

TOWN OF PINCHER CREEK
IN THE PROVINCE OF ALBERTA

**CHINOOK INTERMUNICIPAL SUBDIVISION
AND DEVELOPMENT APPEAL BOARD
BYLAW NO. 1544-19**

A BYLAW OF THE TOWN OF PINCHER CREEK IN THE PROVINCE OF ALBERTA TO ESTABLISH AN INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD;

AND WHEREAS the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26* as amended from time to time requires the municipality to adopt a bylaw to establish a Municipal Subdivision and Development Appeal Board or an Intermunicipal Subdivision and Development Appeal Board;

AND WHEREAS the Council of the Town of Pincher Creek wishes to join other area municipalities to establish the Chinook Intermunicipal Subdivision and Development Appeal Board;

AND WHEREAS the Chinook Intermunicipal Subdivision and Development Appeal Board is authorized to render decisions on appeals resulting from decisions of a Subdivision Authority or a Development Authority in accordance with the South Saskatchewan Regional Plan (SSRP), the *Municipal Government Act (MGA)*, the Subdivision and Development Regulation, the local Land Use Bylaw and statutory plans;

NOW THEREFORE, the Council of the Town of Pincher Creek in the Province of Alberta duly assembled, enacts as follows:

1. TITLE

This Bylaw may be cited as the Chinook Intermunicipal Subdivision and Development Appeal Board Bylaw.

2. AUTHORIZATION

Pursuant to section 627(1)(b) of the *MGA*, this bylaw hereby authorizes the municipality to enter an agreement with the other participating municipalities to establish the Chinook Intermunicipal Subdivision and Development Appeal Board.

3. DEFINITIONS

Appellant means the person who may file an appeal to the Board from decisions of a Subdivision Authority or a Development Authority in accordance with the *MGA*.

Board means the Chinook Intermunicipal Subdivision and Development Appeal Board established pursuant to this bylaw.

Board Member means an appointed member of the Chinook Intermunicipal Subdivision and Development Appeal Board appointed in accordance with this bylaw and who has obtained provincial training and certification.

Board Panel means the group of appointed Board Members actively sitting to hear and decide on an appeal at an appeal hearing.

Chair means the person elected from the Board panel members sitting to hear an appeal to act as the person who presides over the hearing and the procedures.

Chief Administrative Officer (CAO) means the individual appointed to the position for the municipality in accordance with the *MGA*.

Clerk means the person or persons who has completed training and is certified by the province and authorized to act as the administrative clerk for the Intermunicipal Subdivision and Development Appeal Board by the member municipality within which the appeal is held.

Conflict of Interest means both Common Law Bias and Pecuniary Interest.

Council means the Council of the Town of Pincher Creek.

Development Authority has the same meaning as in the *MGA*.

Hearing means a public meeting convened before the Board acting as a quasi-judicial body to hear evidence and determine the facts relating to an appeal of decisions of a Subdivision Authority or a Development Authority, prior to the Board making a decision on the matter subject to the appeal.

Municipality means the municipal corporation of the Town of Pincher Creek together with its jurisdictional boundaries, as the context requires.

Panel Member means an individual Board member participating in the group panel to hear an appeal.

Participating municipality means a municipality in the Province of Alberta who has entered into an agreement with other municipalities, as referred to in Section 2 of this bylaw, to establish the Chinook Intermunicipal Subdivision and Development Appeal Board.

Procedural guidelines means the policies, processes and administrative matters applicable to the filing of an appeal and conducting a hearing, and the roles, duties and conduct of Board members and Clerks.

Subdivision Authority has the same meaning as in the *MGA*.

Subdivision and Development Appeal Board has the same meaning as in the *MGA*.

Quorum means the minimum number of Board panel members required to hear an appeal.

Municipal Government Act (MGA) means the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26*, as amended from time to time.

Chinook Intermunicipal Subdivision and Development Appeal Board means the Board established by agreement to act as the Subdivision and Development Appeal Board.

All other terms used in this Bylaw shall have the meaning as is assigned to them in the Municipal Government Act, as amended from time to time.

