

SUMMARY:

The Heritage Procedures Bylaw sets the procedures for application and issuance of Heritage Alteration Permits, Heritage Designations Bylaws, Heritage Revitalization Agreements, Heritage Conservation Covenants and inclusion on the Heritage Register. The bylaw defines the different types of heritage conservation tools and outlines the information that must be provided when applying for each type of heritage conservation tool.

This bylaw is a 'consolidated' version and includes amendments up to the date listed in the bylaw heading. It is placed on the Internet for convenience only, is not the official or legal version, and should not be used in place of certified copies which can be obtained through the City Clerk's Office at City Hall. Plans, pictures, other graphics or text in the legal version may be missing or altered in this electronic version.

CITY OF KELOWNA
BYLAW NO. 7776
REVISED: November 16, 2009

CONSOLIDATED FOR CONVENIENCE TO INCLUDE: BYLAW NOS. 8206, 8324, 8527, 8748, 10206 and 10263
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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 Kelowna, in open meeting assembled, enacts as follows:

1.0 TITLE

1.1 This Bylaw may be cited as "Heritage Procedures Bylaw No. 7776."

2.0 SEVERABILITY

2.1 If any section, sub-section, clauses, sub-clause, or phrase of this bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this bylaw.

3.0 DEFINITIONS

3.1 In this bylaw,

'Advisory Planning Commission' means the **Advisory Planning Commission** of the City of Kelowna established under Section 898 of the Local Government Act,

BL8748 added the following definition:

'**Building Permit**' means a permit to perform work regulated by the City of Kelowna Building Bylaw No. 7245, 1993,

'**Community Heritage Commission**' means the **Community Heritage Commission** of the City of Kelowna as established under Section 953 of the Local Government Act,

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

BL10206 amended title of definition:

'**Director of Land Use Management**' means the person appointed by **Council** as such and includes his or her lawful deputy,

BL8748 replaced Minor and Major Heritage Alteration Permit with the following definition:

'**Heritage Alteration Permit**' means a permit pursuant to Section 972 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 a **Heritage Conservation Area** identified in the City of Kelowna Official Community Plan pursuant to Section 971 of the Local Government Act,

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BL8748 added the following definition:

'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,

BL8748 added the following definition:

'Heritage Designation Bylaw' means a bylaw adopted by the City of Kelowna pursuant to Section 967 of the Local Government Act,

BL8527 added the following definition:

'Heritage Register' means the **Heritage Register** of the City of Kelowna as established under Section 954 of the Local Government Act,

'Heritage Revitalization Agreement' means an agreement between the City and the owner of heritage property pursuant to Section 966 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;
- (b) the registered holder of the last registered agreement for sale; and
- (c) the holder or occupier of land held in the manner mentioned in Sections 356 and 357 of the Local Government Act,

BL8527 added the following definition:

'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**, 1976, No. 4500' as amended or replaced from time to time.

4.0 APPLICABILITY

BL8527 replaced Sub-section 4.1:

4.1 This bylaw shall apply to the following:

- (a) an amendment of a bylaw under Part 27, Heritage Conservation of the Local Government Act;
- (b) properties identified within a **Heritage Conservation Area** under Section 971 of the Local Government Act;
- (c) a **Heritage Revitalization Agreement** under Section 966 of the Local Government Act;
- (d) the designation of real property in whole or in part as protected heritage property under Section 968 of the Local Government Act;
- (e) the issuance of a **Heritage Alteration Permit** under Section 971 of the Local Government Act; and
- (f) properties identified within a **Heritage Register** under Section 954 of the Local Government Act.

BL8748 added the following paragraph:

- (g) a **Heritage Conservation Covenant** under Section 219 of the Land Title Act."

5.0 HERITAGE REVITALIZATION AGREEMENT

5.1 Every application for a **Heritage Revitalization Agreement**, or an amendment of a **Heritage Revitalization Agreement**, must be made by the registered owner or his agent authorized in writing.

BL8748 replaced Subsection 5.2 with the following:

5.2 Every application for a **Heritage Revitalization Agreement**, or an amendment of a **Heritage Revitalization Agreement**, shall be made on an approved form, signed by the applicant and accompanied by the following:

- (a) the application fee outlined in Development Application Fees Bylaw No. 8034 as amended or replaced from time to time;
- (b) proposed uses 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; and
- (i) details of landscaping.

5.3 An application for a **Heritage Revitalization Agreement** shall be forwarded to both the **Community Heritage Commission** and the **Advisory Planning Commission** for review. When the application is considered by **Council**, the recommendations of the **Community Heritage Commission** and the **Advisory Planning Commission** shall be taken into consideration.

