



THE COMMUNICATOR

Alberta Development Officers Association (ADOA)

May 2024

Spring Issue

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Photo Rebecca Arndt

Words from the Editor

The committee has been working endlessly planning an amazing 40 year anniversary conference. We have fun swag bags, great door prizes, yummy food and a lovely hotel that you can book your reservation anytime, Premier Best Western Calgary Plaza Hotel and Conference Centre, 1316-33 Street NE, 1-800-780-7234. Reminding you of the date, September 25, 26 and 27 in Calgary with the meet and greet on the evening of September 24, 2024.

Dig deep in your closet for your banquet outfit, 80's attire is the theme. And of course your dancing shoes as well. Hopefully we have some breakdancers in the mix!

Please remember to bring a silent auction item from your municipality or yourself. The charity is Alberta Dreams which is for the kids all over Alberta that need our help to get them their dream.

Watch for emails from Diane regarding registration and details up to the event.





BROWNLEE LLP
Barristers & Solicitors

**ALBERTA UTILITIES
COMMISSION'S
RENEWABLES INQUIRY:**

**A MUNICIPAL
PERSPECTIVE**

**ALBERTA UTILITIES COMMISSION'S
RENEWABLES INQUIRY: A MUNICIPAL
PERSPECTIVE**

BACKGROUND [1]

On the eve of the expiry of the Generation Approval Pause Regulation, which put in place a pause on approvals of applications for new renewable generation power plants, the Minister of Affordability and Utilities, Nathan Neudorf (the "Minister"), announced the Government of Alberta's intention to bring forward changes relating to the approval of renewable generation power plants throughout the Province. This announcement comes after the Alberta Utilities Commission (the "AUC"), completed a consultation process which culminated in the issuance of the AUC's Module A Report to the Minister on January 31, 2024. Module A was the first part of a two-part module process that the AUC undertook to address renewable generation power plant issues identified by the Alberta government during their Order in Council on August 2, 2023. [2]

The AUC's Module A Report focused on the following factors:

- Development of power plants on specific types or classes of agricultural or environmental land;
- Impact of power plant development on Alberta's pristine viewsapes;

- Consideration of implementing mandatory reclamation security requirements for power plants; and
- Consideration for development of power plants on lands held by the Crown in Right of Alberta.

The stated goal of this consultation process is to ensure Albertans have an electricity grid that is reliable, affordable and sustainable. The AUC's work is meant to provide the groundwork for new government policy that provides consistency and clarity for investors, municipalities and landowners alike. The policy changes and alterations being made to AUC's approval process will be applied to all power plants going forward, but they will not be applied retroactively to previously approved power plants.

Brownlee Comments:

It is not clear how the policy changes will apply to applications that are pending before the AUC (for example, where a hearing has occurred, but the approval has not yet been issued). The Government of Alberta's announcement provides a summary only; further analysis will be required when more details become available. Our Brownlee planning team has outlined below a municipal perspective respecting the Minister's announcement.

1. AGRICULTURE FIRST APPROACH

Government of Alberta Statement:

The Government of Alberta states it is committed to an agriculture first approach in making decisions relating to the best use of agricultural lands involved in proposed renewable developments.

Proposed Changes:

Starting on March 1, 2024, the Government of Alberta has directed the AUC to no longer allow renewable power plants on Class 1 or Class 2 agricultural lands, based on the Alberta Land Suitability Rating System. However, an exception has been put in place where the proponent of a renewable development is able to demonstrate that the crops and/or livestock are able to coexist with the renewable power plant. The Government of Alberta will also be establishing tools necessary to ensure native grasslands, irrigable lands and productive lands continue to be available for agricultural production.

Brownlee Comments:

Clearly this policy change provides some protection respecting agricultural lands – the AUC had previously approved some renewable power plants including solar power plants on prime agricultural land (citing landowner rights), without full consideration respecting long term impacts of taking these lands out of agricultural production.

