

----- **INTERMUNCIPAL DISPUTE PROCEDURE RULES** -----

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PREFACE

These *Intermunicipal Dispute Procedure Rules* were established under section 523 of the *Municipal Government Act*. They apply to all intermunicipal dispute appeals filed or still open on or after January 1, 2013 and replace the Board's "Procedure Guide", dated January 2000.

Informal Bulletins explaining hearings and the subject matter they deal with can be found on the Municipal Government Board website:

<http://www.mgb.alberta.ca>

For further information you can also contact the Board's office at 780-427-4864 (outside Edmonton call 310-0000 to be connected toll free) or email mgbmail@gov.ab.ca.

Purpose of the Rules

The purpose of the *Intermunicipal Dispute Procedure Rules* is to

- Provide information about the steps involved with intermunicipal dispute proceedings before the MGB.
- Ensure a fair, open and accessible process.
- Increase efficiency and timeliness of Board proceedings.

Operating Principles

These *Rules* recognize that municipalities and persons affected by an intermunicipal dispute should have a fair opportunity to voice their concerns to the Board before it makes a decision.

Hearing participants are encouraged to discuss, develop and bring forward mutually acceptable solutions to issues wherever possible.

Part A – Interpretation and Application of these Rules

1. *Definitions*
- 1.1 “**Act**” means the *Alberta Municipal Government Act*, RSA 2000, c M-26, as amended from time to time.
- 1.2 “**Affected person**” means a person affected by an intermunicipal dispute who has a right to participate in Board proceedings to the extent permitted under the *Act* and these *Rules*.
- 1.3 “**Appellant municipality**” means a municipal authority that filed a notice of appeal with the Board pursuant to section 690 of the *Act*.
- 1.4 “**Board**” means the Alberta Municipal Government Board and includes any panel of the Municipal Government Board.
- 1.5 “**Board administration**” means staff engaged to support the Board and Chair carry out their duties.
- 1.6 “**Board member**” means a member of the Board appointed by the Lieutenant Governor in Council pursuant to section 486 of the *Act*.
- 1.7 “**Case manager**” means a board member or member of the board administration designated by the Chair as such.
- 1.8 “**Chair**”, for the purposes of these *Rules*, means the person to whom the powers of the Administrator have been delegated under section 486(4) of the *Act*.
- 1.9 “**Days**” means calendar days.
- 1.10 “**Panel**” means a panel selected pursuant to section 487 of the *Act*.
- 1.11 “**Person**” includes a natural person, government agency, corporate or other legal entity.
- 1.12 “**Respondent municipality**” means a municipality whose by-law has been appealed by an appellant municipality.
- 1.13 “**Rules**” mean these *Intermunicipal Dispute Procedure Rules*.

2. ***Application of These Rules***
- 2.1 Subject to Rules 2.2 and 2.3, these *Rules* apply to any intermunicipal dispute proceeding before the Board pursuant to Part 17, Division 11 of the *Act*.
- 2.2 These *Rules* apply only to the extent they are consistent with the *Act* and regulations made under the *Act*.
- 2.3 The Board may give specific procedural directions which, to the extent of those directions, waive or modify the *Rules* for any given case.
3. ***Effect of Non-compliance***
- 3.1 If a person fails without reasonable excuse to comply with these *Rules* or with an order of the Board, the Board may
- (a) Limit or bar the presentation of evidence or argument or give it less weight, where the person has disregarded a Rule or Board decision concerning disclosure or exchange of evidence or argument,
 - (b) Order the non-complying person to reimburse another person for costs incurred as a result of the non-compliance, or
 - (c) Take any other action it deems appropriate.

Part B – Communication with and Representation before the Board

4. ***Communication with the Board***
- 4.1 Unless made during a hearing, preliminary hearing, or prehearing conference, communications with the Board about specific ongoing proceedings must be made through the Board administration.
- 4.2 The Board administration may copy correspondence received to other persons in order to facilitate Board proceedings.

5. **Representation**
- 5.1 Persons who participate in Board proceedings may represent themselves or be represented by another person.
- 5.2 Upon the Board's or the Board administration's request, a person who acts for another person must provide
- (a) Proof of authorization to act for the other person, and
 - (b) An address for service
- by the date requested by the Board or the Board administration.

