

# CITY OF WHITEHORSE

## BYLAW 2002-10

A bylaw to provide for the protection of municipal heritage resources.

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WHEREAS section 36(1) of the *Historic Resources Act*, Chapter 10, SY 1996 provides that a municipal Council may, by bylaw, designate as a municipal historic site, any site within the municipality that, in the opinion of Council, is an important illustration of the historic development of the community, or of the peoples of the community and their respective cultures, or the natural history of the community; and

WHEREAS the Council of the City of Whitehorse deems it important to provide for the protection, preservation, orderly development, study and interpretation of those Municipal Historic Sites within their corporate boundaries; and

WHEREAS the Council of the City of Whitehorse wishes to protect and preserve the original character of historic buildings while encouraging those changes that will make those buildings functional;

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 “**Heritage Bylaw**”.

### DEFINITIONS

2. In this bylaw,

“**Alteration**” means installation, demolition, modification, repair, restoration, renovation, excavation and exterior re-colouring.

“**City**” means the City of Whitehorse.

“**Council**” means the Council of the City of Whitehorse.

“**Designated Officer**” means an employee of the City of Whitehorse or an authorized representative as designated in writing by the City Manager.

“**Heritage Character Statement**” means a written description of the overall effect produced by traits or features, which give a building, site or an area distinctive quality or appearance.

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**“Heritage Registry”** means a listing of the Heritage Resources in the City of Whitehorse, as adopted by Council.

**“Heritage Resource”** means a historic site, historic object, or any work or assembly of works that is on the Heritage Registry

**“Historic Resource Permit”** means a permit issued by the Designated Officer to authorize any proposed activity to a heritage resource.

**“Inspector”** means any person appointed as a Bylaw Services Officer for the City.

**“Municipal Historic Site”** means an area or place, parcel of land, building or structure, or the exterior or interior portion of a building or structure that is by itself, or by reason of containing a heritage resource, designated by Council as a Municipal Historic Site.

**“Prohibition”** means the carrying out of any activity that will alter, change or destroy a municipal historic site.

**“Settlement Lands”** means land defined as settlement land in a land claims agreement.

**“Yukon Historic Resources Appeal Board”** means the appeal board as established under the *Historic Resources Act*.

## **ADMINISTRATION OF THE HERITAGE BYLAW**

3. The administration of this bylaw shall be under the management and control of the Designated Officer.

## **HERITAGE REGISTRY**

4. The Heritage Registry may include Heritage Resources, which have not been designated.
5. No restrictions are applied to those resources on the Heritage Registry other than a delay in the issuance of a building and/or demolition permit to allow time to determine whether or not a resource warrants designation.

## **EXEMPT FROM TIPPING FEES**

6. Upon application to the Designated Officer, the owner of a Heritage Resource that has received designation shall be exempt from Landfill tipping fees, development permit fees, building permit fees and zoning amendment fees.

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## **EVALUATION CRITERIA**

7. Council shall establish a Heritage Evaluation Criteria based on the five following categories:

(1) **Architectural History**

- (a) The building may embody characteristics of an architectural type valuable for the study of a style or a method of construction of its period or the City or the Yukon. It may also be a notable example of a builder or architect's work.
- (b) The building has the strong potential for illustrating the City's heritage to a degree such that it will be possible for the visitor to gain from the building an understanding of the architecture or history with which it is associated.
- (c) The building is significant because of the original materials and workmanship remaining.

Architectural criteria may include such attributes as its picturesque quality or functional nature including massing, proportion, scale, layout, material detailing, colour, texture, fenestration, ornamentation or artwork.

(2) **Cultural History**

- (a) A building and/or site that has an association with a person, group, or institution with historical significance to the city. This may include a well-known pioneer, an organization or business, or distinct group of people.
- (b) A building and/or site that has an association with an event or activity of historical significance to the City. This may be a unique event or a recurring event.
- (c) A building and/or sites association with broad patterns of local area or civic history including ecological, social, political, economic or geographic change. (theme)

(3) **Context**

The historical context of a building or site refers to the historical relationship between the building's site and its immediate environment.