There are a number of factors creating a demand to use high quality agricultural lands for renewable power plants. The same qualities that make lands desirable for solar power plants

(extensive sunlight, relatively level land), also make those lands desirable for agricultural production. Historical settlement of land in Alberta has (not surprisingly) occurred in areas of Alberta where high-quality agricultural lands exist (including the Highway 2 corridor); transmission lines have capacity in these areas. The demand for solar power plants has resulted in landowners receiving higher compensation (to lease lands to a solar power plant proponent) than the landowner could receive on the open market for agricultural purposes.

Note that the reference in the Government of Alberta statements to Class 1 lands warrants further comment. The Land Suitability Rating System (LSRS) is a national system, and is somewhat nuanced. It is possible that there are no Class 1 lands in Alberta.

More details will be required to fully evaluate this policy change; for example, it will be necessary to consider further details on the actual integration of crops/livestock required to satisfy the “ability to coexist” requirement in a proposed renewable power plant.

It is possible that certain lands in Alberta otherwise under a Class 2 could be classified as Class 1. For this article, we will work off the premise that there are no Class 1 lands in Alberta. The coexistence will be different depending on whether the power plant is solar or wind. A wind tower has a relatively small footprint and can readily allow pasture or cereal crops around it. However, we anticipate that this policy change is largely directed at solar power plants which will apparently be required (if located on Class 2 lands) to incorporate agrivoltaics, i.e. the simultaneous use of areas of land for both solar panels and agriculture. Agrivoltaics is also called co-location, agrophotovoltaics, agri-solar or dual-use solar. The intent of agrivoltaics is that the two uses (agriculture and solar power plant) complement rather than compete with each other.

Agrivoltaics (in terms of practical application on a commercial scale) is in its relative infancy in Alberta. An example that comes to mind contemplates raised solar panels with animals grazing below them. However, agrivoltaics has a broader scope and would also include: solar panels with space between for crops or pollinator habitat; and greenhouses with semi-transparent solar panels. Some questions raised by this policy change include:

- To what extent (on Class 2 lands) will lands historically used for cereal crop production be required to maintain cereal crop production?
- What technical specifications (such as density of panels) will be ideal to address “ability to co-exist”?
- Will the requirement for “ability to coexist” on Class 2 lands result in increased demand for solar power plants on Class 3 and lower classes?
- Will options for “ability to co-exist” still be a factor for the AUC to consider for lands within Class 3 and lower classes?

2. RECLAMATION SECURITY

Government of Alberta Commitment:

The Government of Alberta states it is committed to developing and implementing the necessary policy and legislative tools to ensure adequate security is provided for land reclamation on future renewable power plants.

Proposed Changes:

Developers will be responsible for reclamation costs through either bond or security. Payment will be made to the Alberta government or negotiated directly with affected landowners if sufficient evidence is provided to the AUC.

It is expected that the actual security amounts and timing of payments will be set by the end of 2024, following consultation between the Ministry of Environment and Protected Areas and the Ministry of Affordability and Utilities. However, the requirements set will apply to all approvals issued by the AUC on or after March 1, 2024.

Brownlee Comments

Again, this policy change is a step in the right direction, and will need to be further analyzed when more details become available. Clearly, this policy change is designed to address the extensive problem with lack of proper reclamation in the oil & gas industry; the Alberta government is trying to ensure that this regulatory failure is not repeated in the renewable energy industry. To date, renewable power plant proponents have pushed back against reclamation security given the additional costs of carrying security. Further, proponents have asserted they cannot disclose agreements with landowners referencing confidentiality requirements on privacy grounds.

One benefit of having security addressed at the provincial level rather than the municipal (development permit) level is that provincial requirements can more readily be changed over time; this flexibility would help ensure, for example, that security thresholds keep up with the pace of inflation. The risk respecting lack of proper reclamation is exacerbated here because the overwhelming number of proponents (for renewable energy) are only leasing lands from the landowner; the proponents are rarely the landowner.

Some questions raised by this policy change include:

- Will the Alberta Government be satisfied with reclamation obligations contained in the agreements (i.e. the private agreement between the proponent and the landowner) or will additional security be required to be deposited with Alberta Environment and Protected Areas?
- Will there be a transparent and regulated methodology to calculate security required to decommission the site and reclaim to prior or equivalent standards?

