



SHORES JARDINE LLP

July 24, 2025

Coalition for Better Infill

**Re: Opinion Letter**

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You have asked for our opinion on the following questions:

- A. Can the City of Edmonton change the City Plan, District Plans and Zoning Bylaw to reduce the number of infill units per lot?
- B. Is compensation payable in respect of a change to the City Plan, District Plans and Zoning Bylaw to reduce the number of infill units per lot?
- C. If someone has applied for a Development Permit under the current Zoning Bylaw, would a change affect them?

**A. CAN THE CITY OF EDMONTON CHANGE THE CITY PLAN, DISTRICT PLANS AND ZONING BYLAW TO REDUCE THE NUMBER OF INFILL UNITS PER LOT?**

**Answer**

Yes, the City Council can amend any of these bylaws by following the process in the Municipal Government Act<sup>1</sup> ("MGA").

**Analysis**

Edmonton's City Plan, the District Plans and Zoning Bylaw are each made under the bylaw making authority granted to the City of Edmonton ("City") under bylaw making power granted under the MGA<sup>2</sup>:

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<sup>1</sup> RSA 2000, c. M-26.

<sup>2</sup> We note that City Plan arguably involves the exercise of authority both under the MGA and the Highways Development and Protection Act, S.A. 2004, c. H-8.5 (as it relates to transportation systems). However, the issue of infills and infill density is purely within the purview of the MGA so that is the focus of our analysis.



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### City Plan<sup>3</sup>

City Plan is intended to satisfy the obligation of the City to adopt a municipal development plan as required under section 632 of the MGA. Under section 632, a municipal development plan must be adopted by bylaw.

### District Plans<sup>4</sup>

Edmonton's District Plans are additional statutory plans authorized under section 635.1 of the MGA (which is incorporated into the MGA for the City under the *City of Edmonton Charter, 2018 Regulation<sup>5</sup>* ("City Charter").

### The Zoning Bylaw<sup>6</sup>

The Zoning Bylaw is intended to satisfy the obligation of the City to pass a land use bylaw as required under section 640 of the MGA.

Any bylaw made under the MGA can be amended by the Council, who must follow the same process as required for the original bylaw. Section 191 of the MGA expressly provides for the amendment of any bylaw made under it. The relevant subsections read:

#### **Amendment and repeal**

**191(1)** The power to pass a bylaw under this or any other enactment includes a power to amend or repeal the bylaw.

**(2)** The amendment or repeal must be made in the same way as the original bylaw and is subject to the same consents or conditions or advertising requirements that apply to the passing of the original bylaw, unless this or any other enactment provides otherwise.

In short, any City bylaw can be amended or replaced by following the advertising and public hearing requirements set out in the MGA.<sup>7</sup>

Municipal councils must be free to amend or alter their bylaws as circumstances dictate. They cannot bind themselves or a successor council to a course of action. An undertaking, a promise

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<sup>3</sup> Charter Bylaw 20,000.

<sup>4</sup> A variety are in effect e.g. Ellerslie District Plan, Charter Bylaw 24003, Central District Plan, Charter Bylaw 20,004, Scona District Plan Charter Bylaw 24010, Southwest District Plan, Charter Bylaw 2401.

<sup>5</sup> AR 39/2018, s 4(33).

<sup>6</sup> Charter Bylaw 20,001.

<sup>7</sup> MGA, s. 606 and 692.



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or a contract to maintain zoning cannot be enforced and cannot give rise to damages resulting from rezoning.<sup>8</sup>

In a recent decision, the Court of King's Bench said: "it cannot be said that property owners have a right to the continued existence of the regime prevailing at any given time."<sup>9</sup>

## **B. IS COMPENSATION PAYABLE IN RESPECT OF A CHANGE TO THE CITY PLAN, DISTRICT PLANS AND ZONING BYLAW TO REDUCE THE NUMBER OF INFILL UNITS PER LOT?**

### **Answer**

No. Generally, if changes are based on valid planning purposes, compensation would not be payable for the impact on the value of land from changes to any of these bylaws.

### **Analysis**

Any change to planning bylaws is likely to affect the value of that land, either increasing or decreasing the value of a parcel. A landowner does not have to pay compensation to the City when a zoning change increases the value of their land. A landowner cannot claim compensation from the City if there is a reduction to the value of their land as a result of a zoning change that is made in accordance with the MGA.<sup>10</sup>

The MGA expressly denies the right to compensation for bylaws made under Part 17 of the MGA, which deals with planning and development. Section 621(1) provides:

#### **Compensation**

**621(1)** Except as provided in this Part and in section 28 of the *Historical Resources Act*, nothing in this Part or the regulations or bylaws under this Part gives a person a right to compensation.

