

CITY OF KELOWNA

BYLAW NO. 11185

Heritage Procedures Bylaw

WHEREAS under the provisions of Part 15 Heritage Conservation of the Local Government Act, the City of Kelowna may by bylaw delegate Council's powers and to establish application procedures in respect of bylaws, agreements and permits

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1.0 TITLE

1.1 This Bylaw may be cited as "Heritage Procedures Bylaw No. 11185."

2.0 SEVERABILITY

2.1 If a portion of this Bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

3.0 DEFINITIONS

3.1 In this bylaw:

'**Building Permit**' means a permit to perform work regulated by the City of Kelowna Building Bylaw No. 7245 as amended or replaced from time to time,

'**Building Inspector**' means the person appointed to the position of Director of Development Services and includes his or her designate,

'**City Clerk**' means the Corporate Officer of the City of Kelowna,

'**Community Planning Department Manager**' means the person appointed to the position and includes his or her designate,

'**Council**' means the Municipal Council of the City of Kelowna,

'**Heritage Advisory Committee**' means the Heritage Advisory Committee of the City of Kelowna as established under Section 142 of the *Community Charter*,

'**Heritage Alteration Permit**' means a permit pursuant to Section 617 of the *Local Government Act*, authorizing alteration or other actions in relation to **Protected Heritage Property** or property within a **Heritage Conservation Area**,

'**Heritage Conservation Area**' means an area designated under Section 614 of the *Local Government Act* in the City of Kelowna Official Community Plan,

'**Heritage Conservation Covenant**' means a registered agreement between the City and the owner of heritage property pursuant to Section 219 of the *Land Title Act*,

'**Heritage Designation Bylaw**' means a bylaw adopted by the City of Kelowna pursuant to Section 611 of the *Local Government Act*,

'**Heritage Register**' means the community heritage register of the City of Kelowna as established under Section 598 of the *Local Government Act*,

'**Heritage Revitalization Agreement**' means an agreement between the City and the owner of heritage property pursuant to Section 610 of the *Local Government Act*,

'**Owner**' means the registered owner of an estate in fee simple, and includes:

- (a) the tenant for life under a registered life estate; and
- (b) the registered holder of the last registered agreement for sale,

'**Policy & Planning Department Manager**' means the person appointed to the position and includes his or her designate,

'**Protected Heritage Property**' means a property subject to the agreement of a registered **Heritage Revitalization Agreement**, a **Heritage Conservation Covenant** or a **Heritage Designation Bylaw**,

'**Zoning Bylaw**' means City of Kelowna Zoning Bylaw No. 8000 as amended or replaced from time to time.

4.0 APPLICABILITY

4.1 This bylaw shall apply to the following:

- (a) an amendment of a bylaw under Part 15, Heritage Conservation of the *Local Government Act*;
- (b) properties identified within a **Heritage Conservation Area** under Section 614 of the *Local Government Act*;
- (c) a **Heritage Revitalization Agreement** under Section 610 of the *Local Government Act*;
- (d) the designation of real property in whole or in part as **Protected Heritage Property** under Section 611 of the *Local Government Act*;
- (e) a **Heritage Conservation Covenant** under Section 219 of the *Land Title Act*;
- (f) the issuance of a **Heritage Alteration Permit** under Section 617 of the *Local Government Act*; and
- (g) properties identified within a **Heritage Register** under Section 598 of the *Local Government Act*.

5.0 HERITAGE REVITALIZATION AGREEMENT

5.1 The registered owner of real property within the City of Kelowna, or an agent authorized in writing, may apply for a **Heritage Revitalization Agreement**, or an amendment of a **Heritage Revitalization Agreement**, pursuant to Section 610 of the *Local Government Act*.

