

MAYFAIR BEL-AIRE COMMUNITY ASSOCIATION

Restrictive Covenants Protection Fund

Terms of Reference

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PURPOSE

Title to almost every residential lot in Mayfair and Bel-Aire is subject to a restrictive covenant (“**RC**”) that imposes certain restrictions on development and use. There are multiple RCs, covering different parts of the two communities, but all are substantially similar in content.

The *Land Titles Act* (Alberta) (“**LTA**”) gives statutory protection to restrictive covenants, such that Mayfair and Bel-Aire homeowners are both subject to the applicable RC and have the right to enforce the applicable RC against other lots subject to that RC.

The RCs operate as a “building scheme” separate from and in addition to municipal zoning bylaws.

The City of Calgary (the “**City**”) does not take any RC into consideration when approving a development permit (“**DP**”) or a building permit (“**BP**”) for construction in Mayfair and Bel-Aire, with the result that the City often approves construction which is contrary to the RC.

The *Municipal Government Act* (Alberta) (“**MGA**”) requires that the City implement a statutory regulatory regime to control development within the City. The City has implemented a Municipal Development Plan (“**MDP**”) pursuant to the MGA, and is now in the process of finalizing and implementing multiple levels of subsidiary statutory instruments, including in particular the *Guidebook For Great Communities* (the “**Guidebook**”), Local Area Plans and new land use bylaws, all consistent with the MDP. The MDP and the Guidebook explicitly call for greater density and diversity of housing in Calgary. The Guidebook contemplates that the zoning for neighbourhoods such as Mayfair and Bel-Aire will be changed from single detached dwellings zoning (R-C1/R-C1L) to zoning which allows semi-detached dwellings, row housing, and various scales of apartment buildings.

The Mayfair Bel-Aire Community Association (“**MBCA**”) considers that the RCs are critically important to the preservation and continuation of the current character of Mayfair and Bel-Aire as single detached dwellings neighbourhoods, with parks, green spaces and a substantial urban forest. The existing low density and low intensity housing also indirectly results in lower levels of traffic and parking problems in our neighbourhoods.

The MDP, the Guidebook and the City’s ultimate proposed zoning for Mayfair and Bel-Aire contemplate forms, size and density of housing which would not be permitted by the RCs.

Section 48 of the LTA states in part that any restrictive covenant “may be modified or discharged by order of the court, on proof to the satisfaction of the court ... that the condition or covenant conflicts

with the provisions of a land use bylaw or statutory plan under Part 17 of the Municipal Government Act, and the modification or discharge is in the public interest.”

Case law in Alberta currently permits enforcement of a RC where the RC is more restrictive than the land use bylaw for the land in question. Greater restriction currently is not considered a conflict with the land use bylaw.

Because the City does not require that any DP or BP comply with the applicable RC, it falls to affected homeowners to enforce the RC. The MBCA has established the Restrictive Covenants Review Committee (“**Review Committee**”) to monitor all DP and BP applications to determine compliance with the applicable RC, and to communicate with owners and builders to alert them to the need for compliance with the applicable RC. The Review Committee’s mandate does not extend to enforcement of RCs, nor is there any provision for funding to cover enforcement costs.

Failure to timely enforce a RC can result in the RC becoming unenforceable. Timely enforcement action – especially before construction occurs – can be critical to successful enforcement of a RC.

The MBCA wishes to ensure that funding is in place and available on a timely basis should the need for protection of the RCs arise, whether:

1. via injunction application to prevent non-compliant construction from commencing or continuing in Mayfair or Bel-Aire;
2. in opposition to any legal action commenced by a Mayfair or Bel-Aire property owner (including via a builder or developer) seeking to invalidate and discharge a RC from title;
3. to support legal action in another Alberta community with substantially similar RCs, where the outcome of such case would be of great precedential value to our communities; and
4. to fund (either alone or in combination with other communities) to lobby in defence of the RCs should the City, developers or others seek to amend the LTA or the MGA so as to invalidate or discharge the RCs;

(the four situations described above being “**Protective Actions**”).

To these ends, it is proposed that the MBCA approve the creation of a fund in support of Protective Actions, as described below in this document.