Part C – Procedures for Filing Intermunicipal Disputes

6. **Notice of Appeal**
- 6.1 The notice of appeal and statutory declaration to be filed with the Board under section 690(1)(a) of the Act may be made using the forms attached to these *Rules* as Appendix "A" and must be accompanied by
- (a) A copy of the written notice of concern sent to the adjacent municipality prior to second reading under section 690(1).
7. **Response to Notice of Appeal**
- 7.1 The statutory declaration required from the respondent municipality under section 690(3) of the Act may be made using the form attached to these *Rules* as part of Appendix "A".

Part D – Case Management and Preliminary Hearings

8. **Case Management**
- 8.1 A case manager may do one or more of the following:
- (a) Direct the appellant municipality, respondent municipality or one or more affected persons to
 - (i) Clarify or focus the issues in dispute.
 - (ii) Identify any relevant agreed facts.
 - (iii) Identify any witnesses to be called and provide a summary of the evidence intended to be introduced through those witnesses.
 - (b) Provide the appellant municipality, respondent municipality or one or more affected persons with copies

of correspondence received, decisions, authorities and other information relevant to a dispute.

- (c) Direct an appellant municipality or respondent municipality to provide any affected person with access to a notice of appeal or statutory declarations required under section 690.
- (d) Direct disclosure of further material or information from the appellant municipality, respondent municipality or one or more affected persons to facilitate a fair, orderly and timely hearing process or to promote compliance with these *Rules*.
- (e) Establish or reschedule dates for hearings, disclosure or exchanges of information.
- (f) Hold meetings or discussions with the appellant municipality, respondent municipality or one or more affected persons to facilitate any of the above.
- (g) Refer any matter to a panel for a preliminary hearing.

8.2 A municipality or affected person who disagrees with a case manager's directive may request a preliminary hearing.

8.3 A Board member who has acted as a case manager in respect of a matter will not participate in any subsequent hearing concerning the same matter unless all affected participants consent.

9. Preliminary Hearings

9.1 At a preliminary hearing, the Board may do one or more of the following:

- (a) Direct the appellant municipality, respondent municipality or one or more affected persons to pursue discussions on their own, with a case manager, or with another independent facilitator by specified dates and monitor the progress of such discussions.

- (b) Establish dates for hearings.
- (c) Determine whether further disclosure is required and direct the appellant municipality, respondent municipality or one or more affected persons to provide or expand particulars, evidence summaries, legal analyses, authorities, or any other relevant documents or material.
- (d) Give directions for disclosure or exchange of material, including the timing for production of material, the persons to whom the material must be produced, measures to protect confidential information, and any further directions it deems necessary.
- (e) Determine whether procedures, filing or disclosure requirements established by legislation or the Board have been met and determine the effects of any defects.
- (f) Determine whether a person is affected by an intermunicipal dispute and the extent to which that person is entitled to participate in the proceedings.
- (g) Determine what matters are properly before the Board or whether one or more grounds of appeal should be struck out as frivolous or not reasonably supportable.
- (h) Determine requests for postponements, withdrawals, or joint recommendations.
- (i) Make any order it deems appropriate to establish procedures by which a hearing may proceed in a fair and expeditious manner.

9.2 Board members who have heard or participated in a panel for a preliminary hearing may also hear or participate in panels for any subsequent hearings concerning the same proceeding if so scheduled by the Chair.

Part E – Prehearing Submissions and Disclosure

- 10. Disclosure** 10.1 Municipalities and affected persons must disclose or exchange any material required under Rules 8 or 9 as directed by a case manager or the Board.

10.2 Unless it grants special permission, the Board will not accept written material filed after it has convened to hear oral submissions.

11. Form of Documents

11.1 Material filed must be clear and understandable. All pages must be numbered consecutively throughout the entire text and graphic content, even if there are dividers or tabs.

11.2 Unless otherwise directed by a case manager or the Board, parties must file eight (8) hard copies of their material with the Board.

