Attachment "A", By-law 87/2018 (proposed changes tracked)

THE CITY OF WINNIPEG

BY-LAW NO. /2018

A By-law of THE CITY OF WINNIPEG to protect and conserve areas within the City of Winnipeg that are of special architectural or historical interest.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

PART 1
INTRODUCTORY PROVISIONS

Short title

1 This By-law may be cited as the "Heritage Conservation Districts By-law".

Definitions

2(1) In this By-law

"alteration" in respect of a character-defining element includes

(a) the construction or installation of an addition, including a sign or advertisement, to the character-defining element;

(b) the modification, repair, restoration, renovation or maintenance of a character-defining element; and

(c) an action that results in damage to the character-defining element;

"applicant", in respect of a proposed HCD, means

(a) one or more owner; or

(b) any person on behalf of an owner with the owner's permission;

"built features" means structures within an HCD which are constructed by people, and includes

(a) physical appearance;

(b) construction materials and methods;

(c) form and massing;

(d) layout and arrangement;

(e) setbacks; or

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(f) relationship to lot size and landscaping;

"character-defining element" means any element which contributes to the heritage values of an HCD, and, without limiting the generality of the foregoing, may include built features, landscaping or streetscaping;

"Charter" means *The City of Winnipeg Charter*, SM 2002, c39;

"City" means The City of Winnipeg continued under the Charter;

"city" means the geographical area within the jurisdictional boundaries of the City;

"Council" means the municipal council of the City;

"demolish" or **"demolition"** includes the destruction, removal, dismantling, or significant and irreversible alteration of a property or an element of a property;

and, without restricting the generality of the foregoing, includes any action for which a demolition permit under the Winnipeg Building By-law is required;

"designated committee" means the Standing Policy Committee on Property and Development, Heritage and Downtown Development;

"designated employee" means the Director and any employee of the City to whom the Director has delegated a duty or authority under this By-law;

"Director" means the Director of the City's Planning, Property and Development Department;

"HCD Plan" means a plan created in accordance with section 21 which provides the conservation requirements within a particular HCD;

"HCD Study" means a study created in accordance with section 13 which evaluates the heritage values of a proposed HCD;

"heritage conservation district" or **"HCD"** means a neighbourhood that has been designated as a heritage conservation district in accordance with this By-law;

"heritage permit" means a permit issued by the designated employee pursuant to section 27 of this By-law;

"heritage values" means the reasons that an HCD or a proposed HCD is architecturally or historically significant based on the following criteria:

(a) its importance in illustrating or interpreting the history of the city or a neighbourhood;

(b) its association with important individuals, groups or events;

(c) its illustration of the architectural or design history of the city;

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(d) its embodiment of distinct or unusual spatial organizations, circulation systems, land use and patterns, ecological or vegetative features, architectural or design characteristics, or particular styles or methods of construction;

(e) its location in an area of historical or architectural interest; and

(f) its historical or architectural integrity;

"Historical Buildings and Resources Committee" or **"HBRC"** means the committee continued by section 37 of the Historical Resources By-law No. 55/2014;

"landscape" means the natural elements and vegetation within an HCD, including, without limitation, sod, trees, shrubs and other flora, and also includes

(a) vegetation species and type;

(b) spatial arrangement;

(c) terrain and waterways; or

(d) planting arrangement;

"neighbourhood" means a particular geographically-defined contiguous area of the city;

"owner", in respect of an HCD or a proposed HCD, means a person who owns a freehold estate in real property located within the boundaries of that HCD or proposed HCD, as the case may be;

"proposed HCD" means a neighbourhood which has been nominated for designation as an HCD;

"special architectural or historic significance" refers to an HCD or proposed HCD that embodies heritage values;

"Standards and Guidelines" means the *Standards and Guidelines for the Conservation of Historic Places in Canada*, Second Edition, and any replacement document, published by Her Majesty the Queen in Right of Canada;

"streetscape" means the elements of an HCD which are located in and adjacent to a public right-of-way, including

(a) land use and zoning designations;

(b) ornamental street lighting;

(c) public sidewalks and multi-use pathways; and

(d) public streets, including layout, construction materials and dimensions;

(e) signage; or

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(f) traffic control signals.

