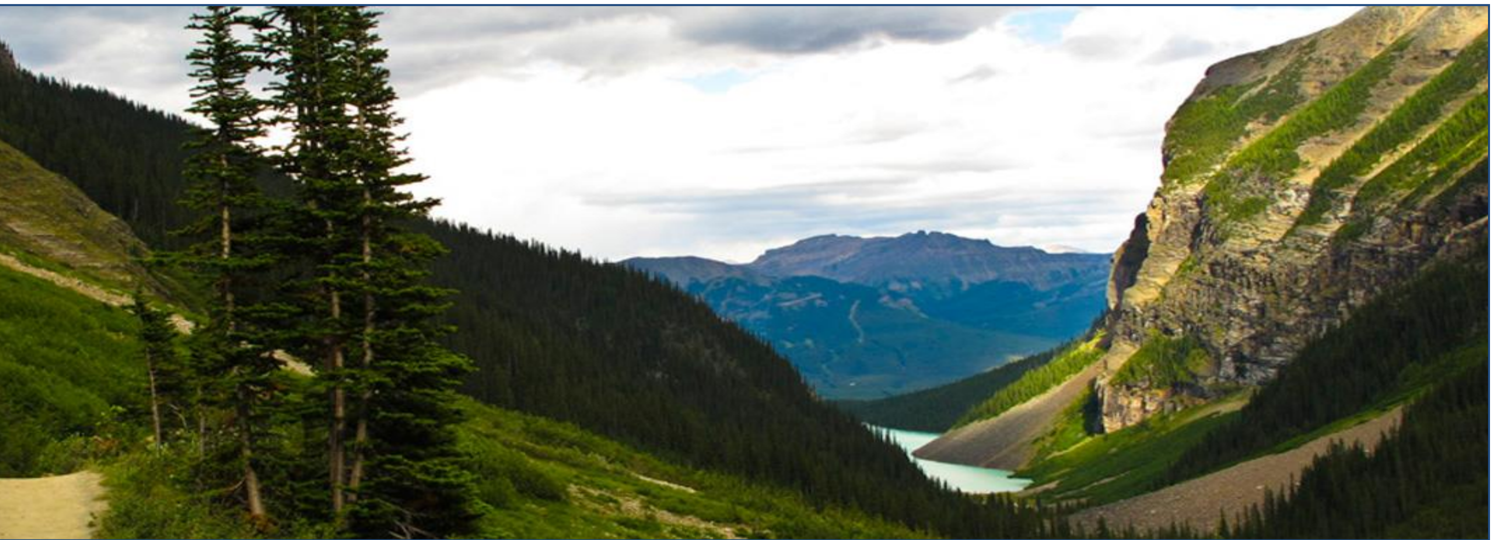
Legislative Review for the City of Calgary's Community GHG Implementation Strategy



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City of Calgary

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October 30, 2015

The Environmental Law Centre (Alberta) Society

The Environmental Law Centre (ELC) is Alberta's oldest and most active public interest environmental law organization and believes that law is the most powerful tool to protect the environment. Since it was founded in 1982, the ELC has been and continues to be Alberta's only registered charity dedicated to providing credible, comprehensive and objective legal information regarding natural resources, energy and environmental law, policy and regulation in the Province of Alberta. The ELC's mission is to educate and champion for strong laws and rights so all Albertans can enjoy clean water, clean air and a healthy environment.

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I. INTRODUCTION

The Environmental Law Centre (ELC) is Alberta's oldest and most active public interest environmental law organization and believes that law is the most powerful tool to protect the environment. Since it was founded in 1982, the ELC has been and continues to be Alberta's only registered charity dedicated to providing credible, comprehensive and objective legal information regarding natural resources, energy and environmental law, policy and regulation in the Province of Alberta. The ELC's mission is to educate and champion for strong laws and rights so all Albertans can enjoy clean water, clean air and a healthy environment.

Project Scope

In order to enable the implementation of its Calgary Community GHG Reduction Plan,[1] the City of Calgary has commissioned this legislative review of several proposed programs which are designed to reduce GHG emissions. These programs include innovative financing and funding programs, building regulation programs and waste reduction programs.

This report examines the manner in which current provincial legislation either enables or creates barriers to the proposed implementation of municipal GHG reduction programs. In particular, this report identifies which proposed GHG reduction programs are currently allowed, have uncertain authority or are expressly disallowed by governing legislation. Following from this analysis, this report provides recommendations for legislative reform to enable implementation of municipal GHG reduction programs. As well, the report identifies existing funding and financing powers in current legislation that might be used to support such programs.

Executive Summary

The following chart provides an executive summary of the municipal jurisdiction, legal barriers and legislative reform recommendations for each of the proposed GHG reduction programs analyzed in this report (please note that a more detailed chart is provided in the conclusion to this report). Each program is highlighted as being currently allowed (green), having uncertain authority (yellow), or expressly disallowed (red) by governing legislation.

The programs highlighted in green have clear municipal authority and, therefore, no legislative amendments are necessary to proceed with these programs. At the other end of the spectrum are the programs highlighted in red. These programs have a strong barrier to their implementation requiring legislative amendment to proceed. The programs highlighted in yellow have unclear municipal authority and legislative amendments would assist in implementing the program.

[1] City of Calgary, *Calgary Community GHG Reduction Plan: Energy in the City* (2011).

Program Description	**Jurisdiction**	**Barriers**	**Reform Recommendations**
Property-tied loans that can be paid back through property taxes (examples include PACE and LICs programs)	**Part 10 MGA** grants taxation powers to municipality	Municipal loans can be made only to a non-profit organization or a municipally controlled corporation (s. 264 MGA). Benefits of a PACE/LIC program are not limited to only one area of a municipality (contrary to MGA language relating to local improvement taxes). Local improvement taxes or special taxes are not specifically allowed to be used for environmental/ energy efficiency/GHG programs.	1. Amend Part 10, Division 7 MGA to allow local improvement taxes to be levied for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs." As well, ss. 395 and 397 must be amended to remove the requirement to identify the area of the municipality that will benefit from the local improvement. 2. Alternatively, amend s. 382 MGA to allow special taxes for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs." As well, s. 384 must be amended to remove the requirement that a special tax bylaw describe the area of the municipality that will benefit from the service or purpose of the tax and in which the special tax will be imposed.
Loans that can be paid back through utility bills (PAYS programs)	ENMAX (a wholly owned subsidiary of the City of Calgary) can be directed to implement such a program.	A legislative framework to support a PAYS is needed and must enable: • the loan agreement to apply to the person responsible for payment of the utility bill (as opposed to the original party to the agreement). • a caveat to be placed on title for the	Create legislative framework to support a PAYS program. See Appendix B for an example of legislation enabling a PAYS program (Manitoba).

		affected property. Municipal loans can be made only to a non-profit organization or a municipally controlled corporation (s. 264 MGA).	
Franchise Fees and Local Access Fees	**45, 61 and 360 MGA** allows imposition of franchise fees.	No legislative barrier	For additional clarity, amend MGA to allow the municipality to use franchise fees for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs."
Minimum energy standards	**Part 17, Division 5 (in particular s. 640) MGA** grants municipal authority to regulate buildings and land use.	Municipal bylaws dealing with same subject matter as building codes are inoperative (s.66 *Safety Codes Act*). Neither the ABC nor NECB set solar-ready, electric vehicle ready or district-energy ready requirements.	1. Amend s. 66 of the *Safety Codes Act* to allow municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards." 2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards" above and beyond the building codes.
Energy labelling and benchmarking	**Part 17, Division 5 (in particular s. 640) MGA** grants municipal authority to regulate buildings and land use.	No legislative barrier	For additional clarity, amend s. 66 of the *Safety Codes Act* to allow municipal bylaws respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards."

Required minimum energy upgrades to existing buildings at point of sale and/or at point of major renovation	**Part 17, Division 5 (in particular s. 640) MGA** grants municipal authority to regulate buildings and land use.	Municipal bylaws dealing with same subject matter as building codes are inoperative (s.66 *Safety Codes Act*). The ABC allows non-conforming, older buildings to be grandfathered; a municipal requirement to upgrade a building at the point of sale would be contrary to the ABC. The NECB does not contemplate application to existing buildings.	1. Amend s. 66 of the *Safety Codes Act* to allow municipalities to impose higher standards than those set in the ABC or the NECB. 2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws above and beyond the building code.
Minimum renewable energy standards for new buildings	**Part 17, Division 5 (in particular s. 640) MGA** grants municipal authority to regulate buildings and land use.	Municipal bylaws dealing with same subject matter as building codes are inoperative (s.66 *Safety Codes Act*). Neither the ABC nor NECB set on-site renewable energy standards.	1. Amend s. 66 of the *Safety Codes Act* to allow municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards." 2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards" above and beyond the building code.
Requirement to provide enhanced energy consumption	ENMAX (a wholly owned subsidiary of the City of Calgary) could be directed	No legislative barrier	For additional clarity, Amend s. 66 of the *Safety Codes Act* to allow municipal bylaws made respecting "enhanced energy efficiency, renewable energy or

information	to implement such a program. Basic billing information that must be provided to consumers is governed by the *Billing Regulations* under the *Electric Utilities Act* and the *Gas Utilities Act*.		alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards."
Waste Reduction	**Section 7 MGA** municipal bylaws for matters dealing with the "safety, health and welfare of people and the protection of people and property"	No legislative barrier	For additional legal clarity, s.7 of the MGA could be amended to include "environmental protection" as a purpose for municipal bylaws.

II. JURISDICTIONAL ANALYSIS & MUNICIPAL AUTHORITY

Municipalities are "creatures of statute" which means that municipalities are created and derive their authority to act from provincial legislation. As such, a municipality can only act in the manner and deal with matters as prescribed by provincial legislation. In addition, because the constitutional authority for municipalities to act is derived through delegation from the province, the legal authority of a municipality cannot exceed that of the province. In other words, if a province is constitutionally incompetent to deal with a subject matter, then so is a municipality.

Legislation Governing Municipalities

The primary piece of legislation governing Alberta municipalities is the *Municipal Government Act*[2] (the "MGA") and its accompanying regulations.[3] Currently, the MGA applies to all municipalities in Alberta including cities, towns, villages, summer villages, municipal districts and specialized municipalities.[4] Recent amendments to the MGA authorize the creation of City Charters which may provide that specified provisions of the MGA are inapplicable to that City. As well, a City Charter may enable that city to modify or replace provisions of the MGA via bylaw.

Aside from the provisions dealing with City Charters, the recent amendments to the MGA were fairly minor. This is because the provincial review of the MGA is still ongoing and a second round of amendments is forthcoming. At the same time, negotiations between the Cities of Edmonton and Calgary, and the provincial government regarding the content of proposed City Charters are ongoing. This means there are still opportunities to incorporate provisions empowering municipal environmental stewardship in the MGA, City Charters or both. For ease of reference, the MGA reform recommendations of the ELC are appended to this report (Appendix A).

Part 1 of the MGA sets out the purposes, powers and capacity of municipalities. The purposes of municipalities include:[5]

- providing good government,
- providing services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and
- developing and maintaining safe and viable communities.

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[2] *Municipal Government Act*, R.S.A. 2000, M-26.

[3] It should be noted that the MGA is currently under review by the provincial government. The website providing progress on the review process is http://mgareview.alberta.ca/. The first round of amendments was placed before the Legislative Assembly in the form of *Bill 20: Municipal Government Amendment Act, 2015* and passed in March 2015. The most significant change was the authorization of City Charters which may modify or make inapplicable specific provisions of the MGA to a Charter City. As well, a City Charter may enable a Charter City to modify or replace provisions of the MGA via bylaw. In addition, Bill 20 made some minor changes to provisions dealing with assessment of property definitions, general taxation provisions, local improvement taxes, and off-site levies. Prior to the recent provincial election, the previous government had indicated an intention to make additional amendments to the MGA later in 2015.

[4] MGA at s. 1(1)(s).

[5] MGA at s. 3.

Under s.5 of the MGA, a municipality has the powers, duties and functions as specifically set out in the Act or in other statutes. In addition, a municipality has **natural person powers** except as limited by the MGA or other statutes.[6] The natural person powers enable a municipality to, among other things:[7]

- borrow and lend money,
- make investments,
- own, buy and sell land, and
- restrict activities on their lands.

Another key authority of municipalities is the ability, under s. 7 of the MGA, to make bylaws for municipal purposes. These purposes include:

- safety, health and welfare of people and the protection of people and property;
- people, activities and things in, on or near a public place or place that is open to the public;
- nuisances, including unsightly property;
- transport and transportation systems;
- businesses, business activities and persons engaged in business;
- services provided by or on behalf of the municipality;
- public utilities; and
- wild and domestic animals and activities in relation to them.

There is no express authorization within s. 7 of the MGA to make bylaws for environmental, energy efficiency or GHG reduction purposes. As will be discussed below, this does not preclude a municipality from passing bylaws for environmental purposes.

As well, a municipality has the authority to enforce its bylaws using several mechanisms including the creation of offenses, fines, penalties, imprisonment, inspections and remedying contraventions. Among other things, a bylaw may:[8]

- regulate or prohibit certain activities;
- deal with developments, activities, business or things in different ways; or
- provide a system of licences, permits or approvals.

It should be noted that any bylaw that is inconsistent with provincial law is of no force or effect.[9]

Municipal revenue powers are governed by Parts 8, 9, 10 and 11 of the MGA. A municipality's authority to borrow money or provide loans and guarantees is governed by Part 8 of the MGA. The definitions and requirements for property assessment (for the purposes of property taxation) are set out in Part 9 of the MGA. Municipal taxation powers are established by Part 10 of the

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[6] MGA at s. 6.
[7] James Mallet, *Municipal Powers, Land Use Planning, and the Environment: Understanding the Public's Role* (2005: Edmonton, Environmental Law Centre).
[8] MGA at s. 8.
[9] MGA at s. 13.

MGA and include the authority to impose property, business, business revitalization, local improvement, well drilling equipment and community aggregate payment taxes. In addition, special taxes for a variety of specific purposes (for example, waterworks, sewer, paving, drainage ditches) may be imposed by a municipality. Part 11 of the MGA deals with assessment appeal boards (for the purposes of appealing tax assessments).

In addition to the MGA, municipalities derive authority from other provincial legislation. From an environmental perspective, key pieces of legislation include the *Environmental Protection and Enhancement Act*, [10] the *Historical Resources Act*,[11] the *Hydro and Electric Energy Act*,[12] and the *Alberta Land Stewardship Act* (ALSA).[13] In terms of regulating new and existing buildings for GHG emission reduction purposes, an integral piece of legislation is the *Safety Codes Act.*[14]

Although not central to the programs discussed in this report, it should be noted that ALSA provides municipalities with a variety of land conservation and stewardship tools that may be used to support GHG reduction programs. The purposes of ALSA are to:[15]

- provide a means by which the Government can give direction and provide leadership in identifying the objectives of the Province of Alberta;
- provide a means to plan for the future, recognizing the need to manage activity to meet reasonably foreseeable needs of current and future generations;
- provide for the coordination of decisions concerning land, species, human settlement, natural resources and the environment; and
- create legislation and policy that enables sustainable development by taking account of and responding to the cumulative effect of human endeavor and other events.

ALSA establishes the provincial regional planning process for Alberta. Regional plans developed under ALSA contain, for each planning region, a vision and a set of objectives for that region. Within each regional plan, there are rules of application and interpretation which specify which portions of the plan are enforceable as law and which portions are statements of public policy or direction that is not intended to have binding legal effect. By virtue of s. 20 of ALSA (and several provisions in the MGA[16]), a municipal government must ensure compliance with an applicable regional plan.

Conservation and stewardship tools may be used by a municipality to meet the requirements set by a regional plan. These tools include market-based instruments, conservation easements, conservation directives, stewardship units, conservation offsets, and transfer of development

[10] *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12.
[11] *Historical Resources Act*, R.S.A. 2000, c. H-9.
[12] *Hydro and Electric Energy Act*, R.S.A. 2000, c. H-16
[13] *Alberta Land Stewardship Act*, R.S.A. 2000, c. A-26.8.
[14] *Safety Codes Act*, R.S.A. 2000, S-1.
[15] ALSA at s.1.
[16] These include, but are not limited to, sections 619, 622, 630.2, 638.1, 639.1, 655, 692, 708.15 of the MGA.

credit schemes.[17] These tools may be particularly useful in maintaining biodiversity and ecosystem services that create the resiliency needed to adapt to the negative impacts of climate change.

In addition, it is conceivable that a regional plan could be used as a vehicle for either a provincial or regional climate change or GHG reduction framework. Again, by virtue of s. 20 of ALSA, a municipality would be required to ensure compliance with the applicable regional plan.

Municipalities and Environmental Matters

As mentioned, municipal authority to act is derived through delegation from the province. In relation to environmental matters, provinces have a dual role as legislators and owners of natural resources.[18] By virtue of s. 92 of the Constitution,[19] each province may make laws in relation to municipalities, property and civil rights in the province, local works and undertakings, and all matters of a merely local or private nature in the province. Given the broad legislative authority granted by the constitution and ownership rights, provinces generally have good authority to deal with environmental matters within the province. The primary exceptions to this are matters that affect fisheries or navigation, and intra-provincial pollution that moves across boundaries by air or water (as these matters are expressly granted to federal jurisdiction).[20]

Specifically with respect to climate change, several legal scholars have found that legislation addressing climate change fits comfortably within provincial authority.[21] Provincial authority to act on climate change derives from its constitutional jurisdiction over property and civil rights in the province, local works and undertakings, and all matters of a merely local or private nature in the province. In these matters, the authority of each province is confined to action within its own boundaries.[22] As stated by Bankes and Lucas: [23]

> It is one thing for the provincial legislature to make a law to establish a program or institution explicitly intended to have effect at the national and international levels and to modify and displace federal initiatives – such a law is likely invalid. But it is another thing for provincial legislature to make a law that is addressed to the citizens and businesses in the province and that may affect international matters – such a law is likely valid.

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[17] See Arlene Kwasniak, "The Potential for Municipal Transfer of Development Credits Programs in Canada" (2004) 15 JELP 147 for a discussion of municipal use of transfer of development credits. It should be noted that this article predates the introduction of ALSA.

[18] Alastair R. Lucas, 'Natural Resource and Environmental Management: A Jurisdictional Primer" in Donna Tingley, ed, *Environmental Protection and the Canadian Constitution: Proceedings of the Canadian Symposium on Jurisdiction and Responsibility for the Environment* (Edmonton: Environmental Law Centre, 1987).

[19] *Constitution Act, 1867* (UK), 30& 31 Victoria, c. 3.

[20] Judith Hanebury, "The Environment in the Current Constitution", (1992) 18:4 Alternatives 14.

[21] Nigel D. Bankes and Alastair Lucas, "Kyoto, Constitutional Law and Alberta's Proposals" (2004) 42 Alta. L. Rev. 355 and Shi-Ling Hsu and Robin Elliot, "Regulatory Greenhouse Gases in Canada: Constitutional and Policy Developments" (2009) 54 McGill L.J. 463.

[22] Nigel D. Bankes and Alastair Lucas, *supra* note 21 at 374.

[23] Nigel D. Bankes and Alastair Lucas, *supra* note 21 at 375.

Given that provinces have authority to deal with climate change matters, a municipality may be authorized to deal with climate change – that is, implementing GHG reduction programs – via provincial delegation of such authority.

There have been several decisions considering the authority of municipalities to act on environmental matters. To determine whether a municipality has authority to act on environmental matters, the courts interpret municipal enabling legislation in a broad, purposive fashion. As stated in *Croplife Canada v City of Toronto*:[24]

> [37] I conclude that absent an express direction to the contrary in the [Ontario] Municipal Act, 2001, which is not there, the jurisprudence from the Supreme Court is clear that municipal powers, including general welfare powers, are to be interpreted broadly and generously within their context and statutory limits, to achieve the legitimate interests of the municipality and its inhabitants.

In this case, the Court found that a municipal pesticide bylaw was legitimate pursuant to its general welfare power. This is consistent with the *Spraytech*[25] decision in which the Supreme Court of Canada upheld a municipal bylaw prohibiting the cosmetic use of pesticides under a provision in the enabling legislation which allowed general welfare bylaws.

While municipalities do have authority to act in environmental matters, that authority is subject to a territorial limitation. In *Shell Canada Products Ltd. v Vancouver*[26] the Supreme Court of Canada reviewed a City of Vancouver resolution which stated the City would not conduct business with Shell until such time as that company withdrew its business activities from South Africa. The Court found that, contrary to its governing legislation, the City was attempting to use its powers to do business to affect matters outside its boundaries. The Court held that there was a territorial limit on the City's powers.

Furthermore, there is a presumption that a municipal bylaw is valid unless it is demonstrated that the bylaw falls outside the municipality's jurisdiction, such as not being made for a municipal purpose or regulating a matter not within provincial jurisdiction (which means it cannot be delegated to the municipality).As expressed by the Ontario Supreme Court in *Eng v Toronto (City)*:[27]

> [17] Municipal by-laws attract a strong presumption of validity. The party challenging a by-law's validity bears the burden of proving that it is invalid. Where a by-law is susceptible to more than one interpretation, it must be read to fit within the parameters of the enabling municipal legislation. Barring "clear demonstration" of invalidity, courts should not so hold.

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[24] *Croplife Canada v City of Toronto,* (2005) 75 O.R. (3d) 357.
[25] *114957 Canada Ltee v Hudson*, [2001] 2 SCR 241.
[26] *Shell Canada Products Ltd. v Vancouver*, [1994] 1 S.C.R. 231.
[27] *Eng v Toronto*, 2012 ONSC 6818 (CanLii) at para. 16 to 17.

