

CITY OF NANAIMO

BYLAW NO. 7261

REVITALIZATION TAX EXEMPTION BYLAW 2018 NO. 7261

WHEREAS pursuant to Section 226 of the *Community Charter*, Council may, by bylaw, establish a revitalization tax exemption program for the purpose of encouraging revitalization in the City of Nanaimo;

AND WHEREAS Council wishes to establish a revitalization tax exemption program in the City of Nanaimo in order to encourage new investment in the City of Nanaimo downtown core and revitalization of the City's downtown core through construction of new commercial and residential buildings and alteration or renovation of existing buildings;

AND WHEREAS Council has included within this Bylaw a description of the reasons for and the objectives of the program and a description of how the program is intended to accomplish the objectives, as required by Section 226(4) of the *Community Charter*;

AND WHEREAS Council has given notice of its intent to adopt this Bylaw in accordance with Section 227 of the *Community Charter* and considered this Bylaw in conjunction with the objectives and policies set out in Section 165(3.1)(c) of the *Community Charter* in the City's financial plan.

NOW THEREFORE, in open meeting assembled, the Council of the City of Nanaimo enacts as follows:

PART 1 – INTERPRETATION

1. This Bylaw may be cited for all purposes as "REVITALIZATION TAX EXEMPTION BYLAW 2018 NO. 7261".
2. In this Bylaw:
 - (a) "**Agreement**" means a Revitalization Tax Exemption Agreement between the owner of a parcel and the City, substantially in the form of and with the content of Schedule "A";
 - (b) "**Assessed Value**" means the BC Assessment Authority land and improvements assessed value of a parcel that is subject to an Agreement for the purposes of calculating property taxes;
 - (c) "**Baseline Assessment**" means the BC Assessment Authority's last published land and improvements Assessed Value immediately before the building permit for the Project has been issued;
 - (d) "**Bylaw**" means this bylaw, including its recitals and schedules;
 - (e) "**City**" means the City of Nanaimo;
 - (f) "**Council**" means the Council of the City of Nanaimo;

- (g) **"Multi-Family Residential Development"** means a multi-family residential development that contains at least four (4) self-contained dwelling units;
- (h) **"Program"** means the revitalization tax exemption bylaw program established by this Bylaw;
- (i) **"Project"** means a revitalization project on a parcel that complies with this Bylaw and is eligible for consideration under Section 10;
- (j) **"Revitalization Area"** means those parts of the downtown core of the City shown outlined on Schedule "C";
- (k) **"Tax Exemption"** means a revitalization tax exemption obtained pursuant to this Bylaw; and
- (l) **"Tax Exemption Certificate"** means a Tax Exemption certificate issued by the City pursuant to this Bylaw, substantially in the form of Schedule "B".

PART 2 – ESTABLISHMENT AND OBJECTIVES OF THE PROGRAM

- 3. The Program is hereby established.
- 4. The reason for and objective of the Program is to:
 - (a) encourage new investment in the Revitalization Area;
 - (b) encourage the construction of new commercial and multi-family residential buildings and alteration and renovation of certain existing buildings in the Revitalization Area; and
 - (c) encourage revitalization of the Revitalization Area.
- 5. The Program is intended to accomplish its objectives by:
 - (a) providing tax certainty to parcel-owners; and
 - (b) reducing the municipal tax burden on parcels where a Project is being undertaken.

PART 3 – TAX EXEMPTION CERTIFICATE CONDITIONS

- 6. The terms and conditions upon which a Tax Exemption Certificate may be issued are as set out in this Bylaw, the relevant Agreement, and the Tax Exemption Certificate in relation to a particular parcel.
- 7. No Tax Exemption Certificate will be issued with respect to a parcel until:
 - (a) the owner of the parcel has submitted an application under Part 7 and the application has been accepted by the City Manager or his or her delegate;
 - (b) the building and occupancy permit for the Project, as described in the owner of the parcel's application under Part 7 has been issued; and

- (c) the Agreement has been executed by both the owner of the parcel and the City.

PART 4 – CALCULATION OF TAX EXEMPTION

8. The amount of the annual Tax Exemption will be equal to that part of the municipal property tax for the parcel and improvements imposed under Section 197(1)(a) of the *Community Charter*, calculated by deducting the Baseline Assessment from the current Assessed Value and applying the difference to the current municipal tax rate.
9. Tax Exemptions under this Bylaw do not include exemptions from any tax other than those municipal property taxes established under Section 197(1)(a) of the *Community Charter*.

