Handbook for Municipal Bylaw Processes: Creating and amending bylaws

Note: this document has been developed as a guide for municipalities. In the case of any discrepancies with the PEI Municipalities Act, the Municipalities Act prevails.

Updated December 30, 2011
Enacting/Repealing/Amending a Municipal Bylaw under the PEI Municipalities Act – Background

The PEI Municipalities Act lists the areas in which a municipal government which is enabled under it may enact bylaws and the procedure which must be followed in doing so.

Bylaw Making Authority – For what purposes may municipalities create bylaws?

“A council may make bylaws that are considered expedient and are not contrary to this or any other Act or regulations for the peace, order and good government of the municipality, the provision of municipal services and any other matter within the jurisdiction of the municipality.” [Section 57 of the Act]

Sections 30 and 31 of the Act list the services which municipalities may provide, often through the passage of a bylaw.

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Authority to provide services for new municipalities created under the *Municipalities Act* would be established as part of the incorporation process (Section 32).

Authority to provide additional services for municipalities to which Section 31 applies may be requested through a Council resolution that is sent to the Minister. The Minister shall make a recommendation regarding the request to the Lieutenant Governor in Council and the Lieutenant Governor in Council shall, should the recommendation be in the positive and they agree, grant approval by publishing an order in the *Gazette* (Section 33).

Section 64 gives some specific details on how the services in sections 30 & 31 may be dealt with through bylaws.

Additional bylaw mandating or enabling sections in the Act include:

- Section 17, **remuneration bylaw**, mandatory if council is to be remunerated/paid for their service.
- Section 19, **wards**, mandatory if municipality is to be divided into wards for elections.
- Section 34.1, enables a **tourism accommodation levy**.
- Section 38, mandatory if establishing a **water/sewer utility**.
- Section 49, mandatory if conducting an **election poll** instead of holding a special election meeting.
- Section 57.1, enables the **adoption of codes or standards** made by recognized technical organizations, e.g. the *National Building Code*.
- Section 64 (a) (i), enables the development of a **procedural bylaw** (highly recommended)

### Types of Bylaw Procedures:

**New Bylaw:**

Creating a brand new bylaw, to begin a new initiative.

**Replacing or Repealing a Bylaw:**

Repeals the former bylaw and introduces an entirely new bylaw that includes words of repeal for the former bylaw.

The current PEI municipal legislation does not contain an express provision for the repeal of bylaws; however the power to repeal a bylaw is a necessary and incidental power to the ability to pass a bylaw.

A bylaw may only be repealed by a bylaw:  
*If a bylaw is replacing another bylaw*, then language to that effect would be included in the new bylaw.

*Repealing a bylaw but not replacing it:* a repeal bylaw would still have to be duly passed. If this is not done, a bylaw would remain in full force and effect indefinitely.

**Consolidation of Bylaws:**

A consolidation of bylaws is the process of taking an original bylaw and incorporating into it all the amendments that have been made to it, and taking out of it all deletions that resulted from the amendments. In the consolidation process no language can be changed; the consolidation must consolidate the flaws along with everything else.

Consolidated bylaws offer greater ease of use for office staff and the public. However, consolidated bylaws will have no legal effect as they have not been passed by the council, may contain errors from the consolidation process, and there...
may have been further changes since the consolidation process was carried out.

Thus a consolidated version of a bylaw must contain a disclaimer to the effect of; “This document is an office consolidation of this Bylaw. It is intended for information and reference purposes only. This document is not the official version of the Bylaw. Where accuracy is critical, please consult official sources. If you find any errors or omissions in this consolidation, please contact ______________.”

**Amendment of a Bylaw:**

An amending bylaw changes text or maps or other components of an existing bylaw but does not form part of the existing bylaw. See note below on consolidation and disclaimers.

As above, the power to amend a bylaw is not specifically enumerated in the current PEI municipal legislation; but again the power to amend a bylaw is a necessary and incidental power to the ability to pass a bylaw.

And again, a bylaw may only be amended by an amending bylaw.

An amending bylaw will generally be titled in such as way as to explain its purpose; **A Bylaw to Amend Bylaw #99-002, Being A Bylaw for Animal Control**, for example.

**Wording of changes (minor changes):** Such a bylaw, if the changes are of a minor nature, will generally contain language to the effect that:

words “a, b and c” in section 3 (1) are replaced with the words “x, y and z”.

