

NAME OF BYLAW

This Bylaw shall be known as the “Public Property Usage Bylaw” of the Town of Cardston.

This Bylaw shall be known as the “Public Expression and Conduct Bylaw” OR, the “Community Standards and Demonstrations Bylaw” of the Town of Cardston.

Commented [JL1]: Either of these names encapsulate the overall scope and intent of this bylaw.

PURPOSE

The purpose of this Bylaw is to regulate the use of Public Property within the Municipality of the Town of Cardston.

Commented [AS2R1]: Likely want to stay away from the use of community standards as that term typically applies to nuisance, littering, and similar issues grouped together in a separate bylaw

The purpose of this Bylaw is to regulate Public Expression and Conduct / Community Standards and Demonstrations within the Municipality of the Town of Cardston.

Commented [JL3]: Reworded for the proposed titles provided above

DEFINITIONS

“Act” means the *Municipal Government Act*, R.S.A. 2000, Ch. M-26 as amended.

“Chief Administrative Officer” means the person appointed as chief administrative officer of the Town.

“Council” means the municipal council of the Town.

“Declaration” means a formal, public statement or expression of opinion, position, or endorsement made by an elected official regarding a specific cause, issue, or movement; including but not limited to resolutions of council, letters of support, speeches, written statements, or social media posts.

Commented [JL4]: Definition added to clarify the scope of section 9

“Decorations” means any decorative or artistic items or illustrations.

“Marking Guide” means the Alberta *Highway Pavement Marking Guide, Second Edition*, as updated or amended from time to time.

“Mayor” means the mayor of the Town.

“Municipal Building” means buildings and any structures incidental to those buildings owned by the Town.

“Municipal Facilities” means infrastructure, improvements, and equipment, on, over, or under Municipal Land or in Municipal Buildings owned, maintained, or operated by the Town for public use or municipal purposes.

“Municipal Land” means land owned by the Town and includes any vegetation on the land.

“Municipal Road” means land located within the Town

- (i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or
- (ii) used as a public road,

and includes a bridge forming part of a public road and any structure incidental to a public road including sidewalks.

“Parade” means a public procession of people and/or vehicles (other than a funeral procession) on Public Property.

“Public Demonstration” means a gathering or march on Public Property (other than at a duly called meeting pursuant to the Act) in which three or more persons gather to publicly express their opinions, beliefs, or demands in support for or opposition to social, political, or economic issues or causes.

“Public Event” means a specifically named, sponsored, or organized event of limited duration which is open to and may be attended by the public and is conducted on Public Property (other than at a duly called meeting pursuant to the Act), including but not limited to concerts, fairs, festivals, exhibitions, markets, and performances.

“Public Property” means all Municipal Land, Municipal Roads, Municipal Buildings, Municipal Facilities, and any other real or personal property owned by or under the control of the Town.

“Town” means the municipal corporation of the Town of Cardston or the geographical area within the municipal boundaries of the Town of Cardston, as the context may require.

FLAGS

1. (a) Only the following flags may be raised on flagpoles or otherwise displayed on or in Public Property:
 - (i) The National Flag of Canada, the flag of Alberta, and the flag of the Town of Cardston;
 - (ii) The official flags of Cardston County and Blood 148 Indian Reserve if such flag is raised or displayed in the Town Civic Centre;
 - (iii) Flags associated with Canadian Armed Forces or Canadian Veteran Associations on Remembrance Day or during public ceremonies honouring Canadian Armed Forces veterans regardless of the day on which the ceremony takes place;

Commented [AS5]: This would need to be defined if you are limiting these flags to specific areas.

Commented [AS6]: Is the intent to limit what days these flags can be flown? As worded, it seems that these flags could be flown on any day of the year, so the wording here would need to be fixed.

- (iv) First responders
- (v) The official flag of a country other than Canada when citizens of that country are competing in a formal sporting event in the Town; and
- (vi) Flags raised or displayed in Parades, Public Demonstrations, and Events.

(b) In the event of a contravention of (a):

(i) the person contravening the provision(s) is subject to a fine in the amount of \$500; and

(ii) the Chief Administrative Officer or designate is authorized to remove or cause to be removed the flag(s) from Public Property, with costs incurred by the Town in removing the flag(s) constituting a debt owing to the Town.

Commented [JL7]: Recommend removal. First responders can be recognized in Parades, etc. 1(vi)

If retained, first responders should be subject to at least the same restrictions as the armed forces 1(iii)

Commented [AS8]: This would need to be more carefully defined. Are the flags allowed only during the games/event itself, or during the evenings/mornings before or after? When is the cut off? What about international competitions like the World Cup? Those might not be in the town but people typically fly national flags during those events.

Commented [AS9]: My read of this is that any flag, without restriction, could be displayed during a parade, public demonstration, or event. Public demonstration is loosely defined as at least three people together expressing their views on something. So you could have a public demonstration with three people gathering together to express their support of problematic views (such as nazism) and flying flags bearing the swastika. Is that the intent?

Commented [AS10]: This is something that can be dealt with later on, but typically I recommend having a general offence clause in the bylaw 'Anyone who contravenes a provision of this Bylaw commits an offence and is liable to pay a fine in the amount set out in Schedule A'. Then you can have a table setting out the penalties for the various contraventions in a schedule attached to the bylaw.

ROAD MARKINGS

2. (a) Traverse markings on Municipal Roads shall be in conformity with and limited to those set out in subsections C3.2, C3.3, and C3.4 of the Marking Guide.

(b) The use of symbols and words on Municipal Roads shall be in conformity with and limited to those set out in section C4 of the Marking Guide.

(c) No other marking, symbol, word, or Decoration may be applied to a Municipal Road.

