

THE CITY OF WINNIPEG

**THE DEVELOPMENT PROCEDURES BY-LAW
NO. 5893/92**

A By-law of The City of Winnipeg to provide for procedures under Part 20 of The City of Winnipeg Act and the making of zoning variance orders and conditional use zoning orders.

1. This By-law may be cited as "**The Development Procedures By-law**".

DEFINITIONS

2. In this By-law:

"appeal committee" means

- (a) the community committee for the community in which the land described in the relevant application is located, or
- (b) the committee on planning and community services under section 6, or
- (c) the committee on planning and community services where a variance order or conditional use order is made in respect of land covered by The Downtown Winnipeg Zoning By-law.

"application" means a development application.

"bulk" means the size of buildings or structures and their relationships to each other and to open areas and lot lines and includes

- (a) height and floor area
- (b) the area of the zoning lot on which a building is located and the number of dwelling units or rooms within such building in relation to the area of the zoning lot
- (c) the shape of buildings or structures
- (d) the location of exterior walls of buildings in relation to lot lines, to other walls of the same building, to legally required windows, and to other buildings

- (e) open areas on a zoning lot and the relationship between or among open areas and buildings or structures on the zoning lot.

"conditional use" means a use of a building or land that might be permitted in a zoning (development) classification as provided for in a zoning (development) by-law.

C.W. Act section 574

"conditional use order" means an order approving a conditional use under Part 20 of The City of Winnipeg Act.

"construction" has the same meaning as under Part 15 of The City of Winnipeg Act.

"density" means the number of permitted dwelling units or the allowable floor area of buildings related to the area of the zoning lot on which those dwelling units or floor area are located.

"development" means the construction of a building on, over or under land, a change in the use or intensity of use of a building or land, the removal of soil or vegetation from land, the deposit or stockpiling of soil or material on land, and the excavation of land.

"development application" means any application under The City of Winnipeg Act in connection with a development or an approval, permit, order, by-law or amendment which allows or would allow a development and includes any appeal filed against a variance order or conditional use order related to any one or more of them.

"director of planning" or **"director"** means the director of planning of the city and includes any officer or employee of the city to whom that director has delegated an action or the exercise of a power, duty or decision relevant to this by-law.

"representations" means information, material or argument presented orally or submitted in writing or other form at a public hearing including representations made in person or on behalf of another person.

"variance" means the modification of a provision of a zoning by-law, other than a change in use, by a variance order.

C.W. Act section 574

"variance order" means an order making or refusing a variance.

"zoning by-law" means a development by-law under Part 20 of The City of Winnipeg Act.

"zoning rule" or **"rule"** means any requirement of a zoning by-law.

"zoning tolerance" or **"tolerance"** means a variance order not exceeding 5% of a requirement of a zoning by-law made by the director of planning granting a tolerance as provided in this by-law.

DEVELOPMENT APPLICATIONS

3. (1) Development applications shall be made in accordance with section 629(1) of The City of Winnipeg Act which provides

"629(1) An application for adoption of a development by-law, the approval of a plan of subdivision, conditional use or variance, or consent to conveyance, may be made by the owner of the building or land to which the application refers, or by a person authorized in writing by the owner."

- (2) Under section 629(2) of The City of Winnipeg Act an application referred to in subsection (1) may be refused if in the opinion of the committee on planning and community services or the board of adjustment it is the same or substantially the same as an application that was rejected within 1 year of the date of the new application.
- (3) An application for a development by-law or approval of a plan of subdivision that does not conform with Plan Winnipeg and any secondary plan for the area in which the land or building is located shall be rejected.

C.W. Act section 630

PUBLIC HEARING ON ZONING OR SUBDIVISION APPLICATION

4. (1) Subject to subsection (2) a proposed zoning by-law or application for subdivision approval by by-law shall be referred under Part 20 of The City of Winnipeg Act to the community committee for the community in which the land is located, or where that land is located in more than one community to the committee on planning and community services or to one of those community committees as designated by the committee on planning and community services and the committee to which the application is referred shall conduct the public hearing required by that Part 20.

