

Bylaw 24/2019 Municipal Public Utilities Bylaw

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Presented by:

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Background

- Financial Sustainability is a key risk to the City of St. Albert
 - Tax Ratio (highly residential leveraged), Growth Capital Deficit, RMR re-investment shortfall, high offsite levies
- The City of St. Albert is **currently** constrained to limited sources of revenue:
 - Property taxes, grants, sales and user fees, fines and penalties, franchise fees and utility rate charges
- The City of St. Albert **currently** has the following levers to pull for financial sustainability (in various combinations):
 - Increases to taxes, utility rates, sales and user fees, fines and penalties,
 - Reducing costs (with corresponding service level reductions),
 - and deferring or cancelling capital projects

Opportunity / Risk Mitigation

- A Municipal Public Utility Bylaw creates opportunities to generate and protect new sources of revenue that fall within the MGA definition of “utility service” in order to offset other declining revenue sources (e.g. grants) and thereby mitigate resultant increasing other sources of current revenue (e.g. taxes and utility rates)

Legislation

- Municipal Government Act

- Section 33 – Prohibiting other public utilities

- When a municipality provides a **municipal utility service**, the council may by bylaw prohibit any person other than the municipality from providing the same or a similar type of utility service in all or part of the municipality

- Sections 1(1)(y) and 28 – Definitions

- “municipal utility service” – means a utility service provided by a municipal **public utility**
 - “public utility” means **a system or works** used to provide one or more of . . .

- water or steam

- sewage disposal or drainage

- public transportation operated by the municipality

- heat, fuel or electric power

- waste management

- for **public** consumption, benefit, convenience or use

Plain English (1)

Proposed Bylaw respects other legislation and pre-existing contracts with suppliers of utilities services, and acknowledges economic realities (“natural monopolies”):

- Franchise Agreements with ATCO Gas and Fortis that give those companies exclusive rights to traditional means of **distribution** of natural gas and electricity in St. Albert, are not affected by the bylaw because the City has already approved those agreements under MGA section 45
- St. Albert residents will continue to have the right to choose their retail supplier/direct sellers of natural gas and electricity through the systems operated by ATCO Gas and Fortis, under MGA sections 31(3) and 33.1 and applicable parts of the legislation and regulations governing distribution of natural gas and electricity.
- The City’s long term water supply agreement signed with EPCOR this year will not be impacted by the bylaw, since it is a pre-existing contract and because there is no other supplier of bulk water in the quantities needed by St. Albert residents. (The City will retain the exclusive right to operate the water ***distribution*** system that brings drinking water through pipes to individual houses and businesses.)
- Agreements with the ACRWC are structured in provincial legislation Alberta Regulation 129/1985, where the City is listed as a member of the Commission and further requirements are listed of the Commissioning requiring to provide services to Members, further Commission bylaws supported by local bylaws support the service delivery.



Plain English (2)

- Historically St. Albert has been a “price taker” on supplied utility services and/or gives valuable commodities away for others to benefit from
- Water, wastewater, gas and electricity utility services currently supplied remain status quo due to “natural monopolies” established by others

Plain English (3)

- New Utility Services offered will present the **opportunity for more value, not less value, to existing and new ratepayers**
- Objective of collaboration and synergies for mutual increased benefit over competition and narrowed playing field
- Desired benefits for City: reduced offsite levies via alternative servicing incenting new commercial tax revenue opportunities and new non-traditional revenue streams supplementing other revenue streams providing additional value to both existing ratepayers and taxpayers

Legal Realities

- 2017 Court of Appeal judgement, Kozak vs. Lacombe County
 - Confirmed right of an Alberta municipality to monopolize provision of a municipal utility service, but also the right to compel property owners to connect to its utility system
(Municipality wanted it and got it)
- 2019 Court of Appeal judgment, River Ridge Condo Corp vs. Medicine Hat
 - Declaration that Medicine Hat is responsible for utility infrastructure for which it thought it had contracted out under a Development Agreement. The Court made the comment that provision of basic utility and road infrastructure to residents is a core municipal responsibility that cannot be avoided by contract with a private landowner, and further made it clear that whenever a system of utility pipes or lines *serves more than one parcel of land*, the muni is responsible to maintain those lines regardless of any contract that says otherwise
(Municipality didn't want it and got it)
- Provides “Quality Control” in services and infrastructure
 - Given the absolutism of municipal responsibility regardless of municipal desire for responsibility, proposed bylaw provides both quality control in system development, operation and maintenance while potentially providing advance revenue generation to contribute to the eventuality that the municipality may assume operation and maintenance for utility services it does not currently provide

Concerns Raised

- Bottled Water
 - Not a “public utility” service, so not impacted by the bylaw. Takes product of a utility service (water usually produced by a municipality or subsidiary), adds “value” and retails
 - Important to remember the City is part of the value chain, it is the distributor, it is not the retail supplier and the further from the water source, the higher the cost of production of value added products
- Solar Power
 - Bylaw does not preclude onsite generation of electricity which is not a “public utility” because the thing produced in that scenario is for private, not public consumption or use
 - City actively encourages onsite generation (rooftop solar array permitted, standalone solar array amendment proposed (August 19, 2019))
- Storm Water (Rain Barrel)
 - City encourages stormwater re-use as a water conservation activity that is better for both the environment and the ratepayer (lower carbon footprint and cheaper for a given volume of water used)
 - Bylaw doesn’t preclude onsite reuse but does enable co-operative or collaborative initiatives on new developments to provide value to more stakeholders instead of one property owner

Summary

- A Municipal Public Utility Bylaw:
 - Provides opportunity for new revenue sources to offset declining sources of revenue and minimize increases to other sources of revenue (e.g. tax increases)
 - Respects other legislation, the practicality of existing natural monopolies and individual property owner rights for both service provision and generation
 - Provides opportunity for more value, not less value, to existing and new ratepayers
 - Enables collaboration and synergy oriented for mutual benefit with partners
 - Provides potential to contribute to reducing offsite levies via alternative servicing incenting new commercial tax revenue opportunities and new non-traditional revenue streams for the City