



REVISED AGENDA - VICTORIA CITY COUNCIL

Thursday, March 21, 2019

COUNCIL CHAMBERS

CITY HALL, #1 CENTENNIAL SQUARE, VICTORIA, BC

To be held immediately following the Committee of the Whole Meeting

To be held Immediately Following the Committee of the Whole Meeting

Pages

A. CONVENE COUNCIL MEETING

B. APPROVAL OF AGENDA

C. PUBLIC & STATUTORY HEARINGS

C.1 Remedial Action Requirement 1176 Yates - Request for Reconsideration

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D. REPORTS OF COMMITTEE

D.1 Committee of the Whole

Motions from the March 21, 2019 Committee of the Whole meeting pending approval at that meeting.

D.1.a Report from the March 21, 2019 COTW Meeting

*D.1.a.a 2019 Victoria Police Budget

Addendum: New Item

D.1.a.b 2558 Quadra Street - Victoria Housing Reserve Fund Application (Forest Heights)

D.1.a.c 330 - 336 Michigan Street - Victoria Housing Reserve Fund Application (Michigan Square)

E. BYLAWS

*E.1 Bylaw for 1303 Fairfield Road

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Adoption of:

- Housing Agreement (1303 Fairfield Road) Bylaw No. 18-047

F. CLOSED MEETING

MOTION TO CLOSE THE MARCH 21, 2019, COUNCIL MEETING TO THE PUBLIC

That Council convene a closed meeting that excludes the public under Section 90 of the Community Charter for the reason that the following agenda items deal with matters specified in Sections 90(1) and/or (2) of the Community Charter, namely:

Section 90(1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

Section 90(1)(a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;

Section 90(1)(e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;

Section 90(1)(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

G. APPROVAL OF CLOSED AGENDA

H. READING OF CLOSED MINUTES

H.1 Minutes from the closed meeting held January 24, 2019

I. UNFINISHED BUSINESS

I.1 Legal Advice - Community Charter Section 90(1)(i)

I.2 Appointment - Community Charter Section 90(1)(a)

*I.3 Legal Advice - Community Charter Section 90(1)(i)

J. CORRESPONDENCE

K. NEW BUSINESS

K.1 Land - Community Charter Section 90(1)(e)

L. CONSIDERATION TO RISE & REPORT

M. ADJOURNMENT

I. **REPORTS OF COMMITTEES**

I.1 **Committee of the Whole**

I.1.c **Report from the February 14, 2019 COTW Meeting**

I.1.c.c **Remedial Action Requirement - 1176 Yates Street
/Bylaw File #25483**

Moved By Councillor Potts
Seconded By Councillor Loveday

That this matter be risen and reported on by way of a staff report to the February 14, 2019 Committee of the Whole meeting to consider the following:

1. That Council, under the authority provided in Section 73 of the *Community Charter*, declare the building (the "Building") located at 1176 Yates Street on lands legally described as Lot 1 Plan 740 Section SR Victoria (the "Lands"), to be in an unsafe condition and creates a hazard to the public that requires remedial action to demolish and remove it from the Lands; and to level the site and plant grass.
2. That Council, under the authority of Section 74 of the *Community Charter*, declare the Building located on the Lands as being in a condition so dilapidated and unclean that it is offensive to the community and declare it a "nuisance" that requires remedial action to remove and/or demolish the Building;
3. That Council, under the authority of Section 72 of the *Community Charter*, impose the remedial action requirements as set out in Schedule A to this Report (see attached);
4. That Council authorize Staff to take all appropriate actions in accordance with Section 17 of the *Community Charter* to ensure the Building and Lands are brought into compliance with the remedial action detailed in Schedule A subject to the following:
 - a. The property owner has not fully complied with the remedial action order on or before the compliance date specified in this Council Resolution; and
 - b. That all costs incurred by the City of Victoria to bring the property into compliance shall be at the expense of the property owner and, as per Section 17 of the *Community Charter*, these costs shall be treated as a debt owed to the City of Victoria;
5. That Council set the time limit for compliance with the remedial action detailed in Schedule A at 60 days commencing February 14, 2019;

6. That Council set the time limit for a notice of a request for Council to reconsider the remedial action requirements detailed in Schedule A at 60 days, commencing February 14, 2019.
7. That, in the event of non-compliance by the owner, Council authorize the City Solicitor, at his discretion, to initiate legal proceedings to enforce compliance with this remedial action requirement, including prosecution or proceedings seeking injunctive relief.

CARRIED UNANIMOUSLY

F. STAFF REPORTS

F.2 Remedial Action Requirement - 1176 Yates Street /Bylaw File #25483

Committee received a report dated January 30, 2019 from the Leader of Bylaw & Licensing Services advising Council that the property located at 1176 Yates Street is in an unsafe and unclean condition which poses a significant safety hazard to the community and seeking authorization to impose a Remedial Action Requirement on the property to remove the unsafe and unclean conditions by demolishing the building.

