



**COMMITTEE OF THE WHOLE
MEETING AGENDA**
Wednesday, March 6, 2024 at 8:30 a.m.
Council Chambers, Town Hall
Zoom Link

1. **Call to Order**
2. **Agenda Approval**
3. **Scheduled Delegations**
4. **Committee Reports**
5. **Administration**
6. **Business Arising from the Minutes**
7. **Policy**
 - 7.1 Council Code of Conduct Bylaw 1622-24 (Page 2)
 - 7.2 Land Use Bylaw Review 1547 (Page 35)
8. **New Business**
9. **Closed Session Discussion**
10. **Adjournment**



Town of Pincher Creek

REQUEST FOR DECISION

Council or Committee of the Whole

SUBJECT: Council Code of Conduct Bylaw 1622-24	
PRESENTED BY: Lisa Goss, Legislative Service Manager	DATE OF MEETING: 3/6/2024

PURPOSE:

For Council to consider updates to the Council Code of Conduct Bylaw 1622.

RECOMMENDATION:

That Council for the Town of Pincher Creek direct administration to prepare and present Council Code of Conduct Bylaw 1622-24 for first reading.

BACKGROUND/HISTORY:

At the November 1, 2023 Committee of the Whole meeting direction was given to administration to prepare amendments to the Council Code of Conduct Bylaw 1622 for Council consideration (COTW 2023-184).

The first draft of the Council Code of Conduct Bylaw was presented to Committee of the Whole for consideration on February 7, 2024 resulting in direction to administration to amend the bylaw as discussed (COTW 2024-019) providing for more clarification in sections 5 and 9 of the proposed draft.

The Code of Conduct Bylaw was initially adopted in 2018 following the 2017 election in accordance with section 145 of the Municipal Government Act with minor amendments in 2021 following that election cycle.

However, as shown in the attached "Councillor Codes of Conduct - A Guide for Municipalities", the Town of Pincher Creek's current Council Code of Conduct Bylaw does not include many of the subject areas that are listed and can be incorporated into the Bylaw, which can serve to guide and clarify some of the roles and duties of members of Council on behalf of the Town.

Having an updated Code of Conduct Bylaw which is easily accessible to the public can potentially attract community members who may be interested in running for and serving on Council in the future.

ALTERNATIVES:

That Council for the Town of Pincher Creek receive the information regarding Council Code of Conduct Bylaw 1622-24 as information.

That Council for the Town of Pincher Creek direct administration to prepare amendments to the draft Council Code of Conduct Bylaw 1622-24 prior to presenting for first reading.

IMPLICATIONS/SUPPORT OF PAST STUDIES OR PLANS:

In accordance with the Terms of Reference for the Policy Review Committee, the criteria for prioritizing policy review is as follows;

1. Legislation Driven
2. Areas of Concern
3. Financial Policy
4. Policies to be Rescinded

FINANCIAL IMPLICATIONS:

None at this time however, additional changes to section 15.1(i) may have substantial undetermined financial implications in the future.

PUBLIC RELATIONS IMPLICATIONS:

An updated Council Code of Conduct Bylaw would provide clearer direction for Council and the public regarding the conduct of members of council, council committees and other bodies established by council.

ATTACHMENTS:

Bylaw No 1622-24 - Council Code of Conduct - DRAFTv3 - 3342
councillor_codes_of_conduct_guidance_document_-_final - 3342

CONCLUSION/SUMMARY:

Administration supports that Council for the Town of Pincher Creek consider Council Code of Conduct Bylaw 1622-24 for first reading.

Signatures:

Department Head:

Lisa Goss

CAO:

Doug Henderson



**BYLAW NO. 1622-24
OF THE TOWN OF PINCHER CREEK
IN THE PROVINCE OF ALBERTA**

BEING A BYLAW OF THE TOWN OF PINCHER CREEK IN THE PROVINCE OF ALBERTA, TO ESTABLISH A CODE OF CONDUCT FOR MEMBERS OF COUNCIL, COUNCIL COMMITTEES AND OTHER BODIES ESTABLISHED BY THE COUNCIL;

WHEREAS, pursuant to section 146.1(1) of the Municipal Government Act, a council must, by bylaw, establish a code of conduct governing the conduct of councillors;

AND WHEREAS, pursuant to section 146-1(3) of the Municipal Government Act, a council may, by bylaw, establish a code of conduct governing the conduct of members of council committees and other bodies established by the council who are not councillors;

AND WHEREAS, pursuant to section 153 of the Municipal Government Act, councillors have a duty to adhere to the code of conduct established by the council;

AND WHEREAS, the public is entitled to expect the highest standards of conduct from the members that it elects to council for the Town of Pincher Creek;

AND WHEREAS, the establishment of a code of conduct for members of council is consistent with the principles of transparent and accountable government;

AND WHEREAS, a code of conduct ensures that members of council share a common understanding of acceptable conduct extending beyond the legislative provisions governing the conduct of councillors;

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

1. Short Title

1.1 This Bylaw may be referred to as the "Council Code of Conduct Bylaw".

2. Definitions

2.1 In this Bylaw, words have the meanings set out in the Act, except that:

- (a) "Act" means the Municipal Government Act, R.S.A. 2000, c. M-26, and associated regulations, as amended;
- (b) "Administration" means the administrative and operational arm of the Municipality, comprised of the various departments and business units and including all employees who operate under the leadership and supervision of the Chief Administrative Officer;
- (c) "CAO" means the Chief Administrative Officer of the Municipality, or their delegate;

- (d) "FOIP" means the Freedom of Information and Protection of Privacy Act, R.S.A 2000, c F-25, any associated regulations, and any amendments or successor legislation;
- (e) "Investigator" means Council or the individual or body established or appointed by Council to investigate and report on complaints;
- (f) "Member" means a member of Council and includes a councillor or the Mayor and includes members of council committees or other bodies established by Council who are not councillors or the Mayor;
- (g) "Municipality" means the municipal corporation of the Town of Pincher Creek.

3. Purpose and Application

- 3.1 The purpose of this Bylaw is to establish standards for the ethical conduct of Members relating to their roles and obligations as representatives of the Municipality and a procedure for the investigation and enforcement of those standards.

4. Representing the Municipality

- 4.1 Members shall:
 - (a) Act honestly and, in good faith, serve the welfare and interests of the Municipality as a whole;
 - (b) Perform their functions and duties in a conscientious and diligent manner with integrity, accountability and transparency;
 - (c) Conduct themselves in a professional manner with dignity and make every effort to participate diligently in the meetings of Council, committees of Council and other bodies to which they are appointed by Council; and
 - (d) Conduct themselves in a manner that promotes public confidence and will bear close public scrutiny.

5. Communicating on Behalf of the Municipality

- 5.1 A Member must not claim to speak on behalf of Council unless authorized to do so.
- 5.2 Unless Council direct otherwise, the Mayor is Council's official spokesperson and in the absence of the Mayor it is the Deputy Mayor. All inquiries from the media regarding the official Council position on an issue shall be referred to Council's official spokesperson.
- 5.3 A Member who is authorized to act as Council's official spokesperson must ensure that their comments accurately reflect the official position and will of Council as a whole, even if the Member personally disagrees with Council's position.
- 5.4 No Member shall make a statement when they know that statement is false.
- 5.5 No Member shall make a statement with the intent to mislead Council or members of the public.
- 5.6 A member invited to speak at community events must make a determination whether the request is to hear the Municipality's perspective or that of the individual Member. For the Municipality's perspective, the Mayor may speak or a Member, in consultation with the Mayor.

5.7 When presenting their individual opinions and positions, Members shall explicitly state that it is their own personal view and that they do not represent Council or the Municipality in those views.

5.8 This Bylaw is not meant to limit public comment solely to Council's official spokesperson, but rather to recognize that the Municipality requires a single point of contact to speak with authority on behalf of Council. Council acknowledges and respects that Members have the legal right to express their personal opinions, whether those opinions are complimentary or critical, subject to those limits prescribed by law.

6. Respecting the Decision-Making Process

6.1 Decision making authority lies with Council, and not with any individual Member. Council may only act by bylaw or resolution passed at a Council meeting held in public at which there is a quorum present. No Member shall, unless authorized by Council, attempt to bind the Municipality or give direction to employees in Administration, agents, contractors, consultants or other service providers or prospective vendors to the Municipality.

6.2 Members shall conduct and convey Council business and all their duties in an open and transparent manner other than for those matters which by law are authorized to be dealt with in a confidential manner in a closed meeting discussion, and in so doing, allow the public to view the process and rationale which was used to reach decisions and the reasons for taking certain actions.

6.3 Members shall accurately communicate the decisions of Council, even if they disagree with Council's decision, such that respect for the decision-making processes of Council is fostered.

7. Adherence to Policies, Procedures and Bylaws

7.1 Members shall uphold the law established by the Parliament of Canada and the Legislature of Alberta and the bylaws, policies and procedures adopted by Council.

7.2 Members shall respect the Municipality as an institution, its bylaws, policies and procedures and shall encourage public respect for the Municipality, its bylaws, policies and procedures.

7.3 Members must not encourage disobedience of any bylaw, policy or procedure of the Municipality in responding to a member of the public, as this undermines public confidence in the Municipality and in the rule of law.

8. Respectful Interactions with Council Members, Staff, the Public and Others

8.1 Members shall act in a manner that demonstrates fairness, respect for individual differences and opinions, and an intention to work together for the common good and in furtherance of the public interest.

8.2 Members shall treat one another, employees of the Municipality and members of the public with courtesy, dignity and respect and without abuse, bullying or intimidation.

8.3 No Member shall use indecent, abusive, or insulting words or expressions toward another Member, any employee of the Municipality or any member of the public.

- 8.4 No Member shall speak in a manner that is discriminatory to any individual based on the person's race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.
- 8.5 Members shall respect the fact that employees in Administration work for the Municipality as a corporate body and are charged with making recommendations that reflect their professional expertise and a corporate perspective and that employees are required to do so without undue influence from any member or group of Members.
- 8.6 Members must not:
- (a) Involve themselves in matters of Administration, which fall within the jurisdiction of the CAO, as defined above;
 - (b) Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any employee of the Municipality with the intent of interfering in the employee's duties; or
 - (c) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of employees of the Municipality.

9. Confidential information

- 9.1 Members must keep in confidence matters discussed in a closed Council or Council committee meeting until the matter is discussed at a meeting held in public.
- 9.2 Members shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or authorized by Council to do so.
- 9.3 No Member shall use confidential information for personal benefit or for the benefit of any other individual organization.
- 9.4 Confidential information includes information in the possession of, or received in confidence by, the Municipality that the Municipality is prohibited from disclosing pursuant to legislation, court order or by contract, or is required to refuse to disclose under the Freedom of Information and Protection of Privacy Act or any other legislation, or any other information that pertains to the business of the Town, and is generally considered to be of confidential nature, including but not limited to information concerning;
- (a) The security of the property of the Municipality
 - (b) A proposed or pending acquisition or disposition of land or other property that is deemed to be confidential by Council or Administration
 - (c) A tender that has or will be issued but has not been awarded
 - (d) Contract negotiations
 - (e) Employment and labour relations
 - (f) Draft document and legal instruments, including reports, policies, bylaws and resolutions, that have not been the subject matter of deliberation in a meeting open to the public
 - (g) Law enforcement matters

(h) Litigation or potential litigation, including matters before administrative tribunals

(i) Advice that is subject to solicitor-client privilege

10. Conflicts of Interest

- 10.1 Members have a statutory duty to comply with the pecuniary interest provisions set out in Part 5, Division 6 of the Act and a corresponding duty to vote unless required or permitted to abstain under the Act or another enactment.
- 10.2 Members are to be free from undue influence and not act or appear to act in order to gain financial or other benefits for themselves, family, friends or associates, business or otherwise.
- 10.3 Members shall approach decision-making with an open mind that is capable of persuasion.

11. Improper Use of Influence

- 11.1 No Member shall use the influence of the Member's office for any purpose other than for the exercise of the Member's official duties.
- 11.2 No Member shall act as a paid agent to advocate on behalf of any individual, organization or corporate entity before Council or a committee of Council or any other body established by Council.
- 11.3 Members shall not contact or otherwise attempt to influence members of any adjudicative body regarding any matter before it relating to the Municipality
- 11.4 Members shall refrain from using their positions to obtain employment with the Municipality for themselves, family members or close associates. Members are ineligible to apply or be considered for any position with the Municipality while they hold their elected position and for one year after leaving office.

12. Use of Municipal Assets and Services

- 12.1 Members shall use municipal property, equipment, services, supplies and staff resources only for the performance of the duties as a Member.

13. Orientation and Other Training Attendance

- 13.1 Every Member must attend the orientation training offered by the Municipality within 90 days after the Member takes the oath of office.
- 13.2 Unless excused by Council, every Member must attend any other training organized at the direction of Council for the benefit of Members throughout the Council term.

14. Informal Complaint Process

- 14.1 Any person or any Member who has identified or witnessed conduct by a Member that the person or Member reasonably believes, in good faith, is in contravention of this Bylaw may address the prohibited conduct by:
 - (a) Advising the Member that the conduct violates this Bylaw and encouraging the Member to stop,
 - (b) Requesting the Mayor to assist in informal discussion of the alleged complaint with the Member in an attempt to resolve the issue. In the event that the Mayor is the subject of, or is implicated in a complaint, the person may request the assistance of the Deputy Mayor.

- 14.2 Individuals are encouraged to pursue this informal complaint procedure as the first means of remedying conduct that they believe violates this Bylaw. However, an individual is not required to complete this informal complaint procedure prior to pursuing the formal complaint procedure outlined below.

15. Formal Complaint Process

- 15.1 Any person or Member who has identified or witnessed conduct by a Member that the person or Member reasonably believes, in good faith, is in contravention of this Bylaw may file a formal complaint in accordance with the following procedure:
- (a) All complaints shall be made in writing and shall be dated and signed by an identifiable individual;
 - (b) All complaints shall be addressed to the Investigator;
 - (c) The complaint must set out reasonable and probable grounds for the allegation that the Member has contravened this Bylaw, including a detailed description of the facts, as they are known, giving rise to the allegation;
 - (d) If the facts, as reported, include the name of one or more Members who are alleged to be responsible for the breach of this Bylaw, the Member or Members concerned shall receive a copy of the complaint submitted to the Investigator;
 - (e) Upon receipt of a complaint under this Bylaw, the Investigator shall review the complaint and decide whether to proceed to investigate the complaint or not. If the Investigator is of the opinion that a complaint is frivolous or vexatious or is not made in good faith, or that there are no grounds or insufficient grounds for conducting an investigation, the Investigator may choose not to investigate or, if already commenced, may terminate any investigation, or may dispose of the complaint in a summary manner. In that event, the complainant and Council, if Council is not the Investigator, shall be notified of the Investigator's decision;
 - (f) If the Investigator decides to investigate the complaint, the Investigator shall take such steps as it may consider appropriate, which may include seeking legal advice. All proceedings of the Investigator regarding the investigation shall be confidential;
 - (g) If the Investigator is not Council, the Investigator shall, upon conclusion of the investigation, provide the Council and the Member who is the subject of the complaint, the results of the Investigator's investigation;
 - (h) A Member who is the subject of an investigation shall be afforded procedural fairness, including an opportunity to respond to the allegations before Council deliberates and make any decision or any sanction is imposed;
 - (i) A Member who is the subject of an investigation is entitled to be represented by legal counsel, at the Member's sole expense, unless otherwise authorized by Council.

16. Compliance and Enforcement

- 16.1 Members shall uphold the letter and the spirit and intent of this Bylaw.
- 16.2 Members are expected to co-operate in every way possible in securing compliance with the application and enforcement of this Bylaw.

Bylaw 1622-24

16.3 No Member shall:

- (a) Undertake any act of reprisal or threaten reprisal against a complainant or any other person for providing relevant information to Council or to any other person;
- (b) Obstruct Council, or any other person, in carrying out the objectives or requirements of this Bylaw.

16.4 Sanctions that may be imposed on a Member, by Council, upon a finding that the Member has breached this Bylaw may include:

- (a) A letter of reprimand addressed to the Member;
- (b) Requesting the Member to issue a letter of apology;
- (c) Publication of a letter of reprimand or request for apology and the Member's response;
- (d) Suspension or removal of the appointment of a Member as the chief elected official under section 150(1) of the Act;
- (e) Suspension or removal of the appointment of a Member as the deputy chief elected official or acting chief elected official under section 152 of the Act;
- (f) Suspension or removal of some or all Council committees and bodies to which council has the right to appoint members;
- (g) Reduction or suspension of remuneration as defined in section 275.1 of the Act corresponding to a reduction in duties, excluding allowances for attendance at council meetings;
- (h) Any other sanction Council deems reasonable and appropriate in the circumstances provided that the sanction does not prevent a Member from fulfilling the legislated duties of a councillor and the sanction is not contrary to the Act.

17. Review

17.1 This Bylaw shall be brought forward for review at the beginning of each term of Council, when relevant legislation is amended, and at any other time that Council considers appropriate to ensure that it remains current and continues to accurately reflect the standards of ethical conduct expected of Members.

READ A FIRST TIME THIS ___ DAY OF _____, 2024.

READ A SECOND TIME THIS ___ DAY OF _____, 2024.

READ A THIRD TIME AND FINALLY PASSED THIS ___ DAY OF _____, 2024.

Mayor, Don Anderberg

CAO, Doug Henderson

Councillor Codes of Conduct

A Guide for Municipalities



Councillor Codes of Conduct: A Guide for Municipalities

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The following has been prepared by the Alberta Association of Municipal Districts and Counties (AAMDC), and the Alberta Urban Municipalities Association (AUMA), in partnership with Brownlee LLP.

This Guidance Document is an educational tool that contains general information intended to assist municipalities in developing a Council Code of Conduct Bylaw. This information is NOT a substitute for legal advice and municipalities are encouraged to consult with their legal advisors.

Part 1: The Councillor Code of Conduct Guide

I. What is a Code of Conduct?

A Code of Conduct sets standards to govern people's actions. Typically, a Code of Conduct will outline behaviour that is acceptable and behaviour that is prohibited; it may also include a statement of principles that set out an organization's values which can help guide decision making when the Code of Conduct is silent on a particular matter.

There is currently no set format or model for a Councillor Code of Conduct (Code). Some Codes are aspirational: setting out principled standards of conduct councillors ought to aspire to. Other Codes are prescriptive: laying out prohibitions and rules councillors must abide by or risk sanction. The most effective Codes are a hybrid of both, combining core values and key principles related to the holding of public office and outlining those behaviours and conduct councillors are obliged to model or avoid.

II. Why adopt a Councillor Code of Conduct?

In Alberta, many municipalities have code of conduct policies that apply to their employees; however, it is less common to find a Code that applies to councillors. Although many issues addressed in an employee code may equally apply to councillors, councillors are not municipal employees.

The *Municipal Government Act* establishes the general duties of all councillors and requires that all councillors take the official oath prior to assuming office.¹ It establishes rules regarding pecuniary interests² and specifies what events/conduct will cause a councillor to be disqualified from holding office.³ Despite this, the *Municipal Government Act* does not address councillor conduct that falls short of being a disqualifying event. Instead, the Legislature has seen fit to leave it to each Council to consider how it will govern itself and, accordingly, has delegated authority to a Council to pass bylaws in relation to the conduct of Council and councillors.⁴

III. Why have Councillor Codes of Conduct become mandatory?

In recent years, there is an increased recognition that municipalities benefit from a more detailed and comprehensive Code that governs Council and which complements legislation. In some jurisdictions, such codes have been mandatory for some time.⁵ A Code is one aspect of accountability and transparency both internally, among councillors and between Council and Administration, as well as externally, to the public at large.

In 2016, when the Government of Alberta sought feedback on the current *Municipal Government Act*, it received submissions about councillor conduct. These included submissions that Codes needed to be updated and enforced; that disciplinary sanctions, systems and tools to discourage inappropriate conduct needed to be considered in order

¹ MGA, ss. 153, 155 and 156 respectively.

² MGA, ss. 169-173.

³ MGA, ss. 174-179.

⁴ MGA, s. 145.

⁵ For example, Ontario and Saskatchewan.

to hold councillors accountable; and, that municipalities should have the power to determine the accountability of their councillors through the creation and enforcement of a Code. Submissions were also made about mechanisms to remove councillors and disallowing disqualified councillors from seeking re-election.

The result of these consultations led to the provisions in Bill 20, *Municipal Government Amendment Act, 2015.a*.