PART 2
HERITAGE CONSERVATION DISTRICTS GENERALLY

Heritage conservation districts established

3 Where an HCD has been designated in accordance with this By-law, the HCD Plan must be added as a schedule to this By-law.

Heritage conservation district eligibility

4 An HCD is only eligible to be designated as an HCD if:

(a) it is of special architectural and historical significance; and

(b) at least 50% of its proposed character-defining elements are at least 40 years old.

Protections for heritage conservation districts

5(1) Unless a person has obtained a heritage permit in respect of a property located within an HCD, that person must not

(a) demolish or alter, or permit to be demolished or altered, any character-defining element located on or within that property; or

(b) construct, erect or locate a permanent or temporary building or structure on that property.

5(2) Subject to subsection (3), an employee designated under a by-law of the City who is taking an action or measure to remedy a contravention of that by-law under subsection 185(1) of the Charter is bound by the obligations imposed on an owner by this By-law.

5(3) Where an emergency arises that affects the health or safety of persons or affects property, an employee who is authorized to take any action or measure under a by-law that is necessary to meet the emergency or to reduce its effects may do so without the need to comply with the obligations imposed by this By-law. However, an employee acting under this authority must make such efforts as are reasonable in the circumstances to conserve any character-defining element within an HCD.

5(4) For greater certainty, the protections imposed by subsection (1) apply in respect of every property located within an HCD.

Effect of decision by Council

6(1) No restrictions imposed by this By-law apply in respect of the affected neighbourhood if, in accordance with this By-law, a decision has been made by Council that a proposed HCD should not be designated as an HCD.

6(2) Where a decision has been made by Council that a proposed HCD should not be designated as an HCD, no substantially similar application may be made for a period of 5 years following the date of the decision.

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6(3) Despite subsection (2), the designated committee may, at any time, direct the Director to review a substantially similar application where the designated committee determines that there has been a material change of circumstances since a decision by Council that a proposed HCD should not be designated as an HCD.

PART 3
NOMINATION PROCESS

Nomination of proposed HCD

7(1) Unless a neighbourhood has been nominated as a proposed HCD under this Part, the neighbourhood shall not be designated as an HCD.

7(2) Subject to subsection (3), a neighbourhood may only be nominated as a proposed HCD by the Director.

7(3) Nomination of a proposed HCD may be initiated by

(a) subject to subsection (4), the Director of his or her own initiative; or

(b) an applicant in accordance with section 8.

7(4) The Director may only initiate the nomination of a proposed HCD if he or she determines, in his or her sole opinion, that the proposed HCD has heritage values that are

(a) likely, upon further review, to result in the designation of the proposed HCD as an HCD; and

(b) of widespread significance to the entire city.

Application for nomination

8(1) To initiate the nomination of a proposed HCD, an applicant must submit to the designated employee

(a) a fully completed application for nomination form prescribed by the designated employee; and

(b) the applicable fee.

8(2) The designated employee must not review an application for nomination if

(a) the nomination application form is incomplete; or

(b) the nomination fee has not been paid.

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8(3) Subject to subsection (2), the designated employee must review an application for nomination within ~~90 days~~ a reasonable amount of time following the date on which he or she received the application for nomination and

(a) reject the application if the designated employee determines that the proposed HCD does not

(i) meet the eligibility criteria listed in section 4 of this By-law; or

(ii) does not have heritage values that are likely, upon further review, to result in designation of the proposed HCD as an HCD; or

(b) nominate the proposed HCD.

8(4) The designated employee must give written notice of their decision under subsection (3) to the applicant.

Notice of Nomination

9(1) In this section, "applicant" includes the Director.

9(2) Where a proposed HCD has been nominated,

(a) the designated employee must within 30 days following the date on which the proposed HCD is nominated give notice of the nomination by regular mail to every owner; and

(b) the applicant must:

(i) give public notice of the nomination in one newspaper with circulation within the proposed HCD within ~~14~~ 30 days following the date on which the applicant receives or is deemed to have received notice under subsection 8(4); and

(ii) where the applicant is not the Director, provide evidence to the designated employee of the public notice referred to in subclause (i) to the satisfaction of the designated employee.