- (2) Subject to subsection 6(1) a proposed zoning by-law which would enact or amend a zoning by-law establishing or amending the text of a zoning by-law without changing the zoning classification of any land shall be referred to the committee on planning and community services to conduct the public hearing referred to in subsection (1).

PUBLIC HEARING ON SECONDARY PLAN

- (5) (1) A proposed Secondary Plan By-law shall, after first reading and before second reading, be referred for conduct of a public hearing in accordance with section 632 to 645 of The City of Winnipeg Act:
 - (a) where the land to which the proposed Secondary Plan By-law applies is located in one community to the community committee for that community;
 - (b) where the land is located in two or more communities to the community committee for one of those communities as designated by resolution of City council;

but if council deems it more appropriate it may by resolution designate either the executive policy committee or a standing committee to conduct the public hearing.

- (2) Starting at whichever committee of council conducts the public hearing referred to in subsection (1) its report and recommendations shall be forwarded up to council, with the combined report and recommendations of each subsequent committee considering the matter, in the sequence community committee – any standing committee other than the committee on planning and community services – the committee on planning and community services and executive policy committee; but nothing in this by-law shall preclude council considering additional reports and recommendations from any committee making them.

COMBINED HEARING ON BY-LAW PLUS VARIANCE OR CONDITIONAL USE

- (6) (1) Where a proposed development requires public hearings on two or more of an amendment to Plan Winnipeg, an amendment to a Secondary Plan, an amendment to a zoning by-law, a variance order or a conditional use order the required public hearings shall be combined and shall be held by the committee set by or designated under sections 4 and 5 but where an application for a conditional use order or variance order is involved the committee on planning and community services, which must hear any appeal, shall not be the hearing committee.

- (2) Where subsection (1) applies the committee referred to in that subsection shall make the variance order or conditional use order in accordance with this by-law and The City of Winnipeg Act and any appeal against the variance order or conditional use order shall be heard and decided by the committee on planning and community services.

C.W. Act section 641

SUBDIVISION BY "SHORT-FORM" OR CONSENT

7. An application for subdivision approval under section 619(1) of The City of Winnipeg Act or for a consent under section 623 of that Act shall be referred to the committee on planning and community services as the designed approval committee under section 619(1) of The City of Winnipeg Act.

REPORTS TO COUNCIL

8. (1) The committee of council that conducts a public hearing under Part 20 of The City of Winnipeg Act to consider a proposed zoning or subdivision approval by-law shall forward its report and recommendation to council to the committee on planning and community services for consideration and its recommendations to council unless that committee is the hearing committee, and
- (2) The committee on planning and community services shall forward any report and recommendation of the community committee together with its own recommendations or report and recommendations to the executive policy committee for its consideration and forwarding of the combined report and all recommendations to City council but nothing in this by-law shall preclude council considering additional reports and recommendations from any committee making them.

NOTICE OF PUBLIC HEARING

9. (1) Notice of public hearings held under Part 20 of The City of Winnipeg Act shall be given as required by sections 632 to 635 of The City of Winnipeg Act and section 10 of this by-law but no additional notice as referred to in clause 632(2) (e) of that Act shall be necessary.
- (2) The mailing address for notice of a public hearing referred to in subsection 632(3) of The City of Winnipeg Act shall be the address described in the application in the case of an applicant and in the case of any other person the address, if any, contained in the last revised assessment roll of the City and if there is none such address as the city clerk determines.

Note: Those sections 632 to 635 are as follows:

“Content of notice

632(1) A notice of a public hearing under this Part shall include the following:

- (a) an explanation of the nature of the matter to be considered at the public hearing;
- (b) the date, time and place of the public hearing, and the name of the committee or board conducting the public hearing;
- (c) a statement that the purpose of the public hearing is to receive representations respecting the matter to be considered;
- (d) a statement that documents respecting the matter are available for any person to inspect and to make a copy, subject to the payment of such fee as council may set, at a place and during times specified in the notice;
- (e) a general description of the area or unit of land affected by the matter to be considered;
- (f) where the matter to be considered changes the use of a specific building or unit of land, a map showing the area in which the building or land is located, including reference to street names or other boundaries;
- (g) such other matters as council considers advisable.

