

# CITY OF KELOWNA

## BYLAW NO. 12527

### Amendment No. 3 to Development Application and Heritage Procedures Bylaw No. 12310

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The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Development Application and Heritage Procedures Bylaw No. 12310 be amended as follows:

1. THAT **Section 1.0 INTRODUCTION, 1.3 Definitions, Official Community Plan** be amended by deleting "Bylaw No. 10500" and replace it with "Bylaw No. 12300";
2. AND THAT **Section 1.0 INTRODUCTION, 1.3 Definitions, Zoning Bylaw**, be amended by deleting "Zoning Bylaw No. 8000" and replace it with "Zoning Bylaw No. 12375";
3. AND THAT **Section 2.0 GENERAL PROVISIONS, 2.3 Delegation of Authority, 2.3.7 a)** be added as follows:

"2.3.7 Development Variance Permits

a) The powers of Council under Section 498.1 – Delegation of power to issue Development Variance Permits of the Local Government Act to issue, refuse and amend **Development Variance Permits**, subject to restrictions identified in Schedule '4' of this bylaw. This includes the powers of **Council** to require that the applicant provide security for the purposes of Section 502 of the Local Government Act, to establish the conditions of the permit, and to determine whether such requirements and conditions have been met.";

4. AND THAT **Section 2.0 GENERAL PROVISIONS, 2.9.3 f) i.** be amended by deleting "The The restoration" and replace it with "The restoration";
5. AND THAT **Section 4.0 PUBLIC NOTIFICATION AND CONSULTATION** be amended by

a.) Adding "4.2.1 Giving Notice d) The obligation to give notice does not apply if the delegate exercises the power to issue the development variance permit, in accordance with Section 499 (1.1) of the Local Government Act.";

b) Removing **4.2 Public Notification, 4.2.2 Development Notice Signage a) Exemptions** as follows:

"a) Exemptions: The following types of applications do not require Development Notice Signage:

- i. Development Permit
- ii. Temporary Farm Worker Housing Permit
- iii. Heritage Conservation Covenant
- iv. Kelowna Heritage Register
- v. Heritage Alteration Permit with no variance(s)
- vi. OCP and Zoning Bylaw amendment applications involving ten or more parcels owned by ten or more people"

And replace with

"a) Exemptions: The following types of applications do not require Development Notice Signage:

- i. Development Permit
- ii. Minor Development Variance Permit
- iii. Temporary Farm Worker Housing Permit
- iv. Heritage Conservation Covenant

- v. Kelowna Heritage Register
- vi. Heritage Alteration Permit with no variance(s)
- vii. OCP and Zoning Bylaw amendment applications involving ten or more parcels owned by ten or more people”;

c) Removing **4.2 Public Notification**, 4.2.2 Development Notice Signage b) Timing as follows:

“For applications that require a statutory Public Hearing, Development Notice Signs will be posted a minimum of ten days prior to the Public Hearing for the application. For all other applications, Development Notice Signs will be posted a minimum of ten days prior to the Council meeting at which the application is scheduled for consideration.

Development Notice Signs must remain in place until the conclusion of the Public Hearing, until Council has considered the application as applicable, within 7 days of Council’s further consideration of the application when the Public Hearing has been waived, or until the development application has been abandoned. Development Notice Signs must be removed within seven days of the conclusion of a Public Hearing.”

And replace with

“i. For applications that require a statutory Public Hearing, Development Notice Signs will be posted a minimum of ten days prior to the Public Hearing for the application.

ii. For all other applications that require a Council meeting, Development Notice Signs will be posted a minimum of ten days prior to the Council meeting at which the application is scheduled for consideration.

iii. Development Notice Signs must remain in place until the conclusion of the Public Hearing, until Council has considered the application as applicable, within 7 days of Council’s further consideration of the application when the Public Hearing has been waived, or until the development application has been abandoned. Development Notice Signs must be removed within seven days of the conclusion of a Public Hearing or of the Council meeting that requires a Development Notice Sign.”;

6. AND THAT **4.2 Public Notification**, 4.2.2 Development Notice Signage h) Failure to Post be amended by adding “or the delegate” after the word “**Council**”;

7. AND THAT **Schedule ‘1’ Application Requirements** l) Landscape Plan be amended by deleting the following:

“Pre-development inventory completed by a Qualified Professional of all trees located on the property including, trees with overhanging branches or root systems, invasive species, fruit trees, cultivated trees, basic description, trunk diameter, and location”;

