

THE TOWN OF THE CITY OF DAWSON

BYLAW #09 – 04

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

WHEREAS section 37(1) of the *Historic Resources Act*, R.S.Y. 2002, c. 109 provides that a municipal Council may, by bylaw, designate as a municipal historic site, any site in the municipality that, in the opinion of Council, has sufficient historic significance of the kind contemplated by section 15 of the Act;

WHEREAS section 15 of the *Historic Resources Act* supra provides, in part, that a site may be designated as a historic site if the site is an important illustration of the historic development of Yukon, or a specific locality in Yukon, or of the peoples of Yukon, or locality, and their respective cultures:

WHEREAS the Council of the City of Dawson considers it important to provide for the conservation and management of heritage resources in accordance with the following Vision:

'The built and natural heritage features of the Klondike Valley Cultural Landscape, of which the Historic Townsite forms an important component, will be managed in a way that improves the quality of life for residents of the City and the region and which provides an enhanced destination attraction for international tourism. The heritage management program will tell the story of the entire human history of the Klondike Valley, with particular emphasis on the Gold Rush era of 1897-1918.; and'

WHEREAS the Council of the City of Dawson wishes to establish guidelines and procedures, whereby historically significant sites in the community can be designated as municipal historic sites and whereby they can be protected.

NOW THEREFORE the Council of the municipality of the City of Dawson, 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,

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

“**City**” means the City of Dawson.

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

"Historic Townsite" means the combined area of the Downtown Heritage Management Area and the Residential Heritage Management Area as defined by the Official Community Plan and Zoning and Heritage Management Bylaw.

"Development Officer" means an employee of the City appointed to that position by resolution of Council or an authorized representative as designated in writing by the Chief Administrative Officer.

"Heritage Inventory" means a listing of the heritage resources in the City of Dawson adopted by Council.

"Heritage Resource" means a historic site, historic object, or any work or assembly of works of nature or human endeavour listed in the Heritage Inventory.

"Historic Resources Permit" means a permit issued by the Development Officer to authorize any proposed alteration to a Municipal Historic Site.

"Inspector" means any person appointed as a Bylaw Officer for the City.

"Minister" means the Minister of the Yukon Legislative Assembly responsible for the Historic Resources Act.

"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.

"Municipal Historic Sites Inventory" means a listing of the Municipal Historic Sites designated by Council.

"Settlement Land" means land defined as settlement land in a Yukon First Nation Final Agreement.

"Site" means as the case may require,
(a) an area or a place, or
(b) a parcel of land, or
(c) a building or structure, or
(d) an exterior or interior portion or segment of a building or structure,
whether it is privately owned or owned by a municipality or owned by the Crown or an agency of the municipality or Crown.

"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 Development Officer.

HERITAGE INVENTORIES

4. The City must maintain an inventory, which shall be available for public inspection, of Municipal Historic Sites within the City limits, known as the Municipal Historic Sites Inventory, showing:
 - (1) the location of the site and description of its boundaries;
 - (2) an explanation of the significance of the site;
 - (3) the date of designation of the site;
 - (4) the names and residence addresses of the owners and lessees of the site, and;
 - (5) any other information Council thinks advisable.
5. The City must also maintain a general inventory, of all heritage resources, including those that have not been designated as Municipal Historic Sites, known as the Heritage Inventory. This inventory shall not be available for public inspection as it may contain personal information that is restricted.. The Heritage Inventory may include Sites, which have sufficient historical significance as contemplated by this Bylaw, but which have not been designated by Council as Municipal Historic Sites.

DESIGNATION OF HISTORIC SITES

6. Council may either, on its own motion, or upon petition by any person or group of persons designate any site as a Municipal Historic Site when it has determined, in its opinion, that the site is an important illustration of the historic or development of the Klondike valley, of which the Dawson townsite is a part, or the natural history or peoples and cultures of the Klondike Valley Cultural Landscape.
7. Any person or group of persons may petition Council to designate a site as a Municipal Historic Site. Any such petition shall be presented to the Development Officer.
8. The Development Officer shall prepare a report as to whether the Site meets the requirements of this Bylaw and has sufficient historical significance. Such report shall be submitted to Council at which time Council shall determine whether, in its opinion, the Site has sufficient historical significance.
9. Where Council proposes to designate a Municipal Historic Site it shall prepare a bylaw to that affect.
- 10.

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 that governs the settlement land.
12. If the site proposed for designation is a residence, in which its owner resides, Council may not designate the site without the written consent of the owner.
13. A site that has no inherent historic significance may be included in a Municipal Historic Site if its inclusion is advisable for the protection or enhancement of the Municipal Historic Site.
14. Prior to preparing a bylaw to designate a site as a Municipal Historic Site, all sites being considered for designation shall be referred to the Heritage Advisory Committee for consideration and recommendation to Council as to whether the site meets the criteria for designation and whether it should be so designated.
15. Having prepared a bylaw to designate a site as a Municipal Historic Site, Council 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 Municipal Historic Site. Such notice shall state a date, time, and place for a public hearing to be held by Council to receive objections and other representation with 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 Council shall:
 - a) serve the owner and any lessee of the site, and the Minister with a copy of the notice of intended designation and attached bylaw;
 - b) 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;
 - c) have the intention broadcast over radio and television as part of the service the broadcaster offers for publicizing community events; and
 - d) where the site is land within the boundaries of a description in a certificate of title under the *Land Titles Act*, file a copy of the notice of intended designation in the Land Titles office.
16. 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.
17. 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.