Amendment:

Moved By Mayor Helps
Seconded By Councillor Collins

to add to end of paragraph "and to level the site and plant grass".

CARRIED UNANIMOUSLY

On the main motion:

CARRIED UNANIMOUSLY



Committee of the Whole Report For the Meeting of February 14, 2019

To: Committee of the Whole **Date:** January 30, 2019
From: Barrie Cockle – Leader, Bylaw & Licensing Services
Subject: Remedial Action Requirement – 1176 Yates St. / Bylaw File #25483

RECOMMENDATION

That this matter be risen and reported on by way of a staff report to the February 14, 2019 Committee of the Whole meeting to consider the following:

1. That Council, under the authority provided in Section 73 of the *Community Charter*, declare the building (the "Building") located at 1176 Yates Street on lands legally described as Lot 1 Plan 740 Section SR Victoria (the "Lands"), to be in an unsafe condition and creates a hazard to the public that requires remedial action to demolish and remove it from the Lands;
2. That Council, under the authority of Section 74 of the *Community Charter*, declare the Building located on the Lands as being in a condition so dilapidated and unclean that it is offensive to the community and declare it a "nuisance" that requires remedial action to remove and/or demolish the Building;
3. That Council, under the authority of Section 72 of the *Community Charter*, impose the remedial action requirements as set out in Schedule A to this Report (see attached);
4. That Council authorize Staff to take all appropriate actions in accordance with Section 17 of the *Community Charter* to ensure the Building and Lands are brought into compliance with the remedial action detailed in Schedule A subject to the following:
 - a. The property owner has not fully complied with the remedial action order on or before the compliance date specified in this Council Resolution; and
 - b. That all costs incurred by the City of Victoria to bring the property into compliance shall be at the expense of the property owner and, as per Section 17 of the *Community Charter*, these costs shall be treated as a debt owed to the City of Victoria;
5. That Council set the time limit for compliance with the remedial action detailed in Schedule A at 60 days commencing February 14, 2019;
6. That Council set the time limit for a notice of a request for Council to reconsider the remedial action requirements detailed in Schedule A at 60 days, commencing February 14, 2019.

7. That, in the event of non-compliance by the owner, Council authorize the City Solicitor, at his discretion, to initiate legal proceedings to enforce compliance with this remedial action requirement, including prosecution or proceedings seeking injunctive relief.

EXECUTIVE SUMMARY

The property at 1176 Yates Street has been the subject of bylaw enforcement action related to the provisions of the City's *Property Maintenance Bylaw* and *Abandoned Properties Bylaw* on an on-going basis for the last 15 years. In addition, other City resources including Police and Fire are continually being called upon to manage incidents directly related to the derelict condition of this property, and the criminal and nuisance activity that it attracts.

Occupancy of this residential building was revoked and the structure posted unsafe to occupy in 2003 after an inspection revealed that unpermitted demolition work in the basement, involving the cutting of weight bearing beams and the undermining of weight bearing posts, had severely compromised the structural integrity of the building. The condition of the building has been in steady decline ever since as the property owner has done nothing to address the unpermitted work and restore occupancy.

The *Community Charter* provides Council the authority to order remedial action if the Council consider that the structure is in or creates an unsafe condition. The *Community Charter* also provides Council the authority to declare a Building on private property, including structures that are so dilapidated or unclean as to be offensive to the community, to be a "nuisance" and impose remedial action requirements, including the removal or demolition of a building.

PURPOSE

The purpose of this report is to advise Council that the property located at 1176 Yates Street is in an unsafe and unclean condition which poses a significant safety hazard to the community; and seek Council's authorization to impose a Remedial Action Requirement on the property to remove the unsafe and unclean conditions by demolishing the building. Staff is also seeking Council's approval to proceed with the remedial action on the property if the property owner does not comply as directed within the time limit set by Council.

BACKGROUND

Section 72 of the *Community Charter* allows Council to impose remedial action requirements in relation to:

- a) matters or things referred to in Section 73 (*hazardous conditions*), or
- b) matters or things referred to in Section 74 (*declared nuisances*).

In the case of matters or things referred to in Section 73 or 74 a remedial action requirement may require the owner or occupier of the land to:

- a) remove or demolish the matter or thing,
- b) fill it in, cover it over or alter it,

- c) bring it up to a standard specified by bylaw, or
- d) otherwise deal with it in accordance with the directions of council or a person authorized by Council.

