

THE CORPORATION OF THE CITY OF PENTICTON  
BYLAW NO. 2009-62

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A BYLAW TO ESTABLISH PROCEDURES TO AMEND THE OFFICIAL COMMUNITY PLAN BYLAW OR THE ZONING BYLAW OR TO ISSUE A PERMIT UNDER PART 26 OF THE *LOCAL GOVERNMENT ACT* AND TO DELEGATE THE AUTHORITY TO ISSUE DEVELOPMENT PERMITS IN ACCORDANCE WITH SECTION 154 OF THE *COMMUNITY CHARTER*.

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WHEREAS the Council of the City of Penticton has adopted an Official Community Plan and Zoning Bylaw;

AND WHEREAS the Council of the City of Penticton must, under Section 895 of the *Local Government Act*, by bylaw, establish procedures to amend an Official Community Plan or a Zoning Bylaw or issue a permit;

AND WHEREAS the Council of the City of Penticton may, under Section 154 of the *Community Charter*, delegate its authority to issue a Development Permit under Section 920 of the *Local Government Act*;

NOW THEREFORE the Municipal Council of The Corporation of the City of Penticton in open meeting assembled ENACTS as follows:

**Title**

1. This Bylaw may be cited for all purposes as "The City of Penticton Development Procedures and Delegation Bylaw 2009-62.

**Repeal**

2. The City of Penticton Land Use Procedures Bylaw No. 93-134 (1993) and amendment thereto are hereby repealed upon adoption hereof.

**Scope**

3. This Bylaw shall apply to applications for amendments to the Official Community Plan and Zoning Bylaw, or the issuance of a permit under Part 26 of the *Local Government Act*, including Development Permits, Riparian Area Development Permits, Environmental Protection Area Development Permits and Development Variance Permits.

**Definitions**

4. In this Bylaw:

**"Application"** means an application to amend the Official Community Plan or Zoning Bylaw or for the issuance of a permit .

**“Development Officer”** means the Manager of Planning provided that the Manager of Planning may designate either the Director of Development and Engineering Services, or the Chief Administrative Officer to exercise the powers of the Manager of Planning under this bylaw, either generally or during the absence of the Manager of Planning.

**“Fees and Charges Bylaw”** means the City of Penticton Fees and Charges Bylaw 2000-25 (2000).

**“File Manager”** means a staff member assigned by the Manager of Planning to process an application in accordance with this Bylaw.

**“Manager of Planning”** means the manager or acting manager of the Planning Department.

**“Official Community Plan”** means the City of Penticton Official Community Plan Bylaw No. 2002-20 (2002).

**“Permit”** means a Development Permit or Development Variance Permit under Part 26 of the *Local Government Act*, including Riparian Area Development Permits, and Environmental Protection Area Development Permits.

**“Subdivision and Development Bylaw”** means the City of Penticton Subdivision and Development Bylaw No. 2004-81.

**“Technical Planning Committee”** means a committee of staff representatives assembled to discuss technical, infrastructural and other matters related to development applications.

**“Zoning Bylaw”** means the City of Penticton Zoning Bylaw No. 87-65.

### **Submittal of Applications**

5. Applications shall be submitted to the Planning Department.
6. Applications shall be signed by all owners of land whose names appear on the registered title certificate or by a person authorized in writing by all such owners, to make an application on behalf of all owners of the land.
7. All applications shall include the supporting documentation and attachments specified in writing from time to time by the Manager of Planning in respect of the type of application in question, which specifications the Manager of Planning must make available to applicants on request and without charge.
8. Upon receipt of an application that does not conform to this Bylaw, the File Manager may:
  - a) refuse to accept the application and application fee; or

- b) process the application in accordance with this Bylaw if, in the opinion of the File Manager, the content of the application is sufficient to proceed for further consideration notwithstanding its deficiencies.
9. When refusing to accept an application under Paragraph 8(a), the File Manager shall inform the applicant of the requirements that must be met for the application to comply with this Bylaw.

