

K. **BYLAWS**

K.1 **Bylaws for Rezoning Application for 224 Superior Street**

Moved By Councillor Alto
Seconded By Councillor Potts

That the following bylaw **be given first and second readings:**

1. Zoning Regulation Bylaw, Amendment Bylaw (No. 1141) No. 19-010

CARRIED UNANIMOUSLY

Moved By Councillor Alto
Seconded By Councillor Thornton-Joe

That the following bylaw **be given first, second, and third readings:**

1. Housing Agreement (224 Superior Street) Bylaw (2019) No. 19-011

CARRIED UNANIMOUSLY

DRAFT



Council Report

For the Meeting of April 25, 2019

To: Council **Date:** April 16, 2019
From: C. Coates, City Clerk
Subject: 224 Superior Street: Rezoning Application No. 00582

RECOMMENDATION

That the following bylaw be given first and second readings:

1. Zoning Regulation Bylaw, Amendment Bylaw (No. 1141) No. 19-010

And that the following bylaw be given first, second, and third readings:

2. Housing Agreement (224 Superior Street) Bylaw (2019) No. 19-011

BACKGROUND


Attached for Council's initial consideration are copies of the proposed Bylaws No. 19-010 and No. 19-011.

The issue came before Council on December 13, 2018 where the following resolution was approved:

224 Superior Street: Rezoning Application No. 00582


That Council instruct staff to prepare the necessary Zoning Regulation Bylaw Amendments that would authorize the proposed development outlined in Rezoning Application No. 00582 for 224 Superior Street, that first and second reading of the Zoning Regulation Bylaw Amendments be considered by Council and a Public Hearing date be set, subject to the preparation and execution of a Housing Agreement to ensure future strata bylaws cannot prohibit the rental of units, executed by the applicant to the satisfaction of the Director of Sustainable Planning and Community Development.

Respectfully submitted,


Chris Coates
City Clerk

Report accepted and recommended by the City Manager

Date:


April 18, 2019

List of Attachments:

- Bylaw No. 19-010
- Bylaw No. 19-011

NO. 19-010

A BYLAW OF THE CITY OF VICTORIA

The purposes of this Bylaw are to amend the Zoning Regulation Bylaw by:

- Creating the R2-56 Zone, Superior Street Conversion District;
- Rezone a portion of the land known as 224 Superior Street from the T-15 Zone, Superior Street Accommodation District, to the R1-S2 Zone, Restricted Small Lot (Two Storey) District;
- Rezone a portion of the land known as 224 Superior Street from the T-15 Zone, Superior Street Accommodation District, to the R2-56 Zone, Superior Street Conversion District;
- Repeal Bylaw 90-81 creating the T-15 Zone, Superior Street Transient Accommodation District.

The Council of The Corporation of the City of Victoria enacts the following provisions:

Title

- 1 This Bylaw may be cited as the “ZONING REGULATION BYLAW, AMENDMENT BYLAW (NO. 1141)”.

Rezoning

- 2 Bylaw No. 80-109, the Zoning Regulation Bylaw, is amended in the Table of Contents of Schedule “B” under the caption PART 2 – Attached Dwelling Zones by adding the following words:

“2.147 R2-56 Superior Street Conversion District”
- 3 The Zoning Regulation Bylaw is also amended by adding to Schedule B after Part 2.146 the provisions contained in Schedule 1 of this Bylaw.
- 4 The land known as 224 Superior Street, legally described as Lot 1937, Victoria City, and Lot 1938, Victoria City as shown hatched on the attached map, is removed from the T-15 Zone, Superior Street Accommodation District, and:
 - (a) that portion of the lot marked “R2-56” on the attached map is placed in the R2-56, Superior Street Conversion District; and
 - (b) that portion of the lot marked “R1-S2” on the attached map is placed in the R1-S2 Zone, Restricted Small Lot (Two Storey) District.