- (a) A notable and historical relationship between a building's site and the street, railway, waterfront, view or other geographic features which were a part of the building's original function. (landscape)

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- (b) A building's continuity and compatibility with adjacent and surrounding buildings and the building's visual contribution to a group of similar buildings. (urban design/streetscape)
- (c) A building's and/or site's visual or symbolic importance as a local landmark.

## (4) **Integrity**

The historical integrity of a building refers to the degree of alteration the building has sustained since its original construction.

- (a) The extent and the impact of the changes and alterations that have occurred to the building over time. The items to consider may include style, design and construction.
- (b) The structural integrity of the building, the interior, exterior and the site.
- (c) The location of the building in relation to its original site.

## (5) **Age**

This category refers only to the age of the building.

## **DESIGNATION OF HISTORIC SITES**

8. Where Council proposes to designate a Municipal Historic Site; it shall prepare a bylaw to that effect.
9. Any person or group of persons may petition Council to designate a site as a Municipal Historic Site.
10. A nomination for a Municipal Historic Site Designation shall be made to the Designated Officer and shall include, but not be limited to, a Heritage Character Statement.
11. If the site proposed for designation is on settlement land, Council may not designate the site without the written consent of the governing body of the Yukon First Nation, which governs the settlement land.
12. If the site proposed for designation is a residence, Council may not designate the site without the written consent of the owner.
13. Council, having prepared a bylaw to designate a site as a Municipal Historic Site, shall prepare a notice of the intended designation with a copy of the proposed bylaw attached, declaring the intention of Council to designate the site as a Historic Municipal Site. Such notice shall state a date, time, and place for a hearing to be held by Council to receive objections and other representation with

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respect to the proposed bylaw, and shall contain such other information and particulars as Council thinks necessary. The date so stated shall be no earlier than 60 days after the latest date on which a copy of the notice of intended designation is served, and the Designated Officer shall:

- (1) serve the owner and any lessee of the site, and the Minister, with a copy of the notice of intended designation and attached bylaw;
  - (2) publish a copy of the notice of intended designation in two (2) issues of a newspaper or one (1) issue of each of two (2) newspapers circulating in the area of the municipal site;
  - (3) have the intention broadcast over radio and television as part of the service the broadcaster offers for publicizing community events; and
  - (4) where the site is land within the boundaries of a description in a certificate of title under the *Land Titles Act* (of Canada), file a copy of the notice of intended designation in the Land Titles office.
14. The Minister, and any person who has been served with a municipal notice of intended designation, and any other person or group affected by or interested in the proposed bylaw may attend at the hearing provided either alone or with counsel and make representations about the proposed bylaw.
15. If there are no objections to a proposed bylaw at the hearing, Council may, after the hearing,
- (1) resolve not to proceed with the proposed bylaw, notwithstanding that there were no objections, or
  - (2) pass the bylaw.

## **APPEALS**

16. Where there are objections to a proposed bylaw at a hearing held under this bylaw, Council may, after the hearing;
- (1) resolve not to proceed further with the proposed designation,
  - (2) revoke the designation with respect to part of the site and pass it as amended, or
  - (3) submit the proposed bylaw along with the objections to the Yukon Historic Resources Appeal Board and request the Appeal Board to hold a hearing and thereafter to report its recommendations to Council.
17. Upon receiving and considering a report from the Yukon Historic Resources Appeal Board in respect of a proposed bylaw, Council may,