Judicial Review of Municipal Decision-Making

With respect to the manner in which municipal decision-making will be reviewed by the courts, the seminal decision is *Dunsmuir v New Brunswick.*[28] In this decision, the Supreme Court of Canada established two standards of review: correctness and reasonableness.[29] The correctness standard applies to jurisdictional determinations made by the decision-maker and other questions of law. On other matters, the court will use the reasonableness standard of review.

As stated by the Court:[30]

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.
>
> In contrast, a reviewing court will give deference to a decision-maker when the appropriate standard of review is reasonableness. In this case, the reviewing court will determine whether the decision falls within a range of possible acceptable outcomes which are defensible in terms of the facts and the law.

An example of judicial review of municipal decision-making is found in *United Taxi Drivers' Fellowship v Calgary (City)*.[31] This decision involved a challenge to a municipal bylaw that restricted the number of taxi licence plates within the city (the bylaw was ultimately upheld). The Court stated that municipalities must be correct in delineating their jurisdiction and such decisions will be reviewed using the standard of correctness. However, in addition, the Court noted that a broad and purposive approach to interpretation of municipal legislation must be used in order to reflect the true nature of modern municipalities which require flexibility in fulfilling their statutory purpose.

These decisions have direct bearing on the City of Calgary's authority to initiate programs pursuant to its GHG reduction plan. In the case of jurisdictional questions - that is, whether the City has the required legislative authority - the decision of the City will likely be reviewed subject to a correctness standard. However, the court will use a broad and purposive approach to interpreting the legislation and determining whether the City's decision is correct. It is notable that general welfare provisions - similar to those in the MGA - have been used to uphold bylaws with environmental purposes.

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[28] *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190.
[29] *Supra* note 28 at para. 45.
[30] *Supra* note 28 at para. 50.
[31] *United Taxi Drivers' Fellowship v Calgary (City),* [2004] 1 S.C.R. 485. See also *Nanaimo (City) v Rascal Trucking Ltd.*, [2000] 1 SCR 342 which considered whether a municipality correctly declared a pile of soil to be nuisance.

Conflict of Laws

The body of caselaw considering the interaction of municipal bylaws with similar provincial or federal laws is also important for understanding the limits of municipal authority to act. The potential conflict between a municipal bylaw and federal law was considered in the *Spraytech* decision mentioned above.[32] Because the matter of pesticides was already federally regulated, the municipal pesticide bylaw was argued to be inoperative. The Supreme Court found that bylaw was not inoperative because there was no **impossibility of dual compliance**. That is, compliance with the municipal bylaw did not necessitate breach of the federal legislation or vice versa. Rather, the municipal bylaw provided a further layer of complimentary regulation (which is permissible).

Specifically, with respect to regulation of environmental matters in Alberta, the Alberta Court of Appeal has stated:[33]

> [20] Municipal authorities have the jurisdiction to address environmental facts even though the environment is regulated by the province: see Robertson v. Edmonton (City), [1990] A.J. No. 278(Alta. Q.B.); Hutterian Bretheren Church of Starland v. Starland No. 47 (Municipal District),b[1991] A.J. No. 495 (Alta. C.A.).

The mere fact of provincial or federal regulation of a subject matter does not necessarily preclude municipal regulation of that same subject matter. In other words, it is possible to have the same subject matter regulated by more than one level of government (this is referred to as concurrent legislation). However, the municipal regulation/bylaw must abide by the rule against impossibility of dual compliance or be found inoperative.[34] In some instances, legislation may set a different test for concurrent regulation (rather than the impossibility of dual compliance test).[35]

III. ANALYSIS OF PROGRAMS

This report provides analysis of the following proposed GHG reduction programs:

- innovative financing and funding programs
    - property-tied loans that can be paid back through property taxes (i.e. PACE & LIC programs)
    - loans that can be paid back through utility bills (PAYS programs)

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[32] *114957 Canada Ltee v Hudson*, [2001] 2 SCR 241. See also *R v Blackbird* (2005), 74 O.R. (3d) 241 (ON. C.A.).

[33] *Patricia Hills Landowners Society v Parkland County (Subdivision and Development Appeal Board)*, 2010 ABCA 413 (CanLii) at para. 20.

[34] This principle is illustrated by the decision in *Northland Material Handling Inc v Parkland (County)*, 2012 ABQB 407 (CanLii). In this case, the County of Parkland denied extension of sand extraction and dry land fill operation. Northland sought judicial review of that decision on several grounds including that Alberta Environment had issued a permit which prevailed over municipal zoning. The Court denied Northland's application because there was no barrier to dual compliance. The Court found that both the Alberta Environment and municipal approvals operated concurrently.

[35] An example is the decision in *Peacock v Norfolk (County)*, [2004] OJ Mo. 5835 (ON. S.C.) which considered a provision similar to s.66 of the *Safety Codes Act*.

    - franchise fees and local access fees
- building regulation programs
    - minimum energy standards
    - energy labelling and benchmarking
    - required minimum energy upgrades to existing buildings at point of sale / point of major renovation
    - minimum renewable energy standards for new buildings
    - requirement to provide enhanced energy consumption information
- waste reduction programs
    - packaging materials prohibitions.

For each program, this report provides an analysis of the manner in which current provincial legislation either enables or creates legal barriers to implementation. In particular, this report identifies which proposed GHG reduction programs are currently allowed, have uncertain authority or are expressly disallowed by governing legislation. Following from this analysis, this report provides recommendations for legislative reform to enable the implementation of municipal GHG reduction programs.

A chart summarizing municipal jurisdiction, legal barriers and recommendations for legislative reform is found in the conclusion to this report. Each program is highlighted in green, yellow or red indicating, respectively, clear legislative authority to proceed, unclear legislative authority to proceed or lack of legislative authority.

A. Innovative Financing and Funding Programs

The installation of home energy technologies and upgrades may be subject to barriers such as high up-front costs, long payback periods and limited access to financing. Innovative financing and funding programs are designed to remove those barriers. As well, such programs can provide an incentive for green energy and energy efficiency improvements.

1. Property-tied loans that can be paid back through property taxes (examples include PACE and LIC programs)[36]

Under this program, municipalities provide loans to homeowners to fund energy efficiency or renewable energy upgrades to their home. The loans are tied to the property (rather than to the individual homeowner) with the result that if the property is sold before the loan is repaid, the loan is transferred to the new homeowner. In other words, the loan — as well as the energy savings — is transferred to future homeowners. A key feature of this program is that the loans can be repaid to the municipality through property taxes.

Municipal financing powers are established by the MGA (in particular Parts 8, 9, 10 and 11) and several regulations promulgated under the MGA.[37] The authority of municipalities to use

[36] PACE is an acronym for **property assessed clean energy** and LIC is an acronym for **local improvement charges**.

innovative financing and funding programs is impacted by both municipal borrowing and lending powers, and by municipal taxation powers.

By virtue of their natural person powers,[38] a municipality has the ability to borrow funds and provide loans. However, this ability is not unlimited. Part 8 of the MGA sets out limitations on municipal use of loans and borrowing. A significant restriction is that municipalities may only lend money or guarantee repayment of a loan if:[39]

- the loan or guarantee of a loan is made to one of its controlled corporations
- the loan or guarantee of a loan is made to a non-profit organization and the loaned money will be used for a purpose that will benefit the municipality, or
- a municipality intends to purchase gas from and become a shareholder of a designated seller under the *Gas Distribution Act*.

Any such loan or guarantee must be authorized by a municipal bylaw.[40] Further, no such loan or guarantee may be made if it would cause the municipality to exceed its debt limit unless the loan or guarantee is approved by the Minister.[41] The restriction on providing loans to only non-profit organizations or one of its controlled corporations will impact on the design of innovative funding and financing programs. As the MGA currently stands, loans cannot be distributed directly to individual property owners. However, as a wholly owned subsidiary of the City of Calgary, ENMAX could receive loans from the City.[42]

Another significant financing power of municipalities is taxation which is regulated by Part 10 of the MGA. The MGA gives municipalities authority to levy property and business taxes, business revitalization zone taxes[43] and special taxes for specific services.[44] Municipalities do not have authority to impose income taxes, sales taxes, hotel taxes, road tolls or fuel taxes (although there is a fuel tax sharing agreement with the province).[45] Particularly relevant to the innovative

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[37] *Capital Region Assessment Services Commission Regulation*, AR 77/1996; *Community Organization Property Tax Exemption Regulation*, AR 281/1998; *Investment Regulation*, AR 66/2000; *Major Cities Investment Regulation*, AR 249/2000; *Principles and Criteria for Off-site Levies Regulation*, AR 48/2004; *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004; *Qualifications of Assessor Regulation*, AR 233/2005; *City of Calgary Rivers District Community Revitalization Levy Regulation*, AR 232/2006; *Matters Relating to Assessment Complaints Regulation*, AR 310/2009; *Muni Funds Investment Regulation*, AR 22/2010; *Business Tax Exemption (Legislative Assembly Office) Regulation*, AR 214/2011; *Supernet Assessment Regulation*, AR 213/2012; *Electric Energy Generation Exemption Regulation*, AR 205/2012; *Extension of Linear Property Regulation*, AR 207/2012; *Debt Limit Regulation*, AR 255/2000.

[38] MGA at s. 6.

[39] MGA at s. 264.

[40] MGA at ss. 265 and 266.

[41] MGA at s. 268. Municipal debit limits are set by the *Debt Limit Regulation*, AR 255/200.

[42] ENMAX is a wholly owned subsidiary of The City of Calgary and Calgary's City Council acts in the capacity of sole Shareholder on behalf of all Calgarians (from ENMAX website at https://www.enmax.com/about-us/Direction-and-Leadership/shareholder-relationship).

[43] The amendments made to the MGA in March 2015 include renaming business revitalization zone taxes to improvement area taxes. This amendment has been passed but is awaiting proclamation so is not yet in force. See note 3 for more information on the MGA review process.

[44] Harry M. Kitchen and Enid Slack, "Special Study: New Finance Options for Municipal Governments" (2003) 51(6) Canadian Tax Journal 2215.

[45] *Ibid*.

financing and funding programs being reviewed in this report are the MGA provisions dealing with property tax associated with special taxes and local improvement taxes.

Currently, section 382 permits a municipality to impose special taxes to "raise revenue to pay for a specific service or purpose". Special taxes may be imposed for:

- waterworks,
- sewers,
- boulevards,
- dust treatment,
- paving,
- cost of repair and maintenance of roads, boulevards, sewer facilities, and water facilities,
- to provide incentives to health professionals to reside and practice their profession in the municipality,
- fire protection areas,
- drainage ditches,
- water supply for hamlet residents, or
- recreational services tax.

A special tax is imposed by bylaw which must include the purpose of the tax and identify the area which benefits from the service.[46] In addition, the revenue raised by the special tax must be used for the specific service or purpose for which the tax was imposed.[47] As currently written, the special tax provisions cannot support the innovative financing and funding programs being considered in this report. This could be changed by amending the MGA to make special taxes available for "any municipal service or purpose" or for "environmental/energy efficiency/GHG reduction purposes." Concurrently, s. 384 must be amended to remove the requirement that a special tax bylaw describe the area of the municipality that will benefit from the service or purpose of the tax and in which the special tax will be imposed.

Part 10, Division 7 of the MGA regulates the imposition of local improvement taxes. A local improvement tax may be imposed to fund a "local improvement" which is defined as a project "that council considers to be of greater benefit to an area of the municipality than to the whole municipality".[48] A local improvement may be proposed by a public petition or by council's own initiative.[49] If a local improvement is proposed, it must be accompanied by a local improvement plan.[50] As with special taxes, the local improvement tax is imposed by bylaw which must describe the proposed local improvement and its location, estimated cost, basis for determining the applicable tax, and other relevant information.[51]

Local improvement taxes apply to a project "that council considers to be of greater benefit to an area of the municipality than to the whole municipality". It has been suggested by some

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[46] MGA at s. 384.
[47] MGA at s. 386.
[48] MGA at s. 391.
[49] MGA at s. 393.
[50] MGA at s. 394.
[51] MGA at s. 395

commentators that the language of the MGA is sufficiently general to support a PACE or LIC program.[52] In its analysis, the Pembina Institute has concluded that there is no specific legislative impediment to LIC programs in the MGA.

Alberta Municipal Affairs considers it to be against the spirit of local improvement taxes to use such taxes for improvements on private property.[53] The concerns raised by Alberta Municipal Affairs are that:[54]

- The (Municipal Government) Act "does not contemplate" a municipality in the business of lending money to a ratepayer for any purpose.
- Local improvements are on public land in all cases, and so the Act "does not expect" to be involved in construction on a person's private home.
- A renovation to a home "cannot be defined" as a local improvement.

The MGA provisions dealing with local improvement taxes consistently refer to a benefit localized within one part of a municipality. Given the goal of a GHG reduction program is to reduce GHG throughout the whole municipality for the benefit of the whole municipality, there is an argument that a GHG reduction program is not supported by the language in the MGA which refers to a "greater benefit to an area of the municipality". That language suggests a more localized benefit than would be conferred by a GHG reduction program.

Given the lack of clarity of language in the MGA and the concerns of Alberta Municipal Affairs, the MGA could be amended to allow the use of local improvement taxes for "environmental/energy efficiency/GHG reduction purposes." Concurrently, ss. 395 and 397 must be amended to remove the requirement to identify the area of the municipality that will benefit from the local improvement.

The organization that supports PACE programs in the United States has outlined several aspects for a comprehensive PACE bill (an alternate term for LIC).[55] These include:

- Public purpose goals
- Qualifying improvements (e.g. energy efficiency, renewable energy onsite generation etc)
- Establish mechanism required for a local government to provide or arrange funding for the PACE program
- Require the municipality to impose an assessment or charge that is not extinguished in the event of a bankruptcy/default
- Allow municipalities to act allow or with others (economies of scale)
- Contract for program administration services from 3rd parties

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[52] See, Roger Peters, Matt Horne and Nicholas Ian Heap, *Using Local Improvement Charges to Finance Building Energy Efficiency Improvements: A Concept Report* (May 2004:Pembina Institute prepared for Climate Change Central and BC Hydro) and Roger Peters, Matt Horne and Johanne Whitmore, *Using Local Improvement Charges to Finance energy Efficiency Improvements: Applicability Across Canada* (June 7, 2005: Pembina Institute prepared for the Office of Energy Efficiency).

[53] Roger Peters, Matt Horne and Nicholas Ian Heap, *supra* note 52 at 9.

[54] Roger Peters, Matt Horne and Nicholas Ian Heap, *supra* note 52 at 9.

[55] See the PACE Enabling Legislation Checklist from PACENow Website (www.pacenow.org).

- Establish funding options (eg revenue bonds of the municipality, other legally available funds, funds provided by a third party, contractual rights to receive assessment payments)
- Allow PACE to fund 100% of a project's hard and soft costs (including audits), project development and application fees
- Take into account differences between types of municipalities

Recent amendments incorporating several of these aspects have been made to Ontario legislation to support LIC programs in that province.[56] The Ontario legislation is appended to this report in Appendix B.

It should be noted that s. 329 of the MGA lists the information that must appear on a tax roll - such as property location, taxpayer information, amount of taxes and so forth. This provision allows the municipality to include "any information considered appropriate by the municipality". In the *Kane v Leochko*[57] decision, the Court noted this provision and found that an ongoing sewer capital charge was an appropriate item to include on the tax roll. This provision would support inclusion of monies loaned through a PACE or LIC program on the tax roll.

Jurisdiction:
1. Part 10, Division 7 provides local improvement taxes may be imposed for "a project "that council considers to be of greater benefit to an area of the municipality than to the whole municipality". This language is potentially broad enough that it could support a PACE/LIC program.

Legislative Barriers:
1. Section 264 restricts municipal loans to being made only to non-profit organizations or one of its controlled corporations. This means that the municipality may not make direct loans to individual property owners. This will impact the design of the program.
2. A barrier is that Alberta Municipal Affairs considers PACE/LIC programs not to be within the spirit of local improvement taxes.
3. Another barrier is the MGA does not specify that local improvement taxes or special taxes can be used for environmental/energy efficiency/GHG programs.

Reform Recommendations:
1. Amend Part 10, Division 7 MGA to allow local improvement taxes to be levied for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs." Concurrently, ss. 395 and 397 must be amended to remove the requirement to identify the area of the municipality that will benefit from the local improvement.
2. Alternatively, amend s. 382 MGA to allow special taxes for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs." Concurrently, s. 384 must be amended to remove the requirement that a special tax bylaw describe the area of the municipality that will benefit from the service or purpose of the tax and in which the special tax will be imposed.
3. See Appendix B for an example of legislation supporting a LIC program (Ontario).

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[56] Sonja Persram, *LIC Primer: Using Local Improvement Charges to Finance Residential Energy* Upgrades (July 25, 2013: Collaboration on Home Energy Efficiency Retrofits in Ontario).
[57] *Kane v Leochko*, 2007 ABPC 190 (CanLii).

2. Loans that can be paid back through utility bills (PAYS programs)[58]

Under this program, a loan may be provided to a homeowner to fund energy efficiency or renewable energy upgrades to their home by either a municipality or a utility. The loan is repaid through the utility bill. The loan may be tied to the meter, rather than to the individual. This means, if the property is sold or otherwise transferred, the loan can also be transferred to a new utility customer.

As discussed above, a municipality is restricted to providing loans only to non-profit organizations or one of its controlled corporations. As a wholly owned subsidiary of the City of Calgary, ENMAX could receive loans from the City which in turn could be used to support energy efficiency improvements. This restriction may still be problematic because a municipality cannot do indirectly what it cannot do directly. For example, in the *Prairie Communities*[59] decision, a municipality attempted to impose fees on a developer as a matter of contract. The Court found that the municipality was attempting to use its natural person powers to circumvent restrictions on the imposition of off-site levies contained in s. 648 of the MGA and that this was not allowed.[60]

One issue to be addressed in a PAYS program is that of contractual privity. A contract cannot confer rights or impose obligations on individuals that are not party to the contract. In a PAYS program, the initial agreement to obtain and repay the loan will be between the utility provider and the utility customer. In order to tie the loan repayment obligation to the meter (rather than the utility customer who originally entered the agreement), supporting legislation must be developed.

Regulation (through provincial legislation or municipal bylaw) would likely be required to provide structure for the program. The province of Manitoba has a PAYS program enacted through its *Energy Savings Act*.[61] A copy of this legislation is appended to this report in Appendix C. The Manitoba legislation allows the corporation to make loans which are recovered with monthly charges on utility bills. The legislation provides that the agreement must be registered on title and is binding on the person responsible for the utility bill.

Jurisdiction:
1. ENMAX is a wholly owned subsidiary of the City of Calgary and, as such, can be directed to implement such a program.

Legislative Barriers:
1. There is no existing legislative framework to support a PAYS program. Specifically, there will need to be a provision allowing the loan agreement to apply to the person responsible for payment of the utility bill (as opposed to the original party to the agreement). As well, there is a requirement to enable a caveat to be placed on title for the affected property.

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[58] PAYS is an acronym for **pay as you save**.

[59] *Prairie Communities Development Corp. v Okotoks (Town)*, 2011 ABCA 315 (CanLii).

[60] See also *Edmonton East (Capilano) Shopping Centres Limited v Edmonton (City)*, 2013 ABQB 526 at paragraph 55 where the court accepts the argument that "a statutory delegate may not do indirectly what they are prevented from doing directly".

[61] *Energy Savings Act*, SM 2012, c. 26.

Reform Recommendation:
1. Create legislative framework to support a PAYS program. See Appendix C for an example of legislation enabling a PAYS program (Manitoba).

3. Franchise Fees and Local Access Fees

Franchise fees (levied on natural gas consumption) and local access fees (levied on electricity consumption) are currently relied upon by municipalities as a source of general revenue. Both franchise fees and local access fees are levied on utility customers by the municipality through the utility provider (i.e. the fees appear on utility bills), the utility provider collects the fees on behalf of the municipality and pays the collected fees to the municipality. The question is whether these fees can be used as funding sources to provide an incentive to make green energy and energy efficiency improvements.

Franchise fees (also referred to as local access fees) are governed by ss. 45, 61 and 360 of the MGA.[62] Section 45 provides that a municipality may enter into an agreement with a person to provide utility services in the municipality. Pursuant to section 61, a municipality may grant rights with respect to its property and charge fees for the use of its property. As well, pursuant to section 360 of the MGA, a municipality may enter into a tax agreement with a public utility owner wherein payment can be made in lieu of tax or other fees and charges as per the legislated formula.

In addition to the MGA provisions regarding franchise fees, the Alberta Utilities Commission (AUC) has authority over the imposition of franchise fees and franchise agreements. The AUC has described franchise fees as follows:[63]

> The municipality determines the level of the franchise fee, which is the consideration paid by the utility for the exclusive right to provide service to the residents of the municipality. The municipality may also opt for the collection of linear property taxes from the utility for the use of municipal lands to provide utility service. Franchise fees and linear property taxes are considered to be a cost of ATCO doing business in the municipality, and therefore, these costs are recovered from electric utility customers in the municipality.

With the adoption of *Rule 029*,[64] the AUC has streamlined the franchise application process for approval of franchise agreements and associated franchise fee riders. It should be noted, however, that *Rule 029* applies only to ACTO Electric Ltd., FortisAlberta Inc., ATCO Gas and Pipelines Ltd., and AltaGas Utilities Inc. **In other words, *Rule 029* is inapplicable to ENMAX.**

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[62] Also relevant are s.139 of the *Electric Utilities Act*, S.A. 2003, C. E-5.1 and ss. 48 and 49 of the *Gas Utilities Act*, R.S.A. 2000, c. G-5.

