**Minute No. 452**
**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 11, 2021**

**Item No. 3 Amendment to the Dwelling Unit Density Provisions in the Development Procedures By-law No. 104/2020**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:

1. That a by-law to amend the density variance provisions of the Development Procedures By-law No.104/2020, a draft of which is attached as Appendix A to this report, be enacted.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 11, 2021**

DECISION MAKING HISTORY:

Moved by Councillor Gilroy,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 18, 2021, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 11, 2021, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

# ADMINISTRATIVE REPORT

**Title:** Amendment to the Dwelling Unit Density Provisions in the Development Procedures By-law No.104/2020

**Critical Path:** Standing Policy Committee on Property and Development, Heritage and Downtown Development - Executive Policy Committee - Council

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| D. Jopling | J. Kiernan | N/A | M. Ruta,<br>Interim CAO |

## EXECUTIVE SUMMARY

On October 29, 2020, Council adopted the new Development Procedures By-law No.104/2020 (the “New By-law”). The New By-law represented a substantial re-write, the result of a detailed review and editing process, facilitated by a comprehensive cross jurisdictional analysis including direct input from multiple City departments. The New By-law is in a more standard legal by-law format which aligns better with the City of Winnipeg Charter, removes redundancies and adds clarity to development application definitions and processes.

The previous Development Procedures By-law (the “Old By-law”) did not clearly address the issue of Density Variances for dwelling units in Multiple Family settings. The rules were unclear and often resulted in the inconsistent processing of a variety of density variances without clear policy guidance.

The Public Service has re-written Section 31 Density Variances to rectify this situation and allow for a greater range of dwelling unit density variances under strict criteria that will allow the City to be more flexible with the wide array of multiple family proposals received. The criteria may require the rezoning of properties into the applicable multiple family zone and density category when appropriate. The Public Service has also corrected an error to permit appeals relating to variance and conditional uses within the downtown area to be heard by the Standing Policy Committee in accordance with the Downtown Winnipeg Zoning By-law.

The Public Service is recommending approval of the attached amendment to Section 31 Density variances of the Development Procedures By-law No.104/2020, a draft of which is attached to this report as Appendix A.

## RECOMMENDATIONS

1. That a by-law to amend the density variance provisions of the Development Procedures By-law No.104/2020 be enacted, a draft of which is attached as Appendix A to this report.

2. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

## REASON FOR THE REPORT

On October 29, 2020, Council adopted the new Development Procedures By-law No.104/2020 a part of which contained Density Variance regulations. After several months of working with the New By-law, the Public Service has found that in certain situations these new density variance regulations are too strict, particularly where affordable housing initiatives are at stake.

The Public Service has amended the Density Variance regulations to allow some flexibility in the minor intensification of existing multiple family including the re-establishment of previously existing multiple family uses to in many instances facilitate affordable housing projects.

## IMPLICATIONS OF THE RECOMMENDATIONS

Should the recommendations of the Winnipeg Public Service be concurred in, Section 31 Density variances will be amended in the Development Procedures By-law No.104/2020, attached to this report as Appendix A.

## HISTORY/DISCUSSION

On October 29, 2020, Council adopted the new Development Procedures By-law No.104/2020. The New By-law represented a substantial re-write, the result of a detailed review and editing process, facilitated by a comprehensive cross jurisdictional analysis including direct input from multiple City departments. The New By-law is in a more standard legal by-law format which aligns better with the City of Winnipeg Charter, removes redundancies and adds clarity to development application definitions and processes.

The previous Development Procedures By-law (the “Old By-law”) did not clearly address the issue of Density Variances for dwelling units in Multiple Family settings. The rules were unclear and often resulted in the inconsistent processing of a variety of density variances without clear policy guidance.

Existing Wording:

***'Density variances***
***31*** *Despite anything else in this By-law, a density regulation or rule in a zoning by-law must not be modified by way of variance except*

*(a) in respect of an existing legally-established multi-family dwelling by no more than 10% of the density rule or regulation where the designated employee determines that significant changes to the existing building height or footprint will not be required; or*

*(b) in respect of any site with any of the following zoning designations:*

*(i) Residential Multi-Family (Large);*

*(ii) Transit Oriented Development;*

*(iii) Residential Mixed Use; or*

*(iv) Commercial Mixed Use.'*

During the past several months operating under the New By-law regulations, the Public Service have run into some situations where these new density variance parameters have proven to be too restrictive particularly in the realm of existing multiple family buildings looking to add an additional couple of suites and in affordable housing proposals looking to use existing multiple family buildings. Recent specific proposals under the Rapid Housing Initiative Program had to be abandoned as the dwelling unit density that was previously existing on the subject site was deemed no longer non-conforming due to having been discontinued for a period longer than 12 months and the site was not eligible for a density variance under the new regulations in the New By-law.

Development proposals for duplexes on properties zoned 'R2' Residential Two-family of a size less than the Zoning By-law requirement of 5,000 square feet in lot area have also been impacted. This change will re-instate the previously long-standing variance process that used to be available for these properties to allow new duplexes to be established on lots that are currently zoned 'R2' but may be below the required 5,000 square feet of lot area.

The Public Service have re-written Section 31 Density Variances to rectify this situation and allow for a greater range of dwelling unit density variances under strict circumstances that will require the rezoning of properties into the appropriate multiple family zone and density category while at the same time allowing some flexibility for existing multiple family buildings and multiple family projects wishing to re-establish within a dormant multiple family building or site.