Section 73(2) of the *Community Charter* allows Council to impose remedial action requirements under Section 73(1) (*hazardous conditions*) if

- a) the Council considers that the matter or thing is in or creates an unsafe condition, or
- b) the matter or thing contravenes the Provincial building regulations or a bylaw under section 8 (3)(1) (*spheres of authority – buildings and other structures*) or Division 8 (*Building Regulation*) of this part.

Section 74 of the *Community Charter* allows Council to declare that any of the following is a “nuisance” and may impose a remedial action requirement in relation to the declared nuisance:

1. a building or other structure, an erection of any kind, or a similar matter or thing.

This applies in relation to a thing that Council considers so dilapidated or unclean as to be offensive to the community.

Section 76 of the *Community Charter* stipulates that the minimum time period that Council may set for compliance with a remedial action order must not be less than 30 days from the date of the notice to the owner. Section 78 allows the owner to request that Council reconsider its decision to impose remedial action and an opportunity to make representations directly to Council, provided such request is received within 14 days from the date of the notice.

Section 79 grants Council the authority to reduce the time limits stated in Sections 76 and 78 if Council considers that there is a significant risk to health or safety if action is not taken earlier.

ISSUES & ANALYSIS

This property is zoned R3-1 and the approved use of the structure is 17 light house-keeping units. The structure was posted “unsafe to occupy” in 2003 after an inspection by City staff revealed that substantial demolition work in the basement, involving the cutting of weight bearing beams and the undermining of weight bearing posts, had severely compromised the structural integrity of the building. The structure was fully tenanted at the time and due to the safety concerns those tenants had to be displaced. The property owner was given written direction to obtain the permits necessary to correct the deficiencies (see Schedule B and C).

To date the owner has taken no action to repair the structure and return it to a state where it can be occupied. Instead, the structure has remained vacant for the last 15 years and the unsafe conditions have only deteriorated further. The City receives public complaints regarding this property on a regular basis, and as a result, City resources are continually being called upon to manage incidents directly related to the derelict condition of this property, and the criminal and nuisance activity that it attracts (see Schedule D). Records show numerous Bylaw, Fire, and Police calls for service at this address, including 2 fires. Information provided by the Victoria Police show 24 calls for service in the last 2 years alone related to unwanted persons, drug use, break and enter, and squatters. A number of these police calls have come from the property owner himself.

The unsafe conditions are such that anyone who enters the structure is at risk, including first responders who have deemed the structure unsafe to enter even in an emergency. The property owner takes only minimal action to maintain the property, and only as a result of repeated enforcement action taken by staff under the provisions of the *Property Maintenance Bylaw* and the *Abandoned Properties Bylaw*. On December 19, 2018 a letter was sent to the property owner regarding the on-going issues upon this property and requesting that he provide staff with his intentions in regards to the property (see Schedule E). Although, the owner has confirmed receipt of the letter he has not provided a formal response.

OPTIONS & IMPACTS

The essential elements that must be considered in this case are as follows;

1. The structure was deemed unsafe and the occupancy was revoked in 2003 because the property owner carried out demolition work which significantly undermined the structural integrity of the building and placed the tenants at risk;
2. The property owner has taken no action to remediate the unsafe conditions and restore occupancy to the building despite having 15 years to do so, and has instead allowed the building to deteriorate which increases the risk that it poses to the public;
3. The property owner has taken no action to maintain the condition of the property and has allowed it to become so unclean that City resources are continually being called upon to manage the criminal and nuisance activity that it attracts.
4. Demolition of the building as outlined in Schedule A is the only certain and effective remedy for the current unsafe and unclean conditions;
5. There is a significant risk to public safety if action is not taken immediately to remediate these conditions.

CONCLUSIONS

Due to the significant risk to public safety posed by the unsafe and unclean condition of this property, and the need to take effective and timely action to remediate the hazardous conditions, staff have determined that the appropriate course of action at this time is to proceed with issuing a Remedial Action Requirement to the property owner. Doing so will not only provide the property owner incentive to act voluntarily, it would allow the City to take the required action should the owner fail to do so themselves.

Respectfully submitted,



Andrew Dolan
Senior Bylaw Officer



Barrie Cockle
Leader – Bylaw & Licensing Services

Report accepted and recommended by the City Manager:

Date:


Feb 5, 2019

List of Attachments (if relevant)

Schedule A – Notice of Remedial Action Requirement.

Schedule B – Letter to the owner from the Senior Bylaw Officer dated November 12, 2003.

Schedule C – Letter to the owner from the Building Inspector dated November 13, 2003.

Schedule D – Photographs of the subject property taken on January 16, 2019.

Schedule E – Letter to the owner from the Senior Bylaw Officer dated December 19, 2018.