IV. What do the new *Municipal Government Act* amendments require?

Bill 20, *Municipal Government Amendment Act, 2015* came into force on October 26, 2017. It amends the *Municipal Government Act* to provide that Council must, by bylaw, establish a Code to govern all councillors equally, by **July 23, 2018**. It also provides that councillors cannot be disqualified or removed from office for a breach of the Code. Further, it amended the councillor duties listed in section 153 to include the duty that councillors adhere to the Code established by Council.

The *Code of Conduct for Elected Officials Regulation, AR 200/2017 (Regulation)* also came into force on October 26, 2017. The *Regulation* sets out the topics each municipality's Code must include.

According to the *Municipal Government Act* and the *Regulation*, Codes must, at minimum, address the following topics:

- a. representing the municipality;
- b. communicating on behalf of the municipality;
- c. respecting the decision-making process;
- d. adherence to policies, procedures and bylaws;
- e. respectful interactions with councillors, staff, the public and others;
- f. confidential information;
- g. conflicts of interest;
- h. improper use of influence;
- i. use of municipal assets and services; and,
- j. orientation and other training attendance.

Additionally, Codes must:

- a. adopt a complaint system outlining who can make complaints, the method by which complaints can be made, the process to determine a complaint's validity, and the process to determine how sanctions will be imposed for valid complaints;
- b. incorporate by reference any matter required in the Code that is in addressed or included in another bylaw; and

- c. include a provision for the review of the Code and any bylaws incorporated by reference at least once every four years from the date the Code was passed.

Council is to consider ss. 3 and 153 of the *Municipal Government Act* when drafting their Code, but Council is prohibited from including provisions or sanctions that prevent a councillor from fulfilling their legislated duties as a councillor.

What kinds of conduct should be addressed under each of the topics?

The topics enumerated in the *Municipal Government Act* and the *Regulation* are purposefully broad, leaving it open to each Council to determine its values and prescribe conduct that will govern individual councillors. Alberta Municipal Affairs has developed an "Implementation Fact Sheet" for Codes which outlines the intent and rationale of each of the topics, as noted below.⁶ However, there are a number of issues Council may want to consider in relation to each topic as it develops its Code.

a. *Representing the municipality: to build and inspire public trust and confidence in local government by upholding high standards and ideals*

Council may want to consider its key values and principles under this topic. Council should consider the purposes of a municipality⁷ and the general duties of councillors⁸, particularly the duty to consider the welfare and interests of the municipality as a whole and to bring to Council's attention to anything that would promote the welfare or interests of the municipality. In addition, Council may want to provide that councillors should aspire to be good public role models by governing their public behaviours in accordance with Code and ensuring they conduct their personal affairs with integrity in accordance with the law.

b. *Communicating on behalf of the municipality: to promote public confidence by respecting the process established by council for communicating with the public on behalf of council*

Council may want to consider establishing communication protocols in its Code to address a number of communication issues, including: which councillor or councillors speak on behalf of Council when a matter is decided upon (usually this would be the Mayor/Reeve), how Council and individual councillors address the media, and how Council and individual councillors address communications with third parties, particularly other levels of government.

Council may also want to clarify that communications concerning matters of a political nature should be directed through the Mayor/Reeve whereas matters of an administrative/operational nature are to be directed through the Chief Administrative Officer (CAO). With respect to political matters, the Code should set limits on the

⁶ See "Implementation Fact Sheet: Code for Elected Officials" at <https://open.alberta.ca/dataset/ab5db63d-302c-4c1b-b777-1eeb0fe23090/resource/7909d159-924a-4429-a3ea-062d1197e136/download/Code-of-Conduct-for-Elected-Officials.pdf>.

⁷ MGA, s. 3.

⁸ MGA, s. 153.

Mayor/Reeve's authority and confirm that the Mayor/Reeve must be careful to communicate only positions approved by Council as a whole.

c. Respecting the decision-making process: to support effective decision-making through the processes set out in legislation and local bylaws for making decisions

The *Municipal Government Act* requires Council to conduct its deliberations and make its decisions in public, save for exceptions expressly set out in the *Municipal Government Act*. Therefore, Council may want to include provisions in its Code that require councillors to bring their issues, correspondence, secondary materials and information to the attention of all of Council by placing such matters on the agenda or presenting the information to Council in accordance with the process set out by Council. These types of provisions should be consistent with the Council Procedure Bylaw, specifically those provisions dealing with public meeting requirements and agenda processes.

Council may also want its Code to affirm that Council as a whole maintains the authority for all decision-making and that an individual councillor must not purport to bind Council, either by publicly expressing personal views on behalf of Council when not authorized to do so or by giving direction to Administration. Your Code may reinforce that Council may only act by bylaw or resolution passed at a Council meeting held in public at which there is a quorum.⁹ Your Code may confirm that once Council makes a decision, individual councillors should respect the decision and should not attempt to undermine it.

d. Adherence to policies, procedures and bylaws: to promote service of the public interest and show leadership up holding legislation, local bylaws and policies adopted by council

Council should include provisions in its Code that require individual councillors to abide by and uphold legislation, local bylaws and policies adopted by Council. Council may also want to include provisions that disallow councillors from encouraging the public to disobey or disrespect laws, bylaws or council policies.

e. Respectful interactions with councillors, staff, the public and others: to promote treatment of council members, municipal employees, and others with dignity, understanding and respect

The Code should recognize the different roles and responsibilities of Administration, Council and individual councillors. The *Municipal Government Act* provides that councillors are to obtain information about the operation or administration of the municipality from the CAO or someone designated by the CAO.¹⁰ Moreover, councillors must avoid involving themselves in matters of Administration, which fall within the jurisdiction of the CAO.¹¹ The Code should be consistent with these statutory requirements.

⁹ MGA, ss. 180 and 181.

¹⁰ MGA, s. 207(c).

¹¹ MGA, s. 201(2).

As such, Council may want to establish provisions in its Code for making inquiries of Administration outside of Council meetings. The Code may outline the manner in which inquiries are made of Administration and should stipulate that any information provided in response to a councillor inquiry is provided to all of Council.¹² The Code should be consistent with any existing Council Procedures Bylaw or any such Bylaw must be amended concurrently with the adoption of the Code.

Council may also want to include communication protocols when a member of the public makes an inquiry to a councillor and when a councillor, as a member of the public, makes an inquiry to Administration.

f. Confidential information: *to promote public trust by refraining from using information in a way that would be detrimental to the public interest*

The *Municipal Government Act* provides that a councillor must keep in confidence matters discussed in private at a Council or Council Committee meeting until discussed at a meeting held in public.¹³ However, councillors may also be privy to confidential information received outside of an *in-camera* meeting. As such, Council may wish to broaden the definition of confidential information and prohibit disclosure unless such disclosure is required by law.

It should be noted that the determination of whether confidential information ought to be disclosed is not the decision of an individual councillor. In general, it is a decision that ought to be made by Council as a whole. In the case of information requests made under the *Freedom of Information and Protection of Privacy Act* (FOIP), the determination of whether such information should be released is made by the head of the municipality for the purposes of FOIP.

In order to reduce the risk of unauthorized disclosure of confidential information (inadvertent or otherwise), Council may want to include provisions in its Code that require councillors to return all confidential documents at the conclusion of an *in-camera* portion of a meeting. Further, your Code may remind councillors that it is an offence to willfully collect, use or disclose personal information in contravention of Part 2 of FOIP. A conviction for an offence under this legislation carries with it a fine of up to \$10,000.

g. Conflicts of interest: *to promote public trust by refraining from exploiting the position of councillor for private reasons or that would bring discredit to the office*

The *Municipal Government Act* addresses both the process by which a councillor must deal with pecuniary (i.e. financial) conflicts of interest and the sanctions.¹⁴ Your Code may affirm the importance of abiding by these provisions and should confirm that the determination of whether a councillor has a pecuniary interest is a decision to be made by the individual councillor. Council cannot draft provisions in its Code that allow Council the discretion to dictate whether a councillor must recuse him or herself from discussion of a particular matter.

¹² MGA, s. 153.1.

¹³ MGA, s. 153(e).

¹⁴ MGA, ss. 169-172.

Although councillors must make their own determination about conflicts of interest, a councillor may seek the advice of the CAO respecting a potential conflict prior to the matter coming before Council. Council may go further and include provisions in its Code that encourage a councillor to obtain *independent* legal advice on a potential conflict. If Council includes such provisions, it should address whether the municipality will pay for (or reimburse) a councillor for obtaining independent legal advice and under what circumstances, or whether such advice is obtained at the councillor's sole expense.

With respect to non-financial conflicts of interest, it is important to remember that the Code cannot include provisions or sanctions that prevent a councillor from fulfilling his or her legislated duties as a councillor¹⁵, including the duty to vote.¹⁶ Therefore the Code cannot create additional duties that require councillors to abstain for non-financial conflicts of interest, but it may include value statements that guide councillor conduct in this regard including statements about acting in the interests of the municipality as a whole, keeping an open mind, allowing affected persons fair and reasonable opportunities to share their views and considering all arguments fairly and thoughtfully before making a decision.

h. Improper use of influence: *to promote the priority of municipal interests over the individual interests of councillors, and to refrain from seeking to influence decisions for personal reasons*

Council should emphasize the importance of advocating for the municipality as a whole in its Code. It should also include statements that promote municipal interests over individual interests, including individual councillor interests. Council should also prohibit councillors from using their influence inappropriately, including to obtain employment with the municipality for themselves, close friends or family, to give individuals or organizations preferential treatment, to act as an agent or advocate of an individual or organization before Council or any of its committees, and to influence members of any adjudicative body whose members are appointed by Council, such as the Subdivision and Development Appeal Board or the Local or Composite Assessment Review Board.

Additionally, Council may want to reiterate the federal *Criminal Code* prohibitions against municipal corruption.¹⁷ The *Criminal Code* states that councillors shall not use the influence of their office for any purpose other than the exercise of their official duties and shall not use their office for any private advantage, sell their vote or receive any preferential treatment from or provide any preferential treatment to another person or corporation.

i. Use of municipal assets and services: *to promote stewardship and public trust by refraining from the use of municipal assets or resources for personal reasons*

Councillors may, by virtue of their office, have access to various municipal property, equipment and supplies. Council must include provisions in its Code addressing appropriate access and use. Council may want to limit use for municipal and council purposes and disallow business use, personal use or profit. Council may also want to

¹⁵ *Regulation*, s. 6.

¹⁶ *MGA*, s. 174(1)(f).

¹⁷ *Criminal Code of Canada*, s. 123.

address appropriate use of electronic devices (i.e. visiting appropriate sites, streaming and downloading limits, roaming charges).

j. Orientation and other training attendance: to promote effective leadership and personal development by accessing training opportunities

The amendments to the *Municipal Government Act* include a provision that municipalities must offer orientation to councillors within 90 days of the councillor taking the oath of office.¹⁸ Council must draft provisions that address orientation and may want to require councillor attendance at orientation and other training as determined by Council.

V. Are there sanctions for breaching the Code?

Without an enforcement mechanism, a Code is merely a series of guidelines. A Code must establish procedures and consequences in the event a councillor fails to adhere to any provision contained in the Code. This will require designating a person or persons for overseeing compliance of the Code.

The *Regulation* provides that sanctions may be imposed if a councillor fails to adhere to the Code and it provides a list of possible sanctions. These include the following:

- a. a letter of reprimand addressed to the councillor;
- b. requesting the councillor to issue a letter of apology;
- c. publication of a letter of reprimand or request for apology and the councillor's response;
- d. a requirement to attend training;
- e. suspension or removal of the appointment of a councillor as the chief elected official under section 150(2) of the *Municipal Government Act*;
- f. suspension or removal of the appointment of a councillor as the deputy chief elected official or acting chief elected official under section 152 of the *Municipal Government Act*;
- g. suspension or removal of the chief elected official's presiding duties under section 154 of the *Municipal Government Act*;
- h. suspension or removal from some or all council committees and bodies to which council has the right to appoint members; and,
- i. reduction or suspension of remuneration as defined in section 275.1 of the *Municipal Government Act* corresponding to a reduction in duties, excluding allowances for attendance at council meetings.

Council may choose to adopt some or all the sanctions listed in the *Regulation*. Arguably, Council may also choose to adopt other sanctions more directly related to addressing the breach of the Code, such as limiting council related travel and/or expenses, requiring the return of certain municipal property, limiting access to certain municipal facilities or

¹⁸ MGA, s. 201.1(1).

restricting how documents are provided to the councillor. If Council decides to adopt any of these sanctions, it is important to remember that any sanctions that are imposed cannot have the effect of preventing a councillor from carrying out his or her legislated responsibilities under the *Municipal Government Act*. Additionally, Council does not have the authority to remove a councillor from office; only a Court or the Minister of Municipal Affairs can do so.¹⁹

VI. Who should enforce the Code?

Although the recent amendments to the *Municipal Government Act* have made Codes mandatory, the provisions still respect the autonomy of Councils to govern themselves. Council, as a whole, is expected to enforce its Code. It is not appropriate for a member of Administration, such as the CAO, to enforce the Code or impose sanctions against a councillor.

Each Code must have a complaint system. Council must develop a system which considers the following:

- a. Who can make complaints? – Fellow Councillors? Administration? Ratepayers? The general public? Affected parties? All the above?
- b. How will complaints be made? - Do complaints have to be in writing? To whom must complaints be made or given? Will anonymous complaints be accepted?
- c. How will Council determine if a complaint is valid? - Who will conduct the investigation? Will all complaints require a formal investigation? Will there be a mechanism to address/dismiss invalid, frivolous or vexatious complaints?
- d. How will sanctions be imposed? – What will be considered in deciding which sanction to impose?

Your Code must specify who can make complaints and who will receive complaints. If complaints are to be handled internally by Council, complaints may be received by the Mayor/Reeve but there should be an alternate person, such as the Deputy Mayor/Reeve, if the complaint is about the Mayor/Reeve. Alternatively, complaints could be directed to a third party investigator or independent integrity commissioner (if Council creates such an office) but it is not appropriate for complaints to be directed to the CAO or staff in Administration for investigation.

Council may want to consider if it will have an initial informal complaint process which must be engaged prior to accessing a formal complaint process. Council should have a process to vet complaints to determine if a complaint is invalid, frivolous or vexatious and the Code should outline what it will do with such complaints.

The Code should also address who will investigate complaints and how they will be investigated. It may be Council as a whole, or authority may be delegated to the Mayor/Reeve to investigate complaints. Alternatively, Council may want to create a local or even an intermunicipal council committee comprised entirely of councillors or public members or a combination of both to investigate complaints. A further option would be to

¹⁹ MGA, ss. 175-178 and 572-574 respectively.

assign an independent third party to investigate complaints, either through retaining an external consultant on an ad hoc or standing basis or by establishing an office of the integrity commissioner. If Council chooses to tailor investigations to the nature of the complaint, the Code should identify the factors that would trigger a particular type of investigation (Mayor/Reeve versus council committee versus third party) and the process for setting up each investigation (how would the committee be formed or how would the third party be retained).

Although the *Municipal Government Act* and the *Regulation* require every Code to include a complaint process, neither imposes a specific process on Council. Therefore, in deciding what type of complaint process to adopt, Council should consider the following:

- Availability of resources and/or expertise;
- Costs;
- Formality of process;
- Seriousness of complaint; and
- Level of independence.

In enforcing the Code, Council must bear in mind that principles of natural justice and procedural fairness likely apply to Council sanctions. In other words, prior to imposing any sanction, the accused councillor should be provided with notice as to the nature of the alleged contravention of the Code and the potential sanction(s) as well as a right to respond to the allegation. Procedurally, after reviewing the results of the investigation and receiving the submissions from the accused councillor, Council should withdraw *in-camera* to consider whether a breach has been established. If there is no consensus then separate reasons can follow, but the decision of Council on whether to sanction the accused councillor must be delivered in public, as Council can only pass a resolution in the public portion of the meeting.

As noted above, some municipalities may choose to create an office of the integrity commissioner to receive complaints, investigate, and recommend sanctions. If you decide to pursue this option, it is important to note that the commissioner needs to be independent and that their mandate should only extend to investigating complaints and *recommending* sanctions. It is still up to Council to make a final determination about the enforcement of its Code and the imposition of sanctions. Establishing an independent office of the integrity commissioner is a significant undertaking which may involve the creation of a designated officer position by bylaw, with potentially significant cost implications, and a thorough discussion regarding this matter is beyond the scope of this Guidance Document.

VII. How do you develop, approve and communicate your new Code?

The ideal time to consider adopting a Code is when there are no immediate or ongoing councillor conduct issues or disputes. That way, your Code can be developed in a calm environment and in a reasonable, principle-driven way. Developing a Code early in Council's term ensures that expectations are agreed upon at an early stage, setting the groundwork for good governance. **Your Code must be adopted by July 23, 2018.**

Developing a Code requires consideration of Council's values. These values will help formulate the ethical basis of the Code and they will help guide behaviour when the Code is unclear or silent. Your Code should not be driven by Administration – it should be driven by Council.

Workshopping with a facilitator can be an effective way to reflect on the values and behaviours Council wants to adopt. Council may also want to seek public input on the values and standards the public believes Council should abide by. Council should also seek legal advice prior to formally adopting the Code to ensure its Code is in line with relevant legislation and case law.

Council must adopt its Code by bylaw. This means the Code will be available for public review and comment. Once adopted, the Code should be made available to Council, Administration and the public. Council may also want to make an annual review and/or training about the Code a provision of the Code.

What are some other things to consider in your Code?

The *Municipal Government Act* and the *Regulation* provide the minimum topics your Code must address. However, there are a number of other issues that are often included in Codes. We have addressed a few of these additional optional considerations below.

a. A Statement of Values

As discussed above, many Codes identify and elaborate on key principles and values that Council agrees are fundamental to the successful performance of a councillor's duties as an elected official. Common themes include, but are not limited to, integrity, accountability, leadership, responsibility, service, respect, and transparency.

b. Councillor Conduct at Meetings

If not already dealt with in a Council Procedure Bylaw, the Code could set out appropriate behaviours at meetings including prohibitions on inappropriate, foul or abusive language or limitations on the use of electronic devices.

c. Election Campaigns

The regulation of municipal election campaigns is governed by the *Local Authorities Election Act* (LAEA). Nevertheless, your Code may address campaign-related issues in a manner that complements the LAEA. For example, your Code may stipulate that councillors are not permitted to use the municipality's equipment and facilities for campaign-related activities. Similarly, the Code may provide that councillors may not engage municipal staff for any election-related purpose during working hours. It would also be prudent to prohibit the use of municipal websites, email and social media accounts for election campaigning, including restricting the linking of private campaign websites and social media accounts to the municipality's website. Further, your Code may stipulate that councillors are personally responsible for ensuring their compliance with all applicable election-related statutes, and therefore should not make inquiries of, or rely on municipal employees for advice and direction in this regard.

d. Remuneration and Expense Claims

Councillors inevitably incur a diverse array of expenses in the course of the official duties. Many Codes set out what expenses are reimbursable, including the imposition of any expense limits. Council may want to establish parameters for reimbursement in the following instances:

- Conference fees and any incidental costs including travel, meal and lodging expenses;
- Tickets to community and charitable functions;
- Expenses incurred while hosting third parties, including officials from other heads of government and out-of-town delegations;
- Meal expenses;
- Mileage;
- Cell phone charges;
- General out-of-pocket expenses; and
- Political fundraising events.

With respect to political fundraising events, it is important to note that a municipality is a “prohibited corporation” for the purposes of the *Election Finances and Contributions Disclosure Act*. A prohibited corporation must not reimburse a councillor for buying a ticket to a fund-raising event held by a Provincial political party, a constituency association or a candidate. Such reimbursement has been determined by Alberta’s Chief Electoral Officer to be an indirect contribution in violation of the *Act*.

Further, your Code may set out a process for the review and approval of expense claims, if such a process does not already exist elsewhere in policy.

e. Gifts and Hospitality

Council may want to include provisions about the acceptance of gifts, including prizes, and hospitality in its Code, which are items closely related to the topics of “conflict of interest” and “undue influence”. Councillors often received gifts or hospitality as an incidental benefit and as a genuine token of appreciation but if a gift or hospitality is given, *or perceived to be given*, in an effort to influence, or manipulate a councillor, it may be problematic. Council may want to include provisions in its Code to clarify when acceptance of a gift or offer of hospitality is acceptable, including protocols and parameters which address the following:

- circumstances where a councillor receives a benefit from a supplier and subsequently participates in a decision involving that supplier;
- the receipt of food, alcoholic beverages, lodging, transportation and/or entertainment from third parties;

- the entitlement of councillors to accept a complementary ticket or a reduced ticket rate for events such as fundraisers, golf tournaments, concerts, sporting events, etc., and if so when, and in what context;
- the use of property or facilities such as vehicles, office space, or vacation property from third parties;
- the maximum value of gifts which may be accepted by an individual councillor; and,
- the receipt of a gift for the municipality.