- 5.2 Every application for a **Heritage Revitalization Agreement**, or an amendment of a **Heritage Revitalization Agreement**, shall be made on a form as approved by the **Community Planning Department Manager**, signed by the applicant and accompanied by the following, as applicable:
- (a) the application fee outlined in Development Application Fees Bylaw No. 10560 as amended or replaced from time to time;
 - (b) proposed use(s) and density of the property;
 - (c) photographs of each elevation of the property;
 - (d) historic information on the property;
 - (e) elevations of the proposed historical restoration including background information showing the architectural features and characteristics of the building at the time of construction;
 - (f) drawings of the subject property including details of building and re-construction materials with sample boards;
 - (g) details of on-site parking;
 - (h) details of the proposed alterations to the heritage property;
 - (i) details of landscaping; and
 - (j) any other information that will assist in the evaluation of the application.
- 5.3 An application for a **Heritage Revitalization Agreement** shall be forwarded to the **Heritage Advisory Committee** for review, after which a recommendation will be forwarded to **Council** for consideration.
- 5.4 An applicant for a **Heritage Revitalization Agreement** shall be required to post a 'Heritage Proposal Sign' on the subject property, in accordance with the conditions outlined in Schedule "1" attached to and forming part of this bylaw.
- 5.5 Subject to Section 590 of the *Local Government Act*, re-application for a **Heritage Revitalization Agreement**, or the amendment of a **Heritage Revitalization Agreement**, that has been refused by **Council** shall not be considered within a six (6) month period immediately following the date of refusal.

6.0 HERITAGE DESIGNATION

- 6.1 The registered **owner** of real property within the City of Kelowna, or an agent authorized in writing, may apply for a **Heritage Designation Bylaw** pursuant to Section 611 of the *Local Government Act*.
- 6.2 Every application for a **Heritage Designation Bylaw** shall be made on a form as approved by the **Community Planning Department Manager**, signed by the applicant and accompanied by the following, as applicable:
- (a) the application fee outlined in Development Application Fees Bylaw No. 10560 as amended or replaced from time to time;
 - (b) a description of the current use(s) of the property;
 - (c) photographs of each elevation of the property;

- (d) information on the heritage significance and architectural merit of the property;
 - (e) site plan of the property;
 - (f) elevation drawings showing the architectural features, characteristics and colours of the exterior of the building;
 - (g) details of affixed interior building features or fixtures proposed to be subject to protection;
 - (h) details of any landscape features proposed to be subject to protection; and
 - (i) any other information that will assist in the evaluation of the application.
- 6.3 An application for Heritage Designation shall be forwarded to the **Heritage Advisory Committee** for review, after which a recommendation will be forwarded to **Council** for consideration.
- 6.4 An applicant for a **Heritage Designation Bylaw** shall be required to post a 'Heritage Proposal Sign' on the subject property, in accordance with the conditions outlined in Schedule "1" attached to and forming part of this bylaw.
- 6.5 Subject to Section 590 of the *Local Government Act*, re-application for a **Heritage Designation Bylaw** that has been refused by **Council** shall not be considered within a six (6) month period immediately following the date of refusal.
- 7.0 HERITAGE CONSERVATION COVENANT**
- 7.1 The registered **owner** of real property within the City of Kelowna, or an agent authorized in writing, may apply for a **Heritage Conservation Covenant** pursuant to Section 219 of the *Land Title Act*.
- 7.2 Every application for a **Heritage Conservation Covenant** shall be made on a form as approved by the **Community Planning Department Manager**, signed by the applicant and accompanied by the following, as applicable:
- (a) the application fee outlined in Development Application Fees Bylaw No. 10560 as amended or replaced from time to time;
 - (b) a description of the current use(s) of the property;
 - (c) photographs of each elevation of the property;
 - (d) information on the heritage significance and architectural merit of the property;
 - (e) site plan of the property;
 - (f) elevation drawings showing the architectural features, characteristics and colours of the exterior of the building;
 - (g) details of affixed interior building features or fixtures proposed to be subject to protection;
 - (h) details of any landscape features proposed to be subject to protection; and

