

## REPORTS OF THE COMMITTEES

### **2. Planning and Land Use Committee – June 25, 2015**

#### **6. Rezoning Application No. 00381 and Development Permit Application No. 0003851 for 1002, 1008-1012 Pandora Avenue (St. Andrew's School)**

It was moved by Councillor Coleman, seconded by Councillor Loveday, that Council:

1. Rescind third reading of Housing Agreement (1002-1008, 1012 Pandora Avenue) Bylaw No. 14-69.
2. That Council amend the Housing Agreement (1002-1008, 1012 Pandora Avenue) Bylaw No. 14-069 by replacing the amended Schedule A that secures 11 non-market rental units.
3. That Council give third reading of Housing Agreement (1002-1008, 1012 Pandora Avenue) Bylaw No. 14-069 with an amended Schedule A that secures 11 non-market rental units.
4. That Council refer the Rezoning Application No. 00381 for consideration at a Public Hearing.
5. Following consideration of Rezoning Application No. 00381, that Council approve a Development Permit for 1002, 1008-1012 Pandora Avenue, in accordance with:
  - a. Plans for Rezoning Application No. 00381 and Development Permit Application No. 000351, stamped June 8, 2015;
  - b. Development meeting all Zoning Regulation Bylaw requirements;
  - c. The Development Permit lapsing two years from the date of this resolution.
6. That Council authorize staff to execute an Encroachment Agreement for a fee of \$750 plus \$25 per m2 of exposed shored face during construction, in a form satisfactory to staff. This is to accommodate shoring for construction of the underground parking structure at the property line.

Carried

**For:**

***Mayor Helps, Councillors Coleman, Loveday and Lucas***

**Against:**

***Councillor Madoff***

NO. 14-069

**HOUSING AGREEMENT (1002-1008, 1012 PANDORA AVENUE) 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 1002-1008 and 1012 Pandora Avenue, Victoria, BC.

Under its statutory powers, including section 905 of the *Local Government Act*, the Council of The Corporation of the City of Victoria enacts the following provisions:

**Title**

- 1** This Bylaw may be cited as the "HOUSING AGREEMENT (1002-1008 and 1012 PANDORA AVENUE) BYLAW".

**Agreement authorized**

- 2** The Mayor and the City's Corporate Administrator are authorized to execute the Housing Agreement
- (a) substantially in the form attached to this Bylaw as Schedule A;
  - (b) between the City and Bishop of Victoria or other registered owners from time to time of the lands described in subsection (c); and
  - (c) that applies to the lands known as 1002-1008 and 1012 Pandora Avenue, Victoria, legally described as:  
Lot 1, Suburban Lot 15, Victoria City, Plan 22437  
Lot 2, Suburban Lot 15, Victoria City, Plan 22437  
except Parcel A (DD C70855)

READ A FIRST TIME the	<b>24<sup>th</sup></b>	day of	<b>July,</b>	2014
READ A SECOND TIME the	<b>24<sup>th</sup></b>	day of	<b>July,</b>	2014
READ A THIRD TIME the	<b>24<sup>th</sup></b>	day of	<b>July,</b>	2014
ADOPTED on the		day of		2014

CORPORATE ADMINISTRATOR

MAYOR

**HOUSING AGREEMENT**  
**(Pursuant to Section 905 of the *Local Government Act*)**

**THIS AGREEMENT** is made the \_\_\_\_ day of June, 2015.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF VICTORIA**

#1 Centennial Square  
Victoria, B.C.  
V8W 1P6

(the "**City**")

OF THE FIRST PART

**AND:**

**BISHOP OF VICTORIA**

4044 Nelthorpe Street  
Victoria, B.C.  
V8X 2A1

(the "**Owner**")

OF THE SECOND PART

**WHEREAS:**

- A. Under section 905 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 905(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 1002, 1008 and 1012 Pandora Avenue, Victoria, B.C. and legally described as:

003-240-487

Lot 2, Suburban Lot 15, Victoria City, Plan 22437  
Except Parcel A (DD C70855)

003-241-025

Lot 1, Suburban Lot 15, Victoria City, Plan 22437

(collectively, the "**Lands**");

- C. The Owner is applying to rezone the Lands and intends to construct a mixed-use building that ranges in height from four to six stories with 4,507 m<sup>2</sup> of ground commercial space and 13,995 m<sup>2</sup> of residential floor area with 210 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 905 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 905 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:**