9(3) In addition to the requirements under the Charter, the notice referred to in subsection (~~1~~2) must include

(a) the date on which the proposed HCD was nominated; and

(b) the boundaries of the proposed HCD.

Protections for proposed HCD

10(1) Until a decision is made by Council in respect of whether to designate a proposed HCD in accordance with section 24,

(a) no demolition permit may be issued in respect of a property located within the proposed HCD; and

(b) any existing demolition permit in respect of a property located within the proposed HCD is suspended.

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10(2) The protections imposed by subsection (1) take effect when the owner of a property has received or is deemed to have received notice of the nomination as required by section 9.

10(3) For greater certainty, the protections imposed by subsection (1) apply in respect of every property located within the proposed HCD.

10.1 Despite section 10, the Director is authorized to issue a demolition permit, or lift the suspension of any existing demolition permit, where he or she determines that

(a) the structure in respect of which the demolition permit is being sought

(i) does not embody sufficient heritage values of the proposed HCD, and the structure proposed to be built following the demolition permitted by the demolition permit would be compatible with the heritage values of the proposed HCD; or

~~(i)~~(ii) represents an unsafe condition such that delaying demolition of the building represents a risk of harm to the health or safety of persons or to property; or

(b) refusing to issue the demolition permit, or failing to lift the suspension of any existing demolition permit, will cause undue prejudice to the demolition permit applicant.

Written submissions

11(1) Each owner is entitled to file one letter of objection or one letter of support in accordance with this section. For greater clarity, each owner may file only one letter of objection or one letter of support regardless of whether that owner owns multiple properties located within the proposed HCD.

11(2) A letter of objection or letter of support must be filed with the designated employee within 30 days following the date on which the owner has received or is deemed to have received notice of a nomination and must include

(a) the owner's name;

(b) the owner's mailing address; and

(c) a clear statement as to whether the owner is opposed to or supportive of the HCD, along with their reasons.

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11(3) In addition to the requirements under subsection (2), a letter of objection or a letter of support may be sent by e-mail or regular mail and may also include the owner's e-mail address.

PART 4
HCD STUDY & HCD PLAN

HCD Study

12 Where a proposed HCD has been nominated, the applicant, in consultation with the designated employee, must prepare and submit an HCD Study in accordance with section 13.

HCD Study requirements

13(1) The HCD Study must include the following:

(a) the proposed boundaries of the proposed HCD;

(b) the history and evolution of the proposed HCD;

(c) a survey of the built features, landscape and streetscape of the proposed HCD;

(d) an evaluation of the heritage values of the proposed HCD;

(e) a statement of significance which includes a list of all proposed character-defining elements;

(f) the objectives of designation including the proposed criteria for determining when a heritage permit is required;

(g) a recommendation in respect of whether an HCD Advisory Committee should be required; and~~, including~~

~~(i) whether an HCD Advisory Committee should be required;~~

~~(ii) the number of HCD Advisory Committee members;~~

~~(iii) the criteria for membership;~~

~~(iv) the HCD Advisory Committee's duties and responsibilities; and~~

~~(v) proposed terms of reference; and~~

(h) the results of any public consultation undertaken by the applicant.

13(2) The designated employee must only accept an HCD Study if the designated employee has determined that it meets all the requirements under subsection (1).

Review of HCD Study

14(1) Subject to subsection (2), where an HCD Study has been accepted by the designated employee, the HBRC must hold a meeting to review the HCD Study and make a recommendation in respect of the proposed HCD to the designated committee within 180 days following the date on which the HCD Study was accepted by the designated

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employee.

14(2) The HBRC may extend the deadline for review of an HCD Study by no more than 90 days if the applicant requests postponement.

Recommendations of HBRC

15(1) After reviewing an HCD Study, the HBRC may make any recommendation to the designated committee in respect of the proposed HCD and is not bound by or limited to the terms of the HCD Study.

15(2) If the HBRC determines that the proposed HCD is of special architectural or historic significance, then the HBRC may recommend to the designated committee that an HCD Plan be prepared.

15(3) If the HBRC recommends to the designated committee that an HCD Plan be prepared, that recommendation must include a list of the character-defining elements that are determined by the HBRC to contribute to the heritage values of the proposed HCD.

