

CITY OF NANAIMO

BYLAW NO. 5549

A BYLAW TO DELEGATE COUNCIL'S POWERS
AND TO ESTABLISH APPLICATION PROCEDURES IN RESPECT OF BYLAWS,
AGREEMENTS AND PERMITS UNDER PART 27 (HERITAGE CONSERVATION)
OF THE *LOCAL GOVERNMENT ACT*

The Municipal Council of the City of Nanaimo, in open meeting assembled, ENACTS AS FOLLOWS:

1. Title

This Bylaw may be cited for all purposes as the City of Nanaimo "HERITAGE PROCEDURES BYLAW 2002 NO. 5549".

2. Severability

If any section of this Bylaw is held to be invalid by a court of competent jurisdiction, that section may be severed from the Bylaw without affecting the validity of the remaining portions of the Bylaw.

3. Definitions

In this Bylaw :

"Council"	means the Council of the City of Nanaimo.
"Design Advisory Panel"	means a select committee of the City of Nanaimo as established under Section 238 of the <i>Local Government Act</i> .
"General Manager"	means the General Manager of the Development Services Department of the City of Nanaimo.
"Heritage Alteration Permit"	means a permit authorizing alterations or other actions in relation to protected heritage property or property within a heritage conservation area pursuant to Section 972 of the <i>Local Government Act</i> .
"Heritage Register"	means the Community Heritage Register of the City of Nanaimo as established under Section 954 of the <i>Local Government Act</i> .
"Heritage Revitalization Agreement"	means an agreement between the City and the owner of heritage property pursuant to Section 966 of the <i>Local Government Act</i> .

“Manager of Building Inspection”	means the Manager of the Building Inspection Division of the City of Nanaimo.
“Nanaimo Community Heritage Commission”	means the Community Heritage Commission of the City of Nanaimo as established under Section 953 of the <i>Local Government Act</i> .
“Plan Nanaimo Advisory Committee”	means a select committee of the City of Nanaimo as established under Section 238 of the <i>Local Government Act</i> .

4. Withholding of Approvals

- 4.1 The Manager of Building Inspection shall withhold the issuance of any building or demolition permit for the following actions where he or she is of the opinion that the permit would authorize an alteration inconsistent with the heritage protection of the property:
 - 4.1.1 an alteration to property that is included in the Heritage Register;
 - 4.1.2 an alteration to property that is included in Heritage Conservation Area #1 - Downtown/Fitzwilliam Street Corridor of “OFFICIAL COMMUNITY PLAN BYLAW 1996 NO. 6000”;
 - 4.1.3 an alteration to property that is the subject of a heritage designation bylaw under Section 967 of the *Local Government Act*;
 - 4.1.4 an alteration to property in respect of which a heritage control period has been declared under Section 964 of the *Local Government Act*.
- 4.2 The Manager of Building Inspection shall not withhold the issuance of any building permit in respect of any alteration which is required by an enactment, nor any demolition permit where the demolition is reasonably required to mitigate a hazard to public safety.
- 4.3 The Manager of Building Inspection shall notify the applicant of a permit withheld under this section by registered mail that the matter of the issuance of the permit will be considered by the Council at its next regular meeting after the approval is withheld, the date, time and location of which are stated in the notice, unless the meeting date is within five days of the date on which the notice would be mailed, in which case the notice must be given in person and not mailed.

