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February 13, 2018

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THE CITY OF CALGARY
CITY CLERK'S

His Worship
Naheed K. Nenshi
The City of Calgary Mayor and His Fellow Councillors

RE: Proposed Bylaw 17P2018

Dear Mr. Mayor / Dear Councillors:

The proposed amendments to s. 27 of the *Land Use Bylaw* will not resolve the concerns that arose last summer in relation to the failed notice posting, contrary to s. 27(2)(g), of a development permit application for an outdoor café in Sunnyside. The Development Authority's failure to post notice as directed by Council effectively denied adjacent landowners like me the opportunity to participate in the review of Development Permit Application DP2017-1512.

One of the grounds in support of my request for reconsideration of the decision to issue that Development Permit was the Development Authority's failure to comply with the mandatory provisions of s. 27. In dismissing my request, the Managing Director of Calgary Approvals Coordination provided the following information regarding notice posting in that case (copy of Joel Armitage's September 12, 2017 letter attached):

"Two **notice postings** were erected at the site on 27 April 2017 and **went missing** at some time before the end of the 7-day notice posting period."

From the material on file, the Senior Planning Technician who had worked on Development Permit Application DP2017-1512 was unable to say where the mandatory notice would have been posted. "**It doesn't say where,**" were the technician's exact words.

The proposed amendment whereby *the Development Authority must ensure a notice is posted in a conspicuous place* will not remedy situations where notices go *missing*. Nor will the requirement, under the new notice posting process as described in the *Planning & Development Report* before you, that applicants provide The City with "*a form stating the notice has been posted and will remain onsite for the period required by The City.*"

What is missing in the proposed s. 27 amendment is the sanction for non-compliance by either the applicant or the Development Authority. What happens when it turns out that the s. 27 notice *went missing*?

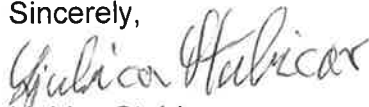
The fact that, in the case of Development Permit Application DP2017-1512, the Managing Director of Calgary Approvals Coordination did not have a problem with the notice having gone *missing* suggests that the mandatory notice-posting requirement is but a formality in the eyes of the Administration.

Although Council has provided, under Bylaw 10P99, that the City of Calgary employees appointed to the position of Development Authority are required to exercise their development powers in accordance with the *Land Use Bylaw*, Council has yet to spell out how the Development Authority is held accountable for the exercise of those powers.

And it is misleading to suggest that failure to post notice of application can be remedied by compliance with the provisions governing notice of approval [s. 39(1)(a), for discretionary uses]. The provisions of ss. 27 and 39, as regards discretionary uses, are cumulative.

If your goal is to provide all Calgarians the opportunity to participate in the development permit application review process, you need to consider making non-compliance with the provisions of s. 27 subject to sanction. You may also want to consider simply directing the Development Authority to give notice of proposed developments in areas like C-COR1 zones by letter to adjacent landowners.

Sincerely,



Ljubica Stubicar
213 9A St. N.W.
Calgary, Alberta, T2N 1T5
(403) 275-6532

Enclosure: 2 pages



12 September 2017

Ms. Ljubica Stubicar
213 9A Street NW
Calgary, Alberta T2N 1T5

Dear Ms. Stubicar,

I apologize for the delay in responding to your letters addressed to me dated 13 July 2017 and 18 July 2017. Please note that Inspectors have reviewed your letters and investigated your complaints.

A Development Inspector attended the subject business on 7 September 2017 and found speakers on the lower patio. The Inspector spoke with the manager on site and directed that the outdoor speakers be removed. Follow up is scheduled at the beginning of October to ensure compliance. If the Inspector finds continuing development infractions, other enforcement options will be considered.

I have considered your request to suspend or cancel development permit DP2017-1512 and have determined that there are insufficient grounds to suspend or cancel this development permit.

This development permit application is for the outdoor café which is located at grade on the parcel addressed at 112 – 10 Street NW. I understand that there is also an upper-level outdoor café which was constructed in 1985.

The Development Authority followed the Land Use Bylaw's requirement to post notice of the application. Two notice postings were erected at the site on 27 April 2017 and went missing at some time before the end of the 7-day notice posting period. In addition to the notice postings, the approval of the application was advertised on 25 May 2017. The advertisement of the decision of the Development Authority in the newspaper is the notice of the approval under the Land Use Bylaw.

We understand that you are concerned that the applicant failed to show land uses adjacent to the site in their application as well as the existing patio at the site. Please be advised that the Development Authority did review adjacent land uses as well as the existing patio before approving the subject development permit. The Development Authority has access to photos, maps and site visits of the area and viewed them during the review of the development permit application.

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You also mention in your letter that you are concerned that the Development Authority rendered its decision on a plan that contained misrepresentations. The Development Authority sees no misrepresentations on the drawings. The discrepancies between the Alberta Land Surveyor's Real Property Report dated 26 May 2014 and the one that was included in the application are not relevant to the development permit decision. A Real Property Report is not required as part of an application for an outdoor café and as such is not required to bear the land surveyor's signature or the land surveyor's permit stamp. The encroachment on the Real Property Report you mention in your letter is also not relevant to the application.

In addition, I am aware that PRLR applied for and obtained the development permit for an outdoor café and it is the Oak Tree Tavern that is operating the outdoor café in addition to its existing 2nd floor outdoor patio. It is not material that PRLR applied for the permit and the Oak Tree Tavern is the one that is operating the patio because the approval is not tied to the applicant but rather the site. Also, as I mentioned above, the Development Authority was aware that there is an existing 2nd floor outdoor patio at this location and took that into consideration when making their decision.

The Development Authority received a letter of authorization from the property owner at the time the development permit was submitted. An outdoor café must be approved in conjunction with a use in the Eating and Drinking Group of the Land Use Bylaw, such as a restaurant – licensed. The addresses of both the existing restaurant and the outdoor café were noted in the application, circulated, approved, and advertised. The development permit is tied to the land and not a particular business owner.

Considering the aforementioned information, we will not be suspending or cancelling this development permit.

Yours truly,

Joel Armitage, M.Eng., P.Eng
Managing Director, Calgary Approvals Coordination
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CC: Jeff Fielding, City Manager, City of Calgary
Carol McClary, Technical Lead Planner, Inspections and Permits
Hanna Oh, Lawyer, Law Department