5.4 Prior to **Council** consideration of a **Heritage Revitalization Agreement** or the amendment of a **Heritage Revitalization Agreement** involving a change in use or density, a public hearing shall be held and the following public notification shall be required:

BL8748 replaced Paragraph (a) with the following:

- (a) the applicant shall post a 'Heritage Proposal Sign' on the subject property a minimum of ten days prior to the meeting(s) of the **Community Heritage Commission** and the **Advisory Planning Commission** and ten days prior to the Public Hearing date of **Council** in accordance with the conditions outlined on Schedule "1" attached to and forming part of this bylaw. Failure to post the sign shall result in the postponement of the **Community Heritage Commission** and **Advisory Planning Commission** consideration of the application and shall require re-scheduling of the Public Hearing upon completion of the sign posting required by this bylaw. Any costs incurred by the City for public notification as a result of such postponement shall be the responsibility of the applicant; and

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- (b) the City Clerk shall mail or otherwise deliver notice of the Public Hearing pursuant to Section 892 of the Local Government Act to the owners and any tenants in occupation of all parcels within a distance of 100 metres from the lands which are the subject of the **Heritage Revitalization Agreement** application.
- 5.5 Subject to Section 950 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 his agent authorized in writing may apply for Heritage Designation Protection pursuant to Section 967 of the Local Government Act.

BL8748 replaced Subsection 6.2 with the following:

- 6.2 Every application for a **Heritage Designation Bylaw** shall be made on an approved form, signed by the applicant and accompanied by the following:
- (a) the application fee outlined in Development Application Fees Bylaw No. 8034 as amended or replaced from time to time;
 - (b) the use 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; and
 - (h) details of any landscape features proposed to be subject to protection.

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- 6.3 An application for Heritage Designation shall be forwarded to the **Community Heritage Commission** for review, after which upon completion, a recommendation will be forwarded to **Municipal Council**.

BL8748 added the new Section 7.0 as follows:

7.0 HERITAGE CONSERVATION COVENANT

- 7.1 The registered owner of real property within the City of Kelowna, or his 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 an approved form, signed by the applicant and accompanied by the following:
- (a) the application fee outlined in Development Application Fees Bylaw No. 8034 as amended or replaced from time to time;
 - (b) the use 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; and
 - (h) details of any landscape features proposed to be subject to protection.
- 7.3 An application for a **Heritage Conservation Covenant** shall be forwarded to the **Community Heritage Commission** for review, after which upon completion, a recommendation will be forwarded to **Council**.

BL8748 replaced Section 8.0 as follows:

8.0 HERITAGE ALTERATION PERMIT

- 8.1 Council may, by resolution, issue **Heritage Alteration Permits**.
- 8.2 The uses or density of land use permitted under the zone designation of the **Zoning Bylaw** may not be varied by a **Heritage Alteration Permit**.

BL10206 amended sub-section 8.3:

- 8.3 The **Director of Land Use Management** pursuant to Sections 950 and 972 of the Local Government Act, 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, establishing the requirements and conditions of the permit, the approval of the permit, and the determination of whether such requirements and conditions have been met. The authority shall be limited to **Heritage Alteration Permits** which meet the following criteria:

(a) Protected Heritage Property:

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

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

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.

(b) Heritage Conservation Areas:

The application is for a development that requires the issuance of a **Building Permit** for the demolition or removal of a building, the construction of a new building or for structural changes to the exterior of an existing building located within a **Heritage Conservation Area**. **Heritage Alteration Permits** for the above development activities must be obtained prior to or in conjunction with the issuance of a **Building Permit**.

In addition to the above, 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**.

(c) Renewals / Extensions

The application is for renewal or extension of **Heritage Alteration Permits** that have been authorized for issuance or have been issued provided that the term of authorization for issuance of the **Heritage Alteration Permit** does not exceed 12 months from the original date of authorization for issuance of the **Heritage Alteration Permit** by either **Council** or the **Director of Planning and Development Services**, or the term of issuance of the **Heritage Alteration Permit** does not exceed 2 years from the original date of issuance of the **Heritage Alteration Permit**.

Where the authority to issue a **Heritage Alteration Permit** has been delegated to the **Director of Land Use Management** as outlined in this section, the **Director of Land Use Management** may authorize and approve the permit, authorize and approve the permit as amended, reject, refuse or otherwise deal with the application for a **Heritage Alteration Permit**.