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- (1) resolve not to proceed with the proposed bylaw,
  - (2) amend the proposed bylaw, or
  - (3) pass the proposed bylaw without amendment.
18. In addition to the right of objection, any owner or lessee of a Municipal Historic Site, and any person or group affected by or interested in the designation, may appeal to Council at any time after the designation is made, but only if there is new information, which has been discovered since the making of the designation. This information must pertain to circumstances existing before the designation was made and which puts in doubt the appropriateness of the designation. The appeal shall be taken by serving the City with a notice of appeal summarizing the reasons for appeal.
19. Upon being served with notice of a Municipal Historic Site designation appeal, Council shall either refer the appeal to the Yukon Historic Resources Appeal Board or hold a hearing and
- (1) dismiss the appeal, or
  - (2) by bylaw, revoke the designation, or
  - (3) by bylaw, revoke the designation with respect to part of the site.
20. If Council refers the appeal to the Yukon Historic Resources Appeal Board, Council may, upon receiving and considering the report of the Yukon Historic Resources Appeal Board,
- (1) by bylaw, revoke the designation,
  - (2) by bylaw, revoke the designation with respect to part of the site, or
  - (3) by resolution, confirm the bylaw appealed from and dismiss the appeal.
21. Council may at any time, on its own motion and without a hearing, resolve not to proceed further with a proposed bylaw.
22. Where a bylaw as proposed or as amended, has been passed under the authority of the Heritage Bylaw, Council may by a further bylaw, revoke or vary that bylaw, but the revocation or variation must be made by following the same procedure as is established for making designations when there are objections.
23. Where, under this bylaw, Council resolves not to proceed further with a proposed designation, or resolves to confirm a bylaw under appeal, or passes a bylaw making a designation, or by bylaw revokes a designation, Council
- (1) shall serve a copy of the resolution or the bylaw on the Minister and on the owner and any lessee of the affected site,

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- (2) publish a notice of the resolution or bylaw in two (2) issues of a newspaper or one (1) issue of each of two (2) newspapers circulating in the area of the municipal site;
- (3) where a notice of intended designation respecting the affected site has already been filed, the Designated Officer shall similarly file notice of the resolution or bylaw.

## **PROTECTION OF SITES**

24. All applications for demolition of a Heritage Resource listed on the Heritage Registry shall comply with Bylaw 99-50, being a bylaw of the City of Whitehorse to administer standards respecting the construction, demolition, removal, or alteration of any building or structure within the City of Whitehorse; and, more specifically, section 23(4) of Bylaw 99-50, which provides that no person shall demolish or move a building or part of a building listed in the Whitehorse Heritage Registry prior to a thirty (30) day review period following the date the Building Inspection Department has received a demolition permit application for such building.
25. Notwithstanding the provisions of Bylaw 99-50, section 23(4), a demolition or building permit shall be issued immediately if the Heritage Resource is not designated, is a residence and the owner does not consent to designation.
26. The Designated Officer shall be advised upon receipt of an application for demolition of an undesignated Heritage Resource listed on the Heritage Registry and bring the application forward to determine if Council wishes to commence the process for designation.
27. No person shall carry out an activity that will alter the historic character of a site that is designated or where Council has provided notice of intent to designate unless the activity is carried out in accordance with a Historic Resources Permit.
28. Any person who proposes to carry out an activity that may alter the historic character of a designated historic site or a site that is subject to a notice of intended designation shall, prior to commencing the proposed activity, submit to the Designated Officer an application for a Historic Resources Permit.
29. Upon receiving an application for a Historic Resources Permit, the Designated Officer may:
  - (1) refuse to issue a permit and shall provide reasons in writing to the applicant;
  - (2) issue a permit or issue a permit with variations;
  - (3) issue a permit with conditions; or

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- (4) require the applicant to provide financial security to mitigate possible damage to the historic resource.

## **ENFORCEMENT**

30. The Designated Officer may conduct investigations and may,
  - (1) with the consent of the occupant in charge of the place, enter any place;
  - (2) at any reasonable time, enter any place to which the public is ordinarily admitted;
  - (3) request the production of documents or things that seem relevant to the investigation;
  - (4) upon giving a receipt, remove from any place documents produced in response to a request under this article and make copies of them or extracts from them;
  - (5) upon giving a receipt, remove from any place any other thing produced in response to a request under this Article and retain possession of it for so long as a person having the right to withhold the thing from the Designated Officer consents to the Designated Officer having possession of the thing.