3. PROTECTING PRISTINE VIEWSCAPES

Government of Alberta Statement:

The Government of Alberta states it is committed to developing the necessary policy and legislative tools to maintain Alberta's pristine viewscapes and other protected areas.

Proposed Changes:

To establish buffer zones, of a minimum 35 km, around protected areas or other “pristine viewscapes” as designated by the province. Within these buffer zones new wind power plants will no longer be allowed. Additionally, other proposed developments within the buffer zone may require a visual impact assessment provided to the appropriate regulating party for consideration before power plant approval is granted.

Brownlee Comments:

Premier Danielle Smith referenced Alberta’s UNESCO Sites when commenting on these provisions. Alberta has 6 UNESCO world heritage sites: Canadian Rocky Mountain Parks; Dinosaur Provincial Park; Head-Smashed in Buffalo Jump; Waterton-Glacier International Peace Park; Wood Buffalo National Park; and Writing-On-Stone or Aisinai’pi Provincial Park.

Note that visual impact assessments may be required for other developments within the buffer zone; therefore, any proponent applying for a solar power plant may need to ensure that the locations do not negatively impact these viewscapes.

Some questions raised by this policy change include:

- What locations within the province will be delineated as “pristine viewscapes” (only UNESCO sites, or others)?
- When an area is designated, what additional requirements (visual impact assessments) will be imposed (for example, siting solar power plants)?

4. CROWN LANDS**Government of Alberta Statement:**

The Government of Alberta states it is committed to developing the necessary policy and legislative tools to properly address renewable power plants on Alberta’s Crown Lands.

Proposed Changes:

Due to a vast amount of competing interests surrounding Alberta’s Crown Land resources, meaningful public engagement will be required before changes to Crown Land access can be implemented. These proposed policy changes would not come into effect until late 2025. Further, any development of renewable plants on Crown Lands will be assessed on a case-by-case basis.

Brownlee Comments:

To date, the Government of Alberta has not allowed renewable power plants on Crown lands. The renewable energy industry has been pressuring government to remove this restriction, to access a larger land base for renewable power plants. Note that “Crown lands” simply refers to the status of the owner, i.e. the provincial Crown. Only some of the “Crown lands” will be environmentally sensitive.

If industry is going to have access to Crown lands for a commercial purpose, important policy choices will need to be made by the Government of Alberta respecting the terms for such contracts.

Some questions raised by this policy change include:

- If the Government of Alberta is going to agree to allow renewable power plants on provincial Crown lands will there be a “level playing field” (i.e. will market value compensation be paid to the Government of Alberta)?
- Will existing dispositions on Crown lands (e.g. grazing leases) be terminated to make way for renewable power plants?

5. TRANSMISSION REGULATION

Government of Alberta Statement:

The Government of Alberta has advised that future changes to Alberta’s Transmission Regulation are coming.

Proposed Changes:

Changes are expected in the coming months to Alberta’s Transmission Regulation, following the Transmission Green Paper. These upcoming changes are expected to change the allocation of transmission costs with renewable power plants. Full details on these changes are expected to be released as the consultation process with the AUC continues.

Brownlee Comments:

We will provide more information when more details become available.

6. MUNICIPAL PARTICIPATION

Government of Alberta Statement:

The Government of Alberta states its strong support for the AUC’s commitments towards increasing the involvement of municipalities, following the AUC’s findings in the Module A Report.

Proposed Changes:

In conjunction with the commitments made by the Government to clarify the rules surrounding renewable power plants, the AUC has stated it is committed to a number of initiatives involving municipalities during the process.

Going forward the AUC will automatically grant municipalities the right to participate in AUC hearings. Further, an expansion of eligible costs recovery measures for municipalities will be implemented. The expansion of recoverable costs will apply in circumstances where the municipalities intend to file expert evidence or arguments that will assist the AUC. Lastly, the AUC will allow municipalities to review the rules related to municipal submission requirements while clarifying consultation requirements.

