

EMERGING TRENDS IN MUNICIPAL LAW 2018


The Modern Municipality:
Doing IDPs and ICFs the Right
Way & Delivering Upon the
Promise of Collaboration



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Overview

- Introduction – the Picture of Collaboration
- Intermunicipal Development Plans
- Intermunicipal Collaborative Frameworks
- Closing Comments & Advice



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Introduction

Picture of Collaboration

- **Think Regionally...Automatically**
 - i. Facing challenges or threats...
 - ii. Seeking opportunities...
 - iii. Automatically
- **Measure Success as Region...Reap All of the Rewards as a Region**
 - i. Attraction or Retention - of industry, business and population
 - ii. Growth – of population, tax base
 - iii. Quality of Life
 - iv. Vibrant, strong community

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Introduction

Picture of Collaboration

- **Roll with the Punches...Together**
 - i. Facing threats and challenges together
 - ii. Because of common geography, history etc., threats and challenges are experienced collectively...
- **Avoid the Alternative**
 - i. Disputes
 - ii. Race to the bottom
 - iii. Amalgamation by dissolution, or otherwise
 - iv. Wasted time and resources
 - v. Lost opportunities



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Introduction

Picture of Collaboration

- **Building a Vision**
 - i. **Future** - A community with a future and a plan for how to get there
 - ii. **Sustainable** - A sustainable community, with sustainable growth
 - iii. **Vibrant** - A vibrant community, that is inclusive beyond boundaries

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Intermunicipal Development Plan

- **Long-range development plan** between **two or more** municipalities
- **Tool** provided by the Municipal Government Act to **facilitate intermunicipal** planning **initiatives**

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Intermunicipal Development Plan

As of April 1, 2018, IDPs are **mandatory** and must be in place by April 1, 2020

Exemptions:


- Neighbours are members of a “ growth region”
- Minister grants exemption

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Intermunicipal Development Plan

Must address (MGA s. 631(2)(a) – in force April 1, 2018):

- The future **land use** within the area,
- The manner of and the proposals for **future development** of the area,
- The provision of **transportation systems** for the area, either generally or specifically,

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Intermunicipal Development Plan

- The co-ordination of **intermunicipal programs** relating to the physical, social and economic development of the area,
- **Environmental matters** within the area, either generally or specifically, and
- Any other matter related to the **physical, social or economic development** of the area that councils consider necessary

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Intermunicipal Development Plan

Must include (MGA s. 631(2)(b):

- a procedure to **resolve disputes** between the municipalities;
- a procedure to **amend the plan**; and,
- procedures for the **administration of the plan**.

NOTE: Municipalities are also required to adopt ICFs with municipalities they share common borders with by April 1, 2020, and the ICFs will not be considered complete until the parties have also adopted an IDP or an IDP is included in the ICF. (MGA, Part 17.2 – in force April 1, 2018)

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Beyond the Basics

Joint Planning Committee

An IDP will generally be developed through a “working group”.

Qualifications for membership:

- Attitude
- Compromise
- Leadership
- Able to communicate recommendations


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Beyond the Basics

Joint Planning Committee

Philosophy:


There is no mention of a distinction between urban and rural in these policies, and it appears the intent is to allow all municipalities to participate on an equal footing in securing for themselves, a wide variety of residential, commercial and industrial uses.


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Beyond the Basics

Referral Protocols

- Area
- Issues
- Other Matters




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Beyond the Basics

Area Covered

- The geographic area covered by your IDP should be clearly identified
- Use maps or series of maps for clarity sake

Reciprocity - does the IDP apply to both sides of the municipal boundary?

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Beyond the Basics

Specific Uses


- Appropriate vs. inappropriate uses
- Confined feeding operations




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Beyond the Basics

Dispute Resolution




- Required pursuant to the MGA
- Escalating steps to deal with issues
- Should recognize MGA time frames


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Beyond the Basics

Clarity & Consistency

- Should be clear as to prevent possible conflicts in interpretation
- Consistent use of terminology in various documents




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Beyond the Basics

Consistency with Annexation Agreement


- There may already be an annexation agreement in place regarding certain lands
- IDP should address lands targeted for future possible annexation
- Any areas that should be protected from annexation


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Beyond the Basics

Cost Sharing

- For infrastructure, maintenance, boundary roads
- Include apportionment formula(s)





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Beyond the Basics

Extent of Joint Initiative

- Joint initiative
- Intermunicipal services
- Comprehensive shared services






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Beyond the Basics

Timelines

- The term of the IDP should be addressed
- Regular meetings of the planning committee
- When will the document be reviewed?





