

LEGAL CONSIDERATIONS

This attachment provides a commentary on the following land development options:

1. In-house;
2. Advisory body (Agency, Board, Committee, or Commission);
3. Municipal land development corporation;
4. Joint Venture; and
5. Edmonton Economic Development Corporation

1. In-house

If a municipality wishes to do land development in house it must do so for the purposes described in Section 3 of the *Municipal Government Act*.

3. The purposes of a municipality are
 - a) to provide good government,
 - b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and
 - c) to develop and maintain safe and viable communities.

This gives the municipality very broad authority, and the land development work the City is presently undertaking falls within this section.

2. Advisory Body

If a municipality wishes to do in-house land development, but with advice from outside persons with relevant expertise, there are two types of advisory bodies that could be established: Advisory Council Committees that report to and provide advice to City Council, and Administrative Committees that report to and provide advice to the City Manager.

a) Advisory Council Committees

Advisory Council Committees must be established by Council by bylaw. The *Municipal Government Act* requires all Council Committees, including Advisory Council Committees, to meet in public (unless the subject matter under discussion meets one of the exceptions under the *Freedom of Information and Protection of Privacy Act*). They must give formal notice of their meetings and the public is allowed to attend. Council establishes the mandate, terms of reference, composition and procedural rules in the bylaw that creates the Committee. Council appoints the members. Administration is required to provide support to all Council Committees. Council Advisory Committees report to Council through the appropriate Council Standing Committee as set out in Schedule B to the Procedures and Committees Bylaw.

Council Policy C575 *Agencies, Boards, Committees and Commissions* establishes rules for the creation of Advisory Council Committees. They are generally comprised of citizens or experts who are appointed to give Council an independent perspective and recommendations on a particular issue. The Policy provides that Councillors should not sit on Council's Advisory Committees because the purpose is to provide independently developed perspectives and advice to Council. However, Council may decide to appoint Councillors as non-voting liaisons between the Committee and Council if that is appropriate.

Examples of Council Advisory Committees include the City's Design Committee, Edmonton Salutes Committee and the Edmonton Homeless Commission.

b) Administrative Committees

Administrative Committees are always advisory to the City Manager. The *Municipal Government Act* permits the City Manager to delegate decision making powers to a City employee or to a designated officer - but not a Committee. The City Manager determines the administrative committee's mandate, terms of reference, membership and reporting requirements. Administrative Committees are not required to meet in public and usually meet in private. However, they may elect to obtain public or expert input if that is provided for in the terms of reference for the committee.

Councillors should not sit on Administrative Committees because it is inappropriate for a Councillor to sit on a committee that is established to give advice to the City Manager. This is contrary to the role of the City Manager, which is to manage administrative decisions and take direction from all of Council. Administrative Committees are normally comprised of members of administration, experts or private citizen members in accordance with the best composition to fulfill the mandate.

Examples of Administrative Committees include the City's Investment Committee, the Vehicle for Hire Industry Advisory Group, and the Corporate Leadership Team.

3. Municipal Land Development Corporation

If a municipality wishes to establish a wholly owned corporation to do land development, similar to what the City of Calgary has done with the Calgary Municipal Land Corporation, approval must first be obtained from the Minister of Municipal Affairs, according to section 73 of the *Municipal Government Act* and the *Control of Corporations Regulation*.

The application for approval must include, inter alia, information relating to the costs to establish the corporation and a business plan with cash flow projections.

The Minister must be satisfied, that the controlled corporation will carry on business solely for one or more of the purposes described in Section 3 of the *Municipal Government Act*, that the controlled corporation will not be dependent for its on-going operation on the municipality and that the purpose and profit and dividends of the controlled corporation will provide a direct benefit to the residents of the municipality.

The City is permitted to lend money to the controlled corporation, or guarantee the repayment of a loan from a lender to the controlled corporation as long as this would not cause the municipality to exceed its debt limit (Section 264 and 268 of the *Municipal Government Act*). Also, if the purpose of the borrowing is to pay the costs related to establishing the controlled corporation, there are restrictions on the loan-to-value ratio and on the debt limit of the municipality (Section 4 of the *Control of Corporations Regulation*).

If the City is proposing to transfer land to the controlled corporation at less than fair market value, this proposal would need to be advertised (Section 70 of the *Municipal Government Act*).

Controlled corporations will have the same obligations under the ***trade agreements** as the City of Edmonton, and are subject to the *Freedom of Information and Protection of Privacy Act*.

The City, as shareholder, can exercise varying degrees of control over the controlled corporation by the terms of a Unanimous Shareholder Agreement and the bylaws of the corporation.

As a matter of governance, it is recommended that the directors of the controlled corporation do not include members of City Council. The directors of a corporation must always act in the corporation's best interests, and that generally involves maximizing profit for the shareholders. The *Municipal Government Act* requires elected officials to act in the best interest of the City, and that often involves considerations other than making a profit. The risk of allegations of conflict of interest, bias and breach of duty can be avoided by structuring the controlled corporation without including members of Council as directors. If appropriate, Councillors could be appointed as non-voting City representatives for the purpose of providing information concerning City issues and perspectives to the controlled corporation's board of directors and Council.

EPCOR is an example of a controlled corporation owned by the City of Edmonton.

4. Joint venture

A municipality can enter into a joint venture agreement with a private corporation. The relationship between the parties, including the respective liabilities and required asset contributions, would be detailed in the joint venture agreement.

The joint venture agreement would need to be structured so the municipality is not loaning money to the private corporation.

While procurements by the private corporation in which the municipality does not participate in any way would not be subject to the trade agreements, any procurements undertaken by the joint venture in which the municipality does participate would be subject to trade agreement requirements.

5. Edmonton Economic Development Corporation

Edmonton Economic Development Corporation is non-profit company limited by shares. The City is its sole shareholder. Non-profit companies are prohibited from distributing dividends or profits to shareholders. Therefore, if the City wishes to be able to retain profit or obtain dividends from land development activity, Edmonton Economic Development Corporation would not be an appropriate corporate vehicle to meet this objective, nor would any other non-profit company.

As an entity owned by the City, Edmonton Economic Development Corporation is also subject to the procurement obligations in the trade agreements.

***trade agreements** – The Province of Alberta is a party to both the pan-Canadian Agreement on Internal Trade and the New West Partnership Trade Agreement between British Columbia, Alberta and Saskatchewan (the “trade agreements”). The trade agreements require that the procurement of goods, services and construction with values greater than specified thresholds be publicly tendered unless a specific exemption applies. The threshold for goods and services is \$75,000 and \$200,000 for construction. The trade agreements oblige the City to comply with them. Additionally, the City’s Administrative Directive A1439C *Procurement of Goods, Services and Construction* requires that the City comply with the trade agreements.