**Wording of changes (major changes):** If the amendment is of a more substantive nature, then it is likely easier to replace a section or part with language such as:

“section 3 is replaced with a new section 3” or multiple sections if that is the case, and the wording of the new sections(s) would be listed.

If the changes are of an even more substantive nature, it may be better to consider passing a new bylaw and repeal the previous in total.
Background

Enacting/Repealing/Amending a Municipal Bylaw under the PEI Municipalities Act – Bylaw Making Process and Procedure

Requirement for public meeting / public hearing for resident comments – bylaws affecting use and enjoyment of residential properties

Before any bylaw that will affect the general use and enjoyment of residential property is made, residents must have an opportunity to express their opinion regarding the bylaw. The section also lists the requirement for notice (advertising) so that the public may have that opportunity to express their opinion on the bylaw. [Section 61 of the Act]

While Section 61 does not provide a timeline for the notice, best practice would be to follow the provisions of Section 55 (3), which states; the administrator shall cause notice of the time, date and place of the annual meeting to be published on at least two occasions in a newspaper circulating in the community and the first of such notices shall be published at least seven days before the date fixed for the meeting.

The procedures for the passing of a bylaw – Section 59-60 of the Act:

Section 59 of the Act states that:

- The bylaw must be read and approved by a majority of councillors on two occasions at meetings of the council, held on separate days.
- After the two readings it must be formally adopted by council resolution.
- It must be signed by the mayor or chairperson and the administrator and sealed with the corporate seal of the municipality.

Section 60 of the Act mandates that:

- The minutes of the meeting, at which a bylaw has been passed, will record the name of the bylaw and the fact that it was passed.
- A copy of the bylaw bearing the signatures of the mayor or chairperson and the administrator and bearing the seal of the municipality shall be entered into the register of bylaws that is retained by the administrator.
- A copy of the bylaw bearing the required signatures and the seal of the municipality must be filed with the Minister within seven days of the passage of the bylaw.

To re-enforce the requirement that all bylaws must be signed by the mayor or chairperson and the administrator and sealed with the seal of the municipality, these requirements are also enumerated in section 18.

It should be noted that bylaw making authority may also be granted to a municipal council under other legislation, the Planning Act for example, and the required process under other legislation may be different than that set out in this document.
Bylaw content

There are certain elements that a bylaw should or may contain; the primary elements are as follows:

- The title and number of the bylaw.
- Words of enactment and a statement as to where the authority for the bylaw comes from; e.g. It is hereby enacted by the council of the Town of X under the authority of section 30 (u) of the Municipalities Act R.S.P.E.I. 1988, M-13..., in the case of a dog control bylaw.
- A purpose section, if desired.
- A definitions section, if required.
- The substantive content of the bylaw (laws/bylaws generally prohibit, mandate or permit something or things).
- How, and by whom, the bylaw is to be enforced.
- Penalties for contraventions of the bylaw, or parts of it.
- Transitional sections, if necessary.
- If the bylaw is meant to repeal another bylaw, then language to that effect should be included.
- A statement of when the bylaw becomes effective, if not immediately at passage.
- A signature page that contains confirmation that the bylaw has been read and approved at two separate meetings of council, and was formally adopted by the council along with the required signatures and the municipal seal.

Remember, it is the responsibility of any municipality passing a bylaw to:

- Ensure that the bylaw has been adopted in accordance with the procedures set out in legislation; and
- Ensure that the municipality has the legislative authority to enact the bylaw; that it has the authority to do what it is setting out to do and that the contents of the bylaw comply with all applicable legislation.

It is highly recommended that all municipalities consult with their legal counsel regarding the passage, repeal, amendment or consolidation of any bylaw or bylaws.
Adopting or amending a bylaw – Municipalities Act, Section 59-60.

A bylaw is amended by bylaw: if the Bylaw is Bylaw #101, the amendment to the Bylaw is Bylaw 101-A/B/C etc. Council is adopting a new bylaw that has the effect of modifying the main bylaw. The new bylaw should be referenced in all readings and resolutions.