## **ORDERS TO REMEDY BREACH**

31. Where Council believes on reasonable grounds that a person is in breach of the Heritage Bylaw, or Part 5 of the *Yukon Historic Resources Act*, or a Municipal Historic Resources Permit, or a provision of an agreement entered into with the City under this bylaw, Council may by order in writing served upon the person,
  - (1) require the person to remedy the breach within a period of time stated in the order, or
  - (2) where Council has reason to believe that irreparable or costly damage is likely to result if the breach continues, require the person to remedy the breach forthwith upon the service of the order.
32. If a person who is required by an order to remedy a breach fails to obey the order, Council may, upon notice to the person, apply to a judge of the Supreme Court for an order authorizing employees of the City to enter the affected municipal historic site and there take such steps as may be necessary to remedy the breach effectively, including
  - (1) the removal of any workers, materials, or equipment found on the municipal historic site, and

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- (2) doing the work required to be done.

The judge may grant the order or such other order as the judge thinks proper and may make the order subject to such conditions as the judge thinks necessary.

33. Where Council believes that the delay to obtain an order under this section is likely to result in irreparable damage to historic resources or human remains, Council may, without such an order and with no further notice to the owner or lessee of the municipal historic site, enter the municipal historic site and there take or cause to be taken such of the steps to which reference is previously made as may be necessary to halt the damage, but shall not take or cause to be taken any other steps except pursuant to and in accordance with the order of a judge.
34. Where Council takes steps under this section to remedy a breach committed by any person, the City may recover from the person,
  - (1) the costs and expenses necessarily incurred by the City in taking those steps, and
  - (2) the amount of any grant made to the person by the City under this Bylaw by way of assistance.

## **APPEALS AGAINST ORDER OR ACTION OF THE CITY**

35. A person aggrieved by an order made or action taken by the City in enforcing the terms of this bylaw may appeal to a Judge of the Supreme Court within 30 days from the making of the order or the taking of the action and the judge may:
  - (1) confirm the legality of the order or, if it is in some way not legal, direct Council to vary or rescind it;
  - (2) confirm the legality of the action or, if it is in some way not legal, direct Council to modify it;
  - (3) give such direction about implementing the order or of the action as the Judge thinks proper.

## **COUNCIL POWERS**

36. Council may engage in activities or expend money for one or more of the following purposes:
  - (1) to acquire, conserve and develop heritage property and other heritage resources;
  - (2) to gain knowledge about the city's history and heritage;

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- (3) to increase public awareness, understanding and appreciation of the City's history and heritage;
  - (4) for any other activities that it considers necessary or desirable with respect to the preservation and protection of heritage property and other heritage resources.
37. Council may, by bylaw, enter into agreements with the owner/lessee of a Municipal Historic Site for the purposes of providing financial and/or technical assistance in order to protect proposed or designated historic sites.

## **HERITAGE FUND**

38. The City may establish a heritage fund, for which the City may receive by donation, public subscription, devise, bequest or otherwise, money, or property, (personal or real).
39. The objects of the fund are to support, encourage and facilitate the preservation, protection, maintenance and restoration of heritage property in the city, subject to any directions or conditions imposed by the donor.

## **OFFENCE**

40. Any person who contravenes the provisions of this bylaw is guilty of an offence.

## **BYLAW REPEAL**

41. Bylaw 97-10, including any amendments thereto, is hereby repealed.

## **COMING INTO FORCE**

42. This bylaw shall come into full force and effect upon the final passing thereof.

**FIRST READING:** December 9, 2002  
**PUBLIC NOTICE:** Yukon News Dec 20  
**PUBLIC MEETING:** January 6, 2003  
**SECOND READING:** January 27, 2003  
**AMENDED by resolution of Council:** January 27, 2003  
**THIRD READING and ADOPTION:** January 27, 2003

ORIGINAL BYLAW SIGNED BY:

"Ernest J. R. Bourassa", Mayor

"R. Fendrick", City Clerk