

CITY OF WHITEHORSE

BYLAW 2012-16

A bylaw to control and regulate the subdivision of land in the City of Whitehorse

WHEREAS section 311 of the *Municipal Act (2002)* provides that council may by bylaw control the subdivision of land within the municipality; and

WHEREAS section 312 of the *Municipal Act* provides that council may by bylaw delegate the power of approving authority from council to the chief administrative officer or a designated municipal officer; and

WHEREAS section 315 of the *Municipal Act* provides that every applicant who applies for subdivision of land shall make provision for the dedication to the public use, in addition to streets and lanes, of ten percent of the land to be subdivided, except under certain conditions identified in this section; and

WHEREAS section 316 of the *Municipal Act* provides that if the dedication of land to the public use under section 315(1) would, in the opinion of the approving authority, serve no practical purpose or for any other reason would be unnecessary or undesirable, the approving authority may direct that the dedication of land to the public use in respect of the proposed subdivision could be deferred or waived in whole or in part;

NOW THEREFORE the council of the municipality of the City of Whitehorse, in open meeting assembled, hereby ENACTS AS FOLLOWS:

SHORT TITLE

1. This bylaw may be cited as the “**Subdivision Control Bylaw**”.

DEFINITIONS

2. This subdivision control bylaw shall apply to all land within the boundary of the City of Whitehorse. The said boundary shall be as defined in the *Municipal Act* of the Yukon and may change from time to time, subject to amendment of the said *Act*.

3. For the purposes of this bylaw, unless the context otherwise requires, certain terms and words are hereby defined as follows:

“APPLICANT” means an owner of land or the owner’s authorized agent;

“APPLICATION” means an application for approval of a proposed subdivision, consolidation or condominium;

“CITY” means the corporation of the City of Whitehorse;

“CONDOMINIUM” means a plan pursuant to section 6 of the *Condominium Act*;

“CONDOMINIUM CONVERSION” means the conversion of an existing residential structure or structures to create units of separate ownership under the *Condominium Act*.

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“CONSOLIDATION” means the combining of two or more contiguous lots to form one lot;

“COUNCIL” means the council of the City of Whitehorse;

“DEVELOPMENT” means the carrying out of any activity involving a material change to any use on, over or under the land or buildings on the land that results, or is likely to result, in a change of use or intensity of use and includes site clearing or excavation, dumping or filling, mining, remediation of contaminated material, construction, renovation or demolition.

“DEVELOPMENT OFFICER” means a City official appointed by council to interpret, administer, and enforce the provisions of the City Zoning Bylaw or this bylaw;

“DEVELOPMENT AGREEMENT” means a binding agreement between the owner of the land that is the subject of an application for subdivision and the approving authority with respect to the requirements or limitations of the conditional approval and said agreements may be registered in the land titles office and shall have the force and effect of a restrictive covenant running with the land;

“HIGHWAY ACCESS” means a street or road right-of-way that may be required pursuant to the *Municipal Act*;

“LOT” means a parcel of land or an area of vacant Commissioner’s land, which is legally defined either by registered plan or description in the registry of the land titles office;

“MUNICIPAL UTILITIES” means a system or facility that is used to provide any of the following things for the public: water, sewage treatment and disposal, public transportation, heat, waste heat, and waste management; and a service or product that is provided for public consumption, benefit, convenience, or use;

“MUNICIPALITY” means the City of Whitehorse;

“PARCEL” means the aggregate of one or more areas of land described in a certificate of title or described in a certificate of title by reference to a plan registered in the Land Titles Office;

“PLAN OF SUBDIVISION” means a plan of survey capable of being registered in the land titles office for the purpose of subdividing a parcel of land;

“PRELIMINARY PLAN” means a plan of survey capable of being registered in the Land Titles Office for the purpose of effecting a subdivision, consolidation, or condominium;

“PUBLIC USE” means land which is to be operated as a public benefit, such as but not limited to, a public park;

“SKETCH PLAN” means a sketch of the proposed subdivision, consolidation or condominium to be submitted with the application that meets the requirements set forth in this bylaw;

“SUBDIVISION” means:

- (1) the adjusting or realigning of an existing property line, or

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- (2) a division of a parcel or lot by means of a plan of subdivision, a plan of survey, a plan made pursuant to section 6 of the *Condominium Act*, an agreement or any instrument, including a caveat, transferring or creating an estate or interest in part of the parcel, or
- (3) the creation of a new parcel from existing parcels of land; or
- (4) for the purposes of Part I of this bylaw, a division of a lot or parcel by an instrument; the creation of a new parcel or lot from previously un-subdivided land (e.g. new surveys of vacant Commissioner's land); and adjusting or realigning an existing property line;

"SUBDIVISION APPROVAL" means the signing of a sketch plan of subdivision by the approving authority;

"TAXES" means taxes imposed pursuant to the *Municipal Act* and the *Assessment and Taxation Act* and include any interest or penalties payable in respect of unpaid taxes and also include any service charges imposed in respect of local improvements on property by the *Municipal Act* or the *Assessment and Taxation Act* and any interest on penalties payable in respect of them.

FEES

4. The applicant shall pay a non-refundable application fee as prescribed in the City of Whitehorse Fees and Charges Bylaw.

APPLICATION REQUIREMENTS

5. On receipt of an application for subdivision approval, the approving authority must give public notice of the application by a method determined appropriate by the approving authority.
6. Every subdivision and consolidation of land within the boundaries of the City of Whitehorse shall be made in accordance with the *Municipal Act*, the Official Community Plan, the Zoning Bylaw, the Sewer and Water Bylaw and this or any other applicable bylaw.
7. The application, together with all required information and fees, shall be submitted to the Development Officer and signed by the registered owner, or be accompanied by a letter appointing an agent and authorizing the agent to sign on the owner's behalf.
8. Every application shall be made in writing using the prescribed form provided by the Development Officer, and shall be accompanied by:
 - (1) A current copy of the certificate of title for the subject parcel of the application and copies of documents for any registered charges that may limit or restrict the use of the subject lands;
 - (2) Three copies of the sketch plan of the proposed subdivision, consolidation, or condominium which shall show at a suitable scale:
 - (a) a bold line indicating the boundaries of the subject parcel(s) and the area(s) thereof;

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- (b) the location, boundaries and dimensions of all proposed lots;
 - (c) the location, width and names of all highways on which the proposed subdivision area abuts;
 - (d) the location and dimensions of all registered easements or rights-of-ways that adjoin or cross the subdivision area;
 - (e) the location, width and names of proposed roads within the proposed subdivision area;
 - (f) the location and dimensions of all lots dedicated for public use as required by the *Municipal Act* and in accordance with Part 2 of this bylaw;
 - (g) all buffer strips as may be required;
 - (h) all surface water bodies and riparian areas within the proposed subdivision area;
 - (i) the locations and dimensions of all proposed easements and public utility lots to be created within the proposed subdivision area;
 - (j) the locations and dimensions of all existing improvements that are located in proximity to existing or proposed lot boundaries within the subdivision area;
 - (k) a symbol indicating north; and
 - (l) the scale of the plan.
- (3) Such other information as may be considered necessary to determine the suitability of the land for the proposed subdivision, which, without limiting the generality of the foregoing, may include:
- (a) a geotechnical assessment report;
 - (b) a hydro-geological assessment and/or hydrology report;
 - (c) an approved drainage plan;
 - (d) the nature and availability of public utilities; and
 - (e) a topographic survey.
- (4) A survey certificate showing the location and dimensions of all improvements on the parcel;
- (5) A receipt showing that all current taxes on the land have been paid; and
- (6) Additional applicable fees as prescribed by the Fees and Charges Bylaw.
9. An application shall not be considered complete until the applicant has submitted all information and fees required pursuant to sections 7 and 8 of this bylaw.
10. Notwithstanding section 9 of this bylaw, the Development Officer may consider an application complete if, in the Development Officer's opinion, the application is of such a nature as to enable a decision to be made on the application without all of the information required in sections 7 and 8 of this bylaw.

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11. The Development Officer may determine that economic, social, and/or environmental impact assessments are required to be completed at the applicant's expense prior to the application being deemed complete.
12. The Development Officer shall notify the applicant in writing upon receipt and determination of a complete application.