And replace with

““Pre-development inventory completed by a Qualified Professional of all trees located on and off the property with overhanging branches or root systems, with a basic description of species, trunk diameter and location, highlighting invasive species, fruit trees, and cultivated trees.”;

8. AND THAT **Schedule ‘1’ Application Requirements** m) Environmental Assessment Report be amended by deleting the following:

“Environmental Assessment Report – prepared, signed and sealed by a Registered Professional Biologist licensed to practice in BC, which assesses potential impacts of the proposed development and provides avoidance, mitigation and/or compensation methods as applicable.”;

And replace with

““Environmental Assessment Report – prepared as per the City of Kelowna Environmental Assessment Terms of Reference, signed and sealed by a Registered Professional Biologist licensed to practice in BC, which assesses potential impacts of the proposed development and provides avoidance, mitigation and/or compensation methods as applicable.”;

9. AND THAT **Schedule '2' Applications to Amend an Official Community Plan Bylaw or Zoning Bylaw, 1.0 APPLICATION REQUIREMENTS, 1.1** be amended by deleting the following:

"f) Project Rationale  
h) Site Plan  
i) Floor Plan (if available)  
j) Elevation Drawings (if available)  
l) Conceptual Landscape Plan"

And replace it with

"f) Project Rationale  
g) Site Plan  
h) Floor Plan (if available)  
i) Elevation Drawings (if available)  
j) Landscape Plan";

10. AND THAT **Schedule '3' – Development Permit Applications, 1.0 FORM AND CHARACTER & FARM PROTECTION DEVELOPMENT PERMITS, 1.1 Form and Character & Farm Protection Direct Development Permits, 1.1.2 Application Requirements** be amended by deleting the following:

"h) Site Plan  
j) Elevation Drawings  
l) Landscape Plan"

And replace it with

"h) Site Plan  
i) Elevation Drawings  
j) Landscape Plan";

11. AND THAT **Schedule '3' – Development Permit Applications, 1.0 FORM AND CHARACTER & FARM PROTECTION DEVELOPMENT PERMITS, 1.2 Form and Character & Farm Protection Council Development Permits, 1.2.1 Application Requirements**, be amended by deleting all references to the following:

" l) Council Landscape Plan"

And replace with

"l) Landscape Plan";

12. AND THAT **Schedule '3' – Development Permit Applications, 1.0 FORM AND CHARACTER & FARM PROTECTION DEVELOPMENT PERMITS, 1.2 Form and Character & Farm Protection Council Development Permits, 1.2.1 Application Requirements**, be amended by deleting the following:

"j) Elevation Drawings  
l) Council Landscape Plan:

And replace with

"i) Elevation Drawings  
j) Landscape Plan";

13. AND THAT **Schedule '3' – Development Permit Applications, 2.0 NATURAL ENVIRONMENT AND HAZARDOUS CONDITIONS DEVELOPMENT PERMITS, 2.2.1 Application Requirements a) Minor Direct Hazardous Conditions Development Permit table** be amended by adding the following:

"i) Geotechnical Letter (if applicable)";

14. AND THAT **Schedule '3' – Development Permit Applications, 2.0 NATURAL ENVIRONMENT AND HAZARDOUS CONDITIONS DEVELOPMENT PERMITS, 2.3 Major Direct Development Permit, 2.3.1**

Application Requirements a) Major Direct Hazardous Conditions Development Permit table, be amended by adding the following:

"i) Geotechnical Assessment";

15. AND THAT **Schedule '3' – Development Permit Applications**, 2.0 NATURAL ENVIRONMENT AND HAZARDOUS CONDITIONS DEVELOPMENT PERMITS, , 2.4 Natural Environment and Hazardous Conditions Council Development Permit, 2.4.1 Application Requirements a) Council Hazardous Conditions Development Permit table, be amended by adding the following:

"i) Geotechnical Assessment";

16. AND THAT **Schedule '4' – Development Variance Permit Applications** as outlined in Schedule 'A' attached to and forming part of this bylaw, be deleted in its entirety, and replaced with Schedule 'B', attached to and forming part of this bylaw;

17. AND THAT **Schedule '5' Temporary Use Permit Applications**, 1.0 APPLICATION REQUIREMENTS, 1,1 be amended by deleting the following:

"f) Application Form  
g) State of Title  
h) Owner's Authorization Form (if applicable)  
i) Site Profile (if applicable)  
j) Zoning Analysis Table  
p) Project Rationale  
k) Photographs l) Site Plan  
m) Floor Plan  
n) Elevation Drawings  
o) Landscape Plan (if applicable)"

