

K. **BYLAWS**

K.3 **Bylaw for 701 Tyee Road: Development Permit with Variances Application
No. 00080**

Moved By Councillor Alto

Seconded By Councillor Collins

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

1. Housing Agreement (701 Tyee Road) Bylaw (2019) No. 19-052

CARRIED UNANIMOUSLY



Council Report

For the Meeting of June 27, 2019

To: Council **Date:** June 26, 2019
From: C. Coates, City Clerk
Subject: 701 Tyee Road: Development Permit with Variances Application No. 00080

RECOMMENDATION

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

1. Housing Agreement (701 Tyee Road) Bylaw (2019) No. 19-052

BACKGROUND

Attached for Council's initial consideration is a copy of the proposed Bylaw No. 19-052.

The issue came before Council on June 6, 2019 where the following resolution was approved:

701 Tyee Road (Railyards): Development Permit with Variances Application No. 00080

That Council, subject to the execution of a Housing Agreement ensuring that no restrictions are placed on the rental of dwelling units within this building, to the satisfaction of the Director of Sustainable Planning and Community Development, and after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following motion:

"That Council authorize the issuance of Development Permit with Variances Application No. 00080 for 701 Tyee Road, in accordance with:

- a. Plans date stamped April 12, 2019.
- b. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
 - i. increase the height from 31m to 33.01m (building) and to 35.65m (mechanical room).
- c. The Development Permit lapsing two years from the date of this resolution.
- d. Direct staff to work with the applicant to re-examine the design of the Victoria West Entry Park to better address the revised building design and the ADP's comments; and that prior to bringing forward the necessary MDA amendment for Council's consideration, the applicant engages with the Victoria West Neighbourhood Association on the Park redesign."

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Coates'.

Chris Coates
City Clerk

Report accepted and recommended by the City Manager:

Date:

Joseph J. J. J.
June 26, 2019

List of Attachments:

- Bylaw No. 19-052

MAYOR

HOUSING AGREEMENT

(Pursuant to Section 483 of the Local Government Act)

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square, Victoria, British Columbia V8W 1P6

(the "City")
OF THE FIRST PART

AND:

THE RAILYARDS DEVELOPMENT INC. (Inc. No. BC0636395)
Burnes House, Third Floor, 26 Bastion Square, Victoria, British Columbia V8W 1H9

(the "Owner")
OF THE SECOND PART

AND:

CANADIAN WESTERN BANK
101 – 2803 Faithfull Avenue, Saskatoon, Saskatchewan S7K 8E8

(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 current civic address of 701 Tyee Road, Victoria, British Columbia, and presently legally described as:

Parcel Identifier 030-294-479, Lot 1, District Lot 119, Esquimalt District, Plan EPP60789, except part in Strata Plan EPS4365 (Phase 1 and Phase 2)

(the "**Lands**").
- C. The Owner is developing a three phase, phased strata development known as 'Horizon at the Railyards' on the Lands and intends shortly to commence construction of the third and final phase consisting of ninety-four strata titled apartment-style dwelling units.
- D. The Dwelling Units 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 third phase of Strata Plan EPS4365 on the Lands to include a building housing ninety-four Dwelling Units.

"Dwelling Unit" means a self-contained residential dwelling unit within the Development that will located on part of the Lands, and "Dwelling Units" means collectively all 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.

"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 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.

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 a Mortgage and Assignment of Rents charging the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA5497949 and CA5497950 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 said charges in the same manner and to the same effect as if Notice had been filed prior to the said 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) or faxing, and
- (b) on the date of delivery if hand-delivered,

to the City:

CITY OF VICTORIA

1 Centennial Square, Victoria, British Columbia V8W 1P6

Attention: Director of Sustainability Planning and Community Development

Facsimile: 250-361-0386

to the Owner:

THE RAILYARDS DEVELOPMENT INC.

530 Herald Street, Victoria, British Columbia V8S 1S6

or upon registration of the strata plan for the Development, 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: _____

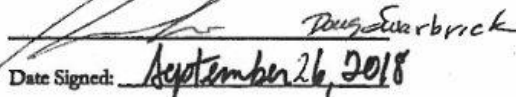
THE RAILYARDS DEVELOPMENT INC.
by its authorized signatory:


C. E. LeFevre

Date Signed: 5 September 2018

CANADIAN WESTERN BANK
by its authorized signatories:


Byron A. Eberle
ATP & Manager, Commercial Banking
Saskatoon


Doug Swarbrick
Date Signed: September 26, 2018