Brownlee Comments:

To date, when a municipality applied to participate in the AUC hearing process for renewable power plants, the AUC has shown a range of responses, from very limited participation to more fulsome participation. Never, to date, has the AUC gone so far as to allow a municipality to claim intervener

funding respecting what the AUC calls facility approvals for renewable power plants; only neighbouring landowners were able to access intervener funding. The AUC's intervener framework is prescribed in Rule 009. The funding model for facility approvals contemplates that interveners may apply to the Commission for a costs award (payable by the proponent) in relation to a hearing or other proceeding.

The scale of costs is limited by the Rule, and includes both legal costs and consultant costs. Whether an intervener will be awarded costs depends on a number of factors including whether the intervener acted responsibly, and contributed to a better understanding of the issues before the AUC.

Granting municipalities intervenor status, with the ability to claim costs awards, is a major and positive policy change. This will give municipalities an opportunity to voice their concerns; whether the AUC listens to municipalities remains to be seen.

Some questions raised by this policy change include:

- Will cost recovery for municipalities (legal and consulting expenses) be available through the AUC process if the municipality takes a proactive approach and is able to resolve concerns with the proponent prior to a hearing process?
- Will the AUC work up Rules respecting standard conditions/commitments to address common municipal concerns like: development agreements; road use agreements; crossing agreements; emergency management plans (including appropriate design controls to address wildfires); waste management plans; weed control; soil management plans; and dust control?
- Given the regulatory failures in the oil & gas industry (respecting non-payment of municipal property taxes), will the AUC or the Government of Alberta develop a stronger regulatory framework to ensure that municipal property taxes are kept current in relation to renewable power plants?

7. SETBACKS AND SITE VISIT RULES

Government of Alberta Statement:

The Government of Alberta states that the AUC is undergoing a process to consider appropriate setbacks of renewable infrastructure.

Proposed Changes:

The AUC has committed to conducting a proceeding or other process to determine the appropriate setbacks of renewable infrastructure from neighboring residences and other important infrastructure. The timeline to implement this proposed procedure has not been specified. Additionally, the AUC has committed to developing rules for mandatory site visits for proposed renewable power plants.

Brownlee Comments:

Setbacks are an issue not only for residences or other receptors but also in other situations, such as aerodromes. Many municipalities own or operate aerodromes; there are complex technical issues respecting height (wind power plants) and glare and turbulence (solar power plants). Setbacks are also considered by the AUC in relation to Noise Control (Rule 012).

WHAT CAN MY MUNICIPALITY DO?

First, municipalities should update their land use bylaws. While a comprehensive analysis respecting land use bylaw amendments is beyond the scope of this article, a municipality should consider the following key themes:

- “use” definitions should be referenced and ideally dovetail with provincial terminology;
- determine whether the preferred approach is a use within a conventional district (with reliance on a discretionary use rather than a permitted use) or a direct control district; and
- develop and adopt standards to address key municipal concerns, such as separation distances, necessary agreements with the municipality (development, road use and crossing), waste management plans, emergency management plans, dust mitigation plans, etc.

While the AUC has the jurisdiction to override a Municipal Council’s policy choices in the land use bylaw or elsewhere, the results of the pause clearly indicate the AUC has been directed to pay more attention to municipal concerns. Consideration should also be given to revising fees and charges provisions (either in the land use bylaw or elsewhere) to enhance a municipality’s ability to ensure the proponent pays for municipal expenses (including legal and consultant expenses) related to reviewing and processing applications.

Second, and concurrent with any update to the land use bylaw, municipalities should ensure their statutory plans and other relevant planning documents support and align with the land use bylaw. Additionally, this may require municipalities to retain legal counsel and other consultants to assist with drafting planning documents that address issues specific to renewable power plants such as aviation studies (for wind power plants) and soil classification mapping (for solar power plants).

Third, municipalities should participate in appropriate early communications with potential proponents. This will allow the municipality, through its administration, to better understand the proposed power plant, retain legal and other experts if needed, and negotiate possible resolutions to municipal concerns outside the AUC process. Municipalities who are aware of power plants in their jurisdiction should sign up for AUC notifications and ensure that if they are sent information packages as part of the Participant Involvement Program created by the developer, they respond proactively and fully, outlining any questions or concerns they have about the proposed power plant.