[63] AUC Decision 2012-294: Town of Fairview Franchise Agreement with ATCO Electric Ltd. and Amendment to Rider A, Application No. 1608821, Proceeding ID No. 2124 (October 31, 2012) at paragraph 9. This was a decision in which a standard form of franchise agreement was approved for ATCO Electric Ltd.

[64] *Rule 029: Applications for Municipal Franchise Agreements and Associated Franchise Fee Rate*.

By virtue of s. 4 of the *Distribution Tariff Regulation*,[65] ENMAX is required to apply to AUC for approval of its distribution tariff (i.e. the prudent costs of distributing electricity which are recovered from customers). This raises the question of whether a franchise fee ought to be considered as part of the distribution tariff application. This question was considered by the AUC in *Decision 2004-067*:[66]

> Unlike the agreement between the City of Calgary and ENMAX, the agreement between the City of Edmonton and EDI is made expressly pursuant to section 45 and 61 of the MGA only. In other words, it purports only to be a "franchise agreement" and does not purport to be a "tax agreement" pursuant to section 360 of the MGA. In most cases, Board approval of a franchise agreement is required by section 45 of the MGA. The exception is in the case of an agreement between a municipality and a subsidiary of the municipality, as "subsidiary" is defined in section 1(3) of the EUA: MGA, section 45(5).
>
> Section 1(3) of the EUA defines "subsidiary" by incorporating by reference section 2(4) of the Alberta Business Corporations Act. The Board is of the view that EDI satisfies this definition of "subsidiary" since EDI is wholly-owned by the City, which is clearly a "municipality" as defined in section 1(1)(ii) of the EUA.
>
> In the present case, the Agreement is between the City, a municipality, and EDI, its wholly-owned subsidiary. Therefore, as all parties have agreed, Board approval of the Agreement is not required and the Board has no jurisdiction to approve it. [FN295]Below, the Board will address the remaining question of whether the Board has any residual jurisdiction in relation to the Fee provided for in the Agreement.

The AUC ultimately concluded that it had no authority to review franchise fees pursuant to an agreement between a municipality and its subsidiary:[67]

> However, in a case where the Board does not have the jurisdiction to review and approve a franchise fee under sections 45 and 61 of the MGA, the Board considers that it cannot take jurisdiction over the franchise fee under section 122 of the EUA. The Board cannot do indirectly what it is prohibited from doing directly. Therefore, the Board cannot review the reasonableness of the Fee under section 122 of the EUA and cannot approve collection of the Fee in the tariff approved by the Board under section 124 of the EUA.

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[65] *Distribution Tariff Regulation*, Alta. Reg. 162/2003.

[66] EUB Decision 2004-067: EPCOR Distribution Inc. 2004 Distribution Tariff Application Part B: 2004 Final Distribution Tariff, Application No. 1306821 (August 13, 2004) at page 203.

[67] AUC Decision 2014-311: ENMAX Power Corporation 2015 Interim Distribution and Transmission Tariff Application, Application No.1610874, Proceeding No.3433 (November 12, 2014).

The most recent AUC decision pertaining to ENMAX's distribution tariff is *Decision 2014-311*[68] and is consistent with the above determination. In the ENMAX decision, the AUC states:[69]

> LOCAL ACCESS FEE (LAF)
>
> The LAF is a surcharge imposed by the City of Calgary and is not approved by the Alberta Utilities Commission. The LAF is collected by EPC on behalf of the City for all Sites located within the municipal boundaries of the City of Calgary.

Local access fee is an alternative term for franchise fee.

Currently, the City of Calgary does impose franchise fees which are collected by ENMAX through utility bills and remitted to the City. The revenue collected as franchise fees is directed into the City's general revenues and are used to displace taxes when the indicative tax rate is calculated.[70] There is no direction or restriction in the MGA requiring that franchise fees be used in a particular manner (although there may be such restriction in the franchise fee agreement).[71] In other words, there is no express prohibition from using franchise fees to support green energy and energy efficiency improvements (on the other hand, there is no express permission to do so either).

As stated by the Court in *Sobey's Leased Properties Limited v Town of Newcastle*,[72]

> A municipal corporation is a creature of the Legislature and derives its power from the Legislature by statute. Such a municipal corporation must have expressed or implied statutory power for an expenditure or the provision of a service. The statutory power to do an act or service or work involves the spending of money and if the act, service or work is authorized, the expenditure of money for such purpose is legal.

In other words, franchise fees collected by the municipality can only be spent in accordance with express or implied statutory powers. As previously discussed in Part II of this report, in general terms the MGA impliedly allows municipal actions directed at GHG reduction, which can include support of green energy and energy efficiency improvements.

Jurisdiction:
1. Franchise fees are permitted by ss. 45, 61 and 360 of the MGA. There is no language directing or restricting the use of funds collected as franchise fees.

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[68] *Supra* note 67 at page 206.
[69] *Supra* note 67 at Appendix 2, pages 4, 6, 8, 10, 13, 14, 17 and 18.
[70] Email communication dated June 23, 2015 from Asheei Hirji to Claire Beckstead.
[71] Upon review of the model franchise agreement approved by the Alberta Utilities Commission, it does not contain a provision restricting or directing the municipalities' use of franchise fees. There are, however, restrictions on the amount by which the franchise fees may be increased.
[72] *Sobey's Leased Properties Limited v Town of Newcastle*, (1997) CanLii 9614 (NB QB) at 7-8. See also *Weyerhaeuser Company Limited v. City of Miramichi*, (2003) NBQB 187 (CanLii).

Legislative Barriers:
1. There is no clear language in the MGA allowing (or disallowing) franchise fee funds to be used in support of green energy and energy efficiency improvements.

Reform Recommendation:
1. Amendment of the MGA to allow the municipality to use franchise fees for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs." In the ELC's view, amendment is not necessary for implementation of this program. The amendment recommendation is for more legal clarity.

B. Building regulations

Another category of municipal GHG reduction programs involves the implementation of building regulations designed to require high energy performance. The programs may be applicable to new or existing buildings.

4. Minimum energy standards

This program would apply to new buildings in the residential, commercial, and industrial/commercial/institutional (ICI) sectors. This program allows municipalities to set minimum energy standards in addition to and beyond the building code. Municipalities could set either prescriptive (i.e. require particular technologies be incorporated into the design) or performance-based (i.e. the building must meet a particular energy performance) standards. As well, the program could require that new buildings be built to renewable-ready standards - such as solar-ready, EV-ready or DE-ready - without the requirement that the technology be incorporated into the building at the time of construction.

As stated in Edmonton's *Green Building Plan*:[73]

> Buildings and land use in Alberta are governed by a number of provincial acts and statutes, including the Municipal Government Act, the Safety Codes Act and the Building Code. Taken together, these regulations provide the framework within which local governments are able to set their own bylaws with respect to green building measures.
>
> Under the Municipal Government Act, local governments in Alberta may pass bylaws for municipal purposes respecting a number of areas, including "the safety, health and welfare of people and the protection of people and property." However, Section 66(1) of the Safety Codes Act states: "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative."
>
> Therefore, the Safety Codes Act and the Building Code prohibits local governments from creating bylaws that interfere or present concurrent authority on a topic already regulated.

[73] Mike Mellross and Jim Andrais, *Green Building Plan* (City of Edmonton: 2012) at 11-12.

> However, local governments are able to create bylaws in areas that are not addressed or regulated by the Act and Building Code. *It is within this area that bylaws for green buildings may be feasible for local governments to pursue including, but not limited to, the efficiency of water and energy using devices, the energy efficiency of existing buildings, energy generation requirements, water use and disposal, waste generation and disposal, and energy labelling requirements*. [emphasis added]

With respect to buildings and land use, municipalities derive power from Part 17 of the MGA which deals with planning and development. In particular, Division 5 sets the municipal requirement to pass a land use bylaw and delineates the matters to be addressed in a land use bylaw. Pursuant to s. 640, a land use bylaw "may prohibit or regulate and control the use and development of land and buildings in a municipality." As well, the land use bylaw establishes the process for accepting, considering and issuing development permits. In issuing development permits, a municipality may attach conditions. As well, a municipality may set requirements for the design, character and appearance of buildings; the ground area, floor area, height, size and location of buildings; and the lighting of land, buildings or other things (among other items).

Under the *Historical Resources Act*[74], municipalities have authority relating to the protection of historic resources which includes buildings of historical or cultural value. A municipality may designate a municipal historic area wherein the use and development of land – including the demolition, removal, construction or reconstruction of buildings – is regulated and controlled. The *Historic Resources Act* prohibits the destruction, disturbance, alteration, restoration or repair of a designated historic building without written approval of municipal council or a person appointed by council.[75]

The other significant piece of legislation relating to buildings in Alberta is the *Safety Codes Act.*[76] This is the legislation that establishes, through the *Building Code Regulation*,[77] the applicable buildings codes. As of May 1, 2015, the *Alberta Building Code 2014* ("ABC") applies in Alberta, with the exception of section 9.36 (Energy Efficiency) which comes into force May 1, 2016. Effective November 1, 2015, the *National Energy Code of Canada for Buildings 2011* ("NECB") will also apply in Alberta.

Both the ABC and the NECB define a building as a "structure use or intended for supporting or sheltering any use or occupancy" (occupancy is defined as the support or shelter of people, animals or property) (ACB, Division A, 1.4.1.2 and NECB, Division A, 1.4.1.2). The ACB defines an alteration as a change or extension to any matter or thing or to any occupancy regulated by the ACB. The NECB defines an addition as any conditioned space added to an existing building that increases the floor surface area by more than 10 m^2.

Both the ABC and the NECB are objective based codes. As defined by the National Research Council of Canada, an objective based code includes objectives or goals that the code is meant to

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[74] *Supra* note 11 at ss. 26-28.
[75] *Supra* note 11 at s. 26.
[76] *Supra* note 14.
[77] *Building Code Regulation*, AR 31/2015.

achieve.[78] Every technical requirement achieves one or more of the stated objectives or goals. Compliance can be achieved by applying the provisions in the code or by using alternative solutions to achieve at least the same level of performance.

As the NECB states:[79]

> [It] does not list acceptable proprietary building products. It establishes the criteria that building materials, products and assemblies must meet. Some of these criteria are explicitly stated in the NECB while others are incorporated by reference to material or product standards published by standards development organizations. Only those portions of the standards related to the objective of this Code are mandatory parts of the NECB.

The ABC provides likewise.[80] Both the ABC and the NECB establish objectives and the functions that a building must perform to help to meet those objectives (in Division A). In addition, both codes provide acceptable solutions which are automatically deemed to meet stated objectives and functions (Division B). In order to encourage innovation, alternative solutions can be used in lieu in of compliance with the acceptable solutions.

The broad objectives of the ABC are to ensure building safety, health, accessibility, and fire and structural protection. In addition, an objective of the ABC is to provide environmental protection by preventing the excessive use of energy (Division A, 2.2.1.1).

The ABC is applicable to new buildings, the alteration of buildings, additions to buildings, reconstruction of building, and change in occupancy of a building. There are several exemptions, including among others (Division A, 1.1.1.1 (3)):

- buildings for housing livestock, for storage of materials or produce, or for storage or maintenance of equipment;
- utility poles and towers, television/radio or communication towers;
- water conveyance and control structures; and
- highway and railway bridges.

Application of the ABC to existing buildings - that is, buildings constructed prior to May 1, 2015 - is dealt with by article 1.1.1.2 which provides that any alteration, rehabilitation, refurbishment, renovation or repair to an existing building shall not reduce the level of life safety or level of performance. Further, the ABC provides that any construction or condition that lawfully existed prior to May 1, 2015 is acceptable so long as it does not constitute an unsafe condition (except for relocatable industrial accommodation subject to Division B, Part 10 of the ABC). A change in occupancy or an alteration of a building built prior to May 1, 2015 shall be permitted if the level of safety and building performance is acceptable to the *authority having jurisdiction* (i.e. a safety codes officer).

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[78] See the National Research Council of Canada website at nrc-cnrc.gc.ca/eng/solutions/advisory/codes_centre/faq/objective_based_codes.html.
[79] NECB at vii.
[80] ABC at vi.

The ABC provides technical requirements on several aspects of buildings (Division B):

- structural design,
- environmental separation (dealing with transfer of heat, air, moisture and sound through building materials),
- heating, ventilating and air-conditioning (HVAC),
- plumbing services and health,
- safety measures at construction and demolition sites,
- housing and small buildings,
- relocatable industrial accommodation, and
- exterior acoustic insulation.

Particularly relevant to the proposed projects reviewed in this report is Division B, 9.36 of the ABC which addresses energy efficiency in housing and small buildings (it should be noted that this provision comes into force in **May 2016**). The scope of section 9.36 is to deal with building envelope, HVAC and service water heating (9.36.1.1).

The objective of the NECB is to limit the possibility that the design and construction of a building will have a negative impact on the environment (Division A, 2.2.1). In particular, the requirements of the NECB are focused on limiting negative impacts on the environment caused by excessive use of energy.

The NECB applies to new buildings and to additions (farm buildings are exempt from the NECB) (Division A, 1.1.1.1). It sets requirements for building envelope, HVAC systems, service water heating, lighting, and electrical power systems and motors (1.1.1.2(1)). As stated in the NECB, it is to be used in conjunction with federal and provincial regulations, and municipal bylaws (Division A, 1.1.1.3 (1)). In the event of conflict, the requirements resulting in greater performance will prevail (Division A, 1.1.1.3(2)).

Given that both the ABC and NECB set energy efficiency requirements, the interaction of these two sets of requirements is important. The ABC provides that a building must meet the prescriptive or trade-off requirements established in 9.36.2 to 9.36.4, the performance requirements in 9.36.5, or the NECB requirements.[81] The ABC specifies that certain building types must meet one of these requirements.[82] As indicated in Table A-9.36.1.3:

- buildings of residential occupancy and small buildings (non-residential or mixed use) less than 300 m^2 must meet the prescriptive or trade-off requirements in 9.36.2 to 9.36.4 or the NECB requirements;
- houses (with or without secondary suites) and buildings with only dwelling units (and common space less than 20% of the floor area) must meet the performance requirements in 9.36.5, must meet the prescriptive or trade-off requirements in 9.36.2 to 9.36.4, or the NECB requirements; and
- non-residential buildings larger than 300 m^2 and medium hazard industrial buildings must meet the NECB requirements.

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[81] ABC at 9.36.1.3.

[82] ABC at 9.36.1.3 and Table A-9.36.1.3.

Table A-9.36.1.3.
Energy Efficiency Compliance Options for Part 9 Buildings

Building Types and Sizes	Energy Efficiency Compliance Options		
	ABC 9.36.2. to 9.36.4. (Prescriptive)	ABC 9.36.5. (Performance)	NECB
• houses with or without a secondary suite • buildings containing only dwelling units with common spaces ≤ 20% of building's total floor area[(1)]	✓	✓	✓
• Group C occupancies • buildings containing Group D, E or F3 occupancies whose combined total floor area ≤ 300 m^2 (excluding parking garages that serve residential occupancies) • buildings with a mix of Group C and Group D, E or F3 occupancies where the non-residential portion's combined total floor area ≤ 300 m^2 (excluding parking garages that serve residential occupancies)	✓	x	✓
• buildings containing Group D, E or F3 occupancies whose combined total floor area > 300 m^2 • buildings containing F2 occupancies of any size	x	x	✓

Notes to Table A-9.36.1.3.:
(1) The walls that enclose a common space are excluded from the calculation of floor area of that common space.

The authority of municipalities over buildings is restricted by s.66 of the *Safety Codes Act*[83] which provides:

Bylaws

66(1) A bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative.

(2) Notwithstanding subsection (1), a municipality may make bylaws

(a) to carry out its powers and duties under the Forest and Prairie Protection Act;

(b) respecting minimum maintenance standards for buildings and structures;

(c) respecting unsightly or derelict buildings or structures.

(3) Notwithstanding subsection (1), an accredited municipality may make bylaws

(a) respecting fees for anything issued or any material or service provided pursuant to this Act, and

(b) respecting the carrying out of its powers and duties as an accredited municipality.[84]

The City of Calgary is an accredited municipality and, by virtue of s. 26 of the *Safety Codes Act*, may administer the act with respect to "any or all things, processes or activities to which this Act applies within the boundaries of the municipalities". This provision, in concert with s.66(3)(b), allows an accredited municipality to make bylaws dealing with its administrative powers under the *Safety Codes Act*.

As discussed in Part II of this report, the impossibility of dual compliance is the usual test for the acceptability of concurrent regulation. However, in some instances, legislation may set a different test for concurrent regulation. A provision similar to s.66 of the *Safety Codes Act* was considered in the *Peacock v Norfolk (County)* decision.[85] In this case, a municipal bylaw regulated the separation distance between a hog operation and a municipal well. A concurrent provincial scheme existed to regulate the management of nutrients and provided that a municipal

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[83] *Supra* note 14.

[84] See the Safety Codes Council website for a complete list of accredited municipalities, http://www.safetycodes.ab.ca/Organizations/Accreditation/Pages/Orgs.aspx.

[85] *Peacock v Norfolk (County)*, [2004] OJ Mo. 5835 (ON. S.C.).

bylaw was inoperative if it addressed the same subject matter as the regulation. Although the Court found that the municipal bylaw was an attempt to change the siting provisions set by the comprehensive provincial code and, as such, was repugnant to the provincial legislation; it also held that the bylaw was inoperative because it dealt with the same subject matter as the provincial regulation.

Section 66 of the *Safety Codes Act*[86] was considered by the Alberta Court of Queen's Bench in the *Miraculous Growth Investments Inc. v Safety Codes Council* decision.[87] This case involved judicial review of a Safety Codes Council decision which required the applicant to cease using a building as a rooming house and return it to its original intended use a single family duplex unit. In considering whether the Safety Codes Council had made a reasonable decision, the Court stated:

> [45] The Council noted that, while municipal zoning and safety code requirements may reference the same subject matter in meeting the respective goals, issues arising under the *Safety Codes Act* are to be determined in accordance with the Act and the Provincial Safety Codes legislation. The Act provides in s. 66 that any bylaw of a municipality that purports to regulate a matter that is otherwise regulated by the Act is inoperative and s. 2 of the Act provides that the Act applies to fire protection and to the operation and maintenance of buildings. Accordingly, contrary to the submissions of the Applicants, a municipal bylaw such as the zoning bylaw cannot regulate matters within the scope of the Act and is an irrelevant consideration for the Council in its decision.

This determination by the Court negated the applicants argument that the Safety Codes Council ought to have relied upon definitions and criteria set out in the zoning bylaw in determining whether the property was being used as originally intended.

Given s. 66 of the *Safety Codes Act*, it is clear that municipal bylaws attempting to address matters already covered in the ABC or the NECB will be inoperative. In other words, to the extent a municipal bylaw addresses matters dealt with by the ABC or the NECB, that municipal bylaw will have no effect. In the event that the ABC or the NECB is amended or repealed to no longer address those matters, the municipal bylaw will revive and take effect.[88] This is due to the fact that a municipal has authority to regulate buildings within its boundaries but is subject to the limitation set by s. 66 of the *Safety Codes Act*.

Neither the ABC nor the NECB have provisions setting solar-ready, electric vehicle ready (EV ready) or district energy ready (DE ready) requirements for buildings. Nor do the codes set requirements for on-site renewable energy standards for new buildings. The ABC references solar thermal systems and solar domestic hot water systems as an option and requires that such equipment be designed and installed in accordance with manufacturer's instructions (9.36.3.11 and 9.36.4.3). Similarly, the NECB references solar thermal service water heating equipment as an option and requires that such equipment be designed and installed in accordance with the

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[86] *Supra* note 14.
[87] *Miraculous Growth Investments Inc v Safety Codes Council*, 2010 ABQB 620.
[88] See Peter W. Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 2007) sections 16.6 and 35.3 for discussion of "invalid" versus "inoperative" laws.

manufacturer's instructions or CAN/CSA - F379 SERIES (6.2.2.3). Given that the building codes do not address these matters, a municipality may be able to set such requirements for buildings within its boundaries. Further, as a matter of policy, a municipality could require its own buildings to meet standards above and beyond those set by the ABC and the NECB.

An example of an Alberta municipality requiring standards beyond those set by the ABC or the NECB can be found in Wood Buffalo Bylaw 12/012 (attached to this report as Appendix D). In that bylaw, the municipality has set green building standards such as requiring that buildings over a certain size meet LEEDS standards or an equivalent alternative (s. 9.7.11). As well, requirements for green utilities are established by the bylaw (s. 9.7.12). Obviously, this bylaw predates adoption of the energy efficiency provisions in the ABC and the NECB (which come into effect May 2016 and November 2015, respectively).

Jurisdiction:
1. Part 17, Division 5 (and in particular s. 640) grants municipalities authority to regulate buildings and land use within its boundaries.

Legislative Barriers:
1. Section 66 of the *Safety Codes Act* which provides "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative."

Reform Recommendation:
1. Amend s. 66 of the *Safety Codes Act* to expand the exceptions to s. 66(1) to include municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards."
2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards" above and beyond the building code. 3. Appendix E provides an example of provisions allowing a municipality to set its own building code (the Vancouver City Charter).

5. Energy labelling and benchmarking

This program would require energy labels for new and existing buildings in the residential sector, and benchmarking for new and existing buildings in the commercial and ICI sector. With respect to residential buildings, an energy label (or energy rating) must be obtained and disclosed so that homeowners can compare the energy performance of their home to similar homes. This enables people purchasing a home to evaluate the amount of energy needed to run a home and to anticipate the cost of energy bills. Energy benchmarking is a similar concept for buildings in the commercial and ICI sector. Building owners and operators are required to disclose the energy performance of their buildings or facilities in comparison to similar buildings or facilities.