15(4) The City Clerk must give notice of the recommendations of the HBRC to the applicant as soon as is practicable after the date on which the recommendations have been made.

Consideration by designated committee

16(1) Subject to subsection (2), the designated committee must consider the recommendations of the HBRC by the third regularly scheduled meeting of the designated committee following the date on which the recommendations were made.

16(2) If the applicant requests postponement, the designated committee may extend the deadline imposed under subsection (1) by no more than 2 regularly scheduled meetings of the designated committee. For greater certainty, and in any event, the designated committee must consider the recommendations of the HBRC by no later than the fifth regularly scheduled meeting of the designated committee following the date on which the recommendations were made.

16(3) The designated employee must give notice to each owner of property located within the proposed HCD at least 30 days prior to the date the designated committee is scheduled to consider the recommendations of the HBRC.

16(4) A notice required under subsection (3) must include

(a) the recommendations of the HBRC;

(b) the date the designated committee is scheduled to consider the recommendations of the HBRC;

(c) the place and times at which the HCD Study is available for inspection;

(d) the fee required to obtain a copy of the HCD Study from the City;

(e) a statement advising the owner that he or she is entitled to

(i) Make a written submission to the ~~designated employee~~ City Clerk for consideration ~~by~~ at the meeting of the designated ~~employee~~committee and the date by which the written submission must be made; and

(ii) Appear in delegation at the meeting of the designated committee

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16(5) The Director must provide a report in respect of the proposed HCD for consideration by the designated committee at the time it considers the recommendations of the HBRC and must recommend either

(a) that the designated employee be directed to prepare an HCD Plan; or

(b) that the proposed HCD not be designated as an HCD.

16(6) The report referred to in subsection (~~3~~5) must consider

(a) the HBRC's recommendations; and

(b) any written submission made in accordance with ~~subclause (3)(e)(i)~~ subsection 11(1).

Decision of designated committee

17(1) After considering the HBRC's recommendations, the designated committee must either

(a) direct the designated employee to prepare an HCD Plan; or

(b) determine that the proposed HCD not be designated as an HCD.

17(2) The designated committee may only direct the designated employee to prepare an HCD Plan if the designated committee determines that the proposed HCD is of special architectural or historic significance.

17(3) If the designated committee directs the designated employee, to prepare an HCD Plan, it must list the character-defining elements that it considers to contribute to the heritage values of the proposed HCD, but may only include character-defining elements that were

(a) proposed in the HCD Study; or

(b) included in the recommendations of the HBRC

Consideration of HCD Study by Council

18(1) Subject to subsection (2), if the designated committee does not concur in the recommendations of the HBRC and the recommendations of the Director, the decision of the designated committee under section 17 in respect of a proposed HCD is deemed to be a recommendation to Council, and Council must consider and make a decision in respect of that recommendation at the next regularly scheduled meeting of Council following the date of the designated committee's decision.

18(2) Council may extend the deadline to consider the recommendations from the designated committee by no more than 1 regularly scheduled meeting of Council if the applicant requests postponement. For greater certainty, and in any event, Council must consider the recommendations from the designated committee by no later than the second regularly scheduled meeting of Council following the date on which the recommendations have been made.

18(3) After considering the recommendations of the HBRC and the designated committee, together with any recommendations made by the Executive Policy Committee, Council must

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(a) direct the designated employee to prepare an HCD Plan; or

(b) determine that the proposed HCD not be designated as an HCD.

18(4) Council may only direct the designated employee to prepare an HCD Plan if Council determines that the proposed HCD is of special architectural or historic significance.

18(5) If Council directs the designated employee, to prepare an HCD Plan, it must list the character-defining elements that it considers to contribute to the heritage values of the proposed HCD, but may only include character-defining elements that were

(a) proposed in the HCD Study; or

(b) included in the recommendations of the HBRC.

Notice of consideration by Council

19 At least 7 days prior to the meeting of Council at which the recommendations of the designated committee will be considered, the City Clerk must give notice to every owner who, in accordance with clause 16(3)(e), made a written submission or appeared in delegation, which notice must include

(a) the designated committee's recommendations; and

(b) the date of the meeting of Council at which those recommendations will be considered.