Manner of giving notice

632(2) Subject to subsection (5), a notice of a public hearing under this Part shall be given as follows:

- (a) by serving a copy of the notice personally or by mail at least 14 days before the day of the public hearing on
 - (i) the applicant,
 - (ii) any municipality or planning district located in whole or part within one km, or such greater distance as council considers advisable, of the land or building in respect of which the public hearing is to be conducted, and
 - (iii) any other person that council considers advisable;

- (b) by publishing the notice at least once in two newspapers with general circulation in the city, not less than 14 days before the day of the public hearing;
- (c) in the case of a Plan Winnipeg by-law or secondary plan by-law, by publishing the notice in two newspapers with general circulation in the city, at least once per week for two consecutive weeks, the first to be published not less than 21 days before the day of the public hearing.
- (d) in the case of a Plan Winnipeg by-law, by serving a copy of the notice on the minister personally or by mail not less than 21 days before the day of the public hearing.
- (e) in any other manner council considers necessary or advisable.

Deemed notice by mail

632(3) A notice served by mail under subsection (2), shall be sent to the address of the person to be served, as the address is determined by council by by-law passed under subsection 628(1), and is deemed to be received by the person on the day that Canada Post confirms is the day on which the notice is delivered to the address to which it is mailed.

Exemption to newspaper notice

632(4) Where a designated employee determines that an application that is subject to a public hearing affects only a specific building or building site, a notice of the application shall be posted in accordance with subsection 634(1), and the posting of a notice may, subject to a by-law passed under subsection 628(1), substitute for publication of the notice in a newspaper under clause (2)(b).

Notice of Municipal Board hearing

632(5) Notice of a public hearing by The Municipal Board under subsection 581(4) shall be given by serving a copy of the notice, personally or by mail not less than 14 days before the public hearing, on the city and any person who made a representation at the previous public hearing or filed an objection, and in such other manner as The Municipal Board considers advisable.

Minister may vary notice provisions

633 Notwithstanding section 632, the minister may, at the request of council, The Municipal Board or board of adjustment, in writing vary the requirements for notice under this Part where he or she is satisfied that it is impossible or impractical to comply with them.

Posting of notice

634(1) A notice posted under subsection 632(4) shall be

- (a) posted for not less than 14 consecutive days before the day of the public hearing; and
- (b) displayed outdoors in conspicuous locations facing each street adjacent to the land or building referred to in the notice, and located so that the notice is not more than one metre inside the lot line.

Proof of posting of notice

634(2) Evidence that a copy of a notice was posted on at least one occasion during the period referred to in subsection (1) is deemed to be conclusive proof that the notice was posted for the required time.

Material available for inspection

635 Council shall make available, at the place and during hours stated in a notice given under section 632, a copy of the proposed by-law or application and any supporting material, and shall permit any person to inspect it, and to make a copy of it or any part of it, subject to the payment of such fee as council may set by by-law."

SPECIFIC BUILDING OR SITE

10. (1) Where the director determines that a development application under Part 20 of The City of Winnipeg Act that is subject to a public hearing affects only a specific building or building site notice of that application shall be posted in accordance with subsections 632(1) and 634(1) of that Part in substitution for newspaper advertising under clause 632(2) (b) of that Part.

