



# City of Richmond

## Report to Committee

**To:** Planning Committee **Date:** June 15, 2015  
**From:** David Weber **File:** 12-8060-20-9259-9267/2015-Vol 01  
 Director, City Clerk's Office  
**Re:** **Board of Variance Bylaw No.9259 and Consolidated Fees Bylaw No.8636, Amendment Bylaw No. 9267**

### Staff Recommendation

1. That Board of Variance Bylaw No. 9259 be introduced and given first, second and third readings; and
2. That Consolidated Fees Bylaw No. 8636, Amendment Bylaw No. 9267 be introduced and given first, second and third readings.

David Weber  
 Director, City Clerk's Office  
 (604-276-4098)

REPORT CONCURRENCE		
<b>ROUTED TO:</b>	<b>CONCURRENCE</b>	<b>CONCURRENCE OF GENERAL MANAGER</b>
Law	<input checked="" type="checkbox"/>	
Development Applications	<input checked="" type="checkbox"/>	
Policy Planning	<input checked="" type="checkbox"/>	
<b>REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE</b>	INITIALS: 	<b>APPROVED BY CAO</b> 

## Staff Report

### Origin

On April 27, 2015, it was announced that Richmond City Council would undertake a process to consider the early termination of land use contracts within the City. As part of that process and in order to incorporate new legislative powers for the Board of Variance to hear appeals relating to the early termination of land use contracts, a review of the Board of Variance Establishment and Procedure Bylaw has been conducted. As a result of this review, a new Board of Variance Bylaw is presented for Council's consideration.

### Analysis

Together with the existing and recently enacted amendments to the *Local Government Act* that govern Boards of Variance, an up-to-date Board of Variance bylaw has been drafted to include the necessary procedural and regulatory provisions for an efficient and compliant Board of Variance appeal process. The proposed bylaw:

- establishes the jurisdiction and purpose of the Board;
- authorizes and provides for administrative and technical staff support;
- defines BOV application requirements and rules for application handling;
- establishes application fees (through the Consolidated Fees Bylaw);
- provides for scheduling and notice for BOV hearings; and
- outlines hearing procedures (including provisions relating to quorum, order of proceedings, rules for delegations, rules for deliberations and decisions of the Board, record-keeping, and provisions for the inspection and availability of Board decisions).

A new category of application has also been established for land use contract early termination appeals to the Board of Variance. The recommended application fee is \$650 which is based on the estimated staff time and resources that will be required to process applications, conduct BOV hearings and to provide notification for each application.

It is also recommended that the fees for other types of Board of Variance applications be standardized at this same level. Although there have only been a handful of applications in recent years, the application fees for BOV appeals have not been reviewed and have therefore remained essentially the same for the past 20 years. Accordingly, the fees (\$173 and \$144 respectively for appeal applications relating to variances or exemptions and appeal applications relating to non-conforming uses) are very outdated and would not realistically cover the current costs associated with processing such applications today. It is recommended that all BOV application fees be standardized and set at \$650.

### Financial Impact

None.

**Conclusion**

An updated Board of Variance bylaw, together with provisions found in the *Local Government Act*, will provide staff and the Board with the procedural and administrative controls necessary to conduct an efficient and effective appeal process. Adoption of the new bylaw and the establishment of the associated application fees are recommended.



David Weber  
Director, City Clerk's Office  
(604-276-4098)

- Att. 1: Board of Variance Bylaw No. 9259
- 2: Consolidated Fees Bylaw No. 8636, Amendment Bylaw No. 9267



## BOARD OF VARIANCE BYLAW NO. 9259

The Council of the City of Richmond enacts as follows:

### PART ONE: CONTINUATION AND JURISDICTION OF BOARD

#### 1.1 Continuation of Board

1.1.1 The **Board**, established by previous bylaw of the **City**, is hereby continued.

#### 1.2 Jurisdiction of Board

1.1.2 The **Board** shall hear and determine **applications** on the grounds and to the extent set out in the *Local Government Act*.

### PART TWO: ADMINISTRATIVE AND TECHNICAL SUPPORT

#### 2.1 Administrative Support

2.1.1 The **Corporate Officer**, or a person assigned by the **Corporate Officer**, shall be the Secretary to the **Board**.

2.1.2 The **Secretary** shall have the following duties:

- (a) determine completeness of an **application**;
- (b) provide notice of an **application** in accordance with the *Local Government Act* and this bylaw;
- (c) prepare the agenda and minutes for each **Board** meeting;
- (d) provide notice of a **Board** decision in accordance with this bylaw; and
- (e) maintain a record of all decisions of the **Board** and ensure that the record is available for public inspection during normal business hours.

#### 2.2 Technical Support

2.2.1 The **City's** Planning and Development Division shall provide technical support to the **Board** in respect to an **application**.

2.2.2 The representative(s) of the Planning and Development Division may:

- (a) provide a written report to the **Board** in respect to an **application**; and/or
- (b) attend a **hearing** and respond to any questions from the **Board**.