As discussed above, municipal bylaws attempting to address matters already covered in the ABC or the NECB will be inoperative (pursuant to s. 66 of the *Safety Codes Act).* Neither the ABC

nor the NECB set requirements for labelling of buildings which means a municipality may be able to set energy labelling and benchmarking requirements.

An issue arises with the manner in which notice of the energy labelling and benchmarking will be provided. The Alberta *Land Titles Act* limits the items that may be registered on a certificate of title (and does not include energy labelling or benchmarking). In Ontario, information about energy consumption must be provided as part of the purchase and sale of property (unless waived by the purchaser). The relevant Ontario legislation is attached to this report as Appendix F. A similar program (complementary to the provincial program) is proposed for adoption in the City of Toronto.[89] An alternative approach to energy labelling and benchmarking is through the submission of annual energy use reports to a government body.[90] The manner in which energy labelling and benchmarking occurs – either as part of a purchase and sale of a property or as a reporting requirement – is a matter of program design.

It should be noted that a labelling and benchmarking program may raise privacy concerns for the building owners or tenants.[91] Given municipalities are subject to the *Freedom of Information and Protection of Privacy Act* (FOIPP),[92] the FOIPP requirements for collecting, using and releasing personal information must be considered in designing such a program.[93] Under FOIPP, personal information is defined as recordable information about an identifiable person and includes a person's name, address and phone number (among other items).[94] It should be noted that FOIPP does not apply to records made from information in a Land Titles Office.[95]

A public body may only collect personal information in limited circumstances which include the collection of information that "relates directly to and is necessary for an operating program or activity of the public body".[96] Furthermore, a public body may only use or release personal information in accordance with the provisions of FOIPP.[97] To the extent that a building labelling or benchmarking program will collect, use or release personal information, the program must be designed to ensure the FOIPP requirements are met. However, the FOIPP requirements should not present a legislative barrier to the implementation of a labelling or benchmarking program.

It should be noted that there are federal laws governing labelling of products - the *Canadian Labelling and Packaging Act* and the *Energy Efficiency Act.* Neither piece of legislation currently contains provisions applicable to buildings. If a municipality does decide to set energy

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[89]See article on Toronto Atmospheric Fund website at http://taf.ca/new-toronto-bylaw-will-reveal-energy-price-tags-in-buildings/.

[90] SeeToronto Atmospheric Fund, *The Energy Reporting Requirement – A Background Report* (February 2014) and Nadav Malin and Tristan Roberts, "Energy Reporting: It's the Law" (August 2012) 21(8) Environmental Building News available online at www2.buildinggreen.com/article/energy-reporting-its-law.

[91]*Ibid*.

[92]*Freedom of Information and Protection of Privacy Act*, RSA 2000, c. F-25. As set out in s. 2, one purpose of FOIPP is "to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information".

[93]FOIPP, s. 1(i)(i) local government body includes a municipality as defined in the MGA.

[94]FOIPP, s. 1(n) defines **personal information**.

[95]FOIPP, s. 4(1)(l)(v).

[96]FOIPP, s. 33.

[97]FOIPP, Part 2, Division 2.

labelling and benchmarking, these pieces of legislation should be kept in mind to ensure the municipal bylaw is complimentary to the federal regime (in the event buildings are brought into the scope of the federal legislation).

Jurisdiction:
1. Part 17, Division 5 (and in particular s. 640) grants municipalities authority to regulate buildings and land use within its boundaries.

Legislative Barriers:
1. Section 66 of the *Safety Codes Act* which provides "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative."

Reform Recommendation:
1. In the ELC's view, amendment to s. 66 of the *Safety Codes Act* is not necessary for implementation of this program because a bylaw requiring energy labelling or benchmarking would not be addressing a matter covered by the ABC or the NECB. The amendment recommendation is for additional legal clarity.
2. Amend s. 66 of the *Safety Codes Act* to expand the exceptions to s. 66(1) to include municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards."
3. Appendix F provides an example of legislation enabling an energy labelling program (Ontario).

6. Required minimum energy upgrades to existing buildings at point of sale and/or at point of major renovation

Under this program, a municipality would require existing buildings to be upgraded to a minimum standard when the property is either sold or renovated.

As discussed above, in light of s. 66 of the *Safety Codes Act*, it is clear that municipal bylaws attempting to address matters already covered in the ABC or the NECB will be inoperative.

Application of the ABC to existing buildings - that is, buildings constructed prior to May 1, 2015 - is dealt with by article 1.1.1.2. which provides that any alteration, rehabilitation, refurbishment, renovation or repair to an existing building shall not reduce the level of life safety or level of performance. Further, the ABC provides that any construction or condition that lawfully existed prior to May 1, 2015 is acceptable so long as it does not constitute an unsafe condition (except for relocatable industrial accommodation subject to Division B, Part 10 of the ABC). A change in occupancy or an alteration of a building built prior to May 1, 2015 shall be permitted if the level of safety and building performance is acceptable to the *authority having jurisdiction* (i.e. a safety codes officer).

As explained in the ABC:[98]

[98] ABC at A-1.1.1.2.

> This Code is most often applied to existing buildings when an owner wishes to rehabilitate a building, change its use, or build an addition, or when an enforcement authority decrees that a building or class of building be altered for reasons of public safety. It is not intended that the Alberta Building Code be used to enforce the retrospective application of new requirements to existing buildings or existing portions of relocated buildings.

In effect, the ABC allows non-conforming, older buildings to be "grandfathered". Sale of such a building does not trigger a requirement to meet the standards of the ABC. A municipal bylaw setting such a requirement would directly address a matter dealt with by the ABC (and set a different standard). This would be an inoperative use of municipal power. On the other hand, the ABC does contemplate application of existing standards at the point of renovation. However, a municipal bylaw seeking to impose certain energy efficiency standards at the point of renovation would be directly addressing a matter covered by the ABC and would be inoperative.

The NECB states this it is applicable to new buildings and to additions.[99] It does not contemplate application of the NECB at the time of renovation. An addition is to be considered as a new building contiguous to an existing building for the purposes of determining the scope of application of the NECB. A municipal bylaw requiring upgrades to meet NECB standards at the time of sale or renovation of an existing building would be extend the NECB beyond its stated application. Given s. 66 of the *Safety Codes Act*, such a municipal bylaw would be inoperative.

Jurisdiction:
1. Part 17, Division 5 (and in particular s. 640) grants municipalities authority to regulate buildings and land use within its boundaries.

Legislative Barriers:
1. Section 66 of the *Safety Codes Act* which provides "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative.
2. The ABC allows non-conforming, older buildings to be grandfathered; a municipal requirement to upgrade a building at the point of sale would be contrary to the ABC. The ABC does contemplate possible building upgrades at the point of renovation or addition. The NECB does not contemplate application to existing buildings.

[99] NECB at 1.1.1.1 and A-1.1.1.1(1).

Reform Recommendation:
1. Amend s. 66 of the *Safety Codes Act* to allow municipalities to impose higher standards than those set in the ABC or the NECB.
2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws above and beyond the building code. Appendix E provides an example of provisions allowing a municipality to set its own building code (the Vancouver City Charter).

7. Minimum renewable energy standards for new buildings

This program would allow municipalities to require that a certain portion of a building's energy demand be produced by on-site renewable energy generation. These requirements could be either prescriptive (such as, requiring a particular technology be incorporated into the building) or performance-based (such as, a certain percentage of the building's energy consumption coming from renewable sources).

As discussed above, given s. 66 of the *Safety Codes Act*, it is clear that municipal bylaws attempting to address matters already covered in the ABC or the NECB will be inoperative. Neither the ABC or the NECB set requirements for on-site renewable energy standards for new buildings. Both the ABC and the NECB have as an objective the prevention of environmental harm caused by "excessive use of energy". There is no focus in either code on the source of energy used by buildings. Given that the building codes do not address these matters, a municipality may be able to set such requirements for buildings within its boundaries.

Jurisdiction:
1. Part 17, Division 5 (and in particular s. 640) grants municipalities authority to regulate buildings and land use within its boundaries.

Legislative Barriers:
1. Section 66 of the *Safety Codes Act* which provides "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative."

Reform Recommendation:
1. Amend s. 66 of the *Safety Codes Act* to expand the exceptions to s. 66(1) to include municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards."
2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards" above and beyond the building code. Appendix E provides an example of provisions allowing a municipality to set its own building code (the Vancouver City Charter).

8. Requirement to provide enhanced energy consumption information

An enhanced energy consumption information program would allow municipalities to require that utilities providers give their customers with better and more detailed information allowing customers to evaluate the energy use in their buildings. This may take the form of enhanced billing or home energy reports, or visible energy metering in buildings.

Part 3, Division 3 of the MGA governs public utilities within a municipality. A public utility is defined as a system or works used to provide services - such as electric power - for public consumption, benefit, convenience or use.[100] There are no provisions within the MGA addressing consumer billing for public utilities.

However, s. 4 of the *Billing Regulation*,[101] promulgated under the *Electric Utilities Act*,[102] sets the billing information to be provided by electric utilities to its consumers. Along with information identifying the consumer - such as name, address and so forth - an electric utility bill must indicate the amount charges for electric energy, the amount charged for administration of the account, the amount paid to the utility owner as distribution tariff, amount of local access fees levied under s. 45 of the MGA. The utility bill must also indicate the user's consumption of energy on which the charge is based. Section 4 of the *Natural Gas Billing Regulation*,[103] promulgated under the *Gas Utilities Act*,[104] sets essentially the same billing information requirements for gas utilities. There is nothing in either regulation to suggest that additional information - such as enhanced energy consumption information - cannot be provided in an electric utility bill.

Jurisdiction:
1. ENMAX is a wholly owned subsidiary of the City of Calgary and, as such, can be directed to implement such a program.
2. The *Billing Regulations*, promulgated under the *Electric Utilities Act* and the *Gas Utilities Act* enumerate the basic billing that must be provided to consumer. There is no restriction against additional information.

Legislative Barriers:
1. There is no clear direction requiring enhanced energy consumption information in the *Billing Regulations*, nor is there clear authority for a municipality to require such information in the MGA.

Reform recommendation:
1. Amendment to the *Billing Regulations* specifying that a municipality may direct a utility provider to provide enhanced energy consumption information.

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[100] MGA at s. 1(1)(y).
[101] *Billing Regulation*, AR 159/2003.
[102] *Electric Utilities Act*, S.A. 2003, c. E-5.1.
[103] *Natural Gas Billing Regulation*, AR 185/2003.
[104] *Gas Utilities Act*, RSA 2000, c. G-05.

2. Alternatively, Part 3, Division 3 of the MGA could be amended to enable a municipality to direct a utility provider to provide enhanced energy consumption information.
3. In the ELC's view, amendment is not necessary for implementation of this program. The amendment recommendation is for additional legal clarity.

C. Waste Reduction

9. Packaging Materials Prohibitions

Under this program, municipalities would prohibit the use of packaging materials. As an example, a municipality could prohibit the use of Styrofoam packaging for fast food or the use of plastic bags.

Waste management in Alberta is primarily a matter of municipal jurisdiction.[105] The MGA includes waste management facilities in the definition of public utilities that may be governed by municipalities.[106] Both the City of Edmonton and the City of Calgary have substantial bylaws dealing with waste management and recycling.[107]

The authority to pass waste management bylaws derives from the general bylaw power found in s. 7 of the MGA which allows municipalities to make bylaws for municipal purposes. A municipality also has the authority to enforce its bylaws using several mechanisms including the creation of offenses, fines, penalties, imprisonment, inspections and remedying contraventions. Among other things, a bylaw may regulate or prohibit certain activities.[108] A bylaw may deal with things in different ways, divide each thing into different classes and deal with each class in different ways.[109]

While the general bylaw power under s. 7 of the MGA does not specifically mention the creation of bylaws for environmental purposes, general welfare powers have been interpreted by the courts as supporting environmental bylaws (as discussed in Part II of this report). Given the broad, purposive approach taken by the courts in interpreting municipal enabling legislation, in combination with established municipal authority over waste management, there is municipal authority to create a bylaw prohibiting the use of packaging materials within the municipality.

In designing a packaging material ban, s.13 of the MGA must be kept in mind. This provision provides that any bylaw that is inconsistent with another enactment is of no effect. In other words, a municipal bylaw cannot be contrary to a federal or provincial so that compliance with

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[105] See for example, Sam N.K. Banks, *Plastic Bags: Reducing their use through regulation and other initiatives* (December 8, 2008) Library of Parliament, Ottawa PRB 08-27E. The author considered a potential federal role in plastic bag bans but concluded the primary role is at the municipal level.
[106] MGA at s. 1(y)(ix). As well, s. 33 provides that a municipality may determine that a particular public utility may operate as a monolopy within its boundaries.
[107] Edmonton's waste bylaw is the *Waste Management Bylaw 13777* and Calgary's is the *Waste & Recycling Bylaw 20M2001.*
[108] MGA at s.8.
[109] MGA at s.8.

both is impossible. A municipal bylaw can be only complementary to the federal or provincial regulation.

Currently, there is no federal or provincial addressing the use of packaging materials as a matter of waste regulation. The federal government exercises its waste management responsibilities with respect to transboundary movements of hazardous waste, releases of toxics to the environment, and activities on federal lands.[110] The provincial government has issued the *Waste Control Regulation*, AR 192/96 pursuant to the *Environmental Protection and Enhancement Act*, RSA 2000, c. E-12 which does not directly address packaging materials. It should be noted that work has been proceeding to review and revise the provincial framework and regulation regarding waste management.[111]

Jurisdiction:
1. Section 7 of the MGA provides that bylaws may be passed for matters dealing with the "safety, health and welfare of people and the protection of people and property." Similar general welfare provisions have been applied to uphold municipal environmental protection bylaws.

Legislative Barriers:
1.Section 7 of the MGA does not specify environmental protection as municipal bylaw purpose.
2. Section 13 of the MGA provides that no bylaw may be inconsistent with another enactment.

Reform Recommendation:
1. For additional clarity, s.7 of the MGA could be amended to include "environmental protection" as a purpose for municipal bylaws.
2. An example of a municipal packaging material ban (single use plastic bags) is appended to this report in Appendix G. This is a bylaw passed by the Municipality of Wood Buffalo, Alberta.
3. In the ELC's view, amendment is not necessary for implementation of this program. The amendment recommendation is for additional legal clarity.

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[110] See Environment Canada website for overview (http://www.ec.gc.ca/gdd-mw/Default.asp?lang=En&n=678F98BC-1) and Andrew R. Hudson, *Good Riddance: Waste Management Law In Alberta*, 2nd ed. (Edmonton: 2003, Environmental Law Centre).

[111] See Alberta Environment and Parks website (http://esrd.alberta.ca/waste/).

IV. CONCLUSION

The following chart summarizes the municipal jurisdiction, legal barriers and recommendations for legislative reform for each of the proposed GHG reduction programs analyzed in this report:

- innovative financing and funding programs
  - property-tied loans that can be paid back through property taxes (i.e. PACE & LIC programs)
  - loans that can be paid back through utility bills (PAYS programs)
  - franchise fees and local access fees
- building regulation programs
  - minimum energy standards
  - energy labelling and benchmarking
  - required minimum energy upgrades to existing buildings at point of sale / point of major renovation
  - minimum renewable energy standards for new buildings
  - requirement to provide enhanced energy consumption information
- waste reduction programs
  - packaging materials prohibitions.

Following from the analysis of the manner in which current provincial legislation either enables or creates legal barriers to implementation of the proposed programs, this chart highlights each program in green, yellow or red. Programs are highlighted as being currently allowed (green), having uncertain authority (yellow), or expressly disallowed (red) by governing legislation.

Clear Legislative Authority– no legislative amendments necessary to proceed with program
Unclear Legislative Authority – legislative amendments would assist in implementing program
Legislative Barrier – amendment required to proceed with program

Program Description	Jurisdiction	Legislative Barriers/ Lack of Legislative Clarity	Reform Recommendations
Property-tied loans that can be paid back through property taxes (examples include PACE and LICs programs)	Part 10, Division 7 provides local improvement taxes may be imposed for a project "that council considers to be of greater benefit to an area of the municipality than to the whole	1. Section 264 restricts municipal loans to being made only to non-profit organizations or one of its controlled corporations. This means that the municipality may not make direct loans to individual property owners. This will impact the design of the	1. Amend Part 10, Division 7 MGA to allow local improvement taxes to be levied for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs." Concurrently, ss. 395 and 397 must be amended to remove the requirement to identify

	municipality". This language is potentially broad enough that it could support a PACE/LIC program.	program. 2. A barrier is that Alberta Municipal Affairs considers PACE/LIC programs not to be within the spirit of local improvement taxes. 3. The benefits of a GHG reduction program are not limited to one area of the municipality (which is not consistent with the MGA language of local improvement taxes). 4. The MGA does not specify that local improvement taxes or special taxes can be used for environmental/energy efficiency/GHG programs.	the area of the municipality that will benefit from the local improvement. 2. Alternatively, amend s. 382 MGA to allow special taxes for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs." Concurrently, s. 384 must be amended to remove the requirement that a special tax bylaw describe the area of the municipality that will benefit from the service or purpose of the tax and in which the special tax will be imposed. 3. See Appendix A for an example of legislation supporting a LIC program (Ontario).
Loans that can be paid back through utility bills (PAYS programs)	ENMAX is a wholly owned subsidiary of the City of Calgary and, as such, can be directed to implement such a program.	1. There is no existing legislative framework to support a PAYS program. Specifically, there will need to be a provision allowing the loan agreement to apply to the person responsible for payment of the utility bill (as opposed to the original party to the agreement). As well, there is a requirement to enable a caveat to be placed on title for the affected property. 2. Section 264 restricts municipal loans to being made only to non-profit organizations or one of its controlled corporations.	1. Create legislative framework to support a PAYS program. 2. See Appendix B for an example of legislation enabling a PAYS program (Manitoba).

Franchise Fees and Local Access Fees	Franchise fees are permitted by ss. 45, 61 and 360 of the MGA. .	No legislative barrier There is no language directing or restricting the use of funds collected as franchise fees In particular, there is no language in the MGA allowing franchise fee funds to be used in support of green energy and energy efficiency improvements.	For additional legal clarity, amendment of the MGA to allow the municipality to use franchise fees for "any municipal service or purpose" or for "environmental/energy efficiency/GHG programs."
Minimum energy standards	Part 17, Division 5 (in particular s. 640) grants municipal authority to regulate buildings and land use within its boundaries.	Section 66 of the *Safety Codes Act* provides that "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative."	1. Amend s. 66 of the *Safety Codes Act* to expand the exceptions to s. 66(1) to include municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards." 2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards" above and beyond the building code. 3. Appendix D provides an example of provisions allowing a municipality to set its own building code (the Vancouver City Charter).

Energy labelling and benchmarking	Part 17, Division 5 (in particular s. 640) grants municipal authority to regulate buildings and land use within its boundaries.	No legislative barrier Section 66 of the *Safety Codes Act* provides that "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative."	1. Amend s. 66 of the *Safety Codes Act* to expand the exceptions to s. 66(1) to include municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards." 2. Appendix E provides an example of legislation enabling an energy labelling program (Ontario).
Required minimum energy upgrades to existing buildings at point of sale and/or at point of major renovation	Part 17, Division 5 (and in particular s. 640) grants municipalities authority to regulate buildings and land use within its boundaries.	1. Section 66 of the *Safety Codes Act* provides that "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative. 2. The ABC allows non-conforming, older buildings to be grandfathered; a municipal requirement to upgrade a building at the point of sale would be contrary to the ABC. The ABC does contemplate possible building upgrades at the point of renovation or addition. The NECB does not contemplate application to existing buildings.	1. Amend s. 66 of the *Safety Codes Act* to allow municipalities to impose higher standards than those set in the ABC or the NECB. 2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws above and beyond the building code. 3. Appendix D provides an example of provisions allowing a municipality to set its own building code (the Vancouver City Charter).
Minimum renewable energy standards for new buildings	Part 17, Division 5 (in particular s. 640) grants municipal authority to regulate buildings and land use within its boundaries.	Section 66 of the *Safety Codes Act* provides that "a bylaw of a municipality that purports to regulate a matter that is regulated by this Act is inoperative."	1. Amend s. 66 of the *Safety Codes Act* to expand the exceptions to s. 66(1) to include municipal bylaws made respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but

			not limited to, district energy, EV ready and renewable energy standards." 2. Alternatively, the MGA (or a City Charter) could be amended to allow municipalities to make bylaws respecting "enhanced energy efficiency, renewable energy or alternative energy requirements including, but not limited to, district energy, EV ready and renewable energy standards" above and beyond the building code. 3. Appendix D provides an example of provisions allowing a municipality to set its own building code (the Vancouver City Charter).
Requirement to provide enhanced energy consumption information	1. ENMAX is a wholly owned subsidiary of the City of Calgary and, as such, can be directed to implement such a program. 2. The *Billing Regulations*, promulgated under the *Electric Utilities Act* and the *Gas Utilities Act* enumerate the basic billing that must be provided to consumer. There is no restriction against additional information.	No legal barrier There is no clear direction requiring enhanced energy consumption information in the *Billing Regulations*, nor is there clear authority for a municipality to require such information in the MGA.	1. Amendment to the *Billing Regulations* specifying that a municipality may direct a utility provider to provide enhanced energy consumption information. 2. Alternatively, Part 3, Division 3 of the MGA could be amended to enable a municipality to direct a utility provider to provide enhanced energy consumption information.