C.W. Act section 632(4)

- (2) The posters required under subsection (1) shall in addition to the requirements of subsections 632(1) and 634(1) of The City of Winnipeg Act be of a size, number and colour as the Director may from time to time prescribe and shall be posted by the applicant unless otherwise directed by the director.
- (3) In compliance with those subsections 632(1) and 634(1) notice by the posters required under subsection (1) of this section shall include

- (a) an explanation of the nature of the matter to be considered at the public hearing;
- (b) the date, time and place of the public hearing, and the name of the committee or board conducting the public hearing;
- (c) a statement that the purpose of the public hearing is to receive representations respecting the matter to be considered;
- (d) a statement that documents respecting the matter are available for any person to inspect and to make a copy, subject to the payment of such fee as council may set, at a place and during times specified in the posters;
- (e) a general description of the area or unit of land affected by the matter to be considered;
- (f) where the matter to be considered changes the use of a specific building or unit of land, a map showing the area in which the building or land is located, including reference to street names or other boundaries;

C.W. Act section 632(1)

and shall be

- (g) posted for not less than 14 consecutive days before the day of the public hearing; and
- (h) displayed outdoors in conspicuous locations facing each street adjacent to the land or building referred to in the notice, and located so that the notice is not more than one metre inside the lot line

C.W. Act section 634(1)

and evidence that a copy of a notice was posted on at least one occasion during the period referred to in clause 3 (g) of this section is deemed to be conclusive proof that the notice was posted for the required time as provided in section 634(2) of The City of Winnipeg Act.

NOTICE OF COMMITTEE REPORTS AND COUNCIL DECISIONS

11. Where under Part 20 of The City of Winnipeg Act notice is required to be given after a public hearing of a report of a committee of council made under that Part or of a decision of council

- (a) subject to clause (b) the City Clerk shall cause notice to be given by ordinary mail to all persons who attended and made representations at that public hearing of the content of the committee report and the date, time and place at which council is to consider the report; and notice of the subsequent decision of council by certified mail, and
- (b) where a written representation was received at that hearing by mail or by other means without the attendance of the person making it the notice referred to in clause (a) shall be mailed to any single address set out thereon for receipt of notice, if any, or if none to any single address given on the filing of the representation, or if none to any one of the addresses contained therein and in the absence of any such address or any such legible address to whatever address the City Clerk determines.

BOARD OF ADJUSTMENT ORDERS

12. Subject to section 6 conditional use applications and all variance applications other than those in respect of which the director of planning makes an order shall be referred to the board of adjustment established by The City of Winnipeg Act to be dealt with in accordance with this by-law and The Board of Adjustment By-law.

NOTICE OF BOARD OF ADJUSTMENT ORDER AND RIGHT TO APPEAL

- 13. (1) When the Board of Adjustment make a conditional use order or variance order the secretary of the board shall as soon as practicable send notice by certified mail to the applicant and subject to subsection (2) to every person who made representations at the public hearing.
- (2) Where a written representation was received by the board at a public hearing on an application, by mail or other means, without the attendance of the person making it the notice referred to in subsection (1) shall be mailed to any single address set out thereon for receipt of notice, if any, or if none to any single address given on the filing of the representation or if none to any one of the addresses contained therein and in the absence of such address or any legible address to whatever address the secretary of the board determines.

- (3) The notice referred to in subsection (1) shall include a copy of the order made, notice of the right of any person who made representations at the public hearing to appeal against the order or any condition therein, and the method of doing so.
- (4) Any person including the director of planning of the City on behalf of the City who made representations at the public hearing may appeal to the appeal committee against the order made or any condition therein by causing a letter of appeal to be received at the office of the city clerk at the described address by not later than 4:30 p.m. of the day 14 days following (but excluding) the date of the notice; i.e. notice date plus 14 = appeal deadline date at 4:30 p.m.

VARIANCE ORDERS BY DIRECTOR OF PLANNING

- 14. (1) The director of planning may on request to do so by an applicant for a variance order consider the application and make any variance order described in subsection (2) where in the opinion of that director the proposed order
 - (a) is consistent with Plan Winnipeg, a secondary plan or development by-law;
 - (b) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area; and
 - (c) is the minimum variation of a development by-law required to relieve the injurious effect of the development by-law on the applicant's property.