And replace with

"a) Application Form  
b) State of Title  
c) Owner's Authorization Form (if applicable)  
d) Site Profile (if applicable)  
e) Zoning Analysis Table  
f) Project Rationale  
g) Photographs  
h) Site Plan  
i) Floor Plan  
j) Elevation Drawings  
k) Landscape Plan (if applicable)";

18. AND THAT **Schedule '9' – Temporary Farm Worker Housing Permit Applications**, 1.0 TEMPORARY FARM WORKER HOUSING PERMIT MINOR DIRECT, 1.2 Application Requirements, 1.2.1 be amended by deleting the following:

"a) Application Form  
b) State of Title  
c) Owner's Authorization Form (if applicable)  
d) Site Profile (if applicable)  
f) Project Rationale  
g) Photographs  
h) Site Plan  
i) Floor Plan  
j) Elevation Drawings  
l) Direct Landscape Plan"

And replace with

"a) Application Form  
b) State of Title

- c) Owner's Authorization Form (if applicable)
- d) Site Profile (if applicable)
- e) Project Rationale
- f) Photographs
- g) Site Plan
- h) Floor Plan
- i) Elevation Drawings
- j) Landscape Plan";

19. AND THAT **Schedule 'g' – Temporary Farm Worker Housing Permit Applications**, 2.0 TEMPORARY FARM WORKER HOUSING PERMIT MAJOR (Council), 2.1 Application Requirements, 2.1.1 be amended by deleting the following:

- "a) Application Form
- b) State of Title
- c) Owner's Authorization Form (if applicable)
- d) Site Profile (if applicable)
- h) Project Rationale
- g) Photographs
- h) Site Plan
- i) Floor Plan
- j) Elevation Drawings
- l) Landscape Plan"

And replace with

- "a) Application Form
- b) State of Title
- c) Owner's Authorization Form (if applicable)
- d) Site Profile (if applicable)
- e) Project Rationale
- f) Photographs
- g) Site Plan
- h) Floor Plan
- i) Elevation Drawings
- j) Landscape Plan";

20. AND THAT **Schedule '10' Heritage Revitalization Agreement Applications**, 1.0 APPLICATION REQUIREMENTS, 1.1 be amended by deleting the following:

" p) Information about historical significance of the property"

And replace with

"m) Information about historical significance of the property";

21. AND THAT **Schedule '11' Heritage Designation Bylaw Applications**, 1.0 APPLICATION REQUIREMENTS, 1.1 be amended by deleting the following:

" p) Information about historical significance of the property"

And replace with

"m) Information about historical significance of the property";

22. AND THAT **Schedule '12' Heritage Conservation Covenant Applications**, 1.0 APPLICATION REQUIREMENTS, 1.1 be amended by deleting the following:

" p) Information about historical significance of the property"

And replace with

"m) Information about historical significance of the property";

23. AND THAT **Schedule '13' Heritage Alteration Permit Applications**, 1.0 HERITAGE ALTERATION PERMITS (DIRECT), 1.2 Application Requirements a), be amended by deleting the following:

- "k) Materials Board
- l) Landscape Plan for Direct Permits
- p) Information about historical significance of the property"

And replace with

- "k) Materials Board
- l) Landscape Plan
- m) Information about historical significance of the property";

24. AND FURTHER THAT **Schedule '13' Heritage Alteration Permit Applications**, 1.0 HERITAGE ALTERATION PERMITS (COUNCIL), 2.1 Application Requirements a) be amended by deleting the following:

- "k) Materials Board
- l) Landscape Plan for Council Permits
- p) Information about historical significance of the property"

And replace with

- "k) Materials Board
- l) Landscape Plan
- m) Information about historical significance of the property".

25. This bylaw may be cited for all purposes as "Bylaw No. 12527, being Amendment No. 3 to Development Application and Heritage Procedures Bylaw No. 12310."

26. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**Schedule 'A' to Bylaw No. 12527 – to be deleted:**

Schedule '4' Development Variance Permit Applications

This Schedule describes the process applicants must follow for Development Variance Permit applications, including application requirements and processing procedures. Following the steps outlined below does not grant a right to development approval.