18. Where there are objections to a proposed bylaw at a hearing held under this bylaw, Council may, after the hearing;
 - a) resolve not to proceed further with the proposed designation,
 - b) revoke the designation with respect to part of the site and pass it as amended, or
 - c) submit the proposed bylaw along with the objections to the Yukon Historic Resources Appeal Board and request the Appeal Board to hold a hearing in accordance with Section 42 of the *Historic Resources Act*.
19. The Yukon Historic Resources Appeal Board shall, after holding a hearing, prepare and submit a report of its recommendations to the City.
20. Upon receiving and considering a report from the Yukon Historic Resources Appeal Board in respect of a proposed bylaw, Council may,
 - a) resolve not to proceed with the proposed bylaw,
 - b) amend the proposed bylaw, or
 - c) pass the proposed bylaw without amendment.

APPEALS

21. In addition to the right of objection to the designation of a Site as, a Municipal Historic Site, any owner or lessee of the designated 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 must put 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.
22. 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,
 - a) dismiss the appeal, or
 - b) by bylaw, revoke the designation, or
 - c) by bylaw, revoke the designation with respect to part of the site.
23. If Council refers the appeal to the Yukon Historic Resources Appeal Board, the Board shall hold a hearing in accordance with the provisions of the *Historic Resources Act*.

24. The Appeal Board shall, after holding a hearing, prepare and submit a report of its recommendations to the City.
25. Upon receiving and considering the report of the Yukon Historic Resources Appeal Board, Council may,
 - a) by bylaw, revoke the designation,
 - b) by bylaw, revoke the designation with respect to part of the site, or
 - c) by resolution, confirm the bylaw appealed from and dismiss the appeal.
26. Council may at any time, on its own motion and without a hearing, resolve not to proceed further with a proposed bylaw.
27. 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.
28. 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
 - a) shall serve a copy of the resolution or the bylaw on the Minister and on the owner and any lessee of the affected site,
 - b) 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 historic site;
 - c) where a notice of intended designation respecting the affected site has already been filed, the Development Officer shall similarly file notice of the resolution or bylaw.

PROTECTION OF SITES

29. No person shall demolish or move a Municipal Historic Site, or a Site proposed to be designated under this Bylaw, unless the activity is carried out in accordance with a Historic Resources Permit.
30. No person shall carry out an activity that will alter the historic character of a Municipal Historic Site or a Site proposed to be designated under this Bylaw, unless the activity is carried out in accordance with a Historic Resources Permit.
31. Upon receipt of an application for a development permit for an activity such as a building move, demolition or intervention that may alter the historic character of a Site listed on the Heritage Inventory, the Development Officer shall bring the application forward to determine if Council wishes to commence the process for designation.

32. Any person who proposes to carry out an activity that may alter the historic character of a Municipal Historic Site or a site proposed to be designated under this Bylaw, prior to commencing the proposed activity, submit to the Development Officer an application for a Historic Resources Permit.
33. Upon receiving an application for a Historic Resources Permit, the Development Officer may
 - a) refuse to issue a permit and shall provide reasons in writing to the applicant;
 - b) issue a permit or issue a permit with variations;
 - c) issue a permit with conditions necessary for the protection of the site; or
 - d) require the applicant to provide financial security to mitigate possible damage to the historic resource.
34. All applications for alteration or demolition of a Municipal Historic Site or a Site listed in the Heritage Inventory shall additionally comply with all City of Dawson Bylaws including but not limited to the City of Dawson Zoning and Heritage Management Bylaw, and, more specifically, sections 2, 3 and 8 of that Bylaw, which outlines requirements for development and demolition permits within the City of Dawson.

ENFORCEMENT

35. An Inspector or any person appointed under Part 4 of the *Historic Resources Act* may conduct investigations and may,
 - a) with the consent of the occupant in charge of the place, enter any place;
 - b) at any reasonable time, enter any place to which the public is ordinarily admitted;
 - c) request the production of documents or things that seem relevant to the investigation;
 - d) 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;
 - e) 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 Inspector consents to the Inspector having possession of the thing.
36. An Inspector who needs, but who cannot obtain, consent to enter a place, or who has been refused entry to a place, may apply to a Judge of the Territorial Court for a warrant authorizing entry of the place.