When designated committee decisions are final

20(1) Notwithstanding section 18, the decision of the designated committee under section 17 is deemed to be a final decision that may not be appealed if the decision is identical to the recommendations of the HBRC and the Director.

20(2) The City Clerk must the final decision in respect of an HCD Plan to the applicant as soon as is practicable following the date on which that decision was made.

HCD Plan

21(1) An HCD Plan must contain the following:

(a) the boundaries of the proposed HCD

~~(b) the history and evolution of the proposed HCD;~~

~~(c)~~(b) a statement of significance;

~~(d)~~(c) the objectives of the HCD;

~~(e)~~(d) policy statements, guidelines and procedures for achieving the objectives of the HCD;

~~(f)~~(e) a list of the work for which a heritage permit is not required; and

~~(g) the results of any owner consultation in respect of the proposed HCD, which may include~~

~~(i) the type of owner consultation completed;~~

~~(ii) meeting agendas;~~

~~(iii) meeting minutes;~~

~~(iv) survey results; and~~

~~(v) any materials provided during the owner consultation.~~

21(2) A statement of significance required under clause (1)(c) must include:

(a) the boundaries or geographic location;

(b) a description;

(c) the heritage values; and

(d) the character-defining elements

of the proposed HCD.

21(3) In addition to the requirements under subsection (1), if an HCD Advisory Committee is required, the HCD Plan must include

(a) the required number of HCD Advisory Committee members;

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(b) the rules for determining membership;

(c) the HCD Advisory Committee's duties and responsibilities; and

(d) the HCD Advisory Committee's terms of reference.

21(4) The designated employee must only accept an HCD Plan if the designated employee determines that it meets all the requirements under subsections (1) and (2) and, if applicable, subsection (~~2~~3).

Review of HCD Plan by HBRC

22(1) Subject to subsection (2), where an HCD Plan has been accepted by the designated employee, the HBRC must hold a meeting to review the HCD Plan and make a recommendation in respect of the proposed HCD to the designated committee within 90 days following the date on which the HCD Plan was accepted by the designated employee.

22(2) If the applicant requests postponement, the HBRC may extend the deadline for review of an HCD Plan by no more than 30 days.

Recommendations of HBRC

23(1) After reviewing an HCD Plan, the HBRC must recommend that the proposed HCD

(a) be designated as an HCD with no amendments to the HCD Plan;

(b) be designated as an HCD with amendments to the HCD Plan; or

(c) not be designated as an HCD.

23(2) The designated employee must give notice to each owner of property located within the proposed HCD at least 30 days prior to the date the designated committee is scheduled to consider the HCD Plan and the recommendations of the HBRC, which notice must include

(a) the recommendations of the HBRC;

(b) the date the designated committee is scheduled to consider the HCD Plan and the recommendations of the HBRC;

(c) the place and times at which the HCD Plan is available for inspection;

(d) the fee required to obtain a copy of the HCD Plan from the City; and

(e) a statement advising the owner that he or she is entitled to

(i) make a written submission to the ~~designated employee~~City Clerk for consideration ~~by~~ at the meeting of the designated ~~employee~~ committee and the date by which the written submission must be made; and

(ii) appear in delegation at the meeting of the designated committee.

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23(3) The Director must provide a report in respect of the HCD Plan and the recommendations of the HBRC for consideration by the designated committee at the time it considers the HCD Plan and the recommendations of the HBRC, and must recommend that the proposed HCD:

(a) be designated as an HCD with no amendments to the HCD Plan;

(b) be designated as an HCD with amendments to the HCD Plan; or

(c) not be designated as an HCD.

23(4) Subject to subsection (5), the designated committee must consider the HCD Plan and the recommendations of the HBRC and the recommendations of the Director at the ~~first~~ third regularly scheduled meeting of the designated committee following the date on which the recommendations of the HBRC were made.

23(5) If the applicant requests postponement, the designated committee may extend the deadline imposed under subsection (1) by no more than 1 regularly scheduled meeting of the designated committee. For greater certainty, and in any event, the designated committee must consider the HCD Plan and the recommendations of the HBRC by no later than the second regularly scheduled meeting of the designated committee following the date on which the recommendations of the HBRC were made.