**"Affordable Housing"** means the provision of Affordable Rental Units within the Development;

**"Affordable Rental Units"** means those Dwelling Units within the Development as designated pursuant to section 3.1;

**"Development"** means the proposed mixed-use building on the Lands to include 210 Dwelling Units;

**"Dwelling Unit"** means a self-contained residential dwelling unit within the building that is/will be 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, 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 5.1;

**"Perpetuity"** means until such time as the Development is either lawfully demolished or substantially destroyed and not promptly rebuilt;

**"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"** has the same meaning as under the *Residential Tenancy Act*.

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 for a period of 10 years from the date of the issuance of an Occupancy Permit for the Development, the Dwelling Units shall be used solely for residential rental purposes and shall only be occupied by Non-owners under the terms of a Tenancy Agreement between the Owner and Non-owner who occupies the Dwelling Unit.

- 2.2 The Owner covenants and agrees that it 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 for residential purposes to a Non-owner.
- 2.3 Without limiting the generality of section 2.2, 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 the Dwelling Units to Non-owners.
- 2.4 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act* and the 10 year period referred to in section 2.1 has expired, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.

### **3.0 Affordable Housing Obligations**

- 3.1 The Owner covenants and agrees that from and after issuance of an occupancy permit for the Development a total of 11 self-contained residential Dwelling Units within the Development shall be designated by the Owner to be Affordable Rental Units in Perpetuity which shall:
  - (a) consist of:
    - (i) five (5) bachelor Dwelling Units;
    - (ii) four (4) one-bedroom Dwelling Units; and
    - (iii) two (2) two-bedroom Dwelling Units.
- 3.2 The Owner covenants and agrees that each Affordable Rental Unit shall, at all times in Perpetuity, only be occupied by a Non-owner or Non-owners under the terms of a Tenancy Agreement with a combined annual household income that is equal to or less than the HILs (as hereinafter defined) that apply to the particular Affordable Rental Unit.
- 3.3 The Owner covenants and agrees that the rent for each Affordable Rental Unit shall not exceed:
  - a) 30% of the Housing Income Limits ("HILs") that are determined from time to time by the British Columbia Housing Management Commission ("BC Housing"), and that apply to the particular Affordable Rental Unit, for example whether the Affordable Rental Unit is a bachelor, one-bedroom or two-bedroom or three-bedroom Dwelling Unit; or
  - b) In the event that BC Housing ceases to determine HILs and such determination is not replaced by a similar publication, then the income limit

with respect to an Affordable Rental Unit shall be determined by reference to the last published HILs which shall be increased annually by an amount equal to the increase in the CPI commencing January 1 following the year BC Housing ceased determining HILs. For the purposes of this section, "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.

- 3.4 For the purpose of section 3.3(a) where rent is payable on a monthly basis and HILs are reported or determined as an annual amount, either the rent or the income figures shall be adjusted to a monthly or annual amount so that an appropriate comparison can be made.

#### **4.0 Reporting**

- 4.1 The Owner covenants and agrees to provide, at the City's request, a report (the "Report") to the City's Director of Sustainable Planning and Community Development (the "Director"), a report in writing confirming, to the Director's satisfaction that the Owner continues to provide Affordable Housing and rental housing, pursuant to section 2.1 in accordance with the requirements of this Agreement, which Report shall include, inter alia:

- (a) the number, type and location, by suite or strata lot number, of all Dwelling Units being rented to Non-owners;
- (b) the number, type and location, by suite or strata lot number, of all Dwelling Units being rented to Non-owners as Affordable Rental Units; and the rents being charged for those Dwelling Units;
- (c) such other information that the Director may reasonably require; and
- (d) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement.

- 4.2 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 unless this Agreement is amended; and
- (b) to notify the City of any proposed changes to its strata bylaws.

- 4.3 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.



## **5.0 Notice to be Registered in Land Title Office**

- 5.1 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 905(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.

## **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.
- 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.

## **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, B.C. V8W 1P6  
Attention: Director of Sustainable Planning and  
Community Development  
Fax: 250-361-0386

to the Owner:



The Bishop of Victoria  
4044 Nelthorpe Street  
Victoria, BC  
V8X 2A1

or, upon registration of a strata plan for the Lands, to the Strata Corporation.

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,

- (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 of 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.

#### 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) 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.

## 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, 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.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

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

## Mayor Lisa Helps

Corporate Administrator Robert Woodland

**THE BISHOP OF VICTORIA** by its  
authorized signatories

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

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