FUND CREATION

1. There is hereby established a fund (the “**Restrictive Covenants Protection Fund**”, or the “**Fund**”) for the protection of the RCs registered against title in Mayfair and Bel-Aire.
2. The Fund will be controlled and administered by the Board of Directors of the MBCA (the “**Board**”).
3. The Board will cause a separate bank account to be opened, which account will receive and disburse all monies for the Fund’s purposes.
4. The Board will designate account signatories for the Fund’s bank account, which designations may change as the Board determines from time to time.

CONTRIBUTIONS TO THE FUND

5. Any person may contribute any amount to the Fund.
6. All contributions to the Fund are, in all cases, non-refundable.
7. Contributions to the Fund are not eligible for any charitable contribution tax receipt.

FUND OPERATION

8. The Review Committee will advise the Board of situations where the Review Committee considers it appropriate to expend monies from the Fund for Protective Actions.
9. After consultation with the Review Committee, and after such consultation as the Board considers appropriate in the circumstances with affected home owners in Mayfair and Bel-Aire, the Board, in its sole discretion, may decide to expend monies from the Fund for Protective Actions. For the first two types of Protective Actions, the Board in exercising its discretion must consider which particular Protective Actions will best achieve the goals of the Fund, without regard to financial contributions made to the Fund by particular affected home owners in Mayfair or Bel-Aire.
10. The Board, in its sole discretion, may engage legal counsel, lobbyists and other advisors, and pay them from the Fund.
11. The Board, in its sole discretion, may otherwise use the Fund in support of Protective Actions.
12. In each case where the Protective Action requires that legal action be commenced or defended in the name of a registered property owner in Mayfair or Bel-Aire, the MBCA shall enter into a funding agreement with such owner on such terms as the Board considers appropriate, which terms might include but not be limited to provisions regarding choice of legal counsel, instruction of counsel, amount of funding, limit of funding, owner contributions to funding, and particulars of cooperation required of owner.

FUND REPORTING

13. The Review Committee shall provide an annual report to the Board, sufficiently in advance of the MBCA Annual General Meeting to permit such report to be circulated to all members of the MBCA as part of the Annual General Meeting information package.
14. The Fund's annual report shall provide an account of all contributions to and expenditures from the Fund, and a summary description of all Protective Actions taken during the annual period in question.

FUND WIND-UP

15. The Board may terminate the Fund and transfer all monies in the Fund's bank account to the MBCA's general bank account to be used for such other purposes as the Board determines from time to time, upon a Special Resolution of the members of the MBCA to that effect. "Special Resolution" for this purpose has the meaning given to it in the *Societies Act* (Alberta), including the 75% voting approval level for special resolutions currently specified in the *Societies Act* (Alberta).

16. Reasons for wind up might include, but are not limited to:
 - a. the City embedding into its statutory plan recognition and enforcement of the RCs as an integral part of the land use classification, DP and BP process;
 - b. the RCs having been wholly discharged from all affect titles;
 - c. the amendment of the *Land Titles Act* (Alberta) so that the continued existence or enforcement of the RCs is not permitted or practicable.
 17. Despite the wind up of the Fund, no contributor is entitled to any refund of any contribution, no matter when or why made.
 18. At the next Annual General Meeting of the MBCA, the Board will propose an amendment to the bylaws of the MBCA, by which the bylaws are altered to permit the creation, operation and wind up of the Fund as provided for in this document.
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Motion to establish the Restrictive Covenant Protection Fund:

Be it resolved that:

1. There is hereby established a fund (the “Restrictive Covenants Protection Fund”, or the “Fund”) for the protection of the restrictive covenants registered against title in Mayfair and Bel-Aire.
 2. The Fund will be used for the purposes, and operated in the manner, described in the “Restrictive Covenants Protection Fund – Terms of Reference” document attached to this resolution.
 3. A separate bank account will be established by the Treasurer of the MBCA to account for and control all monies held in the Fund bank account.
 4. The fund will be administered and directed through the existing Mayfair Bel-Aire Restrictive Covenant Review Committee with all expenditures in any one matter totaling over \$2500 needing approval of the Board of Directors of MBCA
 5. Any individual authorizing the expenditure of funds in the Restrictive covenant committee must be a Director of the MBCA and report the purpose and the amount of the expenditures promptly to the MBCA Board of Directors.
 6. All expenditures in total for any specific purpose over \$2500 must be approved by the President of the MBCA or if that individual is not available through the Treasurer of the MBCA or VP Development.
 7. Fund raising for the Fund will be the responsibility of the BOD and not the Restrictive Covenant Review Committee.
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