C.W. Act section 608(1)

- 14. (2) The director may make an order allowing or rejecting any of the following variances:

Zoning tolerances

- (a) The grant of any zoning tolerance in any zoning district.

Agricultural districts

- (b) In an agricultural district any variance of any yard or bulk rule.

Residential districts

- (c) In the "RA", "RR-2", "R1-20", "R1-9", "R1-6", "R1-5.5", "R1-5", "R1-4.5", "R1-4", "R1-3.5", "R1-3", "R1-2.5", "RP-L", "R2" and "R2-T" Districts any variance of any zoning rule, except lot area for one-family dwellings, single-family dwellings and two-family dwellings.
- (d) In the districts and for the uses described in paragraph (2) (c) a variance of lot area not exceeding 10% of the zoning rule set out in the applicable zoning by-law.
- (e) In each Multiple-Family District including "R2T", but not including "R2", a variance of the zoning rules set out in the applicable zoning by-law:
 - (i) not exceeding 10% of any density rule;
 - (ii) not exceeding 25% of any yard or bulk rule;
 - (iii) not exceeding 25% of any parking or loading rule;
 - (iv) not exceeding 25% of any sign rule; and
 - (v) allowing the temporary development of a parking lot or loading area or both not exceeding 1 year.

Commercial districts

- (f) In each Commercial District, excepting for multiple-family dwelling requirements, a variance of the zoning rules in the applicable zoning by-law:
 - (i) not exceeding 25% of any yard, bulk or floor area limitation rule;
 - (ii) not exceeding 25% of any sign rule;
 - (iii) not exceeding 25% of any parking and loading space rule; and
 - (iv) allowing the temporary development of a parking or loading area or both not exceeding 1 year.
- (g) For multiple family-dwellings in commercial districts a variance as set out in clause (2) (e).

Industrial districts

- (h) In each Industrial District, excepting multiple-family dwelling requirements, a variance of the zoning rules set out on the applicable zoning by-law:
 - (i) not exceeding 25% of any yard, bulk or floor area limitation rule;
 - (ii) not exceeding 25% of any sign rule;
 - (iii) not exceeding 25% of parking and loading space rules; and
 - (iv) allowing the temporary development of a parking or loading area or both not exceeding 1 year.
- (i) For multiple-family dwellings in industrial districts a variance as set out in clause (2) (e).

Park and recreational districts

- (j) In each park and recreational district a variance not exceeding 25% of any yard, bulk or density rule.

Accessory structures

- (k) Subject to paragraphs (a) to (j) any variance of the applicable zoning rules for accessory structures in any zoning district.

CONDITIONS

15. The director of planning may approve an application for a variance order subject to any condition that the director considers necessary to ensure that the proposed development conforms with subsection 14(1).

C.W. Act section 608(2)

16. The director shall not approve an application for a variance order subject to any conditions under section 15 without first conducting a hearing and giving the applicant notice of the date, time and place of the hearing at which the application may appear and make representations.

ZONING TOLERANCES (minor variances of 5% or less)

17. A zoning tolerance varying a zoning requirement by not more than 5% may be granted by the director of planning endorsing on the relevant document or accompanying plans by rubber stamp or other means the phrase "tolerance granted" or any words to the same effect accompanied by a clear indication of the nature of that tolerance by any one or more of words, dimensions and drawings.

NOTICE OF RIGHT TO APPEAL

Tolerances

18. (1) Subject to subsection (2) when the director rejects a tolerance or grants a tolerance applied for in part only or subject to conditions that director shall as soon as practicable give notice to the applicant by certified mail addressed to the address given in the application setting out the tolerance granted and the right to and method of appealing that decision to the appeal committee.

C.W. Act section 643(3)

(2) Where an applicant agrees with a partial tolerance and any conditions as referred to in subsection (1) and wishes to proceed without taking an appeal the applicant may in writing waive statutory notice of and the right to appeal described in subsection (1).