In addition, it has come to the attention of the Public Service that the New By-law erroneously did not account for the Downtown Winnipeg Zoning By-law, which provides that appeals of variance and conditional use decisions within the downtown area are to be heard by the Standing Policy Committee on Property and Development, Heritage and Downtown Development. The attached amending by-law corrects this oversight.

**FINANCIAL IMPACT**

## Financial Impact Statement

**Date:** April 6, 2021

## Project Name:

## Amendment to the Dwelling Unit Density Provisions in the Development Procedures By-law No.104/2020

**COMMENTS:**

There are no material financial implications associated with the recommendations contained in this report.

Mike McGinn April 6, 2021
Mike McGinn, CPA, CA
Manager of Finance

## CONSULTATION

This Report has been prepared in consultation with:
Legal Services (as to legal issues)
Zoning and Permits

## OURWINNIPEG POLICY ALIGNMENT

The recommendations contained in this report align with OurWinnipeg Direction 1: Support diverse housing options in each neighbourhood or neighbourhood cluster throughout the City.

## WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Strategic Opportunity #4: Facilitate Compact, Complete Development and Increase Density.

- 4.2: Ensure New Areas of Growth Are Designed according to the Principles of Complete Communities.

## SUBMITTED BY

Department: Planning, Property and Development
Division: Urban Planning & Design
Prepared by: James Veitch, Principal Planner
Sarah Rentz, Solicitor
Date: April 6, 2021

Attachments:

Appendix A – Draft Amending By-law

**Appendix A – Draft Amending By-law**

**THE CITY OF WINNIPEG**
**BY-LAW NO. /2021**

A By-law of THE CITY OF WINNIPEG to amend the Development Procedures By-law No. 104/2020 in respect of density variances.

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

**Development Procedures By-law amended**
**2** The Development Procedures By-law No. 104/2020 is amended by this By-law.

**Section 31 replaced**
**3** Section 31 is replaced with the following:

***Density Variances***
***31(1)*** *Despite anything else in this By-law, a density regulation or rule in a zoning by-law must not be modified by way of variance except in accordance with this section.*

***31(2)*** *A density regulation or rule in a zoning by-law must not be modified unless the subject site has one of the following zoning designations or where an application to vary the density regulation or rule is accompanied by an application to change the zoning designations to one of the following:*

*(a) Commercial Mixed Use;*

*(b) Residential Mixed Use;*

*(c) Residential Multi-Family (Large); or*

*(d) Transit Oriented Development.*

***31(3)*** *Despite subsection (2), a density regulation or rule in a zoning by-law may be modified by way of variance*

*(a) where the subject site has a zoning designation or an application to change to a zoning designation which allows a two-family dwelling as a permitted use but does not meet the required lot area per dwelling unit for a two-family dwelling, by the minimum amount necessary in order to allow development of the two-family dwelling; and*

*(b) where the subject site has any other zoning designation, in respect of a new or existing multi-family dwelling by no more than 10% of the density regulation or by one additional dwelling unit, whichever is greater. Where 10% of the density regulation would result in a fractional number of*

*dwelling units, the number of dwelling units shall be rounded up to the next highest whole number.*

***31(4)*** *Despite clause (3)(b), a density regulation or rule in a zoning by-law may be modified in other zoning designations by more than 10%*

*(a) where the application to vary the density regulation or rule in a zoning by-law meets all of the conditions below:*

*(i) the existing multi-family dwelling is being maintained without significant changes to the building height or footprint, as determined by a designated employee;*

*(ii) any dwelling units being added to the existing multi-family dwelling will not require any site servicing upgrades, as determined by a designated employee;*

*(iii) the existing zoning district allows a multi-family dwelling as either a permitted use or a conditional use;*

*(iv) the density meets either the minimum lot area per dwelling unit requirements of the Residential Multi-Family (Large) zoning district where the proposed development is multi-family residential, or the minimum lot area per dwelling unit requirements of the Residential Mixed Use zoning district where 0the proposed development is mixed use; and*

*(v) where the dimensional standards of the alternative zoning district would require all of the following:*

*A. a variance for lot area;*

*B. a variance for substandard side yard; and*

*C. a legal tool such as a zoning agreement to restrict the maximum building height; or*

*(b) where*

*(i) the multi-family dwelling is damaged or destroyed, the multi-family dwelling is being repaired or rebuilt and not exceeding the previous density, and a designated employee determines that the cost of repairing or rebuilding the multi-family dwelling is more than 50% of the cost of constructing an equivalent new multi-family dwelling; and*

*(ii) the application to re-establish the previous density of the multi-family dwelling is submitted within 2 calendar years following the date on which the multi-family dwelling was damaged or destroyed, as determined by a designated employee.*

**Section 37 replaced**

**4** Section 37 is replaced with the following:

***Appeal***

***37(1)*** *Subject to subsection (2), a decision of the approving authority under this Part may be appealed to the Appeal Committee in accordance with the Charter.*

***37(2)*** *Where the site is located entirely within the area to which the Downtown Winnipeg Zoning By-law No. 100/2004 applies, a decision of the approving authority under this Part may be appealed in accordance with that By-law.*

**DONE AND PASSED** this day of , 2021.

Mayor

City Clerk

***Approved as to content:***

Director of Planning, Property and Development

***Legally reviewed and certified as to form:***

Director of Legal Services and City Solicitor