PART 5 – ELIGIBLE PROJECTS

10. The categories of Project described under subsections 10(a), 10(b), and 10(c) are eligible for a Tax Exemption:
- (a) Projects within the Revitalization Area that:
- i. have been issued a building and occupancy permit for a new Multi-Family Residential Development;
 - ii. have a permit value, as determined by the Manager of Building Inspections, of at least five hundred thousand dollars (\$500,000.00); and
 - iii. conform with all applicable City enactments and policies, including but not limited to all residential zoning bylaws and land use policies,
- (b) Projects within the Revitalization Area that:
- i. have been issued a building and occupancy permit for a new commercial development;
 - ii. have a permit value, as determined by the Manager of Building Inspections, of at least five hundred thousand dollars (\$500,000.00); and
 - iii. conform with all applicable City enactments and policies, including but not limited to all commercial zoning bylaws and land use policies;
- (c) Projects within the Revitalization Area that:
- i. have been issued a building and occupancy permit for additions or renovations to an existing building for a commercial development;
 - ii. have a permit value, as determined by the Manager of Building Inspections, of at least five hundred thousand dollars (\$500,000.00);
 - iii. have a construction value of at least fifty percent (50%) of either the Assessed Value of the building or the current appraised value building, as determined by a member in good standing of the British Columbia branch of the Appraisal Institute of Canada, whichever amount is the greater; and

- iv. conform with all applicable City enactments and policies, including but not limited to all applicable zoning bylaws and land use policies.
11. The form and character of any Project must be consistent with the applicable Development Permit Area Design Guidelines contained within the Official Community Plan Bylaw.
 12. A Project is not eligible for a Tax Exemption if:
 - (a) the parcel or any improvements on it is subject to another tax exemption from the City;
 - (b) there are property taxes in arrears with respect to the parcel or any improvements on it; or
 - (c) the Project involves proposals to alter buildings listed on the City of Nanaimo Heritage Register.

PART 6 – TERM AND ASSIGNMENT

13. The maximum term of a Tax Exemption is ten (10) years.
14. The Tax Exemption runs with the parcel and is assignable to subsequent parcel-owners only in accordance with the Agreement.

PART 7 – APPLICATION FOR ADMISSION TO PROGRAM

15. If an owner of a parcel wishes Council to consider granting a Tax Exemption, the owner must make a written application to the City Manager or his or her delegate, and must submit all of the following with the application:
 - (a) a copy of the current Property Assessment Notice for the parcel issued by the British Columbia Assessment Authority;
 - (b) a completed written application in a form prescribed by the City;
 - (c) a description of the Project, including details regarding the extent and value of the Project, which will be confirmed via the building permit process; and
 - (d) an Agreement in executable form.
16. An application under Section 15 must be made by the owner and accepted by the City Manager or his or her delegate before the building permit for the Project is issued.

PART 8 – ISSUANCE OF TAX CERTIFICATION CERTIFICATE

17. Once the requirements established under this Bylaw and the Agreement have been fulfilled, a Tax Exemption Certificate must be issued for the parcel.

PART 9 – CANCELLATION

18. A Tax Exemption Certificate may be cancelled by Council if any of the conditions set out in the Agreement, the Bylaw, or the Tax Exemption Certificate are not met.

19. If The Tax Exemption Certificate is cancelled during a year in which the owner of a parcel has received a Tax Exemption, the owner of the parcel shall pay to the City within thirty (30) days of cancellation a recapture amount calculated as equal to a percentage of the amount of the Tax Exemption with the percentage being equivalent to the percentage of the taxation year remaining from the date of cancellation.
20. If the amount is not paid under Section 18, any amount unpaid will bear interest at a rate of one percent (1.0%) per month, compounded annually.

PART 10 – DELEGATION

21. The Director of Finance for the City is designated the municipal officer for the purpose of Section 226(13) of the *Community Charter*.

PASSED FIRST READING: _____
PASSED SECOND READING: _____
PASSED THIRD READING: _____

Notice of intention to proceed with this Bylaw was published on __, ____, 2018 and __, ____, 2018 pursuant to Section 94 and 227 of the *Community Charter*.