11.3 Documents may be filed electronically with the permission of the Board or a case manager.

11.4 The Cover Page in Appendix "B" may form the first page of each disclosure document filed with the Board.

Part F – Orders for Further Disclosure or to Protect Confidential Information

12. Orders for Disclosure

Sharing information before the hearing prevents surprise, encourages resolution through discussion, and facilitates efficient presentations to the Board

12.1 After reviewing the material provided under Rule 10.1, an affected person, appellant or respondent municipality may request in writing that the Board issue an order for further disclosure. Such a request must

- (a) Identify as precisely as possible the information or material required and the issue(s) to which it relates,
- (b) Provide details explaining how the disclosure requested may be relevant to the issue(s) before the Board, and
- (c) Identify the person who will be required to disclose the information.

12.2 When entertaining a request made under this Rule, the Board may consider whether

- (a) The material requested should have been disclosed under these *Rules*, a preliminary hearing decision, or other legal requirement;
- (b) The material requested is
 - (i) Within the control of another person,

- (ii) Not readily available from another source,
- (iii) Potentially relevant to the proceedings before the Board, and
- (iv) Reasonably required by the person requesting the information to make their own submissions.

12.3 After considering a request under this Rule, the Board may

- (a) Order disclosure within a specific time of all or some of the material requested by the other person, with or without conditions, including conditions to protect any confidential information.
- (b) Refuse to order disclosure of the information requested.
- (c) Give any other direction it deems to be appropriate.

13. Disclosure of Confidential Information

13.1 Upon request, the Board may make any order it deems appropriate to help protect the confidential nature of information contained in documents filed with it.

Sealing Orders

13.2 An order under Rule 13.1 may include a sealing order restricting public access to certain Board records (or parts thereof), subject to any overriding legal requirement to disclose them.

Confidentiality on Production of Documents

13.3 Where the Board determines that information in documents containing confidential or sensitive material must be disclosed to another person, the Board may, if it deems it appropriate

- (a) Order the first person to make and disclose a non-sensitive summary or extract of the original.
- (b) Order the material to be provided to the other person subject to a signed undertaking satisfactory to the panel.
- (c) Order restrictions on the use of information by observers to a hearing where confidential information is presented.
- (d) Make any other arrangement suitable in the context of an open hearing to allow access to the information without unnecessarily compromising its sensitive nature.

Part G – Withdrawals, Agreements, and Postponements

- 14. Withdrawals**
- 14.1 An appellant municipality may request to withdraw an appeal that it initiated before the Board.
- 14.2 Subject to waiver from the Board or Board administration, a person who submits a withdrawal request either
- (a) After the hearing has been advertised, or
 - (b) After notices of the hearing have already been distributed
- shall appear on the scheduled date to explain the reason for the late withdrawal.
- 15. Agreements**
- 15.1 Where two or more municipalities or affected persons reach an agreement concerning an issue before the Board, they may provide the Board with a notice of agreement.
- 15.2 Agreements are to be submitted to the Board in writing.
- 15.3 The Board may accept or reject an agreement, or ask for supporting information.
- 15.4 Subject to waiver from the Board or a case manager, parties must be prepared to proceed at the scheduled hearing date to explain the agreement and to provide other submissions as may be required.
- 16. Postponements**
- 16.1 A request to postpone a scheduled hearing must
- (a) Include reasons for the postponement,
 - (b) Suggest suitable replacement dates for the hearing, or in the case of a request for postponement sine die, include reasons why a specific date cannot be identified,
 - (c) Be communicated to the Board as soon as the need arises.
- 16.2 The Board may consider the following factors as relevant to deciding postponement requests:
- (a) Whether the request is based on
 - (i) a serious impediment to the attendance of a principal hearing participant, witness or agent, such

as illness, injury or impassable weather conditions,
or

(ii) a serious issue affecting the fairness of the Board's proceedings.

(b) The degree and likelihood of prejudice or cost to other persons if the request is granted and to the person seeking the postponement if the request is denied.

(c) The number of persons affected by the delay and whether they have consented to the postponement.

(d) The likelihood of unreasonable disruption to the Board's schedule.

(e) Where the request is based on relevant pending Board or Court decisions

(i) Whether the decision(s) is expected within 30 days, and

(ii) Whether the relevant proceedings have been pursued expeditiously.

(f) Legislated timelines for hearings and decisions.

