The selection of the chairperson may be contingent on the purpose of the meeting and manner in which it was called:

- If council initiated the public meeting to provide information and/or solicit public input it may be appropriate for the mayor or reeve or other elected official to conduct the meeting.
- If the meeting is being held as the result of a petition or an anticipated petition it may be beneficial if someone other than an elected official fulfills the role of chairperson. The chairperson may be selected by those attending the meeting through a process of nomination and voting. Another alternative might include council and the petitioners’ representative jointly appointing a neutral, capable individual.

The chairperson is responsible for keeping the meeting running smoothly and without disruption. The chairperson should be impartial and avoid participation in the debate. He or she should be knowledgeable about parliamentary procedures and be someone who is seen by the community as non-partisan and technically able to run a meeting. The chairperson conducts the meeting in a manner agreed to by those present.

It is a good practice for the chairperson to go over certain “ground rules” and get agreement from the attendees on these rules before discussion starts. Some “ground rules” the chairperson might want to consider are:

- explaining the purpose of the meeting;
- establishing an order of business (agenda);
- attendance by the public (i.e. non-voters) and news media;
- allowing or prohibiting tape or video recordings;
- length of time and number of times a speaker is given the floor; and
- the procedure for handling resolutions if any, while bearing in mind that resolutions will not bind council to a course of action.

Appendix C – Petition for Referendum (Cities)

STATEMENT OF REPRESENTATIVE OF PETITIONERS

TO: THE CLERK OF THE CITY OF _____

Submitted herewith is a petition pursuant to section 106 of *The Cities Act*.

I am attaching this statement to the petition as required by section 107 of *The Cities Act*.

I do hereby declare that:

1. I am the representative of the petitioners;
2. The first signature to this petition was collected on _____ [date]; and
3. The City may direct any inquiries about the petition to me at the following address:

Printed Name

Address

City

Postal Code

Daytime phone number

Other phone numbers where you can be reached

SIGNATURE OF REPRESENTATIVE

DATE SUBMITTED TO THE CLERK

PETITION REQUESTING A REFERENDUM

We the undersigned being voters of the City of _____ do hereby petition according to section 106 of *The Cities Act* the Council of the _____ of _____ to hold a referendum for the purpose of submitting the following matter to the voters for approval or rejection:

_____ (State clearly the question that is being petitioned for submission to the voters)

(NOTE: Each page must have an identical statement of purpose and must be filed within 90 days of the first signature to be valid)

Each Signatory below hereby attests that he or she is a qualified voter of the city and has not previously signed the petition.			
Signature of Voter (Print and Sign Name)	Address³⁹ (Civic Address or Legal Land Description)	Date Signed	Witness (Must be 18 or over)
Print ----- Sign			
Print ----- Sign			
Print ----- Sign			
Print ----- Sign			
Print ----- Sign			
Print ----- Sign			
Print ----- Sign			
Print ----- Sign			

³⁹ Postal addresses are not acceptable. Use the address or land description that qualifies the person as a voter in the city.

Appendix D – Petition for Referendum (other than cities)

STATEMENT OF REPRESENTATIVE OF PETITIONERS

TO: THE ADMINISTRATOR OF _____

Submitted herewith is a petition pursuant to section 132 of *The Municipalities Act*.

I am attaching this statement to the petition as required by section 133 of *The Municipalities Act* and I do hereby declare that:

1. I am the representative of the petitioners;
2. The first signature to this petition was collected on _____ [date]; and
3. The Municipality may direct any inquiries about the petition to me at the following address:

Printed Name

Address

Town/Village /RM

Postal Code

Daytime phone number

Other phone numbers where you can be reached

SIGNATURE OF REPRESENTATIVE

DATE SUBMITTED TO THE ADMINISTRATOR

PETITION REQUESTING A REFERENDUM

We the undersigned being voters of the _____ of _____ do hereby petition according to section 132 of *The Municipalities Act* the Council of the _____ of _____ to hold a referendum for the purpose of submitting the following matter to the voters for approval or rejection:

(State clearly the question that is being petitioned for submission to the voters)

(NOTE: Each page must have an identical statement of purpose and must be filed within 90 days of the first signature to be valid)

Each Signatory below hereby attests that he or she is a qualified voter of the municipality and has not previously signed the petition.			
Signature of Voter (Print and Sign Name)	Address⁴⁰ (Civic Address or Legal Land Description)	Date Signed	Witness (Must be 18 or over)
Print			
Sign			
Print			
Sign			
Print			
Sign			
Print			
Sign			
Print			
Sign			
Print			
Sign			

⁴⁰ Postal addresses are not acceptable. Use the address or land description that qualifies the person as a voter in the municipality.

Appendix E – Municipal Actions after Receiving a Valid Petition for a Referendum

If the petition is valid, council is required to take specific steps in a timely fashion to submit the proposed bylaw or resolution to the voters:⁴¹

- In the case of a resort village where the petition is filed on or before March 1st of the year in which a general election is being held, the vote shall be held before the end of the year. If the petition is filed at any other time, the vote will be held within nine months after the petition is filed with the municipality.
- In the case of other municipalities where the petition is filed on or before July 1st of the year in which a general election is being held, the vote shall be held before the end of the year. If the petition is filed at any other time, the vote will be held within nine months after the petition is filed with the municipality.

The wording of the draft bylaw or resolution is to be finalized at least eight weeks before the vote.

If council passes the bylaw or resolution requested by the petition then it is not required to proceed with the referendum.

The council may apply to the Court of Queen’s Bench for direction if:⁴²

- the wording of the petition is unclear;
- there are conflicting petitions; or
- for any other reason where the court’s direction might be required.

The petitioners’ representative or representatives are to be provided notice that the court’s direction is being sought and any order the court makes regarding the petition shall govern the referendum vote.

The Local Government Election Act, 2015 requires municipalities to enact an election bylaw which will address the following matters:⁴³

- date of the vote which may correspond to the date of the general election or a by-election;
- time and place that the returning officer will declare the results of the vote; and
- time and place that the returning officer will receive representations and designate observers.

Public notice is to be provided respecting the voting date. The first publication of the notice must occur between three to five weeks before voting day.⁴⁴ Notice is provided by posting the notice at the municipal office, at the office of the returning officer, at least one other noticeable place in the municipality, and advertising in a newspaper that circulates in the municipality.⁴⁵

⁴¹ Section 136 MA; Section 110 CA

⁴² Section 138 MA; Section 112 CA

⁴³ Section 146 LGEA

⁴⁴ Section 147 LGEA

⁴⁵ Section 9 LGEA

In a resort village, the notice can be posted in three or more widely separated conspicuous locations instead of advertising in a newspaper.

The notice must contain information about the subject matter of the vote, whether it is a question, bylaw or resolution. The notice will include certification by the returning officer as to the accuracy of the information and, where the referendum deals with a bylaw, a statement that council will or may pass the bylaw in accordance with municipal legislation.⁴⁶

Supporters and opponents of the bylaw or question may apply to the returning officer for authorization to observe voting and ballot counting procedures. Up to two members of either side may attend while votes are being cast. Only one member from each side is permitted to attend the counting of the ballots.⁴⁷

If the vote results in a tie the effective result is that the referendum was not won and the matter is deemed to be resolved in favour of the status quo.⁴⁸

The provisions respecting voter qualifications, advance polls, voting procedures, recounts and other challenges are the same as those which normally apply to municipal elections. Further information regarding this topic may be obtained from the Government of Saskatchewan website.

⁴⁶ Section 147 LGEA

⁴⁷ Section 149 LGEA

⁴⁸ Section 155 LGEA