Waste Reduction	Section 7 of the MGA provides that bylaws may be passed for matters dealing with the "safety, health and welfare of people and the protection of people and property." Similar general welfare provisions have been applied to uphold municipal environmental protection bylaws.	No legislative barrier 1. Section 7 of the MGA does not specify environmental protection as municipal bylaw purpose. 2. Section 13 of the MGA provides that no bylaw may be inconsistent with another enactment.	1. For additional clarity, s.7 of the MGA could be amended to include "environmental protection" as a purpose for municipal bylaws. 2. An example of a municipal packaging material ban (single use plastic bags) is appended to this report in Appendix F. This is a bylaw passed by the Municipality of Wood Buffalo, Alberta.

APPENDIX A
ELC Recommendations for the 2014 MGA Consultations

Empowering Municipalities for Environmental Management:
The Environmental Law Centre's Recommendations
2014 *Municipal Government Act* Consultations

The Environmental Law Centre (ELC) is an Edmonton-based charitable organization established in 1982 to provide Albertans with an objective source of information about environmental and natural resources law and policy. The ELC's vision is an Alberta where the environment is a priority, guiding society's choices. It is the ELC's mission to ensure that Alberta's laws, policies and legal processes sustain a healthy environment for future generations.

It is the ELC's view that municipalities have the potential to play a pivotal role in environmental management and protection in Alberta. Municipalities have the authority to control and regulate many private land uses. As well, municipalities have the responsibility for engaging in local land use planning through the use of statutory plans (for example municipal development plans and area structure plans) and land use by-laws. The ELC would like to see environmental management and protection as a priority in the activities of municipalities.

Issues

While the *Municipal Government Act* ("*MGA*")[1] requires municipalities to engage in local land use planning and to create statutory plans that are consistent with applicable regional plans under the *Alberta Land Stewardship Act* ("*ALSA*")[2], there is no imperative to consider environmental matters within the municipality.

It is our view that expressly granting municipalities clear legislative guidance and authority for dealing with environmental matters will enhance the provincial approach to regional land use planning under the *ALSA*. As well, legislative changes can be implemented to solidify the municipal role in stewarding Alberta's natural assets and the delivery of ecosystem services. Ecosystem services can be defined as the "wide range of conditions and processes through natural ecosystems, and the species that are part of them, [that] help sustain and fulfill human life".[3] As an example, ecosystem services include natural processes such as water purification and flood control provided by wetlands.

Along with clarification of the role of municipalities in environmental protection and management in the *MGA*, municipalities must be empowered to actively manage and protect

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[1] *Municipal Government Act*, RSA 2000, c. M-26.
[2] *Alberta Land Stewardship Act*, S.A. c. A-26.8.
[3] Keith H. Hirokawa, "Sustaining Ecosystem Services through Local Environmental Law" (2011) 28 Pace Envt'l L. Re. 760 at 760.

Alberta's environment on a local scale. This includes expansion of municipal tools for enforcement and revenue generation.

Overview of Recommendations

As mentioned in our letter dated April 1, 2014, it is our view that municipalities play an important role in environmental protection and management.

The Supreme Court of Canada, in the *Spraytech*[4] decision, has recognized that local governments may be best positioned to respond to local concerns. In that particular case, the Supreme Court upheld a municipal bylaw restricting the cosmetic use of pesticides in order to protect the health of its residents. The bylaw was found to be authorized under a general bylaw power to "secure [municipal] peace, order, good government, health and general welfare" contained within the municipal enabling legislation. This decision by the Supreme Court of Canada affirms the authority of municipalities to regulate environmental matters.

It is the ELC's view that, in light of this decision, the *MGA* ought to be amended to provide greater clarity and guidance to municipalities on environmental matters. In order to accomplish this, the following changes to the interpretation and purpose provisions of the *MGA* are recommended:

1. To facilitate municipal protection and management of the environment, the *MGA* should include definitions of **environment** and **sustainability** as follows:

    A. Environment means the components of the Earth and includes:
      a. air, land and water,
      b. all layers of the atmosphere,
      c. all organic and inorganic matter,
      d. all living organisms,
      e. the interacting natural systems that include the above components, and
      f. social, cultural, economic, environmental and interactive features or conditions affecting the lives of individuals or communities

    B. Sustainability means planning and development that acknowledges the inherent limitations of the environment, that is socially, culturally, economically and environmentally sound, and that meets the needs of the present without compromising the ability of future generations to meet their own needs.

2. Section 3 of the *MGA* sets out municipal purposes and should be expanded to include environmental protection and management, and the promotion of sustainability as valid

[4] *114957 Canada Ltée (Spraytech Société d'Arrosage)* v *Hudson (Town),* 2001 SCC 40 decision ("*Spraytech*").

municipal purposes. As an example, both the British Columbia *Local Government Act*[5] and *Community Charter*[6] provide that the purposes of a regional district or municipality include:

> (a) providing good government for its community,
> (b) providing the services and other things that the board considers are necessary or desirable for all or part of its community,
> (c) providing for stewardship of the public assets of its community, and
> (d) fostering the current and future economic, social and environmental well-being of its community

The ELC recommends that similar provisions be incorporated into the purpose provisions of the *MGA*. In particular, the *MGA* should incorporate protection and management of the current and future environmental well-being as valid municipal purposes.

In addition to these overarching changes, we recommend other improvements be made to the *MGA* to enable and empower municipalities to fulfil the role of local environmental protection and management. Our recommendations fall into five broad areas:

1. Protection and management of the environment is a valid municipal planning purpose and, as such, should be expressly recognized in the *MGA*.
2. The *MGA* should incorporate by-law purposes specific to protection and management of the environment.
3. The *MGA* should expand the enforcement tools available to municipalities for the purposes of environmental protection and management.
4. The *MGA* should expand the revenue generation options available to municipalities to enable environmental stewardship and, particularly, land conservation.
5. The *MGA* should enhance opportunities for public participation in municipal planning processes.

[5] *Local Government Act*, RSBC 1996, c. 323 ("*Local Government Act*"), s. 2.
[6] *Community Charter*, SBC 2003, c. 26 ("*Community Charter*").

ELC Recommendation 1

Protection and management of the environment is a valid municipal planning purpose and, as such, should be expressly recognized in the *MGA*

As part of the consultation process, we note that Alberta Municipal Affairs has identified several "spotlight topics". The following recommendations deal with the spotlight topic of *Growth and Development*. It is the ELC's view that, while protection and management of the environment is a valid municipal purpose, this is not currently reflected in the *MGA*.

Provisions regarding municipal planning and development are found in Part 17 of the *MGA*. While s. 632 permits consideration of local environmental matters in a municipal development plan, it is not a mandatory requirement. There is no mention of local environmental matters in the provisions dealing with area structure plans (s. 633) and area redevelopment plans (ss. 634 and 635). Similarly, the provisions dealing with land use bylaws (ss. 639 – 646) permit, but do not require, consideration of certain environmental matters.

The ELC specifically recommends that the following provisions be added to Part 17 of the *MGA*:

1. Require that local environmental matters be considered in statutory plans and land use bylaws developed under the *MGA* with particular reference to local environmentally sensitive areas including, but not limited to, riparian areas and wetlands. As well, there should be a requirement to consider the impacts of land use decisions on groundwater and surface water in statutory planning.

2. Section 664 of the *MGA* enables the designation of environmental reserves in the course of the subdivision process. The current approach to designation of environmental reserves is focused on development purposes rather than environmental purposes for setting aside reserves. While the ELC endorses the current enumerated instances for which an environmental reserve is required by s. 664, we would recommend that the provision be expanded to incorporate other environmental concerns. These should include the existence of environmentally sensitive areas such as riparian areas and wetlands. As well, preservation of ecosystem processes and services should be a consideration in setting aside environmental reserves (for example, establishing corridors of environmental reserves throughout a municipality rather than unconnected, discrete environmental reserves). It is the ELC's view that the existing approach depends too much on development purposes and does not give sufficient consideration to environmental matters.

3. The establishment of municipal environmental reserves currently occurs under the *MGA* as a byproduct of subdivision. The ELC recommends that mechanisms for establishing environmental reserves be expanded so that environmental reserves can be established for

express environmental purposes and not merely as a by-product of subdivision for development purposes. A supplementary and preferred approach would be to develop regulatory overlays (or express bylaw powers) which are designed to provide protection of areas with environmental significance. As an example, in British Columbia, the *Riparian Areas Regulation*[7] requires municipalities to protect riparian areas during local development by requiring science-based assessment. Regulatory overlays can be used to protect environmentally sensitive areas, such as riparian areas and wetlands, by establishing appropriate setbacks and assessment requirements for development.

4. Currently, under the *Subdivision and Development Regulation* promulgated pursuant to the *MGA*, site suitability factors are considered in making a sub-division decision[8]. For example, factors such as topography; soil characteristics; storm water collection and disposal; potential for flooding; subsidence or erosion; accessibility to a road; availability of water supply; sewage disposal and solid waste disposal; lot sizes in relation to private sewage disposal systems; and adjacent land uses must be considered. The ELC notes that environmental concerns are absent. Although a site might be appropriate for development in light of these factors, development may be inappropriate given environmental and sustainability considerations. It is our recommendation that municipalities be expressly granted the authority to deny sub-division applications on environmental grounds. The ELC notes that, in British Columbia, an application may be denied due to adverse environmental or natural heritage impacts. As well, British Columbia's legislation allows for the preservation of farm land and consideration of agricultural concerns.

The *MGA* currently requires that municipal planning be consistent with regional planning under the *ALSA*. It is our view that expressly granting municipalities clear legislative guidance and authority for dealing with environmental matters will enhance the provincial approach to regional land use planning under the *ALSA*. As well, legislative changes can be implemented to solidify the municipal role in stewarding Alberta's natural assets and the delivery of ecosystem services.

The ELC also recommends the following changes be made to the *MGA*:

1. Strengthen the mechanisms for inter-municipal planning as a means to encourage and facilitate planning on a regional basis.

2. It is the ELC's view that the current planning appeal process can raise concerns about the appearance of bias when a municipal councilor is also a member of the subdivision and development appeal board ("SDAB"). The ELC notes that this concern is mentioned in

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[7] *Riparian Areas Regulation*, B.C. Reg. 376/2004.
[8] *Subdivision and Development Regulation*, AR 43/2002, s 7.

the discussion paper entitled *Managing Growth and Development.*[9] It is the ELC's recommendation that the *MGA* be amended to establish a subdivision and development appeal process that is separate from administration and political oversight of the municipality. The ELC further recommends that the planning appeals be adjudicated by the Municipal Government Board ("MGB") thereby eliminating the current confusion regarding the appropriate body for appeal (SDAB or MGB). As well, this step will address the perception of bias in the planning appeal process.

3. Currently, under s. 619 of the *MGA*, approvals issued by the AER, NRCB and AUC are given priority over municipal planning. Laux describes the operation of this provision as follows:[10]

> Where the NRCB, the ERCB or AUC has sanctioned a project that also requires planning approval, the project may not be vetoed or altered in any way by the planning body in respect of considerations and issues that have been addressed by the provincial body. On the other hand, the planning agency's powers remain unfettered in respect of planning considerations and issues that have not been addressed by the provincial body.

It is the ELC's view that this provision requires amendment to ensure that local planning conducted by municipalities, in particular that planning done in support of regional planning under the *ALSA*, be given due consideration by the AER, NRCB or AUC as the case may be. In the situation where a municipality has conducted assessment and planning designed to address local environmental concerns and to support regional planning under the *ALSA*, the operation of s. 619 may undermine these efforts. Rather than granting automatic priority to provincial approvals, the ELC recommends that (1) the AER, NRCB and AUC be required to give due consideration to municipal statutory plans and regional plans under the *ALSA* and (2) municipalities be granted standing to participate in the AER, NRCB and AUC decision-making processes.

[9] MGA Review Discussion Paper, *Managing Growth and Development* (December 2013) at 6.
[10] Frederick A. Laux, *Planning Law and Practice in Alberta* (Edmonton: Juriliber, 2010) at § 3.9(3)(b).

ELC Recommendation 2

The *MGA* should incorporate by-law purposes specific to protection and management of the environment

The following recommendations deal with the spotlight topic of *Rules* as described in the *MGA* consultation documents. It is the ELC's view that the bylaw powers granted in the *MGA* ought to be expanded to include environmental protection (rather than depending on less direct, general welfare provisions). Adoption of this recommendation will provide clarity and guidance about the municipal role in environmental protection and management.

The ELC recommends that the bylaw power provisions of the *MGA* be amended to explicitly empower a municipality to pass bylaws for the express purpose of environmental protection and regulation. Currently, s. 7 of the *MGA* grants municipalities the general jurisdiction to enact bylaws for a variety of purposes some of which may have environmental implications (such as, provisions regarding the safety; health and welfare of people; nuisances; public places; transportation; and domestic and wild animals). However, there is currently no express environmental bylaw purpose. Incorporation of such a provision into the *MGA* will bring the legislation into alignment with recent court decisions and provide additional clarity and direction to Alberta's municipalities. The Alberta courts have already found this to be the case with respect to s. 60 of the *MGA*.[11]

In addition to a broad bylaw power to deal with local environmental matters, amendments should be made to specifically enable a municipality to create bylaws for:

- the protection of the natural environment;
- the protection of riparian areas, wetlands, groundwater and surface water;
- the protection of environmentally sensitive areas;
- the maintenance of biodiversity; and
- the control of pollutants and environmental nuisances, including contaminated sites and pesticides.

The ELC recommends that s. 60 of the *MGA* – which grants municipalities direction, control and management over rivers, streams, watercourses, lakes and other natural bodies of water – remain.

The ELC notes that similar bylaw powers have been incorporated into British Columbia's *Community Charter*[12] and include the power to regulate public places; trees; protection of the natural environment; the removal and disposal of soil; and nuisances.

ELC Recommendation 3

[11] *R. v. Latouche*, 2010 ABPC 166 (available on Can. Lii).
[12] *Community Charter*, *supra* note 6, s. 8.

The *MGA* should expand the enforcement tools available to municipalities for the purposes of environmental protection and management

The following recommendations deal with the spotlight topic of *Rules* as described in the *MGA* consultation documents. It is the ELC's view that current enforcement tools available to municipalities are insufficient for achieving environmental protection and management. Two key elements to improve enforcement are establishing enforcement tools similar to those available in the *Environmental Protection and Enhancement Act* ("*AEPEA*") and aligning available municipal tools with the *ALSA*.

Under the current *MGA*, municipalities have limited enforcement tools. By virtue of section 7 of the *MGA*, municipalities are granted the power to enforce bylaws by creating offences enforceable through fines and imprisonment. Municipalities may also conduct inspections to determine if a bylaw is being contravened and may remedy the contravention of a bylaw.

In addition to these bylaw enforcement powers, under section 8 of the *MGA*, municipalities may establish systems of licences, permits and approvals (which can be enforced through suspension or cancellation for failure to comply with necessary conditions). A municipality may enforce its bylaws or development permits by issuing a stop order under ss. 645 and 646 of the *MGA*.

The ELC recommends that the enforcement "toolbox" available to municipalities be expanded and aligned with those tools available under the *AEPEA* and the *Water Act*:

1. The ELC notes that the discussion paper entitled *Land Dedication (Reserves)*[13] raises the possibility that Alberta Environment and Sustainable Resource Development ("AESRD") be charged with the enforcement on lands dedicated as environmental reserves.

   It is the ELC's view that this approach – in combination with adoption of an environmentally focused approach to designation of environmental reserves - is desirable. The ELC would further recommend that municipalities/municipal bylaw officers be granted delegated inspector status pursuant to section 25 of the *AEPEA* and section 163 of the *Water Act*.[14] This would enable municipalities to take direct action to enforce environmental violations on a local basis. Effective implementation of this recommendation will necessitate provincial financial support for local enforcement by municipalities.

2. The ELC recommends that, in order to effectively deal with local contaminated lands, municipalities be granted the authority to identify and designate contaminated lands within their boundaries. In addition, municipalities ought to be granted the

[13] *MGA* Review Discussion Paper, *Land Dedication (Reserves)* (December 2013).
[14] *Water Act*, RSA 2000, c. W-3.

accompanying power to require clean-up of such contaminated lands (including on a retroactive basis). This recommendation can be implemented via regulations pursuant to s.37(e)(i) of the *AEPEA* which allows the Minister to delegate the powers of the Director to a delegated authority. It is the ELC's view that this includes the Director's powers related to environmental protection orders for substance release (s. 113) and to contaminated sites (Part 5, Division 2).

3. While section 7 of the *MGA* does grant municipalities the power to conduct inspections as a means to enforce their bylaws, the ELC recommends that municipalities be granted clear authority to enter and inspect places in response to suspected bylaw or development permit violations (similar to those powers granted under s. 198 of the *AEPEA*). The ELC recommends that the powers to enter and inspect be included in section 549 of the *MGA*.

4. Given the overlap of provincial and municipal roles in environmental protection and management, the ELC recommends that the *MGA* include a provision clearly outlining areas of mutual jurisdiction. The ELC notes that section 9 of British Columbia's *Community Charter* identifies spheres of concurrent activity.[15] In

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[15] For ease of reference, section 9 of British Columbia's *Community Charter* provides as follows:

9. (1) This section applies in relation to the following:
(a) bylaws under section 8 (3) (i) *[public health]*;
(b) bylaws under section 8 (3) (j) *[protection of the natural environment]*;
(c) bylaws under section 8 (3) (k) *[animals]* in relation to wildlife;
(d) bylaws under section 8 (3) (l) *[buildings and other structures]* establishing standards that are or could be dealt with by the Provincial building regulations;
(e) bylaws under section 8 (3) (m) *[removal and deposit of soil and other material]* that
(i) prohibit soil removal, or (ii) prohibit the deposit of soil or other material, making reference to quality of the soil or material or to contamination.
(2) For certainty, this section does not apply to
(a) a bylaw under section 8 *[fundamental powers]* that is under a provision not referred to in subsection (1) or is in respect of a matter to which subsection (1) does not apply,
(b) a bylaw that is authorized under a provision of this Act other than section 8, or
(c) a bylaw that is authorized under another Act,
even if the bylaw could have been made under an authority to which this section does apply.
(3) Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is
(a) in accordance with a regulation under subsection (4),
(b) in accordance with an agreement under subsection (5), or
(c) approved by the minister responsible.
(4) The minister responsible may, by regulation, do the following:
(a) establish matters in relation to which municipalities may exercise authority as contemplated by subsection (3) (a), either (i) by specifying the matters in relation to which they may exercise authority, or (ii) by providing that the restriction under subsection (3) only applies in relation to specified matters;
(b) provide that the exercise of that authority is subject to the restrictions and conditions established by the regulation;

addition, the ELC recommends that section 13 of the *MGA* be amended to clarify that, while a municipal bylaw has no effect to the extent that it is inconsistent with a provincial enactment, there is no inconsistency if a person who complies with the bylaw does not contravene the provincial enactment.

While the ELC recommends strengthening municipal bylaw powers and accompanying enforcement tools to improve environmental protection and management, we also recognize that these are somewhat limited tools. As stated by Justin Duncan,[16]

> Regulation of activities through by-laws can be a very effective means of achieving environmental management objectives and protecting human health. However, in some circumstances by-law enactment and enforcement may not be possible given legal restrictions on municipal powers and fiscal restraints on program implementation and maintenance. In other circumstances, by-law enactment and enforcement may not be the most effective, or the most cost-efficient means of achieving an objective.

With this in mind, the ELC also recommends that the municipal enforcement "toolbox" be aligned with tools enabled by the *ALSA* in order to move beyond traditional command and control approaches to environmental protection. This will empower municipalities to actively participate in environmental protection. Furthermore, this will better position Alberta's municipalities to implement regional planning goals and requirements established by land use planning under the *ALSA*.

While already permitted under the *ALSA*, it is our recommendation that the *MGA* expressly enable municipalities to use the tools of conservation easements, conservation offsets and transfer of development credit schemes.[17] In order for effective use of these tools, the *MGA* must recognize that, in some circumstances, municipalities must be able exercise activities outside their boundaries. For example, effective implementation of conservation offsets may necessitate activity by a municipality outside its boundaries. Further, the ELC notes that there is a need for alignment of municipal planning and conservation directive decisions under ALSA. That is, it ought to be recognized that municipalities play a valid role in conservation directive decisions

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(c) provide that the exercise of that authority may be made subject to restrictions and conditions specified by the minister responsible or by a person designated by name or title in the regulation.
(5) The minister responsible may enter into an agreement with one or more municipalities that has the same effect in relation to the municipalities as a regulation that could be made under subsection (4).
(6) If
(a) a regulation or agreement under this section is amended or repealed, and
(b) the effect of the amendment or repeal is that bylaws that previously did not require authorization under subsection (3) would now require that authorization,
those bylaws affected that were validly in force at the time of the amendment or repeal continue in force as if they had been approved by that minister.

[16] Justin Duncan, *The Municipal Powers Report: Municipal By-laws and Best Practices for Community Health and Environmental Protection in Canada* (Toronto: Sierra Legal, 2010) at 16.

[17] See Arlene Kwasniak, "The Potential for Municipal Transfer of Development Credit Programs in Canada" (2004) 15:2 JELP 47 which outlines the municipal role and authority with respect to transfer of development credit schemes.

made in the course of regional planning. It is the ELC's view that these changes will provide clarity to municipalities regarding their role in regional planning under the *ALSA*.

ELC Recommendation 4

The *MGA* should expand the revenue generation options available to municipalities to enable environmental stewardship and, particularly, land conservation

The following recommendations deal with the spotlight topic of *Funding* as described in the *MGA* consultation documents. Insufficient funding is impairing the ability of municipalities to fulfill their roles, even where municipal powers are otherwise sufficient.[18] The challenge of inadequate financial resources and limited options for revenue generation applies to large and small municipalities alike.[19] The ELC has heard numerous municipal concerns about "responsibility without capacity".

