

## BYLAW NO. 3487/2012

Being a bylaw of The City of Red Deer to establish the Appeal Boards.

COUNCIL OF THE CITY OF RED DEER ENACTS AS FOLLOWS:

### Short Title

1. The short title of this bylaw is "The Appeal Boards Bylaw".

### Definitions

2. (1) In this bylaw:
  - (a) "Appellant" means a person who has served a written Notice of Appeal as set out in Division 10 of Part 17 of the *Municipal Government Act* or subordinate legislation or authorized person acting on behalf of the Appellant;
  - (b) "Applicant" means a person who made the initial application upon which an appeal is based or authorized person acting on behalf of the Applicant;
  - (c) "Board" means either the Subdivision and Development Appeal Board or Red Deer Appeal and Review Board as established by Council, and in a section of this bylaw relating to a specific Board, means that specific Board;
  - (d) "Citizen Representative" means a person appointed by Council who does not represent a specific organization;
  - (e) "Clerk" means a person appointed by The Chief Administrative Officer of the City of Red Deer (or designate) to assist the Boards in fulfilling their mandates and legislative requirements.
  - (f) "Member" means a member of the Board;
  - (g) "MGA" means the *Municipal Government Act* of Alberta, RSA 2000, Ch. M-26, as amended;
  - (h) "Organizational Meeting" means the organizational meeting of Council as required under the MGA; and
  - (i) "Resident" means a resident of the City of Red Deer;

- (j) "Subordinate legislation" means any bylaw or regulation that supplements the MGA.
- (2) The titles or headings used in this bylaw are inserted for convenience of reference only and will not affect the interpretation or construction of this bylaw.

### **Establishment of Boards**

- 3. (1) The following Boards are established:
  - (a) Red Deer Appeal and Review Board; and
  - (b) Subdivision and Development Appeal Board.

### **Membership**

- 4. (1) Council will establish the Membership composition of Boards including whether a Board requires Council, Citizen Representatives, or agency representation.
- (2) In selecting Board Members, preference may be given to local residents; however, it is also recognized that non-residents who own property or have a business in the City also have a stake in the community.
- (3) Former Members, former Council Members, and former City employees may apply for appointment to a Board after a two year hiatus from that capacity, with exceptions to be made at the discretion of Council.

### **Terms of Appointment**

- 5. (1) Unless otherwise stated in this bylaw, Members are appointed at the Organizational Meeting of Council as follows:
  - (a) All Members are appointed for two-year terms;
  - (b) Where a Board position is left vacant for any reason, Council may appoint a replacement for the remainder of that term;
  - (c) A Member may be re-appointed to a Board at the expiration of the Member's term but may not serve more than three consecutive terms;

- (d) A Member may resign from a Board at any time by giving written notice to the Legislative Services Manager;
- (e) Council may remove any Member from a Board at any time on the recommendation of the Mayor and City Manager; and
- (f) Council may alter the terms of appointment of any Member.

### **Chairperson**

- 6. (1) The Chairperson will be:
  - (a) Chosen annually from among Members;
  - (b) Will preside over and be responsible for the conduct of hearings;
  - (c) May limit a submission if it is determined to be repetitious or in any manner inappropriate; and
  - (d) Will vote on matters submitted to the Board unless otherwise disqualified.

### **Attendance at Hearings**

- 7. (1) Any Member absent from three consecutive hearings of the Board, unless such absence is authorized by resolution of the Board, will automatically forfeit his/her membership as of the date of the third consecutive hearing.
- (2) Any Member forfeiting his/her Membership may be eligible for reappointment in the future but not for the unexpired portion of the term forfeited.

### **Hearings**

- 8. (1) Hearings will be held at such time and place as determined by the Board.
- (2) Public notice of a Board hearing will be given in the manner provided for in the MGA and subordinate legislation.
- (3) The proceedings of the Board must be conducted in public except where the Board deals with information protected from disclosure under the provisions of the *Freedom of Information and Protection of Privacy Act*.

## **Quorum and Voting**

9. (1) Quorum is a majority of Members.
- (2) The Board must not sit in even numbered panels.
- (3) All members must vote on all matters before the Board unless a pecuniary interest or a conflict of interest is declared.
- (4) The majority vote of those Members present and voting constitutes the decision of the Board.