**(2)** Subsection (1) applies only to this Part and does not create, extinguish or affect rights created, extinguished or affected by the rest of this Act.

City Plan, the District Plans and the Zoning Bylaw are all made under Part 17 and accordingly protected from claims for compensation by section 621(1). In respect of section 621(2), no

<sup>8</sup> *Pacific National Investments Ltd. v. Victoria (City)*, [2000 SCC 64 \(CanLII\)](#), [2000] 2 SCR 919, at para. 56. *Pacific National Investments Ltd. v. Victoria (City)*, [2004 SCC 75 \(CanLII\)](#), [2004] 3 SCR 575, at para. 1.

<sup>9</sup> *Lehodey v. Calgary (City)*, [2025 ABKB 8 \(CanLII\)](#), at para. 103.

<sup>10</sup> F. Laux and G. Stewart-Palmer, *Planning Law and Practice in Alberta* (4<sup>th</sup> Ed), Juriliber (Loose leaf) at p. 8-1.



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other provision of the MGA provides any right to compensation from the City for an amendment or replacement of a bylaw made under Part 17.<sup>11</sup>

### **C. IF SOMEONE HAS APPLIED FOR A DEVELOPMENT PERMIT UNDER THE CURRENT ZONING BYLAW, WOULD A CHANGE AFFECT THEM?**

#### **Answer**

Yes. Generally, an application for a development permit that has been made but not decided, is subject to the provisions of the new bylaw.

#### **Analysis**

Once a permit is issued (and the limitation period for appealing passes), the person to whom it is issued has the vested right to develop in accordance with the permit. However, an application for a development permit does not create any vested rights in the applicant. If a developer applies for a permit and before the developer receives the permit, the City amends the bylaw to reduce the number of infill units, the new bylaw applies to the application.<sup>12</sup>

However, as we have discussed, it would not be open to the City to administratively put a hold on consideration of development permits while a new bylaw made its way through Council. That would be problematic from the perspective of lawfulness and good faith. During the consideration of the new bylaw, the City development officers would have to continue to consider permit applications in the ordinary course and issue permits where applications comply with the bylaw in effect at the time.

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<sup>11</sup> There is a narrow exception to the general principle that there is no compensation for downzoning a parcel, if the rezoning is actually a de facto taking of the land. It requires two things to be shown, the City would have to receive a beneficial interest in the land or flowing from it, and the amending bylaw would have to remove all reasonable uses of the land. See *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006 SCC 5 \(CanLII\)](#), [2006] 1 SCR 227, at para. 30 and *Annapolis Group Inc. v. Halifax Regional Municipality*, [2022 SCC 36 \(CanLII\)](#), [2022] 2 SCR 772, at para. 44. An example of this would be having a public park as the only lawful use of a property.

<sup>12</sup> *Lehodey v. Calgary (City)*, [2025 ABKB 8 \(CanLII\)](#), at para. 103.



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## CONCLUSION

The establishment of planning bylaws, including City Plan, the District Plans and the Zoning Bylaws, are exercises of democratic decision making by City Council under the MGA. As long as Council acts in accordance with the MGA and for legitimate planning purposes, Council can amend the Land Use Bylaw by reducing the number of infill units (and indeed even take more drastic action to limit where infill units can be built or the rules relating to them).

A developer has no more rights to a specific planning regime than a homeowner on a neighbouring lot. Both of them are subject to changes in the law and neither of them are entitled to compensation when the law changes in accordance with the MGA.

## LIMITS ON USE OF OPINION

This opinion is prepared based on the general questions posed and provides general advice in response. It is not intended to be used and should not be used in respect of any specific matter involving a specific property, the zoning applicable to a specific property or any application for a development or use of a specific property or any issue respecting compensation arising from circumstances unique to a specific property. Land use planning law is complex and factually dependent. Specific legal advice must be sought for issues respecting specific properties and their circumstances.

Sincerely,

**SHORES JARDINE LLP**

Per:

**WILLIAM W. SHORES, K.C.**

[bill@shoresjardine.com](mailto:bill@shoresjardine.com)

WWS/ck

Suite 2250, Bell Tower  
10104 – 103 Avenue  
Edmonton, Alberta  
T5J 0H8

tel 780.448.9275  
fax 780.423.0163  
[shoresjardine.com](http://shoresjardine.com)

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