### **Fee**

10. All applications shall include payment in full of the applicable application fees prescribed in the Fees and Charges Bylaw.

### **Referrals**

11. Prior to consideration by Council or the Development Officer, all applications shall be referred, for a minimum of ten (10) business days, to City departments and external agencies as required by legislation or as deemed appropriate by the File Manager.
12. Prior to consideration by Council or the Development Officer, and only after the referrals under Paragraph 11 have occurred, the File Manager may forward any application to the Technical Planning Committee for review.

### **Reports**

13. Where Council is to consider a bylaw amendment or the issuance of a permit in accordance with this Bylaw, Council shall be provided with the following items for consideration:
  - a) a report prepared by the File Manager,
  - b) a copy of the proposed permit or amending bylaw, as applicable; and
  - c) any additional materials deemed necessary for Council's consideration by the File Manager.
14. Where a Development Permit under Paragraph 15 is to be considered by the Development Officer, the Development Officer shall be provided with the following items for consideration:
  - a) a briefing note prepared by the File Manager, in a format acceptable to the Development Officer,
  - b) a copy of the proposed Development Permit, and
  - c) any additional materials deemed necessary for the Development Officer's consideration by the File Manager.

## **Delegation of Development Permit Issuing Authority**

15. In accordance with Section 154 of the *Community Charter*, Council delegates its powers under Section 920 of the *Local Government Act* to the Development Officer in respect of Development Permits authorizing the following, other than the power to refuse a Development Permit:
- a) Additions to existing buildings where the floor area of the addition is less than 930m<sup>2</sup>;
  - b) Amendments to existing Development Permits dealing with the form and character of development that do not substantially alter the form and character approved in the original Permit;
  - c) Façade alterations on existing buildings;
  - d) Construction of multi-family residential buildings to a maximum of six stories in height and with a maximum floor area of 2,800 m<sup>2</sup>;
  - e) Construction of commercial buildings containing one or more residential units to a maximum of six stories in height and with a maximum floor area of 2,800 m<sup>2</sup>;
  - f) Commercial construction with a floor area of up to 2,800 m<sup>2</sup>;
  - g) Surface parking lots or alterations to existing surface parking lots;
  - h) Works requiring an Environmental Protection Area Development Permit;  
and
  - i) Works requiring a Riparian Assessment Area Development Permit.

## **Exceptions and Limitations to Development Officer Powers**

16. Notwithstanding Paragraph 15, the Development Officer may not issue a Development Permit that varies or supplements the Zoning Bylaw or Subdivision and Development Bylaw under Section 920(2)(a) of the *Local Government Act*.
17. Notwithstanding Paragraph 15, the Development Officer may not issue a Development Permit application submitted concurrently with an application to amend the Zoning Bylaw or the Official Community Plan or an application for a Development Variance Permit.
18. The File Manager may refer any application described in Paragraph 15 to Council for consideration of issuance.
19. An applicant for a Permit described in Paragraph 15 is entitled to have the Council reconsider a decision of the Development Officer on the application, and for this purpose:

- a) within 30 days of receiving the Development Officer's decision in writing the applicant shall submit to the City Clerk a written request for reconsideration and the City Clerk shall notify the File Manager of the request;
- b) the File Manager shall prepare a full report to Council in accordance with Paragraph 13 and setting out the Development Officer's reasons for decision;
- c) at a date and time set by the City Clerk, the applicant shall be provided an opportunity to appear before Council and be heard regarding the decision; and
- d) following the applicant's opportunity to be heard, Council may either confirm the Development Officer's decision or vary it.

20. If an application is forwarded to Council for consideration under Paragraph 18, the File Manager shall prepare a full report to Council in accordance with Paragraph 13.

21. When a Development Permit is approved by the Development Officer under Paragraph 15, a copy of the Permit and the materials prepared by the File Manager under Paragraph 14 shall be provided to members of Council for information.

