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COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

CALGARY  CHAPTER

Government Affairs Update

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Alberta City Charters

Robert Homersham

Alberta City Charters: A Brief History

Presented To: **NAIOP, Calgary Chapter**

Presented By: **Robert Homersham, Stikeman Elliott**

The Charters Regulations



Province of Alberta

MUNICIPAL GOVERNMENT ACT

**CITY OF EDMONTON CHARTER, 2018
REGULATION**



Province of Alberta

MUNICIPAL GOVERNMENT ACT

**CITY OF CALGARY CHARTER, 2018
REGULATION**

Overview

On April 4, 2018, the Provincial Cabinet approved both the Calgary City Charter, 2018 Regulation and the Edmonton City Charter, 2018 Regulation. These Regulations represent the culmination of a years-long process by Alberta's two major cities to secure greater control from the Province. Or so we thought ...



Overview

Jun 2012	Alberta, Edmonton, and Calgary enter into an MOU
Oct 2014	Alberta, Edmonton, and Calgary enter into a Framework Agreement for Charters
Mar 2015	Bill 20 - <i>MGAA</i> was passed which introduced the City Charters enabling provision
Oct 2017	Draft City of Edmonton and Calgary Charter Regulations
Apr 2018	City of Calgary Charter, 2018 Regulation City of Edmonton Charter, 2018 Regulation
Nov 2018	City of Calgary Charter, 2018 Regulation Amendment Regulation City of Edmonton Charter, 2018 Regulation Amendment Regulation

Overview

Is a Charter Necessary?

Is it a bit late to be asking this question?

An often heard justification for a big city charter is that the *MGA* is “one size fits all” legislation for a summer village of 20 residents to a city of 1.2M

But the *MGA*, which has just gone through a cover-to-cover amendment, is a complex and comprehensive act – 740 sections, over 220 regulations under it

Perhaps the summer villages should have been lobbying for simpler legislation rather than the big cities lobbying for more

Overview

Why a Charter?

Several major Canadian cities have city charters. These cities include:

- St. John's
- Halifax
- Montreal
- Hamilton
- Toronto
- Winnipeg
- Vancouver

Overview

Why a Charter?

- “In order to ensure cities like Edmonton and Calgary are able to become centres of excellence on the international stage, the legislation applicable to them must recognize their unique status and needs” – Former Municipal Affairs Minister Larivee
- The charters are a tripartite effort to provide additional authorities and flexibility to the cities with the aim of building strong, vibrant cities that attract trade and investment.

An Improper Delegation of Powers?





**What do these two rulers
have in common?**

**City charters in other provinces are enabled by
provincial statute not regulation**

Vancouver Charter

Amendments

- Enacted by provincial statute.
- The Vancouver Charter was enacted in 1952.
- Since enactment, it has been amended over 300 times, all under the scrutiny of the BC Legislature.

Regulations

- There are 10 regulations currently in force under the Vancouver Charter, addressing mostly procedural matters.

The City of Toronto Act – the Toronto Charter

Amendments

- Enacted by provincial statute.
- *The City of Toronto Act*, SO 2006 been amended 41 times since enactment in 2006, all under the scrutiny of the Ontario Legislature.

Regulations

- *The City of Toronto Act*, SO 2006 has 24 regulations currently in force, mostly procedural or further defining (rather than expanding) authorities granted under the *Act*

An Improper Delegation of Powers?

But what about Alberta's Charters?

The “Henry VIII Clause”

- A Government sometimes adds a provision, known as a Henry VIII clause, to a Bill to enable the Government to repeal or amend it after it has become an Act of Parliament
- The provision enables primary legislation to be amended or repealed by subordinate legislation without further parliamentary scrutiny
- Such provisions became known as Henry VIII clauses after the Statute of Proclamations 1539 gave King Henry VIII power to legislate by proclamation

Are Henry VIII Clauses Unlawful?

- No, but the Courts and parliamentary committees in Canada have cautioned against their use in all but the most exceptional circumstances
- For example, the federal *War Measures Act* delegates broad powers to Cabinet to conduct war and to amend its enabling legislation
- This delegation of legislative authority was challenged unsuccessfully (in *Grey, Re*), the SCC holding that the authority to levy war was one of those exceptional circumstances

Can Henry VIII Clauses be Used in Unexceptional Circumstances?

- Arguably, no. The prevailing judicial view of Henry VIII clauses is that they are repugnant to principles of democracy and parliamentary sovereignty
- “It is one thing to confer this extraordinary power if it is actually needed for some urgent and immediate action to protect an explicitly identified public interest. It is quite another thing to hand it out with daily rations of government power, unlimited as to any explicit legal purpose for which it may be exercised.” (*Ontario Public Schools Boards’ Assn v Ontario (AG)*, 1997)

An Improper Delegation of Powers?

- *MGA* is amended by the Legislature to enable charter cities to pass bylaws that amend the *MGA* and other provincial acts
- A charter bylaw may be able to amend or replace the *MGA* or any other provincial enactment
- A charter bylaw may supersede the *MGA* or any other provincial enactment in the event of a conflict or inconsistency
- What urgent public interest is being protected by this extraordinary delegation of provincial power?

Charters – Development Perspective



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Overview

Alberta Charters focus on five main categories:

1. Administrative efficiency
2. Supporting community and wellbeing
3. Smarter community planning
4. Empowering local government stewardship
5. Collaboration

Charters – Creating Uncertainty for Development

1. Lack of transparency and involvement
2. Climate change / environmental stewardship impacts
3. Fiscal/tax/levies/cost impacts
4. Inter-municipal opportunities & challenges
5. Implementation, policy and regulatory uncertainty

Four Broad Categories of 37+ Authorities

1. Improving Administrative Efficiency (18)

- City Charters modernize processes, remove obstacles to innovation and efficiency, provide greater autonomy for administrative decision-making, and ensure appropriate accountability is in place.

2. Supporting Community and Wellbeing (2)

- City Charters work to improve the wellbeing of citizens by supporting the development and maintenance of affordable housing stock to meet the needs of low and medium income households.

Four Broad Categories of Authorities

3. Smarter Community Planning (10)

- City Charters enable smarter community planning within the cities by supporting diversified transportation networks, enabling thoughtful revitalization of existing neighborhoods, and encouraging growth that meets local needs.

4. Empowering Environmental Stewardship (7)

- City Charters enable the City to respond to environmental pressures with local solutions, including measures that provide greater community energy security, climate change mitigation and adaptation planning, and protection of the local physical environment.

Improving Administrative Efficiency

- Authority to perform supplementary assessments on farm land recently redesignated for development
- Authority to define additional types of statutory plans
- Authority to assess Environmental Reserve at the time of subdivision
- Authority to manage its own debt
- Authority to create the parameters for its off-site levies
- Authority to pass bylaws for even broader purposes than those described in secs. 7 & 8 of the MGA

1. Improving administrative efficiency

2. Supporting Community Wellbeing

3. Smarter Community Planning

4. Environmental Stewardship

Improving Administrative Efficiency

Issue: The MGA permits supplementary assessments for improved property, not when property changes from one assessment class to another.

Regulatory Change: The City may impose supplementary assessments on property that has changed from farm land to another use.

Industry Concern: Given long development timeframes for new residential subdivisions especially, supplementary assessments could add significant costs

Improving Administrative Efficiency

Issue: The City lacks the ability to create more specific statutory plans to regulate specific types and areas of development.

Regulatory Change: The City will be authorized to pass additional statutory plans that fit into the hierarchy of the MDP, CTP, ASP, and ARP.

Industry Concern: ASPs and ARPs have already become overly prescriptive. Adding another layer of regulation will add time and cost to development with no clear benefit. A statutorily defined hierarchy of plans could upset the current interpretive regime (defined by case law) of plans, policies and the land use bylaw.

Improving Administrative Efficiency

Issue: Environmental Reserves are determined during the land use redesignation/subdivision approval processes and have been assessed as such as of the date of the LUD decision by Council.

Regulatory Change: The City will be authorized to assess ER lands under its prior assessment class until subdivision.

Industry Concern: This change stems, we believe from a 2004 ABCA decision involving Carma and The City of Calgary over the assessment of ER in the community of Tuscany. Carma successfully argued that those parcels designated as ER at LUD should be assessed as such from that time. If this were to change so that ER wouldn't apply for assessment purposes until subdivision plan registration, this would add significant costs.