It is common for Codes to recognize certain exemptions for gifts and benefits received by a councillor that “normally accompany the responsibilities of office” and are received “as an incident of protocol or social obligation”. Food and beverages consumed by a councillor at events that serve “a legitimate business purpose” is another common exception to the rule against accepting gifts, although additional parameters may be established, such as requiring a representative of the organization extending the invitation to be in attendance and/or a stipulation that the value of the food/drink be “reasonable” and the invitations “infrequent”.

As noted above, your Code may also establish monetary limits respecting the receipt of gifts and benefits from any one person or organization over the course of a specified period. Further, or in the alternative, your Code might require that councillors file an annual disclosure statement listing the gifts and benefits received during a specified period, including an approximation of their monetary value.

Council may also want to address the receipt of “official gifts” received on behalf of the municipality by a councillor as a matter of protocol. The Code may, for example, clarify that such gifts are the property of the municipality and will remain with the municipality after the councillor ceases to hold office.

f. Use of Social Media

Although Council is required to address a number of communication issues, Council may want to specifically address the appropriate use of social media. Council may want to adopt provisions that recognize that personal use of social media should be kept separate from a councillor’s professional use. Your Code may want to discourage councillors from opening up their personal social networks for official business as doing so can result in a blurring of the lines between a councillor’s official capacity and their personal capacity and potentially expose the councillor to unintended and undesirable consequences.

Councils may also consider adopting guidelines on responsible social media use by councillors to ensure that the reputation of Council and the municipality is not adversely affected by the social media activity of one councillor. Council may also want to develop protocols about how councillors should respond to comments from residents posted on social media sites, whether these are service requests, compliments or complaints.

Part 2: Bylaw Template

The following is a sample bylaw for a councillor code of conduct. It is intended to be a template for municipalities in Alberta to assist in the drafting of a bylaw that establishes a code of conduct. It should be carefully reviewed and tailored to the specific needs of each municipality. Each municipality should use their respective bylaw review processes to ensure consistency and accuracy.

[INSERT NAME OF MUNICIPALITY]

[INSERT BYLAW NUMBER]

A BYLAW TO ESTABLISH A CODE OF CONDUCT FOR MEMBERS OF COUNCIL

WHEREAS, pursuant to section 146.1(1) of the *Municipal Government Act*, a council must, by bylaw, establish a code of conduct governing the conduct of councillors;

[Optional provision if the Code is also to apply to non-elected members of Council Committees: AND WHEREAS, pursuant to section 146.1(3) of the *Municipal Government Act*, a council may, by bylaw, establish a code of conduct governing the conduct of members of council committees and other bodies established by the council who are not councillors]; [NOTE: if this bylaw is to apply to non-elected members of council committees the definition of “Member” in Section 2 below will need to be updated accordingly.]

AND WHEREAS, pursuant to section 153 of the *Municipal Government Act*, councillors have a duty to adhere to the code of conduct established by the council;

AND WHEREAS the public is entitled to expect the highest standards of conduct from the members that it elects to council for the **[insert name of municipality]**;

AND WHEREAS the establishment of a code of conduct for members of council is consistent with the principles of transparent and accountable government;

AND WHEREAS a code of conduct ensures that members of council share a common understanding of acceptable conduct extending beyond the legislative provisions governing the conduct of councillors;

NOW THEREFORE the Council of the **[insert name of municipality]**, in the Province of Alberta, duly assembled, enacts as follows:

1. Short Title

1.1. This Bylaw may be referred to as the “Council Code of Conduct Bylaw”.

2. Definitions

2.1. In this Bylaw, words have the meanings set out in the Act, except that:

- (a) “Act” means the Municipal Government Act, R.S.A. 2000, c. M-26, and associated regulations, as amended;
- (b) “Administration” means the administrative and operational arm of the Municipality, comprised of the various departments and business units and including all employees who operate under the leadership and supervision of the [insert applicable title: e.g. CAO];
- (c) [Insert applicable title, e.g. “CAO”, “City Manager”, County Manager, “Town Manager”, etc] means the chief administrative officer of the Municipality, or their delegate;
- (d) “FOIP” means the Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, any associated regulations, and any amendments or successor legislation;
- (e) “Investigator” means Council or the individual or body established by Council to investigate and report on complaints;
- (f) “Member” means a member of Council and includes a councillor or the [insert as applicable: Mayor or Reeve];

-OR-

- (f) “Member” means a member of Council and includes a councillor or the [insert as applicable: Mayor or Reeve] and includes members of council committees or other bodies established by Council who are not councillors or the [insert as applicable: Mayor or Reeve];
- (g) “Municipality” means the municipal corporation of the [Insert name of municipality].

3. Purpose and Application

3.1. The purpose of this Bylaw is to establish standards for the ethical conduct of Members relating to their roles and obligations as representatives of the Municipality and a procedure for the investigation and enforcement of those standards.

4. Representing the Municipality

4.1. Members shall:

- (a) act honestly and, in good faith, serve the welfare and interests of the Municipality as a whole;
- (b) perform their functions and duties in a conscientious and diligent manner with integrity, accountability and transparency;
- (c) conduct themselves in a professional manner with dignity and make every effort to participate diligently in the meetings of Council, committees of Council and other bodies to which they are appointed by Council; and

- (d) arrange their private affairs and conduct themselves in a manner that promotes public confidence and will bear close public scrutiny.

5. Communicating on Behalf of the Municipality

- 5.1. A Member must not claim to speak on behalf of Council unless authorized to do so.
- 5.2. Unless Council directs otherwise, the **[Insert as applicable: Mayor/Reeve]** is Council's official spokesperson and in the absence of the **[Insert as applicable: Mayor/Reeve]** it is the **[Insert as applicable: Deputy Mayor/Deputy Reeve]**. All inquiries from the media regarding the official Council position on an issue shall be referred to Council's official spokesperson.
- 5.3. A Member who is authorized to act as Council's official spokesperson must ensure that their comments accurately reflect the official position and will of Council as a whole, even if the Member personally disagrees with Council's position.
- 5.4. No Member shall make a statement when they know that statement is false.
- 5.5. No Member shall make a statement with the intent to mislead Council or members of the public.

6. Respecting the Decision-Making Process

- 6.1. Decision making authority lies with Council, and not with any individual Member. Council may only act by bylaw or resolution passed at a Council meeting held in public at which there is a quorum present. No Member shall, unless authorized by Council, attempt to bind the Municipality or give direction to employees in Administration, agents, contractors, consultants or other service providers or prospective vendors to the Municipality.
- 6.2. Members shall conduct and convey Council business and all their duties in an open and transparent manner other than for those matters which by law are authorized to be dealt with in a confidential manner in an in-camera session, and in so doing, allow the public to view the process and rationale which was used to reach decisions and the reasons for taking certain actions.
- 6.3. Members shall accurately communicate the decisions of Council, even if they disagree with Council's decision, such that respect for the decision-making processes of Council is fostered.

7. Adherence to Policies, Procedures and Bylaws

- 7.1. Members shall uphold the law established by the Parliament of Canada and the Legislature of Alberta and the bylaws, policies and procedures adopted by Council.
- 7.2. Members shall respect the Municipality as an institution, its bylaws, policies and procedures and shall encourage public respect for the Municipality, its bylaws, policies and procedures.

- 7.3. A Member must not encourage disobedience of any bylaw, policy or procedure of the Municipality in responding to a member of the public, as this undermines public confidence in the Municipality and in the rule of law.

8. Respectful Interactions with Council Members, Staff, the Public and Others

- 8.1. Members shall act in a manner that demonstrates fairness, respect for individual differences and opinions, and an intention to work together for the common good and in furtherance of the public interest.
- 8.2. Members shall treat one another, employees of the Municipality and members of the public with courtesy, dignity and respect and without abuse, bullying or intimidation.
- 8.3. No Member shall use indecent, abusive, or insulting words or expressions toward another Member, any employee of the Municipality or any member of the public.
- 8.4. No Member shall speak in a manner that is discriminatory to any individual based on the person's race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.
- 8.5. Members shall respect the fact that employees in Administration work for the Municipality as a corporate body and are charged with making recommendations that reflect their professional expertise and a corporate perspective and that employees are required to do so without undue influence from any Member or group of Members.
- 8.6. Members must not:
 - (a) involve themselves in matters of Administration, which fall within the jurisdiction of the [Insert applicable title, e.g. "CAO", "City Manager", County Manager, "Town Manager", as defined above];
 - (b) use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any employee of the Municipality with the intent of interfering in the employee's duties; or
 - (c) maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of employees of the Municipality.

9. Confidential Information

- 9.1. Members must keep in confidence matters discussed in private at a Council or Council committee meeting until the matter is discussed at a meeting held in public.
- 9.2. Members shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or authorized by Council to do so.

- 9.3. No Member shall use confidential information for personal benefit or for the benefit of any other individual organization.
- 9.4. **[Alternative provision to section 9.2 above]:** In the course of their duties, Members may also become privy to confidential information received outside of an “in-camera” meeting. Members must not:
- (a) disclose or release by any means to any member of the public, including the media, any confidential information acquired by virtue of their office, unless the disclosure is required by law or authorized by Council to do so;
 - (b) access or attempt to gain access to confidential information in the custody or control of the Municipality unless it is necessary for the performance of the Member’s duties and is not otherwise prohibited by Council, and only then if the information is acquired through appropriate channels in accordance with applicable Council bylaws and policies;
 - (c) use confidential information for personal benefit or for the benefit of any other individual or organization.
- 9.5. **[Optional additional provision]:** Confidential information includes information in the possession of, or received in confidence by, the Municipality that the Municipality is prohibited from disclosing pursuant to legislation, court order or by contract, or is required to refuse to disclose under FOIP or any other legislation, or any other information that pertains to the business of the Municipality, and is generally considered to be of a confidential nature, including but not limited to information concerning:
- (a) the security of the property of the Municipality;
 - (b) a proposed or pending acquisition or disposition of land or other property;
 - (c) a tender that has or will be issued but has not been awarded;
 - (d) contract negotiations;
 - (e) employment and labour relations;
 - (f) draft documents and legal instruments, including reports, policies, bylaws and resolutions, that have not been the subject matter of deliberation in a meeting open to the public;
 - (g) law enforcement matters;
 - (h) litigation or potential litigation, including matters before administrative tribunals; and
 - (i) advice that is subject to solicitor-client privilege.

10. Conflicts of Interest

- 10.1. Members have a statutory duty to comply with the pecuniary interest provisions set out in Part 5, Division 6 of the Act and a corresponding duty to vote unless required or permitted to abstain under the Act or another enactment.
- 10.2. Members are to be free from undue influence and not act or appear to act in order to gain financial or other benefits for themselves, family, friends or associates, business or otherwise.
- 10.3. Members shall approach decision-making with an open mind that is capable of persuasion.
- 10.4. **[Optional additional provision:]** It is the individual responsibility of each Member to seek independent legal advice, at the Member's sole expense, with respect to any situation that may result in a pecuniary or other conflict of interest.

11. Improper Use of Influence

- 11.1. No Member shall use the influence of the Member's office for any purpose other than for the exercise of the Member's official duties.
- 11.2. **[Optional additional provision:]** No Member shall act as a paid agent to advocate on behalf of any individual, organization or corporate entity before Council or a committee of Council or any other body established by Council.]
- 11.3. **[Optional additional provision:]** Members shall not contact or otherwise attempt to influence members of any adjudicative body regarding any matter before it relating to the Municipality.
- 11.4. **[Optional additional provision:]** Members shall refrain from using their positions to obtain employment with the Municipality for themselves, family members or close associates. Members are ineligible to apply or be considered for any position with the Municipality while they hold their elected position and for one year after leaving office.

12. Use of Municipal Assets and Services

- 12.1. Members shall use municipal property, equipment, services, supplies and staff resources only for the performance of their duties as a Member.
- 12.2. **[Alternative Provision:]** Members shall use municipal property, equipment, services, supplies and staff resources only for the performance of their duties as a Member, subject to the following limited exceptions:
 - (a) municipal property, equipment, service, supplies and staff resources that are available to the general public may be used by a Member for personal use upon the same terms and conditions as members of the general public, including booking and payment of any applicable fees or charges;
 - (b) electronic communication devices, including but not limited to desktop computers, laptops, tablets and smartphones, which are supplied by the

Municipality to a Member, may be used by the Member for personal use, provided that the use is not for personal gain, offensive or inappropriate.

13. Orientation and Other Training Attendance

- 13.1. Every Member must attend the orientation training offered by the Municipality within 90 days after the Member takes the oath of office.
- 13.2. Unless excused by Council, every Member must attend any other training organized at the direction of Council for the benefit of Members throughout the Council term.

[Alternate Provision]

- 13.3. Every Member must attend the orientation training offered by the Municipality within 90 days after the Member takes the oath of office. Attendance at additional training sessions throughout the Council term is discretionary.

[Alternate Provision]

- 13.4. Every Member must attend all orientation and other training organized at the direction of Council for the benefit of Members throughout the Council term.

[Optional Provision: Remuneration and Expenses]

- 13.5. Members are stewards of public resources and shall avoid waste, abuse and extravagance in the use of public resources.
- 13.6. Members shall be transparent and accountable with respect to all expenditures and strictly comply with all municipal bylaws, policies and procedures regarding claims for remuneration and expenses.

[Optional Provision: Gifts and Hospitality]

- 13.7. Members shall not accept gifts, hospitality or other benefits that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved.
- 13.8. Members may accept hospitality, gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation, provided that the value of the hospitality, gift or benefit does not exceed **[insert dollar limit]**.
- 13.9. Gifts received by a Member on behalf of the Municipality as a matter of official protocol which have significance or historical value for the Municipality shall be left with the Municipality when the Member ceases to hold office.

[Optional Provision: Election Campaigns]

- 13.10. No Member shall use any facilities, equipment, supplies, services, municipal logo or other resources of the Municipality for any election campaign or campaign-related activity.

[Optional Provision: Informal Complaint Process

- 13.11. **[Insert as applicable: Any person [or] Any Member]** who has identified or witnessed conduct by a Member that the **[Insert as applicable: person [or] Member]** reasonably believes, in good faith, is in contravention of this Bylaw may address the prohibited conduct by:
- (a) advising the Member that the conduct violates this Bylaw and encouraging the Member to stop,
 - (b) requesting the **[insert as applicable: Mayor/Reeve]** to assist in informal discussion of the alleged complaint with the Member in an attempt to resolve the issue. In the event that the **[insert as applicable: Mayor/Reeve]** is the subject of, or is implicated in a complaint, the person may request the assistance of the **[insert as applicable: Deputy Mayor/Deputy Reeve]**.
- 13.12. Individuals are encouraged to pursue this informal complaint procedure as the first means of remedying conduct that they believe violates this Bylaw. However, an individual is not required to complete this informal complaint procedure prior to pursuing the formal complaint procedure outlined below.

14. Formal Complaint Process

- 14.1. **[Insert as applicable: Any person [or] Any Member]** who has identified or witnessed conduct by a Member that the **[Insert as applicable: person [or] Member]** reasonably believes, in good faith, is in contravention of this Bylaw may file a formal complaint in accordance with the following procedure:
- (a) All complaints shall be made in writing and shall be dated and signed by an identifiable individual;
 - (b) All complaints shall be addressed to the Investigator;
 - (c) The complaint must set out reasonable and probable grounds for the allegation that the Member has contravened this Bylaw, including a detailed description of the facts, as they are known, giving rise to the allegation;
 - (d) If the facts, as reported, include the name of one or more Members who are alleged to be responsible for the breach of this Bylaw, the Member or Members concerned shall receive a copy of the complaint submitted to the Investigator;
 - (e) Upon receipt of a complaint under this Bylaw, the Investigator shall review the complaint and decide whether to proceed to investigate the complaint or not. If the Investigator is of the opinion that a complaint is frivolous or vexatious or is not made in good faith, or that there are no grounds or insufficient grounds for conducting an investigation, the Investigator may choose not to investigate or, if already commenced, may terminate any investigation, or may dispose of the complaint in a summary manner. In that event, the complainant and Council, if Council is not the Investigator, shall be notified of the Investigator's decision;

- (f) If the Investigator decides to investigate the complaint, the Investigator shall take such steps as it may consider appropriate, which may include seeking legal advice. All proceedings of the Investigator regarding the investigation shall be confidential;
- (g) If the Investigator is not Council, the Investigator shall, upon conclusion of the investigation, provide the Council and the Member who is the subject of the complaint, the results of the Investigator's investigation;
- (h) A Member who is the subject of an investigation shall be afforded procedural fairness, including an opportunity to respond to the allegations before Council deliberates and makes any decision or any sanction is imposed;
- (i) A Member who is the subject of an investigation is entitled to be represented by legal counsel, at the Member's sole expense.

15. Compliance and Enforcement

- 15.1. Members shall uphold the letter and the spirit and intent of this Bylaw.
- 15.2. Members are expected to co-operate in every way possible in securing compliance with the application and enforcement of this Bylaw.
- 15.3. No Member shall:
 - (a) undertake any act of reprisal or threaten reprisal against a complainant or any other person for providing relevant information to Council or to any other person;
 - (b) obstruct Council, or any other person, in carrying out the objectives or requirements of this Bylaw.
- 15.4. Sanctions that may be imposed on a Member, by Council, upon a finding that the Member has breached this Bylaw may include:
 - (a) a letter of reprimand addressed to the Member;
 - (b) requesting the Member to issue a letter of apology;
 - (c) publication of a letter of reprimand or request for apology and the Member's response;
 - (d) suspension or removal of the appointment of a Member as the chief elected official under section 150(2) of the Act;
 - (e) suspension or removal of the appointment of a Member as the deputy chief elected official or acting chief elected official under section 152 of the Act;
 - (f) suspension or removal of the chief elected official's presiding duties under section 154 of the Act;
 - (g) suspension or removal from some or all Council committees and bodies to which council has the right to appoint members;

- (h) reduction or suspension of remuneration as defined in section 275.1 of the Act corresponding to a reduction in duties, excluding allowances for attendance at council meetings;
- (i) any other sanction Council deems reasonable and appropriate in the circumstances provided that the sanction does not prevent a Member from fulfilling the legislated duties of a councillor and the sanction is not contrary to the Act.

16. Review

- 16.1. This Bylaw shall be brought forward for review at the beginning of each term of Council, when relevant legislation is amended, and at any other time that Council considers appropriate to ensure that it remains current and continues to accurately reflect the standards of ethical conduct expected of Members.

READ a First time this ___ day of _____ 2018.

READ a Second time this ___ day of _____ 2018.

READ a Third time this ___ day of _____ 2018.

SIGNED AND PASSED this ___ day of _____ 2018.

[INSERT: MAYOR/REEVE]

[INSERT: CHIEF ADMINISTRATIVE
OFFICER/OTHER]



Town of Pincher Creek

REQUEST FOR DECISION

Council or Committee of the Whole

SUBJECT: Land Use Bylaw	
PRESENTED BY: Lisa Goss, Legislative Service Manager	DATE OF MEETING: 3/6/2024

PURPOSE:

For Council to review and discuss adopting a new Land Use Bylaw in accordance with section 640 of the Municipal Government Act.

RECOMMENDATION:

That Council for the Town of Pincher Creek receive the new Land Use Bylaw information as presented.

BACKGROUND/HISTORY:

The current Land Use Bylaw 1547 was originally adopted in 2005 and consolidated to 1547-AS on February 26, 2024.

ALTERNATIVES:

That Council for the Town of Pincher Creek direct administration to

IMPLICATIONS/SUPPORT OF PAST STUDIES OR PLANS:

None at this time.

FINANCIAL IMPLICATIONS:

The estimated cost to prepare a new Land Use Bylaw is \$20,000.

PUBLIC RELATIONS IMPLICATIONS:

In addition to the legislated public hearing process that must be followed when adopting a new Land Use Bylaw, consideration must be given to Public Participation Policy 166-24.

ATTACHMENTS:

Draft new LUB - Admin section Feb 2024 (STEVE) - 3350
Land Use Bylaw Council Overview & Discussion Workbook - 3350

CONCLUSION/SUMMARY:

Administration supports that Council for the Town of Pincher Creek initiate the process of adopting a new Land Use Bylaw.

Signatures:
Department Head:

Lisa Goss

CAO:

Doug Henderson



Town of Pincher Creek

LAND USE BYLAW NO. ????