Schedule A

IN THE MATTER OF THE *COMMUNITY CHARTER* S.B.C. 2003, c. 26

AND

THE PROPERTY LOCATED AT
1176 YATES STREET, VICTORIA BC

TO: Mr. Robin Kimpton
1121 Empress Ave.
Victoria, BC
V8T 1P3

NOTICE OF REMEDIAL ACTION REQUIREMENT

WHEREAS the Council of the City of Victoria (the "Council") has determined and declared that the building (the "Building") located at 1176 Yates Street, legally described as **Lot 1 Plan 740 Section SR Victoria** (the "Lands"), is a nuisance, hazard and creates an unsafe condition pursuant to Section 74 of the *Community Charter*.

THEREFORE under statutory power, including Sections 16, 17, 64, 72 to 74, 79 and 154 to 156 of the *Community Charter*, the Council orders as follows:

1. Within sixty (60) days of February 14, 2019, the registered owner of the lands (the "Owner"), at the Owner's expense, must obtain a building permit, and adhere to the conditions of the building permit, to remediate the unsafe conditions by removing and/or demolishing the Building and removing from the Lands any and all debris or accumulated materials.
2. If the Owner does not take the action required under Section 1 of this Notice, the Council, or any persons authorized by the Council (including private contractors) are authorized to enter upon the Lands pursuant to Section 16 and 17 of the *Community Charter* for the purpose of carrying out the required work.
3. Any action taken by the Council or other authorized person with respect to Section 2 of this Notice will be undertaken at the expense of the Owner, and the City of Victoria may recover the costs incurred in doing so as a debt from the Owner in accordance with Section 17 of the *Community Charter*.
4. If the City takes action and the costs of the action are unpaid on December 31 of the year in which the costs were incurred, the amount owing will be added to the property taxes and deemed as taxes in arrears in accordance with Section 258(1)(c) of the *Community Charter*.
5. Within fourteen (14) days of February 14, 2019, the Owner may request, in accordance with Section 78 of the *Community Charter* that the Council reconsider the remedial action requirement imposed under Section 1. A request that the Council reconsider the remedial action requirement must be given in writing within the time stated to:

City Clerk
City of Victoria
#1 Centennial Square
Victoria, BC
V8W 1P6

Dated at the City of Victoria, this 14th day of February 2019.

Mayor

City Clerk



Planning &
Development
Department

Bylaw Enforcement
Business Licensing

#1 Centennial Square
Victoria

British Columbia

V8W 1P6

Tel (250) 361-0215

Fax (250) 361-0277

dans@city.victoria.bc.ca

November 12, 2003
File: 3904

Robin Kimpton
1936 West 14th Avenue
Vancouver BC V6J 2K2

CERTIFIED TRUE COPY

Dear Sir:

Subject: Bylaw infractions at 1176 Yates Street

On November 10, 2003, I made an inspection of the building at this address accompanied by the Building Inspector, Plumbing Inspector, Electrical Inspector, and officials from the Ministry of Human Resources. Also present was your local manager, Albert Ward.

The approved use of the building at 1176 Yates is 17 housekeeping units. A housekeeping unit is defined as "a room or rooms used or intended to be used for normal living purposes including cooking, eating and sleeping but without separate bathrooms or toilet facilities."

According to the Building, Plumbing, and Electrical Inspectors, there is evidence of substantial construction (including demolition), plumbing, and wiring without valid permits. Each housekeeping unit has had its own bathroom installed without permits, and this work has had the effect of converting the building, illegally, to an apartment building. There is evidence that uncapped or illegal plumbing is allowing sewer gas into the building. There is also evidence of construction of extra apartments, in particular on the top floor and attic, and in the basement. Finally, there has been a substantial amount of demolition work in the basement, involving the cutting of weight-bearing beams and the undermining of weight-bearing posts.

As a result of these findings, the Building Inspector has posted the building "unsafe to occupy" and has informed your manager of this decision.

To comply with building and zoning regulations, you must take immediate steps to terminate occupancy of the building. If you wish to reoccupy the building, you must take steps to return it to its approved layout and use through the permit process.

If you have any questions, please contact the undersigned. Thank you for your cooperation in this matter.

Sincerely,

Dan Scoones
Senior Bylaw Officer

c: VCET



**Planning &
Development
Department**

**Permits &
Inspections
Division**

#1 Centennial Square
Victoria
British Columbia
V8W 1P6
Tel (250) 361-0342
Fax (250) 385-1128
Inspect@city.victoria.bc.ca

November 13, 2003
File: 1176 Yates

Mr. Robin Kimpton
1936 West 14th Avenue
Vancouver BC V6J 2K2

Dear Mr. Kimpton:

Subject: Unsafe – No Occupancy - 1176 Yates Street

On November 06, 2003, I made an inspection of the building at this address to accompany the Electrical Inspector and Bylaw Enforcement Officers. Your local manager, Albert Ward was present. I was prepared to immediately post the building as "Unsafe" due to the scope and nature of the infractions and let Mr. Ward know of my intention.