Improving Administrative Efficiency

Issue: The City's debt capacity is currently limited by provincial regulation.

Regulatory Change: The City will be authorized create its own debt limit and debt servicing policies.

Industry Concern: This change could be useful for expanding the City's capacity to finance development infrastructure. However, without the backing of the Province's credit rating, City debt could be more expensive.

Improving Administrative Efficiency

Issue: Off-site levies are currently prescribed by the MGA and Regulation.

Regulatory Change: The City will be authorized to add new types of infrastructure that qualify for levies, define the process of stakeholder consultation, and establish the benefitting area and degree of benefit.

Industry Concern: The MGA was recently amended to authorize the community and recreational levy, which the City had collected for years on questionable authority. This new Charter Authority would allow the City to include additional types of development-related infrastructure to its off-site levies bylaw, further limit consultation with developers, and establish a methodology that veers from the current off-site levy regulation in determining benefit.

Improving Administrative Efficiency

Issue: The MGA sets out general and specific powers by which Council may pass bylaws. Broader powers to pass bylaws would allow the City to better accomplish its goals.

Regulatory Change: The Charter (sec. 4(4)) provides the City with the broad authority to pass bylaws, provided they fit within the municipal purposes described in sec. 3 of the MGA:

- to provide good government;
- to foster the well-being of the environment;
- to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or part of the municipality;
- to develop and maintain safe communities;
- to work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services.

Improving Administrative Efficiency

Industry Concerns: The expanded powers conferred on a charter city under sec. 4(4) of the Charter Regulation to pass bylaws are so broad as to be potentially limitless. Furthermore, bylaws passed under this authority do not require a public hearing (sec. 9(2) of the Charter). What is the purpose of such an unfettered delegation of power? How do the charter cities intend to use it?

Supporting Community Well-Being

- Authority to offer loans to support affordable housing projects
- Ability to ensure that affordable housing agreements follow title for the life of the agreement
- Ability create a city-specific inclusionary housing by amending its land use bylaw

1. Improving administrative efficiency

2. Supporting Community Wellbeing

3. Smarter Community Planning

4. Environmental Stewardship

Supporting Community Wellbeing

Issue: Despite City policies supporting complete communities, few tools are available at the municipal level to effectively deliver and maintain affordable housing.

Regulatory Change: Through the Charter, the City can offer loans to individuals and to developers specifically for affordable housing projects, and design a comprehensive inclusionary program. The ultimate objective is to spur (or require) the development of affordable housing.

Industry Concern: How will these loans be funded? What incentives or offsets will the City offer to a developer as compensation for the requirement to develop affordable housing? Will the cost be borne broadly enough?

Smarter Community Planning

- Authority to further define subdivision approval conditions
- Ability to use current or surplus school sites for other uses that confer a public benefit

1. Improving administrative efficiency

2. Supporting Community Wellbeing

3. Smarter Community Planning

4. Environmental Stewardship

Smarter Community Planning

Issue: A municipality is in the best position to determine what factors it needs to examine to make a sound decision on a subdivision application.

Regulatory Change: Existing subdivision application requirements would continue to apply as a baseline. The City would, in its land use bylaw, be enabled to vary or add to subdivision application requirements set out in the Subdivision and Development Regulation.

Industry Concern: The *MGA* Subdivision and Development Regulation contains a comprehensive list of “Relevant considerations” for an authority to determine a subdivision application. The Charter Cities have not yet consulted with industry about what further considerations they think may be necessary.

Environmental Stewardship

- Requirement to adopt a climate change adaptation and mitigation plan
- Addition of the environment as it relates to land-use as a matter for bylaws
- Inclusion of the environment in planning and development provisions of MGA

1. Improving administrative efficiency

2. Supporting Community Wellbeing

3. Smarter Community Planning

4. Environmental Stewardship

Environmental Stewardship

The Environmental Stewardship authorities in the Charter Regulations enable, among other things, the amendment of the MGA's general jurisdiction to pass bylaws (sec. 7) to include:

(h.1) the well-being of the environment, including bylaws providing for the creation, implementation and management of programs respecting any or all of the following:

- (i) contaminated, vacant, derelict or under-utilized sites;
- (ii) climate change adaptation and greenhouse gas emission reduction;
- (iii) environmental conservation and stewardship;
- (iv) the protection of biodiversity and habitat;
- (v) the conservation and efficient use of energy;
- (vi) waste reduction, diversion, recycling and management.

Environmental Stewardship

Issue: The City would like to encourage innovative construction technologies to improve energy use and waste efficiencies in new construction and renovations.

Regulatory Change: The Charter authorizes the City to establish requirements in addition to current building code standards to meet environmental and energy conservation objective.

Industry Concern: These amendments should only be implemented after extensive consultation with the development and building industries. The creation of separate building codes for the Edmonton and Calgary is inefficient.

Environmental Stewardship

Issue: The City would like to pass bylaws that protect areas of environmental significance within urban boundaries.

Regulatory Change: The Charter authorizes the City to pass bylaws that would address environmental protection and restrict land use to protect environmentally sensitive areas.

Industry Concern: These amendments should only be implemented after extensive consultation with the development industry. There is potential to sterilize developable lands. The MGA currently provides for MR, ER, and CR.

Charter Authorities – Calgary Implementation

- Prior to the Nov 2018 Amendment Regulation, Calgary had identified which of the 37 authorities require a bylaw, a bylaw and a public hearing, and which require no further action by the City. The City is in the process of adding to this list of authorities resulting from the Amendment Regulation.
- Calgary is delegating to its various business units the responsibility to come up with their own plans for implementing those authorities under their respective jurisdictions.

Charter Authorities - Challenges

- Changes to approval process (requirements, process, considerations)
- Changes to code (separate building codes?)
- Changes on assessment classes and timing of assessment
- Changes related to environmental impacts
- Additional Levies
- Inclusionary Housing
- Risk of “Henry VIII” challenges to bylaws



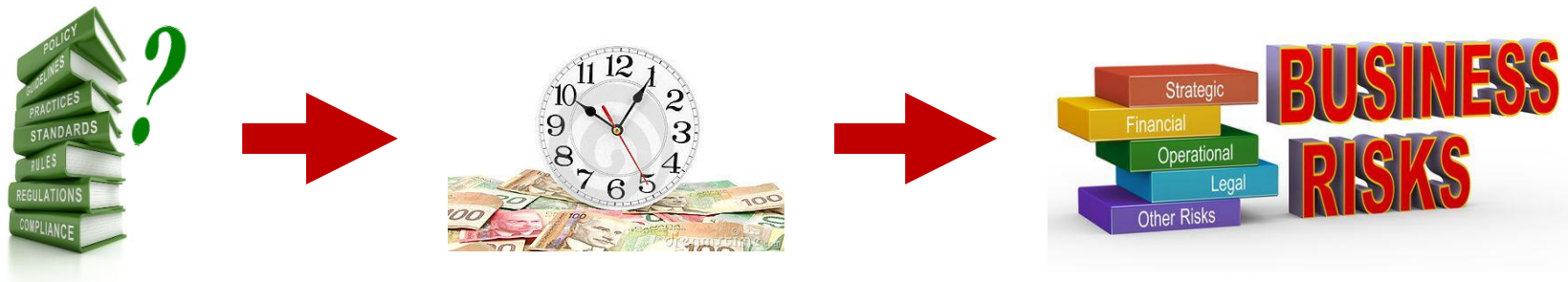
Charter Authorities – Potential Opportunities



- Funding mechanisms
- City assessment of debt and budgets
- Administrative efficiencies
- Environmental initiatives
- Innovation
- *However, all of these potential opportunities need stakeholder engagement and transparency*

City Charter – MGA Broad Changes

The combined impact of uncertainty and policy burdens from the MGA amendments and City Charter Authorities add time and cost to development in Edmonton and Calgary. This results in a higher level of perceived risk for our industry,



which could lead to a flight of capital investment and business from Alberta.



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Established Areas Growth & Change Strategy

Chris Ollenberger

Established Areas Growth and Change Strategy
Stormwater Working Group Update

Chris Ollenberger, P. Eng.

THANK YOU TO THE CITY OF CALGARY FOR ALLOWING USE OF THEIR SLIDES!

To enable community growth and change in the Established Area, what level and location of investment is required, and how and when should it be funded?