Repeal

- 5 Bylaw No. 90-81, the Zoning Regulation Bylaw, Amendment Bylaw (No. 293) is repealed.
- 6 Bylaw No. 80-109, the Zoning Regulation Bylaw, is amended in the Table of Contents of Schedule “B” under the caption PART 5 – Transient Accommodation Zones by deleting the following words:

“5.15 T-15 Superior Street Transient Accommodation”

READ A FIRST TIME the day of 2019

READ A SECOND TIME the day of 2019

Public hearing held on the day of 2019

READ A THIRD TIME the day of 2019

ADOPTED on the day of 2019

CITY CLERK

MAYOR

PART 2.147 – R2-56 ZONE, SUPERIOR STREET CONVERSION DISTRICT**2.147.1 Permitted Uses in this Zone**

The following uses are the only uses permitted in this Zone:

- a. Uses permitted in the R-2 Zone, Two Family Dwelling District, subject to the regulations set out in Part 2.1 of the Zoning Regulation Bylaw
- b. Multiple dwelling created through a house conversion of a building constructed prior to 1900, with no more than four self-contained dwelling units
- c. Home occupation subject to the regulations in Schedule “D”

2.147.2 Lot Area

- a. Lot area (minimum) 945m²

2.147.3 Floor Space Ratio

- a. Floor space ratio (maximum) 0.5:1

2.147.4 Height, Storeys

- a. Principal building height (maximum) 7.6m
- b. Storeys (maximum) 2

2.147.5 Setbacks, Projections

- a. Front yard setback (minimum) 11m

Except for the following maximum projections into the setback:

- Steps less than 1.7m in height 2.5m
 - porch 2.5m
- b. Rear yard setback (minimum) 4.0m
 - c. Side yard setback - west (minimum) 3.65m
 - d. Side yard setback - east (minimum) 3.00m

2.147.6 Site Coverage, Open Site Space

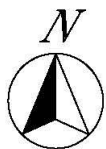
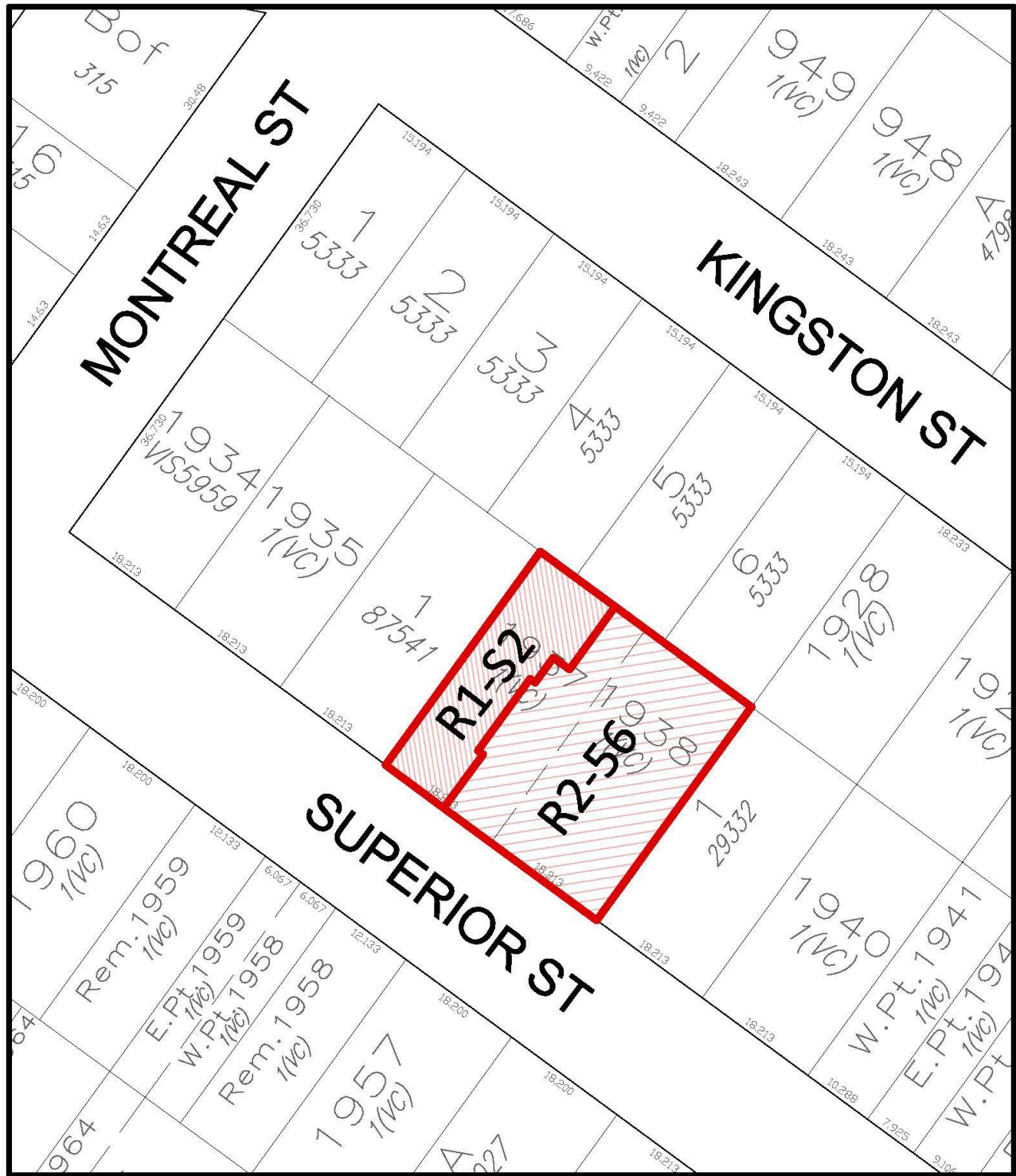
- a. Site Coverage (maximum) 30%