The Council of the Town of Pincher Creek in the Province of Alberta enacts as follows:

BEING A BYLAW OF THE TOWN OF PINCHER CREEK, IN THE PROVINCE OF ALBERTA, TO REGULATE THE USE AND DEVELOPMENT OF LANDS AND BUILDINGS AND IMPLEMENT THE POLICIES ESTABLISHED IN THE MUNICIPAL DEVELOPMENT PLAN.

ADMINISTRATION

GENERAL

SECTION 1 PURPOSE AND APPLICATION

1.1 SHORT TITLE

This bylaw may be cited as the “Town of Pincher Creek Land Use Bylaw.”

1.2 REPEAL OF FORMER BYLAW

Town of Pincher Creek Bylaw No. 1547 and any amendments thereto are hereby repealed.

1.3 PURPOSE

The purpose of this bylaw is to:

- (1) divide the municipality into districts;
- (2) prescribe and regulate the use(s) for each district, and the intent and purpose for which land and buildings may be used;
- (3) establish a method for making decisions on applications for subdivision and development permits and issuing development permits for a development;
- (4) provide the manner in which notice of the issuance of a development permit is to be given;
- (5) prescribe criteria and standards applicable to land uses as prescribed in the districts; and
- (6) implement the Town of Pincher Creek Municipal Development Plan and other statutory plans of the municipality, as may be developed.

1.4 EFFECTIVE DATE

This bylaw shall come into effect upon third and final reading thereof.



1.5 SEVERABILITY

If any provision of this bylaw is held to be invalid by a decision of a court of competent jurisdiction, that decision will not affect the validity of the remaining portions.

1.6 COMPLIANCE WITH THE LAND USE BYLAW

- (1) No development, other than those designated in Section 4.2 and Schedule 1 of this bylaw (Development Not Requiring a Permit), shall be undertaken within the Town unless a development application has been approved and a development permit has been issued; and
- (2) notwithstanding sub-section (1), while a development permit may not be required pursuant to Section 4.2 and Schedule 1, development shall comply with all regulations of this bylaw.

1.7 COMPLIANCE WITH OTHER LEGISLATION

Compliance with the requirements of this bylaw does not exempt any person undertaking a development from complying with all applicable municipal, provincial or federal legislation, and respecting any easements, covenants, agreements or other contracts affecting the land or the development.

1.8 RULES OF INTERPRETATION

Unless otherwise required by the context, words used in the present tense include the future tense; words used in the singular include the plural; and the word person includes a corporation as well as an individual. The *Alberta Interpretation Act, Chapter I-8, RSA 2000* as may be amended from time to time, shall be used in the interpretation of this bylaw. Words have the same meaning whether they are capitalized or not. The following shall also apply, regarding the potential for perceived conflicts:

- (1) the written regulations of this bylaw take precedence over any graphic or diagram if there is a perceived conflict;
- (2) the Land Use Districts Map takes precedence over any graphic or diagram in the district regulations if there is a perceived conflict; and
- (3) all references to engineering requirements shall be prepared by an engineer registered with The Association of Professional Engineers and Geoscientists of Alberta (APEGA).
- (4) All applicable definitions as applied in this bylaw shall be as outlined and as defined in **Schedule 7**.
- (5) Where there is uncertainty or dispute about the exact location of a boundary of any district as shown on the Land Use District Map the location shall be determined by the application of the following rules. Where the district boundary is shown approximately following:



- (a) the centre line of a public roadway, it shall be deemed to follow the centre line thereof;
- (b) the boundary of a lot or parcel of land, the lot or parcel boundary shall be deemed to be the boundary of the district.
- (c) In situations where Council specifically approved a split zoning (land use designation) to occur on a lot or parcel of land, the measurements on the land use district amending or adoption map that designated the area of land shall apply.

1.9 MEASUREMENTS AND STANDARDS

All units of measure contained within this bylaw are expressed in metric (SI) standard form, with equivalent Imperial measurements and conversions given in parenthesis for information purposes only. Should there be a discrepancy between the metric and Imperial units, the metric standards version shall prevail.

1.10 FORMS, NOTICES AND FEES

- (1) For the purposes of administering the provisions of this bylaw, Council may authorize by separate resolution or bylaw as may be applicable, the preparation and use of such fee schedules, forms or notices as in its discretion it may deem necessary. Any such fee schedules, forms or notices are deemed to have the full force and effect of this bylaw in execution of the purpose for which they are designed, authorized and issued.
- (2) In any case, where the required fee is not listed in the fee schedule, such fee shall be determined by the Development Officer or other such Approving Authority as assigned by Council, and shall be consistent with those fees listed in the schedule for similar developments.
- (3) If development is commenced without a valid development permit, an additional fee in the amount prescribed under the current fee schedule, shall be payable upon application for the development permit.

1.11 APPENDICES

Appendices attached hereto are for information purposes only and may be amended from time to time as it does not form part of the Town of Pincher Creek Land Use Bylaw.

SECTION 2 APPROVING AUTHORITIES AND RESPONSIBILITIES

2.1 DEVELOPMENT AUTHORITY

The Development Authority is established in accordance with the **Municipal Development and Subdivision Authority Bylaw (Appendix C)** and any amendments thereto, and consists of:

- (1) the Municipal Development and Subdivision Authority while exercising development powers or duties under this bylaw, the **Municipal Development and Subdivision Authority**



Bylaw (Appendix C), where applicable by resolution of Council, or as prescribed in the *MGA*;

- (2) the Development Officer while exercising development powers or duties under the Municipal Development and Subdivision Authority Bylaw (Appendix C), this bylaw, where applicable by resolution of Council, or as prescribed in the *MGA*;
- (3) in the absence of the appointed Development Officer, the following are authorized to act in the capacity of Development Officer:
 - (a) Chief Administrative Officer; or
 - (b) a designate(s) in accordance with the *MGA*.
- (4) Where the term or reference to Development Authority is made in this bylaw, the term refers to either the Municipal Development and Subdivision Authority or the Development Officer being responsible or performing the duty outlined.
- (5) Council, although not forming part of the Development Authority, shall make development decisions in Direct Control Districts, unless decision making authority has been specifically delegated by the Direct Control bylaw to the Municipal Development or Subdivision Authority or the Development Officer under section 624 of the *MGA* (refer to subsection 2.2).

DUTIES AND RESPONSIBILITIES OF THE DEVELOPMENT AUTHORITY

2.1.1 Development Officer

- (1) The office of the Development Officer is hereby established, and Council shall by resolution, appoint one or more Development Officer positions. Council, through this resolution, may delegate to the CAO the authority to appoint a person to the Development Officer position.
- (2) The Development Officer is an authorized Designated Officer while only carrying out development and land use functions or duties for the municipality in accordance with sections 210 and 623(b) of the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA,)*, the Municipal Development and Subdivision Authority Bylaw (Appendix C) as may be amended from time to time, and this bylaw.
- (3) The authorized Designated Officer powers of the Development Officer, as it relates to development and land use, shall include:
 - (a) the duties and responsibilities specified in this Bylaw;
 - (b) municipal inspections and enforcement in accordance with section 542 of the *MGA*;
 - (c) order to remedy bylaw contraventions in accordance with section 545 of the *MGA*;
 - (d) order to remedy dangers and unsightly property in accordance with section 546 of the *MGA*;



- (e) certification requirements for advertising in accordance with section 606 of the MGA;
 - (f) signature evidence in accordance with section 630 of the MGA, including signing the issuance of development permits, decisions (approvals or refusals) and compliance certificates or letters;
 - (g) at the direction of council, imposition and collection of a redevelopment levy in accordance with section 634 of the MGA;
 - (h) at the direction of council, notification of the Registrar of Land Titles that the provisions of the MGA have been complied with and request for the Registrar to remove a designation of municipal reserve, community services reserve, or conservation reserve.
- (4) The Development Officer:
- (a) shall assist and generally advise the public with respect to the standards and requirements of the Land Use Bylaw and other pertinent land use regulations or municipal development requirements;
 - (b) shall receive all development applications and shall review each application to ensure that it is complete in accordance with the requirements of this bylaw;
 - (c) shall collect the fees payable for each development permit application in accordance with the fees which has been established by resolution of Council;
 - (d) may require a development permit applicant to supply information other than prescribed in this bylaw if such information is deemed to be necessary for consideration of the development application;
 - (e) may not deem a development application complete until all required information has been provided and the Development Officer is satisfied that all requirements have been met;
 - (f) except as provided in sub-sections (h) and (i), shall consider and decide upon applications for development permits for:
 - (i) permitted uses that comply with this bylaw;
 - (ii) permitted uses that request variance(s) as prescribed in **Section 4.10**;
 - (iii) permitted uses on existing registered lots where the Municipal Development and Subdivision Authority granted a variance to the minimum lot width, length and/or area requirements as a part of the subdivision approval of the lot;
 - (iv) landscaping; fences, walls or other types of enclosures that comply with this bylaw; and
 - (v) demolition, in accordance with the outlined process for demolition;
 - (g) may, as a condition of issuing a Development Permit, require the applicant to provide security in the form of a certified cheque, irrevocable Letter of Credit or other security



acceptable to the Development Officer, to ensure the terms and conditions attached to the Development Permit are carried out;

- (h) shall refer any discretionary development application or applications requiring a variance beyond the jurisdiction of the Development Officer to the Municipal Development and Subdivision Authority for a decision, and may refer any other planning or development matter to the Municipal Development and Subdivision Authority for its review, comment or advice;
- (i) shall refer all development permit applications in a Direct Control District to Council for a decision, unless Council has specifically delegated approving authority to the Development Officer or the Municipal Development and Subdivision Authority;
- (j) shall consider and decide upon requests for time extensions on development permit applications for permitted uses;
- (k) shall keep and maintain, for the inspection of the general public during office hours, a copy of this bylaw including all amendments, and shall ensure that copies of the same are available to the general public for a fee which has been established by resolution of Council;
- (l) shall keep on file, and make available for inspection by the general public during regular office hours, a register of all completed applications for development permits, including the decisions thereon; and
- (m) shall perform any other powers and duties as are specified in this bylaw, the Municipal Development and Subdivision Authority Bylaw, the *MGA*, or by resolution of Council.

2.1.2 Municipal Development and Subdivision Authority

- (1) The Municipal Development and Subdivision Authority may exercise only such powers and duties as are specified in this bylaw, the Municipal Development and Subdivision Authority Bylaw as may be amended from time to time, the *MGA*, or by resolution of Council;
- (2) the Municipal Development and Subdivision Authority shall be responsible for:
 - (a) considering and deciding upon development permit applications referred to it by the Development Officer, including all discretionary development applications or those requiring variances outside the jurisdiction of the Development Officer;
 - (b) providing recommendations on planning and development matters referred to it by the Development Officer or Council;
 - (c) considering and deciding upon requests for time extensions on development permit applications referred to it by the Development Officer;



- (d) requiring, when deemed necessary by the Commission, the applicant to provide security in the form of a certified cheque, irrevocable Letter of Credit or other security acceptable to the Commission; and
 - (e) any other powers and duties as are specified in this bylaw, the Municipal Development and Subdivision Authority bylaw, the *MGA*, or by resolution of Council.
- (3) The Municipal Development and Subdivision Authority, in accordance with the **Municipal Development and Subdivision Authority Bylaw**, shall be the designated Subdivision Authority considering and deciding upon applications for subdivision approval.
- (4) The Subdivision Authority may, as authorized through the **Municipal Development and Subdivision Authority Bylaw**, this bylaw, or by resolution of Council, or through delegation to the CAO, delegate any of its required subdivision authority powers, functions, or duties in the processing of subdivision applications to an authorized person or entity. In respect of this:
- (a) the delegation of duties by the Subdivision Authority may include the authorized person or entity (e.g., agency, commission) being responsible for determining the completeness of a submitted subdivision application; and
 - (b) the Subdivision Authority delegate is authorized to carry out the subdivision application process as described in the Subdivision Application Procedures in Section 7 of this bylaw.

2.1.3 Subdivision and Development Appeal Board

- (1) The powers, duties and responsibilities of the Subdivision and Development Appeal Board with respect to this bylaw are those established in the *MGA* and the Subdivision and Development Appeal Board Bylaw and any amendments thereto.
- (2) The Subdivision and Development Appeal Board shall consider and decide upon all appeals concerning subdivision and development decisions and stop orders which have been properly filed in accordance with this bylaw and the *MGA*.

2.2 DUTIES AND RESPONSIBILITIES OF COUNCIL

2.2.1 Council

- (1) Council shall be responsible for considering and deciding upon development permit applications within any Direct Control district except where the decision making authority has been delegated to the Municipal Development and Subdivision Authority or the Development Officer.
- (2) Council shall be responsible for considering and deciding upon requests for time extensions on subdivision approvals in accordance with section 657 of the *MGA*.
- (3) Council shall be responsible for considering all proposed bylaw amendments including land use redesignations, use provisions or development standards, to this bylaw.



SECTION 3 DEVELOPMENT IN GENERAL

3.1 ESTABLISHMENT OF DISTRICTS

- (1) In accordance with section 640 of the *MGA*, all land within the Town of Pincher Creek is herein divided into land use districts.
- (2) The boundaries of the districts are delineated on the Land Use Districts Map contained in Schedule 3 of this bylaw.
- (3) With the exception of particular direct control districts, the defined uses of land or buildings in each district are classified as follows:
 - (a) permitted uses in each district, or
 - (b) discretionary uses in each district, and
 - (c) specific prohibited uses, although any use not listed as permitted, discretionary or deemed similar in nature to such uses shall be prohibited.
- (4) A use not defined in this bylaw but which is reasonably similar in character and purpose to a permitted use or discretionary use in that district may be deemed a similar use by the Development Authority in accordance with Section 3.7.
- (5) Where a perceived error exists on the Land Use Districts Map relating to the assigning of a Land Use District to a specific lot or portion of the Town, corrective action regarding the perceived error shall be decided upon by resolution of Council or if Council has designated such decision making authority to the Development Officer.
- (6) Land identified in an Overlay district shall be subject to the regulations, land uses and standards as stipulated in the Overlay district which take precedence over any regulations, land uses and standards prescribed in the underlying land use district. For a parcel of land only partially affected by an Overlay district, the Overlay rules shall only apply to the portion of land identified as part of the Overlay.

3.2 USE OF LAND

A person who develops land or buildings in the Town shall comply with all requirements of this bylaw including all conditions attached to a development permit if one is required, and all other applicable federal, provincial, and municipal requirements.

3.3 SUITABILITY OF SITES

- (1) Notwithstanding that a use of land may be permitted or discretionary or considered similar in nature to a permitted or discretionary use in a land use district, the Subdivision Authority or Development Authority, as applicable, may refuse to approve a subdivision or issue a development permit if the Subdivision Authority or Development Authority is made aware of or if in their opinion, the site of the proposed building or use:



- (a) does not have safe legal and physical access to a maintained road in accordance with this bylaw, other municipal requirements or those of Alberta Transportation within the prescribed distance of a highway and provincial jurisdiction;
- (b) creates a situation where vehicular and non-vehicular traffic safety is negatively impacted;
- (c) is located within a future road right-of-way or road alignment,
- (d) has a high water table or soil conditions which make the site unsuitable for foundations or is in a flood zone or flood prone area;
- (e) is situated on or adjacent to an unstable slope or area of subsidence;
- (f) consists of unconsolidated material unsuitable for building;
- (g) does not comply with the requirements of the Regional Plan, Matters Relating to Subdivision and Development Regulation, MDP, IDP, or any other applicable statutory plans;
- (h) is situated over an active or abandoned oil or gas well or pipeline;
- (i) is unsafe due to contamination by previous land uses;
- (j) does not meet the minimum setback requirements from a sour gas well or bulk ammonia storage facility;
- (k) does not have adequate municipal water and/or sewer provisions;
- (l) cannot adequately contain or convey storm water runoff;
- (m) is incompatible with existing and approved uses of neighbouring land;
- (n) does not meet lot size and/or setback requirements or any other applicable standards or requirements of this bylaw, unless variance has been granted in accordance with **Section 4.9** of this bylaw;
- (o) is subject to an easement, caveat, restrictive covenant or other registered encumbrance which makes it impossible to build on the site; and
- (p) any other land use matters deemed relevant by the Development Authority that may affect the proposed use.

3.4 REGULATION OF DWELLING UNITS ON A LOT

- (1) The municipality may regulate through this bylaw the number, density, and type of dwellings permissible on a parcel or lot.
- (2) No person shall construct or locate, or cause to be constructed or located, more than one dwelling unit on a parcel or lot except when permitted by the land use district or unless authorized by the Development Authority through the issuance of a development permit.



3.5 NON-CONFORMING LOT SIZES

- (1) Development on an existing registered lot or parcel that does not conform with the minimum requirements for lot length, width or area specified in the applicable land use district as per this bylaw, may be permitted at the discretion of the Development Authority; and
- (2) the Development Officer is authorized to approve development on existing registered lots or parcels that do not conform to the requirements for lot length, width or area specified in the applicable land use district as per this bylaw, if a variance was issued as a part of the subdivision approval of the lot.

3.6 DEVELOPMENT AGREEMENTS

- (1) The Development Authority may require, with respect to a development, the applicant/developer enter into an agreement with the municipality, pursuant to section 650(1) of the *MGA*, to do any or all of the following:
 - (a) to construct or pay for the construction of a road required to give access to the development;
 - (b) to construct or pay for the construction of:
 - i. a pedestrian walkway system to serve the development, or
 - ii. pedestrian walkways to connect the pedestrian walkway system serving the development with a pedestrian walkway system that serves or is proposed to serve an adjacent development, or both;
 - (c) to install or pay for the installation of public utilities, other than telecommunications systems or works, that are necessary to serve the development;
 - (d) to construct or pay for the construction of:
 - i. off-street or other parking facilities; and
 - ii. loading and unloading facilities;
 - (e) to pay an off-site levy or redevelopment levy;
 - (f) to outline the obligations of the developer in developing and servicing the land; and
 - (g) to give security to ensure that the terms of the agreement under this section are carried out.
- (2) The Subdivision Authority may require, with respect to a subdivision that as a condition of issuing an approval for a subdivision, the applicant enter into an agreement with the municipality, pursuant to section 655(1) of the *MGA*.



- (3) An agreement referred to in this section may require the applicant for a development permit or subdivision approval to oversize improvements in accordance with section 651 of the *MGA*.
- (4) A municipality may register a caveat under the *Land Titles Act* with respect to an agreement under this section against the certificate of title for the land that is the subject of the development, or for the parcel of land that is the subject of the subdivision.
- (5) If a municipality registers a caveat under this section, the municipality must discharge the caveat when the agreement has been complied with.
- (6) As a condition of subdivision approval, all agreements may be registered concurrently by caveat onto individual lots being created.
- (7) The Developer shall be responsible for and within thirty (30) days of the presentation of an owing account, pay to the Town all legal and engineering costs, fees, expenses and disbursements incurred by the Town through its solicitors and engineers for all services rendered in connection with the preparation, fulfillment, execution and enforcement of the agreement, unless otherwise agreed to by the Town and stipulated in a development agreement.

3.7 SIMILAR USES

- (1) Upon receipt of a complete application for a development permit for a use that is not specifically listed in any land use district, but which may be similar in character and purpose to other uses of land and structures in the land use district in which such use is proposed, the Development Officer may classify the use as either similar to a permitted use or similar to a discretionary use.
- (2) Where a use has been classified similar to a permitted use, the Development Officer may process the application accordingly as a permitted use or refer the application to the Municipal Development and Subdivision Authority for a decision. The notice of the decision shall be subject to Section 4.12 (Notice of Decision).
- (3) Where a use has been classified similar to a permitted use and requests exceeding the powers outlined in Section 4.10(2), the Development Officer shall:
 - (a) refer the application to the Municipal Development and Subdivision Authority for a decision; and
 - (b) notify adjacent landowners and other persons likely to be affected in accordance with Section 4.11 (Notification of Adjacent Landowners and Persons Likely Affected).
- (4) Where a use has been classified similar to a discretionary use the Development Officer shall:



- (a) refer the application to the Municipal Development and Subdivision Authority for a decision; and
 - (b) notify adjacent landowners and other persons likely to be affected in accordance with **Section 4.11** (Notification of Adjacent Landowners and Persons Likely Affected).
- (5) Upon referral of an application by the Development Officer for a use that may be similar in character and purpose to a permitted or discretionary use, the Municipal Development and Subdivision Authority:
- (a) shall rule whether or not the proposed use is similar to a use in the land use district in which it is proposed;
 - (b) if the proposed use is deemed similar to a use in the land use district in which it is proposed, the application shall be reviewed as a discretionary use application;
 - (c) if the proposed use is not deemed similar to a use in the land use district in which it is proposed, the development permit shall be refused.