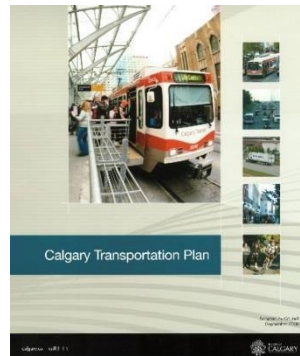
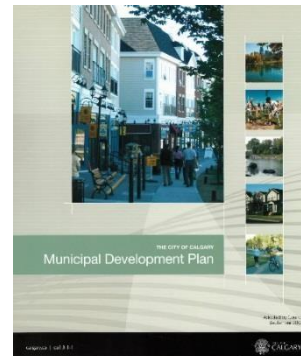
MDP/CTP and Plan It Calgary Process



100-year vision
(2006)

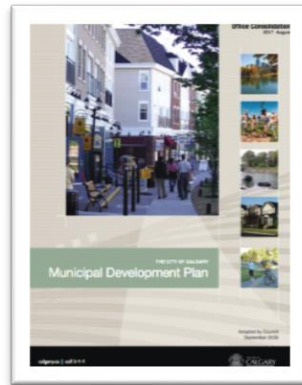


Planning and Engagement
(2006 – 2009)



Municipal Development Plan
Calgary Transportation Plan
(2009)

Complementing the New Community Growth Strategy, three factors form the foundation for this work



MDP/CTP Alignment



Market Demand



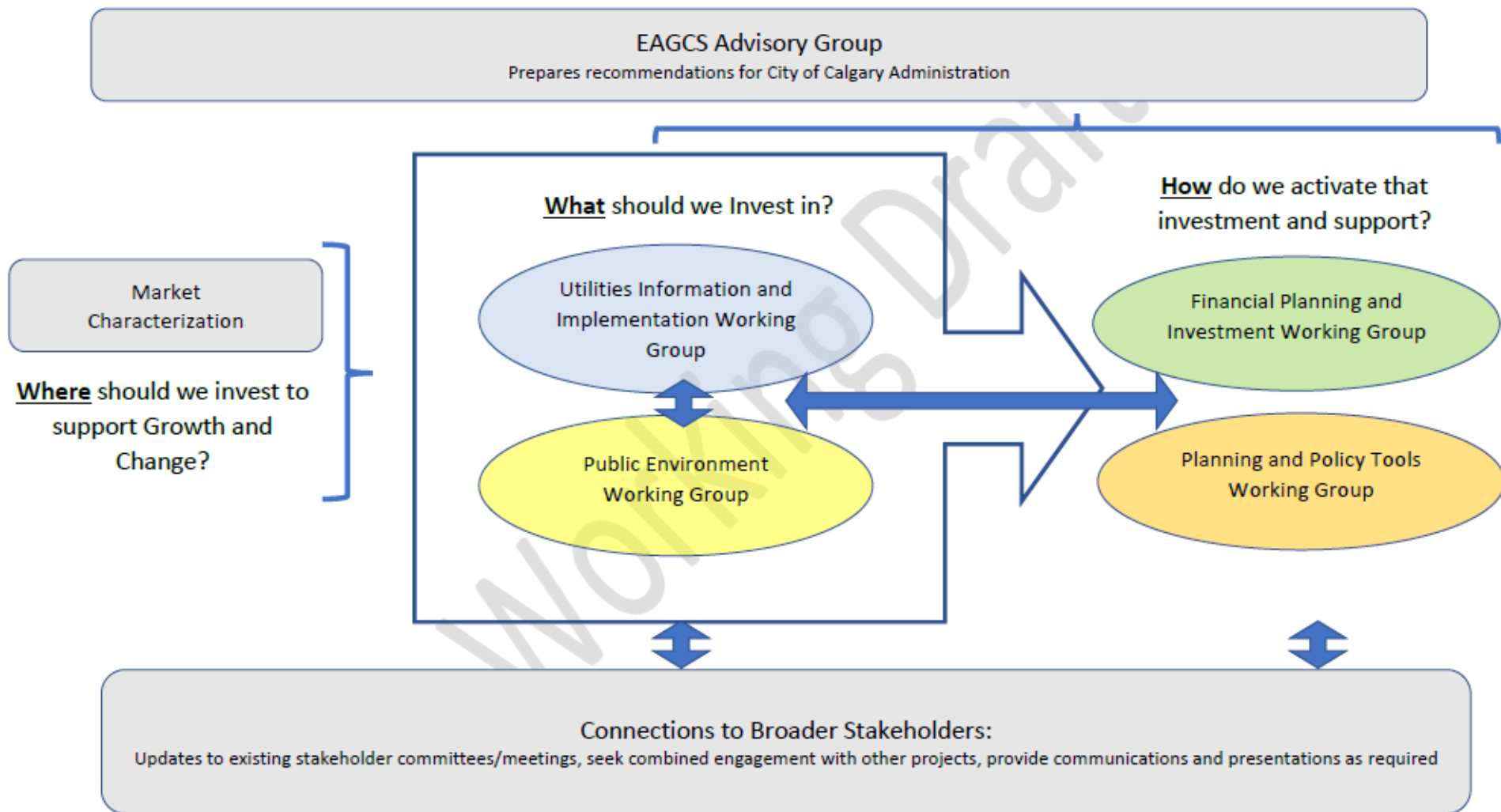
Financial Capacity

Redevelopment Readiness

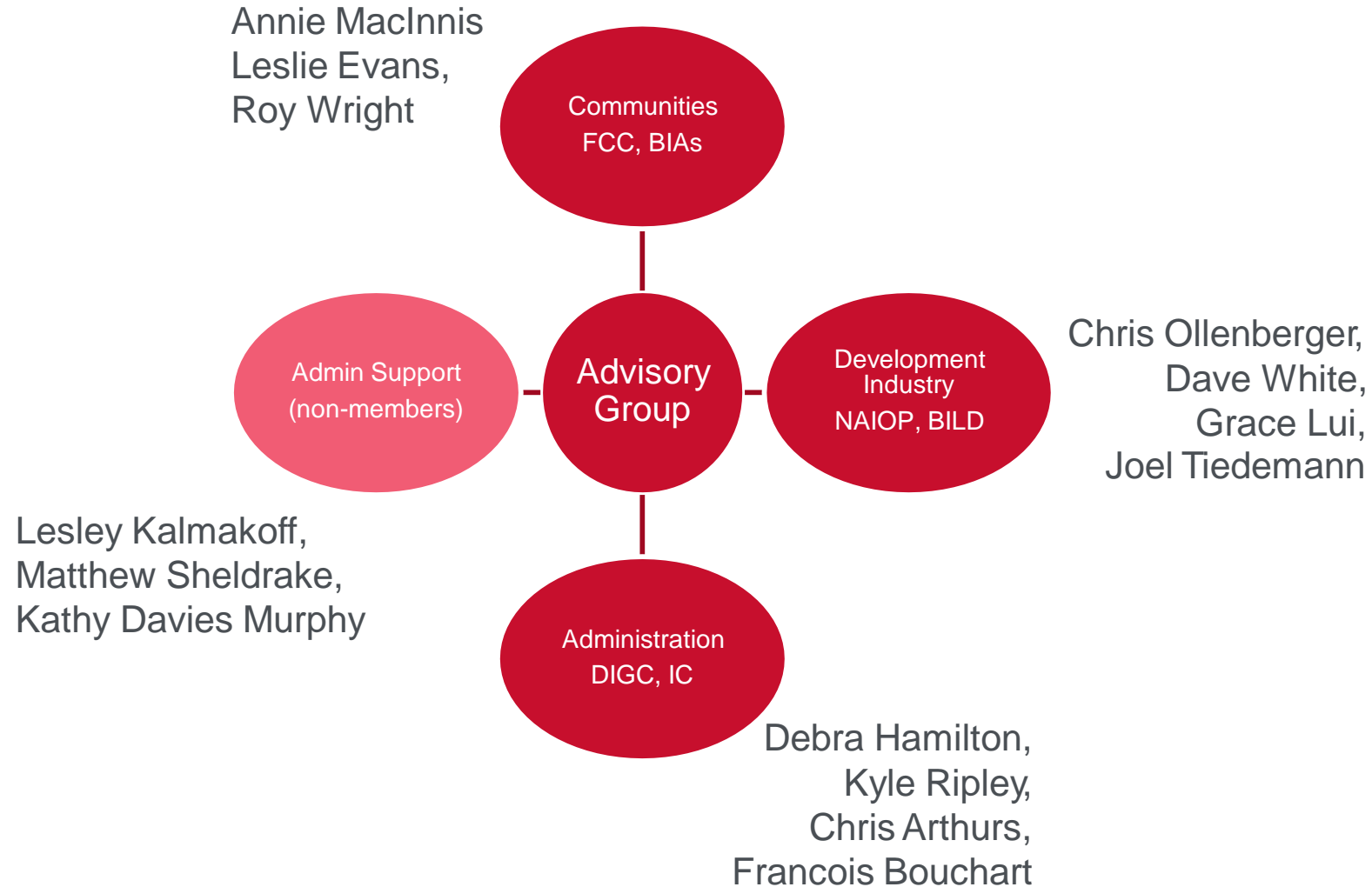
*Within or in addition to these factors,
Redevelopment Readiness will be important
to define and consider with stakeholders.*



