

**BY-LAW 2009-10
CONCERNING MINOR EXEMPTIONS**

**VILLAGE
OF AYER'S CLIFF**



**l'Esprit des Cantons
the Spirit of the Townships**

**Includes the amending by-laws :
Corrections techniques (MJ3 – February 2011)**

September 2009

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**PROVINCE DE QUÉBEC
M.R.C. DE MEMPHRÉMAGOG
VILLAGE D'AYER'S CLIFF**

BY-LAW CONCERNING MINOR EXEMPTIONS

At a regular meeting of the municipal council held at École Saint-Barthélemy on September 8, 2009, in accordance with the law, at which are present councillors Patrick Proulx, Roger Dumouchel, Isabel Marcotte and France Coulombe-Goodsell, forming a quorum under the chairmanship of the mayor, Mr. Vincent Gérin.

BY-LAW 2009-10

WHEREAS it is in the interests of the citizens of the village of Ayer's Cliff that the municipal council have a by-law dealing with minor exemptions;

WHEREAS by virtue of articles 145.1 to 145.8 in the *Land Use Planning and Development Act* (R.S.Q. C. A-19.1), the municipal council of a municipality may adopt and amend a by-law dealing with minor exemptions (also called minor variances) to the provisions of the Zoning and Subdivision By-laws other than those related to the land use and density of land use;

WHEREAS a Planning Advisory Committee (called a Comité consultatif d'urbanisme in French or CCU) has been struck, in accordance with articles 146, 147 and 148 of the *Land Use Planning and Development Act*;

WHEREAS this by-law has been the subject of a consultation in accordance with the Land Use Planning and Development Act;

WHEREAS it is timely to redraft the by-law governing minor exemptions under the framework of the revision of the planning program and the planning by-laws;

WHEREAS the applicable adoption procedure has been duly followed;

FOR THESE REASONS, the council decrees as follows:

CHAPTER I

DECLARATORY AND INTERPRETIVE PROVISIONS

Section I: Declaratory provisions

	TITLE	1
This by-law is entitled the "Minor Exemptions By-law"		
	TERRITORY COVERED	2
This by-law applies to the entire territory of the Municipality of the Village of Ayer's Cliff.		
	REPEAL OF EARLIER BY-LAWS	3
Without limiting the generality of the foregoing, this by-law repeals and replaces by-law 12-90 and its amendments.		
	SUBJECT OF A MINOR EXEMPTION	4
All the provisions of the Zoning and Subdivision By-laws, other than those related to use and land use density, may be the subject of a minor exemption.		

Section II: Interpretive provisions

SYSTEM OF MEASUREMENT 5

The dimensions in this by-law are provided in International System (IS) units.

TERMINOLOGY 6

The words and expressions used in this by-law have the meaning attributed to them, by order of precedence, as follows:

- (1) This by-law;
- (2) The Zoning By-law;
- (3) The Building By-law;
- (4) The Subdivision By-law;
- (5) The Permits and Certificates By-law;
- (6) The Conditions for issuing building permits By-law.

CHAPTER II

PROVISIONS ADMINISTRATIVES

Section I: Administration and application of the by-law

ADMINISTRATION OF THE BY-LAW 7

The secretary-treasurer and director general of the municipality is responsible for the administration of the by-law.

APPLICATION OF THE BY-LAW 8

The inspector is charged with applying this by-law. He is specifically authorized to give a report of infraction related to any infraction of this by-law.

The council may, by resolution or by-law, authorize any other person to issue a report of infraction related to an infraction of this present by-law.