### **PART THREE: APPLICATION PROCEDURES**

#### **3.1 Completion of Application**

3.1.1 A person or an owner, as applicable, may apply to the **Board** for an order under the following section(s) of the *Local Government Act*:

- (a) section 901 [*Variance or exemption to relieve hardship*];
- (b) section 901.1 [*Exemption to relieve hardship from early termination of land use contract*];
- (c) section 902 [*Extent of damage preventing reconstruction as non-conforming use*].

3.1.2 The person or owner making an **application** shall submit the following to the **Secretary**:

- (a) a completed application form together with any required supporting materials, including any applicable drawings and plans, and the grounds of the **application**, in form and content satisfactory to the **Secretary**;
- (b) title search, dated no earlier than 30 days from the **application** date, for the land that is the subject of the **application**; and
- (c) the applicable fee specified in the Consolidated Fees Bylaw No. 8636, which fee is non-refundable except in accordance with section 3.2.2 of this bylaw.

3.1.3 The owner making an **application** pursuant to section 3.1.1(b) of this bylaw shall submit the following additional materials and information:

- (a) a copy of the land use contract registered on title, together with any amendments to the land use contract; and
- (b) the length of extension requested for the termination of the land use contract, the nature of the hardship requiring the extension, and how the extension would relieve the hardship, together with any supporting documents or materials.

3.1.4 The **Secretary** shall examine each **application** and may request the applicant to submit such further information or materials as the **Secretary** may deem necessary.

- 3.1.5 An **application** for an order under section 3.1.1(b) of this bylaw shall be made within 6 months after the adoption of the bylaw, authorized by section 914.2 [*early termination of land use contracts*] of the **Local Government Act**, that is applicable to the land for which the order is sought.

### 3.2 Withdrawal or Adjournment

- 3.2.1 A person or owner who has made an **application** may, at any time prior to the **hearing** date, apply to the **Secretary** to withdraw the **application** or request an adjournment of the **hearing**.
- 3.2.2 If a person or owner withdraws an **application** prior to the mailing or delivery of notices for the **hearing** pursuant to section 4.1.2 of this bylaw, the person or owner is entitled to a refund of 50% of the fee paid pursuant to section 3.1.2(c) of this bylaw.
- 3.2.3 If the **Secretary** grants a request to adjourn a **hearing** after the mailing or delivery of the notices for the **hearing** pursuant to section 4.1.2 of this bylaw, the person or owner shall pay to the **City** the additional fee specified in the Consolidated Fees Bylaw No. 8636 for mailing or delivery of notices in respect to the new **hearing** date.

## PART FOUR: BOARD PROCEDURES

### 4.1 Pre-Meeting Procedures

- 4.1.1 Upon the **Secretary** being satisfied the **application** is complete, the **Secretary** shall:
- (a) schedule the **hearing** of the **application** for the next available meeting date for the **Board**;
  - (b) provide notice of the **hearing** in accordance with section 4.1.2 of this bylaw; and
  - (c) provide the completed **application** to the **Board** and the **City's** Planning and Development Division.
- 4.1.2 Not less than 10 days before the **hearing** date for an **application** for an order pursuant to section 3.1.1(a) or (b) of this bylaw, the **Secretary** shall mail or otherwise deliver written notice of the **hearing** date, time, location and subject matter for the **application** to:
- (a) the person or owner making the **application**;
  - (b) the tenants in occupation of the land that is the subject of the **application**; and

- (c) the owners and tenants in occupation of land that is immediately adjacent to or within 50 metres of the land that is the subject of the **application**.

4.1.3 The **Secretary** may schedule more than one **hearing** for each **Board** meeting.

## 4.2 Meeting Procedures

4.2.1 The quorum of the **Board** for a meeting is the majority of its members.

4.2.2 If a quorum is not present within 15 minutes after the scheduled time of the meeting, the **Secretary** shall cancel the meeting and:

- (a) record the names of the persons present;
- (b) reschedule the **applications** to be heard at that meeting to the next available **Board** meeting; and
- (c) either:
  - (i) prior to cancelling the meeting, announce the new **hearing** date and location for each rescheduled **application**; or
  - (ii) provide notice of the new **hearing** date and location in accordance with section 4.1.2 of this bylaw.

4.2.3 At the beginning of each **hearing**, the **Secretary** must provide to the **Board** and the applicant any written submissions in respect to the **application** received in advance of the **hearing**.

4.2.4 The applicant must be afforded the first opportunity to make a submission to the **Board**, after which submissions may be presented by other persons in the order determined by the Chair of the meeting, until all persons wishing to make a submission relevant to the **application** have been given an opportunity to be heard.

4.2.5 Other than the applicant, persons making submissions to the **Board** at a **hearing** must not exceed a total speaking time of five minutes, excluding the time taken for questions posed by **Board** members, unless the **Board** authorizes additional speaking time.