I returned in the afternoon with my Manager, a fellow Building Inspector, Plumbing Inspector, Senior Bylaw Officer and Officials from the Ministry of Human Resources. We were accompanied, again, by Mr. Ward.

I could find no evidence of any permits, or applications for permits, for the structural, architectural, plumbing or electric work that was either in progress or completed since our last recorded entries. Substantial alterations were underway on all storeys.

The strong smell of sewer gases from numerous sources and the various liberties taken with the integrity of load bearing structural elements were sufficient to invoke section 2.5 of the Building Bylaw to prohibit the occupancy of the unsafe building.

I posted the building and all suites "Unsafe – No Occupancy" and informed your manager of this decision.

Plans, prepared under the seal of a professional architect and structural engineer, must be submitted in support of a building permit application to bring the building into compliance with the intended use. The application should be submitted within 14 days.

If you have any questions, please contact the undersigned. Thank you for your cooperation in this matter.

Yours truly,

Dave Marchment, R.B.O.
Building Inspector

CERTIFIED TRUE COPY

Cc: Dan Scoones- Senior Bylaw Officer

Schedule D

1176 YATES ST.

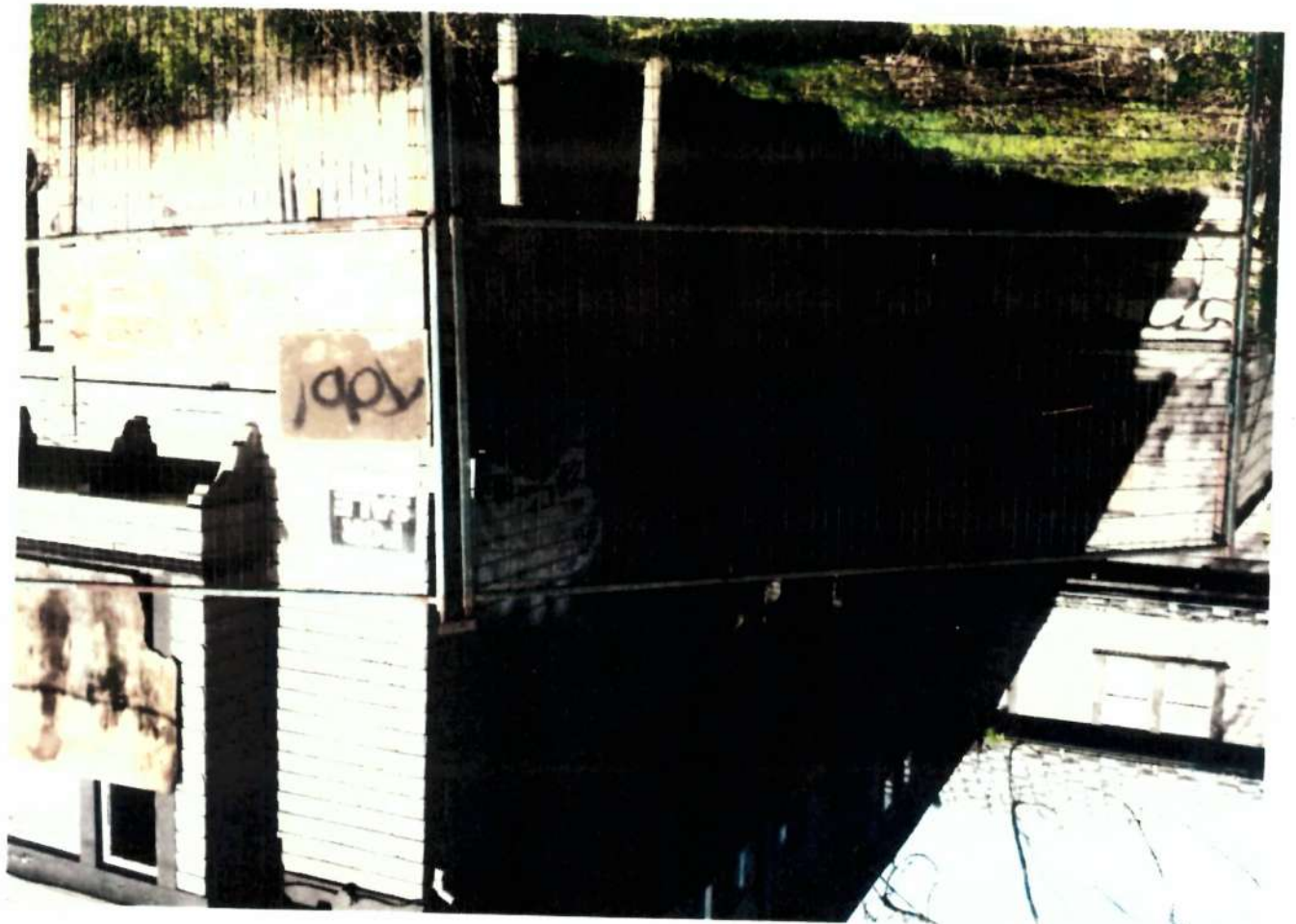


JAN 16/19



Boban.