A survey of 46 municipalities, urban and rural, identified financial incapacity as the leading barrier to pursuit of environmental objectives at the municipal level.[20] Beyond competing demands on limited resources, many funding options available to municipalities preclude environmental programs.[21] Inadequate funding options create a misfit with a finding of "substantial levels of support for land conservation within a wide range of municipal governments", both urban and rural.[22] While 68% of municipal respondents rated conservation as a high to medium priority, 80% did not provide financial support to community environmental initiatives.[23] Only a small percentage of municipalities purchase land or conservation easements.[24] Most municipalities depend on regulation for land conservation.[25] This may fuel perception that conservation impacts property rights. The survey indicated a need for municipalities to use partnerships and that lack of funding impacts land trusts too.[26] These provincial trends lag behind growing documentation of the economic benefits and competitive advantages associated with environmental stewardship at the municipal level.[27]

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[18] *MGA Review Consultation Workshops, What We Heard*, (Alberta Association of Municipal Districts and Counties, November 2013); and Kristen Pue, *A "Big City Charter" for Edmonton and Calgary: Explaining the role of municipalities in Canada's federal framework*, (University of Alberta: Centre for Constitutional Studies, April 24, 2013), available online: < http://ualawccsprod.srv.ualberta.ca/ccs/index.php/constitutional-issues/federalism/729-a-big-city-charter-for-edmonton-and-calgary-explaining-the-role-of-municipalities-in-canada-s-federal-framework>.
[19] *Ibid.*
[20] Alberta Land Trust Alliance, Conservation Connections Alberta, *Our Spaces, Our Future: Phase 1 – Survey of Municipalities & Land Trusts* (Edmonton: Alberta Land Trust Alliance, 2012) (the "survey").
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*
[27] Calvin Sandborn, *Protecting Natural Areas in Our Communities*, in *Maintaining SuperNatural BC for Our Children, selected law reform proposals*, Calvin Sandborn, ed. (University of Victoria: Environmental Law Centre, 2012), p.87-91 ("Reform Proposals"); and survey, *ibid.*

Impact on provincial objectives: The Land Use Framework[28] implies a significant role for municipalities, by promoting "efficient land use" and "smart growth". The Land Use Framework identifies specific areas of provincial interest that the ELC views as being impacted by municipal development. These gaps include coordinating surface and subsurface uses; preventing agricultural land fragmentation and conversion; managing flood risk; managing recreation; protecting the diversity of Alberta's ecological regions; and establishing transportation and utilities corridors. Municipalities have further roles in watershed planning; lake management; riparian buffering; and wetland policy. The regional planning consultations have revealed the huge commitment needed to fill these gaps. Fear of implementation burden could undermine support for the provincial approach to stewardship as a shared responsibility.

Municipal services include delivery of ecosystem services: The spotlight on funding invites discussion of municipal services and how the costs of servicing should be recovered. The materials recognize the provision of 'soft services' including recreational, cultural, and social services. This invites discussion of amenity migration as a driver of growth in Alberta. Municipalities with high natural amenities are facing extraordinary demand for conventional municipal services and for recreational opportunities.[29] Some towns straddling the urban-rural divide are growing over twice as fast as Calgary, while the rate of rural growth is the highest in the entire west.[30] The resulting need for local stewardship of environmental assets and rewards for doing so transcends the debate over differential taxation based on municipal size.

Reform options: The Land Use Framework is understood as a statement of provincial intention to develop new tools for voluntary conservation and stewardship. This intention is being pursued largely under *ALSA* but the ELC recommends using municipal government legislation to overcome immediate challenges.

ALSA: The *ALSA* conservation and stewardship tools should definitely be developed but this is proving to be a slow process requiring more provincial investment. Creating a conservation easement means lost property value and uncertain funding for ongoing stewardship. Easement donors likely deserve a property tax break but municipalities are not assured revenue options. The *ALSA* tools that could provide compensation and incentives to landowners and municipalities require further development: There is insufficient guidance for transfer of development credits, no regulatory oversight for conservation offsets and no policy for use of conservation directives. Some municipalities are apprehensive of the *ALSA* tools despite recognizing environmental, agricultural and natural scenic values in their own plans and

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[28] *Land-use Framework,* Pub. No. 1/321 (Edmonton: Government of Alberta, 2008).
[29] Danah Duke et al., *Spatial Analysis of Rural Residential Expansion in Southwestern Alberta* (University of Calgary: Miistakis Institute, September 2003).
[30]*Ibid.*

bylaws.[31] They fear inequitable burdens between municipalities and seek assurance of local benefits.[32] Municipalities are requesting training, funding and assistance with use of *ALSA*.[33]

The *MGA*: The *MGA* could fill local revenue gaps and generate support for *ALSA*. The issue is that existing *MGA* provisions do little to enable directed revenue for environmental initiatives:

- The "special tax" that may be used to "pay for a specific service or purpose" omits ecosystem goods and services; land conservation and stewardship; or the environment.[34] This incomplete list is inconsistent with the intention of the *MGA* to provide broad powers unless specifically limited, and inconsistent with municipal government legislation elsewhere as discussed below.

- The "Local improvement" tax provision is vague concerning what "benefits" may be.[35] Existing case law concerns hard services.[36]

- Provisions for revenue other than taxation are even less conducive to funding environmental initiatives. Levies are tied to development; licensing is a regulator charge paid to general revenue; debt financing and investment options are limited; and there are no provisions for conservation bonds or user fees.

A proven alternative: British Columbia is witnessing a "common success story" in which "local citizens have raised impressive sums" for conservation purposes.[37] BC municipal government legislation enables local authorities to establish funds to secure land for the provision of ecosystem services.[38] As of 2011 there were six programs in operation.[39] Three programs were created by regional districts comprised of multiple municipalities.[40] These regional funds have shown success over ten years.[41] Multiple programs make use of partnerships. An example is the East Kootenay Conservation Partnership which promotes collaborative win-win solutions to ecosystem conservation on private lands.[42] This program

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[31] Oldman River Regional Services Commission, *Municipal Perspectives: Position Paper on the South Saskatchewan Regional Plan*, (Oldman River Regional Services Commission, November, 2009).
[32] *Ibid.*
[33] *Ibid.*
[34] *MGA*, s 382.
[35] *MGA*, s.391.
[36] *Kane v. Leochko*, 2007 ABPC 190.
[37] Reform Proposals, *supra* note 27.
[38] South Okanagan Similkameen Conservation Program, 2011 *Establishing a Regional Conservation Fund in British Columbia: A Guide for Local Governments and Community Organizations* (2011) ("Conservation Funds").
[39] *Ibid.*
[40] Micah Carmody, *Regional District Conservation Funds in British Columbia: Three Case Studies,* (University of Victoria, Environmental Law Centre, October 23, 2009). [Case Studies].
[41] *Ibid.*
[42] East Kootenay Conservation Partnership, online: < http://kootenayconservation.ca/ >.

indicates that funding by municipal electors can attract numerous partners including industry, government, and land trusts.

The BC experience offers sample legislative provisions, municipal bylaws, and model funding programs.[43] The BC legislation has three features that would improve Alberta's legislation:

1. Municipal power to deliver services related to the environment: The *Community Charter* provides that municipalities may provide "any service that the council considers necessary or desirable, and may do this directly or through another public authority or another person or organization".[44] It specifically provides that municipalities may make bylaws in relation to "municipal services" and "protection of the natural environment".[45] The *Local Government Act* empowers regional districts comprised of multiple municipalities to operate "any service" it considers "necessary or desirable" for all or part of the region.[46] The provision of ecosystem services is akin to delivery of water or waste disposal. [47]

2. Broader options for directed revenue, including:
    a. Property tax based on land value that allows for separate rates for revenue to be raised for different purposes.[48]
    b. Parcel tax, where a flat rate irrespective of land value is applied to all parcels receiving the service.[49] (Available for service tax under the existing MGA).
    c. Local area service tax**,** which may be property value tax or parcel tax.[50]
    d. Fees for service on a cost recovery basis for all or part of a service.[51] The fee may be collected from households as part of utilities instead of being imposed through the property taxation process. [52]

3. Accountability for financial requisitions through a combination of provincial oversight and direct democracy. The bylaw creating the service and the means of cost recovery must be approved by the provincial inspector and by the participating area.[53] An option for the participating area to grant approval is "assent of the

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[43] Available from the Environmental Law Centre on request.
[44]*Community Charter*, s **8**(2); and Conservation Funds, *supra* note 38.
[45] *Community Charter*, s.8(3)(a)(j); and Conservation Funds, *supra* note 38.
[46]*Local Government Act*, s 796(1).
[47] Conservation Funds, *supra* note 38.
[48] *Community Charter*, s 197.
[49] *Community Charter*, s 200; and *Local Government Act*, s 803(1).
[50] *Community Charter*, s 216.
[51] ***Community Charter*, s 194;** and *Local Government Act*, s 803(1).
[52] Conservation Funds, *supra* note 38.
[53]Case Studies, *supra* note 40.

electors" (a majority vote on a referendum).[54] Referendums may be held for one municipality or for the whole area.

Municipalities with current programs have largely found the dedicated funding options to be more appealing than use of general revenue for conservation funding.[55]

Detailed Recommendations

The MGA should expand the revenue generation options available to municipalities to enable funding for environmental stewardship and particularly land conservation. The ELC recommends that the *MGA* be amended as follows:

- Provide that municipalities may make bylaws on taxation, municipal services and for protection of the environment.
- Make special tax available for "any municipal service or purpose." Alternatively, ensure that the existing list clearly includes environmental programs. An option for guiding municipalities in advancing the Land Use Framework could be to replicate the purpose of conservation tools under *ALSA*: to protect conserve, manage or enhance the environment, natural-scenic, esthetic, or agricultural values. [56]

- Provide that services may be delivered through another government authority or other person or organization.

- Clarify that local improvement tax is available for environmental enhancements and low-infrastructure improvements to natural amenities. As with the special tax, an option for guiding municipalities would those purposes consistent with conservation tools under *ALSA*: to protect conserve, manage or enhance the environment, natural-scenic, esthetic, or agricultural values.[57]

- Expand the cost-recovery options for allowable environmental programs as follows:
  - Property tax based on property value assessment as currently exists, but with additional power to apply separate rates for revenue for different, specific services.
  - Parcel tax with flat rate paid for each parcel, as exists with special tax[58]
  - Taxation based on unit of frontage or unit of area as exists with special tax.[59]
  - Fees for services on a cost-recovery basis for part or all of the service.

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[54] *Local Government Act*, ss 801.2 and 797.5; and Case Studies, *supra* note 40.
[55] Conservation Funds, *supra* note 38.
[56] *ALSA,* ss 29(1) and 37(1).
[57] *ALSA,* s.29(1).
[58] MGA, s.384.
[59] *Ibid.*

- Provide that a bylaw creating a tax or fee may be created by assent of the municipal electors. Assent should be established in one of two ways:
    - A majority (over 50%) vote on a referendum of electors who would pay the tax and benefit from the service.
    - A petition signed by the majority (over 50%) of electors who would pay for and benefit from the service. The existing right to petition for local improvement tax should apply to special tax.

  As well, the *MGA* should provide that the bylaw may last more than one year so as to enable land conservation spending that is more capital than operational in nature.

- Provide a system of assent for multiple municipalities or regional authorities to establish regional funding for delivery of ecosystem services. Participation of all municipalities should be voluntary.

Advantages of recommendations

These would be simple amendments to existing *MGA* provisions. They would not alter the relationship of municipalities to the province; create differential taxation power between municipalities or involve costs of reform beyond those allocated to the MGA review.

These amendments could:

- Increase capacity to pursue local, regional and provincial policy objectives.
- Improve support for stewardship as a shared responsibility by reducing implementation burden.
- Advance the Land Use Framework by empowering municipalities to exercise local autonomy in ways that uphold provincial interests.
- Overcome resistance to *ALSA* tools by assuring local benefits from conservation and stewardship. Provincial legislation that applies to all municipalities equally would allow diverse municipalities to choose the revenue tool that best fits their unique issues. Regional funds could help coordinate conservation and stewardship efforts and allow municipalities with larger roles to benefit from economies of scale.
- Provide compensation and incentives to municipalities and landowners while the *ALSA* tools are under development.
- Make the provincial Land Trust Grant Program and Alberta Land Stewardship Fund go further by enabling matching funds at the municipal level.
- Capitalize on existing municipal understanding of the *MGA* regime. Consistent wording between a reformed *MGA* and *ALSA* could provide clarity as to where municipal actions comply with *ALSA*.

- Increase accountability of municipalities through electoral assent for new taxes.
- Help Alberta catch up to a neighboring province that has demonstrated success in municipal funding for environmental programs.

ELC Recommendation 5

The *MGA* should enhance opportunities for public participation in municipal planning processes

The following recommendations deal with the spotlight topic of *Accountability* as described in the *MGA* consultation documents. Current opportunities for public participation in municipal planning and decision-making are too limited. It is the ELC's view that early, meaningful engagement of the public in decision-making processes leads to better decisions. Accordingly, the *MGA* ought to be amended to improve public participation opportunities.

Currently, the *MGA* provides limited opportunity for public engagement in municipal planning processes. Section 230 of the *MGA* requires public hearings to be held before the second reading of a proposed bylaw or before council votes on a proposed resolution. The council is required to hear from any person who claims to be affected by the proposed bylaw or resolution. While preparing a statutory plan, there are requirements – by s. 636 of the *MGA* – for the municipality to provide public notice and a means for persons affected by a proposed statutory plan to make suggestions and representations. It is noted that these requirements do not apply to amendments to statutory plans. Further, while the *MGA* does provide a mechanism for members of the public to petition for a new bylaw, or amendment or repeal of an existing bylaw, this mechanism does not apply to bylaws relating to planning and development.

It is the view of the ELC that public participation in municipal planning and development processes should be encouraged as an asset. Municipalities should strive to encourage as much public participation as there is interest. This requires that the *MGA* provide support for meaningful and effective public participation in municipal planning and development decision-making processes. This requires, at a minimum:

a. notice be provided in sufficient form and detail to allow the preparation of public input on the proposed statutory plan or bylaw,
b. full and convenient access to information,
c. a reasonable period of time to prepare public input,
d. an opportunity to present public input,
e. fair consideration of public input by the municipality, and
f. explicit consideration of information, comments and evidence provided by the public in the decisions.

Public participation must be encouraged and accommodated at the early stages of municipal planning. The current approach invites public participation at a late stage of decision-making (i.e. the second reading). The ELC recommends that efforts be made to engage the public at an early stage of development of statutory plans.

Further, the ELC recommends that the right of public participation should be expanded to include those persons with a genuine public interest (as opposed to only those "affected" or on

“adjacent property”). The “genuine interest” approach to standing requires that the participant demonstrate a genuine, legitimate, tangible, or bona fide interest or concern in the matter to be decided. The genuine interest test strikes a balance between bringing issues forward and screening out frivolous, unmeritorious challenges. The Supreme Court of Canada holds that:[60]

> …the need to grant public interest standing in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue.

The legal test for genuine interest comprises of three aspects which are weighed by the courts to determine standing:[61]

- a serious issue,
- a genuine or legitimate interest in the decision, and
- it is a reasonable or effective way for the matter to be heard.

Courts do not grant public interest standing on issues that can be more appropriately or effectively addressed by private litigants.

Demonstrating genuine interest generally requires a history of involvement in an issue or an established record of “legitimate concern” for the interest to be represented. An example in the Alberta context is provided by *Western Canada Wilderness Committee* v. *Alberta*.[62] A non-governmental organization was found to have a genuine interest in a timber resource agreement between government and a private party because the organization was incorporated for purposes related to wilderness in western Canada, including education, information, conservation, and protective status.

The ELC recommends that genuine interest standing be extended to ss. 678 and 685 in order to provide the opportunity for appeals on subdivision and development permit decisions raising concerns of genuine public interest. In addition, it is recommended that the *MGA* acknowledge that genuine public interest concerns are valid considerations in municipal planning, including the development of statutory plans.

Conclusion

We thank you for the opportunity to provide written submissions in the *MGA* consultation process. In the course of providing these submissions, we wish to highlight the important role of municipalities in environmental protection and management, and the key role of municipalities in implementing regional planning under the *ALSA*.

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[60] *Canadian Council of Churches* v. *R.,* [1992] 1 S.C.R. 236.
[61] *Finlay* v. *Canada,* [1986] 2 S.C.R. 607 and *Canada (AG)* v. *Downtown Eastside Sex Workers*, [2012] 2 S.C.R. 524.
[62] *Western Canada Wilderness Committee* v. *Alberta (Provincial Treasurer),* [1994] 108 D.L.R. (4th) 495, 2 W.W.R. 378.

It is the ELC's view that amendments can be made to the *MGA* to provide clarity and guidance to municipalities in fulfilling these important roles. By way of summary, our recommendations fall into five broad areas:

1. Protection and management of the environment is a valid municipal planning purpose and, as such, should be expressly recognized in the *MGA*.
2. The *MGA* should incorporate by-law purposes specific to protection and management of the environment.
3. The *MGA* should expand the enforcement tools available to municipalities for the purposes of environmental protection and management.
4. The *MGA* should expand the revenue generation options available to municipalities to enable environmental stewardship and, particularly, land conservation.
5. The *MGA* should enhance opportunities for public participation in municipal planning processes.

We would be pleased to meet with the Minister or relevant staff to further discuss our submissions. Please feel free to contact the undersigned with any questions or comments.

Sincerely,

Brenda Heelan Powell

Staff Counsel
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APPENDIX B
Example of Legislation Supporting a LIC Program

ONTARIO REGULATION 322/12
made under the
MUNICIPAL ACT, 2001
Made: October 23, 2012
Filed: October 25, 2012
Published on e-Laws: October 26, 2012
Printed in The Ontario Gazette: November 10, 2012

Amending O. Reg. 586/06
(LOCAL IMPROVEMENT CHARGES — PRIORITY LIEN STATUS)

1. Ontario Regulation 586/06 is amended by adding the following heading before section 1:
PART I GENERAL

2. (1) Subsection 1 (1) of the Regulation is amended by adding the following definitions:

> "private" means, with respect to a work or property, a work or property that is not owned by the municipality or a local board of the municipality;
> . . . . .
> "sufficient agreement" means an agreement determined to be sufficient under section 36.4;

(2) Clause 1 (2) (b) of the Regulation is amended by striking out "or distribution of water" and substituting "distribution or conservation of water".
(3) Subsection 1 (2) of the Regulation is amended by striking out "and" at the end of clause (o), by adding "and" at the end of clause (p) and by adding the following clause:
> (q) constructing energy efficiency works or renewable energy works.

(4) Section 1 of the Regulation is amended by adding the following subsection:
(3) If a municipality undertakes a work as a local improvement, a special charge imposed with respect to the work in accordance with this Regulation has priority lien status as described in section 1 of the Act.

3. Section 2 of the Regulation is revoked and the following substituted:

> Scope of local improvement
> 2. (1) If a municipality has the authority to undertake a work, including a private work, under section 9, 10 or 11 of the Act or under any other provision of any Act, the municipality may undertake the work as a local improvement in accordance with this Regulation.
> (2) The power to undertake a work as a local improvement includes, without limitation, the power to,
> > (a) undertake the work as a local improvement, including undertaking the work on private property;
> > (b) acquire an existing work and where it does, this Regulation applies as if the municipality were undertaking the work so acquired;
> > (c) undertake a work as a local improvement for the benefit of a single lot; and
> > (d) raise the cost of undertaking a work as a local improvement by imposing special charges, including special charges on a single lot.
>
> (3) Where a municipality undertakes a private work as a local improvement, this Regulation applies to undertaking the private work as a local improvement as if the municipality were undertaking its own work.
> (4) Nothing in this Regulation authorizes a municipality to enter and undertake a work as a local improvement on private property without the permission of the owner or other person having the authority to grant such permission.

4. Subsection 4 (2) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(2) A notice to an owner under this Regulation is sufficiently given if it is,

5. The Regulation is amended by adding the following heading before section 5:

PART II

IMPOSITION AND APPORTIONMENT OF THE COSTS OF LOCAL IMPROVEMENTS ON THE BASIS OF FRONTAGE

6. Paragraph 2 of subsection 12 (2) of the Regulation is revoked and the following substituted:

2.Reasonable administrative costs, including the cost of advertising and of giving notices.

7. The Regulation is amended by adding the following Part:

PART III

LOCAL IMPROVEMENTS ON PRIVATE PROPERTY BY AGREEMENT

PURPOSE, SUFFICIENT AGREEMENTS AND BY-LAWS

Local improvements, private property

36.1 In accordance with this Part, a municipality may raise the cost of undertaking works as local improvements on private property by imposing special charges on the lots of consenting property owners upon which all or part of the works are or will be located.

Local improvements by agreement

36.2 (1) This Part applies to a municipality undertaking work as a local improvement on private property if,

(a)the municipality and the owners of the lots which would be specially charged to raise all or any portion of the cost of the work enter into a sufficient agreement in which the owners consent to their lots being specially charged; and

(b)the municipality is not undertaking the work in accordance with Part II.

(2) An agreement described in subsection (1) may provide for the apportionment of the cost of the work among the specially charged lots on any basis that the municipality considers appropriate, but the method of apportionment must be authorized under Part XII of the Act.

(3) Despite subsection (2), the method of apportionment provided for in an agreement described in subsection (1) shall not result in special charges that are based on, are in respect of or are computed by reference to the assessment of the specially charged lots as shown on the assessment roll for any year under the Assessment Act.

(4) An agreement described in subsection (1) shall be signed by the municipality and the owners of all the lots which would be specially charged, if the municipality undertakes the work as a local improvement in accordance with this Part.