POWERS OF THE PERSON RESPONSIBLE FOR THE APPLICATION 9

- (1) He may: visit and inspect a movable or immovable property as well as the interior or exterior of any house or building between the hours of 7 am and 7 pm, to verify that the by-laws and other municipal regulations are being respected, to verify any information or ascertain any fact needed for the exercise by the municipality of the power conferred on it by the law or a by-law, deliver a permit, issue a notice of compliance for an application, give an authorization or any other form of permission. In this context, the person charged with applying the by-law may take measurements, photograph the premises and collect any samples as required. In a territory decreed a permanent agricultural zone by the *Act respecting the preservation of agricultural lands and activities* (the LPTAAQ),

to gather any information or to ascertain any fact necessary for the application of the norms for

(2) distances separating incompatible activities, the inspector may be assisted by an agronomist, a veterinarian, a professional technologist or a land surveyor;

(2) give notice for the temporary evacuation of any building the condition of which could endanger the lives of any person;

(3) give notice to carry out any work or repairs that he deems necessary for the safety of the construction, and recommend to the council any emergency measure;

(4) give notice to rectify any situation constituting a contravention of this by-law;

(5) recommend to council any measure necessary to halt construction, or the use of a part of a lot, a parcel of land, a building or a construction that is not compatible with this by-law .

**OBLIGATION TO
ALLOW ENTRY**

10

The owner, tenant or occupant of a movable or immovable property, a house or a building must allow the inspector or his assistant, as the case might be, to enter for the purpose of inspecting, between the hours of 7 am and 7 pm, related to carrying out or respect for this by-law, other by-laws or resolutions of the council

Section II: Contraventions and sanctions

INFRACTIONS AND PENALTIES 11

Whoever contravenes a provision of this by-law commits an infraction and is liable for:

(1) For a first infraction, a fine of \$500 to \$1,000 in the case of a physical person or a fine of \$1,000 to \$2,000 in the case of a moral person;

(2) In the case of a repeated offense, a fine of \$1,000 to \$2,000 in the case of a physical person or a fine of \$2,000 to \$4,000 in the case of a moral person.

ONGOING INFRACTION 12

When an infraction continues for more than one day, the penalty is applied for each day or fraction of a day that the infraction continues.

REPEATED OFFENSE 13

When the by-law contemplates a greater penalty in the case of a repeated offense, it can only be imposed if the repeated offense has taken place within the two years following the declaration of the offender's guilt for an infraction against the same provisions as that for which the heavier fine is being sought.

CIVIL RECOURSE 14

In addition to penal recourse, the municipality may exercise all civil rights at its disposal before the courts to ensure that the provisions of this by-law are observed

COSTS 15

Costs are added to the penalties contemplated in this by-law. They include the costs attached to executing the judgement.

Section III: Application and processing of the file

**APPLICATION FOR
MINOR EXEMPTION 16**

A person who wishes to apply for a minor exemption shall forward two (2) copies of the application to the person charged with applying the by-law.

**DOCUMENTS
REQUIRED 17**

Without limiting the generality of the preceding article, the person who wishes to apply for a minor exemption shall provide the following:

- (1) The cadastral description of the land and its dimensions;
- (2) A written description of the application and the circumstances and reasons for the application related to this property and the contiguous properties;
- (3) A draft siting plan when the application concerns a proposed construction;
- (4) In the event that the application concerns work underway or work that has already been completed, and should the application be for an immovable for which the application for a building permit or certificate of authorization has been presented, a copy of the building permit or application or for the certificate of authorization, or the application for the building permit or the certificate of authorization as well as the plans and other documents that form part of it, as the case might be;
- (5) In the case of work already carried out that does not require a minor exemption, a location certificate;
- (6) Any other relevant information or document required by the person responsible for issuing the permits and certificates.

COSTS 18

A person who wishes to apply for a minor exemption shall include with the application the payment for the fees which are set at \$300. This sum covers the cost of study of the application and the cost of publication.

**FORWARDING OF THE
APPLICATION TO THE
PLANNING ADVISORY
COMMITTEE** 19

The inspector forwards the application to the Planning Advisory Committee (the CCU) when the file is complete and the required fees have been paid. The Planning Advisory Committee is also given the objectives covered by the application for a minor exemption in relation to the application regulatory provisions.