ADOPTED: _____

MAYOR

CORPORATE OFFICER

SCHEDULE "A"

Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the ___ day of _____, 20___ is

BETWEEN:

XXXX

(the "Owner")

AND:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC V9R 5J6

(the "City")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of lands in the City of Nanaimo at [*civic address*] legally described as [*legal description*] (the "Parcel");
- B. Council has established a revitalization tax exemption program and has included within the City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2018 NO. 7261";
- C. The Parcel is situated within the Revitalization Area, as defined in the Bylaw; and
- D. The Owner proposes to construct new improvements or alter or renovate existing improvements on the Parcel as described in Appendix "A" attached to and forming part of this agreement (the "Project") and has applied to the City to take part in the revitalization tax exemption program in respect of the Project and the City has agreed to accept the Project under the program;

THIS AGREEMENT is evidence that in consideration of the promises exchanged below, the Owner and the City covenant and agree each with the other as follows:

1. In this Agreement, the following words have the following meanings:
 - (a) "Assessed Value" means the BC Assessment Authority land and improvements assessed value of the parcel subject to this Agreement for the purposes of calculating property taxes;
 - (b) "Baseline Assessment" means the BC Assessment Authority's last published land and improvements assessed value immediately before the commencement of the Project;

- (c) "Bylaw" means City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2018 NO. 7261" as amended from time to time including any amendments thereto;
 - (d) "Renovation" means capital improvements of an existing building;
 - (e) "Tax Exemption" means a revitalization tax exemption determined in accordance with the Bylaw; and
 - (f) "Tax Exemption Certificate" means a revitalization tax exemption certificate issued by the City of Nanaimo pursuant to the Bylaw and the *Community Charter*.
2. The Project – the Owner will use its best efforts to ensure that the Project is constructed, maintained, operated and used in a fashion that will be consistent with and will foster the objectives of the revitalization tax exemption program, as outlined in the Bylaw. Without limiting the generality of the foregoing, the Owner covenants to use its best efforts to ensure that the Project will:
- (a) ; and
 - (b) .
3. Operation and Maintenance of the Project – throughout the term of this Agreement, the Owner shall operate, repair and maintain the Project and will keep the Project in a state of good repair as a prudent owner would do.
4. Revitalization Tax Exemption – subject to fulfillment of the conditions set out in this Agreement and the Bylaw, the City shall issue a Tax Exemption Certificate to the British Columbia Assessment Authority entitling the Owner to a Tax Exemption in respect of the property taxes due (not including local service taxes) in relation to the Parcel and the improvements thereon for the calendar year(s) set out in this Agreement. The Tax Exemption Certificate shall be substantially in the form of Appendix "B", which is attached to and forms part of this Agreement.
5. Conditions – the Owner must fulfill the following conditions before the City will issue a Tax Exemption Certificate to the Owner in respect of the Project:
- (a) the Owner must obtain a building permit from the City for the Project on or before _____, 20__;
 - (b) the Owner must complete or cause to be completed construction of the Project in a good and workmanlike fashion and in strict compliance with the building permit and the plans and specifications attached hereto as Appendix "C";
 - (c) the Project must be officially opened and available for use as *[describe permitted use]* (the "Exempt Use") and for no other use, by no later than _____, 20__ ; and
 - (d) the completed Project must substantially satisfy the performance criteria set out in Appendix "D" hereto, as determined by the City's Land Use Manager or designate, in his or her sole discretion, acting reasonably.

6. Calculation of Revitalization Tax Exemption – the amount of the Tax Exemption in each year shall be calculated in accordance with the Bylaw.
7. Term of Tax Exemption – provided the requirements of this Agreement, and of the City of Nanaimo Revitalization Tax Exemption Bylaw 2018 No. 7261, are met the Tax Exemption shall be for the taxation years _____ to _____ , inclusive. [10 year maximum]
8. Compliance with Laws – the Owner shall construct the Project and, at all times during the term of the Tax Exemption or any renewal term, use and occupy the Parcel forming part of the Project in compliance with all statutes, laws, regulations, bylaws and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws, including all the rules regulations policies guidelines criteria or the like made under or pursuant to any such laws.
9. Subdivision under Strata Property Act – if the Owner deposits a strata plan in the Land Title Office under the *Strata Property Act* that includes an improvement on the Parcel included in the Project, then the Tax Exemption shall be prorated among the strata lots in accordance with the unit entitlement of each strata lot for:
 - (a) the current and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office before _____, _____, 20____; or
 - (b) for the next calendar year and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office after _____, _____, 20____,

provided that any strata subdivision must comply with the terms of any Housing Agreement in relation to the Parcel or the Project which limits ability to subdivide the Parcel or a building on the Parcel under the *Strata Property Act*.

