

Development Agreements 101

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Land Development

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TABLE OF CONTENTS

A.	Introduction	1
B.	Authority.....	1
C.	Nature of Obligations.....	2
	1. Municipal Improvements - Construction or Payment	2
	2. Oversize Improvements (s. 651).....	3
	3. Off-site Levies (s. 648)	3
	4. Redevelopment Levy (s. 647)	5
	5. Security.....	5
D.	Key Provisions.....	5
	1. Design Standards.....	5
	2. Construction Standards	6
	3. Essential Services	6
	4. Guarantee Periods	6
	5. Utility Easements or Other Instruments	6
	6. Indemnity and Insurance	7
	7. Security.....	7
	8. Construction Completion Certificate and Final Acceptance Certificate	9
	9. Staged Developments.....	10
E.	Amendments.....	10
F.	Caveats.....	10

A. INTRODUCTION

The *Municipal Government Act*, RSA 2000, c. M-26 (“MGA”) is, amongst other things, a statute geared towards development cost recovery for municipalities. When properly understood, properly implemented, and effectively managed, the tools provided within the MGA in many cases can offer up to full recovery of costs associated with planning and development. At the very least, the MGA can offer some of the most effective risk and cost management tools available to municipalities. The trick, of course, is in understanding this complex piece of legislation, and the main tools provided within it.

The agreements contemplated under Section 650 and 655 of the MGA are among the most important tools to assist with carrying out the goals, objectives, and responsibilities of municipalities in Alberta. These “Development Agreements”, as they are termed, are a written contract between the applicant for a development permit or a subdivision approval (the “developer”) and the applicable municipality. They are certainly not new, and have been utilized extensively by municipalities since introduced into our planning legislation.

The concept of a development agreement is consistent with the overall philosophy for development under the MGA, being: that new development should bare its own initial costs because, although the municipality realizes increases in its tax base from new development, new development requires the municipality to accept a long term obligation to maintain the related roads and services (excepting such things as onsite parking and loading) and it will need to fund these obligations through the municipal tax base.

The purpose of this paper is to discuss the basics of development agreements, including its statutory authority, the nature of the contractual obligations and the essential terms and conditions that can be found in a typical development agreement.

B. AUTHORITY

The municipality may require a developer to enter into a development agreement as a condition of a development permit (MGA s. 650), or as a condition of subdivision approval (MGA s. 655). There is no statutory reference to a development agreement for redistricting. The land use bylaw should indicate that a development agreement may be required as a condition of issuing a development permit. Section 650 contemplates a land use bylaw requirement which imposes the development agreement condition upon development permit applications. The development agreement condition applies automatically to subdivision approval under s. 655.

A development agreement, as that term is used in the MGA, may require an applicant to:

1. construct or pay for a road or pedestrian walkway system;
2. install or pay for the installation of public utilities (other than telecommunications);
3. construct or pay for off-street parking or other parking facilities, and loading or unloading facilities;
4. pay an off-site levy or redevelopment levy; and
5. give a security to ensure performance of the terms of the development agreement.