**STUDY OF THE
APPLICATION AND
RECOMMENDATION BY
THE PLANNING
ADVISORY COMMITTEE** 20

The Planning Advisory Committee studies the application and may ask the inspector or applicant for additional information to complete their study. The members may also visit the immovable for which the application for a minor exemption is made.

The Planning Advisory Committee draws up a notice, in writing, taking into account the assessment criteria and the restrictions set out in Chapter III and in the *LAU*.

**PUBLIC NOTICE AND
DATE OF THE MEETING
OF COUNCIL** 21

The secretary-treasurer and director general, working with the municipal council, sets the date of the meeting of the municipal council where the application for the minor exemption will be discussed and, at least 15 days before this meeting, will publish a notice in accordance with the *Municipal Code*. The notice gives the date, time and location of the meeting of the council and the type and impact of the minor exemption.

This notice contains the designation of the immovable concerned: the street address of the immovable, or, failing that, the cadastral number, and it notes that any interested person may be heard by the council in relation to this application (article 145.6 *LAU*).

DECISION OF THE COUNCIL 22

In accordance with the rules contemplated in the *Land Use Planning and Development Act*:

The resolution by which the council gives its decision may consider any condition, taking into account the powers of the municipality, with the goal of mitigating the impact of the minor exemption. The resolution may consider any condition among those in article 165.4.13 when the exemption accorded concerns the fact that the distances separating incompatible uses contemplated in a regulatory provision adopted by virtue of paragraph 4) in the second section of article 113 were not respected during the construction or enlargement of a work or structure or building for animal rearing that is not covered by the second sub-section of article 165.4.2, or, should there be no such provisions, by virtue of the directive related to odours emanating from animal wastes related to agricultural activities (2003, G.O.2, n° 25A, p. 2829A) applicable in such a case by virtue of article 38 or 39 of the Act amending the Act respecting the preservation of agricultural lands and activities and other legislative provisions (L.Q. 2001, c. 35).

TRANSMISSION OF THE RESOLUTION TO THE PROPERTY OWNER 23

Following the decision by the council, a certified copy of the resolution shall be transmitted by the secretary-treasurer and director general to the person who applied for the minor exemption and to the inspector.

ISSUING OF THE PERMIT OR CERTIFICATE (IF APPLICABLE) 24

Upon presentation of the certified copy of the resolution by which the council accords the minor exemption, the person charged with applying the by-laws issues the permit or certificate, as the case might be, if the conditions contemplated in the resolution are met and if all other provisions of the planning by-laws that are not the subject of the minor exemption are respected.

**KEEPING OF A
REGISTER**

25

The application for a minor exemption, the notice from the Planning Advisory Committee and the resolution of the municipal council are entered in a register opened for this purpose.

CHAPTER III

ASSESSMENT CRITERIA FOR THE APPLICATION

ASSESSMENT CRITERIA AND RESTRICTIONS 26

The assessment criteria and restrictions used to evaluate the application for a minor exemption are based on the following considerations:

- (1) The minor exemption may not be given for a land use or land use density (*LAU*) ;
- (2) The minor exemption respects the objectives of the Planning program (*LAU*) ;
- (3) The minor exemption may not be given in a zone where the land use is subject to special constraints for reasons of public security (*LAU*) ;
- (4) The minor exemption does not adversely affect the enjoyment by the owners of neighbouring immovables of their property rights (*LAU*) ;
- (5) The minor exemption has a unique character in the neighbourhood;
- (6) Application of the by-law causes a serious prejudice to the person seeking the minor exemption (*LAU*) ;
- (7) For work underway or already completed, the minor exemption may not be given unless a building permit or certificate of authorization, as the case might be, was given for the work, and the work was carried out in good faith.

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COMING INTO FORCE

This by-law comes into force in accordance with the law.

Vincent Gérin, Mayor

Ghislaine Poulin-Doherty, director general and secretary-treasurer

Notice of motion: July 6, 2009

Adoption of the draft by-law: July 6, 2009

Public consultation meeting: July 27, 2009

Adoption of the by-law: September 8, 2009

Notice of coming into force: _____