

**F.1     Bylaw for 610-624 Herald Street and 611-635 Chatham Street**

*Councillor Isitt recused himself at 4:24 p.m. due to a non-pecuniary conflict of interest, as he is a member on the board of a society that occupies a space in proximity to this parcel.*

**Moved By** Councillor Thornton-Joe

**Seconded By** Councillor Potts

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

- Housing Agreement (610-624 Herald Street and 611-635 Chatham Street)  
Bylaw (2021), No. 21-080

**CARRIED UNANIMOUSLY**



## Council Report

### For the Meeting of August 5, 2021

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**To:** Council **Date:** July 29, 2021  
**From:** C. Kingsley, City Clerk  
**Subject:** 610-624 Herald Street and 611-635 Chatham Street: Development Permit with Variance No. 00156

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### RECOMMENDATION

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

1. Housing Agreement (610-624 Herald Street and 611-635 Chatham Street) Bylaw (2021) No. 21-080

### BACKGROUND

Attached for Council's initial consideration is a copy of the proposed Bylaw No. 21-080.

The issue came before Council on June 17, 2021 where the following resolution was approved:

**610 - 624 Herald Street and 611 - 635 Chatham Street - Development Permit with Variances Application No. 00156 (Downtown)**

That, subject to the preparation and execution of legal agreements to secure all residential units as rental, to the satisfaction of the Director of Planning and minor public realm plan corrections, that Council, 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 Variance Application No. 00156 for 610 - 624 Herald Street and 611 - 635 Chatham Street, in accordance with:

1. Plans date stamped May 14, 2021.
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variance:
  - i. increase building height to 21.1m.
3. Registration of legal agreements on the property's title to secure all residential units as rental for 60 years or the life of the building, to the satisfaction of City Staff.
4. A legal agreement to secure public realm improvements as indicated on Plans dated May 14, 2021.
5. Council authorizing the street-level projecting canopies over the City Right-of-Way on Herald, Chatham and Government Streets, provided that the applicant enters

into an Encroachment Agreement in a form satisfactory to the City Solicitor and the Director of Engineering and Public Works.

6. Council authorizing anchor-pinning in the City right-of-way, with form and contents satisfactory to the City Solicitor and the Director of Engineering and Public Works.
7. That the mural be changed to reflect the Old Town and Chinatown neighborhood history and culture.
8. Further consideration of diversifying the brick colours in the project and make colours and design elements more consistent with those found in Chinatown
9. The Development Permit lapsing two years from the date of this resolution.”

Respectfully submitted,

Curt Kingsley  
City Clerk

**Report accepted and recommended by the City Manager**

**List of Attachments:**

- Bylaw No. 21-080

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:

1 This Bylaw may be cited as the "HOUSING AGREEMENT (610-624 HERALD STREET  
and 611-635 CHATHAM STREET) BYLAW (2021)".

2 The Director of Sustainable Planning and Community Development is authorized to execute the Housing Agreement:

- READ A SECOND TIME the \_\_\_\_\_ day of \_\_\_\_\_ 2021

READ A THIRD TIME the

day of

2021

ADOPTED on the

day of

2021

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")

AND:

**NICOLA HERALD NOMINEE INC.**  
1508 West Broadway, 5<sup>th</sup> Floor  
Vancouver, British Columbia, V6J 1W8  
  
(the "Owner")

**WHEREAS:**

- A. Capitalized terms used herein will have the respective meanings ascribed to them in section 1.1 of this Agreement, unless the context otherwise clearly requires or they are elsewhere defined herein.
- B. 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*.
- C. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with civic addresses of 610-624 Herald Street and 611-635 Chatham Street Victoria, B.C. and legally described as:
  - PID: 009-375-775 Lot 620 Victoria City;
  - PID: 009-375-783 Lot 621 Victoria City;
  - PID: 009-375-791 Lot 622 Victoria City,
  - PID: 009-375-821 Lot 623 Victoria City;
  - PID: 009-375-830 Lot 624 Victoria City;
  - PID: 009-375-899 Lot 632 Victoria City;
  - PID: 009-375-911 Lot 633 Victoria City;
  - PID: 009-375-929 Lot 634 Victoria City; and
  - PID: 009-375-945 Lot 635 Victoria City,

(collectively, the "Lands").
- D. The Owner has applied to the City for a development permit with variance to permit 278 housing units within the Development in accordance with this Agreement.