VARIANCES OTHER THAN TOLERANCES

19. When the director of planning grants a variance other than a tolerance the director shall as soon as practicable give notice of the right to appeal to the applicant and to the owners of the lands adjoining the property in respect of which the variance is granted by certified mail addressed to the applicant at the address given in the application and to those adjoining owners in accordance with The City of Winnipeg Act; plus notice to any others who might be affected of their right to appeal by posting of that property in similar manner to posting notice of a public hearing under subsection 632(4) with the necessary modifications of the poster.

FILING AN APPEAL

20. A person who is notified of a right to appeal against a conditional use or variance order may appeal to the appeal committee against the order or any condition therein by causing a written letter of appeal to be received at the office of the city clerk at the described address by not later than 4:30 p.m. of the day 14 days following (but excluding) the date of the notice; i.e. notice date plus 14 = appeal deadline at 4:30 p.m.

APPEALS

21. Where the appeal committee receives an appeal filed in accordance with this by-law against a conditional use order or a variance order it shall conduct a public hearing and make a decision in accordance with this by-law and subsections 608(1) and (2) and sections 611 and 612 of The City of Winnipeg Act as required by subsection 647(3) of that Act.

Note: Those provisions of The City of Winnipeg Act are as follows:

“Conditions for allowing variance

608(1) An order of variance may be made where the designated city administrator or the board of adjustment is of the opinion that the proposed order

- (a) is consistent with Plan Winnipeg, a secondary plan or development by-law;
- (b) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area; and
- (c) is the minimum variation of a development by-law required to relieve the injurious effect of the development by-law on the applicant’s property.

Conditions applied to variance

608(2) Subject to a by-law passed under subsection 607(1), the designated city administrator or the board of adjustment may approve an application for an order of variance subject to any condition that the designated city administrator or the board of adjustment considers necessary to ensure that the proposed development conforms with subsection (1).

Powers respecting applications

611 After completing a public hearing in respect of an application for a conditional use or an amendment of an approved conditional use, the board of adjustment may

- (a) reject the application; or

- (b) approve the application where, in its opinion, the proposed development
 - (i) is compatible with the area,
 - (ii) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area, and
 - (iii) complies with Plan Winnipeg, secondary plans and development by-laws.

Conditions for conditional use

612 The board of adjustment may approve a conditional use subject to conditions that ensure the proposed development complies with clause 611(b).

647(3) Subsection 608(1) and (2), and sections 611 and 612 apply to a decision of a committee of council made under subsection 2.”

NOTICE AND APPEAL HEARING

22. Notice of an appeal hearing shall be given in accordance with sections 9 and 10.

23. At a public hearing the appeal committee shall receive representations from any person, on his or her own behalf or on behalf of another person.

C.W. Act section 638(1)

24. Prior to receiving representations on an application any member of the City Planning, Department present shall briefly explain the nature of the application and read out the report and any recommendations of that Department on the application; unless otherwise directed by the appeal committee.

25. Unless otherwise directed by the appeal committee the appellant shall make his/her/its representations first, followed in order by others in support and others opposed; after which the appellant shall be heard in rebuttal.

26. The appeal committee may restrict the nature and length of representations at a public hearing.

27. The appeal committee may question persons making representations at a public hearing and shall allow opportunity to reply to the appellant and supporters and to rebut those responding to the appeal as provided in section 25 but the board shall not allow cross-examination.

28. After completion of all representations the appeal committee shall not receive further representations unless the appeal committee re-opens representations on one or more issues to all persons wishing to be heard applying the process described in section 25 as closely as practical, subject to the direction of the appeal committee.

FEES

29. An applicant shall pay to the city the fees required by the City Development Fees By-law in respect of a development application and related approvals and permits.

FORMS

30. The form and content of application forms and information to be submitted in support of an application shall be as determined by the director from time to time.

31. By-law No. 5769/91 is hereby repealed.

DONE AND PASSED in Council assembled, this 4th day of March, A.D., 1992.