1.0 APPLICATION REQUIREMENTS

1.1. The following information is required for Development Variance Permit applications. See Schedule '1' of this bylaw for a description of each application requirement.

a) Application Form	f) Photographs
b) State of Title	g) Site Plan
c) Owner's Authorization Form (if applicable)	h) Floor Plan
d) Site Profile (if applicable)	i) Elevation Drawings
e) Zoning Analysis Table	l) Landscape Plan (if applicable)
m) Project Rationale	

1.2. Additional Development Approval Information may be required by the Department Manager, Development Planning in accordance with Section 2.4 of this bylaw to adequately make a recommendation to Council regarding a Development Variance Permit application.

2.0 PROCESSING PROCEDURE

A Development Variance Permit application submitted in accordance with this bylaw will be processed as follows:

- a) Upon receipt of an application package submitted to the City in accordance with the requirements of this bylaw, staff will issue a fee receipt to the applicant.
- b) Development Planning will review the application for completeness. If the application is incomplete, staff will request the required information from the applicant. Staff will only process the file when the application package is complete.
- c) Development Planning will refer the application to all relevant City departments, as well as applicable government and external agencies.
- d) Development Planning will evaluate the proposal for compliance with relevant City bylaws and policies.
- e) The applicant will complete public notification and consultation as required by Section 4 of this bylaw.
- f) Development Planning will prepare a staff report and refer the application to any relevant Council committee(s). The applicant is encouraged to attend any Council committee meeting(s) at which the application is being considered. The Council committee will provide a recommendation to Development Planning staff.
- g) Upon receipt of the comments of other referral agencies, Development Planning staff will prepare a staff report and draft Development Variance Permit for consideration by Council.

The applicant is encouraged to attend the Council meeting at which the application is being considered.

- h) The Office of the City Clerk will notify the applicant in writing of the decision of Council.
- i) If authorized for issuance by the Council, Development Planning staff will prepare the required Development Variance Permit and related schedules for signature, and obtain any required security, pursuant to Section 2.9 of this bylaw.
- n) Upon sign-off of the Development Variance Permit by the Department Manager, Development Planning and receipt of required security, the Development Variance Permit will be issued and then registered on the State of Title of the subject property(s).



## **Schedule 'B' to Bylaw No. 12527 – to be added:**

### Schedule '4' Development Variance Permit Applications

This Schedule describes the process applicants must follow for Development Variance Permit applications, including application requirements and processing procedures. Following the steps outlined below does not grant a right to development approval.

#### **1.0 DEVELOPMENT VARIANCE PERMITS**

#### **1.1 Minor Development Variance Permits**

##### 1.1.1 Restriction on Delegation – Minor Criteria

As a restriction on Section 2.3.7(a), only 'Minor' Development Variance Permits can be approved by the Department Manager, Development Planning. As required by Section 498.1(2)a of the Local Government Act, the criteria for determining whether a proposed variance is minor is determined by the following:

1. Minor variances only apply to Zoning Bylaw No. 12375 (except Section 9 of Zoning Bylaw No. 12375) and not to other bylaws (such as the Sign Bylaw); AND
  - a. A Development Variance Permit application is submitted when an associated Form and Character Development Permit application is not required; OR
  - b. A Development Variance Permit application is submitted for any commercial or industrial development in which the authority for the Form and Character Development Permit has been delegated to the Department Manager, Development Planning; OR
  - c. A Heritage Alteration Permit application is submitted with variances in which the authority for the Heritage Alteration Permit has been delegated to the Department Manager, Development Planning.

##### 1.1.2 Restriction on Delegation – Guidelines

As required by Section 498.1(2)b of the Local Government Act, the guidelines the delegate must consider in deciding whether to issue a Development Variance Permit is determined by the following:

1. Scope and scale of variances.
  - a. For example, if a significant parking variance is proposed then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
2. Use and enjoyment of neighbouring lands.
  - a. A variance could negatively impact or affect adjacent buildings and uses. For example, a setback variance that would result in a primary window of neighbouring property staring at a large blank wall, then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
3. Effects on the natural environment.
  - a. For example, if a variance would have a detrimental effect on the environment as determined through the Natural Environment Development Permit approval process, then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
4. Appropriateness of the development.
  - a. A variance could decrease the appropriateness of the development if certain Official Community Plan policies and guidelines were not followed due to the variance. For example, if a setback variance increases the area of the home within a 30% steep slope area, then this would decrease the appropriateness of the development and then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.