- (i) any other information that will assist in the evaluation of the application.
- 7.3 An application for a **Heritage Conservation Covenant** shall be forwarded to the **Heritage Advisory Committee** for review, after which a recommendation will be forwarded to **Council** for consideration.
- 7.4 Subject to Section 590 of the *Local Government Act*, re-application for a **Heritage Conservation Covenant** that has been refused by **Council** shall not be considered within a six (6) month period immediately following the date of refusal.
- 8.0 HERITAGE ALTERATION PERMIT**
- 8.1 The registered **owner** of real property within the City of Kelowna, or an agent authorized in writing, may apply for a **Heritage Alteration Permit**, or an amendment of a **Heritage Alteration Permit**, pursuant to Section 617 of the *Local Government Act*.
- 8.2 Every application for a **Heritage Alteration Permit**, or an amendment of a **Heritage Alteration Permit**, shall be made on a form as approved by the **Community Planning Department Manager**, signed by the applicant and accompanied by the following, as applicable:
- (a) the application fee outlined in Development Application Fees Bylaw No. 10560 as amended or replaced from time to time;
 - (b) photographs of each elevation of the property;
 - (c) elevations of the proposed facade alterations;
 - (d) drawings of the subject property including details of building/re-construction materials and colour samples on appropriate sample boards;
 - (e) details of on-site parking;
 - (f) details of the proposed alterations to the heritage property; and
 - (g) any other information that will assist in the evaluation of the application.
- 8.3 Pursuant to Section 615 and 617 of the *Local Government Act*, a **Heritage Alteration Permit** must be issued prior to undertaking alterations or other actions on property within a **Heritage Conservation Area** or on **Protected Heritage Property**.
- 8.4 Where a **Building Permit** is required, a **Heritage Alteration Permit** must be issued prior to or in conjunction with the issuance of a **Building Permit**. In addition, applicants must obtain a **Building Permit** for new construction prior to or in conjunction with the issuance of a **Building Permit** for the demolition or removal of a building within a **Heritage Conservation Area**.
- 8.5 An application for a **Heritage Alteration Permit** shall be forwarded to the **Heritage Advisory Committee** for review in accordance with the **Heritage Advisory Committee Terms of Reference**, after which a recommendation will be forwarded to the **Community Planning Department Manager** or **Council** for consideration.
- 8.6 An applicant for a **Heritage Alteration Permit** that requires a variance to the provisions of the **Zoning Bylaw** shall be required to post a 'Heritage Proposal Sign' on the subject property, in accordance with the conditions outlined in Schedule "1" attached to and forming part of this bylaw.

- 8.7 Pursuant to Sections 590 and 617 of the *Local Government Act*, the **Community Planning Department Manager** is hereby authorized to exercise the powers and perform the duties of **Council** in respect of the issuance of **Heritage Alteration Permits** listed in this section. These powers and duties shall include, but not be limited to, authorizing and approving the permit, rejecting the permit, establishing the requirements and conditions of the permit, and determining whether such requirements and conditions have been met.

The authority shall be limited to **Heritage Alteration Permits** that meet the following criteria:

(a) **Protected Heritage Property:**

- (i) The application is for non-structural alterations to a heritage building located on **Protected Heritage Property**, including the replacement of windows, doors, roofing materials or minor repairs/alterations of this nature; or
- (ii) The application is for changes to the exterior finish of a heritage building located on **Protected Heritage Property**, such as repainting, the addition of period lighting on the structure and replacement of decorative details; or
- (iii) The application is related to site alteration requests for **Protected Heritage Property** such as the addition or removal of site vegetation, or the re-location of required parking; and
- (iv) The application does not require a variance to the provisions of the Zoning Bylaw.

(b) **Heritage Conservation Areas:**

- (i) The application is for development on a property that is zoned for single or two dwelling housing within a **Heritage Conservation Area**; and
- (ii) The application does not require a variance to the provisions of the Zoning Bylaw.