4. APPOINTMENT OF THE BOARD

- (1) The Board is comprised of the member representative(s) as appointed by the participating municipalities.
- (2) A municipality may participate in the Chinook Intermunicipal Subdivision and Development Appeal Board without appointing individual representative(s) by utilizing the appointed Board Members of the other participating member municipalities to act on the municipality's behalf as its appeal body.
- (3) For each member municipality appointing individual Board Member representative(s) to the Chinook Intermunicipal Subdivision and Development Appeal Board, the appointment shall be made by resolution of Council. Appointed Board Members from a municipality shall consist of no more than three (3) members, with no more than one (1) being an elected official and the other two (2) being non-elected officials who are persons at large. If two (2) or less persons are appointed as members, they must be non-elected persons at large.
- (4) For those member municipalities appointing individual representative(s) to the Board, the remaining composition of the Board Panel Members shall be the appointed members from the other municipalities of the Chinook Intermunicipal Subdivision and Development Appeal Board.
- (5) Appointments to the Chinook Intermunicipal Subdivision and Development Appeal Board shall be made for a term of not more than three years. Reappointments must coincide with the successful completion of the mandatory provincial refresher training course to be taken every three (3) years.
- (6) Board Members may be appointed for a two (2) or three (3) year term, at the discretion of the municipality, for the purpose of establishing a staggered expiration of terms amongst the Board Members.
- (7) A Board Member may resign from the Chinook Intermunicipal Subdivision and Development Appeal Board at any time by providing written notice to the municipality to that effect.
- (8) Where Council has appointed a Board Member representative(s) for the municipality, Council may remove its individual appointed Board Member representative(s) at any time if:
 - a) in the opinion of Council, a Board Member is not performing his/her duties in accordance with the MGA, this Bylaw or the rules of natural justice,
 - b) a Board Member is absent for more than three (3) consecutive hearings to which he/she has been assigned to sit on the Board Panel without reasonable cause, or
 - c) a Board Member has participated in a matter in which that Board Member has a Conflict of Interest, contrary to the provisions of this Bylaw.

5. COMPOSITION

- (1) The Board Members of the Chinook Intermunicipal Subdivision and Development Appeal Board shall meet in Panels, and two (2) or more Panels may meet simultaneously. The Panels have all the powers, duties and responsibilities of the Subdivision and Development Appeal Board.
- (2) For the purpose of this Bylaw, the Board Panel formed from the appointed members of the Chinook Intermunicipal Subdivision and Development Appeal Board to hear an appeal, shall normally be composed of not less than three (3) persons, with no more than one (1) being an elected official.
- (3) Three (3) Board Members constitute a quorum of the Board Panel.
- (4) If a vacancy of an appointed Board member representative from a municipality shall occur at any time, the municipality may appoint another person to fill the vacancy by resolution of Council.
- (5) In the absence of the municipal appointed member representative(s) of the municipality in which the appeal originates being available to sit on a Panel, then the appointed Panel Member representative(s) from the other municipalities of the Chinook Intermunicipal Subdivision and Development Appeal Board shall form the composition of the Board Panel to hear and decide on a matter of appeal on behalf of the municipality.
- (6) Board Panel Members of the Chinook Intermunicipal Subdivision and Development Appeal Board shall not be members of a Municipal Subdivision Authority or Development Authority or municipal employees of the municipality in which the appeal is located.
- (7) A person appointed as a Board Member in accordance with this Bylaw must successfully complete and maintain the mandatory provincial training and certification prior to sitting on a Panel to hear an appeal.

6. COSTS AND REMUNERATION

- (1) Board Members may be entitled to reasonable remuneration for time and expenses relating to participating on a Board Panel.
- (2) Costs related to appeal hearings and the remuneration to Board Members shall be provided as specified in the intermunicipal agreement of the participating members of the Chinook Intermunicipal Subdivision and Development Appeal Board.

7. DUTIES OF THE INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

- (1) The Chinook Intermunicipal Subdivision and Development Appeal Board shall hold hearings as required pursuant to the *Municipal Government Act* on a date to be determined by the Board.
- (2) The Board, and those Members who sit as a Board Panel hearing an appeal, shall govern its actions and hearings in respect of the processes and procedures as outlined in the Procedural Guidelines.