37. If a person refuses to comply with a request of an Inspector under this Bylaw the Inspector may apply to a Judge of the Territorial Court for an order for the production of the document or thing.
38. If a Judge of the Territorial Court is satisfied that there are reasonable grounds to believe that it is necessary that a place be entered in furtherance of an investigation under the Bylaw, the Judge may issue a warrant authorizing entry of the place by any person referred to in the order.
39. If a Judge is satisfied that there are reasonable grounds to believe that the production of a document or thing is necessary that a place be entered in furtherance of an investigation under the bylaw, the Judge may issue a warrant authorizing the seizure of the document or thing by any person referred to in the order.
40. An order issued under this Bylaw by a Judge of the Territorial Court which authorizes the seizure of a document or thing may be included in a warrant under this Bylaw authorizing entry of a place, or may be made separately from such a warrant.
41. A warrant issued under this Bylaw and an Order made under this Bylaw
 - a) shall be executed within any part of a day, if any, specified in the order; and
 - b) shall expire at the end of the day specified in the order or on the fourteenth day after the order is issued or made, whichever day ends first.

ORDERS TO REMEDY BREACHES

42. Where Council believes, on reasonable grounds, that a person is in breach of the Heritage Bylaw, or Part 5 of the *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,
 - a) require the person to remedy the breach within a period of time stated in the order, or
 - b) 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.
43. 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 Territorial Court for an order authorizing officers of the City to enter the affected Municipal Historic Site and take such steps as may be necessary to remedy the breach effectively, including

- a) the removal of any workers, materials, or equipment found on the Municipal Historic Site, and
- b) doing the work required to be done,

and 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.

44. Where Council believes that the delay to obtain an order under this Bylaw 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 take, or cause to be taken, such steps 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 of the Territorial Court.

45. Where Council takes steps to remedy a breach committed by any person, the City may recover from the person,

- a) the costs and expenses necessarily incurred by the City in taking those steps, and
- b) 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

46. A person aggrieved by an order made, or action taken, by the City under this Bylaw may appeal to a Judge of the Territorial 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

47. 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 study and gain knowledge about the City's history and heritage;
- (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 conservation and management of heritage property and other heritage resources.

48. Council may, by bylaw, require the owner or lessee of a Municipal Historic Site to take measures for the repair, maintenance, preservation, protection or restoration of the site, subject to the City providing assistance in the form of grants, loans, professional or technical or other advice and assistance to the owner.

49. Council may, by bylaw, enter into an agreement with the owner or lessee of a Municipal Historic Site for the purpose of providing for the maintenance, preservation or protection of the site, or with respect to providing financial and/or technical assistance in order to protect proposed or designated historic sites.

HERITAGE FUND

50. The City may by bylaw establish a heritage fund, for which the City may receive by donation, public subscription, devise, bequest or otherwise, money or property (personal or real).

ACQUISITION AND DISPOSAL OF MUNICIPAL HISTORIC SITES

51. If the Council believes it to be in the public interest, Council may acquire a Municipal Historic Site by gift, devise, purchase, lease, exchange, expropriation under the *Expropriation Act*, or otherwise; and, if the Municipal Historic Site is owned by the municipality may, sell, give or lease the Municipal Historic Site to any person or group for use or development according to any conditions of the lease, gift or sale.

HERITAGE ADVISORY COMMITTEE

52. The Heritage Advisory Committee, established by the Zoning and Heritage Management Bylaw #09-03 under Section 179(1) of the *Municipal Act* and Section 48(1) of the *Historic Resources Act*, shall:

- (1) Consider and make recommendations to the Development Officer regarding Historic Resource Permit applications;
- (2) Consider and make recommendations to Council as to whether sites meet the criteria for designation as Municipal Historic Sites and should be designated;
- (3) Perform the duties identified for the Heritage Advisory Committee in the Zoning and Heritage Management Bylaw; and
- (4) Such other duties as the Council may delegate to it from time to time by bylaw or resolution.

PENALTIES

53. Any person who contravenes any provision of this bylaw is guilty of an offence.
54. Any person who commits an offence under this bylaw is, in addition to any other punishment, liable on summary conviction to:
- (1) A voluntary fine under section 20 of the Summary Convictions Act, issued in respect of an offence specified in Schedule "A" attached hereto and forming part of this bylaw; or
 - (2) A fine not exceeding ten thousand dollars (\$10,000.00) where proceedings are commenced pursuant to the summary conviction provisions of the *Criminal Code of Canada*; or
 - (3) A fine not exceeding five hundred dollars (\$500.00) where proceedings are commenced pursuant to the *Summary Conviction Act* of the Yukon.
55. Should any person owning or occupying real property within the City refuse or neglect to pay any penalties that have been levied pursuant to this bylaw, the Designated Officer may inform such person in default that if these charges are unpaid on the thirty-first day of December on the same year, these shall be added to and form part of the taxes payable in respect of that real property as taxes in arrears.

GENERAL INTERPRETATION

56. The invalidity of any section, 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.

COMING INTO FORCE

49. This bylaw shall come into full force and effect upon the _____ DAY OF _____, 2009.

READ A FIRST TIME THIS _____ DAY OF _____, 2009.

READ A SECOND TIME THIS _____ DAY OF _____, 2009.

READ A THIRD TIME AND FINALLY PASSED THIS _____ DAY OF _____, 2009.

ORIGINALS SIGNED BY:

John Steins
MAYOR

Eldo Enns
CAO