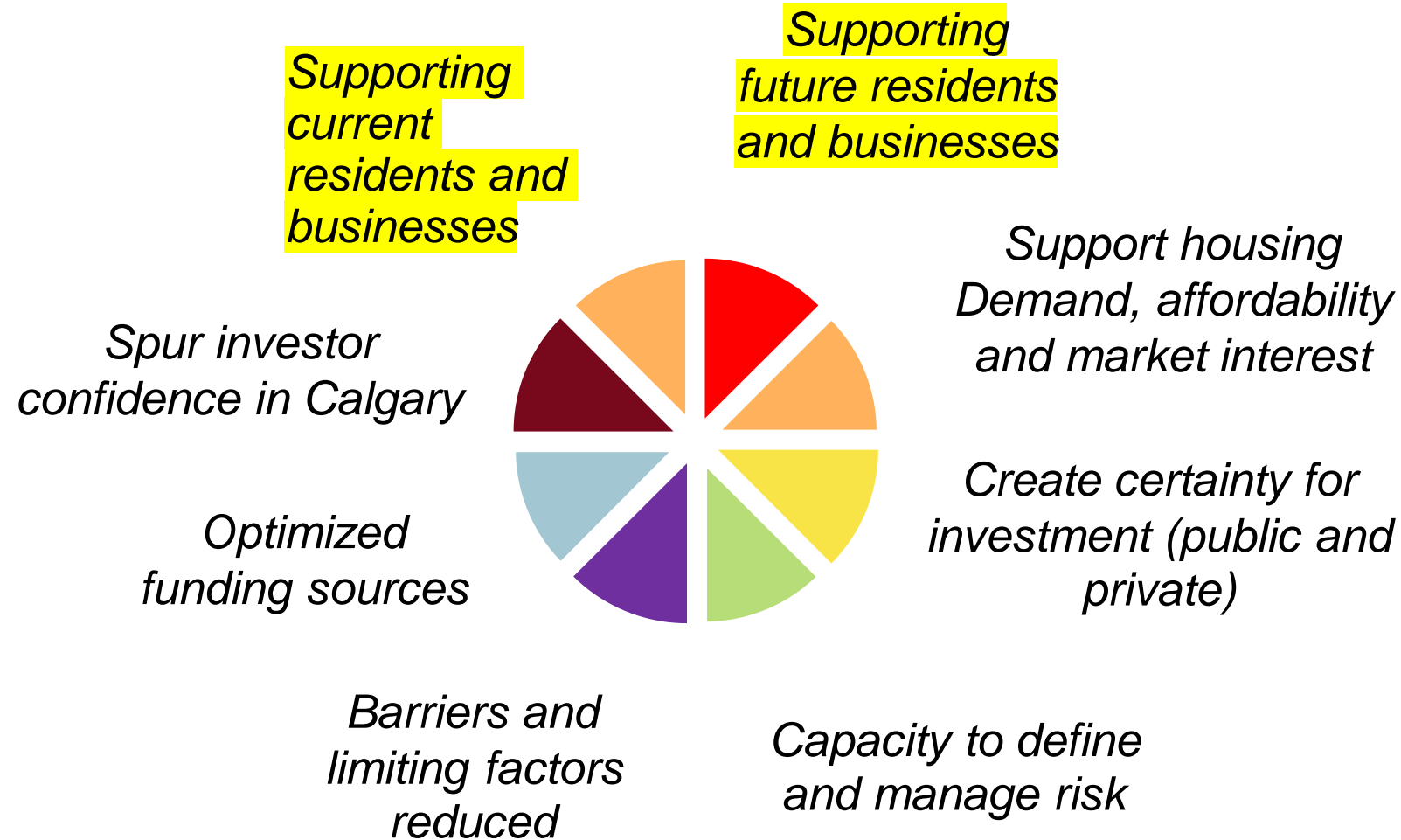
Strategic Recommendations, Through Lens of “Where, What and How”