(g) Any other factor the Board deems relevant.

16.3 Subject to waiver from the Board or Board administration, all hearing participants must be prepared to proceed at the hearing date scheduled in case the request is not granted.

**Late
Postponement
Requests**

16.4 Subject to waiver from the Board or Board administration, a person who submits a postponement request either

(a) After the hearing has been advertised, or

(b) After notices of the hearing have already been distributed

shall appear on the scheduled date to explain the reason for the postponement request.

Part H – Hearing Procedures

- 17. Location of Hearings** 17.1 Hearing locations will be determined having consideration for the convenience and cost to those attending the hearings and to the Board.
- 18. Mode of Hearings** 18.1 At the discretion of the Board, hearings may be conducted by way of
- (a) An in-person hearing.
 - (b) A telephone or other form of electronic conference.
 - (c) Written materials and submissions delivered to the Board.
 - (d) Any combination of (a), (b) or (c) or any other means a panel or case manager deems appropriate.
- 19. Cost of Participation** 19.1 Subject to an award for costs under Part J, persons who participate in Board proceedings do so at their own expense.
- 20. Identification of Participants and Notice of Oral Submissions** 20.1 A panel or case manager may make any arrangements they deem necessary to identify all participants at a hearing and ensure an orderly hearing process.
- 20.2 Subject to waiver from the panel, persons intending to make oral submissions at a hearing must notify the case manager of their intent within a reasonable time before the hearing begins.
- 21. Recording of Proceedings** 21.1 No person shall make an audio, video, photographic or other electronic record of Board proceedings or a verbatim record without obtaining permission from the Board prior to the hearing.
- 21.2 If the Board permits a party to make a verbatim record of the proceedings, the Board is to receive paper and electronic copies of the record, as applicable, at no cost to itself and the Board may apply one or more of the following conditions:
- (a) The costs of transcription, including expedited transcription if requested by the Board, and copies for the Board are to be borne by the person who requested the record, unless others agree to share the costs.
 - (b) Other persons specified by the Board are to receive

additional copies of any transcription or recording, provided they cover the cost of the copies they receive.

- (c) The process of recording or transcription will not interrupt the orderly conduct of Board proceedings.
- (d) The recording or transcription proposed will be, in the view of the panel, of sufficient accuracy.
- (e) Any other condition the Board finds appropriate.

21.3 The Board may provide for the recording of its own proceedings where

- (a) A transcript may be requested by the Court of Appeal under section 688 of the Act, or
- (b) The Board otherwise deems it necessary to do so.

21.4 The Board will not provide access to recordings or transcripts made under Rule 21.3(a) except as necessary to fulfill its responsibility under section 688 of the Act or other legal requirement including freedom of information and protection of privacy legislation.

Part I – Recusal of Panel Members

22. *Withdrawal of Panel Members Owing to Apprehension of Bias*

22.1 Where a panel member becomes aware of circumstances that he or she believes may raise a reasonable apprehension of bias, that member will

- (a) Disclose the circumstances and withdraw from the panel, or
- (b) Disclose the circumstances and give the affected parties an opportunity to either
 - (i) Waive any objection to the member sitting on the panel, or
 - (ii) Give reasons as to why the panel member should or should not withdraw.

22.2 A appellant or respondent municipality or an affected person may ask a panel member to withdraw because of a reasonable apprehension of bias. A person who makes such a request

must do so as soon the circumstances giving rise to it become known and must provide reasons for the request.

- 22.3 Where a member has been asked to withdraw, the panel will give an opportunity to the appellant municipality, respondent municipality and any other affected person it deems to have a sufficient interest to address the question of whether the circumstances raise a reasonable apprehension of bias.
- 22.4 The decision to grant or dismiss a request to withdraw because of an apprehension of bias must be made by the member in question.
- 22.5 A panel member may confer with other panel members before deciding whether to withdraw.
- 22.6 A panel from which one or more members has withdrawn may
 - (a) Proceed to hear the matters before it, subject to the existence of a quorum as defined in section 489 of the Act, or
 - (b) Adjourn or make arrangements to reschedule a matter so that it may be heard by a full panel.