3.8 TEMPORARY USES

- (1) The Development Authority may issue a temporary development permit for a period of time as deemed appropriate by the Development Authority but not to exceed **24 months** for uses that are determined to be temporary in nature. The proposed temporary use must be either a permitted, discretionary, or deemed similar use in conformance with the applicable land use district and the development permit shall be subject to the following:
- (a) the applicant or developer is liable for any costs involved in the cessation or removal of any development at the expiration of the permitted period;
 - (b) the Development Authority may require the applicant to submit an irrevocable Letter of Credit, certified cheque, or other form of security acceptable to the Development Authority guaranteeing the cessation or removal of the temporary use; and
 - (c) any other conditions as deemed necessary.
- (2) The Development Authority may extend the validity of a temporary permit one time for an additional 12 months.
- (3) Once a temporary permit has expired and is no longer valid, an applicant may not reapply for the same or similar use on the same parcel for at least 6 months from the expiration date.

3.9 NON-CONFORMING USES AND BUILDINGS

- (1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use



or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw in accordance with the parameters and conditions detailed in section 643 of the *MGA*.

- (2) A non-conforming use of land or a building may only be continued in accordance with the conditions detailed in section 643 of the *MGA*.
- (3) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except:
 - (a) to make it a conforming building,
 - (b) for routine maintenance of the building, which may include painting, replacing flooring, reshingling, residing, if the Development Authority considers it necessary, or
 - (c) in accordance with the land use bylaw Section 3.10 that provides minor variance powers to the Municipal Development and Subdivision Authority for the purposes of this section.

3.10 NON-CONFORMING VARIANCE POWERS

- (1) In respect of the minor variance powers afforded, the Municipal Development and Subdivision Authority may allow that the building may undergo structural alterations to address safety issues if the building is currently habitable, windows or doors may be upgraded or changed, and a new porch, steps, landing, veranda, or uncovered deck may be attached or added to the building.

SECTION 4 DEVELOPMENT PERMIT RULES AND PROCEDURES

4.1 DEVELOPMENT PERMITS REQUIRED

- (1) Except as otherwise provided for in section 4.2, no person shall commence a development unless they have been issued a development permit in respect of the development in accordance with any terms and/or conditions of a development permit pursuant to this bylaw; and
- (2) in addition to meeting the requirements of this bylaw, it is the responsibility of the applicant to ascertain, obtain and comply with all other approvals and licenses that may be required by other federal, provincial or municipal regulatory departments or agencies.

4.2 DEVELOPMENT NOT REQUIRING A PERMIT

- (1) Developments not requiring a municipal development permit are listed in Schedule 2.
- (2) This subsection does not negate the requirement of obtaining all required permits, as applicable, under the *Safety Codes Act* and any other Provincial or Federal statute.
- (3) This subsection does not negate the requirement of obtaining a business license or other municipal approval where required.



- (4) If a variance to any measurable standard in this bylaw is required this exemption section does not apply, and a development permit is required; and
- (5) if there is a question as to whether a development permit is required for a particular use, the matter shall be referred to the Municipal Development and Subdivision Authority for a determination.

4.3 DEVELOPMENT PERMIT APPLICATIONS

- (1) All development permit applications shall be made only by the registered owner(s) of the land or titled unit on which the development is proposed, or if not the registered owner, then a person or agent who is authorized to act on their behalf, such as a developer, contractor, land surveyor, engineer, lawyer or property tenant/leasee.
 - (a) The Development Officer may request written consent be provided by the registered owner(s) if a person is acting on their behalf.
- (2) Applications submitted to the Development Officer shall include the following information, unless otherwise indicated by the Development Officer in accordance with sub-sections (4) and (5):
 - (a) a complete signed and dated application form with the required fee;
 - (b) a description of the proposed development, including a statement of the intended use of all land, buildings, and finishes or materials to be used;
 - (c) a legible site plan showing:
 - i. north arrow and accurate orientation of all proposed development;
 - ii. the scale of the plan, to the satisfaction of the Development Authority;
 - iii. the area and dimensions of the property to be developed;
 - iv. the presence of any and all abandoned wells; and if, abandoned wells are present, a professionally prepared plot plan showing the actual well location(s) in relation to property lines and existing and/or proposed buildings;
 - v. the locations and external dimensions, including the height of all existing buildings on the site and any buildings to be erected;
 - vi. location and size of driveways; and
 - vii. all front, side and rear yard setback areas with dimensions from buildings or structures to all property lines.
 - (d) For new buildings, structures, or additions, the provision of a floor plan and elevation (side view) plans of the building(s) to be constructed.
 - (e) In the cases where the proposed development is for commercial, industrial, institutional, or multiple residential dwelling unit developments on one or more lots



the following additional information is required unless otherwise exempted by the Development Officer:

- i. schedule of densities which will result from the number of units;
 - ii. parking and loading provisions in accordance with bylaw standards;
 - iii. access/egress to and from the site;
 - iv. location of fencing, storage areas and garbage receptacles;
 - v. landscaping and site improvement proposals;
 - vi. the location of all existing buildings, roads, water bodies and other physical features of the land and all adjacent properties;
 - vii. the location of existing sidewalks and curbs;
 - viii. servicing detail plans; and
 - ix. the proposed lot grade and on-site drainage information;
- (f) in cases where architectural controls are in place and applicable to the parcel or unit in question, a copy of the architectural controls approval;
- (g) a current copy of the Certificate of Title; and
- (h) any other information deemed necessary by the Development Officer to adequately process the application.
- (i) Items (e)(ii) through (ix) are to be illustrated on a comprehensive site plan which also shall include any proposed phasing of development or illustrate the location of any future buildings to be sited, etc.
- (3) In accordance with section 4.3(2)(h) other information may include but is not limited to a lot grading plan, a storm water management plan, geotechnical investigation results prepared and sealed by a member in good standing of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) ensuring that the site is suitable in terms of topography, soil characteristics, flooding, subsidence, slope stability, erosion, and any other engineering, construction, or servicing detail information that may be required.
- (4) For any development application, a current copy of the Certificate of Title to the land showing ownership and encumbrances shall be provided when requested by the Development Officer.
- (5) The Development Officer may accept an application without the provision of a site plan for proposed developments where the site or land will not be altered or have new buildings or structures added to it, such as a change in use or home occupation application.



- (6) As specified in the bylaw, certain developments or uses as outlined (such as home occupations, signage, demolition), have its own or supplementary application form and prescribed information to be provided by an applicant.
- (7) The Development Officer may require security or refundable deposits to be provided as part of the development permit application submission requirements.
- (8) The Development Officer may accept an application and make a decision thereon without any or all of the above information if, at its discretion, the nature of the development is such that a decision on the application for the proposed development would not:
 - (a) unduly interfere with the amenities of the neighbourhood; or
 - (b) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land; andthe proposed development conforms with the use prescribed for that land or building in this bylaw.

4.4 DETERMINATION OF COMPLETE DEVELOPMENT PERMIT APPLICATION

- (1) A Development Officer shall, within 20 days after the receipt of an application for a development permit in accordance with Section 4.3, determine whether the application is complete.
- (2) An application is complete if, in the opinion of the Development Officer, the application contains the documents and other information necessary to review the application.
- (3) The commencement of processing the application by the Development Officer is an acknowledgement to the applicant that the submitted information and application is deemed to be complete.
- (4) The time period referred to in sub-section (1) may be extended by an agreement in writing between the applicant and the Development Officer.
- (5) If the Development Officer does not make a determination referred to in sub-section (1) within the time required or agreed to under sub-sections (1) or (4), the application is deemed to be complete.
- (6) If the Development Officer determines that the application is incomplete, the Development Officer shall issue to the applicant a written notice indicating that the application is incomplete and specifying the outstanding documents and information to be provided, including but not limited to those required by Section 4.3. A submittal deadline for the outstanding documents and information shall be set out in the notice. A later date may be agreed on between the applicant and the Development Officer in writing to extend the submission deadline.
- (7) When the Development Officer determines that the information and documents required to be submitted under sub-section (6) are complete, the Development Officer shall issue



to the applicant a written Notice of Completeness acknowledging that the application is complete, delivered by hand, mail, or electronic means.

- (8) If the required documents and information under sub-section (6) have not been submitted to the Development Officer within the timeframe prescribed in the notice issued under sub-section (6), the Development Officer shall return the application to the applicant accompanied by a written Notice of Refusal stating the application is deemed refused and the reasons for refusal.
- (9) Despite issuance of a Notice of Completeness under sub-sections (5) or (7), the Development Authority in the course of reviewing the application may request additional information or documentation from the applicant that the Development Authority considers necessary to review the application.

4.5 PERMITTED USE APPLICATIONS

- (1) Upon receipt of a completed development permit application for a permitted use that conforms with this bylaw, the Development Officer:
 - (a) shall consider whether a notice should be sent to those listed in Section 4.11 and shall refer the application where required to do so;
 - (b) shall issue a development permit with or without conditions, including the provision of a Development Agreement pursuant to the *MGA*; or
 - (c) may refer the application to the Municipal Development and Subdivision Authority for a decision.
- (2) Conditions imposed by a Development Officer shall be in consideration of Section 4.9 and shall be reasonable planning-related conditions in order to ensure the proposed use will comply with provisions of the bylaw, any applicable municipal bylaw, the municipal development plan or any other statutory plan.
- (3) All applications requesting variances shall be processed in accordance with Section 4.10 (Variances).
- (4) An application for a permitted use that is determined by the Development Officer to not conform with this bylaw may be refused a development permit application, stating reasons.

4.6 DISCRETIONARY USE APPLICATIONS

- (1) Upon receipt of a complete development permit application for a discretionary use the Development Officer shall:
 - (a) determine completeness of the application and process accordingly in accordance with Section 4.4;



- (b) notify adjacent landowners and other persons likely to be affected in accordance with Section 4.11 including government departments, referral agencies and the MD of Pincher Creek; and
 - (c) refer the application to the Municipal Development and Subdivision Authority for a decision.
- (2) After consideration of any response to the notifications of adjacent landowners and other persons likely to be affected, including the MD of Pincher Creek, government departments and referral agencies as applicable, compatibility and suitability of the proposed uses, and any other matters, the Municipal Development and Subdivision Authority may:
- (a) approve a development permit with or without conditions; or
 - (b) refuse a development permit application, stating reasons.
- (3) The Municipal Development and Subdivision Authority may place any of the conditions stipulated in Section 4.9 on a development permit for a discretionary use, in addition to any other conditions necessary to ensure the quality, suitability and compatibility of the development with other existing and approved uses in the area.

4.7 CHANGE OF USE APPLICATIONS

- (1) Where, in the opinion of the Development Officer, a proposed new land use is deemed to be a change of use from existing development the applicant or developer shall be required to apply for a development permit for a change of use of the buildings or land. In such situations, the following shall apply:
- (a) A change of use is applicable where a developer is proposing to change a previously approved development to a different use that is materially different, is defined separately in the bylaw as a use, or cannot be deemed similar in nature to the existing use or is likely to result in a change in the intensity of use of the land or building.
 - (b) The new use being proposed for the building or land must be a use that is listed as either permitted or discretionary in the applicable land use district.
 - (c) The proposed change of use development permit must be processed in accordance with the processing and notification requirements of this bylaw and is subject to the development standards applicable to the new proposed use.

4.8 APPLICATIONS IN DIRECT CONTROL DISTRICTS

- (1) Upon receipt of a complete application for a development permit in a Direct Control District, the Development Officer shall:
- (a) refer the application to Council for a decision, except where the decision-making authority has been delegated to the Municipal Development and Subdivision Authority or the Development Officer; and



- (b) notify adjacent landowners and other persons likely to be affected in accordance with Section 4.11(3).
- (2) After considering any response to notifications issued under Section 4.11(3), Council or the delegated decision making authority in the Direct Control bylaw may:
 - (a) approve a development permit with or without conditions; or
 - (b) refuse to approve the development permit, stating reasons.

4.8 DEMOLITION

- (1) Any individual who wishes to demolish a building, structure, or utility, but not including fences or buildings 13.9 m² (150 sq. ft.) or less in size, must make application to the Development Officer using **Form D of Appendix 7** of this Land Use Bylaw and paying the prescribed fee.
- (2) Demolition applications are dealt with in the same manner as a permitted use application and a demolition permit approval may be issued with or without conditions by the Development Officer, with no notification of adjacent landowners and persons likely affected required.
- (3) The Development Officer may use its discretion to refer demolition applications to various utility agencies, government departments, or internal municipal departments as it determines may be necessary as circumstances warrant.

4.9 DEVELOPMENT PERMIT CONDITIONS

The Development Authority may place any of the following conditions on a development permit for a permitted or discretionary use:

- (1) require the applicant to enter into a development agreement or deferred servicing agreement pursuant to the *MGA*, as prescribed in Section 3.6;
- (2) require the provision of security in the form of a certified cheque, irrevocable Letter of Credit or other security acceptable to the Development Authority to ensure the terms of the permit approval are carried out;
- (3) require geotechnical investigation results prepared and sealed by a member in good standing of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) ensuring that the site is suitable in terms of topography, soil characteristics, flooding, subsidence, slope stability, erosion and servicing;
- (4) provide professionally prepared lot grading plans or engineered storm water management plans;
- (5) provide engineering, construction, landscaping, or servicing detail plans for the development to the satisfaction of the municipality;



- (6) require the alteration of a structure or building size or location to ensure any setback requirements of this bylaw or the Subdivision and Development Regulation can be met;
- (7) specify time periods stipulating completion of development;
- (8) require the applicant to provide easements and/or encroachment agreements required as a result of the development;
- (9) stipulate the application of an increased setback to any minimum required setback if determined to be necessary where an adjacent use may be considered to be otherwise negatively impacted, and the increased setback would serve to improve the suitability of the proposed use at the subject location, with consideration for the local context;
- (10) to repair or reinstate, or pay for the repair or reinstatement to original condition, of any street furniture, curbing, sidewalk, boulevard landscaping and tree planting that may be damaged or destroyed or otherwise harmed by development or/and building operations upon the site;
- (11) provide a professionally prepared Environmental Impact Assessment;
- (12) provision of vehicular and pedestrian access and public utilities, other than telecommunications systems or works;
- (13) provide a professionally prepared Traffic Impact Assessment;
- (14) specifying or limiting hours or days of operations;
- (15) requiring the applicant to obtain any other approval, permit, authorization, consent or license that may be required to develop or service the affected land;
- (16) requirement for a lot, site, or construction stakeout conducted by an approved surveyor or geomatic agent;
- (17) any measure required to ensure compliance with applicable federal, provincial and/or municipal legislation and approvals; and
- (18) any other conditions necessary to ensure compliance with this bylaw, municipal standards, and any other statutory plans brought into force by the Town of Pincher Creek.

4.10 VARIANCES

- (1) In accordance with section 640(6) of the *MGA*, the Development Authority may decide on a development permit application even though the proposed development does not comply with this bylaw if, in the opinion of the Development Authority:
 - (a) the proposed development would not:
 - i. unduly interfere with the amenities of the neighbourhood; or
 - ii. materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land; and



the proposed development conforms with the use prescribed for that land or building in this bylaw.

- (2) The Development Officer may only exercise a variance or waiver discretion under Section 4.10 (1) in respect of the following matters:
 - (a) granting one minor waiver not exceeding 15 percent of one of the measurable standards established in this bylaw for a permitted use; or
 - (b) granting two minor waivers not exceeding a combined total of 10 percent of any of the measurable standards established in this bylaw for a permitted use;
 - (c) approval of minor deviations from approved site plans and/or drawings.
- (3) Upon receipt of a complete application for a development permit that does not comply with this bylaw but in respect of which the Municipal Development and Subdivision Authority is requested to exercise discretion as outlined in sub-section (1), the Development Officer shall:
 - (a) refer the application to the Municipal Development and Subdivision Authority for a decision; and
 - (b) notify adjacent landowners and other persons likely to be affected, including the MD of Pincher Creek, government departments and any other referral agency in accordance with Section 4.11.

4.11 NOTICE OF ADJACENT LANDOWNERS AND PERSONS LIKELY AFFECTED

- (1) Where notification of adjacent landowners and persons likely affected is required as set forth in section 640 of the MGA and Administration of this bylaw, the Development Officer:
 - (a) shall mail (postal service or electronic) written notice of the application and the date of Municipal Development and Subdivision Authority meeting at least twelve (12) days (allowing for 7 days mailing and 5 days minimum notice*¹) before the meeting of the Municipal Development and Subdivision Authority to:
 - i. adjacent (contiguous) landowners;
 - ii. the MD of Pincher Creek, if in the opinion of the Development Officer or the Municipal Development and Subdivision Authority, the proposed development could have an impact upon land uses in the MD or is adjacent to the MD Boundary or is required in accordance with an IDP policy; and
 - iii. any government departments or referral agency that is deemed to be affected or required by legislation; or

¹ Wherever delivery of a notice involves mailing by regular postal service, 7 days must be allowed before it is deemed to be received.



- (b) shall hand deliver written notice of the application and meeting date at least 5 days before the meeting of the Municipal Development and Subdivision Authority to the persons and agencies specified in subsection (1)(a); or
 - (c) publish a notice of the application and meeting date in a newspaper circulating in print or online in the municipality, or a Town newsletter, at least five (5) days before the meeting of the Municipal Development and Subdivision Authority to the persons and agencies specified in subsection (1)(a); or
 - (d) post a notice of the application and meeting date online in a conspicuous space on the Town of Pincher Creek website or social media site(s) at least five (5) days before the meeting of the Municipal Development and Subdivision Authority or as outlined in an adopted advertising bylaw of the municipality; or
 - (e) post a notice of the application and meeting date in a conspicuous place on the property at least five (5) days before the meeting of the Municipal Development and Subdivision Authority to the persons and agencies specified in subsection (1)(a); or
any combination of the above.
 - (f) The Development Officer may at their discretion, in addition to the above, also mail (postal service or electronic) written notice of the application at least twelve (12) days before the meeting of the Municipal Development and Subdivision Authority to area landowners who are not immediately adjacent and any other persons the Development Officer deems may potentially be affected by the issuance of a development permit.
- (2) In all cases, the notification shall: describe the nature and location of the proposed use or development; state the time and place where the Development Authority will meet to consider the application; indicate how and when written or oral submission on the application will be received and considered; and specify the location at which the development permit application and any support material can be inspected.

4.12 NOTICE OF DECISION

- (1) Upon the issuance of a decision on a development permit application for a permitted use that complies with this bylaw, the Development Officer shall:
 - (a) Immediately mail (postal service or electronic mail) or hand deliver a written notice of decision to the applicant; and
 - (b) post a copy of the decision in a prominent place in the Town Office for at least 21 days; or
 - (c) post a copy of the decision online in a conspicuous space on the Town of Pincher Creek website or social media site(s) as outlined in an adopted advertising bylaw of the municipality, for at least 21 days; or



- (d) in addition to (a) undertake both (b) and (c).
- (2) Upon the issuance of a decision on all other development permit applications (discretionary uses, variances), the Development Officer shall:
 - (a) mail (postal service or electronic mail) or hand deliver a written notice of decision to the applicant; and
 - (b) mail a copy of the decision to those originally notified of the development permit application, those that made written submissions, and any other person, government department or agency that may, in the opinion of the Development Officer, likely be affected; or
 - (c) publish a notice of the decision in a newspaper or the municipal newsletter in print or online circulated within the municipality; or
 - (d) in addition to (a) a combination of both (b) and (c).

4.13 COMMENCEMENT OF DEVELOPMENT

Despite the issuance of a development permit, no development is authorized to commence until the appeal period has expired in compliance with the following:

- (1) Within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw as per section 686(1) of the *MGA* for a permitted use where a variance was granted or conditions were imposed on the permit or for a discretionary use.
- (2) Any development work that commences prior to the legislated appeal period expiring is at the sole risk and expense of the applicant/developer.
- (3) For development permits issued that have been appealed, no development shall commence until the appeal is decided upon.

4.14 VALIDITY OF DEVELOPMENT PERMIT

- (1) Unless a development permit is suspended or cancelled, the development must be commenced or carried out with reasonable diligence in the opinion of the Development Authority within **24 months** from the date of issuance of the permit, otherwise the permit is void, notwithstanding an extension approved by the Development Authority prior to the 24 month period concluding.
- (2) An application to extend the validity of a development permit may be made at any time prior to the expiration of the approved permit.
- (3) Upon receipt of a request to extend the validity of a development permit, the validity of a development permit may be extended for a period of up to **12 months** from the original validity expiration date by:



- (a) the Development Officer if the permit was decided upon and issued by the Development Officer; or
 - (b) the Municipal Development and Subdivision Authority if the permit was issued by the Municipal Development and Subdivision Authority or approved on appeal by the Subdivision and Development Appeal Board.
- (4) No circulation or notification is required prior to making a decision on granting an extension but it may occur at the discretion of the Development Authority if deemed warranted.
- (5) When any use has been discontinued for a period of 24 months or more, any development permit that may have been issued is no longer valid and the use may not be recommenced until a new application for a development permit has been made and a new development permit issued.
- (6) If, after a development permit has been issued, the Designated Officer finds a clerical, technical, grammatical, or typographical error on the issued permit which does not materially affect the permit in principle or substance (e.g., wrong permit number, applicant name, legal description or municipal address), the Development Officer may correct the error and reissue the permit with the correct information and there is no renotification required and no avenue for an appeal.