APPEALS

13. Where the application is refused or conditionally approved, or if a plan of subdivision is refused, the Development Officer shall notify the applicant of the decision, along with the reasons for refusal, and shall advise the applicant of the right to appeal and the time within which an appeal may be made.
14. Where the application is refused or conditionally approved, the applicant may appeal in writing:
 - (1) to council if the subdivision was approved by a Development Officer; or
 - (2) to the Yukon Municipal Board if the subdivision was approved by council.
15. An appeal to council or the Yukon Municipal Board shall be made within 30 days after the date on which the applicant is served with notice of refusal or conditional approval or the date the notice was mailed to the applicant.

PART 1

SUBDIVISION

UTILITY SUBDIVISIONS

16. Where a subdivision of land creates a parcel of land necessary for the use of a utility, the parcel may be of the shape and size required and shall be used exclusively for the utility, and shall vest in the municipality, other governments or private utility companies as considered appropriate in the circumstances.

SUBDIVISION BY LEASE OR ENCUMBRANCE

17. Where an instrument granting a lease of only part of a parcel of land, or charging, mortgaging, or otherwise encumbering only a part of a parcel of land, has the effect, or may have the effect of subdividing the parcel, the Land Titles Registrar may reject the instrument for registration until it is approved in accordance with the *Municipal Act* and the regulations.
18. Where a parcel of land is separated into two or more areas by a registered plan for a road or right-of-way under a plan of subdivision, or by a natural boundary, the separated areas shall be deemed to be one parcel for the purposes of this section as per the *Municipal Act*.

CONDOMINIUM CONVERSIONS

19. The minimum requirements of the current edition of the National Building Code and the City's Building and Plumbing Bylaw must be met, so that the building is not deficient in critical life safety aspects (i.e. exit lights, fire extinguishers, ventilation).

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20. Professional Review of Building
- (1) The applicant shall supply to the Development Officer a comprehensive report which addresses critical life safety aspects, complete with two sets of drawings, prepared by an independent professional engineer and/or architect licensed to practice in the Yukon.
 - (2) The report shall define the area, height and classification of the building under the current National Building Code. The professional engineer or architect preparing the report shall prepare the report from on-site observations and shall review the building for architectural, structural, mechanical and electrical National Building Code requirements.
 - (3) In existing buildings, various systems require maintenance to ensure they remain operational (examples of this include exit lights, emergency power, fire alarms, ventilation, sprinklers, fire extinguishers, door closures and fire separation systems). The report shall therefore identify variances from the current National Building Code, in operation of systems and recommended corrective measures to ensure life safety for the occupants.
21. A Building Permit is required where work must be carried out as a result of the findings of the report and drawings submitted under section 20 of this bylaw.

SUBDIVISION APPROVING AUTHORITY

Major Subdivisions

22. Council shall by resolution approve, conditionally approve, or refuse subdivision applications that result in the creation of six or more lots in addition to the original parent lots.

Minor Subdivisions

23. A Development Officer shall approve, conditionally approve, or refuse subdivision applications that result in the creation of five lots or less, subdivisions involving the realignment of existing lot lines which do not create a new parcel, consolidations, and all condominium subdivisions (including bare land type condominium units).
24. Council shall by resolution approve, conditionally approve, or refuse subdivision applications that have been referred to council pursuant to section 29 of this bylaw.

ADMINISTRATIVE REVIEW

25. The Development Officer shall forward copies of the application to the appropriate departments of the City for review and comment.
26. The Development Officer shall refer the application to the Development Review Committee for review.
27. The Development Officer may refer the application to any Government of Yukon or Government of Canada Departments or First Nations that may be interested in matters relative to the land.

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28. The Development Officer shall review the application and all referral comments and make recommendations on major subdivisions to council in the form of an administrative report.
29. The Development Officer may refer minor subdivisions to council that are deemed to warrant review and decision by council.
30. An application for subdivision of land shall be considered approved if a decision has not been made by the approving authority within 90 days of the submission of the application.
31. Despite section 30, the Development Officer may extend the time allowed for the consideration of an application with the applicant's written consent.