Part J – Post-Hearing Procedures

23. Costs

See Section 501

- 23.1 When determining whether to award costs, the Board may consider whether the person(s) against whom they are to be awarded
 - (a) Has abused the Board's process.
 - (b) Has acted contrary to an agreed-upon or Board-directed process.
 - (c) Has caused unreasonable delays, postponements, or expense.
 - (d) Has acted unreasonably or engaged in conduct worthy of an order to reimburse another person for costs and expenses incurred as a result of that conduct.
- 23.2 Where the Board does not otherwise direct, a request for costs must

- (a) Be filed with the Board no later than 30 days after the date of the Board's decision.
- (b) Specify the total sum sought for costs together with a description of how the amount is calculated and an itemized list of any expenses sought to be recovered.
- (c) Specify the reasons why an award of costs is appropriate in the circumstances.

**24. Rehearings/
Reviews**

**Application
Process**

24.1 A request may be submitted to the Board in writing to rehear, review, vary or rescind any matter or decision under the discretionary power granted by section 504 of the Act.

24.2 A request under this Rule must include

- (a) A detailed statement explaining how the request meets the grounds for a rehearing or review listed under this Rule; and
- (b) The following background information:
 - (i) Name of the applicant.
 - (ii) Board decision number.
 - (iii) Address, phone number and contact persons for the appellant and respondent municipalities.

24.3 Requests must be made no later than 30 days following the date of the decision.

24.4 After a request is filed pursuant to this Rule, the Chair may

- (a) Refer the matter to a case manager for case management,
- (b) Refer the request to the panel that originally heard the matter for further directions, final determination, or both, or
- (c) Refer the request to a new panel for further directions, final determination, or both.

Grounds for

24.5 The Board may exercise its power under section 504 of the Act

a Rehearing or Review

in the following circumstances:

- (a) New facts, evidence or case-law that was not reasonably available at the time of the hearing, and that could reasonably have affected the decision's outcome had it been available,
- (b) A procedural defect during the hearing which caused prejudice to one or more of the parties,
- (c) Other material errors that could reasonably have changed the outcome of the decision, or
- (d) Any other circumstance the Board considers reasonable.

24.6 The following are generally not sufficient grounds to grant a rehearing or review:

- (a) Disagreement with a decision.
- (b) A party's failure to provide evidence or related authorities that were reasonably available at the time of the hearing.

25. Access to Board Decisions

25.1 The Board may publish its reports or have them published in any form, including posting them on the Internet.

26. Access to other Board Records

26.1 The Board will not make will not make available a filed notice of appeal or statutory declarations required under section 690 that can be viewed at the initiating or responding municipality.

26.2 Other records that have been filed with the Board for an intermunicipal dispute will be made accessible for viewing at the MGB office in Edmonton, subject to

- (a) Restrictions imposed by Board orders, freedom of information and protection of privacy legislation or other legal restrictions, and
- (b) Payment of any prescribed fee if copies are required following viewing.

Appendix "A"

Notice of Appeal for Intermunicipal Dispute Form

Statutory Declaration Form

As per section 690(1) of the *Municipal Government Act (Act)*, a municipality that

1. is of the opinion that a statutory plan (or amendment) or a land use bylaw (or amendment) adopted by an adjacent municipality has or may have a detrimental effect on it,
2. has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, and
3. is attempting or has attempted to use mediation to resolve the matter

may appeal the matter to the Municipal Government Board. A statutory declaration indicating the status of mediation must accompany this Notice of Appeal. The Notice of Appeal and Statutory Declaration must be filed with the MGB within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw.

Part 1 – General Information – Please Print

APPELLANT MUNICIPALITY

| | | | |
|------------------------------|---------------------|------------------------|---------------|
| Name of Municipality | | Telephone Number | |
| Designated Contact | | Position (e.g. C.A.O.) | |
| Address (Street, PO Box, RR) | (Town/City/Village) | (Province) | (Postal Code) |
| E-mail Address | | Fax Number | |

AGENT INFORMATION AND CERTIFICATION (if Appellant is Represented by a Lawyer/Agent)

| | | | |
|------------------------------|--------------------|---------------------|----------------------------|
| Name of Firm | | | |
| Designated Contact | | (Last) (First) | Telephone Number (daytime) |
| Address (Street, PO Box, RR) | (Suite, Apartment) | (Town/City/Village) | (Province) (Postal Code) |
| E-mail Address | | Fax Number | |