4.15 TRANSFER OF DEVELOPMENT PERMIT

Except for Home Occupation permits which are non-transferable, a valid development permit on a lot or parcel is transferable to another person or entity (i.e., runs with the land) when the use remains unchanged, and the development is affected only by a change in ownership, tenancy, or occupancy.

4.16 FAILURE TO MAKE A DECISION

In accordance with section 684 of the *MGA*, an application for a development permit is, at the option of the applicant, deemed refused if a decision has not been made by the Development Authority within 40 days of an application being deemed complete under Section 4.4(5)(7), unless the applicant has entered into an agreement with the Development Authority to extend the 40-day period.

4.17 REAPPLICATION FOR A DEVELOPMENT PERMIT

- (1) If an application for a development permit is refused by the Development Authority or the Subdivision and Development Appeal Board on an appeal, another application for development on the same lot for the same or similar use shall not be made for 6 months from the date of refusal; or
- (2) if an application was refused solely because it did not comply with the standards of this bylaw, or was refused as an incomplete application under Section 4.4(6) or (8), the Development Officer may accept another application on the same lot for the same or



similar use before the time period referred to in sub-section (1) is up, provided the application has been modified to comply with this bylaw.

4.18 SUSPENSION OR CANCELLATION OF A PERMIT

- (1) If, after a development permit has been issued, the Development Authority finds:
 - (a) the application for the development permit contained a serious misinterpretation;
or
 - (b) facts concerning the application on the development that were not disclosed and which should have been disclosed at the time the application was considered, have subsequently become known; or
 - (c) the permit was issued in error;the Development Authority may suspend or cancel the development permit by notice in writing to the permit holder.
- (2) Upon receipt of the written notification of suspension or cancellation of the permit, the permit holder must cease all development and activities to which the development permit relates.
- (3) A person whose development permit has been suspended or cancelled under this section may appeal within 21 days of the written decision, to the Subdivision and Development Appeal Board.
- (4) If a development permit is suspended or cancelled and an appeal is filed by the applicant, the Subdivision and Development Appeal Board shall review the application, and either:
 - (a) reinstate the development permit;
 - (b) cancel the development permit if the Development Authority would not have issued the permit if all the facts had been known at the time of application; or
 - (c) reinstate the development permit and may impose such other conditions considered necessary to ensure this bylaw and any other statutory plan is complied with; and
 - (d) provide written reasons for the decision made.
- (6) If a permit is deemed to be no longer valid due to a discontinuance of use for the period of time with respect to Section 4.14 (Validity of a Development Permit), the permit is no longer valid, and the development must cease.

4.19 WITHDRAWING A PERMIT APPLICATION OR APPROVAL

- (1) If, after a development permit application has been submitted and it has been processed by the Development Officer an applicant requests to withdraw the permit application prior to a decision being rendered, such requests must be made by the



original applicant in writing to the Development Officer. If a permit application is withdrawn:

- (a) the Development Officer shall acknowledge such by notice in writing to the applicant which may be in the form of electronic mail correspondence;
 - (b) any assigned permit number shall not be reassigned and the municipal records shall reflect the permit number was a withdrawn application; and
 - (c) other than the applicant, there is no requirement to notify any other person, including those who may have originally been notified as part of an application referral process, that the applied for permit was withdrawn.
- (2) If, after a development permit application has been approved by the Development Authority the permit holder requests to withdraw and cancel the development permit, such requests must be made in writing by the permit holder to the Development Officer.
- (a) Where a development permit is cancelled and no longer valid, all development and activities to which the development permit relates must cease upon receiving notification of the cancellation of permit by the Development Officer; and
 - (b) the processing steps in accordance with Section 4.19(1)(a) through (c) shall apply.

4.20 AMENDMENT OF A DEVELOPMENT PERMIT APPLICATION OR APPROVAL

- (1) Amendment of a development permit application prior to issuance of a decision by the Development Authority may be permitted at the discretion of the Development Authority and may require renotification and recirculation fees as applicable.
- (2) Except as provided in Section 4.20(3), amendment of a development permit application or approval after a decision has been issued by the Development Authority is not permitted. A new development permit application is required and will be processed anew.
- (3) If, after a notice of decision has been issued on a development permit or after a development permit has been issued, the Development Officer finds a clerical, technical, grammatical, or typographical error on the issued notice and/or permit which does not materially affect the permit in principle or substance, the Development Officer may correct the error and reissue the notice of decision and/or permit with the correct information and there is no renotification required and no avenue for an appeal.

4.21 APPEALS

- (1) Any person applying for a development permit, or any other person affected by an order, decision, or development permit made or issued by the Development Authority,



may appeal to the Subdivision and Development Appeal Board or the Land and Property Rights Tribunal (where the *Matters Relating to Subdivision and Development Regulation* requires it) in accordance with Sections 683 to 687 of the *MGA* inclusive of any other part of the *MGA* referenced in these sections.

- (2) Notwithstanding sub-section (1) and in accordance with section 685(4) of the *MGA*, there is no avenue for an appeal if the application was made on lands zoned as Direct Control, if the decision was made by Council. If the decision was made by the Municipal Development and Subdivision Authority or Development Officer as a delegated authority of Council, the appeal is limited to whether the Development Authority followed the directions of Council, as per Section 641 of the *MGA*.
- (3) If an applicant in accordance with section 684 of the *MGA*, deems an application as refused due to a decision not being made by the Development Authority within 40 days of an application being deemed complete and no time extension has been entered into, may appeal to the appropriate appeal body having jurisdiction.
- (4) Any landowner who applied for subdivision and was refused an approval or had conditions attached to the approval, may appeal the decision to the Subdivision and Development Appeal Board or the Land and Property Rights Tribunal (where the *Matters Relating to Subdivision and Development Regulation* requires it). Adjacent or affected landowners have no right to appeal under the *MGA*.

SECTION 5 ENFORCEMENT

5.1 DESIGNATED OFFICER POWERS

In accordance with Section 210 of the *MGA*, an officer designated to carry out enforcement of the *MGA*, the Subdivision and Development Regulation, a development permit or subdivision approval, municipal bylaws, or this bylaw is herein referred to as an Officer, and includes:

- (1) the Development Officer, CAO or another designated officer in Section 2.1(4) of this bylaw; and
- (2) a Bylaw Enforcement Officer in accordance with the *MGA*; and
- (3) a Community Peace Officer in accordance with the Alberta *Peace Officer Act*; and
- (4) a Police Officer in accordance with the Alberta *Police Act*.

5.2 NOTICE OF VIOLATION

- (1) Where the Development Authority finds that a development or use of land or buildings is not in accordance with the *MGA*, the Subdivision and Development Regulation, a development permit or subdivision approval, or this bylaw, an Officer may issue a notice of violation to the registered owner or the person in possession of the land or buildings or to the person responsible for the contravention; and



- (2) such notice shall state at a minimum the following:
 - (a) the nature of the violation;
 - (b) any and all corrective measures required to comply;
 - (c) the time period in which such corrective measures must be carried out; and
 - (d) the potential course of action, further enforcement, or penalties the municipality may carry out if the corrective measures are not complied with.

5.3 STOP ORDERS

- (1) As set forth in section 645 of the *MGA*, the Development Authority is authorized to issue a stop order, herein referred to as an order, if a development, land use or use of a building is not in accordance with those regulations listed in Section 5.2(1) of this bylaw; and
- (2) a person who receives notice pursuant to sub-section (1) may appeal the order, within 21 days after the date on which the order is made, to the Subdivision and Development Appeal Board as prescribed in the *MGA*.
- (3) If compliance with an order is not voluntarily effected, the Town may undertake legal action, including but not limited to, seeking injunctive relief from the Alberta Court of Queen's Bench pursuant to section 554 of the *MGA*.
- (4) Pursuant to the *MGA*, if a person fails or refuses to comply with an order directed to the person, an Officer may upon the issuance of a court order enter onto the land or building that is the subject of the order and take any action necessary to carry out the order; and
- (5) in accordance with the *MGA*, the Town may cause the costs and expenses incurred in carrying out the order to be added to the tax roll of the parcel of land that is the subject of the order.

5.4 PENALTIES AND RIGHTS OF ENTRY

- (1) Any person who contravenes any provision of this bylaw is guilty of an offence in accordance with Part 13, Division 5 of the *MGA* and is liable to a fine of not more than \$10,000.00 or to imprisonment for not more than one year or to both fine and imprisonment.
- (2) In accordance with section 542 of the *MGA*, an Officer may, after giving reasonable notice to and obtaining consent from the owner or occupier of land on which this bylaw or the *MGA* authorizes anything to be inspected, remedied or enforced:
 - (a) enter on that land at a reasonable time and carry out inspection, enforcement or action authorized or required by the enactment or bylaw;
 - (b) request anything to be produced that would assist in carrying out Section 5.4(2)(a);



- (c) make copies of anything related to Section 5.4(2)(a)(b); and
- (3) pursuant to section 543 of the *MGA*, if a person refuses to grant consent or refuses to provide anything to assist in the inspection, enforcement or action referred to in section 542 of the *MGA*, the municipality may obtain a court order.

SECTION 6 AMENDMENTS TO THIS BYLAW

6.1 AMENDMENT OR REPEAL OF BYLAW

- (1) A person may request an amendment to this bylaw, by applying in writing, furnishing reasons in support of the application and paying the prescribed fee (as established by Council).
- (2) All applications to amend this bylaw shall be submitted to the Development Officer and shall be accompanied by the following:
 - (a) the application fee prescribed by Council for each application;
 - (b) the application form as found in **Appendix A** of this bylaw, which is completed to the satisfaction of the Development Officer; and
 - i. a narrative and explanation of the purpose of the request if it is for text, development standard, or land use being proposed as an amendment; and
 - ii. any other material as deemed necessary by the Development Officer to allow Council to make an informed decision on the application.
 - iii. Additional requirements in Section 6.2 for land use redesignation applications also apply.
- (3) The Development Officer may refuse to accept an application for an amendment to this Land Use Bylaw if, in their opinion, the information supplied is not sufficient to undertake a proper evaluation of the proposed amendment.
- (4) Once an application is accepted by the Development Officer, they shall forward the application to Council for a decision.
- (5) In reviewing an application to amend this bylaw, Council should give consideration to the following:
 - (a) the merits of the proposal and consistency of the proposal to the Town's statutory and non-statutory plans, approved policies, and this bylaw;
 - (b) if the proposed amendment is for a redesignation of land;
 - i. the suitability of the proposal, if it is located in an appropriate area of the community, if it is compatible with adjacent land uses or if it would negatively impact adjacent landowners or uses;



- ii. the proposal does not compromise the road capacity of the area, levels of service of the roads in the area, or vehicular and non-vehicular traffic safety, and is suitably and efficiently serviced by an off-site road network;
 - iii. the proposal can be adequately serviced with municipal utilities or if it will impact municipal infrastructure; and
 - iv. any other matter as deemed necessary by Council taking into consideration the nature of the application as well as any statutory or non-statutory plan, scheme, concept, or approved policy affecting the site.
- (6) All proposed amendments to this bylaw shall be decided upon by Council in accordance with the *MGA*.
- (7) A public hearing and notification shall occur and shall be in accordance with Section 692 of the *MGA* and the requirements of this bylaw.
- (8) Where an application for an amendment to this bylaw has been refused by Council, another application that is the same or similar shall not be accepted for a period of 6 months following the date of the decision of refusal; or
- (9) where an application for an amendment to this bylaw has been refused by Council, another application that has been significantly changed or changed at the request of Council may be accepted prior to the 6-month waiting period prescribed in sub-section (8), at the discretion of Council.

6.2 LAND USE DISTRICT REDESIGNATION

In addition to the general requirements for amendment or repeal of this bylaw as set forth in Section 6.1, an application made specifically for redesignation from one land use district to another shall be accompanied by the following:

- (1) a completed application form (found in Appendix A) and fee paid in full;
- (2) an explanation of the application describing:
 - (a) proposed land use designation and future use(s);
 - (b) consistency with applicable statutory plans OR rationale for why the proposal may be inconsistent with applicable statutory plans;
 - (c) development potential/suitability of the site including identification of any constraints and/or hazards to development;
 - (d) availability of infrastructure to service the site including adequate water, sewer, and storm water capacities;
 - (e) the adequacy of vehicular and, when applicable, non-vehicular access, and potential impacts to public roads and options available to address any impacts that would create issues relating to road capacities, levels of service and vehicular/non-vehicular traffic safety;



- (3) In addition to Sub-sections (1) and (2) the Development Authority may at its discretion request the following information if deemed necessary to properly evaluate the proposal:
 - (a) a conceptual subdivision layout and design, if applicable;
 - (b) a geotechnical report prepared by an engineer demonstrating soil or slope suitability;
 - (c) an evaluation of surface drainage which may include adjacent properties;
 - (d) a current Certificate of Title of the land affected and/or other documents satisfactory to the Development Officer, which indicate the interest of the applicant in the said land if the application is for a land use redesignation,
 - (e) any legible diagrams, maps or sketches required to be submitted if deemed required by the Development Officer which shall be drawn to the satisfaction of the Development Officer; and
 - (f) any other information deemed necessary by the Development Authority to properly evaluate the application.
- (4) The Development Officer has the discretion to exempt any of the prescribed application requirements listed in section 6.2 if it determines they are not necessary for the particular situation.
- (5) A professionally prepared Area Structure Plan, Outline Plan or Conceptual Design Scheme may be required in conjunction with an application if:
 - (a) proposing to redesignate lands from Transitional /Urban Reserve to any other land use district;
 - (b) multiple parcels of land are involved;
 - (c) more than two lots could be created;
 - (d) several fragmented parcels are adjacent to the parcel that is the subject of the proposed redesignation;
 - (e) internal public roads would be required;
 - (f) municipal services would need to be extended; or
 - (g) it is required by Council or the Development Authority.

SECTION 7 SUBDIVISION

7.1 SUBDIVISION IN GENERAL

- (1) Where the development of land requires the subdivision of land, no development permit shall be issued until the application for subdivision has been approved and any attached conditions met in accordance with the *MGA*.



- (2) Subdivision approval, including bareland condominium subdivision, shall be considered with respect to the applicable land use district and bylaw standards, any statutory plan requirements, and servicing needs.
- (3) Minimum dimensional standards for subdivided lots and all other requirements in this bylaw shall be as specified in the applicable land use district in Schedule 3.
- (4) An application for subdivision may be subject to the same requirements of Section 6.2 (Land Use District Redesignation) and Section 3.3 (Suitability of Sites), in addition to any other requirements considered necessary in order to make a decision on the application, as determined by the Subdivision Approving Authority.
- (5) All applications for subdivision shall be required to meet the design standards set out in **Schedule 4** (General Standards of Development).
- (6) Subdivision of land within the residential Manufactured/Mobile Home (R2) land use district shall not be permitted unless accompanied by an approved Area Concept Plan or adopted Area Structure Plan.

7.2 SUBDIVISION APPLICATIONS

- (1) An applicant applying for subdivision shall provide the required material and information as requested by the Subdivision Authority or those authorized to act on its behalf (its designate). A completed application shall consist of:
 - (a) an official application, in the manner and form prescribed, clearly and legibly completed with all the required information and signatures provided as requested on the form;
 - (b) the applicable fees paid;
 - (c) an up-to-date and current copy of the Certificate of Title to the subject land;
 - (d) a professionally prepared Surveyor's sketch or tentative subdivision plan with dimensions, structures, and location of utility easements present;
 - (e) the provincial abandoned gas well map and information;
 - (f) for vacant parcels, a detailed servicing plan may be required as part of the application, or may be imposed as a condition of subdivision approval;
 - (g) any such other information as may be required at the discretion of the Subdivision Authority or its designate in order to accurately evaluate the application and determine compliance with the Land Use Bylaw or other government regulations. This may include but is not limited to the provision of geotechnical information, soil analysis reports, water reports, soil or slope stability analysis, drainage information, contours and elevations of the land, engineering studies or reports, wetland reports, environmental impact assessments, utility and servicing information, and/or the preparation of a conceptual design scheme or an area structure plan may be required from the applicant prior to a decision being rendered on a



subdivision application to determine the suitability of the land for the proposed use; and

- (h) the landowner's consent to authorize the Subdivision Authority or its designate to carry out a site inspection on the subject land as authorized in accordance with the *MGA* must also be provided on the submitted application form unless determined not to be needed by the Subdivision Authority.

7.3 DETERMINATION OF COMPLETE SUBDIVISION APPLICATION

- (1) In accordance with the *MGA*, the Subdivision Authority or those authorized to act on its behalf, shall provide notification to a subdivision applicant within the 20-day prescribed time period, on whether a submitted application is deemed complete, or if it is determined to be deficient what information is required to be submitted by a specified time period, by sending notification in the following manner:
 - (a) for an application deemed complete, the applicant shall be notified in writing as part of the formal subdivision application circulation referral letter;
 - (b) for an application determined to be incomplete, written notification shall be given to the applicant which may be in the form of a letter sent by regular mail to the applicant, or sent by electronic means, or both, or by any other method as may be agreed to between the applicant and Subdivision Authority designate;
 - (c) in respect of sub-section (1)(b) for a subdivision application determined to be incomplete, the applicant will be advised in writing as part of the Notice of Incompleteness what the outstanding or required information items are that must be submitted by the time specified in the notice.
- (2) Notwithstanding sub-section (1), the applicant and Subdivision Authority or its designate may agree and sign a time extension agreement in writing in accordance with section 653.1(3) of the *MGA* to extend the 20-day decision time period to determine whether the subdivision application and support information submitted is complete.
- (3) A determination made by the Subdivision Authority or its designate that an application is complete for processing does not preclude the ability for the Subdivision Authority to request other information or studies to be submitted by the applicant during the review and processing period, prior to a decision being rendered, or as condition of subdivision approval.

7.4 INCOMPLETE SUBDIVISION APPLICATIONS

- (1) The Subdivision Authority or its designate may refuse to accept and process a subdivision application where the information required under Section 7.2 and/or as described in a Notification of Incompleteness has not been submitted, is determined to be deficient, is still incomplete, or in the opinion of the Subdivision Authority the quality of the material supplied is inadequate to properly evaluate the application.



- (2) If the Subdivision Authority or its designate makes a determination that the application is refused due to incompleteness, the applicant shall be notified in writing with reasons in the manner as described in Section 7.3(1)b).
- (3) The notification provided for in Section 7.3(1)b) shall include for the applicant the required information on the filing of an appeal and to which appeal board body the appeal lies, either the local appeal board or provincial Land and Property Rights Tribunal, in accordance with the parameters of the *MGA*.

7.5 SUBDIVISION APPLICATION NOTIFICATIONS

- (1) On receipt of a complete application for subdivision approval, the Planning Advisor or other Subdivision Authority designate must refer a notice and copy of the application to:
 - (a) the Government departments, agencies, persons and local authorities required by the subdivision and development regulations; and
 - (b) owners of land located adjacent and contiguous to the land that is the subject of the application.
 - (c) The notice under subsection 7.5(1) must describe the nature of the application, the method of obtaining further information about the application and the manner in which and time within which written submissions may be made to the Subdivision Authority.

7.6 SUBDIVISION DECISIONS

- (1) The Subdivision Authority must make a decision on an application for subdivision within:
 - (a) 21 days from the date of receipt of a completed application under section 652(4)(a) of the *MGA*; or
 - (b) 60 days from the date of receipt of all other applications;unless an agreement to extend the time has been entered into with the Subdivision Authority.
- (2) If an applicant refuses to enter into a time extension agreement, the application may be deemed to be refused if no decision is made within the time prescribed, and the applicant may file an appeal with the local appeal board or provincial Land and Property Rights Tribunal to render a decision.
- (3) A Subdivision Authority when considering an application under this section,
 - (a) must consider the written submissions of those persons and local authorities to whom an application for subdivision approval or notice of application was given in accordance with this section but is not bound by the submissions unless required by the *Matters Relating to Subdivision and Development Regulation*; and
 - (b) is not required to hold a hearing.