- 8.8 **Heritage Alteration Permits** that do not meet the criteria in Section 8.7 of this bylaw shall require consideration by **Council**.

- 8.9 A **Heritage Alteration Permit** is considered to have been issued upon the date of authorization by **Council**, or, where applicable, upon the date of authorization by the **Community Planning Department Manager**.

- 8.10 A **Heritage Alteration Permit** is considered to have lapsed if construction has not substantially commenced within two years of the date of issuance, or as otherwise specified by the Permit. In order for construction to be considered substantially commenced, the following minimum criteria will apply:

- (a) A valid **Building Permit** has been issued;
- (b) The site has been completely fenced for construction purposes;
- (c) The site has been partially or entirely excavated; and

- (d) Greater than 50% of the approved **Heritage Alteration Permit's** project's footing and foundation has been poured.
- 8.11 Subject to Section 590 of the *Local Government Act*, re-application for a **Heritage Alteration Permit** that has been refused by the **Community Planning Department Manager** or **Council** shall not be considered within a six (6) month period immediately following the date of refusal.

9.0 KELOWNA HERITAGE REGISTER

- 9.1 The registered **owner** of real property within the City of Kelowna, or an agent authorized in writing, may submit a written request to add a building(s) to or remove a building(s) from the Kelowna **Heritage Register** pursuant to Section 598 of the *Local Government Act*.
- 9.2 Written requests will be reviewed by the Policy & Planning Department on an annual basis, unless special circumstances require otherwise at the discretion of the **Policy & Planning Department Manager**.
- 9.3 The Policy & Planning Department will compile background information on the subject building(s) and the request and information will be forwarded to the **Heritage Advisory Committee** for review.
- 9.4 The **Heritage Advisory Committee** will evaluate the historical, architectural and contextual qualities of the subject building(s) and prepare a recommendation regarding the request.
- 9.5 The recommendation of the **Heritage Advisory Committee** will be forwarded to **Council** for consideration.

10.0 WITHHOLDING OF APPROVALS

- 10.1 Pursuant to Sections 604 and 605 of the *Local Government Act*, approvals may be withheld for **Protected Heritage Property** as follows:
 - (a) The **Building Inspector** may withhold the issuance of any **Building Permit** where the **Community Planning Department Manager** is of the opinion that the **Building Permit** would authorize an alteration to **Protected Heritage Property**; and
 - (b) The **Building Inspector** may withhold the issuance of any **Building Permit** for the demolition of **Protected Heritage Property** until a **Heritage Alteration Permit** and any other necessary approvals have been issued with respect to the proposed alterations.
- 10.2 Pursuant to Sections 604 and 605 of the *Local Government Act*, approvals may be withheld for a building that is included in the **Heritage Register** as follows:
 - (a) The **Building Inspector** may withhold the issuance of any **Building Permit** where the **Community Planning Department Manager** is of the opinion that the **Building Permit** would authorize an alteration to property that is included in the **Heritage Register**; and
 - (b) The **Building Inspector** may withhold the issuance of any **Building Permit** for the demolition of a building included in the **Heritage Register** until a **Building Permit** and any other necessary approvals have been issued with respect to the proposed alterations.

- 10.3 The **Building Inspector** may not withhold the issuance of a **Building Permit** for the demolition or alteration of **Protected Heritage Property** or a building included in the **Heritage Register** where the demolition or alteration is reasonably required to mitigate a hazard to public safety.
- 10.4 The **Building Inspector** shall notify the applicant for a **Building Permit** withheld under this section that the matter of the issuance of the **Building Permit** will be considered by **Council** at a regular meeting. The date, time and location of the meeting shall be stated in the notice. The notice shall be sent by registered mail, unless the meeting date is within five days of the date on which the notice would be mailed, in which case the notice shall be given by personal service and not mailed. The applicant for the **Building Permit** being withheld shall be entitled to address **Council** when the matter is considered by **Council**.