- (3) A Board Member may only participate in an appeal hearing if they have successfully completed the mandatory provincial training prior to the appeal hearing date.
- (4) The Board Panel may, at its discretion, agree to adjournments in respect of the processes and procedures as outlined in the Procedural Guidelines.
- (5) A Board Panel hearing an appeal shall appoint a Chair to preside over the proceedings prior to the commencement of the hearing.
- (6) An order, decision or approval made, given or issued by the Board Panel and under the signature of the Chair, or a Board Member acting as a designate, is the decision of the Board.
- (7) The Board Members shall conduct themselves in a professional, impartial and ethical manner and apply the principles of administrative justice and judicial fairness.
- (8) The Board Members shall consider and act in respect of the Chinook Intermunicipal Subdivision and Development Appeal Board Procedural Guidelines.
- (9) The Board does not have the jurisdiction or authority to award pecuniary or monetary awards or costs to any persons, entity or organization involved in an appeal.

8. APPEAL FILING

- (1) An appeal shall be filed in writing by an appellant, in accordance and in the manner prescribed in the *MGA*, to the municipality and include the payment of the applicable municipal appeal fee.
- (2) If there is a question about the validity of an appeal being filed, the Board Panel must convene the appeal hearing in accordance with the *MGA* to establish jurisdiction and then it may decide on the matter of validity. It shall be the responsibility of the Board Panel to make the determination of whether the appeal is valid.
- (3) In the event an appeal is abandoned or withdrawn in writing by the appellant, the Board Panel shall not be obliged to hold the appeal hearing referred to in the *MGA* unless another notice of appeal has been served upon the Board in accordance with the *MGA*.

9. CLERK RESPONSIBILITIES AND DUTIES

- (1) Council shall by resolution appoint a Clerk as a designated officer, or sub-delegate to its CAO the authority to appoint a Clerk or Clerks, for the specific purposes of providing administrative assistance to the Board in fulfilling its legislative duties.
- (2) The appointed Clerk shall attend all meetings and hearings of the Chinook Intermunicipal Subdivision and Development Appeal Board held in that member municipality, but shall not vote on any matter before the Board.
- (3) A person appointed as a Clerk to assist the Chinook Intermunicipal Subdivision and Development Appeal Board in accordance with this bylaw must have successfully completed the mandatory provincial training prior to assisting the Board in its legislative duties.

- (4) The Clerk, acting for the Board, shall accept on behalf of the Board appeals which have been filed with the municipality in relation to a decision of the Subdivision Authority or the Development Authority.
- (5) The Clerk of the Board shall keep records of appeals and proceedings for the municipality in which the appeal has been filed, as outlined in the Procedural Guidelines.


10. ADMINISTRATIVE

- (1) **Singular and Masculine** – Words importing the singular number shall include the plural number and vice versa and words importing one gender only in this Bylaw shall include all genders and words importing parties or persons in this Bylaw shall include individuals, partnerships, corporations, and other entities, legal or otherwise.
- (2) **Severability** – Every provision of this Bylaw is independent of all other provisions and if any provision of this Bylaw is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this Bylaw shall remain valid and enforceable.

11. ENACTMENT

- (1) This bylaw shall come into effect upon third and final reading thereof.
- (2) This Bylaw rescinds Bylaw No. 1544-12, being the former municipal Subdivision and Development Appeal Board Bylaw, and any amendments thereto.

READ a **first** time this 8th day of April, 2019.




 Mayor



 Chief Administrative Officer –

READ a **second** time this 8th day of April, 2019.




 Mayor




 Chief Administrative Officer –

READ a **third** time and finally PASSED this 8th day of April, 2019.



 Mayor



 Chief Administrative Officer –

AGREEMENT FOR CHINOOK INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Between

Oldman River Regional Services Commission
("Coordinator")

– and –

Town of Pincher
("Municipality")

Dated this 8 day of April, 2019

BACKGROUND

WHEREAS, the *Municipal Government Act, RSA 2000, C M-26 (MGA)*, as amended, requires the establishment of a Subdivision and Development Appeal Board and authorizes two or more Councils to jointly establish an Intermunicipal Subdivision and Development Appeal Board to exercise that function within their municipalities:

- A. The Member Municipality wishes to partner to create one Intermunicipal Subdivision and Development Appeal Board;
- B. The Oldman River Regional Services Commission is the Coordinator for the Intermunicipal Subdivision and Development Appeal Board;
- C. The Municipality is willing to join the Chinook Intermunicipal Subdivision and Development Appeal Board.