Schedule E



December 19, 2018

Legislative and
Regulatory Services
Department

Mr. Robin Kimpton
1121 Empress Ave.
Victoria, BC
V8T 1P3

Re: Abandoned property – 1176 Yates St. / Bylaw File #25483

Bylaw and Licensing
Services Division

Dear Sir,

1 Centennial Square
Victoria BC V8W 1P6

This letter is to advise you that the City of Victoria continues to receive complaints regarding the condition of the property located at 1176 Yates Street. As a result of the complaints, and the growing concerns regarding the deterioration of the structure, the unsightly condition of the property, and the possible risk to public safety that it poses, I have been asked to conduct a file review and share my findings with you.

The structure was posted "unsafe to occupy" in 2003 after an inspection by City staff revealed that substantial demolition work in the basement, involving the cutting of weight bearing beams and the undermining of weight bearing posts, had severely compromised the structural integrity of the building. You were directed to obtain the permits necessary to correct the deficiencies. To date you have taken no action to repair the structure and return it to a state where it can be occupied. Instead, the structure has remained vacant for the last 15 years and the unsafe conditions have only deteriorated further to the point where first-responders have deemed the structure unsafe to enter even in an emergency. Records show numerous Fire and Police calls for service at this address, including 2 fires, and 24 calls in the last 2 years alone related to unwanted persons, drug use, break and enter, and squatters.

This is an unacceptable situation as City resources are continually being called upon to manage incidents directly related to the derelict condition of this property, and the criminal and nuisance activity that it attracts. The City would like to know what you have planned for this building, and if you intend to take any immediate action to address any of the concerns detailed above. Be advised that if you are unwilling or unable to take the necessary action, the City will exercise the authority granted under the *Community Charter* and move forward with whatever action is deemed necessary to ensure public safety.

Please respond and let me know what your intentions are by January 2, 2019. Please don't hesitate to contact me directly by email at adolan@victoria.ca or by telephone at 250.361.0578 during regular business hours.

Regards

Andrew Dolan
Senior Bylaw Officer
Bylaw & Licensing Services
City of Victoria

Cc: Barrie Cockle – Leader, Bylaw & Licensing Services

To Contact

Telephone 250.361.0215

Fax: 250.361.0205

E-Mail: bylawenforcement@victoria.ca

Web: www.victoria.ca

and Regional Districts of the Capital Regional Territory, we live and work
"The Swinging"



HEARING PRACTICE AND PROCEDURE

In open session of a meeting of Council:

1. The Mayor opens the hearing and asks City Clerk to introduce the item and the process involved with Council consideration.
2. City Clerk to provide context for the hearing and overview of issues specific to the matter before Council (Bylaw Services Manager will be on hand to respond to technical matters if necessary).
3. Mayor asks if the appellant or representative is present and wishes to address Council on the matter.
4. Once the appellant and staff have presented their information and questions have been answered, the Mayor will close the hearing.
5. Council gives consideration to the issues presented and may deliberate in a closed meeting before making their decision.
6. Council declares its decision in its minutes and a copy of those minutes will be mailed to the appellant in a letter.

**Legislative and
Regulatory
Services
Department**



Legislative Services

#1 Centennial Square

Victoria

British Columbia

V8W 1P6

Tel (250) 361-0571

Fax (250) 361-0348

www.victoria.ca

March 11, 2019

Mr. Robin Kimpton
1121 Empress Avenue
Victoria, BC V8T 1P3

Dear Mr. Kimpton:

**Re: Request for Reconsideration of Remedial Action Requirement
for 1176 Yates Street**

I hereby acknowledge receipt of your letter dated February 27, 2019, requesting an opportunity to address Council and request they reconsider the Remedial Action Requirement for 1176 Yates Street.

Please be advised that a Special Hearing has been scheduled for the Council meeting to be held **Thursday, March 21, 2019, at 11:00 a.m.** at the City of Victoria, City Hall, 1 Centennial Square (corner of Douglas and Pandora), in Council Chambers.

Please note that you must be in attendance at the Hearing in order for Council to consider the request to reconsider. Legal representation at the Hearing is permitted. A copy of the procedures for this hearing is enclosed for your information.