SUBDIVISION DECISION PROCESS

32. In making a decision on an application, the approving authority may consider any matter or factor deemed relevant to the application, including, but not limited to the following:
 - (1) the reports submitted pursuant to sections 25 through 29 of this bylaw;
 - (2) the Official Community Plan and the Zoning Bylaw; and
 - (3) the suitability of the land for the proposed subdivision, having due regard for:
 - (a) the proposed use;
 - (b) the existing and proposed uses of land in the vicinity of the proposed subdivision;
 - (c) the topography of the parcel(s);
 - (d) the characteristics of the soil;
 - (e) the nature of surface and subsurface drainage;
 - (f) any potential hazard from flooding, unstable slopes, erosion and subsidence;
 - (g) any potential contamination of air, water, or soil;
 - (h) provision of highway access;
 - (i) the manner of laying out of streets, lanes and lighting;
 - (j) the design and orientation of the subdivision, including the size and shape of lots;
 - (k) the need, location and suitability of public reserve, parks, school sites and recreation facilities;
 - (l) the availability and adequacy of electricity, telephone and municipal utilities;
 - (m) the proposed storage or use of flammable, explosive or radio-active material;

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- (n) protection and enhancement of sensitive environmental areas and critical wildlife habitat;
 - (o) protection of significant natural, historical and heritage features;
 - (p) wildfire risk and fire management plans; and
 - (q) the impact assessment reports identified in section 11 of this bylaw.
33. The approving authority may place any conditions on the approval of the application that the approving authority deems necessary to meet the requirements of the *Municipal Act*, the Official Community Plan, the Zoning Bylaw, the Sewer and Water Bylaw or any other applicable bylaw.
34. The approving authority may, as a condition of approval of the application, require the registered owner of the subject land to enter into a development agreement with the municipality with respect to that land, pursuant to the *Municipal Act* and the Development Agreement Regulations Bylaw.
35. The approving authority may, as a condition of approval of the application, levy a development cost charge on the owner of the land pursuant to the *Municipal Act* and in accordance with the Residential Development Cost Charges Bylaw.
36. The approving authority may, as a condition of approval of the application, require a public use land dedication pursuant to the *Municipal Act* and in accordance with Part 2 of this bylaw.
37. Where, in the opinion of the approving authority, compliance with a requirement of any applicable regulation or bylaw is impractical or undesirable because of circumstances peculiar to a proposed subdivision, the approving authority may relieve the applicant in whole or in part from compliance with the requirement unless relief is contrary to the provisions of the *Municipal Act*, the Official Community Plan or the Zoning Bylaw.

HIGHWAY ACCESS

38. Every applicant who applies for subdivision of land shall provide to each lot created by the subdivision direct access to a highway satisfactory to the approving authority.
39. The cost of providing highway access under this section shall be borne by the applicant.
40. Sections 38 and 39 of this bylaw do not apply to land intended for use as a railway, a right-of-way for a ditch, irrigation canal, pipeline, telecommunication cable, or power transmission line, or a utility described in section 16.
41. The requirement for access under section 38 may be waived by the approving authority if strict compliance is impractical or undesirable.

PROCESS FOLLOWING APPROVAL

42. The Development Officer shall notify the applicant of the decision, along with any conditions of approval, in writing and advise the applicant of their right of appeal if the application was approved conditionally.

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43. The Development Officer shall have three copies of the sketch plan signed by the Mayor and City Clerk for major subdivisions or by a Development Officer for minor subdivisions.
44. The Development Officer shall return two copies of the signed sketch plan with the approval decision letter to the applicant as the subdivision approval notification.
45. The applicant shall then contract a licensed Canada Lands Surveyor to produce a preliminary plan of survey drawn in conformity with the signed sketch plan. The Canada Lands Surveyor shall submit copies of the preliminary plan to the Development Officer for review of its conformance to the sketch plan.
46. If the Development Officer is satisfied that the preliminary plan has been prepared in conformance to the sketch plan, and that all applicable conditions of the subdivision approval have been satisfied, two copies of the preliminary plan shall be signed by the approving authority and one copy shall be returned to the Canada Lands Surveyor.