PART 2.147 – R2-56 ZONE, SUPERIOR STREET CONVERSION DISTRICT

2.147.7 Vehicle and Bicycle Parking

- a. Vehicle and bicycle parking (minimum)

Subject to the regulations in
Schedule "C".



224 Superior Street
Rezoning No.00582



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:

DONALD JAMES HALTON,
FERNANDO ALEJANDRO GARCÍA VAZQUEZ
and ALBION HOUSE LTD.
224 Superior Street
Victoria, B.C.
V8V 1T3
(collectively the "Owner")

OF THE SECOND PART

AND:

FIRST ACCREDIT MORTGAGE CORP.
(the "Existing Chargeholder")

OF THE THIRD 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 224 Superior Street, Victoria, BC, V8V 1T3 and legally described as:

LOT 1937, VICTORIA CITY (PID: 003-642-305)
LOT 1938, VICTORIA CITY (PID: 003-642-313)
(collectively, the "Lands");
- C. The Owner applied to rezone the Lands and the City conditionally approved such application subject to a number of conditions, including that the Owner and the Existing Chargeholder enter into this Agreement with the City;
- D. Some of the Dwelling Units (hereinafter defined) are intended to be stratified and therefore will be subject to the *Strata Property Act* (British Columbia) and the bylaws of the Strata

Corporation, but the intent of this Housing Agreement is to ensure the perpetual availability of rental units (in addition to owner-occupied units);

- E. 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 establish the terms and conditions regarding the occupancy of the residential units identified in this Housing Agreement.

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 parties agree each with the other as follows:

1.0 Definitions

1.1 In this Agreement:

"Development" means the proposed conversion of the Existing Building to include four Dwelling Units which will be subdivided by strata plan; the construction of the New Building; and the subsequent subdivision of the Lands into two separate legal lots on each of which one of those two buildings will be located.

"Dwelling Unit" means a self-contained residential dwelling unit within a building located on the Lands, and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise.

"Dwelling Units" means collectively all of such residential dwelling units located on the Lands.

"Existing Building" means the building existing on the Lands as of the date of execution of this Agreement by all parties, which building is known as the Albion House Bed and Breakfast.

"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.

"New Building" means the new residential building intended to be built on the Lands adjacent to the Existing Building as part of the Development.