5. Intent of the Zoning Bylaw

- a. A variance could undermine the purpose of a regulation. For example, the purpose of the 70% maximum upper floor area limit on carriage houses relative to the carriage house footprint is to prevent carriage house 'box' designs and a variance to this regulation could undermine the purpose of this regulation. Then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.

6. Public interest in variances

- a. For example, if a variance triggers a significant public response to the Development Planning Department Manager during the public consultation period, then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.

Applications not eligible for issuance or amendment by the Department Manager, Development Planning must be considered by Council and are subject to the requirements listed in Schedule '4', Section 1.2 – Development Variance Permits, below.

1.1.3 Application Requirements

- a) The following information is required for Development Variance Permit applications. See Schedule '1' of this bylaw for a description of each application requirement.

a) Application Form	g) Photographs
b) State of Title	h) Site Plan
c) Owner's Authorization Form (if applicable)	i) Floor Plan
d) Site Profile (if applicable)	j) Elevation Drawings
e) Zoning Analysis Table	k) Landscape Plan (if applicable)
f) Project Rationale	

- b) Additional Development Approval Information may be required by the Department Manager, Development Planning in accordance with Section 2.4 of this bylaw to adequately make a recommendation to Council regarding a Development Variance Permit application.

1.1.4 Processing Procedure

A Development Variance Permit application submitted in accordance with this bylaw will be processed as follows:

- j) Upon receipt of an application package submitted to the City in accordance with the requirements of this bylaw, staff will issue a fee receipt to the applicant.
- k) Development Planning will review the application for completeness. If the application is incomplete, staff will request the required information from the applicant. Staff will only process the file when the application package is complete.
- l) Development Planning will refer the application to all relevant City departments, as well as applicable government and external agencies.
- m) Development Planning will evaluate the proposal for compliance with relevant City bylaws and policies.
- n) Relevant referral agency comments will be considered by the Department Manager, Development Planning.
- o) Development Planning will notify the applicant in writing of the decision of the Department

Manager, Development Planning.

- p) If authorized for issuance by the Department Manager, Development Planning, staff will prepare the required Development Permit and related schedules for signature and obtain the required security pursuant to Section 2.9 of this bylaw.
- q) Upon sign-off of the Development Permit by the Department Manager, Development Planning and receipt of the required security, the Development Permit will be issued and then registered against the title of the property(s) at the Land Title Office.

## 1.2 Development Variance Permits

### 1.2.1 Application Requirements

- a) The following information is required for Development Variance Permit applications. See Schedule '1' of this bylaw for a description of each application requirement.

a) Application Form	g) Photographs
b) State of Title	h) Site Plan
c) Owner's Authorization Form (if applicable)	i) Floor Plan
d) Site Profile (if applicable)	j) Elevation Drawings
e) Zoning Analysis Table	k) Landscape Plan (if applicable)
f) Project Rationale	

- b) Additional Development Approval Information may be required by the Department Manager, Development Planning in accordance with Section 2.4 of this bylaw to adequately make a recommendation to Council regarding a Development Variance Permit application.

### 1.2.2 Processing Procedure

A Development Variance Permit application submitted in accordance with this bylaw will be processed as follows:

- a) Upon receipt of an application package submitted to the City in accordance with the requirements of this bylaw, staff will issue a fee receipt to the applicant.
- b) Development Planning will review the application for completeness. If the application is incomplete, staff will request the required information from the applicant. Staff will only process the file when the application package is complete.
- c) Development Planning will refer the application to all relevant City departments, as well as applicable government and external agencies.
- d) Development Planning will evaluate the proposal for compliance with relevant City bylaws and policies.
- e) The applicant will complete public notification and consultation as required by Section 4 of this bylaw.
- f) Development Planning will prepare a staff report and refer the application to any relevant Council committee(s). The applicant is encouraged to attend any Council committee meeting(s) at which the application is being considered. The Council committee will provide a recommendation to Development Planning staff.
- g) Upon receipt of the comments of other referral agencies, Development Planning staff will prepare a staff report and draft Development Variance Permit for consideration by Council. The applicant

is encouraged to attend the Council meeting at which the application is being considered.

- h) The Office of the City Clerk will notify the applicant in writing of the decision of Council.
- i) If authorized for issuance by the Council, Development Planning staff will prepare the required Development Variance Permit and related schedules for signature, and obtain any required security, pursuant to Section 2.9 of this bylaw.
- j) Upon sign-off of the Development Variance Permit by the Department Manager, Development Planning and receipt of required security, the Development Variance Permit will be issued and then registered on the State of Title of the subject property(s).