## **Clerk**

10. (1) The Clerk will:
  - (a) Consult with the Board to set policies, procedures and directives governing hearing processes, Member conduct and other Board matters.
  - (b) Issue instructions to independent legal counsel for the Boards when required.
  - (c) At the request of the Chairperson, sign orders, decisions and documents issued by the Board
- (2) The Clerk will maintain a Record of Hearing which will include:
  - (a) The appeal form;
  - (b) All documentary evidence filed in the matter;
  - (c) A list of witnesses who gave evidence at the hearing;
  - (d) A transcript or recording of the hearing or, in the absence of a transcript or recording, a summary of all testimonial evidence given at the hearing;
  - (e) All written arguments presented at the hearing;
  - (f) A written list that is prepared at the end of the hearing that identifies those matters or issues from the appeal form about which evidence was given or argument was made at the hearing; and

- (g) The decision of the Board.

### **Rules of Procedure**

- 11. (1) The Board will conduct hearings in accordance with:
  - (a) The express provisions of the MGA and related regulations;
  - (b) Principles of natural justice and procedural fairness; and
  - (c) Policies and procedures approved by the Board.

### **Public Hearing**

- 12. (1) Notice of a public hearing may be given by the Board in such form as it shall determine from time to time and shall include the following information:
  - (a) Name and address of the person to whom the notice is directed;
  - (b) Appeal number;
  - (c) Date, time, and location of the appeal hearing; and
  - (d) Substance of the issue being appealed.
- (2) The Board may in its discretion grant adjournments of a hearing for such purposes as it feels necessary to ensure proper consideration of the issues before it, including:
  - (a) Allowing a party to obtain additional information or plans; and
  - (b) Allowing the Board to obtain a legal opinion or other professional guidance.
- (3) After a hearing of an appeal or a review by the Board, the Clerk shall:
  - (a) Under direction of the Chairperson, prepare the decision or order of the Board and the reasons for the decision in compliance with the MGA and subordinate legislation; and
  - (b) Arrange for the order or decision of the Board to be signed; and distributed in accordance with the requirements under the MGA.

## **Remuneration**

13. (1) The remuneration and expenses payable to each Member shall be established by Council resolution.

## **Conflict of Interest**

14. (1) Where a Member of the Board is of the opinion that he or she has a conflict of interest with respect of a matter before the Board, the Member must disclose the conflict of interest by:
- (a) Declaring that he or she has a conflict of interest; and
  - (b) Describing in general terms the nature of the conflict of interest.
- (2) For the purposes of this provision, a Member has a conflict of interest in a respect of a matter before the Board when he or she is of the opinion that:
- (a) He or she has a personal interest in the matter which would conflict with his or her obligation as a Member to fairly consider the issue; or
  - (b) Doubt as to the ethical integrity of the Member would be raised in the minds of a reasonable observer, if that Member were to participate in the consideration of that matter.

## **Pecuniary Interest**

15. (1) The pecuniary interest provisions of the MGA apply to all Members while attending hearings of the Board, as though they were Councillors.
- (2) A Board Member who fails to declare a pecuniary interest in a matter before the Board, or fails to absent himself or herself from proceedings dealing with such a matter, ceases to be a Member.

## **Power of Authority**

16. (1) No Member has:
- (a) Power to pledge the credit or course of action of the City or enter

into any agreement on behalf of the Board or the City;

- (b) Power to authorize any expenditure to be charged against the City without prior approval by Council; and
- (c) Authority to act administratively except as delegated by the City Manager.

### **Red Deer Appeal and Review Board**

17. (1) The Red Deer Appeal and Review Board membership consists of five Members as follows:
- (a) One Councillor;
  - (b) Four Citizen Representatives;
  - (b) One alternate Councillor and;
  - (c) One alternate Citizen Representatives.
- (2) The alternate Councillor and Citizen Representative will serve respectively in the place of a Councillor or Citizen Representative who is unable to participate in a hearing.
- (3) The duty and purpose of the Red Deer Appeal and Review Board is to hear and to make decisions on appeals for which it is responsible under any City bylaw and in particular, arising under the following bylaws:
- (a) Alarm Bylaw;
  - (b) Dog Bylaw;
  - (c) Drinking Establishment Licensing Bylaw;
  - (d) Escort Services Bylaw;
  - (e) Firearms Bylaw;
  - (f) Land Use Bylaw;
  - (g) License Bylaw;
  - (h) Limousine and Sedan Bylaw;
  - (i) Taxi Bylaw;