11.0 RE-CONSIDERATION

- 11.1 Where an applicant or **owner** of property subject to a decision made by the **Community Planning Department Manager** pursuant to Section 8.7 of this bylaw is dissatisfied with the decision, the applicant or **owner** may apply to **Council** for re-consideration of the matter within 30 days of the decision being communicated to them.
- 11.2 An application for re-consideration shall be delivered in writing to the **City Clerk** and shall set out the grounds upon which the applicant considers the requirement or decision of the **Community Planning Department Manager** is inappropriate and what, if any, requirement or decision the applicant considers **Council** ought to substitute.
- 11.3 The **City Clerk** must place each application for re-consideration on the agenda of a regular meeting of **Council** to be held not earlier than two weeks from the date the application for re-consideration was delivered, and must notify the applicant and any other party who the **City Clerk** reasonably considers may be affected by the re-consideration, of the date of the meeting at which the re-consideration will occur.
- 11.4 An applicant for re-consideration shall be required to post a 'Heritage Proposal Sign' on the subject property, in accordance with the conditions outlined in Schedule "1" attached to and forming part of this bylaw.
- 11.5 At the meeting, **Council** may hear from the applicant and any other person interested in the matter under re-consideration who wishes to be heard, and may either confirm the requirement or decision of the **Community Planning Department Manager** or substitute its own requirement or decision.

12.0 ENACTMENTS

- 12.1 Any enactments referred to herein is a reference to an enactment of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein is a reference to an enactment of the **Council** of the City of Kelowna, as amended, revised, consolidated or replaced from time to time.

13.0 EFFECTIVE DATE

- 13.1 This bylaw shall come into full force and effect as and from the date of adoption.

14.0 REPEAL

- 14.1 Heritage Procedures Bylaw No. 7776 and all amendments thereto, are hereby repealed.

Read a first, second and third time this 22nd day of February, 2016.

Adopted by a 2/3 vote of the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "1"

HERITAGE PROPOSAL SIGN REQUIREMENTS

1.0 GENERAL INFORMATION

- 1.1 Heritage Proposal Signs will be purchased from a signage provider at the applicant's expense. The City's signage template must be used and the signage content must be endorsed by City Staff.
- 1.2 The sign(s) will include the following information, as applicable to the application:
 - (a) The City's application file number;
 - (b) A brief project description;
 - (c) The date(s) of the relevant **Council** meeting at which the application is to be considered; and
 - (d) Any additional information the **Community Planning Department Manager** may require.

2.0 LOCATION AND SITING SPECIFICATIONS

- 2.1 All Heritage Proposal Signs will be placed on a property that is subject to an application pursuant to this bylaw so that they are clearly visible from the street, approximately 3 metres inside the property line.
- 2.2 One sign is required for each 100 metres of road frontage provided that no more than three signs are required for any one site.
- 2.3 Heritage Proposal Signs will be located in a manner that does not interfere with pedestrian or vehicular traffic or obstruct visibility from streets, lanes, walkways or driveways. All Signs must be installed and maintained by the applicant in a safe, sturdy manner, capable of withstanding wind and weather.

3.0 TIMING

- 3.1 All Heritage Proposal Signs must be posted a minimum of ten days prior to the **Council** meeting at which the application is scheduled for consideration. The Heritage Proposal Sign must remain in place continuously until **Council** has concluded deliberations on the application. All signs must be removed within seven days of a Public Hearing or the final decision of **Council**.

4.0 PHOTOGRAPHIC EVIDENCE

- 4.1 The applicant must provide the **Community Planning Department Manager** with photographic evidence confirming that all Heritage Proposal Signs required by this bylaw have been installed on the subject property before the application will be considered at a **Council** meeting.

5.0 FAILURE TO POST

- 5.1 Failure to post the required Heritage Proposal Sign(s) in accordance with this bylaw will result in the postponement of consideration of the application by **Council**. All

costs incurred by the City for public notification as a result of such postponement will be the responsibility of the applicant.