(d) In the event of a contravention of (a), (b), or (c):

(i) the person contravening the provision(s) is subject to a fine in the amount of \$500; and

(ii) the Chief Administrative Officer or designate is authorized to remove or cause to be removed non-compliant items, markings, symbols, and words, flags, and Decorations from Public Property, with costs incurred by the Town in removing the items constituting a debt owing to the Town.

Commented [AS11]: No issues with this. You would likely have a hard time enforcing the fine against a specific person unless you have clear evidence they were the ones to put the markings on the road, but that is an enforcement issue.

PARADES, PUBLIC DEMONSTRATIONS, & PUBLIC EVENTS

3. (a) No:
 - (i) person, or
 - (ii) corporation, company, association, or other legal entity ("Non-person Entity")

shall organize or participate in a Parade, Public Demonstration, or Public Event (each, an “event”) without first obtaining a permit from the Town.

(b) No Public Demonstration may be held within 100 m of a property on which a school, playground or park, church, hospital, or funeral chapel is located or so as to block first responders.

(c) Each contravener of the provisions in (a) or (b) shall be subject to a fine:

(i) in the amount of \$500 if that contravener is a person, and

(ii) in the amount of \$1,000 if that contravener is a Non-person Entity.

4. An applicant for a permit shall provide in writing the following information:

(i) The name, mailing address, email address, and telephone number of the person or non-person entity organizing the event;

(ii) If the applicant is a non-person entity:

i. the name of the contact person representing that entity; and

ii. evidence of the legal standing of that entity such as a certificate of incorporation, etc. [church]

(iii) The proposed date of the event;

(iv) The proposed start and end times of the event;

(v) The proposed route or location of the event;

(vi) The estimated number of participants in the event; and

(vii) A description of any risks to person or property inherent in the event to which the Town and its employees and agents should reasonably be made aware.

5. The application and a waiver provision must be signed by the applicant.

6. The application must be submitted no later than 21 days [tiered] prior to the proposed date of the event.

7. The application must be accompanied by a non-refundable application fee of \$100.

7.8. Upon receipt of a permit application, the Town may grant the permit, with or without conditions. The applicant for a permit is required to comply with all of the conditions of the permit, failing which the permit shall be revoked. The Town may refuse, in its sole discretion, to issue the permit. There shall be no appeal from a permit refusal.

Commented [AS12]: It is fairly common to require permits for public events/parades. However, for something as broadly defined as a public demonstration, the definition as currently worded could capture three people sitting on the grass in a park talking about politics, and it seems unreasonable to require a permit for something like that. My suggestion would be to perhaps place a higher ceiling on the amount of people required for a public demonstration prior to when a permit is required. For example, 10+ people gathering is likely a situation where a permit is required. You can still place careful limits on public demonstrations of less than 10 people, but being alive to the possibility of a charter claim for infringement of the freedom to associate and freedom of expression.

Commented [AS13]: I would also include ‘any emergency services’.

Commented [AS14]: See above comment re enforcement provisions.

Commented [JL15]: Burton comment:

[ensure permit can cover multiple uses, eg. Farmers’ market, six months duration?]

[The permit requirements could be in a schedule to this Bylaw, rather than in the general provisions. Note that I am suggesting that the application form contain a waiver of liability in favour of the Town.]

Commented [AS16]: There are additional sections that you would want to include, but this just makes it clear what the options are following the permit application.

DECENCY/OBSCENITY

8.9. (a) No act, speech, printed material, pre-recorded audio and/or visual, or display that has obvious sexual, indecent, or obscene content may be performed, spoken, displayed, portrayed, played, published, or distributed on or in Public Property or on or in private property such that it is or could be visible or audible from Public Property (separately or collectively a "Portrayal").

(b) A Portrayal is deemed to be indecent or obscene if that Portrayal is offensive or disgusting by accepted standards of morality in the Town community.

(c) A person contravening the provision in (a) shall be subject to a fine of \$500 for each offence.

DECLARATIONS

9.10. Neither the Mayor nor the Council, nor the persons holding those offices, shall make a declaration in support of or in opposition to social, political, or economic issues or causes that do not directly affect or do not have the potential to directly affect the Town's property or the care, management and operations of such property, or the provision of services to its residents.

Commented [AS17]: This entire section is problematic. While I can see there is an attempt to further define what would be 'incident or obscene' content, defining what is the 'accepted standards of morality in the Town community' would be difficult if not impossible on its own. Even if we remove the reference to indecent or obscene and just leave 'obvious sexual content', you have included anything on private property that could be visible or audible from public property, which is very broad. I see this section as being very likely contrary to charter rights (many different charter rights could apply here), possibly void for being an attempt to legislate in the criminal law domain (there is an offence of indecent exposure in the criminal code which is very similar to this), and almost certainly difficult to enforce. I could foresee situations where a woman wearing slightly revealing clothing in public is deemed to be a 'sexual display' contravening the bylaw, and that degree of charter infringement would be difficult if not impossible to justify under the charter analysis if the bylaw is challenged. My recommendation is to remove this entirely. There are criminal code provisions which deal with indecent exposure, so if this is an issue, then it should be dealt with at the criminal level.

Commented [JL18]: Burton had also mentioned putting these standards in a different bylaw.

I disagree. Resolutions of council are a common target for militant groups. If the intent of this Bylaw is to protect the municipality will preserving freedom of expression, this bylaw is the right place for these standards.

Commented [AS19]: This would be prohibited by 145(10) of the MGA which prohibits any bylaw or part of a bylaw that "addresses the behaviour or conduct" of councillors. Additionally, even aside from 145(10), it is a virtual certainty that this provision would be an unreasonable infringement of the charter rights of free expression for an elected official. There is a high degree of public expression afforded to politicians, for good reason, and a bylaw that constrains that would likely be found to infringe the charter. This should be removed.