Where the authority to issue a **Heritage Alteration Permit** has been delegated to the **Director of Land Use Management** as outlined in this section, the **Director of Land Use Management** shall forward the application to the **Community Heritage Commission** for review. Upon reviewing the application, the **Community Heritage Commission** shall forward a recommendation to the **Director of Land Use Management**.

8.4 **Heritage Alteration Permits** which meet the following criteria and do not conform to the limitations for **Heritage Alteration Permits** as defined in subsection 8.3 of this Bylaw shall require the approval by **Council** resolution.

(a) Protected Heritage Property:

The application is for structural alterations to a heritage building located on **Protected Heritage Property** which requires the issuance of **Building Permit** and/or a variance to the provisions, except use or density, the **Zoning Bylaw**.

(b) Heritage Conservation Areas:

The application is for a development that requires a variance to the provisions of the **Zoning Bylaw** in order to be issued a **Building Permit** for the demolition or removal of a building, the construction of a new building or for structural changes to the exterior of an existing building located within a **Heritage Conservation Area**. **Heritage Alteration Permits** for the above development activities must be obtained prior to or in conjunction with the issuance of a **Building Permit**.

In addition to the above, applicants must obtain a **Building Permit** for new construction prior to or in conjunction with the issuance of a **Building Permit** for demolition or removal of a building within a **Heritage Conservation Area**.

The Planning & Development Services Department shall forward the application for a **Heritage Alteration Permit** to the **Community Heritage Commission** and, where a variance to the **Zoning Bylaw** is required, to the **Advisory Planning Commission** for review with recommendations to be forwarded to **Council**.

- 8.5 Every application for a **Heritage Alteration Permit** must be made by the registered owner or his agent authorized in writing.
- 8.6 Every application for a **Heritage Alteration Permit** shall be made on an approved form, signed by the applicant and accompanied by the following:
- (a) the application fee outlined in Development Application Fees Bylaw No. 8034 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 proposed alterations to the heritage property.

- 8.7 Applicants for a **Heritage Alteration Permit** shall be required to post a 'Heritage Proposal Sign' on the subject property, in accordance with the conditions outlined on Schedule "1" of this bylaw. In the case of where the application is forwarded to a meeting of the **Community Heritage Commission**, the **Advisory Planning Commission** or **Council**, the sign shall be posted a minimum of ten days prior to the date when the proposal is to be reviewed. Failure to post the sign shall result in the postponement of the **Community Heritage Commission**, **Advisory Planning Commission** or **Council** consideration of the application and shall require re-scheduling of the consideration of the application upon completion of the sign posting required by this bylaw. Any costs incurred by the City for public notification as a result of such postponement shall be the responsibility of the applicant."

BL8748 re-numbered Section 8.0 to 9.0; BL8527 added a new Section 8:

9.0 KELOWNA HERITAGE REGISTER

- 9.1 Requests to add buildings to or remove buildings from the **Kelowna Heritage Register** will be processed in the following manner:
- (a) Written requests by the **owner** will be reviewed by the **Planning and Development Services Department** on an annual basis, unless special circumstances require otherwise.
 - (b) **Planning and Development Services Department** staff compiles background information on the subject building(s).
 - (c) **Planning and Development Services Department** staff and the **Community Heritage Commission** evaluate the historical, architectural and contextual qualities of the subject building(s).
 - (d) **Planning and Development Services** staff and the **Community Heritage Commission** forward a recommendation to **Council** regarding the proposed removal or addition of the buildings to the **Heritage Register**.
 - (e) **Council** may add to or remove a building from the **Heritage Register** by resolution. The **owner(s)** of the subject building(s) is advised of **Council's** decision.

BL10206 and 10263 amended sub-section 9.2:

9.2 Withholding of Approvals

- (a) The **Director of Land Use Management** may withhold the issuance of any building permit where the **Director of Land Use Management** is of the opinion that the building permit would authorize an alteration to property that is included in the **Heritage Register**;
- (b) The **Director of Land Use Management** may withhold the issuance of any building permit for the demolition of a building included in the **Heritage Register** until a building permit has been issued with respect to the proposed new construction.

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- (c) The **Director of Land Use Management** may not withhold the issuance of a building permit for the demolition or alteration of a building included in the **Heritage Register** where the demolition or alteration is reasonably required to mitigate a hazard to public safety.
- (d) The **Director of Land Use Management** must notify the applicant for a building permit withheld under this section by registered mail 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 must be 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 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**.

