

G.2 Bylaw for 121 Menzies Street

Moved By Councillor Loveday

Seconded By Councillor Alto

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

- Heritage Designation (121 Menzies Street) Bylaw, No. 21-038

CARRIED UNANIMOUSLY

Moved By Councillor Alto

Seconded By Councillor Loveday

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

- Housing Agreement (121 Menzies Street) Bylaw (2021), No. 21-037

CARRIED UNANIMOUSLY



Council Report

For the Meeting of September 23, 2021

To: Council **Date:** September 16, 2021
From: C. Kingsley, City Clerk
Subject: **121 Menzies Street: Development Variance Permit Application No. 00194 and Heritage Designation Application No. 000162**

RECOMMENDATION

That the following bylaw be given first and second readings:

1. Heritage Designation (121 Menzies) Bylaw No. 21-038

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

1. Housing Agreement (121 Menzies Street) Bylaw (2021) No. 21-037

BACKGROUND

Attached for Council's initial consideration are copies of the proposed Bylaws No. 21-038 and 21-037.

The issue came before Council on August 5, 2021 where the following resolution was approved:

121 Menzies Street - Development Variance Permit Application No. 00194 and Heritage Designation Application No. 000162 Update Report

That Council, after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following updated motion:

Development Permit with Variance Application No. 00194

"That Council authorize the issuance of Development Permit with Variance Application No. 00194 for 121 Menzies Street in accordance with:

1. Plans date stamped May 26, 2021.
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
 - i. decrease the dwelling unit floor area (minimum) from 33.00m² to 14.79m²;
 - ii. locate the parking in the front yard;
 - iii. locate accessory buildings in the side yard;
 - iv. increase total site coverage from 40% to 42.30%;
 - v. increase the height of one accessory building from 3.50m to 4.41m;
 - vi. decrease the rear setback of an accessory building from 0.60m to 0.50m;
 - vii. decrease the side setback of accessory buildings from 0.60m to 0.40m;

- viii. decrease the separation space between an accessory building and a principle building from 2.40m to 1.0m;
- ix. increase the rear yard site coverage for an accessory building from 25.00% to 29.80%;
- x. increase the combined floor area for an accessory building from 37.00m2 to 41.61m2.

3. The Development Permit lapsing two years from the date of this resolution.”

Heritage Designation Application No. 000162

That Council consider this updated motion with respect to Heritage Designation Application No. 000162:

“That Council give first and second reading of Heritage Designation Bylaw (Bylaw No. 21-038) be for Heritage Designation Application No. 000162 for 121 Menzies Street.”

Respectfully submitted,

Curt Kingsley
City Clerk

Report accepted and recommended by the City Manager

List of Attachments:

- Bylaw No. 21-038
- Bylaw No. 21-037.

NO. 21-037

HOUSING AGREEMENT (121 MENZIES STREET) 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 121 Menzies Street, 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 (121 MENZIES STREET) BYLAW (2021)".

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 Gordon Donald Osborne or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 121 Menzies Street, Victoria, BC, legally described as:
PID: 008-674-477, Lot 27, Section 11, Beckley Farm, Victoria City, Plan 753.

READ A FIRST TIME the **23rd** day of **September** 2021.

READ A SECOND TIME the **23rd** day of **September** 2021.

READ A THIRD TIME the **23rd** day of **September** 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, BC V8W 1P6

(the "City")

OF THE FIRST PART

AND:

GORDON DONALD OSBORNE

121 Menzies Street
Victoria, BC V8V 2G4

(the "Owner")

OF THE SECOND PART

AND:

ROYAL BANK OF CANADA

10 York Mills Road, 3rd Floor
Toronto, ON M2P 0A2

(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 121 MENZIES STREET, Victoria, BC and legally described as:

PID: 008-674-477
Lot 27, Section 11, Beckley Farm, Victoria City, Plan 753

(collectively, the "Lands");
- C. The Owner has applied to the City to rezone the land from the current R1-B, Single Family Dwelling District, to a site specific zone to permit 10 housing units including a Caretaker's Suite within the Development in accordance with this Agreement.
- D. The City and 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 the agreement (the "**Agreement**"), the parties agree each with the other as follows:

1.0 In this Agreement:

"Caretaker Suite" means a dwelling unit occupied by a person employed by the Owner to manage the lands

"Development" means development and use of the land for a 10-dwelling unit House Conversion;

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

"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 7.3; and

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

1.1 In this Agreement:

- (a) reference to any enactment includes any regulations, order 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 including a Caretaker Suite in perpetuity, and for the 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.

3.0 REPORTING

3.1 The Owner covenants and agrees to provide the City's Directors of Sustainable Planning and 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;

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

3.2 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.

- 3.3 The Owner acknowledges that it is with the City's sole discretion to consent or not to consent to modification of the Agreement and that such consent may be withheld for any reason.

4.0 NOTICE TO BE REGISTERED IN THE LAND TITLE OFFICE

- 4.1 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 and interest in the Lands after registration of the Notice.

5.0 PRIORITY AGREEMENT

- 5.1 The Existing Chargeholder, as the registered holder of a charge by way of a Mortgage and Assignment of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA3815432 and CA3815433, 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 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.

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 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.
- 6.2 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 Lands are encumbered by and affected by this agreement.

7.0 GENERAL PROVISIONS

7.1 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:

Gordon Osborne
121 Menzies Street
Victoria, BC V8C 2G4

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,

(c) Notice sent by the impaired service is considered to be received on the date of delivery, and

(d) 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 essence of this Agreement.

7.3 BINDING EFFECT.

This Agreement will ensure 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 and interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands with respect only to that portion of the Lands of which the Owner had 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 headings in this Agreement are inserted for the convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

7.6 LANGUAGE

Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or feminine or the body corporate or politic as the context so requires.

7.7 EQUITABLE REMEDIES

The Owner acknowledges and agrees that the 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.

7.8 CUMULATIVE REMEDIES

No remedies under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

7.9 ENTIRE AGREEMENT

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

7.10 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.

7.11 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.

7.12 LAW APPLICABLE

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

7.13 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, license 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,

7.14 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.

7.15 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 on and the same Agreement.

7.16 EFFECTIVE DATE

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

IN WITNESS WHEREOF the parties here to 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

City Clerk

Date signed: _____

owner(s)


Gordon D. Osborne
Gordon Osborne

Print Name: Gordon Donald Osborne

Date signed: April 30/19

ROYAL BANK OF CANADA

by its authorized signatories:



Print Name: Karl Darius

Print Name: _____

Date signed: April 30, 2019

NO. 21-038

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to designate the exterior of the building located at 121 Menzies Street to be protected heritage property.

Under its statutory powers, including Section 611 of the *Local Government Act*, the Municipal Council of The Corporation of the City of Victoria enacts the following provisions:

1. This Bylaw may be cited as the “HERITAGE DESIGNATION (121 MENZIES STREET) BYLAW”.
2. The building located at 121 Menzies Street, legally described as PID: 008-674-477, Lot 27, Section 11, Beckley Farm, Victoria City, Plan 753, is designated to be protected heritage property.

READ A FIRST TIME the **23rd** day of **September** 2021.

READ A SECOND TIME the **23rd** day of **September** 2021.

Public Hearing Held on the _____ day of _____ 2021.

READ A THIRD TIME the _____ day of _____ 2021.

ADOPTED on the _____ day of _____ 2021.

CITY CLERK

MAYOR