



## Legislation Text

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**TAMRMS#: B06**

### **Bylaw 24/2019 Municipal Public Utilities Bylaw (2<sup>nd</sup> & 3<sup>rd</sup> Reading)**

Presented by: David Leflar, Director, Legal & Legislative Services

#### **RECOMMENDATION:**

1. That Bylaw 24/2019 be read a second time.
2. That Bylaw 24/2019 be read a third time.

#### **PURPOSE OF REPORT**

The purpose of this report is to transmit to Council the recommendation of the Governance, Priorities and Finance Committee (GPFC) at its August 12, 2019 meeting that Bylaw 24/2019, the Municipal Public Utilities Bylaw, be passed.

#### **ALIGNMENT TO COUNCIL STRATEGIC PRIORITY**

N/A

#### **BACKGROUND AND DISCUSSION**

The *Municipal Government Act* has for many years contained a section that allows a council to pass a bylaw prohibiting any person from providing the same or similar utility services as those provided by the municipality or by a subsidiary corporation of the municipality. Historically, municipalities whose utility services consisted only of traditional potable water supply, wastewater collection/treatment, stormwater management and garbage disposal, have not often taken advantage of this statutory power <sup>(1)</sup>. This is because the financial and regulatory barriers to entry, and the “natural monopoly” nature of such utilities services, make it unlikely that a private sector corporation would emerge to challenge the exclusivity of municipalities in this economic space.

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(1). Such bylaw provisions have however been enacted in other Alberta municipalities, although they are more often embedded within bylaws governing specific types of utility services (for example s. 5 of Edmonton’s EPCOR Water and Wastewater Bylaw or s. 32 of Medicine Hat’s Electric Utility Bylaw) as opposed to a stand-alone bylaw like proposed Bylaw 24/2009 that covers all possible utilities services, present and future. Wood Buffalo is an example of an Alberta municipality that has enacted a similar stand-alone bylaw to provide general protection for its monopoly position in utilities services. Also noteworthy is a recent (2017) judgment of the Alberta Court of Appeal, *Kozak v. Lacombe County* which confirmed not only the right of an Alberta municipality to monopolize the provision of a municipal utility service, but also a municipality’s right to compel property owners to connect to a public utility at the owners’ cost.

But things are quickly changing both in the utilities sector and in municipal government generally where the continual need to fund both new growth, and repair, maintenance & replacement of assets, is on a collision course with our dwindling ability to access traditional property tax and grant revenues -- thereby putting municipalities into an ever-tightening financial vice grip. Therefore, it has become more urgent for the City both to safeguard its traditional sources of utility revenues and to pursue new non-traditional revenue sources based on providing new utility services or providing traditional services in innovative and environmentally responsible ways. Some of these new or alternative servicing options may not involve the kinds of large up-front capital costs that are typically associated with traditional methods of delivering utility services and may therefore tend to attract competition where traditional utility servicing would not. So it is very important for the City to establish its monopoly position, as the law of Alberta contemplates and allows, before we commit significant time and resources to alternative utility servicing.

Bylaw 24-2019 will not solve all our problems, but it does represent an important foundational piece in addressing these future revenue and funding challenges. Section 5 of the bylaw establishes as a baseline that neither the City itself nor its potential future utility corporation, would have to face competition in their utilities business within the municipal boundaries of St. Albert. But Section 5 is only half of what Bylaw 24-2019 seeks to achieve. Section 6 is equally important because it provides a legal foundation for strategic partnerships with other governments and/or the private sector, to leverage the whole range of emerging technologies in the utility sector in a way that could reduce costs and/or tap into new revenue sources. This should expand the range of opportunities for shared investment/shared benefit, thereby enhancing local growth and development. From this perspective Bylaw 24-2019 is key to our future success in forging ahead with alternative utility service delivery models and their associated business opportunities.

## **STAKEHOLDER COMMUNICATIONS OR ENGAGEMENT**

A specific stand-alone notice was placed in the City Lights section of the St. Albert Gazette, calling attention to the fact that discussion of this item was scheduled for the GPFC meeting of August 12, 2019 and identifying key elements of the Bylaw. A social media awareness plan was also implemented, with the same objective.

## **IMPLICATIONS OF RECOMMENDATION**

If passed, Bylaw 24-2019 would solidify the City's exclusive right to provide utility services within our municipal boundaries, either directly or through a wholly owned utility corporation. The Bylaw would also provide the necessary legal flexibility to negotiate commercial arrangements to turn what would otherwise be competitors into business partners, thereby enhancing the scope and quality of services the City is able to provide.

### Financial:

None at this time but potential for significant future enhanced utility net revenues.

### Legal / Risk:

No significant legal risk, since the *Municipal Government Act* does authorize a council to pass such a bylaw.

Environmental risks:

(including the risk of not significantly reducing our environmental footprint)

More likely to go down than increase, since this Bylaw would pave the way for new and more environmentally friendly methods of delivering utility services.

Organizational:

The Bylaw itself would have no immediate organizational impact. Such impacts would arise if Council gives future approval to create a corporation owned by the City, through which utility services are delivered.

**ALTERNATIVES AND IMPLICATIONS CONSIDERED**

If Council does not wish to support the recommendation, the alternative is to maintain the *status quo*, under which there is a risk that our most promising alternative utility service initiatives could be adversely impacted by competition instead of being augmented and strengthened by strategic partnerships.

Report Date: August 19, 2019

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