The Parties agree as follows:

1. BYLAW, PROCEDURES AND FEES

- 1.1 The Municipality shall pass a Bylaw establishing the Intermunicipal Subdivision and Development Appeal Board and authorize the Municipality to enter into this Agreement.
- 1.2 The Municipality agrees that the "Chinook Intermunicipal Subdivision and Development Appeal Board Procedural Guidelines" document shall govern the rules and procedures of the Intermunicipal Subdivision and Development Appeal Board, which may be amended, from time to time.
- 1.3 The Municipality agrees to pay the costs associated with the Board which shall be determined by the ORRSC Executive and published in an Annual Schedule of Fees.

2. DEFINITIONS

In this Agreement, unless the context provides otherwise, the following words or phrases shall have the following meanings:

“Appellant” means the person who may file an appeal to the Board from decisions of a Subdivision Authority or Development Authority in accordance with the *Municipal Government Act*.

“Board” means the Chinook Intermunicipal Subdivision and Development Appeal Board established by bylaw.

“Board Member” means an appointed member of the Chinook Intermunicipal Subdivision and Development Appeal Board appointed by Council and who has obtained provincial training and certification.

“Chinook Intermunicipal Subdivision and Development Appeal Board (SDAB)” means the Board appointed to hear appeals on subdivision and development established in accordance with *Municipal Government Act* s. 627 (1)(b).

“Clerk” means the person or persons who has completed training and is certified by the province and authorized to act as the administrative clerk for the Intermunicipal Subdivision and Development Appeal Board by the member municipality within which the appeal is held.

“Coordinator” means the Oldman River Regional Services Commission (ORRSC).

“Municipality” means is a municipality who has signed this Agreement.

3. MUNICIPALITY RESPONSIBILITIES

- 3.1 The Municipality shall be entitled to participate in the Intermunicipal Subdivision and Development Appeal Board once it enters into the Agreement and passes a Bylaw in the form attached as Schedule “A”.
- 3.2 The Municipality will pay a yearly fee to ORRSC for administering the Intermunicipal Subdivision and Development Appeal Board which shall be determined by the ORRSC Executive and published in an Annual Schedule of Fees.
- 3.3 The Municipality may select and appoint individual(s) to be a Board member(s) to be available to sit on a Panel for the Intermunicipal Subdivision and Development Appeal Board. If a vacancy on the Board occurs at any time, the Municipality who appointed the individual may appoint a new individual to fill the vacancy for the remainder of that term.
- 3.4 Any costs incurred to advertise and select a Board member(s) are the responsibility of the Municipality.
- 3.5 If the Municipality is required to hold an Appeal Hearing, the Municipality is responsible to pay all costs related to the hearing, including both Board member costs and hearing costs. The fees for the Board member costs shall be determined by the ORRSC Executive and published in an Annual Schedule of Fees. Board member costs include but are not limited to:
 - a) Board member per diems,
 - b) mileage,
 - c) meal allowance, etc.

- 3.6 The Municipality is responsible to provide a Clerk for the appeal hearing, which may be municipal staff or an ORRSC SDAB Clerk. In addition to Clerk costs, the Municipality shall be responsible for hearing costs including but are not limited to:
 - a) materials,
 - b) postage,
 - c) facility and /or equipment rental,
 - d) meal allowance,
 - e) mileage, etc.
- 3.7 If legal services are required for issues that relate to a specific appeal, the Municipality is responsible for engaging legal counsel of behalf of the SDAB Panel and are responsible for paying all costs associated with the legal services required.
- 3.8 The Municipality will make every reasonable effort to ensure information will be or is intended to be used to make a decision on an appeal is both complete and accurate, as per the Procedural Guidelines approved for the Appeal Board.

4. COORDINATOR RESPONSIBILITIES

- 4.1 The Coordinator will coordinate services for the Municipality and may assign any responsibilities to an ORRSC Clerk as deemed necessary.
- 4.2 The Coordinator shall keep a master list of all qualified Board members, their contact information and training.
- 4.3 The Coordinator is responsible for ensuring the Intermunicipal Subdivision and Development Appeal Board members receive training in accordance with the *Municipal Government Act* and associated regulations.
- 4.4 The Coordinator is responsible to assign a Panel of Board members (in consultation with the affected Municipality) to the SDAB, as described in the *Municipal Government Act* and in the Municipality's Intermunicipal Subdivision and Development Authority Bylaw.
- 4.5 The Coordinator will be responsible to manage the payment of Board member costs related to the Intermunicipal Subdivision and Development Appeal Board and will invoice the Municipality in accordance with the Annual Schedule of Fees.