- (4) A Notice of Decision with Reasons must be provided to the applicant, and those Government departments, agencies, and local authorities originally notified.

7.7 CONDITIONS OF SUBDIVISION APPROVAL

- (1) The Subdivision Authority may impose conditions to ensure that the requirements of the MGA, the regulations, the statutory plans, and the bylaw are complied with.
- (2) The Subdivision Authority may impose a condition requiring the applicant to enter into a Development Agreement with the Town for:
 - (a) construction of a public roadway required to give access to the development; or
 - (b) construction of a public pedestrian walkway; or
 - (c) the installation of utilities necessary to serve the development; or
 - (d) an off-site levy or redevelopment levy under the MGA;
 - (e) to ensure the obligations on the part of the developer are carried out; or
 - (f) to provide a financial security in a form acceptable to the Town to ensure the terms of the agreement are carried out.
- (3) The Development Agreement pursuant to subsection (2) may, at the option of the Town, be registered in the Land Titles Office in the form of a caveat against the Certificate of Title for the land that is the subject of the development agreement.
- (4) A caveat registered pursuant to subsection (3) shall be discharged by the Town when the requirements and conditions of the agreement have been met.

7.8 SUBDIVISION ENDORSEMENT OF FINAL PLANS AND DOCUMENTS

- (1) An applicant for subdivision approval must submit to the authorized Subdivision Authority designate the plan of subdivision or other instrument that effects the subdivision within one year of the latest of the following dates:
 - (a) the date on which the subdivision approval is given to the application;
 - (b) if there is an appeal to the local appeal board or provincial Land and Property Rights Tribunal, the date of that board's decision or the date on which the appeal is discontinued;
 - (c) if there is an appeal to the Court of Appeal under the Act, the date on which the judgment of the Court is entered or the date on which the appeal is discontinued.
- (2) On being satisfied that a plan of subdivision or other instrument complies with a subdivision approval and that any conditions imposed have been met or will be met, the person or entity authorized to act on behalf of the Subdivision Authority must endorse the plan or other instrument in accordance with the subdivision and development regulations.



7.9 VALIDITY OF SUBDIVISION APPROVALS

- (1) If the plan of subdivision or other instrument is not submitted to the Subdivision Authority or its designate for final endorsement within the time prescribed by Section 7.8(1) or any longer period authorized by the Council, the subdivision approval is no longer valid.
- (2) If the plan of subdivision or other instrument is not registered in Land Titles office within one year after the date on which it is endorsed pursuant to this section or within the extended period prescribed under subsection 7.9(1), the subdivision approval of the plan or instrument and the endorsement are void and the plan or instrument may not be accepted by a Registrar for registration.
- (3) Town Council may, at its discretion, extend the periods referred to in Sections 7.8 and 7.9.

7.10 APPEALS OF SUBDIVISION DECISIONS

- (1) In accordance with Section 4.21(4) of the bylaw, an appeal of a subdivision decision may be filed with the appropriate appeal body within 21 days of the date of the Notice of Subdivision Decision.
- (2) Only the applicant, municipality, or government departments as stipulated in the MGA have the right to file an appeal. Adjacent or affected landowners have no right to appeal.

OTHER LAND USE and DEVELOPMENT REQUIREMENTS - For **General Municipal Standards** and **Specific Use Standards** land use and development criteria and standards, refer to **Schedules 4 and 5** of this Bylaw.



SCHEDULE 1

DEVELOPMENT NOT REQUIRING A PERMIT



DEVELOPMENT NOT REQUIRING A PERMIT

The following are developments where no development permit is required to be obtained from the municipality provided all standards and criteria of the bylaw are met and no variances (waivers) of the bylaw standards occur.

SECTION 1 GENERAL

- (1) This Section does not negate the requirement of obtaining all required permits, licenses, authorizations, or approvals as applicable, under the *Safety Codes Act* and any other Provincial or Federal statute.
- (2) This Section does not negate the requirement of obtaining a municipal Business License where required. Conversely, some developments may require a development permit but may be exempt from the obligation to obtain a Business License if the business or use is a profession and/or occupation in Alberta that is self-governed by a professional regulatory organization (PROs), which receive their authority through provincial legislation.
- (3) Previously commenced developments are not affected by the passage of this bylaw and shall not require a new development permit subject to the following:
 - (a) the completion of a building which was lawfully under construction at the date this bylaw came into effect provided that the building is completed in accordance with the terms and conditions of any development permit granted;
 - (b) the completion of a building or structure that did not require a development permit under the previous land use bylaw and which was lawfully under construction provided the building is completed within 12 months from the date this bylaw came into effect.
- (4) The following developments related to various government bodies or which may be otherwise exempted by governing legislation shall not require a development permit:
 - (a) any use or development exempted under section 618(1) of the *Municipal Government Act*;
 - (b) any use or development exempted by the Lieutenant Governor in Council pursuant to section 618 of the *Municipal Government Act*;
 - (c) the maintenance or repair of public works, services, structures and utilities carried out by, or on behalf of federal, provincial, municipal or public authorities on land which is publicly owned or administered or public authorities or private utilities under special agreement or authorization with the Town of Pincher Creek;
 - (d) the installation and maintenance of new or replacement playground facilities in municipal public parks that are owned and operated by the Town of Pincher Creek;
 - (e) the use of a building or part thereof as a temporary polling station, returning officer's headquarters, candidate's campaign office and any other official temporary use in connection with a federal, provincial or municipal election, referendum or census;



- (f) telecommunication antenna systems that are regulated by Industry Canada subject to **Schedule 5: Standards of Development, Section 19** (Telecommunication Antenna Siting Protocols);
- (5) The following developments shall not require a development permit, but must otherwise comply with all other provisions of this bylaw:
 - (a) extensive cultivation or grazing of land where the land is designated as Transitional/Urban Reserve (TUR);
 - (b) the erection or maintenance of agricultural fences associated with the extensive cultivation or grazing of land, or an Extensive Agriculture use;
 - (c) the erection or construction of temporary buildings, works, plants or machinery that, in the opinion of the Development Officer or the Municipal Development and Subdivision Authority, are needed in connection to the construction of a development with an approved development permit during the period of construction, unless such temporary buildings, works, plants or facilities are a Construction Camp;
 - (d) the maintenance or repair of any building, including interior and exterior renovations, provided that such works do not include structural alterations or additions which affect changes in the exterior size, dimensions or design of the building;
 - (e) interior renovations to a building which do not:
 - i. create another dwelling unit,
 - ii. increase parking requirements as required by this bylaw,
 - iii. result in the change of use of a building, or
 - iv. increase the square footage (increase density) of the building;
 - (f) a change of occupancy or ownership of a conforming use of land or buildings, unless that change results in a change of use from one separately defined use to a different and separately defined use (this does not apply to home Occupations where a change in ownership occurs);
 - (g) excavation, grading, stripping, or stockpiling provided it is part of a development for which a development permit has been issued or is addressed in a signed Development Agreement with the Town of Pincher Creek (if not addressed in conjunction with an approved development, then a development permit is required);
 - (h) the placement or maintenance of up to **two** Accessory Buildings, such as storage, garden or tool sheds, greenhouses and similar, that are not on a permanent foundation, provided that:
 - i. these do not exceed 13.9 m² (150 sq. ft.) each in area;
 - ii. **only two** such buildings may be located on a lot or parcel without a development permit and provided the maximum site coverage is not exceeded; and



- iii. any matter pertaining to the development of such a building including its height, setbacks, location, site coverage, and appearance complies with the provisions of this bylaw and the schedules thereto;
- (i) the construction, erection, maintenance or alteration of an Accessory Structure (if it is an air conditioner, heat pump, fountain, fire pit, patio heater, garbage enclosure, raised garden box, gazebo, pergola, playhouse, and flagpoles, television or radio towers less than 4.88 metres (16 ft.) in height) provided that:
 - i. these do not exceed 13.9 m² (150 sq. ft.) each in area and provided the maximum site coverage is not exceeded; and
 - ii. any matter pertaining thereto including its height, setbacks, location and finish complies with this bylaw and the schedules thereto, where applicable, and the Accessory Structure is located to the satisfaction of the Development Officer;
- (j) steps, stairs, or a landing to access a dwelling or building provided the setbacks, or allowed projections into setbacks, are met in accordance with the standards of this bylaw (see Schedule 4);
- (k) the erection of gates, fences, walls, hedges or other means of yard enclosure which are:
 - i. in residential rear and side yards provided they are 1.8 m (6 ft.) or less in height,
 - ii. in residential front yards provided they are 0.9 m (3 ft.) or less in height;
 - iii. in commercial or industrial rear, side and front yards provided they are chain link fences 2.4 m (8 ft.) or less in height;
 - iv. in commercial or industrial rear and side yards, solid fences provided they are 2.4 m (8 ft.) or less in height, and solid fences in front yards provided they are 0.9 m (3 ft.) or less in height; (see Schedule 4);
- (l) the construction of uncovered decks or patios less than 0.6 m (2 ft.) above grade (either attached or detached) provided bylaw setbacks are met (a covered or raised deck shall require a development permit); (see Schedule 4);
- (m) the installation of concrete, pavers, stones, or other hard surface material that is not to be covered or partially covered by a roof, structure, or other shelter and that is in compliance with [Schedule 9: Landscaping and Amenity Areas Standards and Guidelines](#);
- (n) a Day Home as defined in [Schedule 15: Definitions](#) (but must obtain a Business License);
- (o) satellite dishes (internet, television) of less than 0.8 m (3 ft.) in diameter;
- (p) private, individual solar panels installed on a roof or attached to a side (wall) of a dwelling or building in accordance with the standards of this bylaw in Schedule 4 (any applicable Safety Codes permits are required, particularly electrical permits);
- (q) landscaping that was not required as part of the original development permit provided it does not negatively affect drainage on the lot or impact adjacent properties;



- (r) temporary above ground outdoor swimming pools with a CSA standard or constructed in accordance the *National Building Code, 2019 Alberta Edition (or any update to)* and above ground or portable hot tubs smaller than 150 ft²; however, they are subject to the Town of Pincher Creek Storm Drainage Bylaw (any applicable Safety Code permits are required including electrical permits for power/electricity connection);
- (s) the seasonal display of retail goods or merchandise on a property for a business with an approved development permit provided the goods or materials are fully contained on the premises, do not impede access (pedestrian and vehicular), and do not remove parking space that is required to be provided as part of the use standards of development;
- (t) mobile food vendor trucks that are not permanently parked in one location or operate for more than 30 days in calendar year from the same lot or location (but must obtain a Business License);
- (u) garage sales, provided they do not exceed four weekends in a calendar year and comply with the Business License bylaw including obtaining a garage sales permit;
- (v) seasonal events or temporary sales (non-permanent), but they shall require a Town of Pincher Creek Business License, (e.g., fruit and vegetable stands, Christmas tree sales, mobile sales, individual single-event auction or estate sales, etc.) if in the opinion of the Development Authority, such sales, activities and special events would not adversely affect:
 - i. parking,
 - ii. traffic flow,
 - v. the appearance of the site,
 - vi. public safety, and/or
 - vii. the seasonal outside sale, activity or special event is in operation for a period not to exceed 30 days consecutive or in a calendar year.
- (w) In all land districts the temporary placement of one shipping container in connection with the construction of a development for which a development permit has been issued for the period of those operations, or for the temporary moving and storage of household goods or commodities, in accordance with the following:
 - i. the shipping container is temporary and needed in conjunctions with approved construction and the site is active (i.e., construction or moving has commenced and is on-going or is about to commence within one week); placement of a shipping container on an inactive construction site is prohibited;
 - ii. minimum yard setbacks shall be 0.9 m (3 ft.) and the container shall not encroach onto any municipal right-of-way including sidewalks, lands and roadways;
 - iii. shipping container be removed immediately upon completion of construction or moving;



- iv. more than one shipping container on an active site constitutes the requirement of a development permit;
- v. the shipping container may remain on site for a single period not exceeding fourteen (30 days in a calendar year (i.e., a single period is allowed, regardless of the total number of days – once the shipping container leaves the site it may not return without the benefit of an approved development permit).

SECTION 2 SIGNS (DEVELOPMENT PERMIT EXEMPTIONS)

- (1) A development permit is not required for the following signs if they comply with this bylaw and are not animated or equipped with flashing lights:
 - (a) official signs, notices, traffic and directional signage, election signs, and any sign or billboard erected by a government or public authority, agency or department and railway operating signs;
 - (b) identification, memorial, property name, or address signs in any district for any use except home occupations provided that:
 - (i) the sign does not exceed 0.2 m² (2 sq. ft.) in area, and
 - (ii) not more than one identification sign is located along a street frontage for each business or occupant;
 - (c) on-site signs in any district advertising the sale, rental or lease of land or buildings provided that:
 - (i) such signs do not exceed 1.12 m² (12 sq. ft.) in a residential district,
 - (ii) such signs do not exceed 2.97 m² (32 sq. ft.) in a district other than a residential district,
 - (iii) such signs are not illuminated; and
 - (iv) provided such signage is removed within 30 days upon completion of the lease or sale;
 - (d) on-site signs identifying an approved construction project and/or the parties involved in that project provided that such signs are removed within 14 days after construction is complete;
 - (e) barrier-free parking or other similar type signs required in accordance with *National Building Code, 2019 Alberta Edition (or any update to)*.
 - (f) directional signs indicating on-site traffic circulation and parking restrictions provided that such signs do not exceed 0.9 m² (10 sq. ft.) in area;
 - (g) temporary signs (other than portable signs) on lots or parcels in commercial or industrial districts advertising a special promotion on the premises provided that the sign is removed within seven days of the end of the special promotion;



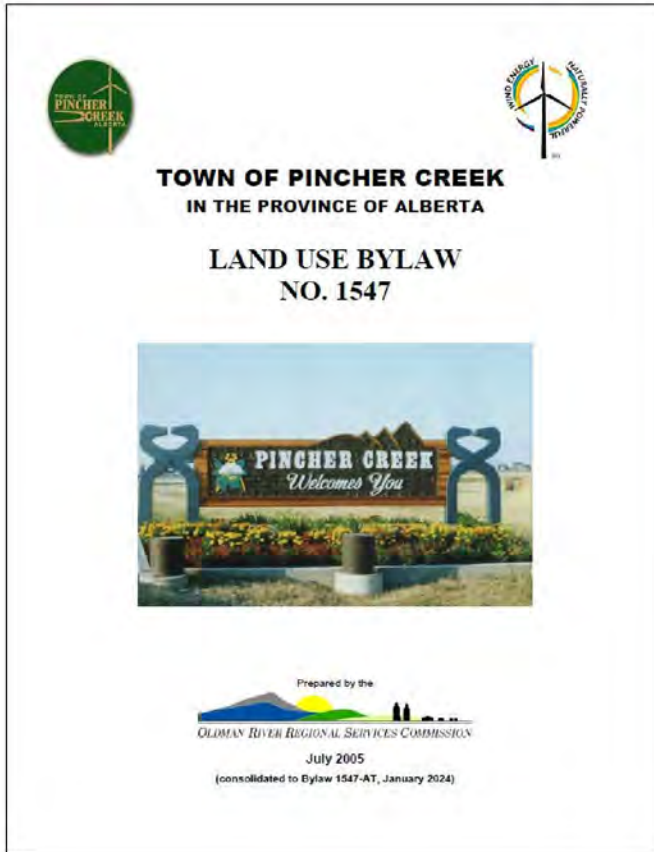
- (h) yard or garage sale placards or signs placed on private property provided they are removed within 24 hours after the completion of any garage or yard sale (but a separate Garage/yard sale permit must be obtained from the Town of Pincher Creek).
 - (i) window signs in association with any conforming use in a commercial or industrial land use district;
 - (j) signs in the interior of a building, including a shopping centre, provided such signs are not visible from the exterior of the building;
 - (k) any sign that may be specifically exempt pursuant to the **Town of Pincher Creek Sign Bylaw (see Appendix 4)**.
- (2) A development permit is not required for the maintenance of any lawful sign or for a copy change on a lawful sign provided that the location, height, dimensions and structural framework of the sign are not altered.

SECTION 3 SIGN PERMITS

- (1) All signs, however, shall obtain a development SIGN PERMIT pursuant to the Town of Pincher Creek Sign Bylaw (see Appendix 4).

SECTION 4 ROLE OF MUNICIPAL DEVELOPMENT AND SUBDIVISION AUTHORITY

- (1) If there is any doubt as to whether or not a development requires a development permit, the matter shall be referred to the Municipal Development and Subdivision Authority, whose decision shall be final.



Land Use Bylaw Review and Input Guide for Town of Pincher Creek Council

Prepared by ORRSC

LAND USE BYLAW 101

Land Use Bylaw Discussion Workbook

Part 1

LAND USE BYLAW – Overview

What is a Land Use Bylaw and Why do municipalities have them?

Legislation

Every municipality must pass a Land Use Bylaw. The Municipal Government Act, section 640(1) states:

Land use bylaw

640(1) Every municipality must pass a land use bylaw.

(1.1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality, including, without limitation, by

- (a) imposing design standards,
- (b) determining population density,
- (c) regulating the development of buildings,
- (d) providing for the protection of agricultural land, and
- (e) providing for any other matter council considers necessary to regulate land use within the municipality.

(2) A land use bylaw

- (a) must divide the municipality into districts of the number and area the council considers appropriate;
- (b) must, unless the district is designated as a direct control district pursuant to section 641, prescribe with respect to each district,
 - (i) the one or more uses of land or buildings that are permitted in the district, with or without conditions, or
 - (ii) the one or more uses of land or buildings that may be permitted in the district at the discretion of the development authority, with or without conditions, or both;
- (c) must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provision for
 - (i) the types of development permit that may be issued,
 - (ii) applying for a development permit,
 - (iii) processing an application for, or issuing, cancelling, suspending or refusing to issue, a development permit,
 - (iv) the conditions that are to be attached, or that the development authority may attach, to a development permit, either generally or with respect to a specific type of permit,
 - (v) how long any type of development permit remains in effect,
 - (vi) the discretion that the development authority may exercise with respect to development permits, and
 - (vii) any other matters necessary to regulate and control the issue of development permits that to the council appear necessary;
- (d) must provide for how and to whom notice of the issuance of a development permit is to be given;
- (e) must establish the number of dwelling units permitted on a parcel of land.

The land use bylaw is the “implementation document” for land use and development, the application of standard rules and requirements.

Why? The application of a land use bylaw is to help implement efficient development; considers safety (separation between buildings), health (separation of non-compatible uses) and environmental matters (not build in a flood zone) to protect persons, property and investment; helps protect or plan for expensive municipal infrastructure; tries to create some longer-term certainty for developers and property owners of what can be done on land; supports the community with places to live, work, obtain services and enable opportunities for parks & recreation; allows for equitable treatment (fairness) amongst developers and landowners; tries to mitigate conflicts (noxious industrial not adjacent to residential) or negative impacts (noise, odours, emissions) between competing or in-compatible land uses (as best it can); amongst other land use and community matters.

“Coles Notes” Version of a Land Use Bylaw

- The bylaw must divide the municipality into land use districts (zones)
- Lists the prescribed land uses (permitted / discretionary / prohibited) for each district
- Describes what developments may be exempt from permit requirements
- Articulates process for submitting applications, reviewing applications, making decisions and issuing permits, what conditions may be imposed
- Provides guidelines and standards for the subdivision of land
- Outlines guidelines, rules and minimum standards for development
- Outlines the enforcement process – notice of violation, Stop Order process
- Authorizes Waiver / Variance guidelines for the Development Officer, MDSA. Variances are a relaxation of a numerical standard of the bylaw, such as setbacks to property lines, lot dimensions, height of buildings or structure, lot coverage, etc. (We don’t live in a black and white world and the same applies to development – must be able to address unique, new, historical, or site-specific circumstances outside the general “norm”.)

Land Use Bylaw Specifics

Land Use Designation (Zoning)

- All parcels (titles) have a Land Use designation (streets and & lanes do not)
 - Commonly referred to as a District or Zone
- General land use district categories may often include:
 - Residential
 - Residential Multi-unit (higher-density)
 - Commercial (Downtown or Highway Commercial, etc.)
 - Industrial, Light Industrial or Railway
 - Recreational or Parks & Open Space
 - Public / Institutional (government or educational)
 - Direct Control (Council makes its own rules, may issue the permit)



Each individual municipal Council can determine for its own municipality, how many land use districts it wants, what they are called, what uses may be allowed in the district, etc.

Changing the Land Use designation – an application request is made to Council (not the Development Authority) who makes decisions on zoning through a public process. There is no right to appeal on a bylaw amendment redesignation (rezoning) decision by Council.

How is “Development” defined?