**Consideration of a new bylaw or bylaw amendment**

- Council or council committee develops draft bylaw or amendment bylaw

**Public Process - if bylaw affects residential properties**

- If the bylaw affects the use and enjoyment of residential property, Council sets date for public meeting, with the ad to appear at least 7 clear days before the public meeting (do not count day of ad or day of meeting). Ad contains details of the proposed bylaw.
- If Council intends to meet after the public meeting, this should be indicated in the ad as well.
- Minutes of the discussion at the public meeting must be kept.

**Approval process**

- Council gives 1st reading to the new or amendment bylaw.* In debate, Council may amend the wording of the amendment to reflect public discussion.
- On a separate occasion, Council gives 2nd reading to the bylaw.*
- After 2nd reading, Council formally adopts the bylaw by resolution
- A copy of the bylaw, with a sealed resolution sheet bearing the signature of the mayor/chair and administrator is filed with the municipality.
- A copy is filed with the Minister, along with all pertinent documentation (ad, all minutes) within 7 days of the passage of the bylaw.
- Effective date is the date of formal adoption by Council or another date identified in the bylaw.

* If either occasion is not a regularly-scheduled meeting of a community council, the public notice requirements for a special meeting of s. 55 (3) of the Municipalities Act apply.
Sample structure of the bylaw

NEW BYLAW: [Title & Bylaw Number]

AMENDMENT BYLAW: [Title and Bylaw Number]
A bylaw to amendment the [Municipal Name] [main bylaw name and number]

Authority
It is hereby enacted by the Council of the Town/Community of [...] pursuant to [...] [ie. Section. 30 (u)] of the Municipalities Act R.S.P.E.I. 1988, M-13

1. Name - E.G. - This Bylaw may be referred to as the “Town/ Community of .... [Animal Control] Bylaw”.

2. Purpose - The purpose of this bylaw is...

3. Definitions – In this bylaw
“...” means ...

“...” means ...

4. Substantive content of the bylaw -- The substantive content of the bylaw (laws/bylaws generally prohibit, mandate or permit something or things).

New bylaw: The content of the bylaw

Amendment – minor changes: ie: words “a, b and c” in section 3 (1) are replaced with the words “x, y and z”.

Amendment – major changes: ie: “section 3 is replaced with a new section 3” or multiple sections if that is the case, and the wording of the new sections(s) would be listed.

Amendment – new content: ie: Addition of section 3 (1) as follows: .... [new text, figures, map, etc.]

5. Offence and penalty: How, and by whom, the bylaw is to be enforced, penalties for contraventions, etc.

6. Amendments to other bylaws (if necessary)

7. Transitional sections (if necessary)

8. Repeal section (if necessary; if the bylaw is meant to repeal another bylaw, then language to that effect should be included)

9. Coming into force date: A statement of when the bylaw becomes effective, if not immediately at passage.

Bylaw Readings and formal adoption – signature sheet follows

Endorsed with the Seal of the municipality

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BYLAW SIGNATURE PAGE

(Document Name)
(Municipal Name)

[If amending: TITLE and # of AMENDMENT BYLAW]
To amend the (Municipal Name) [name title] Bylaw]

Effective Date
The effective date of the ________________ Bylaw amendment(s) is _____________________.

Authority
The Council for the (Municipal Name), under authority vested in it by Sections _____________ of the Municipalities Act. hereby enacts as follows:

First Reading:
The ________________ Bylaw [amendment] was read a first time at the Council meeting held on the ______ day of ________, ________.

This Bylaw [amendment(s)] was approved by a majority of Councillors present at the Council meeting held on the ______ day of ________, ________.

Second Reading:
This ________________ Bylaw [amendment(s)] was read a second time at the Council meeting held on ______ day of ________, ________.

This ________________ Bylaw [amendment(s)] was approved by a majority of Councillors present at the Council meeting held on the ______ day of ________, ________.

Adoption and Approval by Council:
This ________________ Bylaw [amendment(s)] was adopted by a majority of Councillors present at the Council meeting held on the ______ day of ________, ________.

This ____________________ Bylaw amendment(s) is declared to be passed on the ______ day of ________, ________.

Mayor/Chairperson
(signature sealed)

Chief Administrative Officer
(signature sealed)

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Resolutions of Council and the Bylaw Adoption Process:

A new bylaw or amendment bylaw will require a total of 5 resolutions over 2 meetings held on different days:

1. Resolution to give first reading
2. Approval of first reading
3. Resolution to give second reading
4. Approval of second reading
5. Adoption of the Amendment Bylaw

These sample resolutions would be modified with the specific titles and details pertinent to the situation.