### **Requirements for Security**

22. When a Permit is issued by the Development Officer under Paragraph 15, the applicant shall provide security in accordance with Section 925 of the Local Government Act; subject to the conditions in Paragraphs 23, 24 and 25.

23. Securities required under Paragraph 22 must be provided:

- a) when an application for a Building Permit is made, if the Development Permit authorizes the construction of a structure requiring a Building Permit, or
- b) prior to issuance of the Development Permit, if the Development Permit authorizes development that does not require a Building Permit.

24. In accordance with Section 925(4) of the *Local Government Act*, the amount of security required under Paragraph 22 shall be determined by the File Manager using the following guidelines:

- a) The amount of security may be calculated using:
  - i. such methodologies as the Manager of Planning may prescribe from time to time; or

II. an estimate or quote provided by the applicant or obtained by the City, prepared by a professional qualified to undertake or supervise the works for which the securities are required.

b) If, in the opinion of the File Manager, the amount of security determined under Paragraph 24(a) appears insufficient to cover the cost of the works for which the securities are required, the File Manager may use any of the following methods to establish the amount of the security:

I. The arithmetic mean, median or greater of two values determined using both methods under 24(a);

II. Additional estimates or quotes provided by the applicant under 24(b), or

III. An alternative method, suitable to the Manager of Planning, if all of the permitted methods under this bylaw appear inadequate to determine the value of the security.

25. The applicant may be required to add a contingency amount of up to 10% to an amount of security determined under Paragraphs 24(a), 24(b) or 24(c).

#### **Permit Applications Considered by Council**

26. Upon receipt of an application for a Development Permit under Section 920 of the *Local Government Act*, Council may, by resolution, authorize the issuance of the Permit, authorize the issuance of the Permit subject to conditions, including conditions respecting security in accordance with Section 925 of the *Local Government Act*, or refuse to authorize the issuance of the Permit.

27. Where:

a) The File Manager recommends rejection of a Development Permit application; or

b) a Development Permit application has been submitted in conjunction with an application to amend the Official Community Plan or Zoning Bylaw, or an application for a Development Variance Permit,

the application shall proceed in accordance with Paragraph 29.

28. If Council refuses to approve a Permit application under Paragraph 26, the resolution shall include reasons for rejection, citing Development Permit guidelines contained in the Official Community Plan or Zoning Bylaw.

29. Upon receipt of an application for a Development Variance Permit under Section 922 of the *Local Government Act*, a Development Permit that varies a provision of a bylaw under Section 920(2) of the *Local Government Act*, or a Development Permit application under Paragraph 27, Council may, by resolution:

- a) proceed with consideration of the application in accordance with Paragraph 30, or
  - b) refuse to issue the Permit.
30. Where Council resolves to proceed with an application under Paragraph 29(a):
- a) notification and consultation shall be carried out in accordance with paragraph 32; and
  - b) the application shall be tabled at a subsequent meeting of Council for further consideration.

### **Zoning and Official Community Plan Amendments - Approval or Refusal**

31. Upon receipt of an application to amend the Official Community Plan or Zoning Bylaw, Council may reject the application or proceed with an amendment bylaw in accordance with the procedural requirements of the *Local Government Act* and *Community Charter*.

### **Notification and Consultation Requirements**

32. Where Council resolves to proceed with an application under Paragraph 27 or 29, the City Clerk shall deliver notice in accordance with Sections 922(5) and 922(6) of the *Local Government Act*, at least ten days prior to the final consideration of the application by Council, to:
- a) all owners and tenants of the land that is subject to the proposed Permit; and
  - b) all owners and tenants of lands any portion of which is within 45 meters of the land that is subject to the proposed Permit.
33. Prior to final consideration of a Permit under Paragraph 27 or 29, and only after notification has been carried out in accordance with Paragraph 32, all persons who believe their interests are affected by the proposed permit shall be afforded reasonable opportunity to be heard in an open meeting of Council and to present written submissions respecting matters relating to the Permit.
34. Council may receive and consider representations under Paragraph 33 and give final consideration and approval, approval with conditions or rejection of a Permit under Paragraph 27 or 29 at the same meeting.
35. In accordance with Section 892 of the *Local Government Act*, where Council proceeds with a Public Hearing, notice of the Public Hearing shall be mailed or otherwise delivered by the City Clerk at least ten days before the date of the hearing to:
- a) all owners and tenants of the land that is subject to the proposed amendment, and