Should you have any questions regarding your appeal, or are unable to attend, please contact Legislative Services at 250.361.0346.

Yours truly,

Chris Coates
City Clerk

Enclosures

C: B. Cockle, Lead of Bylaw and Licensing
T. Zworski, City Solicitor

HOUSING AGREEMENT (1303 FAIRFIELD ROAD) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for rental housing for the lands known as 1303 Fairfield Road, Victoria, BC.

Under its statutory powers, including section 483 of the *Local Government Act*, the Council of The Corporation of the City of Victoria in an open meeting enacts the following provisions:

Title

- 1 This Bylaw may be cited as the "HOUSING AGREEMENT (1303 FAIRFIELD ROAD) BYLAW (2019)".

Agreement authorized

- 2 The Mayor and the City Clerk are authorized to execute the Housing Agreement:
 - (a) substantially in the form attached to this Bylaw as Schedule A;
 - (b) between the City and Unity Urban Properties Ltd. (Inc. No. BC0661523) or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 1303 Fairfield Road, Victoria, BC, legally described as:
PID: 007-150-377, Lot "A" (DD 286440-I) Fairfield Farm Estate, Victoria City, Plan 1456.

READ A FIRST TIME the	14 th	day of	February	2019
READ A SECOND TIME the	14 th	day of	February	2019
READ A THIRD TIME the	14 th	day of	February	2019
RESCIND THIRD READING the	14 th	day of	March	2019
AMENDED the	14 th	day of	March	2019
READ A THIRD TIME the	14 th	day of	March	2019
ADOPTED on the		day of		2019

CITY CLERK

MAYOR

HOUSING AGREEMENT
(Pursuant to Section 483 of the *Local Government Act*)

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, B.C. V8W 1P6

(the "City")

OF THE FIRST PART

AND:

UNITY URBAN PROPERTIES LTD.
(Inc. No. BC0661523)
3471 Short Street
Victoria, BC V8W 2V6

(the "Owner")

OF THE SECOND PART

WHEREAS:

- A. Under section 483 of the *Local Government Act* the City may, by bylaw, enter into a Housing Agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*.
- B. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 1303 Fairfield Street, Victoria, B.C. and legally described as:
- PID: 007-150-377
LOT "A" (DD 286440-I) FAIRFIELD FARM ESTATE, VICTORIA CITY, PLAN 1456
- (the "Lands");
- C. The Owner has applied to the City to rezone the Lands to permit 15 rental apartment housing units within the Development in accordance with this Agreement.
- D. The City and the Owner wish to enter into this Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner that all Dwelling Units within the Development on the Lands will be used and held only as rental housing and one dwelling unit will be used and held for moderate income rental housing.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this agreement (the "Agreement"), the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"CPI" means the All-items Consumer Price Index for Victoria, B.C. published from time to time by Statistics Canada, or its successor in function.

"Development" means the new residential/commercial building consisting of residential housing and related facilities on the Lands;

"Dwelling Units" means any or all, as the context may require, of the 15 self-contained residential dwelling units within the Development and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise;

"Dwelling Unit" means any of such residential dwelling units located on the Lands;

"Immediate Family" includes a person's husband, wife, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew;

"Market Rent" means the rent (as determined by a professional appraiser acceptable to the City in the City's sole and absolute discretion) that a willing tenant would pay to a willing landlord to rent the Dwelling Unit in question pursuant to a Tenancy Agreement, on the open market in Victoria, British Columbia, having regard to any utility or other services or amenities available to the tenant or provided by the Owner as landlord;

"Moderate Household Income" means the annual median household income for the Victoria, BC census metropolitan area, as published periodically by Statistics Canada, or its successor in function, which amount shall for the purposes of this Agreement be increased on January 1 each year, between the years in which Statistics Canada reports median household income statistics, by an amount equal to the increase in the CPI over the preceding 12 months. The parties agree that for 2019, the median household income for the Victoria, BC census metropolitan area is \$85,000. In the event that Statistics Canada or its successor in function no longer publishes median household income statistics for the Victoria, BC census metropolitan area, Median Household Income shall be the amount determined by the City from time to time, acting reasonably, and based upon the most reliable statistical and census data then available;

"Moderate Income Unit" means a Dwelling Unit that is designated as a Moderate Income Unit in accordance with Article 4.0 of this Agreement;

"Non-owner" means a person other than the Owner and other than a member of the Owner's Immediate Family, who occupies a Dwelling Unit for residential purposes;

"Owner" includes a person who acquires an interest in the Lands or any part of the Lands and is thereby bound by this Agreement, as referred to in section 8.3; and

"Tenancy Agreement" means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act.