These resolutions are prepared before the Council meeting and are provided to each member of Council prior to the discussion at the meeting.

The text of the resolutions is the text to be read at the meeting; it should appear in the minutes and it is the text to be voted on by Council.

Council Meeting #1 – open to the public
- Resolution to give 1st reading to the bylaw
- Resolution to approve the bylaw (1st instance)

Council Meeting #2 – open to the public
- Resolution to give 2nd reading to the bylaw
- Resolution to approve the bylaw (2nd instance)
  Resolution to adopt the bylaw

All resolutions to give reading to the bylaw or bylaw amendment should be accompanied by the actual text of the amendment as a schedule; all members of council should be able to clearly see what they are voting on.
Council Meeting #1 - Bylaw or Bylaw Amendment Resolution #1 – FIRST READING

Date: __________________________
Moved by Councillor: __________________________
Seconded by Councillor: __________________________

“Whereas [reason for adopting or amending the bylaw in question]

Be it resolved that the “__________________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]” be hereby read a first time.

Schedule A is attached [Schedule A would be the actual bylaw or amendment bylaw]
Council Meeting #1 - Bylaw or Bylaw Amendment Resolution #2 – APPROVAL OF FIRST READING

Date: ______________________
Moved by Councillor: ________________
Seconded by Councillor: __________________

“Whereas [reason for adopting or amending the bylaw in question]

And whereas the “_______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, was read a first time at this Council meeting;

Be it resolved that the “_______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, be hereby approved.
Council Meeting #2 – Bylaw or Bylaw Amendment Resolution #3 – SECOND READING

Date: _____________________
Moved by Councillor: _____________________
Seconded by Councillor: _____________________

“Whereas [reason for adopting or amending the bylaw in question]

And whereas the “______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, was read and formally approved a first time at the Council meeting held on ________________;

Be it resolved that the “______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, be hereby read a second time.

Schedule A is attached [Schedule A would be the actual amending bylaw]
Sample Bylaw Resolutions

Council Meeting #2 - Bylaw or Bylaw Amendment Resolution #4 – APPROVAL OF SECOND READING

Date: ______________________
Moved by Councillor: ______________________
Seconded by Councillor: ______________________

“Whereas [reason for adopting or amending the bylaw in question]

And whereas the “______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, was read and formally approved a first time at the Council meeting held on ______________;

And whereas the “______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, was read a second time at this Council meeting;

Be it resolved that the “______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, be hereby approved.
Council Meeting #2 - Bylaw or Bylaw Amendment Resolution #5 – ADOPTION OF BYLAW AMENDMENT

Date: _______________________
Moved by Councillor: _______________________
Seconded by Councillor: _______________________

“Whereas [reason for adopting or amending the bylaw in question]

And whereas the “______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, was read and approved at two separate meetings of Council held on different days;

Be it resolved that the “______________ bylaw” / “bylaw amendment [amending bylaw #], a bylaw to amend the [title of main bylaw]”, be hereby formally adopted.
Bylaw Amendments Summary

The process for amending a bylaw is the same as the process for creating one. Essentially, the municipality is creating a bylaw that has the effect of amending the original bylaw.

Process-wise, two readings and an adoption of the bylaw amendment will still be required.

Council Meeting #1
- Resolution to give 1st reading to the bylaw
- Resolution to approve the bylaw (1st instance)

Council Meeting #2
- Resolution to give 2nd reading to the bylaw
- Resolution to approve the bylaw (2nd instance)
- Resolution to adopt the bylaw

Content-wise, when voting, the Council should have in front of them the amendment bylaw that describes in full detail what text is being removed and what text is being inserted. A sample structure for the amendment bylaw, along with all sample resolutions, is listed in this guide.