Fourth, municipalities may wish to review its community standards bylaw and noise bylaws to ensure they align with the aesthetic and noise standards in the land use bylaw.

Fifth, municipalities should participate in the AUC proceedings. The Government has provided that the AUC will automatically grant municipalities intervener status to participate but municipalities may still have to register on the AUC website. Registration will give municipalities access to the application, which should be reviewed by municipal staff to assess the compatibility of the proposed power plant with the municipality's bylaws. The municipality should participate by preparing both written and oral submissions, if necessary.

CONCLUSION

The specific details arising from these policy changes will become apparent over time. Brownlee will remain on the lookout for the implementation of the proposed legislative tools by the Government of Alberta and their potential impacts on municipalities in practice. If you have any questions regarding the implications these policy developments, please contact these members of Brownlee's Planning Group.

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[1] In this document, the Brownlee LLP Planning Team comments on the Government of Alberta policy announcements as of February 28th, 2024. Statements from the Government of Alberta are outlined using blue boxes, followed by Brownlee's comments.

[2] Order in Council: https://kings-printer.alberta.ca/documents/Orders/Orders_in_Council/2023/2023_171.pdf

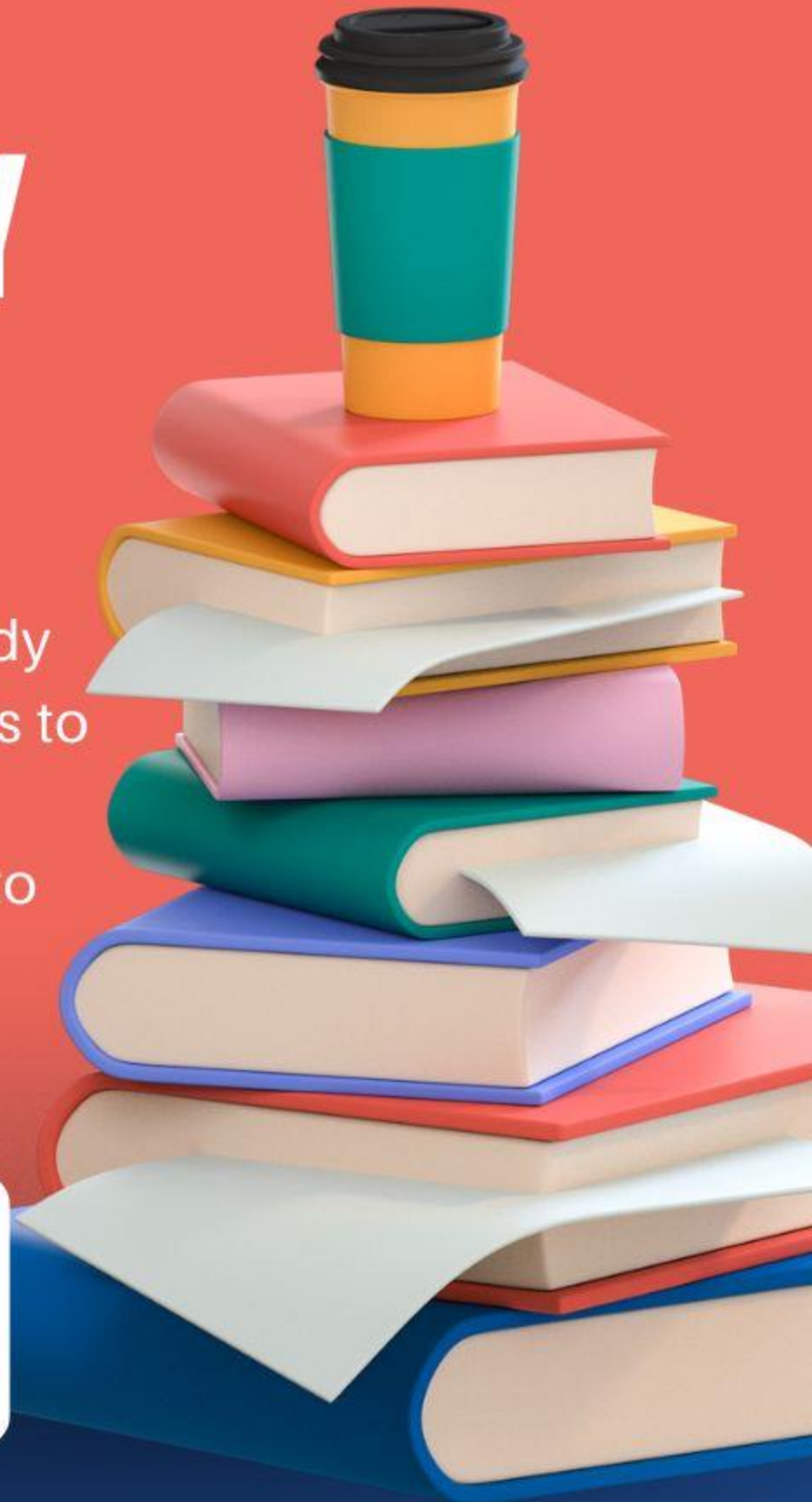
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Alberta Development Officer Newsletter - May