BL8748 renumbered Section 9.0 to 10.0; BL8527 BL10206 amended sub-section 10.0:

10.0 RE-CONSIDERATION

- 10.1 Where an applicant or owner of property subject to a decision made by the **Director of Land Use Management** pursuant to Section 7.3 of this bylaw is dissatisfied with the decision, the applicant or owner may apply to the **Council** for re-consideration of the matter within 30 days of the decision being communicated to them.
- 10.2 An application for re-consideration must be delivered in writing to the City Clerk and must set out the grounds upon which the applicant considers the requirement or decision of the **Director of Land Use Management** is inappropriate and what, if any, requirement or decision the applicant considers the **Council** ought to substitute.
- 10.3 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.
- 10.4 At the meeting, the **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 **Director of Land Use Management** or substitute its own requirement or decision.

BL8748 renumbered Section 10.0 to 11.0; BL8206 added the following Section:

11.0 ENACTMENTS

- 11.1 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.

Read a first, second and third time this 20th day of January, 1997.

Adopted by a 2/3 vote of the Municipal Council of the City of Kelowna this 3rd day of February, 1997.

"Walter Gray"

Mayor

"D.L. Shipclark"

City Clerk

BL8748 deleted Schedule 1 in its entirety and renumbered the existing Schedule 2 to Schedule 1

SCHEDULE "1" to Bylaw No. 7776

HERITAGE PROPOSAL SIGN REQUIREMENTS

1.0 **GENERAL INFORMATION:**

The City's Planning & Development Services Department will supply the applicant with the correct number of Signs for his application for a fee of \$25.00 per sign. The format of the sign shall be in accordance with page 2 of this schedule.

2.0 **LOCATION AND SITING SPECIFICATIONS:**

All Heritage Proposal Signs must be placed so that they can be clearly viewed from the street, approximately 3 m (10 ft.) inside the property line at a spacing of at least one notice every 100 m (300 ft.) of street frontage. No Sign shall 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 sound, workmanlike manner, capable of withstanding wind and weather.

2.1 **Heritage Proposal Signs**

The Heritage Proposal sign(s) will provide the general public with the basic facts relating to the application. The sign will indicate the date of the Public Meetings of the **Community Heritage Commission**, the **Advisory Planning Commission** (if applicable), and the date of the Public Hearing of **Council**.

Once the Public Hearing date has been set by **Council**, it will be the applicant's responsibility to mark the assigned date on the sign(s). (The date must be written with a permanent marker.)

BL8324 replaced Section 3.0; BL10206 amended sub-section 3.0:

3.0 **TIMING:**

All Heritage Proposal Signs must be installed by the applicant immediately upon notification by the Planning & Development Services Department, which will be confirmed 10 calendar days prior to the Public Meeting date of either the **Community Heritage Commission** or the **Advisory Planning Commission**. The Heritage Proposal Sign must remain in place continuously until **City Council** or the **Director of Land Use Management** has concluded deliberations on the application. All signs must be removed within seven days of the final decision of **City Council** or the **Director of Land Use Management**.

4.0 **STATUTORY DECLARATION:**

The applicant must provide the City's Planning & Development Services Department with a statutory declaration that all Heritage Proposal Signs required by this bylaw have been installed on the land involved before the application be considered at a Public Meeting.

The contents of the declaration shall be as follows:

CITY OF KELOWNA	
STATUTORY DECLARATION	
POSTING OF HERITAGE PROPOSAL SIGNS	
I, _____ of _____	
(print name in full)	(address)
hereby certify that I did post _____ Heritage Proposal Signs for	
(No. of signs)	
Application, File No. _____, in accordance with Sections 5.4, 7.5 and/or 7.6 of	
Heritage Procedures Bylaw No. 7776, as amended from time to time on the _____ day of	
_ 19____, at _____ a.m./p.m.	
Sworn before me at _____) _____
in British Columbia, this _____ day of _____, 19____.	

Commissioner for taking Affidavits for British Columbia)



HERITAGE PROPOSAL

This property is under consideration by Kelowna City Council for issues related to this structure and/or property identified as having heritage value.

APPLICATION NUMBER: _____

APPLICANT: _____ TEL: _____

OWNER: _____

PURPOSE OF THE APPLICATION: _____

EXISTING ZONE: _____

COMMUNITY HERITAGE COMMISSION

PUBLIC MEETING DATE: _____

ADVISORY PLANNING COMMISSION

PUBLIC MEETING DATE: _____

COUNCIL

PUBLIC HEARING DATE: _____

Please contact the Planning
Dept. for further information.
Kelowna City Hall, 1435 Water St.
Phone: 862-3304