Product-wise, at the end of the day, you should end up with
1. The amendment bylaw (aka the bylaw amendment) (assign a bylaw number)

2. Signature page (showing signatures of mayor/chair and administrator/CAO, and dates of all resolutions for Bylaw), signed and sealed

3. 5 Resolutions for the Bylaw Amendment
   a) 1st Reading of Bylaw (when Council votes on this resolution, they should have Schedule A in front of them)
      i. Schedule A - the text of the bylaw amendment should be attached to this resolution
   b) Approval of Bylaw
   c) 2nd Reading of Bylaw
      i. Schedule A - the text of the bylaw amendment should be attached to this resolution (should be same as (a)(i) above unless there have been any amendments)
   d) Approval of Bylaw
   e) Formal Adoption of Bylaw

Reminder:

- All documents listed above should be included in the municipality's record files. The amendment bylaw and the signature page should be in the package submitted for filing to the Province
- It is recommended that the resolutions and schedules be provided to Council members prior to the meeting so that all understand exactly what they are voting on.
- The wording of resolutions as voted on by Council should match the wording of resolutions on the resolution sheets.
- The wording of resolutions as reflected in the minutes of the meetings should match the wording of resolutions on the resolution sheets.
- Non-planning bylaws and amendments are effective upon formal adoption by Council.

For Planning Bylaw amendments, please refer to the Planning Amendments Handbook.
## Municipal Affairs Review Checklist for New Bylaws and Bylaw Amendments

Non-Planning Bylaws adopted under the *Municipalities Act, Charlottetown Area Municipalities Act,* or *City of Summerside Act.*

### 1. Develop Bylaw or Bylaw Amendment
(See the Municipal Bylaw Handbook for more details):

- Does the municipality have the authority to do what the bylaw or amendment is setting out to do? (Y/N)
- Does the content of the bylaw comply with provincial legislation? (Y/N)
- Does the content of the bylaw affect the use and enjoyment of residential property? If no, go to step 2. If yes, public meeting is required – see below:
  - Council sets a date for the public meeting (MA, section 61)
  - Place two (2) ads in the local newspaper. The first ad must appear ‘at least’ 7 days before the public meeting. The first day the ad appears in the newspaper and the day of the meeting shall not be counted. (MA, section 55)
  - Newspaper ad must indicate:
    - In general terms, the nature of proposed Bylaw or Bylaw Amendment
    - the date, place and time of meeting;
    - location where the information may be inspected; and
    - an invitation to the public to make representation.
  - 1st Ad placed on: ___________ (DD/MM/YY) 2nd Ad placed on: ___________ (DD/MM/YY)
  - Day of Meeting: ___________ (DD/MM/YY) Number of days between 1st ad and meeting: _____ (# days)

### 2. Finalize the text of:
- the Bylaw or Bylaw Amendment
- the 5 resolutions required regarding the readings and approval of the Bylaw or Bylaw Amendment
- the signature page if not embedded in the text of the Bylaw or Bylaw Amendment

### 3. Move to formal bylaw approval process:
Council should have the text of all resolutions and the text of the Bylaw or Bylaw Amendment before them before doing any readings or approvals

- Council Meeting #1 (open to the public):
  - Resolution #1: First Reading of the Bylaw or Bylaw Amendment
  - Resolution #2: Approval of the Bylaw or Bylaw Amendment
- Council Meeting #2 (open to the public, separate day):
  - Resolution #3: Second Reading of the Bylaw or Bylaw Amendment
  - Resolution #4: Approval of the Bylaw or Bylaw Amendment
  - Resolution #5: Adoption of the Bylaw or Bylaw Amendment

### 4. Submission requirements:
- A copy of the Bylaw or Bylaw Amendment (full text)
- A signed & sealed signature sheet for Council’s 5 resolutions giving 1st and 2nd reading and adopting the Bylaw or Bylaw Amendment

**Signature sheets must:**
- Bear the signature of the Mayor/Chairman and the Administrator
- Be sealed with the Municipal Seal
- Be filed with the Province within 7 days of the formal adoption of the Bylaw or Bylaw Amendment

**Notes:**
- In the case of a Community, if either of the council meetings is not a regularly scheduled meeting of council, public notice requirements of section 55 of the *Municipalities Act* apply.
- In the case of non-planning bylaws, bylaws are simply filed with the Province; the Minister does not approve the process or the bylaw.
- It is the responsibility of any municipality passing a bylaw to:
  - Ensure that the bylaw has been adopted in accordance with the procedures set out in legislation; and
  - Ensure that the municipality has the legislative authority to enact the bylaw; that it has the authority to do what it is setting out to do and that the contents of the bylaw comply with all applicable legislation.

It is highly recommended that all municipalities consult with their legal counsel regarding the passage, repeal, amendment or consolidation of any bylaw or bylaws.

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