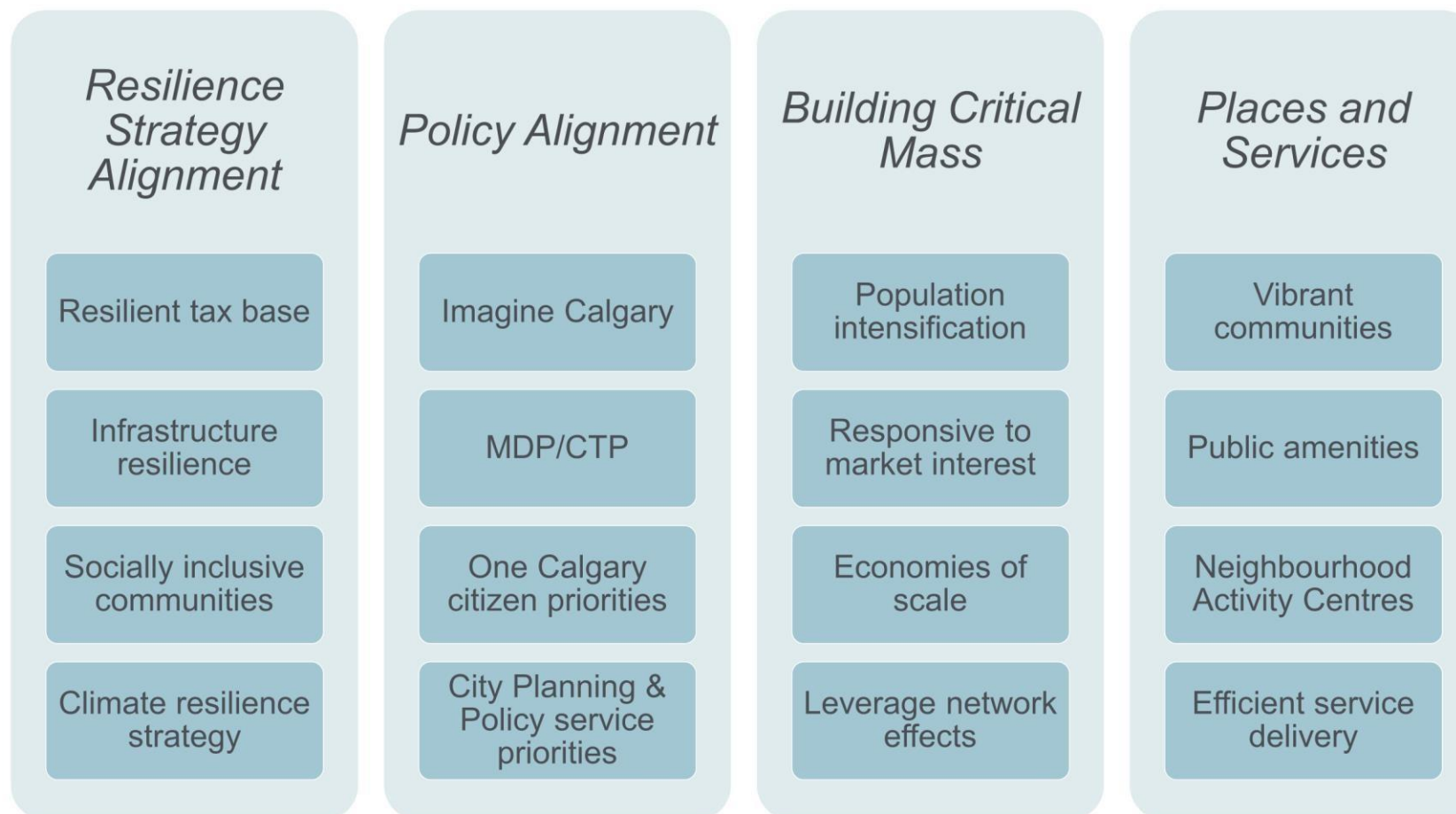
EAGCS Advisory Group Membership



Key Strategic Outcomes of the EAGCS

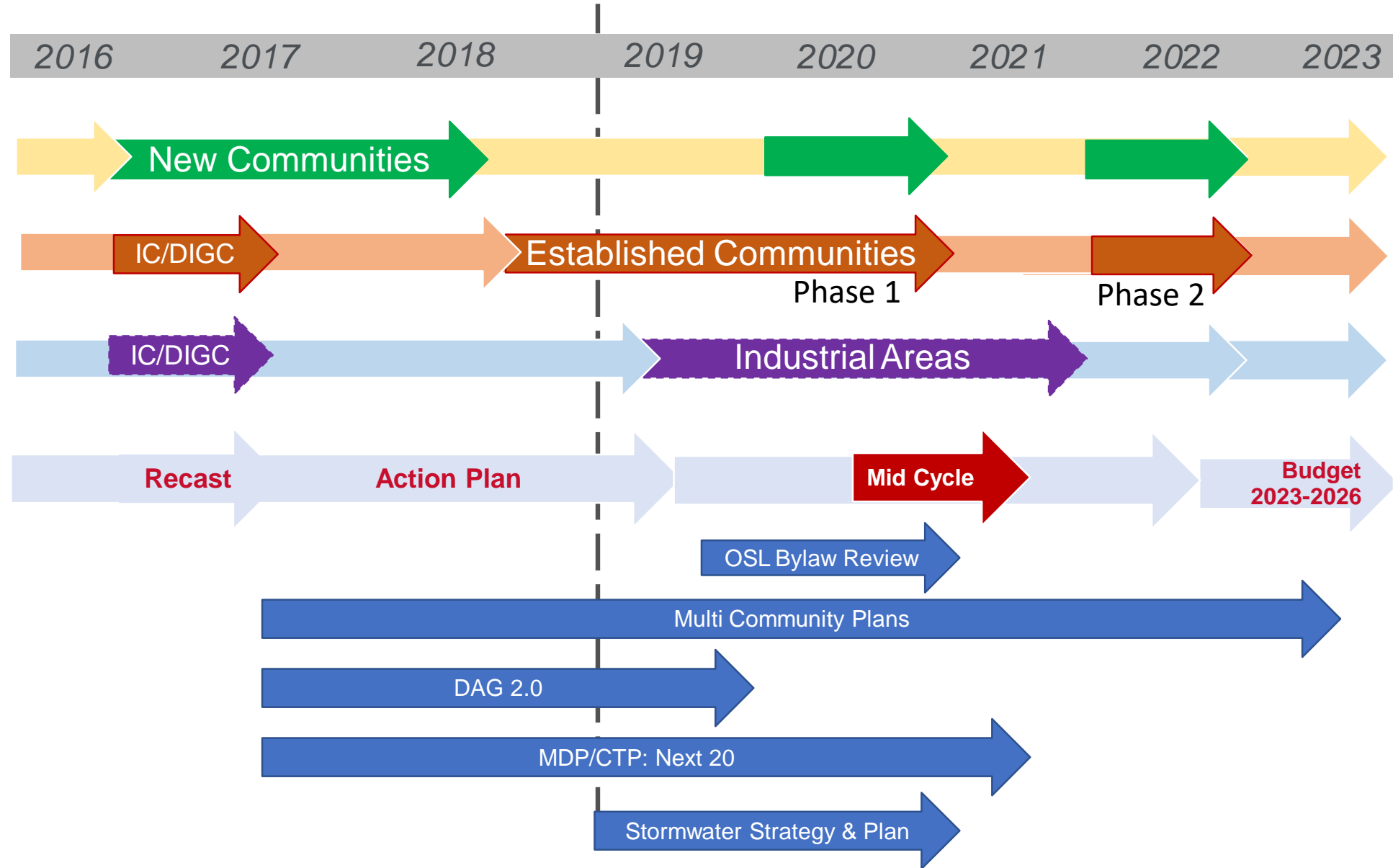


DRAFT - For Feedback

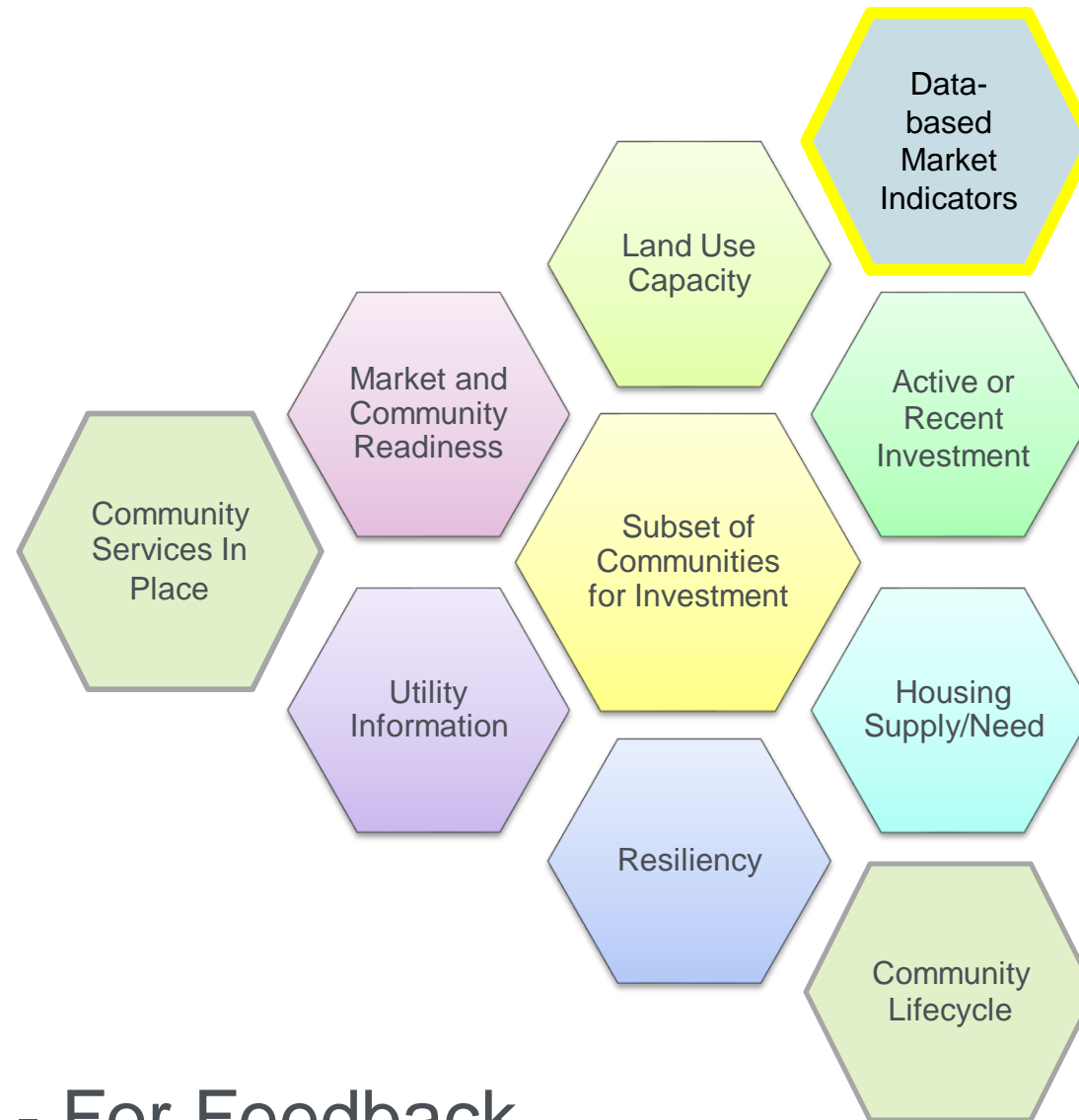


DRAFT - For Feedback

Growth Strategy Timeline Towards Investment Recommendations



Redevelopment Market Analysis & Further Information for Consideration in EAGCS



DRAFT - For Feedback

Municipal Development Plan

Goals and Priorities



Managing growth and change



Shaping a more
compact urban form



Connecting the city



Creating great communities



Urban design



Prosperous economy



Greening the city

Core Indicators

- Urban Expansion
- Density
- = Accessibility to Daily Needs
- = Land Use Mix
- Road & Street Infrastructure
- = Transit Service Transportation
- = Mode Split Accessibility to
- = Primary Transit Residential
- = Land Use Mix Population and
- = Job Balance Goods Access
- = Watershed Health
- = District Energy
- = Urban Forest
- =