ADJACENT MUNICIPALITY

| | | | |
|----------------------------------|---------------------|------------------|---------------|
| Name of Municipality | | Telephone Number | |
| Designated Contact (e.g. C.A.O.) | | | |
| Address (Street, PO Box, RR) | (Town/City/Village) | (Province) | (Postal Code) |
| E-mail Address | | Fax Number | |

Part 2 – Owner(s) of Land that is the Subject of the Appeal

(If more than one owner, please attach list of the names and addresses of each landowner of any land that will be directly affected by this appeal)

| | | |
|------------------------------|--------------------|----------------------------|
| Name (Last) | (First) | Telephone Number (daytime) |
| Address (Street, PO Box, RR) | (Suite, Apartment) | (Town/City/Village) |
| | (Province) | (Postal Code) |
| E-mail Address | Fax Number | |

Part 3 – Bylaw Information

(all to be completed)

| | |
|---|-------------------|
| Please indicate which bylaw is under appeal | |
| Date bylaw received second reading | Date bylaw passed |

Please attach a copy of the notice sent to the municipality prior to the second reading.

Part 4 – Reasons for Appeal

Indicate the specific provisions appealed and the reasons you think they are detrimental (attach more pages as necessary).

.....

.....

.....

.....

.....

Signature of Appellant OR
Person Authorized to Act on Behalf of Appellant

Date

This information is being collected for the purposes of setting up appeal hearings in accordance with Section 33(c) of the Freedom of Information and Protection of Privacy Act. The contact information you provide may also be used to conduct follow-up surveys designed to measure satisfaction with the appeal process. Questions about the collection of this information can be directed to Alberta Municipal Affairs, Municipal Government Board, 15th Floor, Commerce Place, Edmonton, Alberta T5J 4L4 780-427-4864. (Outside of Edmonton call 310-0000 to be connected toll free)

I _____ of _____ DO SOLEMNLY DECLARE THAT:
(Name)

1. _____ wishes to file an Appeal with the
(Appellant Municipality)
Municipal Government Board concerning _____, and that
(Bylaw provision under appeal)

2. I am the _____ of the _____, and that
(Position) (Appellant Municipality)

3. (Please choose one of the following)
- (a) Mediation with (adjacent municipality) was not undertaken
 - (b) Mediation was undertaken but was not successful
 - (c) Mediation is ongoing and the appeal is being filed to preserve the right of appeal

4. And further, the reasons why mediation was either not undertaken or not successful are as follows in Attachment "A" (please tick N/A if option (c) was selected), N/A

AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME FORCE AND EFFECT AS IF MADE UNDER OATH.

(Signature of Appellant OR
Person Authorized to Act on Behalf of Appellant)

(Print Name)

DECLARED BEFORE ME AT _____

In the Province of Alberta, this _____ day

of _____, 2_____

(Commissioner for Oaths)

(Print Name)

(Expiry Date of Commission)

This information is being collected for the purposes of setting up appeal hearings in accordance with Section 33(c) of the Freedom of Information and Protection of Privacy Act. The contact information you provide may also be used to conduct follow-up surveys designed to measure satisfaction with the appeal process. Questions about the collection of this information can be directed to Alberta Municipal Affairs, Municipal Government Board, 15th Floor, Commerce Place, Edmonton, Alberta T5J 4L4 780-427-4864. (Outside of Edmonton call 310-0000 to be connected toll free)

Appendix "B"

Cover Page

| | | | |
|--|---------------------------|----------|-------------------|
| MGB FILE NO. | | RECEIVED | EXHIBIT NO. _____ |
| IN THE MATTER OF | AN INTERMUNICIPAL DISPUTE | | |
| INITIATING MUNICIPALITY | | | |
| RESPONDENT MUNICIPALITY | | | FOR MGB USE ONLY |
| DOCUMENT | | | |
| NAME (ORGANIZATION) ADDRESS FOR SERVICE EMAIL TELEPHONE (FOR PERSON FILING THIS DOCUMENT) | | | |