4.2.6 The **Board**, in its discretion, may:

- (a) establish procedures for **Board** meetings and **hearings**, provided such procedures do not conflict with the provisions of this bylaw;
- (b) administer an oath or affirmation for oral evidence;
- (c) accept evidence that is unsworn, written or hearsay evidence; and

- (d) before evidence is presented at a **hearing**, direct that:
  - (i) no oral evidence will be allowed to be given unless all of the witnesses first take an oath or affirmation in the same manner as witnesses at a civil trial in the Supreme Court of British Columbia; or
  - (ii) no written evidence will be allowed to be given unless it is given by affidavit.

4.2.7 The **Board** may, at any time, adjourn a meeting or the **hearing** of an **application**, provided either:

- (a) prior to the adjournment, the **Secretary** announces the new date and location for the meeting or **hearing**; or
- (b) the **Board** directs the **Secretary** to provide notice of the new meeting or **hearing** date and location in accordance with section 4.1.2 of this bylaw.

4.2.8 The **Board** must not hear any oral or written submissions in respect to an **application** except at a **hearing** for the **application**.

### 4.3 Decision-Making Procedures

4.3.1 At the conclusion of the **hearing** for an **application**, the Board may:

- (a) grant or deny the order requested by the applicant and provide reasons for the grant or denial;
- (b) request further information from the applicant, the **City's** Planning and Development Division or any person who has made a submission to the **Board** in respect to the **application** and adjourn the **hearing** in accordance with section 4.2.7 of this bylaw; or
- (c) reserve its decision and provide a written decision at a later date.

4.3.2 The decision of the **Board** to either grant or deny an order must be supported by not less than 3 members of the **Board**.

4.3.3 A **Board** member must not abstain from voting in respect to an **application** heard by the **Board** member.

4.3.4 **Board** members not present during a **hearing** for an **application** must not participate in making a decision in respect to the **application**.

4.3.5 A **Board** member shall not discuss the merits of an **application** other than with another **Board** member who was present at the **hearing** for the **application**.



- 4.3.6 If an applicant, or his or her representative, does not attend the **hearing** for the **application**, the **Board** may adjourn the **hearing** in accordance with section 4.2.7 of this bylaw or make a decision in the absence of the person or owner.
- 4.3.7 Following a decision by the **Board** in respect to an **application**, the **Secretary** must mail or otherwise deliver to the applicant written notice of the **Board's** decision.
- 4.3.8 The **Board** shall not rehear an **application** covering the identical grounds or principles upon which the **Board** has previously rendered a decision.

## PART FIVE: INTERPRETATION

- 5.1 In this bylaw, unless the context requires otherwise:

<b>APPLICATION</b>	means an application for an order under section 3.1.1(a), (b) or (c) of this bylaw
<b>BOARD</b>	means the Board of Variance for the <b>City</b> continued pursuant to this bylaw
<b>CITY</b>	means the City of Richmond
<b>COMMUNITY CHARTER</b>	means <i>Community Charter</i> , SBC 2003, c. 26, as amended or replaced from time to time
<b>CORPORATE OFFICER</b>	means the person appointed by Council pursuant to section 148 of the <i>Community Charter</i> as the Corporate Officer of the <b>City</b> , or his or her designate
<b>HEARING</b>	means the hearing of an <b>application</b> by the <b>Board</b>
<b>LOCAL GOVERNMENT ACT</b>	means <i>Local Government Act</i> , RSBC 1996, c. 323, as amended or replaced from time to time
<b>SECRETARY</b>	means the person assigned to be Secretary to the <b>Board</b> in accordance with section 2.1.1 of this bylaw

## PART SIX: SEVERABILITY

- 6.1 If any section, subsection, paragraph, clause or phrase of this bylaw is for any reason held to be invalid by the decision of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.

## PART SEVEN: REPEAL AND CITATION

- 7.1 Board of Variance Establishment and Procedure Bylaw No. 7150 is hereby repealed.
- 7.2 This bylaw is cited as "**Board of Variance Bylaw No. 9259**".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CORPORATE OFFICER

CITY OF RICHMOND
APPROVED for content by originating dept. <i>DW</i>
APPROVED for legality by Solicitor <i>mf</i>



Consolidated Fees Bylaw No. 8636, Amendment Bylaw No. 9267

The Council of the City of Richmond enacts as follows:

- 1. The Consolidated Fees Bylaw No. 8636, as amended, is further amended by deleting the schedule titled "SCHEDULE – BOARD OF VARIANCE ESTABLISHMENT AND PROCEDURE" in its entirety and substituting the following:

"SCHEDULE – BOARD OF VARIANCE

Board of Variance Bylaw No. 9259

Application Fees

Sections 3.1.2(c), 3.2.3

Table with 2 columns: Description, Fee. Rows include application fees for variance, hardship, reconstruction, and adjournment.

- 2. This Bylaw is cited as "Consolidated Fees Bylaw No. 8636, Amendment Bylaw No. 9267".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

Four horizontal lines for signatures corresponding to the reading stages.

Approval box for City of Richmond, containing text for content and legality approval with handwritten signatures.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CORPORATE OFFICER