At last - it seems Spring is here to stay and as such, the construction season is well underway as is the new National Building Code- 2023 Alberta Edition. When the National Building Code was released, it included new building classifications for farm buildings and greenhouses. Alberta continues to work towards harmonization with the National Code, however we will not be seeing these new occupancy's in the National Building Code- 2023 Alberta Edition.



Although Building Code requirements likely don't necessarily impact your role within Planning and Development, it is interesting to see the changes within the industry and the evolution of Code development. An awareness of certain requirements can assist when evaluating various applications or in encouraging ratepayers or builders to consult with your Safety Codes Officer.

The changes we see in this code cycle are not monumental, they do include a variety of details requiring builders and contractors to be aware of new minimum requirements. Some of these adjustments applicable for residential occupancy's include:

- allowing stairs with open risers in residential homes but eliminating that provision from commercial buildings
- second floor windows were permitted at floor level in residential homes. Now, windows within 600mm of the floor require windows to be protected by a guard or mechanism requiring special knowledge (non egress)
- requirement for basement insulation increased from a minimum of 2ft below grade to the full wall
- increase for the minimum distance between fresh air intake and exhaust

Over the years we have seen an increase to the number of homes providing various care services. A new occupancy has been added to the Code to facilitate residential care occupancy. Previously care occupancy's would fall under a different part of the code which resulted in significant code requirements that were challenging to achieve. This new occupancy has different requirements based on the number of occupants and allow for such uses with greater flexibility.

We have seen significant changes in construction since the introduction of energy code requirements since 2014. As we move to further harmonize to the National Code, the 2023 Code includes moving to the tier based energy code, with this code cycle placing us at tier 1. This change includes the requirement of HRV units- this is no longer optional. There are a total of 4 tiers that we will continue to work towards, with tier 4 being a net zero ready home.

Part 3 or commercial buildings see several changes such as:

- an increase to minimum width of doorways in exit corridors and pathways
- roof mounted HVAC equipment previously required stairs for access, however this has been changed back to ladders being acceptable means of roof accessibility
- section has been added for engineers to address roof design with solar panels

Of particular note in rural areas, previously campgrounds with 30 sites or more required a service building for laundry and washroom facilities. This requirement has been removed, there is no requirement for service buildings for campgrounds, however if one is being constructed it will need to meet the applicable minimum code requirements.

Another change we will begin to see is in universal washrooms and barrier free access. There is an increase to the required space as well as requirements to include adult sized change tables. Assembly occupancy's will require assistive listening devices where goods and services are provided / public service counters. This includes screens, microphones, Bluetooth hearing aids etc.

The above items summarized above are not intended to be a comprehensive list of all changes or specify under what circumstances they would apply. We always encourage communication with your Safety Codes Officer when evaluating Code requirements and specific site considerations. The Building Code is available as a pdf, free of charge. Copies of the National Building Code – 2023 Alberta Edition as well as other Code information can be found at <https://www.alberta.ca/building-codes-and-standards>



2022-2023 Board of Directors

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