23(6) After reviewing the HCD Plan and the recommendations of the HBRC, the designated committee must recommend that the proposed HCD

(a) be designated as an HCD with no amendments to the HCD Plan;

(b) be designated as an HCD with amendments to the HCD Plan; or

(c) not be designated as an HCD.

Designation

24(1) Subject to subsection (2) Council must consider and make a decision in respect of an HCD Plan at the first meeting of Council where the HCD Plan is included on the Council meeting agenda.

24(2) Council may extend the deadline to consider the HCD Plan by no more than 1 regularly scheduled meeting of Council. For greater certainty, and in any event, Council must consider the HCD Plan by no later than the second regularly scheduled meeting of Council following the date on which the HCD Plan first appeared on a Council meeting agenda.

24(3) After considering an HCD Plan, Council must

(a) designate the proposed HCD as an HCD with no amendments to the HCD Plan;

(b) designate the proposed HCD as an HCD with amendments to the HCD Plan; or

(c) decline to designate the proposed HCD.

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24(4) The City Clerk must give notice of Council's decision under subsection (3) as soon as is practicable following the date of the decision to

(a) the applicant; and

(b) every owner.

PART 5
DIRECTOR'S EMERGENCY CONSERVATION POWERS

Emergency conservation powers

25(1) Notwithstanding any other provision of this By-law, the Director may issue an emergency conservation order prohibiting the demolition or alteration of a character-defining element where

(a) the character-defining element is listed in the nomination of a proposed HCD;

(b) the Director is satisfied that the character-defining element contributes to the heritage values of the proposed HCD; and

(c) the Director has reason to believe that demolition of or irreparable alterations to the character-defining element is imminent.

25(2) An emergency conservation order issued under this section must be given to the owner of the property on which the character-defining element is located in accordance with this By-law.

25(3) An appeal of an emergency conservation order issued under this section may be made to the designated committee in accordance with the Charter and no fee is payable for such an appeal.

PART 6
HERITAGE PERMITS

Definition

26 In this Part, "applicant" means an owner, or a person on behalf of an owner, who has submitted an application for a heritage permit

Heritage permits

27(1) Subject to this section, upon application by or on behalf of an owner, the designated employee may issue a heritage permit authorizing the owner to carry out alterations in respect of a property located within an HCD.

27(2) Heritage permits may only permit alterations that are consistent with conservation of the special architectural or historic significance of the HCD.

27(3) A heritage permit may be issued subject to conditions or restrictions.

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27(4) All heritage permits issued under this Part are deemed to be issued subject to the following conditions:

(a) that the permit holder carry out the work for which the heritage permit was issued in accordance with the plans, specifications, documents and any other information that form the basis on which the heritage permit was issued; and

(b) that the permit holder not make any material changes to a plan, specification, document or other information that forms the basis on which the heritage permit was issued.

27(5) The decision of the designated employee to issue or deny a heritage permit, or to impose conditions or restrictions on a heritage permit, must

(a) be consistent with the Standards and Guidelines and the HCD Plan; and

(b) take into consideration the following:

(i) the fundamental goal of conserving and enhancing the special architectural or historic significance of the HCD;

(ii) the practical necessity for the proposed alterations for which the heritage permit is being sought;

(iii) the benefits of various techniques or approaches by which the proposed alterations could be completed; and

(iv) any advice of the HBRC or the HCD Advisory Committee, if applicable, received pursuant to section 28.

Reference to the HBRC

28(1) The designated employee must refer any application for a heritage permit to the HCD Advisory Committee for consideration prior to making a decision with respect to the application.

28(2) If the HCD Plan in respect of a particular HCD does not establish an HCD Advisory Committee, the designated employee must refer any application for a heritage permit in respect of a property located within that HCD to the HBRC for consideration prior to making a decision with respect to the application.

28(3) This section does not apply if

(a) the HBRC has established guidelines in respect of issuing heritage permits; and

(b) the designated employee follows those guidelines in making a decision in respect of an application for a heritage permit.

Notice to owner

29(1) The designated employee must give notice to the applicant of a decision in respect of an application for a heritage permit within 90 days after the date on which the designated employee has received the complete application.

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29(2) An application for a heritage permit is not complete until the designated employee has received all the information which the designated employee has determined is reasonably necessary to make a decision in respect of the application.