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Beyond the Basics

Reports

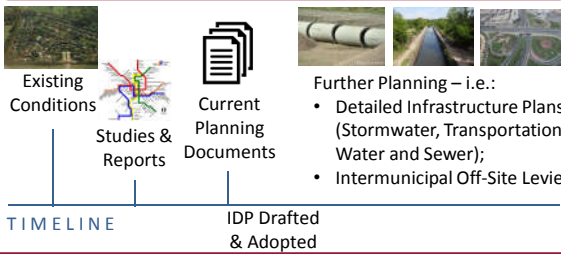
- Growth management study
- Master transportation plan
- Master utility plan
- Joint economic impact analysis



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Beyond the Basics

A Snapshot in Time...



Existing Conditions

Studies & Reports


Current Planning Documents

Further Planning – i.e.:

- Detailed Infrastructure Plans (Stormwater, Transportation, Water and Sewer);
- Intermunicipal Off-Site Levies

TIMELINE

IDP Drafted & Adopted

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Beyond the Basics

Environmental Issues




- Environmental reserves
- Watersheds
- Water bodies
- Environmentally defective lands
- Irrigation ditches

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Beyond the Basics

Consequential Amendments

- Pursue consequential amendments to other planning documents (statutory and the LUB) either concurrently with adoption of IDP or soon thereafter including:
 - Uses
 - Other plans
 - Premature fragmentation
 - Referral requirements

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Beyond the Basics

Land Use Policies

- Provincial strategies
- Lakes
- Fringe areas
- Transportation and utility corridors
- Mix of uses
- School and recreation sites


As ALSA implemented, provincial land use policies are to be phased out.

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Beyond the Basics

SDAB


- May be established by bylaw in accordance with s.627 of the MGA and must:
 - Provide for matters in s.145(b)
 - Prescribe the functions and duties of an SDAB (s.628(1))
 - Establishment of intermunicipal SDAB should be contemporaneous with passing of IDP

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Beyond the Basics

Legal Advice

- When preparing an IDP, legal advice should be sought early in the process
- Less re-drafting required if counsel is involved from the outset, as opposed to reviewing an already complete document


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Beyond the Basics

The Alberta Land Stewardship Act

- Seven land use regions



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Introduction to ICFs

Intermunicipal Collaboration Framework (ICF)

- Part 17.2 of MGA
- Comes into force April 1, 2018
- Requires an ICF with each neighbour within 2 years
- Some exceptions – e.g. Growth Management Board




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Introduction to ICFs

Intermunicipal Collaboration Framework (ICF)

- **Stated Purpose of ICF:**
 - (a) to provide for the integrated and strategic **planning, delivery and funding of intermunicipal services;**
 - (b) to **steward scarce resources efficiently** in providing local services; and
 - (c) to ensure municipalities **contribute funding to services** that benefit their residents.

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Introduction to ICFs

Intermunicipal Collaboration Framework (ICF)

- **ICF Must Address:**
 - (a) transportation;
 - (b) water and wastewater;
 - (c) solid waste;
 - (d) emergency services;
 - (e) recreation; and
 - (f) any other services, which could benefit regionally.




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Introduction to ICFs

ICF Process


- **Inventory:**
 - (a) the services being **provided by each municipality.**
 - (b) the services being **shared on an intermunicipal basis** by the municipalities. and
 - (c) the services in each municipality that are being **provided by third parties** by agreement with the municipality.

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Introduction to ICFs

ICF Process


- **Assessment:**
 - (a) which services are best provided on a **municipal basis**;
 - (b) which services are best provided on an **intermunicipal basis**; and
 - (c) which services are best provided by **third parties** by agreement with the municipalities.

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Introduction to ICFs

ICF Process


- **Planning – for intermunicipal services, how will it be:**
 - (a) **intermunicipally delivered** (which municipality will lead delivery of the service)?
 - (b) **intermunicipally funded**?
 - (c) **discontinued** by a municipality when replaced by an intermunicipal service?
- **Including a plan for implementing it all.**

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Implementation of ICFs

Models for Implementing Collaboration


- **Main Models of Collaboration/Service Delivery:**
 1. **By Agreement** – e.g. funding agreement, service/supply agreement, etc.
 2. **By Joint Ownership/Governance Structure** – e.g. co-ownership, commission, muni. corp., joint venture, etc.
- **Applied to each intermunicipal service.**

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Implementation of ICFs

Examples of Collaboration


- **ICF Must Address:**
 - (a) transportation;
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 - (c) solid waste;
 - (d) emergency services;
 - (e) recreation; and
 - (f) any other services, which could benefit regionally.