5. TERM

- 5.1 The term of this Agreement shall be deemed as indefinite, provided, however, this Agreement may be terminated as follows:
 - a) by mutual consent, in which case, this Agreement will be terminated effective the date of the mutual consent and ORRSC will be entitled to payment of fees, on a pro rata basis, to the effective date of termination;
 - b) without cause or mutual consent, by delivery of a ONE (1) year notice of termination by either party, in which case ORRSC will be entitled to payment of fees and expenses.

6. DISPUTE RESOLUTION

- 6.1 All claims, disputes, and other matters arising out of this Agreement or relating to a breach thereof may, upon agreement of both parties, be referred to either:
- a) Mediation – voluntary, no risk, non-binding process bringing the parties to a resolution. The mediator will be appointed upon the agreement of both parties; or
 - b) Arbitration – upon the agreement of both parties, be referred to a single arbitrator under the *Arbitration Act*, and if so referred, the decision of the arbitrator shall be final, conclusive and binding upon the parties. If the parties are not able to agree on an arbitrator, the Alberta Court of Queen’s Bench shall select one. All costs associated with the appointment of the arbitrator shall be shared equally unless the arbitrator determines otherwise in accordance with the *Arbitration Act* of Alberta.

7. INDEMNIFICATION

- 7.1 The Municipality agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Oldman River Regional Services Commission, its Board, Executive, Director and Employees against all damages, liabilities or costs arising out of the coordination of an appeal, an appeal or disputes related an appeal.
- 7.2 The Municipality is solely responsible for the Appeal and compliance with the outcome of the Appeal.
- 7.3 In the furnishing of any services by the Coordinator, the Coordinator shall not assume any responsibility, obligations or duties in respect to the services.

8. NOTICES

- 8.1 Any notices or other correspondence required to be given to any party to this agreement shall be deemed to be adequately given if delivered to the Municipality.

9. FORCE MAJEURE

- 8.2 Each party reserves the right, at its option, either to suspend or cancel this Agreement, in whole or in part, at any time, without incurring any costs or damages whatsoever, where such suspension or cancellation is caused by force majeure, including, but not limited to, acts of God, the public enemy of the government, strikes or other labour disputes, fires, floods, freight embargoes, unusually severe weather or other contingencies beyond the control of either party.

10. SINGULAR AND MASCULINE

- 8.3 Words importing the singular number shall include the plural number and vice versa and words importing one gender only in this Agreement shall include all genders and words importing parties or persons in this Agreement shall include individuals, partnerships, corporations, and other entities, legal or otherwise.

11. GOVERNING LAW

11.1 This Agreement shall be deemed to have been made in accordance with the laws of the Province of Alberta. The Courts of Alberta shall have sole and exclusive jurisdiction over any dispute or lawsuit between the parties.

12. INTERPRETATION

12.1 The headings in the Agreement are for ease of reference only and shall not affect the meaning or the interpretation of this Agreement.

13. SUCCESSORS

13.1 This Agreement shall inure to the benefit of and be binding upon the Parties and, except as herein before provided, the successors and assigns thereof.

14. ENTIRE AGREEMENT

14.1 This Agreement is the whole agreement between the parties and may not be modified, changed, amended or waived except by signed written agreement of the parties.

15. COUNTERPART

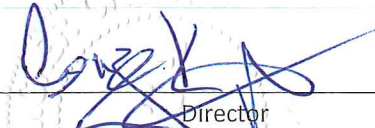
15.1 This Agreement may be executed in any number of counterparts by the parties. All counterparts so executed shall have the same effect as if all parties actually had joined in executing one and the same document.

16. EFFECTIVE DATE

16.1 This Agreement becomes effective April 1, 2019.

The parties to this Agreement have affixed their corporate seals signed by the hands of their proper officers.

OLDMAN RIVER REGIONAL SERVICES COMMISSION

PER: 


Director

PER: 

Chair

"MUNICIPALITY"
PER: Laurie Wilgosh 

Chief Administrative Officer

PER: Don Anderberg 

Mayor