PROCESS FOLLOWING REFUSAL

47. Where the approving authority refuses to approve the application, the approving authority shall state the reason or reasons for refusal and the Development Officer shall notify the applicant in writing and advise the applicant of their right to appeal.
48. Where an application is refused, no subsequent unaltered application for the same use of land shall be made within six months of the date of the refusal.

APPROVAL TIMELINE

49. An application for subdivision shall be considered approved if the approving authority has not made a decision within 90 days of the City receiving a completed application, unless the applicant's consent has been given in writing for a time extension.
50. Approval of an application shall be valid for a period of 12 months.
51. Subdivision approval shall lapse if the preliminary plan has not been submitted to the Land Titles Office within 12 months of the date of approval, unless the applicant and the approving authority agree to a further 12-month period.
52. The approving authority may renew an approval of an application for one period of 12 months, commencing from the end of the first approval period.

PART 2

PUBLIC USE LAND DEDICATION

POLICY STATEMENT

53. It shall be the policy of the City of Whitehorse to exercise the right of the municipality to require a 10% public use land dedication, or payment in lieu thereof, for each subdivision application received within the constraints of the enabling legislation.

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DEFINITIONS

54. "Public Use Land Dedication" means land, or payment in lieu of land, taken by the City during subdivision of land in accordance with section 315 of the *Municipal Act*.

BACKGROUND

55. The City of Whitehorse uses the subdivision plan approval process as an instrument for regulating the detailed development standards and ultimate supply of residential, industrial and commercial land parcels or lots in the City. Subdivision approval is not authorized unless it is in accordance with the Official Community Plan and the Zoning Bylaw. In addition, conditions may be attached to the subdivision to ensure parcels newly created are serviced to municipal standards. An important part of the subdivision process is the determination of the location and amount of land to be conveyed for public purposes. Public Use land dedication is typically reflective of the need for parks, recreation opportunities, service infrastructure, and protection of environmental features.
56. Section 316 of the *Municipal Act* provides an alternative to the City of Whitehorse to accept cash-in-lieu of land dedications. In this circumstance, the value of the land shall be determined on the basis of its fair value immediately after the subdivision of the land, and such fair value shall be established under the *Assessment and Taxation Act*. All monies received in lieu of land dedication will be reserved and expended only for the acquisition of lands to be used for public park or other public uses.

PROCEDURE FOR PUBLIC USE LAND DEDICATION

57. Each applicant proposing a subdivision of land for any use is required to dedicate 10% of the total land to be subdivided for public use. The calculation to determine the 10% shall not include land to be dedicated for buffers, streets and lanes.
58. The location and dimension of all lots dedicated for public use lands must be shown in the sketch plan of the proposed subdivision.
59. The location and suitability of land within the proposed subdivision to be dedicated to the public use is subject to the approval of the approving authority.

LANDS THAT MUST BE TRANSFERRED TO THE CITY

60. In addition to the ten percent land dedication, the following lands must be transferred to the City:
- (1) All proposed streets, and lanes, as a condition of subdivision approval and without compensation to the applicant; and
 - (2) Buffer areas that have been required in a subdivision of land proposed for residential uses.

LANDS THE CITY MAY REQUIRE TO BE INCLUDED

61. The City may require that the following lands be included in the ten percent land dedication:
- (1) Any parcel of land as deemed appropriate by the approving authority; and

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- (2) Where land adjacent to surface water or any other body of water is to be subdivided for other than public recreational uses, the following dedication of land to the public use may be required:
 - (a) A parcel of land, of such width as may be determined by the approving authority, lying between the bank of the land containing water and the land to be retained by the owner, for the preservation of the bank and the protection of the land retained by the owner against flooding and to provide public access to the water, unless the land being proposed for subdivision is intended for recreational uses; and
 - (b) Land to provide access to the shoreline of the land containing water, to serve the proposed subdivision, and not exceeding ten percent of the area of the land to be subdivided, unless the land being proposed for subdivision is intended for recreational uses.

ADDITIONAL LANDS THAT MAY BE TAKEN

62. If the land to be subdivided contains ravines, swamps, natural drainage courses, or other areas that in the opinion of the approving authority are unsuitable for building sites or other private uses, the approving authority may require that those areas be dedicated to the public use in addition, or in part contribution, to the required 10% public use land dedication.