- b) to owners and tenants of lands any portion of which is within 45 meters of the land that is subject to the proposed amendment.
36. In accordance with Section 892(7) of the *Local Government Act*, notice of Public Hearing is not required under Paragraph 35 if the application is for a Zoning Bylaw or Official Community Plan amendment affecting ten or more parcels owned by ten or more persons.
37. The notification distance under 32(b) and 35(b) shall be measured from the legal boundary of the parcel or parcels in respect of which the Permit or amendment application is made.

### **Postponing Final Consideration and Hearings**

38. Once any application under this Bylaw has been introduced to Council, Council may, by resolution, postpone:
- a) any Public Hearing or reading of an amendment bylaw that is required under this bylaw, the *Local Government Act* or *Community Charter*, or
  - b) final consideration of any Permit application,
- and direct staff or the applicant to provide additional information relevant to the application.

### **Requirements to Post Notice**

39. In accordance with Section 892(8) of the *Local Government Act*, all applicants applying for an Official Community Plan amendment, or a Zoning Bylaw amendment, shall post notice in accordance with Paragraphs 40-45.
40. Notwithstanding Paragraph 39, posting notice is not required for amendments to the Zoning Bylaw or Official Community Plan initiated by the City of Penticton affecting ten or more parcels.

### **Form of Notice**

41. A sign containing the information prescribed by the Manager of Planning shall be erected on the subject site at least ten days before the date of the Public Hearing and maintained in place until the day following the Public Hearing. If the Public Hearing has been waived in accordance with Section 890(4) of the *Local Government Act*, the sign shall be erected at least ten days prior to scheduled third reading of the amendment bylaw.
42. Where a sign under Paragraph 41 must be erected, the applicant shall, at their cost, have the sign erected by the contractor designated by the City to fabricate and erect signs required by this bylaw.
43. The cost of posting notice under paragraph 41 shall be specified in the Fees and

Charges Bylaw.


**Requirements to Maintain Signage and Failure to Post Notice**

44. The applicant shall promptly have a notice sign repaired by the City Sign Contractor, at the applicant's cost, if it is destroyed or damaged such that it no longer conveys the information prescribed by the Manager of Planning.
45. If an applicant fails to post or maintain notice in accordance with this Bylaw, Council, by resolution, may:
- a) postpone consideration of the application until notice is posted in accordance with this Bylaw; or
  - b) reject the application.
46. Notwithstanding Paragraph 44, if a sign is deliberately or accidentally removed, damaged or destroyed, the applicant is deemed to have complied with the requirement to post and maintain notice under this bylaw if:
- a) The applicant made a reasonable effort to comply with Paragraph 44; and
  - b) The removal, damage or destruction of the sign was not the result of a deliberate or negligent action by the applicant.

**Reapplication**

47. Subject to Section 895(3) of the *Local Government Act*, an application for a Permit or bylaw amendment that has been refused by the Council shall not be made within a six-month period immediately following the date of refusal.

READ A FIRST time this 5th day of October, 2009.  
READ A SECOND time this 5th day of October, 2009.  
READ A THIRD time this 5th day of October, 2009.  
RECONSIDERED and FINALLY PASSED and ADOPTED  
this 19<sup>th</sup> day of October, 2009.

  
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Dan Ashton, Mayor

  
\_\_\_\_\_  
Cathy Ingram, City Clerk

Certified a true copy of Bylaw  
No. 2009-62 as adopted.

  
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Cathy Ingram, City Clerk