5. Delegation of Authority

- 5.1 Subject to Section 5.3., Council delegates to the General Manager the powers, duties and functions of Council in respect of:
- 5.1.1 heritage inspections under Section 956 of the *Local Government Act*;
 - 5.1.2 a requirement that an applicant provide heritage impact information under Section 958 of the *Local Government Act*;
 - 5.1.3 the making of agreements with applicants to prevent or mitigate impairment of the heritage value or heritage character of property where an application for a building permit or demolition permit described in Section 4.0 of this Bylaw has been made and the building permit or demolition permit would otherwise be withheld in accordance with that section; and
 - 5.1.4 Heritage Alteration Permits pursuant to Sections 972 and 973 of the *Local Government Act*, including, without limitation, establishing requirements and conditions of a Heritage Alteration Permit, and the determination of whether such requirements and conditions have been met.
- 5.2 Subject to Section 972(4) of the *Local Government Act*, the General Manager may, in issuing a Heritage Alteration Permit, vary the provisions of a bylaw or permit referred to in Section 972 of the *Local Government Act*.
- 5.3 The delegation under Section 5.1. does not include the power to issue a Heritage Alteration Permit that:
- 5.3.1 varies a regulation contained in "ZONING BYLAW 1993 NO. 4000" by more than 50 percent;
 - 5.3.2 varies an off-street parking requirement contained in "DEVELOPMENT PARKING REGULATIONS BYLAW 2002 NO. 5541" by more than 50 percent;
 - 5.3.3 permits construction of a proposed development exceeding 4,600 square metres (49,515.61 square feet);
 - 5.3.4 permits construction of more than 50 dwelling units;
 - 5.3.5 varies signage that is not considered by the General Manager to be an integral part of a building's design;
 - 5.3.6 notwithstanding Section 5.3.1., varies site coverage or conditions of use beyond the requirement contained in "ZONING BYLAW 1993 NO. 4000";
 - 5.3.7 notwithstanding Section 5.3.1., varies the building height contained in "ZONING BYLAW 1993 NO. 4000" by more than 1 metre (3.28 feet);
 - 5.3.8 notwithstanding Section 5.3.1., varies a watercourse leave strip contained in "ZONING BYLAW 1993 NO. 4000" by more than 20 percent.

5.4 If the General Manager requires security under section 973(2)(c) of the *Local Government Act* to guarantee the performance of the terms, requirements and conditions of a permit relating to the form, exterior design or exterior finish of the building or structure, then the amount of the security must be no more than the amount estimated by the General Manager to be the actual cost of constructing the building or structure so as to conform to the requirements of the Heritage Alteration Permit with respect to the form, character, exterior design or exterior finish as the case may be.

5.4.1 Section 5.4. shall not be interpreted as limiting or impairing the authority of the General Manager to require security in connection with a Heritage Alteration Permit.

5.5 Despite the delegation under Section 5.1., a member of Council may, prior to the issuance of the Heritage Alteration Permit, request that the permit application be referred to Council for consideration and Council may, upon considering the matter, exercise its power in relation to the Heritage Alteration Permit under the *Local Government Act* or refer the matter to be dealt with by the General Manager.

6. Reconsideration

6.1 Where an applicant or owner of property subject to a decision made by the General Manager pursuant to Section 5.0. of this Bylaw is dissatisfied with the decision, the applicant or owner may apply to the Council for reconsideration of the matter within 30 days of the decision being communicated to him or her.

6.2 An application for reconsideration must be delivered in writing to the City Clerk and must set out the grounds upon which the applicant considers the requirement or the decision of the General Manager is inappropriate and what, if any, requirement or decision the applicant considers the Council ought to substitute.

6.3 The City Clerk must place each application for reconsideration on the agenda of a regular meeting of Council to be held not earlier than two weeks from the date the application for reconsideration was delivered, and must notify the applicant and any other party who the City Clerk reasonably considers may be affected by the reconsideration of the date of the meeting at which the reconsideration will occur.

6.4 At the meeting, the Council may hear from the applicant and any other person interested in the matter under reconsideration who wishes to be heard, and may either confirm the requirement or decision of the General Manager, amend or set aside all or part of the decision of the General Manager, or make its own decision including imposing terms, requirements and conditions.

7. Heritage Alteration Permit

- 7.1 Every application for a Heritage Alteration Permit, or an amendment to a Heritage Alteration Permit, must be made by the registered owner or his or her agent in writing.
- 7.2 An application under Section 7.1. must be made in the form required by "DEVELOPMENT APPROVAL PROCEDURES AND NOTIFICATION BYLAW 1991 NO. 3892" for a Development Permit.
- 7.3 The procedures set out in "DEVELOPMENT APPROVAL PROCEDURES AND NOTIFICATION BYLAW 1991 NO. 3892" for the processing of an application for a Development Permit apply to an application for a Heritage Alteration Permit or an amendment to a Heritage Alteration Permit except as modified by this Bylaw .
- 7.4 An application fee shall be paid to the City of Nanaimo as set out in "DEVELOPMENT SERVICES FEES AND CHARGES BYLAW 1999 NO. 5357."
- 7.5 The Development Services Department shall forward the application for a Heritage Alteration Permit, or an amendment to a Heritage Alteration Permit, to the Design Advisory Panel for review , upon which a recommendation shall be forwarded to the General Manager.