10. Representations and Warranties – The Owner represents and warrants to the City that the Owner is the Owner of the Parcel for the purpose of property assessment and taxation.
11. Cancellation – the City may in its sole discretion cancel the Tax Exemption Certificate at any time:
 - (a) on the written request of the Owner; or
 - (b) effective immediately upon delivery of a notice of cancellation to the Owner if at any time any of the conditions in the Tax Exemption Certificate are not met.
12. If such cancellation occurs, the Owner of the Parcel for which the Tax Exemption Certificate was issued will pay to the City a recapture amount in accordance with the Bylaw, which amount will bear interest in accordance with the Bylaw.
13. No Refund – for greater certainty, under no circumstances will the Owner be entitled under the City's revitalization tax exemption program to any cash credit, any carry forward tax exemption credit or any refund for any property taxes paid.

14. Notices – any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any party shall be sufficiently given if delivered by hand or posted on the Parcel, or if sent by prepaid registered mail (Express Post) or if transmitted by facsimile to such party:

(a) in the case of a notice to the City, at:

THE CITY OF NANAIMO
455 Wallace Street,
Nanaimo, B.C.
V9R 5J6
Attention:
Fax:

(b) in the case of a notice to the Owner, at:

[insert name and address of owner]
Attention:
Fax:

or at such other address as the party to whom such notice or other writing is to be given shall have last notified the party giving the same.

15. No Assignment – the Owner shall not assign its interest in this Agreement except to a subsequent owner in fee simple of the Parcel.

16. Severance – if any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

17. Interpretation – wherever the singular or masculine is used in this agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.

18. Further Assurances – the parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

19. Waiver – waiver by the City of a default by the Owner shall be in writing and shall not be deemed to be a waiver of any subsequent or other default.

20. Powers Preserved – this Agreement does not:

(a) affect or limit the discretion, rights or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Parcel;

(b) affect or limit any enactment relating to the use or subdivision of the Parcel; or

(c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Parcel, and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges,

application fees, user fees or other rates, levies or charges payable under any bylaw of the City.

21. Reference – every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows.
22. Enurement – this agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

Executed by the CITY OF NANAIMO by
its authorized signatories:

Mayor

Corporate Officer

Executed by __ by its
authorized signatories:

Name:

Name:

APPENDIX "A" to Revitalization Tax Exemption Agreement

Map of Affected Parcel

APPENDIX "B" to Revitalization Tax Exemption Agreement
Tax Exemption Certificate

APPENDIX "C" to Revitalization Tax Exemption Agreement
Plans and Specifications for the Project

APPENDIX "D" to Revitalization Tax Exemption Agreement
Performance Criteria for the Project

SCHEDULE "B"

Revitalization Tax Exemption Certificate

In accordance with the City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2018 NO. 7261" (the "Bylaw"), and in accordance with a Revitalization Tax Exemption Agreement dated for reference the _____ day of _____, 20__ (the "Agreement") entered into between the City of Nanaimo (the "City") and _____ (the "Owner"), the registered owner(s) of *[insert legal description of property]* _____ (the "Parcel"):

This certificate certifies that the Parcel is subject to a revitalization tax exemption equal to the following assessment value of the Parcel: Class 01 Residential: _____ and Class 06 Business/Other: _____ multiplied by the municipal rate of tax in effect for Class 01 – Residential and/or Class 06 – Business/Other, for each of the taxation years 20__ to 20__ inclusive.

The Tax Exemption is provided under the following conditions:

1. The Owner does not breach any term, condition or provision of, and performs all obligations set out in, the Agreement and the Bylaw;
2. The Owner has not sold all or any portion of his or her equitable or legal fee simple interest in the Parcel without the transferee taking an assignment of the Agreement, and agreeing to be bound by it;
3. The Owner, or a successor in title to the Owner, has not allowed the property taxes for the Parcel to go into arrears or to become delinquent;
4. The Exempt Use (as defined in the Agreement) of the Project is not discontinued;
5. The Agreement is not otherwise terminated.

If any of these conditions are not met then the Council of the City of Nanaimo may cancel this Revitalization Tax Exemption Certificate. If such cancellation occurs, the Owner of the Parcel, or a successor in title to the Owner as the case may be, shall remit to the City the recapture amount calculated in accordance with the Bylaw.

SCHEDULE "C"
Revitalization Area