Attachment 1 from EAGCS Scoping Report: Project Deliverables, Stakeholders and Timelines (abbreviated deliverables)

Timing	Deliverable
By Nov 2018	<ol style="list-style-type: none"> 1. To set the context (define area, data analysis, influencing factors) 2. Complete best practice research <ul style="list-style-type: none"> • Define project governance
By Feb 2019	<ol style="list-style-type: none"> 3. To explore/build a better array of financial tools 4. To identify new and upgrade-focused infrastructure and amenity investments that are critical <ul style="list-style-type: none"> • Referral report to PFC March 5
By May 2019	<ul style="list-style-type: none"> • Update report to Committee May 1 <ol style="list-style-type: none"> 5. Identify opportunities to leverage and collaborate on investment 6. Develop data-based decision model
By Nov 2019	<ol style="list-style-type: none"> 7. Outline a strategic approach to recommendations
By Mar 2020	<ol style="list-style-type: none"> 8. Package of recommendations at mid-cycle budget adjustments

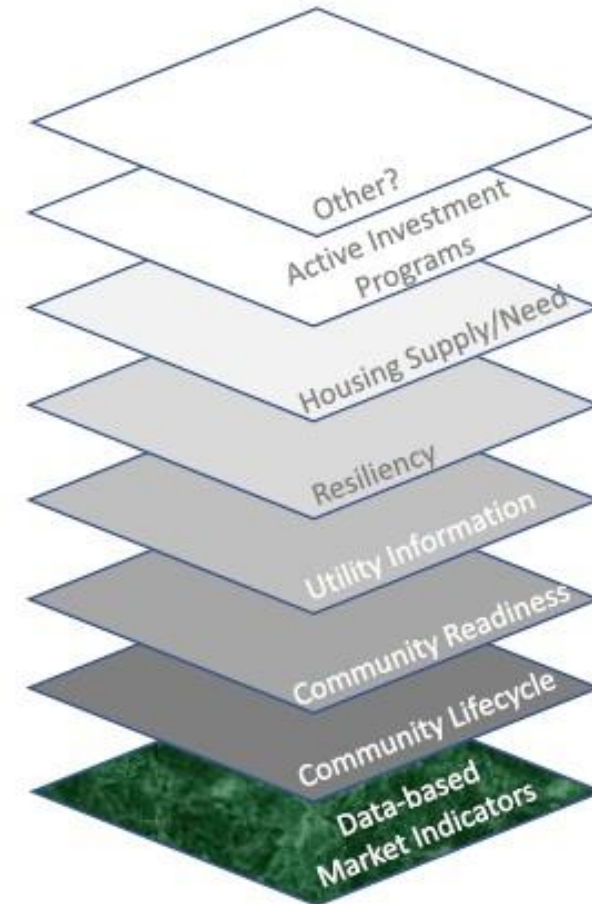


Proposed Use of the Market Indicators Analysis

Redevelopment Readiness: An evaluation that reflects the readiness of an area to accept change, and includes:

- Land use capacity of existing land use districts,
- High occurrence of under density developments,
- Existing Council approved policy,
- Market attractiveness, community lifecycle,
- Community readiness, and
- Knowledge of infrastructure context.

Information that is
more subjective
or based on analysis



Note: Components with green text have been reflected in the data-based Market Indicators



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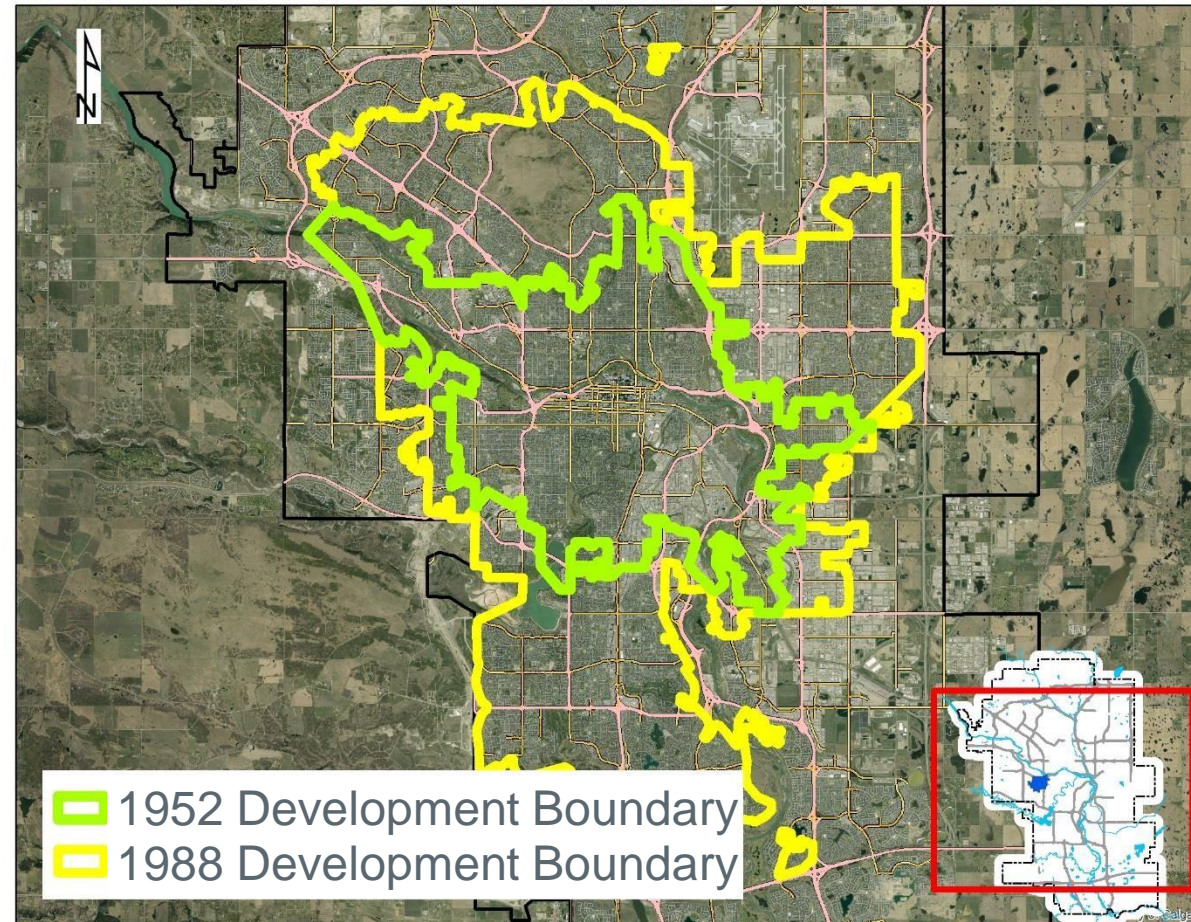
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Stormwater Working Group Update

Chris Ollenberger

Stormwater Catchments

In many catchments, we do not have a full understanding of the existing stormwater catchments



How do we bridge the gap between how stormwater is managed at a lot level and the regulatory, river health and safety requirements for stormwater management...





