



THE POLICY CHOICE BEHIND THE BYLAW

Nicola Marotz
Ministry of Community Services

Bylaw Drafting Essentials Workshop
Local Government Management Association of BC
November 22, 2007



INTRODUCTION

Q: **Why** do you want to draft a bylaw?



LOCAL GOVERNMENT ISSUES

- ❑ Require **choice**
- ❑ Involve **competing interests**
- ❑ Exist in a **political environment** of values, biases, perspectives & limitations
- ❑ Are often **complex** and **multi-faceted**
- ❑ Are often dealing with **symptoms**, not causes
- ❑ Are often subject to local government **influence**, not control



LOCAL GOVERNMENT ISSUES

- Can be approached by local government in many different ways – e.g.
 - monitoring
 - educating
 - facilitating
 - collaborating
 - providing incentives
 - rule making



LOCAL GOVERNMENT BYLAWS

- Bylaw = legal expression of a public policy choice
 - it is an outcome of a decision
 - it is more than words on paper
 - it should be based on a policy process



POLICY PROCESS

- A process for problem solving – for helping decision-makers make choices
- Key elements:
 - defining the **issue**
 - developing **options**
 - choosing the **preferred option**
 - making a **recommendation**



DEFINING THE ISSUE

- Defining the issue is vital
- Purpose of defining the issue
 - get the full story – i.e. understand an issue's symptoms, causes, constraints, impacts & perspectives
 - create the basis for developing options
- Define the issue by researching, consulting, analyzing... by **asking questions**



WHAT IS THE ISSUE?

- Noise control bylaw -- municipality < 5,000

General regulations

No person shall make or cause, or allow or permit to be made or caused, any noise.....

.....

No hawker, huckster, peddler, newsvendor, or other person shall by his intermittent or reiterated cries, disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons in the vicinity



WHAT IS THE ISSUE?

- Noise control bylaw -- municipality > 10,000

General regulations

No person shall make or cause, or permit to be made or caused, any noise.....

.....

No hawker, huckster, peddler, newsvendor, or other person shall by his intermittent or reiterated cries, disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public



WHAT IS THE ISSUE?

- Noise control bylaw -- municipality > 75,000

General regulations

No person shall make or cause, or allow or permit to be made or caused, any noise.....

.....

No hawker, huckster, peddler, newsvendor, or other person shall by his intermittent or reiterated cries, disturb or tend to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons in the vicinity



DEVELOPING OPTIONS

- Options are a set of realistic choices
 - they may be **substantive**, **process** or **hybrid** options
 - realistic = grounded in the objective
 - what is your local government trying to achieve?
 - what is the political environment?



CHOOSING PREFERRED OPTION

- ❑ Preferred option = preferred (not perfect) effects or implications
- ❑ Many different types of implications – e.g. financial, enforcement, political, legal



PROVINCIAL INVOLVEMENT

- Provincial approval is an implication for some types of bylaws – e.g.
 - loan authorization
 - development cost charges
 - concurrent authority (e.g. building standards; natural environment; public health; soil removal)
- Provincial approvals reduced/subject to exceptions
- Ministry of Community Services focuses on advice; guidance; facilitation; resources (e.g. grants); legislative authority



CHOOSING PREFERRED OPTION

- Judge the implications (aka doing the pros and cons)
 - establish criteria on which to judge
 - balance among the implications of the options



MAKING RECOMMENDATION

- **Decide...** then tell the story
 - know your audience
 - don't assume your audience knows
 - acknowledge negative implications
 - don't just tell – explain
 - focus on key elements and messages



CONCLUSION

- Do you really **need** to draft a bylaw?
 - what is the issue you are trying to address?
 - what is your local government trying to achieve?
 - what are the non-law making approaches?
 - whom would a bylaw affect, to what extent & how, & how would they react?
 - what is needed to develop, adopt & implement a bylaw, & make it work?
 - would the bylaw address the issue, & how will you know?