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

"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 7.3.

"Tenancy Agreement" means a tenancy agreement entered into 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 No Restrictions on Rentals

- 2.1 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.
- 2.2 Without limiting the generality of section 2.1, 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.
- 2.3 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act*, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.

3.0 Reporting

- 3.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainability Planning and Community Development, a report in writing confirming:
 - (a) the number, type and location by suite or strata lot number, of Dwelling Units that are being rented to Non-owners; and
 - (b) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement.
- 3.2 The Owner covenants and agrees:
 - (a) to exercise its voting rights in the Strata Corporation against the passage of any bylaws that would restrict the availability for rental of any Dwelling Unit under the terms of a Tenancy Agreement unless this Agreement is amended; and
 - (b) to notify the City of any proposed amendments to its strata bylaws.
- 3.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications to this Agreement and that such consent may be withheld for any reason.

4.0 Notice to be Registered in Land Title Office

- 4.1 Notice of this Agreement ("**Notice**") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483(5) 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.
- 4.2 It is agreed and understood that if the Lands are subdivided at any time after this Agreement is entered into, such that the New Building is located on a separate legal lot (hereinafter referred to as "**Lot 1**") from the lot on which the Existing Building is located, the City will file a release of the Notice from Lot 1 within a reasonable time after such subdivision.

5.0 Liability

- 5.1 The Owner agrees to indemnify and save 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.
- 5.2 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.

6.0 Priority Agreement

- 6.1 The Existing Chargeholder, as the registered holder of charges by way of mortgages registered under number CA7395064 and assignment of rents registered number CA7395065 (collectively, the "**Existing Charges**") against title to the Lands in the Land Title Office at Victoria, British Columbia, for and in consideration of the sum of One Dollar (\$1.00) paid by the City (the receipt whereof is hereby acknowledged), agrees with the City that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to Section 483(5) of the *Local Government Act*, this Agreement shall be an encumbrance upon the Lands in priority to the Existing Charges in the same manner and to the same effect as if Notice had been filed prior to the Existing Charges.

7.0 General Provisions

Notice

- 7.1 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), 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 Sustainability Planning and Community
Development

to the Owner:

Donald James Halton, Fernando Alejandro García Vazquez and Albion
House Ltd.
224 Superior Street
Victoria, BC V8V 1T3

or upon registration of a strata plan for the Lands, to the Strata Corporation, and
to the Owner of any Dwelling Unit that is subject to the restrictions under section
2.1.

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 slow-down, force
majeure, or other cause,

- (a) notice sent by the impaired service is considered to be received on the date of
delivery, and
- (b) 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.

Time

- 7.2 Time is to be the essence of this Agreement.

Binding Effect

- 7.3 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.

Waiver

- 7.4 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.

Headings

- 7.5 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.

Language

- 7.6 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.

Equitable Remedies

- 7.7 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.

Cumulative Remedies

- 7.8 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.

Entire Agreement

- 7.9 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

Further Assurances

- 7.10 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.

Amendment

- 7.11 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.

Law Applicable

- 7.12 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

No Derogation from Statutory Authority

- 7.13 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) relieve 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.

Joint and Several

- 7.14 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.

Counterpart

- 7.15 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.

Effective Date

- 7.16 This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties have hereunto set their hands as of the dates inscribed at a place within British Columbia:

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

_____)
 MAYOR _____)

_____)
 CITY CLERK _____)

Date signed: _____)

ALBION HOUSE LTD.

by its authorized signatory(ies):

Print Name: Don HaltonPrint Name: FERNANDO A. GARCIADate signed: MARCH 26, 2019**DONALD JAMES HALTON**Date signed: MAR 26, 2019Donna Smith
Witness**FERNANDO ALEJANDRO
GARCIA VAZQUEZ**Date signed: MAR 26, 2019[Signature]
Witness**FIRST ACCREDIT MORTGAGE CORP.**
by its authorized signatory(ies):Print Name: Chris Pahl

Print Name: _____

Date signed: March 26, 2019