(5) The agreement signed by the municipality and the owners of all the lots which would be specially charged must include,

(a) the estimated cost of the work;

(b) the estimated lifetime of the work;

(c) a description of the apportionment method and the amount of the special charges for the lots to be specially charged;

(d) without limiting clause (c), the manner in which a cost over run or under run is to be dealt with, if the actual cost of work differs from the estimated cost of the work; and

(e) when the special charges for the lots are to be paid.

Cost of a work

36.3 The following may be included in the cost of a work under this Part:

1. Engineering expenses.
2. Reasonable administrative costs, including the cost of advertising and of giving notices.
3. Interest on short and long-term borrowing.

4. Compensation for lands taken for the purposes of the work or injuriously affected by it and the expenses incurred by the municipality in connection with determining the compensation.
5. The estimated cost of incurring long-term debt, including any discount allowed to the purchasers of the debt.

Sufficient agreement

36.4 (1) An agreement described in section 36.2 is sufficient if it meets the requirements of section 36.2 and of this section.
(2) The clerk of the municipality shall determine the sufficiency of an agreement and, where it is sufficient, the clerk shall certify the agreement.
(3) The clerk's certification of the agreement as sufficient is final and binding.
(4) A person who has signed an agreement may withdraw his or her name from the agreement by filing a written withdrawal with the clerk, before the clerk has certified the sufficiency of the agreement but the person cannot withdraw his or her name from the agreement after the clerk has certified the sufficiency of the agreement.
(5) In determining the sufficiency of an agreement, where a lot is owned by two or more persons, the owner of the lot is deemed not to have signed the agreement unless all of the owners of the lot have signed the agreement.

Local improvement charges by-law

36.5 (1) If the municipality has the authority to undertake a work, it may, in accordance with this Part, pass a by-law to undertake the work as a local improvement for the purpose of raising all or any part of the cost of the work by imposing special charges on lots upon which all or some part of the local improvement is or will be located.
(2) A by-law under subsection (1) may be a by-law to authorize the undertaking of a specific work for which the municipality has given notice under clause 36.6 (2) (a) or a by-law to authorize the undertaking of works which satisfy the requirements of a municipal program for which the municipality has given notice under clause 36.6 (2) (b).

Notice of local improvement charges by-law

36.6 (1) Before passing a by-law to undertake a work as a local improvement under section 36.5, the municipality shall give notice to the public of its intention to pass the by-law.
(2) The public notice of the intention to pass the by-law shall include,

(a) a description of a specific work the municipality intends to undertake; or
(b) a description of a program that the municipality has or intends to establish to undertake the types of works set out in the notice.

Clarification

36.7 A municipality may undertake a work as a local improvement under this Part in accordance with a sufficient agreement despite receiving a petition under subsection 7 (1) against undertaking the work as a local improvement under Part II within the previous two years.

Application of ss. 31-36

36.8 Sections 31 to 36 apply, with necessary modifications, for the purpose of a municipality undertaking a work as a local improvement under this Part.

Non-application of exemption

36.9 If an Act, regulation or by-law provides that special charges under this Regulation are not required to be paid with respect to a lot, despite the exemption, the lot is subject to this Part for all purposes and shall be specially charged.

PROCEDURE FOR IMPOSING SPECIAL CHARGES

Local improvement roll

36.10 Before a special charge is imposed, the treasurer of the municipality shall prepare a local improvement roll setting out,

(a) the cost of the work;

(b) every lot to be specially charged and the name of the owner of each lot;
(c) the special charges with which each lot is to be specially charged;
(d) when the special charges are to be paid; and
(e) the lifetime of the work.

Notice and certification of proposed roll

36.11 (1) Before a special charge is imposed, the municipality shall give notice of the proposed local improvement roll that is prepared to the owners of lots liable to be specially charged.

(2) The treasurer shall certify the proposed local improvement roll after,
(a) considering objections to the roll received from the owners, if any;
(b) considering proposed revisions to the roll received from the municipality, if any; and
(c) making any corrections to the roll that the treasurer considers fair and equitable as a result of the objections and proposed revisions.

Public access to local improvement roll

36.12 Copies of the proposed local improvement roll shall be available for inspection at the office of the clerk of the municipality until the treasurer of the municipality has certified the local improvement roll.

Effect of certification of local improvement roll

36.13 When certified by the treasurer under subsection 36.11 (2) or section 36.15,
(a) the certified local improvement roll and the special charges set out in it are final and binding, except where otherwise provided in this Regulation; and
(b) the work in respect of which the roll has been prepared and certified is conclusively deemed to have been lawfully undertaken in accordance with this Regulation.

Special charges by-law

36.14 (1) After the treasurer of the municipality has certified the local improvement roll under subsection 36.11 (2) or section 36.15, the municipality shall by by-law provide that,
(a) the amount specially charged on each lot set out in the roll is sufficient to raise that lot's share of the cost by a specified number of annual payments; and
(b) a special charge is imposed in each year on each lot equal to the amount of the payment payable in that year.

(2) The amount of each annual payment shall be entered in the local improvement roll by the treasurer.

(3) The annual payments with respect to a work shall not extend beyond its lifetime.

Amendments to local improvement roll

36.15 The treasurer of the municipality shall make any corrections in the local improvement roll that are necessary to give effect to changes made in accordance with sections 36.16 and 36.17 and shall certify the corrected roll.

Apportioning special charges if lot subdivided

36.16 (1) If a lot that is or is to be specially charged is subdivided into two or more new lots, the municipality shall apportion the amount of special charges that would have otherwise been charged on the original lot among the new lots by imposing special charges.

(2) The apportionment of the amount of special charges among the new lots shall be done as follows:
1. If the sufficient agreement provides for a specified method of apportioning special charges among the new lots when an original lot is subdivided, the municipality shall apportion the amount among the new lots in accordance with the specified method of apportioning special charges.
2. If the sufficient agreement does not provide for a specified method of apportioning special charges among the new lots when an original lot is subdivided, the municipality may apportion the amount in any manner the municipality considers just and equitable, having regard to the relative degree of benefit received by each of the new lots.

Reduction or increase in special charge due to gross error

36.17 (1) The treasurer shall, at any time after the certification of the local improvement roll, reduce or increase any special charge for the current year and the remaining years for which the special charge is imposed if the treasurer determines that the special charge is incorrect by reason of any gross or manifest error.
(2) Before reducing or increasing a special charge, the municipality shall give notice of the proposed reduction or increase to the owners of the lots specially charged for the work and to which the reduction or increase applies.
(3) By filing an objection with the clerk, a person may object to the reduction or increase to the special charge on the grounds that the reduction or increase is incorrect or not warranted.
(4) The treasurer shall consider the objection and may make any decision the treasurer considers fair and equitable.
(5) Where there is a reduction in the special charge, the amount of the reduction shall be borne by the municipality.
(6) Where there is an increase in the special charge, the amount of the increase shall be applied towards payment of the special charges imposed to raise the owners' share of the cost of the work.

Proportion of municipality's and owner's share cannot be changed
36.18 The treasurer shall not change the proportion of the municipality's and the owners' share of the cost, except to the extent that the proportion may be affected by a decision made under section 36.11 or 36.17.

8. The heading before section 37 of the Regulation is revoked and the following substituted:
PART IV
TRANSITIONAL PROVISIONS

Commencement
9. This Regulation comes into force on the day it is filed.

APPENDIX C
Example of Legislation Supporting a PAYS Program

The Energy Savings Act
S.M. 2012, c. 26

ENERGY EFFICIENCY PLAN

Energy efficiency plan

7(1) The board must, in consultation with the minister,

(a)prepare an energy efficiency plan by March31,2013; and

(b)prepare an update to the plan annually after that.

Content of plan

7(2)The energy efficiency plan must set out

(a)energy efficiency targets in relation to the projected use of power and natural gas by the corporation's customers in Manitoba;

(b)a strategy for achieving the energy efficiency targets;

(c)the programs, services and projects that the corporation will support to implement the strategy, which may include programs, services and projects that

(i)replace or improve equipment and materials related to the use of power and natural gas and the production of greenhouse gas emissions,

(ii)enhance space heat retention and heating efficiency, and

(iii)change customer behaviour relating to the use of power and natural gas and the production of greenhouse gas emissions; and

(d)the estimated annual cost of implementing the strategy and indicate how the costs will be funded.

Annual reporting

8(1)For each fiscal year beginning after March31, 2013, the board must report, in writing, on the outcomes achieved under the energy efficiency plan during the fiscal year. The report must be given to the minister within 12 months of the end of the fiscal year.

Tabling of report

8(2)The minister must table a copy of the corporation's report in the Assembly within15 days after receiving it if the Assembly is sitting or, if it is not, within15 days after the next sitting begins.

ON-METER EFFICIENCY IMPROVEMENTS PROGRAM

On-meter efficiency improvements program

9(1)The corporation may establish and maintain an on-meter efficiency improvements program under which the corporation

(a)pays on behalf of a person — pursuant to an agreement with the person — some or all of the costs incurred by the person in relation to changes made to improve the efficiency of a building; and

(b)recovers the costs that are to be repaid to it by or on behalf of the person by levying a monthly charge on the account for power for the building.

Improving the efficiency of a building

9(2)For the purpose of clause(1)(a), the changes made to improve the efficiency of a building are capital improvements or fixture installations that the corporation reasonably expects will

(a)improve the energy efficiency of the building or a structure related to the building; or

(b)reduce the production of greenhouse gas emissions that result from the use of home heating fuels in the building or in a structure related to the building.

Water efficiency and conservation measures may be included

9(3)Changes that improve efficiency and conservation in the use of water within the building or a structure related to the building are also considered to improve efficiency, but only if the changes that do so are made in conjunction

with other changes made under the program to improve energy efficiency or reduce the production of greenhouse gas emissions.

Program criteria, terms and conditions
9(4)Subject to this Act, the corporation may establish the criteria and terms and conditions of the on-meter efficiency improvements program.

Agreement respecting monthly charges
10(1)An agreement entered into by the corporation and a person under clause9(1)(a) must
(a)set out
(i)the term of the agreement, which must not exceed the useful lifespan of the longest lasting change made to improve efficiency,
(ii)the amount of the monthly charge to be levied on the account for power for the building, which, subject to adjustments in the interest rate under subsection (3), must be the same throughout the entire term of the agreement, and
(iii)consistent with subsection(3), the times and manner in which the amount of the monthly charge may be adjusted by the corporation in order to reflect adjustments in the interest rate charged by the corporation under the agreement; and
(b)include the following provision:
"If a building that is subject to the on-meter efficiency improvements program is occupied by one or more tenants who are responsible for paying the account for power for the building, the registered owner must provide each tenant the program-related information that Manitoba Hydro gives to the registered owner to give to the tenants."

The agreement may contain other terms and conditions.

Projected savings to pay monthly charge
10(2)The amount of the monthly charge for the first five years of the agreement must be less than the projected average monthly cost savings that the corporation reasonably expects will be realized during the first12 months of the agreement because of the changes.

Adjustment in monthly charge
10(3)The corporation may, at the end of the first five years of the agreement and once every five years after that, adjust the amount of a monthly charge to reflect adjustments in the interest rate it charges under the agreement.

Monthly charge to be displayed separately
10(4)The corporation must ensure that the monthly charge is shown as a separate line item on the monthly statement for the account for power.

Monthly charge continues for term of agreement
10(5)The corporation may continue to levy the monthly charge for the term set out in the agreement, including on an account for power that replaces an account for power for that building.

Who pays the monthly charge
11(1)The person who is responsible for paying an account for power for a building for any period must pay each monthly charge levied for that period under the on-meter efficiency improvements program, even if that person is not a party to the agreement under which the corporation first levied the monthly charge.

Collection of monthly charge
11(2)The corporation may collect the monthly charge in the same manner, and with the same priority, as it collects charges for power supplied by it under *The Manitoba Hydro Act*, and for that purpose, the provisions of *The Manitoba Hydro Act* that apply to the collection of accounts apply with necessary changes to the collection of a monthly charge.

Notice of agreement to be registered in L.T.O.

12After entering into an agreement referred to in clause9(1)(a) in respect of a building, the corporation must, if there is a title, register a notice of the agreement against the applicable title in the appropriate land titles office. The notice must be in the form approved by the Registrar-General.

Monthly charge is not a price for power

13For the purposes of this and any other Act, a monthly charge is not a price charged by Manitoba Hydro with respect to the provision of power.

Regulations

14The Lieutenant Governor in Council may make regulations that are considered necessary or advisable respecting the on-meter efficiency improvements program.

APPENDIX D
Example of Municipal Bylaw Imposing Requirements above and beyond the Building Code

Regional Municipality of Wood Buffalo
City Centre Land Use Bylaw 12/012
as consolidated by
BL 12/013, BL 13/004, BL 14/032

9.7.11 Green Building Standards (BL 13/004)

.1 Compliance Methods depend upon the type, size and scope of Building works being proposed. These methods are set out in table 9.7-1 below. Where more than one compliance method is shown, the applicant may choose which compliance method to meet.

Table 9.7-1 Compliance Methods for Green Building Standards.

New Construction:	Compliance Method:
Gross Floor Area > 1,000m^2	LEED Gold (9.7.11.2) Alternative A (9.7.11.3)
Gross Floor Area < 1,000m^2	Alternative B (9.7.11.4)
Existing Building Extension:	**Compliance Method:**
Greater than 30% of existing Gross Floor Area and cumulative area is > 1,000 m^2	LEED Gold (9.7.11.2) Alternative A (9.7.11.3)
Less than 30% of existing Gross Floor Area	Alternative B (9.7.11.4)
Buildings with high process loads:	**Compliance Method:**
ice arenas, data centres, Food and Beverage Commercial	(9.7.11.5)

.2 The LEED Gold Compliance Method is applicable to Buildings that meet the following criteria:

a. New construction, Gross Floor Area greater than 1,000m²;

b. Existing Building extension greater than 30% existing Gross Floor Area and cumulative area is > 1,000m².

The LEED Gold Compliance Method requires that the project meets the applicable Canada Green Building Council (CaGBC) LEED 2009 Gold Standard for New Construction (NC) or Core and Shell (CS) as amended, replaced or updated from time to time. The choice of LEED credits, energy performance, water use reduction and ventilation rates are at the discretion of the applicant. If the LEED Gold Compliance Method is achieved, the mandatory performance standards in alternative A and B do not apply.

.3 Alternative A is applicable for Buildings that meet the following criteria:

a. New construction, Gross Floor Area greater than 1,000m²;

b. Existing Building extensions greater than 30% existing Gross Floor Area and cumulative area is > 1,000m².

The required performance standards are as follows:

.1 Provide an energy model demonstrating a percentage cost improvement in building energy use over the MNECB (Model National Energy Code for Buildings 1997) or ASHRAE (American Society of Heating, Refrigerating and Air Conditioning Engineers) baseline. Minimum performance improvements are:

	MNECB 1997	ASHRAE 90.1 2007
New Buildings	49%	40%
Core & Shell Buildings	45%	36%
Existing Building Extensions	45%	36%

Calculations shall follow the methodology and guidelines required under LEED NC or CS 2009 and the current LEED Canada Energy Modelling Rules. For mixed use projects that include both residential and commercial uses, where the commercial use is a Core and Shell, the entire building, including the Core and Shell component, must comply with the New Buildings performance standard.

.2 The development is to achieve a minimum of 50% less potable water use than the water use baseline as defined in LEED NC or CS 2009 Water Efficiency WEc1: Water Use Reduction.

.3 Landscaping & irrigation systems shall be designed to minimise the use of potable water. Designs shall integrate the use of drought tolerant plants,

drip irrigation and demand based control systems. The use of captured rain water is encouraged to further reduce potable water demand.

.4 Office Commercial space must provide a 20% improvement on fresh air ventilation supply under ASHRAE 62.1 2007: Ventilation for Acceptable Indoor Air Quality, as amended, replaced or updated from time to time.

.5 The additional energy associated with providing higher fresh air volumes shall be ameliorated through the design of the Building mechanical systems, which may include but are not limited to energy/heat recovery ventilators (ERV/HRV) regenerating units with a minimum efficiency of 80%.

.6 Full documentation of designs, calculation and analysis shall be supplied to support this application. Approved compliance with Alternative A shall require the applicant to submit documentation; stamped and sealed by the Registered Professional of Record.

.4 Alternative B is applicable for Buildings that meet the following criteria:

a. New Construction, Gross Floor Area less than 1,000m^2;

b. Existing Building extension less than 30% existing Gross Floor Area, but greater than 5% of the building or 100m^2 in area.

The required performance standards are as follows:

.1 Provide an energy model demonstrating a percentage cost improvement in building energy use over the MNECB (Model National Energy Code for Buildings 1997) or ASHRAE ((American Society of Heating, Refrigerating and Air Conditioning Engineers) baseline. Minimum performance improvements are:

	MNECB 1997	ASHRAE 90.1 2007
New Buildings	40%	30%
Core & Shell Buildings	37%	26%
Existing Building Extension	37%	26%

Calculations shall follow the methodology and guidelines required under LEED NC or CS 2009 and the current LEED Canada Energy Modelling Rules. For mixed use projects that include both residential and commercial uses, where the commercial use is a Core and Shell, the entire building, including the Core and Shell component, must comply with the New Buildings performance standard.

.2 The development is to achieve a minimum of 30% less potable water use than the water use baseline as defined in LEED NC or CS 2009 Water Efficiency WEc1: Water Use Reduction.

.3 Landscaping & irrigation systems shall be designed to minimise the use of potable water. Designs shall integrate the use of drought tolerant plants, drip irrigation and demand based control systems. The use of captured rain water is encouraged to further reduce potable water demand.

.4 Office Commercial space must provide a 20% improvement on fresh air ventilation supply under ASHRAE 62.1 2007: Ventilation for Acceptable Indoor Air Quality as amended, replaced or updated from time to time.

.5 The additional energy associated with providing higher fresh air volumes shall be ameliorated through the design of the Building mechanical systems, which may include but are not limited to Energy/heat recovery ventilators (ERV/HRV) regenerating units with a minimum efficiency of 80%.

.6 Full documentation of designs, calculation and analysis shall be supplied to support this application. Approved compliance with Alternative B shall require the applicant to submit documentation; stamped and sealed by the Registered Professional of Record.

.5 Buildings with high process loads such as ice arenas, data centres, Food and Beverage Commercial use, often result in the process load dominating the Building energy use, and therefore significant energy reductions overall can be difficult.

In such circumstances, the Building will be modeled with the process loads removed from the analysis, in order to test compliance with the criteria described for regular Buildings described in Table 9.7-1.

Furthermore, the equipment/machinery associated with the process load, will be required to demonstrate "Best Available Technique" (BAT) that meets energy efficient operation.

.6 The following types of Developments are exempt from meeting the green building standards set out in this section: New Residential Building with less than 1,000m^2 Gross Floor Area.

.7 Where an extension to a building is undertaken, the green building standards set out in this section only apply to the extension, not the entire building.

.8 An existing building shall not be deemed to be non-conforming only because it does not meet the green building standards in this section.

9.7.12 Green Utilities

.1 Within the Downtown Major Redevelopment Zone and the Franklin Avenue Re-urbanization Zone, the Development Authority may require, as a condition of issuance of a Development Permit, that the Development connect to infrastructure and services provided to enhance sustainability, including green utilities and telecommunications.

.2 Within the Downtown Major Redevelopment Zone and the Franklin Avenue Re-urbanization Zone, the Development Authority may require, as a condition of issuance of a Development Permit, that the applicant provide a plan, to the satisfaction of the Development Authority, demonstrating how the Development could effectively connect to and utilize future green utilities when they become available to the subject Site. Green Utilities, may include, but are not limited to: a district energy system, a district heating system, a district water heating system, and a reclaimed water use system.

.3 Within the Downtown Major Redevelopment Zone and the Franklin Avenue Re-urbanization Zone, the Development Authority may require that the applicant provide a plan demonstrating that Building systems will be configured to connect to a District Energy System, when it becomes available, designed to address the following criteria:

.1 The District Energy System will be designed to provide thermal energy to the Downtown Major Redevelopment Zone and the Franklin Avenue Re-urbanization Zone. Device standards are provided in the Municipal Engineering Service Standards. **(BL 13/004)**

DELETED (BL 13/004)

.2 All Buildings shall ensure that their building systems, mechanical, electrical, plumbing are designed and configured to connect to the Green Utility systems. The following provision shall be made:

(a) Adequate space is allowed in plant rooms for installation of heat exchangers, controls, metering.

(b) Primary energy distribution systems are enabled to ensure that the District Energy System can connect, including:

i. Pipework configured with valves, headers;

ii. Main electrical panels have spare ways for connections;

(c) Sleeves/ducts are provided for District Energy System pipes/wires to be connected with ease;

(d) In interests of economy and convenience, space is allowed for District Energy System pipes to run through Parking Structures associated with Buildings.

APPENDIX E
Example of Legislation Supporting a Municipal Building Code

Vancouver Charter
[SBC 1953] CHAPTER 55
Part IX —Buildings

Interpretation
304. In this Part, unless the context otherwise requires,

"building" includes structures of every kind, excavations in respect of any structure, and everything so attached to a structure as to constitute it real property;

"construction" includes erection, repair, alteration, enlargement, addition, demolition, removal, and excavation;

"greenhouse gas" has the same meaning as in the *Greenhouse Gas Reduction Targets Act*.

City Building Inspector
305. There shall be a City Building Inspector appointed by the Council who shall have such duties and powers in addition to those provided by this Act as the Council may from time to time prescribe.