29(3) If the designated employee fails to give notice within 90 days as required by subsection (1), the applicant may proceed with the alteration for which a heritage permit was sought without a heritage permit.

Public notice of decision

30(1) Where the designated employee makes a decision in respect of a heritage permit that differs substantially from the advice of the HBRC or the HCD Advisory Committee

(a) he or she must publish on the City's website a notice that contains

(i) the decision made in respect of the application for a heritage permit; and

(ii) the information required under subsection 116(2) of the Charter; and

(b) he or she must notify the Chair of the HBRC or the Chair of the HCD Advisory Committee, as the case may be, of this decision.

30(2) Where the designated employee makes a decision in respect of an application for a heritage permit that differs substantially from the advice of the HBRC, the heritage permit must not be issued until and unless

(a) no person has appealed the decision within the time period for appealing the decision under this By-law; or

(b) the appeal has been heard and decided, in which case the heritage permit must reflect the decision of the designated committee.

PART 7
MISCELLANEOUS

Offences

31(1) Any person who contravenes this By-law or an order issued under this By-law commits an offence.

31(2) Any person who demolishes or alters a character-defining element in contravention of this By-law or an order issued under this By-law is subject to a fine of no less than $1,000.00 and no more than $1,000,000.00 for each contravention or for each day during which a contravention is on-going.

Notice

32(1) Unless otherwise provided in this By-law, any notice required to be given under this By-law may be given

(a) by way of personal service on the person required to be notified; or

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(b) by sending the notice by registered mail, delivery or e-mail to an address determined in accordance with subsection (3).

32(2) Where notice is given by one of the methods set out in clause (1)(b), it is deemed to have been received on the third day after the day that it was mailed, delivered or e-mailed.

32(3) Where an owner has provided their address or e-mail address to the designated employee, they are deemed to have provided such address or e-mail address for the purposes of being given notice.

32(4) An address for giving notice for the purposes of this By-law may be determined as follows:

(a) if the notice relates to an application made by or on behalf of a person, the address or e-mail address provided as part of the application;

(b) if the person to whom the notice is to be given has provided an address or e-mail address for the purposes of being given notice, the address or e-mail address so provided; and

(c) if the person to whom the notice is to be given is the owner of real property, either

(i) the address maintained by the tax collector for the purpose of issuing the tax notice for that property;

(ii) the address maintained by The Property Registry as the address for service of the person; or

(iii) if the person is a registered corporation that has not been dissolved, the address of the registered office of the corporation shown in the articles of incorporation or in the last notice filed under section 19 of The Corporations Act, CCSM c C225.

Powers of the designated employee

33(1) The Director and any other employee to whom this power is delegated by the Director may conduct inspections and take steps to administer and enforce this By-law and, without limiting the generality of the foregoing, may

(a) issue orders prohibiting work being done in contravention of this By-law; and

(b) remedy a contravention of this By-law in accordance with the Charter.

33(2) The Director and any employees designated for those purposes have the powers of a designated employee under the Charter for the purposes of administering and enforcing this By-law.

33(3) Without restricting the powers set out in subsection (1), after giving reasonable notice to the owner and occupant of a building, a designated employee may enter a building where this is reasonably required in order to assess its architectural or historic

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significance for the purposes of a nomination or an application to remove or modify an HCD designation under this By-law.

Fees waived by the Director

34 The Director is authorized to waive all or part of a fee imposed by this By-law where the Director is satisfied that the imposition of the fee would be unfair in the circumstances.

Appeals

35(1) Except as otherwise provided in this By-law, an appeal from an order or decision under this By-law may be made, upon payment of any applicable fee, to the designated committee by filing a written appeal with the City Clerk. ~~in accordance with the Charter.~~

35(2) An appeal from a decision by the Director to nominate a neighbourhood as a proposed HCD filed in accordance with subsection (2) must be submitted by an owner within 30 days following the date on which the owner received or is deemed to have received notice of the nomination.

35(3) Where an appeal has been filed in accordance with this section, the designated employee must give notice of the appeal in accordance with the Charter to

(a) the applicant;
(b) the appellant; and
~~(a)~~(c) any person who has submitted a letter of support or a letter of opposition in accordance with this By-law.

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