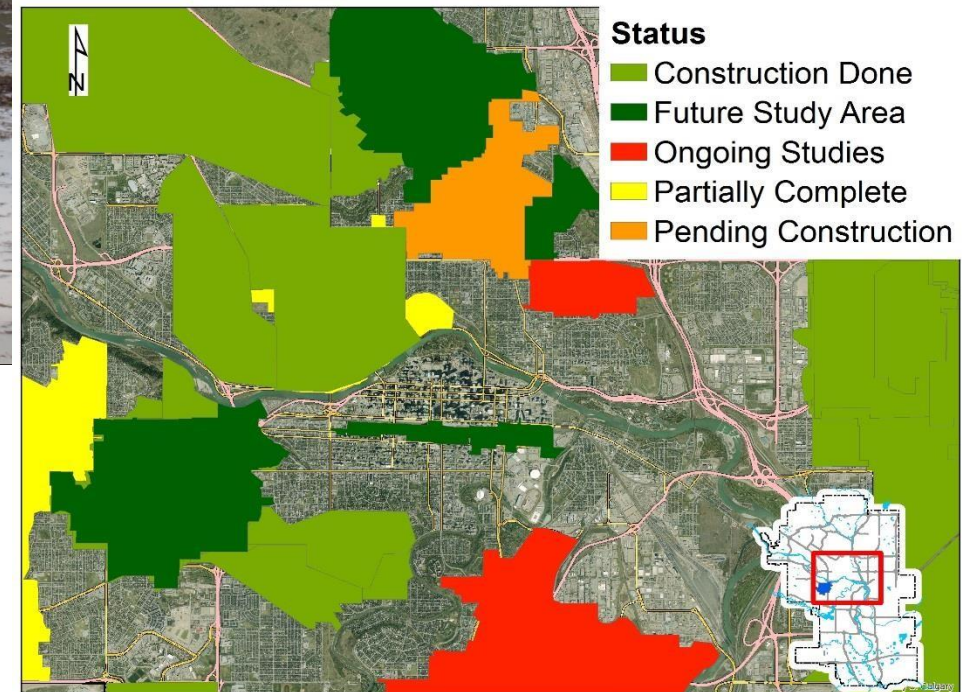
First Major Stormwater Redevelopment Challenge

1. Optimizing The City's existing
stormwater programs

Question: What improvements can be
made to our existing programs to
optimize the City's investment in
stormwater management?

Community Drainage Improvements

Focus = Improve flood safety and reduce property damage



Considers existing system

Integrated Stormwater Management

Previous/Existing Programs

Gaps

1.



2.



3.



4.



(drivers and objectives)

Integrated Stormwater Management

Integrated Stormwater Management

Public and
Private
Options



Triple Bottom
Line

Green versus
Pipe
Infrastructure
Options



Framework for
Future Studies



Second Major Stormwater Redevelopment Challenge

2. Balancing stormwater management between public and private land.

Question: How can we share the responsibility for stormwater management between private and public land in established communities, while ensuring stormwater management is not a financial impediment to redevelopment?



Considerations when determining what's possible at a **project** level

- There are both technical and financial (proforma) considerations for feasibility at **project** level.
- Storm water decisions on private land affect public infrastructure and the public realm

Drivers (risks)

- water quality
- flood control
- volume control
- river health
- climate change

Factors that affect feasibility

- Land Use
- Slope
- Soils
- Existing drainage concerns
- Catchment
- Community
- Others...

Stormwater

Finding our place amongst . . .

Weekly BILD +
NAIOP +
Water Resources
Meetings

The Stormwater
Strategy

Recent Collaboration between WR and BILD and NAIOP

Interim Requirements for Redevelopment (*Industry Bulletin October 2018*)

- ☐ All previously issued approvals will continue to be honoured
- ☐ Interim UARR of 50 L/s/ha, unless a higher critical UARR has been provided at the DP stage
- ☐ Allowance for some free flow areas on redevelopment sites

Recent Collaboration between WR and BILD and NAIOP

Interim Runoff Volume Control (*Upcoming Bulletin April 2019*)

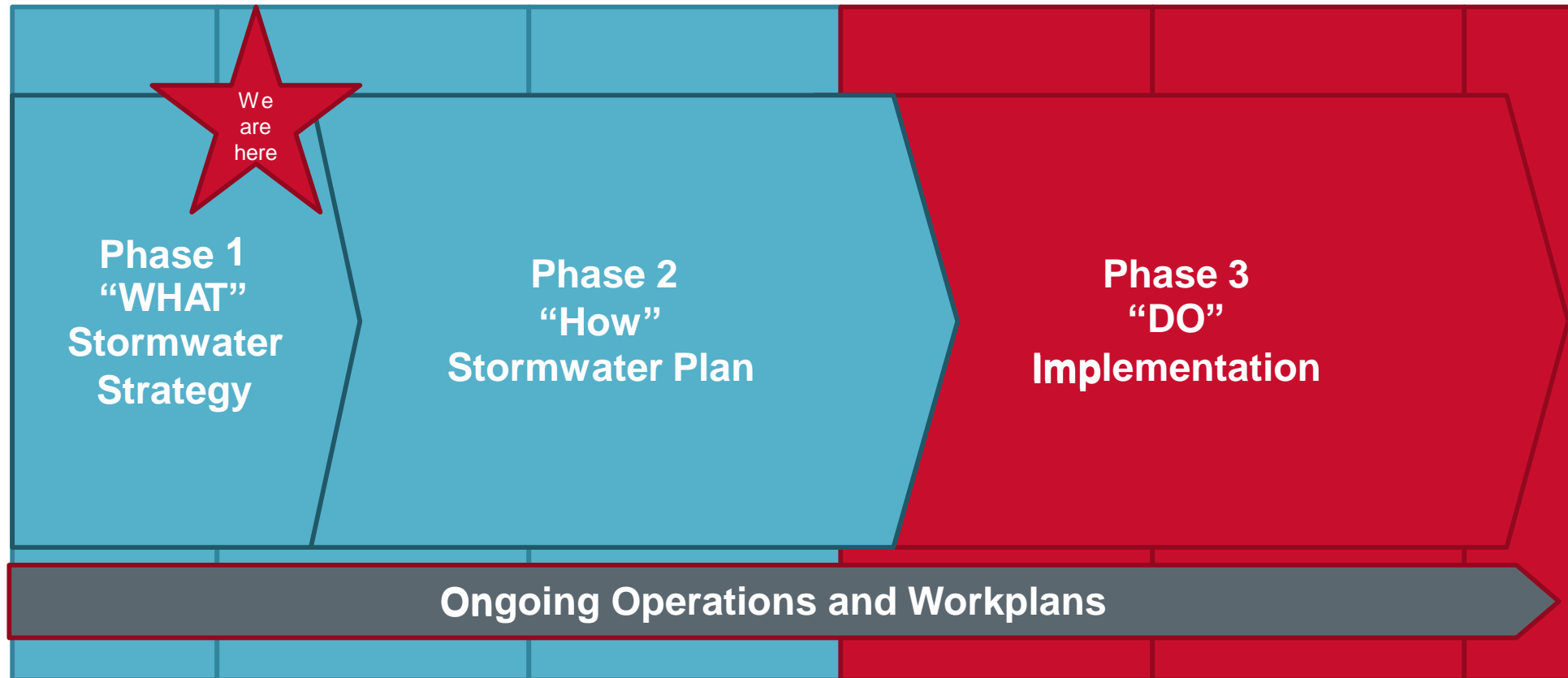
- ☐ With attempts to implement runoff volume control measures over the past few years, it is now evident that the development of the methods and tools have not progressed as originally envisioned. While progress has been made to advance stormwater management practices to minimize the impact of growth on our watersheds, The City has seen examples where current limitations with policies and tools are delaying or stalling development applications because runoff volume control targets cannot be meaningfully achieved.
- ☐ An average annual runoff volume of 150 (e.g., multi-family residential development)– 250 mm (e.g., commercial and industrial development). A range is being provided to account for the varying land uses, imperviousness, and soil conditions/infiltration rates across the city (greenfield)