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Implementation of ICFs

Examples of Collaboration

- **ICF Must Address:**
 - (a) transportation;
 - (b) water and wastewater;
 - (c) solid waste;
 - (d) emergency services;
 - (e) recreation;** and
 - (f) any other services, which could benefit regionally.




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Implementation of ICFs

Examples of Collaboration - Recreation


- **Recreation – identify common needs/threats:**
 - *Additional Recreation Services/Programs*
 - *Health & Wellness, Seniors, etc.*
 - *Aquatics*
 - *Operating costs and usership revenues*
- **If identified independently...*automatically*...discussed with neighbour.**
- **Should have been identified in the ICF Process.**

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Implementation of ICFs

Examples of Collaboration - Recreation


- **Important Factors:**
 - (a) If there is an **existing facility** to improve/expand;
 - (b) If there is a clear **leading municipality**;
 - (c) If there is **grant funding** available and/or **no significant joint capital investment**;
 - (d) If **usership and operating costs** are a key issue.
- Suggests, or lends itself to **collaboration by agreement**.

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Implementation of ICFs

Examples of Collaboration - Recreation


- **Cost Sharing Agreement:**
 - (a) One municipal owner;
 - (b) Facility and services available to residents in both municipalities;
 - (c) Collective identification of programming needs;
 - (d) Proportionate sharing of operating costs not recovered through user fees or other revenues.

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Implementation of ICFs

Examples of Collaboration - Recreation


- **Collaborative Achievements:**
 - (a) Avoided duplication of **capital costs**;
 - (b) Utilized available **grant efficiently**;
 - (c) Satisfied a **regional service need**;
 - (d) Contributed to **quality of life** of the region;
 - (e) Provided for a **focal point of activity** meaningful to the communities.

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Implementation of ICFs

Examples of Collaboration


- **ICF Must Address:**
 - (a) transportation;
 - (b) water and wastewater;
 - (c) solid waste;
 - (d) emergency services;
 - (e) recreation; and
 - (f) any other services, which could benefit regionally.


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Implementation of ICFs

Examples of Collaboration – Water/Wastewater

- **ICF Must Address:**
 - (a) transportation;
 - (b) water and wastewater;**
 - (c) solid waste;
 - (d) emergency services;
 - (e) recreation; and
 - (f) any other services, which could benefit regionally.




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Implementation of ICFs

Examples of Collaboration – Water/Wastewater


- **Water/Wastewater – identify common needs/threats:**
 - i. Limited regional growth historically*
 - ii. IDP identified growth area/opportunity*
 - iii. Most efficient servicing is intermunicipal*
 - iv. Most cost effective servicing is intermunicipal*
 - v. Existing systems have excess capacity*
 - vi. AEP Approvals expiring, requiring plant upgrades*
 - vii. Need to facilitate growth, and benefit from growth*

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Implementation of ICFs

Examples of Collaboration – Water/Wastewater

- **Important Factors:**
 - (a) By its nature, the service is **permanent**;
 - (b) Requires **long term** capacity management, capital replacements, planning upgrades to meet growth, etc.;
 - (c) If there is **large, shared capital investment** to build new or upgrade existing plant;
 - (d) If there is **limited/no grant funding**;
 - (e) If **intermunicipal grant funding** applies.


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Implementation of ICFs

Examples of Collaboration – Water/Wastewater

- **All these factors suggests need for:**
 - (a) **Collaboration** – by ownership/governance structure;
 - (b) **Tax Base and Revenue** – a means to address the location of new tax base that has been created.


Something more than merely a cross boundary service connection.

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Implementation of ICFs


Examples of Collaboration – Water/Wastewater

- **Collaborative Achievements:**
 - (a) Addressed a **planning and development need**;
 - (b) Addressed a **consumer need** for the serviced lands;
 - (c) Facilitated **regional growth**, and **growth of tax base**.
 - (d) Avoided duplication of **capital costs**;
 - (e) Utilized available **grants and infrastructure** efficiently;
 - (f) Provided for lowest possible **costs of service** for the consumers.