8. Heritage Revitalization Agreements

- 8.1. Every application for a Heritage Revitalization Agreement, or an amendment to a Heritage Revitalization Agreement, must be made by the registered owner or his or her agent in writing.
- 8.2. An application under Section 8.1. must be made in the form required by "DEVELOPMENT APPROVAL PROCEDURES AND NOTIFICATION BYLAW 1991 NO. 3892" for a Development Permit, except where use or density of use are varied in which case the application shall follow the form required for a zoning bylaw amendment.
- 8.3. The procedures set out in "DEVELOPMENT APPROVAL PROCEDURES AND NOTIFICATION BYLAW 1991 NO. 3892" for the processing of an application for a Development Permit apply to an application for a Heritage Revitalization Agreement or an amendment to a Heritage Revitalization Agreement except as modified by this Bylaw . Where a Heritage Revitalization Agreement will vary use or density of use the procedures for amending a zoning bylaw shall apply.
- 8.4. An application fee shall be paid to the City of Nanaimo as set out in "DEVELOPMENT SERVICES FEES AND CHARGES BYLAW 1999 NO. 5357."
- 8.5. The Development Services Department shall forward the application for a Heritage Revitalization Agreement, or an amendment to a Heritage Revitalization Agreement, to the Design Advisory Panel for review, upon which, a recommendation shall be forwarded to the General Manager. Alternatively, where the application will vary use or density of use, it shall be forward to the Plan Nanaimo Advisory Committee, upon which, a recommendation shall be forwarded to Council.

9. Heritage Designation

- 9.1 The registered owner of real property within the City of Nanaimo, or his or her agent authorized in writing may apply for Heritage Designation Protection pursuant to Section 967 of the *Local Government Act*.
- 9.2 Every application for Heritage Designation Protection shall be submitted in writing to the Development Services Department and shall be accompanied by the following:
- 9.2.1 a description of the current use of the property;
 - 9.2.2 colour and black/white photographs of each elevation of the property.
 - 9.2.3 information on the heritage significance and architectural merit of the property;
 - 9.2.4 site plan of the property;
 - 9.2.5 elevation drawings showing the architectural features, characteristics and colours of the exterior of the building;
 - 9.2.6 details of affixed interior building features or fixtures proposed to be subject to protection;
 - 9.2.7 details of any landscape features proposed to be subject to protection.
- 9.3. The Development Services Department shall forward the application for Heritage Designation Protection to the Nanaimo Community Heritage Commission for review, upon which, a recommendation shall be forwarded to Council.

10. Amendments to the Heritage Register

Requests to add buildings, structures or sites to, or remove buildings, structures or sites from, the City of Nanaimo Heritage Register will be processed in the following manner:

- 10.1 written requests by the property owner will be reviewed by the Development Services Department on an annual basis, unless special circumstances require otherwise;
- 10.2 Development Services Department staff will compile background information on the subject building, structure or site;
- 10.3 Development Services Department staff and the Nanaimo Community Heritage Commission will evaluate the historical, architectural and contextual value and character of the subject building, structure or site;

- 10.4 Development Services Department staff and the Nanaimo Community Heritage Commission will forward a recommendation to Council regarding the proposed removal or addition of the building, structure or site from the Heritage Register;
- 10.5 Council may add or remove a building, structure or site from the Heritage Register by resolution. The owner(s) of the subject building, structure or site is then advised of Council's decision pursuant to Section 974 of the *Local Government Act*.

PASSED FIRST, SECOND AND THIRD READINGS 2002-OCT-07.
ADOPTED 2002-OCT-21.

G. R. KORPAN
MAYOR

J. T. BOWDEN
CITY CLERK