Stormwater Strategy Timeline

Strategy Phase

Implementation Phase

2018	2019		2020		2021		2022		2023
Jun	Jan	Jun	Jan	Jun	Jan	Jun	Jan	Jun	Onwards



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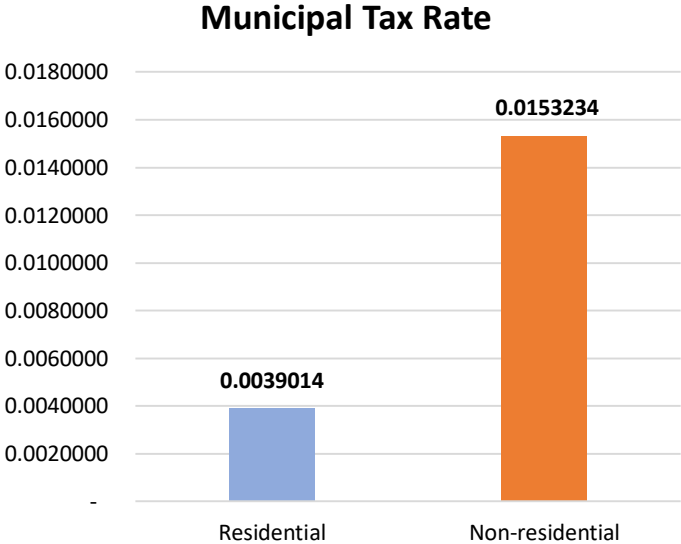
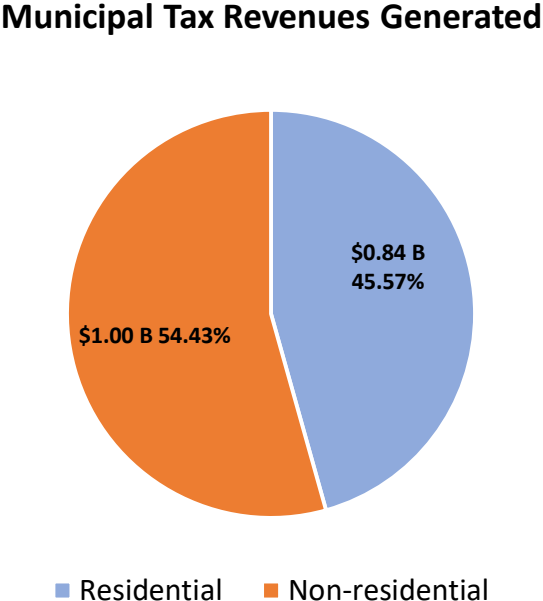
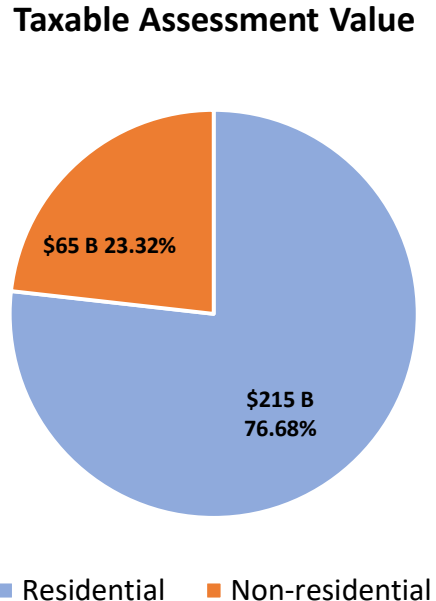
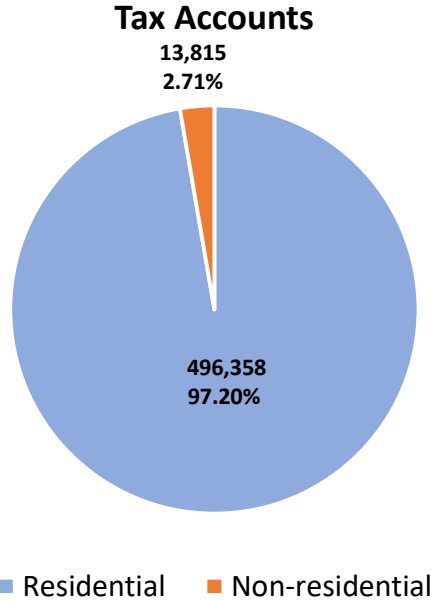
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Property Tax Shift

Richard Morden

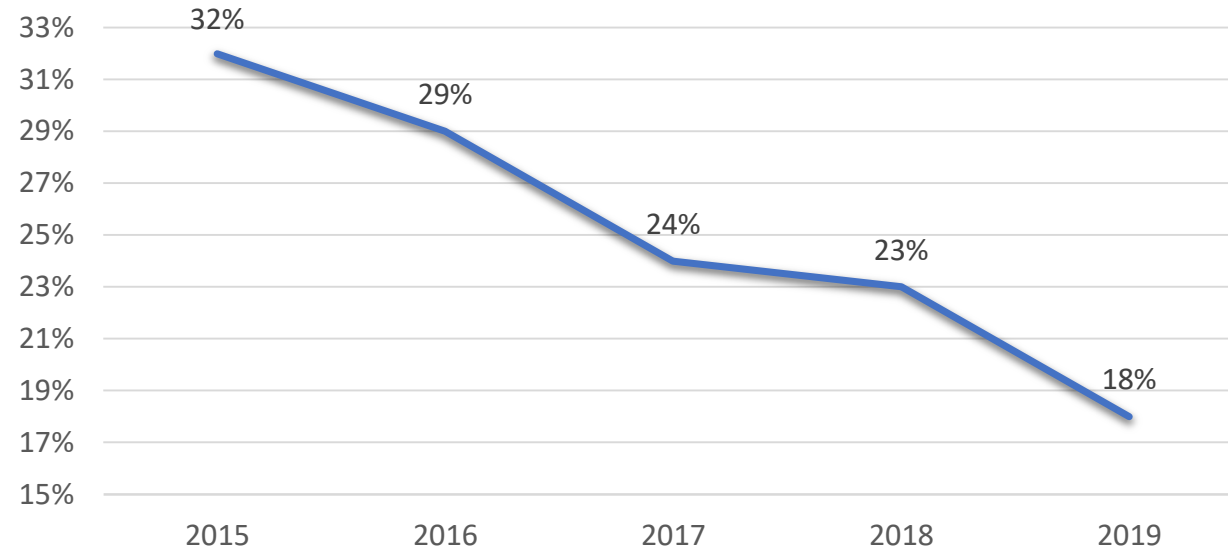
Tax Comparison



Note: Ratio of 2018 non-residential to residential mill rate equals 3.93 : 1

Source: City of Calgary

Downtown Share of Total Calgary Non-Residential Assessment Value




Source: City of Calgary

\$250 million drop on taxes collected downtown in 2019 vs. 2018

Impact on City Wide Commercial Assessment Base

Impact On Taxes Outside of Downtown	Result
Increase in all industrial tax rates	Increased competitive gap - Rocky View County
Increase in suburban office tax rates	Reduced competitive edge - downtown office
Increase in suburban retail tax rates	\$5 million incremental bill for CF at Chinook

Industrial Example

	Year	2016	2017	2018	2019
	Taxes - \$/sf	1.10	1.21	1.33	1.81
	% increase		10.0%	9.9%	36.1%

Proposals under consideration

- Mayor's proposal - increase Portion of City budget required from residential base from 45% (\$865m) to 48% (\$942m)
 - Results in ratio shift in 2019 from 4.46:1 to 4.22:1
 - Relies on \$27m in tax room from Provincial tax share (no provincial budget in place)
 - Businesses would be able to apply for one-time grants from City-administered fund (May 2019)
 - Calls for an analysis for potential of adding a small-business assessment sub-class
- Alternative proposal – faster shift from commercial accounts (51%) to residential accounts (49%)
 - Results in ratio shift in 2019 from 4.46:1 to 3.93:1
 - Couple with residential rebates - City to directly apply PTP to homeowners' accounts
 - Aim to get to 50%/50% share in 2020 - 2022



NAIOP's position

- Solution needs to focus on entire 4 year budget cycle 2019 – 2022
- Small-business assessment subclass suboptimal – administrative cost & issue of “who is small?”
- Make further savings in City annual budget (\$1.95 billion of budget required from property tax)
- Selective divestiture of non-core City-owned assets
 - Industrial lands
 - Parking business
 - Non-core corporate owned properties
- Transfer benefits of Phased-in Tax Plan (PTP) from commercial accounts to residential accounts
 - Benefit: City can directly apply savings achieved to homeowners' accounts > transparent
- Working with BOMA Calgary with input from NAIOP and Calgary Economic Development
 - Letters written to Mayor and all Councilors
 - Active participation in City organized workshops on assessment methodology & tax policy

Next steps

- Council meeting April 8, 2019 to consider 2 remaining proposals – 2019 tax bills to be issued subsequent
- City to report May 2019 on potential for small business sustainability grant fund (up to \$70m)
- Reports in June (PFC) on Financial Task Force progress – savings and recommendation on future shift
- Report in November (Council) on impact of 2020 assessment values on indicative 2020 taxes
- If approved April 8, 2018, report to Priorities Finance Committee June 2019 on small-business subclass
 - Mayor's plan would be to, if approved, implement sub-class in 2021
 - Allowed for by current provincial government's changes to Municipal Government Act