- 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 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.

**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:

"**Business Day**" means Monday to Friday, other than any such day which is a statutory holiday in Victoria, British Columbia;

"**Development**" means the new buildings consisting of 278 residential housing units, ground floor commercial units and related facilities on the Lands;

"**Dwelling Units**" means any or all, as the context may require, of the 278 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, and "**Dwelling Unit**" means any of such residential dwelling units located on the Lands;

"**Immediate Family**" includes a person's spouse, child, grandchild, parent, grandparent, sibling, niece and nephew, and includes the Immediate Family of the person's spouse;

"**Non-owner**" means a person other than a Related Person or the Owner;

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

"**Related Person**" includes, where the registered or beneficial owner of the Lands or Dwelling Unit, as applicable, is:

- (a) a corporation or society:
  - (i) an officer, director, shareholder, or member of such corporation or society, or of another entity which is a shareholder or member of such corporation or society; or
  - (ii) an Immediate Family of a person to whom paragraph (i) applies, or
- (b) an individual, an Immediate Family of the registered or beneficial owner;

"**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.

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

## **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 for sixty (60) years beginning on the date the City issues an occupancy permit, or the life of the Development, 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 REPORTING**

- 4.1** The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Community Development, within thirty (30) days of the Director's written request, a report in writing confirming that:

- (a) all Dwelling Units are being rented to Non-owners or are vacant, and
- (b) all other requirements of this Agreement are being complied with by the Owner and the Development,

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

- 4.2** 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.
- 4.3** 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.

## **5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE**

- 5.1** 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.



## 6.0 LIABILITY

- 6.1** 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, or otherwise that would not have arisen "but for" this Agreement.
- 6.2** 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, or otherwise that would not have arisen "but for" this Agreement.

## 7.0 GENERAL PROVISIONS

- 7.1 NOTICE.** If sent as follows, notice under this Agreement is considered to be received:

- (a) upon confirmation of delivery by Canada Post if sent by registered mail,
- (b) on the next Business Day if sent by facsimile or email with no notice of failure to deliver being received back by the sender, and
- (c) on the date of delivery if hand-delivered, and

in the case of the City, addressed to:

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

Attention: Director of Sustainable Planning and  
Community Development  
Fax: 250-361-0386  
Email: [khoese@victoria.ca](mailto:khoese@victoria.ca)

and in the case of the Owner, addressed to:

Nicola Herald Nominee Inc.  
1508 West Broadway, 5th Floor  
Vancouver, BC V6J 1W8

Attention: Josh Anderson  
Fax: N/A  
Email: [janderson@nicolawealth.com](mailto:janderson@nicolawealth.com)

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, email or facsimile service is interrupted by strike, work slowdown, force majeure, or other cause,

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

**7.2 TIME.** Time is of the essence of this Agreement.

**7.3 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.

**7.4 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.

**7.5 HEADINGS.** The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.

**7.6 LANGUAGE.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

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

**7.8 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

**7.9 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.

**7.10 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

- 7.11 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.
- 7.12 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.
- 7.13 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 7.14 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) 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.
- 7.15 SEVERABILITY.** If any section, term or provision of this Agreement is found to be partially or wholly illegal or unenforceable, then such sections or parts will be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, will be unaffected thereby and will remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.
- 7.16 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.
- 7.17 COUNTERPARTS.** This Agreement may be executed in counterparts and delivered by 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.
- 7.18 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 signatory: )

\_\_\_\_\_)  
 Karen Hoesel, Director of Sustainable  
 Planning and Community Development )

Date signed: \_\_\_\_\_ )

**NICOLA HERALD NOMINEE INC.** )  
 by its authorized signatory(ies): )

  
 \_\_\_\_\_ )  
 Print Name: Alex Messina )

\_\_\_\_\_)  
 Print Name: )

Date signed: July 19, 2021