By-laws respecting building regulation
306. (1) The Council may make by-laws

Regulating construction
(a) for regulating the construction of buildings
(i) where the safety of persons or property is concerned;
(ii) where the health of occupants or others is concerned;
(iii) where the protection of persons or property against fire is concerned;
(iv) where the provision of access to a building, or to part of a building, for a person with disabilities is concerned;
(v) where the conservation of energy or water is concerned;
(vi) where the reduction of greenhouse gas emissions is concerned;

Scaffolding
(b) for regulating the construction and use of scaffolding in connection with any building;

Use of street during construction
(c) for regulating the temporary use or occupancy of any portion of a street for the more convenient construction of a building, upon such terms as to rental, length of use or occupancy, or otherwise as may be prescribed, and for the temporary closing of such portion of a street so used or occupied;

Classification of buildings
(d) for classifying buildings and parts thereof, and differentiating between classes as to the regulations applicable to the respective classes;

Permit to be obtained
(e) for prohibiting any person from commencing the construction of any building, or part thereof, until he has obtained a permit therefor from the City Building Inspector;

Conditions of permit
(f) for fixing the terms and conditions upon which the City Building Inspector may issue, cancel, or suspend building or other permits, including the fees to be charged therefor and the building, surveyor's, or other plans, specifications and particulars to be submitted with applications for building permits;

Certification of fitness
(g) for providing that no building or designated part thereof shall be occupied or used during construction or thereafter until the City Building Inspector has certified that the building has been completed in conformity with the by-laws of the city and is fit for occupancy or use;

Powers of inspection
(h) for providing for the inspection of all buildings during the course of construction and thereafter as occasion may require, and for empowering the City Building Inspector, and anyone authorized by him, to enter any premises at any reasonable time for the purpose of such inspection;

Standards for dwellings
(i) for fixing standards of fitness for human habitation to which all dwellings, whether single or multiple, shall conform, and for requiring the owners of dwellings to make the same conform to any such standards, and for prohibiting the use or occupancy of dwellings which do not conform with any standard so fixed, and for providing (after the giving of notice as hereinafter provided) that in default of such conformation to such standards the city may by its workmen or others enter and effect such repairs, renovations or alterations as are necessary to make the dwellings conform to such standards at the cost of the person so defaulting; no such work shall be undertaken by the city until the expiration of 60 days after the date of service of a notice to that effect has been given by registered mail to the owner or has been posted on the premises;

Removal of non-conforming structures
(j) for providing for the demolition or removal, in whole or in part, at the expense of the owner of the parcel on which it is constructed, of any building, or of any part thereof, in cases where its construction has failed in any respect to comply with the provisions of any by-law, and for providing that the cost of such demolition or removal may be recovered from the owner in any Court of competent jurisdiction or by entering the amount of such cost in the real-property tax roll with respect to such parcel;
(k) [Repealed 1964-72-9.]

Plumbing and heating facilities
(l)

(i) for regulating the installation or alteration of plumbing and heating facilities in and about buildings and premises, including the materials to be used and the drains, pipes, and all means of connections with sewers, water-mains, and chimneys and the fixtures and apparatus in connection therewith;
(ii) for fixing standards for plumbing and heating facilities and for ordering the removal or repair of any such facilities that do not comply with that standard;

Sewer and water connections required
(m) for requiring that with respect to designated areas the owners of all premises therein which are used, or intended to be used, for human occupation shall at all times be effectively connected to a sewer or water-main, or both;

Tests for plumbers
(n) for constituting a board of examiners for persons desiring to engage in the trade of plumber, and for empowering such board to grant to any person found by the board to be a competent plumber a certificate of registration after such tests as may be required of him, and for making it unlawful for any person to engage in the trade of plumber unless he is the holder of such a certificate;

Gas or oil appliances
(o) subject to the *Safety Standards Act*, for regulating the installation and use of gas or oil ranges, gas or oil heaters, gas or oil furnaces, and other appliances using gas or oil for the production of heat, and the piping and other apparatus connected therewith;

Fire limits

(p) for establishing areas to be known as "fire limits", and for regulating the construction of buildings in each of such areas in respect of precautions against the danger of fire, and for discriminating and differentiating between the areas as to the character of buildings permitted in each of them, and for prohibiting the construction of any building within any such area unless it conforms with the regulations provided for it;

Unsafe buildings may be removed
(q) for providing for the demolition or removal, in whole or in part, or the amendment at the expense of the owner thereof, of any building certified by the City Building Inspector to be a fire hazard or structurally unsafe or a menace to health, and for that purpose to authorize any workers or others to enter upon the premises and carry out such demolition, removal or amendment, and for providing that the cost of the demolition, removal or amendment may be recovered from the owner in any court of competent jurisdiction or by entering the amount of such cost in the real property roll with respect to such parcel, and the provisions of this paragraph respecting cost recovery shall apply where the City Building Inspector orders the boarding up or securing of any unsafe building;

Off-street parking and loading space requirements
(r) with respect to loading and off-street parking for motor vehicles and bicycles to

> (i) require owners or occupiers of any land or building to provide off-street parking and loading spaces for the land or building, or the use of the land or building, including spaces for use by disabled persons,
> (ii) establish design standards for spaces required under subparagraph (i), including standards respecting the size, surfacing, lighting and numbering of the spaces,
> (iii) permit off-street parking spaces required under subparagraph (i) to be provided, other than on the site of the building or use, under conditions that are specified in the by-law, and
> (iv) as an alternative to complying with a requirement to provide off-street parking spaces under subparagraph (i), permit, at the option of the owner or occupier of the land or building, the payment to the city of an amount of money specified in the by-law;

(s) and (s.1) [Repealed 2008-23-33.]

Excavations to be guarded
(t) for compelling owners of, or building contractors in respect of, any real property on which there is any excavation likely to be dangerous to children or others to keep the same effectively fenced or enclosed or under the care of a watchman;

Undue cost of services may prevent certain uses
(u) for prohibiting the construction of any building for residential, commercial, or industrial purposes on land where by reason of its low-lying, marshy, or unstable character the cost of installing water, sewage, or drainage facilities is in the opinion of the Council unduly great;

Non-conforming building may be acquired
(v) for acquiring any real property being used for a purpose, or upon which is erected a structure, which does not conform with the provisions of any by-law relating thereto, and for disposing of the same upon such terms as may be just;

Adopting by reference
(w) for adopting by reference in whole or in part and with any change the Council considers appropriate any codes, standard or rule relating to fire safety or energy conservation or affecting the construction, alteration or demolition of buildings, either in place of or in addition to any regulations provided for in this Part;

Street numbers may be assigned
(x) for assigning and, where deemed necessary, reassigning street numbers to parcels of real property abutting on any street and to the buildings on such real property, and for providing that a record be kept by the city of such numbers so assigned or reassigned;

Sale of goods and chattels
(y) for providing for the disposal or storage of any goods or chattels situate in any building ordered by the City Building Inspector to be demolished and for the recovery of any costs or expenses incurred for such disposal or storage by sale of the goods or otherwise. The proceeds from the sale of such goods or chattels over and above any costs or expenses incurred shall be held in trust for the owner;

System established *re* Building By-law
(z)

(i) for establishing a system to permit an architect or engineer recognized as qualified by the City Building Inspector and retained by a person seeking a building permit, to certify:

(A) that plans describing a building comply with the Building By-law; and

(B) that a building as built conforms to plans which were accepted by the city or certified as complying with the Building By-law by an architect or engineer;

(ii) such a system may establish the form of such certificates and the City Building Inspector may accept a certificate as satisfactory evidence of compliance and conformity;

(iii) the system established may also provide for any of the following:

(A) that in order to be recognized as qualified by the City Building Inspector, an architect or engineer must provide evidence satisfactory to the City Building Inspector that he is covered by public liability insurance, and must attend a course or courses approved by the City Building Inspector and, or in the alternative, attain a designated mark in an examination approved by the City Building Inspector;

(B) that an architect or engineer so recognized as qualified may be disqualified by the City Building Inspector;

(C) that a qualified architect or engineer shall, prior to issuing a certificate, obtain from qualified professional engineers all necessary assurances as to the building's electrical, mechanical and structural safety and fire protection;

(D) that a specified portion of the fees to be charged for a building permit in respect of which a qualified architect or engineer has issued the certificate of compliance may be refunded upon receipt of the certificate of compliance and record drawings of the completed building;

(E) that persons wishing to retain an architect or engineer to certify the compliance of plans and buildings shall enter into such undertakings and assurances as the City Building Inspector may prescribe; and

(F) that a permit may be revoked and no work on a building shall be permitted to continue where an architect or engineer retained to certify compliance and conformity has been discharged or resigns, except with the approval of the City Building Inspector;

(iv) where the City Building Inspector accepts the certificate of a qualified engineer or architect pursuant to a system established under this section neither the city nor the City Building Inspector nor any other city employee shall be liable for any loss, damage or expense caused or contributed to because a building in respect of which a certificate is issued is unsafe or does not comply with the Building By-law or other applicable by-laws;

Elevators
(aa) subject to the *Safety Standards Act*, for requiring that every elevator in any building used for residential purposes shall be maintained in an operational condition at all times;

Assessing costs to owner
(bb) for providing that, where

(i) there has been a successful prosecution pursuant to a by-law regarding building standards or fixing standards of fitness for human habitation, or

(ii) Council has suspended or revoked a license on the grounds that the owner or occupier of the premises is in violation of a by-law regarding building standards or fixing standards for human habitation,

Council may order that the owner be assessed all reasonable costs of all inspections and investigations, and all other city costs involved in the preparation of any such prosecution or

proceeding, and any amount so determined by Council may be recovered in any court of competent jurisdiction;

Withholding of permit
(cc) for withholding a building permit in respect of any parcel of land situate in a designated flood plain area until the City Building Inspector is satisfied that the elevation or design will reduce or eliminate the risk of flood damage and for requiring a covenant registered against the land acknowledging the risk of flood damage.

Where owner unavailable
(dd) for providing that,
(i) if an owner is unavailable, the authorized agent of the owner who is responsible for managing the building is required to comply with the building by-laws as if that agent were the owner, and
(ii) for the purposes of (i), an owner is unavailable if, after making reasonable efforts, the city is unsuccessful in contacting the owner regarding the matter.

(2) Money referred to in subsection (1) (r) (iv) is payable
(a) at the time the building permit is issued for the applicable building, or
(b) if no building permit is required, at the time the use that requires the parking space specified in the by-law begins.

(3) A by-law under subsection (1) (r) may make different provisions for one or more of the following:
(a) different classes of uses or of buildings as established by the by-law;
(b) subject to subsection (4), different activities and circumstances relevant to transportation needs that are related to
(i) a use,
(ii) a building, or
(iii) a class of use or of buildings
as established by the by-law;
(c) different areas;
(d) different zones;
(e) different uses within a zone.

(4) A provision under subsection (3) (b) must not increase the number of off-street parking spaces required under subsection (1) (r).

(5) A provision under subsection (3) that establishes requirements with respect to the amount of space for different classes does not apply with respect to
(a) land, or
(b) a building existing at the time the by-law came into force,
so long as the land or building continues to be put to a use that does not require more off-street parking or loading spaces than were required for the use existing at the time the by-law came into force.

(6) A by-law under subsection (1) (r) may exempt one or more of the following from any provisions of such a by-law:
(a) a class of use, or of buildings, as established by the by-law;
(b) an activity or circumstance relevant to transportation needs that is related to
(i) a use,
(ii) a building, or
(iii) a class of use or of buildings
as established by the by-law;
(c) a use or building existing at the time of the adoption of a by-law under this paragraph;
(d) residential, cultural or recreational uses of a building that is designated as a heritage site under the Heritage Conservation Act.

(7) If money is received by the city under subsection (2), the city must

(a) establish a reserve fund for the purpose of providing

(i) new and existing off-street parking spaces, or

(ii) transportation infrastructure that supports walking, bicycling, public transit or other alternative forms of transportation, and

(b) place the money to the credit of the reserve fund.

(8) If reserve funds are established for both the purpose of subsection (7) (a) (i) and the purpose of subsection (7) (a) (ii), the reserve funds must be separate.

(9) In each year the Director of Finance must prepare and submit to the Council a report for the previous year that includes the following:

(a) the amounts received under subsection (2) in the applicable year;

(b) the expenditures from the reserve funds in the applicable year;

(c) the balance in the reserve funds at the start and at the end of the applicable year;

(d) the projected timeline for future projects to be funded from the reserve funds.

(10) As soon as practicable after receiving the report under subsection (9), the Council must consider the report and make it available to the public.

Repealed
306A. [Repealed 1959-107-21.]

Building Board of Appeal
306B. Council may, by by-law, establish a Building Board of Appeal and may empower such Building Board of Appeal to determine such matters, relating to by-laws prescribing requirements for buildings, as to Council seem appropriate. Any decision of the Building Board of Appeal shall be final and no appeal shall lie therefrom.

Eviction of tenants may be effected
307. Where a demolition or removal is undertaken pursuant to section 306 (1) (j) or (q) and any occupants of the building refuse to vacate the premises, they may be evicted upon such notice as the Council may prescribe. If, at the expiration of such notice, any occupant remains on the premises, the Mayor may direct a warrant to the Chief Constable requiring him to remove such occupant and his effects, and the Chief Constable shall, using such force as is necessary, cause them to be removed accordingly.

Taxes may be remitted
308. Where in any year a building has been demolished or removed pursuant to section 306 (1) (j) or (q), the Council may remit so much as it sees fit of the taxes levied in that year in respect of such building.

Regulated by by-law
308A. The council may by by-law regulate

(a) the removal of soil, sand, gravel, rock or other substance of which land is composed from any land in the city or in any area in the city, and different regulations and prohibitions may be made for different areas, and

(b) the deposit of soil, sand, gravel, rock or other material on land in the municipality or in any area in the municipality, and require the holding of a permit for the purpose and fix a fee for the permit, and different regulations and prohibitions may be made for different areas.

APPENDIX F
Example of Legislation Supporting an Energy Labelling and Benchmarking Program

Ontario Green Energy Act, 2009, S.O. 2009, c. 12

Mandatory home efficiency disclosure
3. (1) A person making an offer to purchase an interest in real property has the right to receive from the person offering to sell the property such information, reports or ratings as are prescribed,

(a) relating to energy consumption and efficiency with respect to a prescribed residence on the property or a class of prescribed residences on the property; and

(b) in such circumstances and at such times as are prescribed and in such manner as is prescribed.

Provision before accepting offer
(2) The person offering to sell the property shall, in accordance with subsection (1), provide the information, reports or ratings to the person making the offer to purchase before accepting that person's offer.
Waiver

(3) Subsections (1) and (2) do not apply where the person making the offer waives, in writing, the provision and receipt of the information, reports or ratings.

APPENDIX G
Example of Legislation Supporting a Waste Reduction Program

BYLAW NO. 12/007

BEING A BYLAW OF THE REGIONAL MUNICIPALITY OF WOOD BUFFALO, IN THE PROVINCE OF ALBERTA, TO REGULATE THE USE AND DISTRIBUTION OF BAGS BY RETAIL ESTABLISHMENTS OPERATING WITHIN THE BOUNDARIES OF THE REGIONAL MUNICIPALITIY OF WOOD BUFFALO

WHEREAS pursuant to Section 7 of the Municipal Government Act, a Council may pass bylaws for municipal purposes respecting businesses, business activities and persons engaged in business and the enforcement of bylaws;

AND WHEREAS single-use bags have been determined to have detrimental effects on the environment;

AND WHEREAS the Council of the Regional Municipality of Wood Buffalo wishes to reduce the negative effects plastic and paper bags have on the environment;

NOW THEREFORE, the Council of the Regional Municipality of Wood Buffalo, in the Province of Alberta, hereby enacts as follows:

Short Title

1. This bylaw may be cited as the "Single-Use Shopping Bag Bylaw".

Definitions

2. For the purpose of this bylaw, capitalized terms shall have the same meaning as defined in Land Use Bylaw No. 99/059, unless otherwise defined here:

(a) "Chief Administrative Officer" or its successor, means the Chief Administrative Officer of the Regional Municipality of Wood Buffalo, or his delegate;
(b) "Municipality" means the Regional Municipality of Wood Buffalo;
(c) "Peace Officer" means a community peace officer, environmental enforcement investigator or bylaw enforcement officer employed by the Municipality and authorized to enforce this bylaw, or a police officer;
(d) "Person" includes an individual, a corporation and other legal entities;
(e) "Retail Establishment" means any location where goods are offered for sale;
(f) "Reusable Container" means any bag, box or other container specifically designed and manufactured to hold at least 20 pounds of weight without failure or sign of eminent failure, is resistant to cuts and tears, and is made of:

- cloth or other machine washable fabric; and/or durable plastic that is at least 2.25 mils (.571 millimeters) thick; and/or
- any other durable material suitable for multiple uses; and
- only includes a cardboard box made of pressed paper pulp or pasted sheets of paper used for cartons where such cardboard box has been used previously.

(g) "Single-Use Bag" means a bag that is made of:

- less than 2.25 mils (.571 millimeter) thick polyethylene; and/or
- pulp or paper,

and, for clarity, shall include, but is not limited to:

- a door hanger bag designed to hold flyers, coupons or other advertisements and intended to be left on the doors of homes;
- a decorative paper or plastic gift bag where such bag is being used to transport goods;
- a biodegradable bag composed of, in whole or part, biodegradable plastic, oxo-biodegradable plastic, plastarch, polylactide, or any other plastic resin composite that is intended to degrade at a faster rate than non-biodegradable plastic film.

Application

3. This bylaw applies to the provision, distribution, sale and use of Bags by Retail Establishments within the Municipality.

Exemption

4. This bylaw does not apply to any of the following:

(a) Single-use bags containing food from a Retail Establishment that is a:

- Food Service, Drive-in or Drive-through;
- Food Service, Major Restaurant;
- Food Service, Minor Restaurant;
- Food Service, Mobile Catering; or a
- Food Service, Take out Restaurant.

(b) Single-use bags distributed by a non-profit in its normal course of business, which includes but is not limited to, a food bank, a homeless shelter or an animal shelter; and
(c) Single-use bags containing:

- loose, bulk goods such as fruit, vegetables, nuts, grains, candy, or small
- hardware items such as nails, screws, nuts and bolts, which goods are not Prepackaged;
- fresh meats or fish, which goods may be prepackaged;
- fresh cut flowers, or potted plants;
- freshly prepared foods or bakery goods;
- clothing immediately following the professional laundering or dry-cleaning of same;
- medical prescriptions and over the counter medications;
- paraphernalia related to the use of illegal drugs;
- undergarments or similar products of a personal or adult nature;
- any product or good where the purchaser must be an adult, except those related to a lottery or the sale of tobacco; and
- dirty, greasy, or hazardous products or materials;

(d) the sale of multiple, prepackaged single-use bags.

Prohibited Activities

5. A Retail Establishment shall not:

(a) provide, distribute, sell or use single-use bags; or
(b) restrict or deny the use of any Reusable Container by a Person.

Inspection on Demand

6. A Peace Officer may enter any Retail Establishment and may make such examinations, investigations and inquiries as required to determine compliance with this bylaw.

Offence

7. A Retail Establishment that contravenes this bylaw is guilty of an offence.

Fines and Penalties

8. A Retail Establishment that is guilty of an offence is liable, upon summary conviction, to a fine in an amount of not less than that established in this bylaw and not exceeding $10,000.

9. Without restricting the generality of Section 10, the fine amounts established for use on Violation Tickets if a voluntary payment option is offered are prescribed by Schedule "A" of this bylaw.

Continuing Offence

10. In the case of an offence that is of a continuing nature, a contravention constitutes a separate offence in respect of each day, or part of a day, on which it continues and a Retail Establishment guilty of such an offence is liable, upon summary conviction, to a fine in an amount not less than that established by this bylaw for each such day.

Violation Ticket

11. A Peace Officer may issue a Violation Ticket in accordance with the Provincial Offence Procedure Act, to any Retail Establishment that the Peace Officer has reasonable and probable grounds to believe has contravened this bylaw.

12. If a Violation Ticket is issued in respect of an offence, the Violation Ticket may:

(a) specify the fine amount established by this bylaw for the offence in Schedule "A"; or
(b) require a Retail Establishment to appear in court without the alternative of making a voluntary payment.

Voluntary Payment

13. A Retail Establishment who commits an offence may make a voluntary payment equal to the specified fine if:

(a) a Violation Ticket is issued in respect of the offence; and
(b) a Violation Ticket specifies the fine amount established by this bylaw for the offence.

Provincial Court Clerk

14. When a clerk records in the court records the receipt of a voluntary payment pursuant to this bylaw and the Provincial Offences Procedure Act, the act of recording receipt of that payment constitutes acceptance of the guilty plea and also constitutes a conviction and the imposition of a fine in the amount of the specified penalty.

Severability

15. If any provision of this bylaw is declared invalid for any reason by a court of competent jurisdiction that provision shall be severed, and all other provisions of this bylaw shall remain valid and enforceable.

Transitional

16. Any Retail Establishment may request an exemption from the application of this bylaw for a period of up to twelve (12) months from the effective date of this bylaw.

17. Any request under Section 16 must be made in writing with reasons and must be submitted to the Chief Administrative Officer within thirty (30) days of the effective date of this bylaw.

18. The Chief Administrative Officer may grant an exemption, where in the sole discretion of the Chief Administrative Officer, the applicant has demonstrated that direct, and undue hardship will result from the implementation of this bylaw. An exemption granted shall expire one year from the effective date of this bylaw and is not transferable

19. The Chief Administrative Officer shall issue a decision in writing to the applicant within thirty (30) days of receipt of a request under Section 16.

Repeal

20. Bylaw No. 09/033 is repealed.

Effective Date

21. This bylaw shall come into force six months after the date of passing.

READ a first time this 27th day of March, 2012.
READ a second time this 10th day of April, 2012.
READ a third and final time this 10th day of April, 2012.
SIGNED and PASSED 10th day of April, 2012.

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Mayor

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Chief Legislative Officer