- (j) Utility Bylaw;
  - <sup>1</sup>(k) Chicken Bylaw.
- (4) In addition, the Board shall exercise the power of Council in respect of applications for review arising under s. 547 of the MGA.
- (5) An appeal or a review is commenced by:
- (a) Mailing or delivering to the Clerk of the Board at Red Deer City Hall a Notice of Appeal or a Request to Review in the form established by the Board from time to time,
  - (b) By paying the applicable fee:
    - (i) Filing Fee: Seventy-Five (\$75.00) dollars; and
    - (ii) When required by the Board to be advertised: Seventy-Five (\$75.00) dollars.
  - (c) There is no fee for applications for Review arising under s. 547 of the MGA.
- (6) The Notice of Appeal or Request to Review must be received by the Clerk at the Red Deer City Hall within the time frames set out in the MGA or subordinate legislation.
- (7) Where there is no time frame set out in the MGA or subordinate legislation, the Notice of Appeal must be received by the Clerk at Red Deer City Hall within fourteen (14) days of the date the Appellant was notified of the issue to which an appeal is sought.
- (8) When considering the merits of an appeal or a review, the board shall have regard to:
- (a) The need to maintain the integrity of the policies which the applicable bylaw and statues are intended to promote;
  - (b) The potential cost implications to the City of Red Deer of the decision of the Board; and
  - (c) The need to treat fairly the persons affected by the order or decision under appeal.

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<sup>1</sup> 3487/A-2014

- (9) Where in the opinion of the Board a Request to Review under section 547 of the MGA involves a matter of significant public policy or potential substantial cost to the City of Red Deer, the Board shall refer the review to Council.
- (10) Where the parties to an appeal consent to an adjournment of the hearing, such adjournment may be granted by the Chairperson after consultation with the Members individually (whether in person, by telephone, or by email) without the need to convene a formal hearing. In such a case, the Board is deemed to have convened and the hearing is deemed to have commenced as of the date of such consultation.

### **Subdivision and Development Appeal Board**

18. (1) In this section, the following words and terms are defined as follows:
  - (a) “Development Authority” means:
    - (i) The Development Officer and any employee of the City of Red Deer to whom the City Manager has delegated authority to carry out duties or functions of a Development Officer; or
    - (ii) The Municipal Planning Commission in respect of any matter assigned to it under the Land Use Bylaw, by Council, or referred to it by the Development Officer. Municipal Planning Commission is the subdivision authority of the City of Red Deer.
- (2) The Subdivision and Development Appeal Board membership consist of five Members as follows:
  - (a) One Councillor;
  - (b) Four Citizen Representatives;
  - (b) One alternate Councillor and;
  - (c) One alternate Citizen Representatives.
- (3) The alternate Councillor and Citizen Representative will serve in the place of a Councillor or Citizen Representative who is unable to participate in a hearing.
- (4) The Board has the authority to hear and decide upon appeals from the decisions of the Development Authority in respect of development or subdivision matters, in accordance with the provisions of the MGA.

- (5) A subdivision or development appeal is commenced by:
  - (a) Mailing or delivering to the Clerk at Red Deer City Hall a Notice of Appeal in the form established by the Board from time to time, within the time specified in the MGA; and
  - (b) By paying the applicable fee:
    - (i) Where the Appellant is also the Applicant: Seventy-Five (\$75.00) dollars; and
    - (ii) When required by the Board to be advertised: Seventy-Five (\$75.00) dollars.
  - (c) Where a person may be affected by the subdivision or development but does not have a legal or equitable claim in the site, or is not the agent of the person having such interest: there is no fee.
- (6) Where the parties to an appeal consent to an adjournment of the hearing, such adjournment may be granted by the Chairperson after consultation with the Members individually (whether in person, by telephone, or by email) without the need to convene a formal hearing. In such a case, the Board is deemed to have convened and the hearing is deemed to have commenced as of the date of such consultation.

## **Repeal**

- 19. (1) Bylaw 3432/2009 is repealed.

**Transitional**

- 20. (1) Board Members holding office at the date this bylaw comes into full force shall continue to hold office until the expiry of their terms in accordance with their appointment under the Committees Bylaw and Subdivision and Development Appeal Board or until new Members are appointed under this bylaw.

READ A FIRST TIME IN OPEN COUNCIL this 29<sup>th</sup> day of October 2012.

READ A SECOND TIME IN OPEN COUNCIL this 29<sup>th</sup> day of October 2012.

READ A THIRD TIME IN OPEN COUNCIL this 29<sup>th</sup> day of October 2012.

AND SIGNED BY THE MAYOR AND CITY CLERK this 29<sup>th</sup> day of October 2012.

“Morris Flewwelling”  
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Mayor

“Frieda McDougall”  
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City Clerk