"Strata Corporation" means, for the portions of the Lands or any building on the Lands that is subdivided under the *Strata Property Act*, a strata corporation as defined in that Act, including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation.

1.2 In this Agreement:

- (a) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment; and
- (b) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

2.0 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

2.1 The Owner covenants and agrees that the Dwelling Units shall only be used as rental housing in perpetuity, and for that purpose shall only be occupied by a Non-owner under the terms of a Tenancy Agreement between the Owner and the Non-owner who occupies the Dwelling Unit.

3.0 NO RESTRICTIONS ON RENTALS

3.1 The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any rules or regulations whatsoever, the effect of which would be to prevent or restrict the Owner of a Dwelling Unit from renting that Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

3.2 Without limiting the generality of section 3.1, the Owner covenants and agrees that it will not make application to deposit a strata plan for or in respect of the Lands or a building on the Lands unless the strata bylaws in no way restrict rental of any Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

4.0 MODERATE INCOME HOUSING

4.1 The Owner covenants and agrees that one 3 bedroom Dwelling Unit shall be designated as a Moderate Income Unit and shall only be occupied and used as a Moderate Income Unit.

4.2 The Moderate Income Unit shall only be occupied by a Non-owner or Non-owners with a combined annual income that is equal to or less than Moderate Household Income.

4.3 Monthly rent for the Moderate Income Unit shall not exceed the lesser of:

- (a) Market Rent; and
- (b) thirty percent (30%) of Moderate Household Income divided by 12.

5.0 REPORTING

5.1 The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Development, on the 1st day of February in each calendar year, a report in writing confirming the following:

- (a) all Dwelling Units are being rented to Non-owners;
- (b) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement; and
- (c) the Moderate Income Unit is being rented in accordance with Article 4.0,

along with such other information as may be requested by the Director from time to time.

5.2 The Owner hereby authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

5.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

6.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

6.1 Notice of this Agreement (the "Notice") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after registration of the Notice.

7.0 LIABILITY

7.1 The Owner agrees to indemnify and saves harmless the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by reason of or arising out of failure of the Owner to comply with the terms and conditions of this Agreement.

7.2 The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Owner now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement.

8.0 GENERAL PROVISIONS

8.1 NOTICE. If sent as follows, notice under this Agreement is considered to be received

- (a) seventy-two (72) hours after the time of its mailing (by registered mail) or faxing, and
- (b) on the date of delivery if hand-delivered,

to the City:

City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6

Attention: Director of Sustainable Planning and
Community Development
Fax: 250-361-0386

to the Owner:

661523 B.C. Ltd.
3471 Short Street
Victoria BC V8W 2V6

Attention: Nicole Roberts

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail service or facsimile service is interrupted by strike, work slowdown, force majeure, or other cause,

- (b) notice sent by the impaired service is considered to be received on the date of delivery, and
- (c) the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand-delivering the notice.

8.2 TIME. Time is of the essence of this Agreement.

8.3 BINDING EFFECT. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all obligations hereunder is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.

- 8.4 WAIVER.** The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 8.5 HEADINGS.** The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 8.6 LANGUAGE.** Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
- 8.7 EQUITABLE REMEDIES.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 8.8 CUMULATIVE REMEDIES.** No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 8.9 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 8.10 FURTHER ASSURANCES.** Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.
- 8.11 AMENDMENT.** This Agreement may be amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.
- 8.12 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 8.13 NO DEROGATION FROM STATUTORY AUTHORITY.** Nothing in this Agreement shall:
- (a) limit, impair, fetter or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, licence or approval, granted, made or issued thereunder, or pursuant to statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Agreement; or
 - (b) relieves the Owner from complying with any enactment, including the City's bylaws, or any obligation of the Owner under any other agreement with the City.
- 8.14 JOINT AND SEVERAL.** The Owner, if more than one, are jointly and severally obligated to perform and observe each and every of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.

8.15 COUNTERPARTS. This Agreement may be executed in counterparts and delivered by facsimile or emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

8.16 EFFECTIVE DATE. This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year last below written.

THE CORPORATION OF THE CITY OF VICTORIA by its authorized signatories:

MAYOR Lisa Helps

CITY CLERK Chris Coates

Date signed: _____

UNITY URBAN PROPERTIES LTD. (Inc. BC0661523)
by its authorized signatory(ies):

A Roberts

Print Name:

Nicole Roberts

Print Name:

Date signed: March 5, 2019

[00028396:1] \DAVIDS\ASSISTANT\Users\ASSIST-INDOCUME-PClients\UNITYU-111569-1.012\HOUSIN-11303 Fairfield Revised Housing Agreement requiring rentals and mod income CoV edits Mar 5 2019.da.cln.docx