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**Collaboration by
Owner/Governance Structure**

- **Factors suggesting an ownership/governance relationship needed:**
 - (a) Need to share capital costs;
 - (b) Requirements of intermunicipal grants; and
 - (c) Permanence of the service, and long term management of capacities, planning, capital renewal required.

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**Collaboration by
Owner/Governance Structure**

- **Municipally Controlled Corporation**
 - (a) Separate legal entity;
 - (b) Most flexible of all options;
 - (c) Same type of entity as a private business;
 - (d) Recognizes proportionality of interests;
 - (e) Best model to allow direct council control.

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**Collaboration by
Owner/Governance Structure**

- **Municipally Controlled Corporation - Examples**
 - (a) ENMAX - *City of Calgary*
 - (b) EPCOR - *City of Edmonton*
 - (c) Aquatera - *City of Grande Prairie, County of Grande Prairie, Village of Sexsmith*
 - (d) Alberta Central East Water Corporation - *13 municipalities*
 - (e) Sheep River Regional Utility Corp. - *4 municipalities*

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**Collaboration by
Owner/Governance Structure**

- **Regional Services Commission:**
 - (a) Created under MGA
 - (b) Most common example of regional ownership
 - (c) Significant Provincial oversight
 - (d) Hardest entity to create
 - (e) Most regulated entity to create
 - (f) Limited to certain types of services

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**Collaboration by
Owner/Governance Structure**

- **Regional Services Commission - Examples**
 - (a) North 43 Lagoon Commission - **sewage**
 - (b) Bow Valley Waste Management commission – **solid waste**
 - (c) Barrhead Regional Water Services Commission - **water**
 - (d) Capital Region Assessment Services Commission – **property assessment and appraisals**
 - (e) Pincher Creek Emergency Services Commission – **fire, rescue, emergency medical services**

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**Collaboration by
Owner/Governance Structure**


- **Part 9 Company**
 - (a) Non-profit entity;
 - (b) Can have proportionality of interests
 - (c) No need for ministerial consent to obtain
 - (d) Hard to change corporate constitution after creation

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Collaboration by Owner/Governance Structure


- **Part 9 Company - Examples**
 - (a) Peace Regional Waste Management Company – solid waste services/landfill operation
 - (b) High River Regional Airport Limited – regional airport operation
 - (c) Wildfire Legacy Corporation – wildfire memorial and interpretative centre operation



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Collaboration by Owner/Governance Structure

- **Society:**
 - (a) Non-profit entity
 - (b) No proportionality of interests – all are the same
 - (c) No need for ministerial approval to create
 - (d) Better corporate governance statute than Part 9 Company
 - (e) Easy to bring in new members

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Collaboration by Owner/Governance Structure

- **Society - Examples:**
 - (a) Friends of Champion Park Society – Historical railway artifacts ownership and display
 - (b) Fairview Medical Clinic Operating Society – regional ownership and rental of medical clinic to local doctors
 - (c) Foothills – Okotoks Recreational Society – joint operation of regional fieldhouse and rec facilities
 - (d) Crowsnest/Pincher Creek Landfill Association – joint operation of landfill and operations

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**Collaboration by
Owner/Governance Structure**


- **Federal Non-Profit Corporation**
 - (a) Created pursuant to federal *Canada Not-for-profit Corporations Act*
 - (b) Non-profit entity
 - (c) Best/most modern non-profit corporate statute to govern the members (best statute is *Business Corporations Act*)
 - (d) Easily permits council input over operations
 - (e) New-ish legislation (2011)

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**Collaboration by
Owner/Governance Structure**

- **Federal Non-Profit Corporation - example**
 - (a) Because it's so new, not many examples used in municipal world yet
 - (b) Regional Water Customers Group Inc. – to hold provincial water license in trust for benefit of 7 municipalities/water commissions




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Closing Advice & Comments

Relationship Agreement

- The agreements need to be **governed by a larger relationship**
- There needs to be **room for evolution** over time
- There needs to be a **mechanism for dealing with change**
- Much of this must **rely upon the relationship** that is created
- Must avoid the prospect of winners and losers – **the region has to be the winner.**

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Closing Advice & Comments

Opportunities

- **Opportunities Have No Boundaries:**
 - (a) Regional Municipal Partners
 - (b) Regional Service Providers (3rd Parties)
 - (c) First Nations



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