MGA states that a development permit must be obtained for all “development” unless exempted by the bylaw. Every municipality may make its own exemptions it feels are appropriate for the community.

Development is defined under Part 17, Definitions, section 616 of the MGA - A municipality may expand upon this definition. Basically, the MGA states that anything done over, under, on, and to land is a development including an excavation or a stockpile.

Why are Development Permits required? Some main basic reasons include:

- To ensure developments are carried out in a safe manner and appropriate Safety Codes are applied for and issued
- To address health & safety matters by ensuring adjacent land uses are compatible with each other
- To ensure the person doing the thing (digging, erecting, constructing, establishing) on the land has permission to do so and is the rightful owner or is authorized by the owner to do so
- To protect people and property (not allow development in an area prone to flooding, or over an abandoned gas well, over hazardous (steep slopes) or contaminated land, etc.)
- To enable the municipality to have record of the development and what occurred on the land over time (history, and it relates back to the safety issue)
- To ensure type of development is captured to be properly assessed for the municipality
- To ensure that development is properly connected to municipal infrastructure (water, sewer, storm drains, roads)
- To help protect people’s investment in property to some extent, by having appropriate and somewhat common standards being applied for similar types of development
- To ensure that buildings and structures are sited properly, setbacks are met, and there are no encroachments over property lines
- To have a process whereby some developments that may have potential impacts can be referred to affected landowners, various provincial departments, utility providers, etc., for comments

Development Permits are not only required for new buildings, structures, or land uses, they are also required if a **change in use** (i.e., different type of use) on a parcel or in a building occurs (e.g., a former retail shoe store building is being converted to a new restaurant use).

Permitted Use vs Discretionary Use

A **permitted use** is considered a use “as of right” and if all aspects of the bylaw standards are met, the Development Officer is duty bound to issue a permit (i.e., must issue). Conditions may be imposed on a permitted use provided they address land use planning matters, but the conditions must be more limited.

Appeals of permitted uses are very limited (questions of law or jurisdiction or on imposed conditions).

A **discretionary use** is a use that may be issued a permit if it is determined it is suitable for the property and that it will not likely negatively impact adjacent land uses, or that conditions may be properly imposed on a permit to address or mitigate any potential issues. It is a discretionary matter, reviewed and decided

upon a case-by-case basis, although consistency in similar decision making should be respected. The conditions imposed can be more extensive.

Appeals on discretionary uses are more readily available – the use itself or conditions imposed may be appealed by any affected person.

Developments Not Requiring a Development Permit

- A land use bylaw may exempt certain uses, usually small-scale or benign land uses, which are considered to have little impact to the municipality, infrastructure, neighbouring parcels of land, or the environment. They are developments typically smaller in scale, temporary, or easier to remove. Some of these may not need a development permit but may still be subject to Safety Codes (e.g., a hot tub that is hard-wired with a GFCI-protected 230 volt 40 or 50 amp circuit will need an electrical permit.)

Common types of permit exemptions

- municipal works (utilities, road construction or repair) along with provincial or federal government public works)
- internal renovations or the maintenance or repair of any building provided that the work does not include structural alterations (major) or additions (door, window, siding, roofing replacement does not require a permit)
- any accessory storage building, garden shed, or structure (e.g., gazebo, pergola, fountain, fire pit, etc.) placed on a lot which is 13.9 m² (150 ft²) or less in area that is not on a permanent foundation (Note: Pincher Creek's LUB allows for up to one without the need for a permit);
- temporary (moveable) outdoor swimming pools and above ground hot tubs smaller than 11.15 m² (120 ft²) or are portable;
- structures such as fences, gates, air conditioners, cable or satellite dishes, ground level decks provided the bylaw standards are met (such as for height);
- landscaping if not part of a development proposal
- a day home with six or less children as defined in the bylaw Definitions;
- certain signs, such as election, real estate, window sign, building address signs.



(Refer to Part 3 of bylaw for complete list)

Land Use Bylaw Organization - How a Bylaw is Typically Formatted (partitioned)

Provided the requirements of the MGA are addressed, a municipality is afforded a lot of discretion about how it organizes and formats its land use bylaw, and how detailed or general the information in the bylaw is presented. In respect of ease of use for a reader, consideration of former provincial land use regulation bylaws format, and municipal law legal advice, there is a basic bylaw format used by many municipalities across Alberta. Over the years, and as court challenges and appeals have occurred, the trend has been that many land use bylaws have become more in depth and detailed, to be less open to ambiguity, misinterpretation, and challenges.

- **Administrative Section – the enabling legislation part of the bylaw**

An Administrative or Legislative part outlines the authority of the municipality, roles of development officer and planning committee (MDSA), application requirements, permit processes and procedures, notification rules (how notices are given and to whom), time frames, responsibilities, applicable conditions that may be placed on permits, enforcement mechanisms, appeal process, and subdivision process. It stipulates how long a permit is valid for, how much time someone has to commence a development once a permit is approved, if time extensions are allowed, etc.

The MGA states the LUB can address these matters, but how they are addressed is up to the municipality to decide (caveat: there must be consideration for established planning law in Alberta and past court decisions that have set precedent. For example, the courts have made rulings on who an affected person is, minimum notice times considered reasonable, etc.)

- **Development Not Requiring a Permit**

The listed authorized exemptions that the bylaw allows for instances where a permit is not required from the municipality. (MGA states all development requires a permit unless exempted.) This may be in the Administrative section of the bylaw or in a section on its own.

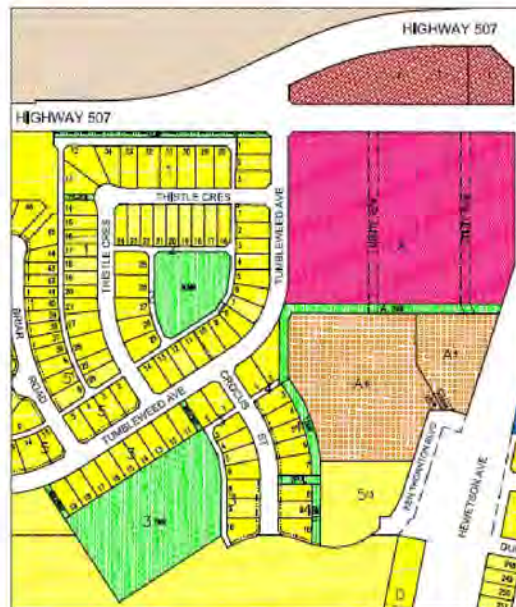
- **Land Use District (Zoning) Maps**

The assigned legal zoning of parcels of land within the municipality as displayed on a legal cadastral map.

- **Land Use Districts**

The various districts as Council assigns with the prescribed uses listed (permitted, discretionary) and the common standards applicable for that district or zone. A Council may determine the number of districts in the bylaw, what they are called, and what uses should be prescribed as permitted and what should be prescribed and managed as discretionary.

The land use district will also contain some required basic development measurable standards to be met: minimum lot sizes, setbacks to property lines, maximum site coverage allowed, and maximum height of buildings.



- **Standards of Development**

This section will outline what the **general standards** are that apply to all types of development for items such as municipal servicing, access, driveways, parking, accessory buildings & structures, fencing, drainage, design quality, etc. Each individual municipality can set its own municipal standards in its bylaw, and this can vary greatly in bylaw formats of different municipalities.

- Some bylaws may contain an additional section on “**Specific Use Standards**” which are more detailed standards for certain types of developments that may require special considerations, conditions imposed, or could potentially have more impacts to neighbors, municipal infrastructure, etc. Examples are home occupations, shipping containers, drive-thru restaurants, fuel sales and storage, cannabis production facilities, etc.

- If a municipality desires to impose specific standards, those should be specified in the bylaw to clearly stipulate the authority to impose them and articulate what the standards are so landowners and developers are aware of what the requirements or obligations might be. It also enables the Appeal Board or a court to be aware of the standards being applied in case a matter is challenged or gets appealed.
- **Sign Regulations** (may be in Standards of Development section or own its own)

Signs are a unique development as they are a structure placed on either land or a building but are associated with other principal development on the parcel. Signage may be for information (directions) or used to advertise a business. Signage standards address issues such as safety, sight line protection, sizing, lighting, and visual aesthetics.
- **Other Schedules**

Many municipal land use bylaws may often have a more detailed section for certain land uses that may require more detailed criteria and standards, or potential conditions imposed. These will often include manufactured homes or manufactured home parks, moved-in (previously occupied or used) buildings, demolition, communication (cell) towers.
- **Definitions**

A bylaw should contain a section on definitions to make the uses and application/interpretation of the rules clear for everyone, especially since the implementation and enforcement of the bylaw may have legal implications. Ideally, there should be a definition for every use in the bylaw, common standards terminology and some of the general development and planning references.
- **Official Forms - Applications & Notices**

A bylaw will typically have the official application forms and notice templates and letters in the form and manner prescribed by the individual municipality in order to receive the type of information it needs to make an informed decision on a development proposal. These may be placed in an Appendix to the bylaw to enable them to be more easily updated and changed as required.

Town new LUB - The Town's proposed updated and new land use bylaw includes provisions for all the elements described above, including more comprehensive and detailed Administrative section so the rules, requirements, and processes are clear for everyone. It also will contain an enhanced section on development not requiring a permit (common exemptions added), definitions and expanded land use districts. It is also proposed to contain an enhanced "Specific Use Standards" section to provide detailed standards for certain types of developments.

What are the Roles of different Municipal Entities as it applies to the LUB?

Development Officer's Role

To receive development applications and ensure required information is provided, make decisions where authorized for permitted uses or limited variances, undertake required notifications, issue the permits on behalf of Development Authority (itself and MDSA), initiate any needed enforcement processes, act as support to MDSA, provide general development and bylaw advice, etc.

Development Authority's (Municipal Development & Subdivision Authority) Role

To review and make decisions on discretionary use matters and variances as outlined in the bylaw, provide recommendations to Council on development or bylaw issues they identify.

Council's Role

Approve and adopt the land use bylaw, make decisions on bylaw amendments and land use redesignations (rezonings), make decisions for any Direct Control district, approve Development Agreements on behalf of municipality (either general DA agreement template or individual negotiated agreements).

Subdivision and Development Appeal Board (SDAB) Role

SDAB will hold a hearing and decide upon appeals filed by applicants or affected parties in regard to a decision made on a subdivision application, a development permit or a Stop Order issued. The SDAB must comply with the LUB except if it grants a variance or waiver. To do so, it must determine the waiver and use would not unduly interfere with amenities of neighborhood, materially interfere with or affect the use, enjoyment, or value of neighboring parcels of land, and conforms with the use prescribed (i.e., cannot waive land uses in a district as prescribed by Council)

Why Update the Land Use Bylaw?

- The *Municipal Government Act* and *Subdivision and Development Regulation* have been updated, with new requirements added, and the bylaw must include new provisions as required by the province (e.g., determination of application completeness, appeal process, abandoned gas well and historical resource information, wetland considerations, etc.).
- The current land use bylaw was originally adopted in 2005 and although over time subsequent bylaw amendments have occurred and been added, all the changes should be wholistically reviewed to ensure consistency. The bylaw is also now somewhat dated and not as comprehensive as it should be.
- New or changed types of land use or development are not accounted for that should be added (e.g., secondary suites or accessory dwelling units, solar collectors, geothermal energy conversion systems, cottage industries, telecommunication tower protocols).
- Over the years, development matters that have gone to an appeal or before the Courts highlight gaps or areas of ambiguity or concern that may need to be addressed better.
- Some common development standards or recommended best land use practices change over time and updates should be considered to align with new practices or legislation (e.g., communication towers have a different process with a Letter of Concurrence, and not a development permit)
- Over time and through the application of the bylaw, a municipality will notice that some types of development are being particularly problematic to regulate or are causing concerns.
- A new bylaw will help clarify existing aspects of the bylaw that may not have been clear or address matters that were omitted or not previously contemplated (i.e., the bylaw is silent on them).
- As a community grows and evolves, new challenges arise (e.g., housing variety issues or lack of affordable housing). Some land use districts main purpose may no longer be as relevant.
- Over time, different Councils may have different objectives or opinions on how or what type of development should occur or how it is to be regulated or even not regulated.

Part 2

LAND USE BYLAW – Review Process

A land use bylaw is not a statutory document or plan but a regulatory bylaw for the municipality. With the focus more on standards and rules being applied, the review, public engagement, and adoption process may look different than how other municipal plans or policies are often developed.

Process for Review and Adoption

As unlike other plans that may be broader in scope or aim to promote or encourage some goals or visions for the community, a land use bylaw is more regulatory in nature (rules and procedures, standards being applied), often mirrors aspects of provincial Safety Codes, and also outlines municipal requirements and servicing standards (to protect municipal investment in infrastructure), the writing or amending of the bylaw will typically involve the municipality's planner, administrative staff, composition of the Development Authority (both Development Officer and MDSA), and Council in creating the framework or draft document. Either targeted components of the bylaw (e.g., introduction of secondary suites, renewable energy systems) or the draft bylaw itself may be presented to the public for feedback or comments to gauge public understanding, support, and concerns. From that input, the bylaw can be revised to address certain aspects or standards in the bylaw. Typically, better public response is provided if the public has clear information to respond to rather than asking open ended or broad questions.

Public Process

At a very minimum, the process must involve the following procedural components:

1. Council must at some point give interested parties a reasonable opportunity to present their views, and
2. A public hearing must be held prior to second reading of a bylaw to adopt (or amend) a land use bylaw.

The provision of allowing a reasonable opportunity to present views may simply be the notification and public hearing process of the bylaw adoption itself.

Additionally for the Town of Pincher Creek, the IDP with the MD of Pincher Creek does require a referral of the bylaw to be provided to them for review and comment.

Recommended Review Process

- Town's planner and administrative staff review current bylaw and identify topics, issues, and land use matters they feel should be addressed (and what the MGA requires to be included).
- Discuss bylaw, land use and development issues with Council – have Council provide input on matters presents and additional items they identify as important to be addressed.
- Based on direction given, draft bylaw standards and ultimately new land use bylaw document to incorporate suggestions and requests.
- Sections of drafted bylaw brought back to Council for review, amend as necessary.
- Formulate a strategy for presentation to public and to initiate some method of public engagement.

Part 3

LAND USE BYLAW – Council Direction

Council has the opportunity to amend, remove and include new requirements, district amendments, land uses, and standards for development to be implemented through the land use bylaw, that the Development Officer, MDSA and appeal board must consider and apply in making decisions.

Input from Municipality & Council:

The following are items identified that Council should review, discuss, and consider if amendments or additions are warranted. (The listed items are flagged to act as a discussion guide. The section following can encapsulate other items that Council members may highlight to be discussed and potentially addressed.) The following is not an exhaustive list to identify every matter but to simply start discussions.

Administrative (Rules) Section

- Requirements / Obligations for Developers – require developers provide refundable security on a Development Permit approval for items such as protection of sidewalks, curbs, gutters.
- Change and extend validity of a development permit from 18 to 24 months (the time frame within which a developer must start and commence the development), allow for a time extension request for an additional 12 months.
- Consider allowing Development Officer power to extend validity one time for permitted uses, the MDSA would deal with discretionary uses (currently all must go to MDSA).
- Development Officer allowed to grant one minor waiver not exceeding 15%, consider allowing up to two provided the two combined do not exceed 10%.
- Does Council have preference on the Notification to affected parties process?
- Change - If a permit is refused, another application for development on the same lot for the same or similar use shall not be made for 6 months from the date of refusal (bylaw currently states 1 month). If subsequent application is submitted to address requirements of Development Authority, then it may be accepted earlier.

Development Not Requiring a Permit – determine/expand the list to exempt more items

Suggestions to consider:

- Solar collectors installed on buildings
- Day homes with 6 children or less
- Decks less than 2 feet in height (at 2 feet the Building Code is applicable)
- Seasonal outdoor display of retail merchandise on a property for a business operating with an approved Development Permit
- Add common residential items for exemption (hot tubs, above ground swimming pools, moveable fountains, portable fire pits, garden boxes, etc.)
- Allow for temporary placement of shipping or storage containers in emergency situations (to store personal goods in the case of a fire or flood situation)

Land Use Districts

Residential

- R1 district minimum dwelling size – lower from current 1,000 ft.² to 900 or 800 ft.² Semi-detached and duplex lower from current 800 ft.² to 700 ft.² for each unit. This would help allow for more affordable housing options.
- Consider moving/adding semi-detached dwelling from discretionary list to permitted use column. Add moved-in dwellings as a discretionary use in the district.
- Would Council consider adding a 3-unit or 4-lex multi-unit as a discretionary use in the R1?

Secondary Suites (Accessory Dwelling Units) – types

- Bylaw currently silent on these - consider adding and determine what types will be allowable, and if permitted or discretionary (e.g., basement suites, other suites within a dwelling, additions to a dwelling, stand alone garden suites, garage conversion to suites (detached or attached), suites above a detached garage). Specify a minimum floor area, such as 400 ft.² for a suite.

Multi-unit housing (change all terminology from current “multi-family”)

- Should secondary suites be allowed in multi-unit housing, and if so what types, and as a permitted or discretionary use? E.g., allow a semi-detached dwelling to have basement suites or a four-plex to have secondary suites (such as basement suites) which would essentially become an 8-unit dwelling.
- Consider the concept of Cluster Housing to be expanded and defined to enable small (tiny) homes to be sited together as part of a comprehensive and planned development.

Home Occupations – parameters (requirements that should be reviewed)

- Review Class 1 and Class 2 Home Occupation standards for suitability
- Number of visitors allowed per day or per week
- Number of non-resident employees allowed or not allowed
- Outdoor storage considerations
- Parking or storage of commercial vehicles, trailers, equipment

C1 Downtown/Retail Commercial

- **Parking and setbacks, consideration of variances**
 - On-going parking issues downtown and the lack of onsite parking being able to be provided, especially on historic lots that have zero setback frontage and no rear access, may be specifically addressed as this continually requiring waivers.
 - Consider a ‘Core Downtown Overlay’ area to be identified in the land use bylaw to allow for specific exemptions or development requirements to be applied.
 - What uses are considered not suitable for downtown (e.g., drive-thru restaurants?)
 - Review what land uses are considered to be the most suitable for downtown
- **Residential use considerations**
 - Discuss the type and suitability of residential dwelling units acceptable in the C1 district (current bylaw only allows residential use as a secondary use in conjunction with an approved commercial use)
 - What standards might be applied to residential use being mixed with commercial? The bylaw should contain some siting and development criteria

- Should bylaw contain allowances for more temporary uses to occur (e.g., seasonal markets)

C4 Transitional Commercial

- With Highway/Dive-in Commercial C3 district, some downtown uses have relocated or established outside the downtown. The intent of C4 was to identify residential areas where the commercial expansion of the downtown may be feasible to develop. Is the intent still relevant?
- Is it worth reviewing the focus of the C4, and could the C4 be used to allow more mixed-use type of development – retail or business commercial on the bottom floor of a building and residential units above or at the rear of a building? May be an opportunity for more affordable housing options to develop.
- Should the C4 district only be considered for application in the core downtown vicinity, and not applied to other areas of the town?

Drive-thru Restaurants

- Review locational criteria – continue to only allow in the Highway/Dive-in Commercial C3 district?
- Standards in bylaw – should be included to provide siting criteria (stipulate menu-order box setbacks from road, adjacent residents, and outline minimum stacking queuing lane dimension for vehicle drive-thru ordering and pickup lane, etc.)

Parking Requirements

- Should be overall reviewed for applicability and suitability of provision standards.
- Special relaxation considerations for downtown C1 district for historical situations.

Standards of Development

- height of accessory buildings – consider raising from current 15 ft. to 16 ft.
- driveway widths & coverage – allow 25 ft. from current 20 ft., to align with more common garage widths
- fencing - remove need for clear sight-triangle corner on lanes (i.e. fencing restriction), consider different fencing standards for industrial lots
- add standards that address servicing matters and suitability of the land for development – minimum lot grading and drainage standards, connections to municipal servicing, landscaping
- shipping containers - consider suitability in certain districts, allow for temporary placement of shipping or storage containers in emergency situations (to store personal goods in the case of a fire or flood situation) without the need for a development permit
- add more detailed definitions and standards for decking, privacy, or wind screens, fencing
- add multi-density land use standards to address site development, landscaping, parking, storm water management, amenity space, etc.

Communication (cell) Tower Process - letter of concurrence

How far (distance radius) to notify the public and the process to be used (e.g., letter, open house)

Additional Input or Direction from Council:

Council can suggest any other matters regarding the application of the bylaw, applying standards, or land use or development issues that may be reviewed and could be warranted for potential amendments or addition being made to the bylaw.