EXEMPTIONS

63. The public use land dedication requirements identified in section 315 of the *Municipal Act* and this bylaw shall not apply to all subdivision applications where:
 - (1) The land is intended for:
 - (a) a railway station grounds or railway right-of-way;
 - (b) a right-of-way for a ditch or irrigation canal;
 - (c) a pipeline;
 - (d) telecommunication cable or power transmission line;
 - (e) a reservoir or sewage lagoon; or
 - (2) Land is to be re-subdivided for the purpose of correcting or re-arranging boundaries of land previously included in an area subject to the requirements of the subdivision section of the *Municipal Act*; or
 - (3) The land is to be subdivided into lots twenty hectares or larger in area, unless the approving authority directs otherwise; or
 - (4) If, in a previous subdivision of land a dedication of ten percent for public use was made in addition to the dedication for streets and lanes; or
 - (5) If another government authority has exercised reversionary rights on the land proposed for subdivision; or

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- (6) The approving authority may exempt the 10% public use land dedication if the land being subdivided exists as public land and is intended to stay in the public domain after subdivision; or
- (7) The land to be subdivided is from vacant Commissioner's Land and is being consolidated with an existing surveyed lot as a lot enlargement.

CASH IN PLACE OF LAND DEDICATION

- 64. In cases where the identified dedications of land do not total 10% of the subdivision land area, the remaining difference shall be required in a cash-in-lieu payment to the municipality. The cash-in-lieu of dedication shall be provided at a rate equivalent to the fair market value of 10% of the land, less the fair market value of any lands already identified for dedication.
- 65. The value of the land shall be determined on the basis of the value of the land immediately after the subdivision of the land and shall be established under the *Assessment and Taxation Act*.
- 66. Cash-in-lieu payments shall be deposited in a reserve account and shall be used only for purchase or development of public use land.

PUBLIC USE RESERVES DEFERRED OR WAIVED

- 67. If the dedication of land to the public use would, in the opinion of the approving authority, serve no practical purpose or for any other reason would be unnecessary or undesirable, the approving authority may direct that the dedication of land to the public use in respect of the proposed subdivision:
 - (1) be deferred in whole or in part until a further subdivision is made, or
 - (2) be waived in whole or in part, and may provide that, instead of dedicating the land, the applicant be required to pay to the municipality a sum of money in an amount no greater than the value of the land that would otherwise have been dedicated to the public use, and may direct the time and method of payment.
- 68. For the purposes of section 67(2) of this bylaw, the value of the land shall be determined on the basis of its fair value immediately after the subdivision of the land, and such fair value shall be established under the *Assessment and Taxation Act*.

PART 3

GENERAL INTERPRETATION

BYLAW SHALL PREVAIL

- 69. Where the provisions of this bylaw conflict with the provisions of any other bylaw of the City, the bylaw with the more stringent provisions shall prevail.

OFFENCE

- 70. Any person who contravenes the provisions of this bylaw is guilty of an offence and is liable to a fine not exceeding ten thousand dollars (\$10,000.00) where

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proceedings are commenced pursuant to the summary conviction provisions of the *Criminal Code of Canada*.

71. Each day that a violation of the provisions of this bylaw exists shall constitute a separate offence.

SEVERABILITY

72. The invalidity of any section, clause, sentence or provision of this bylaw shall not affect the validity of any other part of this bylaw that can be given effect without such invalid part or parts.

REPEAL

73. Bylaw 2000-54, including all amendments thereto, is hereby repealed.
74. The council policy named the "Public Use Land Dedication Policy", including all amendments thereto, is hereby repealed.

COMING INTO FORCE

75. This bylaw shall come into full force and effect upon the final passing hereof.

FIRST and SECOND READING: March 12, 2012

THIRD READING and ADOPTION: March 26, 2012

ORIGINAL BYLAW SIGNED BY:

"Ranj Pillai"

Ranj Pillai, Deputy Mayor

"Robert I. Fendrick"

Robert I. Fendrick, FCGA, City Clerk