

CITY OF NANAIMO
BYLAW NO. 7143
REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143

WHEREAS Council may, by bylaw, establish a revitalization tax exemption program;

AND WHEREAS Council wishes to establish a revitalization tax exemption program in the City of Nanaimo in order to encourage the development and redevelopment of hotels and motels to improve upon the inventory of quality rooms available to the travelling public;

AND WHEREAS Council has the following objectives for the program established by this bylaw:

- to encourage new hotel and motel investment in the City of Nanaimo;
- to promote a higher standard of overnight accommodations and enrich the visitor's experience while staying in the City of Nanaimo; and
- to generally reinforce the City's commitment to the long term development of the tourism industry in Nanaimo;

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 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:

1. This bylaw may be cited for all purposes as "REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143"

2. In this bylaw:

"Agreement" means a Revitalization Tax Exemption Agreement between the owner of a Parcel and the City, substantially in the format of and with the content of Schedule "A" which is attached to and forms part of this bylaw;

"Assessed Value" means the BC Assessment Authority land and improvements assessed value of the parcel subject to an Agreement for the purposes of calculating property taxes;

"Baseline Assessment" means the BC Assessment Authority's last published land and improvements assessed value immediately before the commencement of the Project;

“City”	means the City of Nanaimo;
“Council”	means the Council of the City of Nanaimo;
“Parcel”	means a legal parcel upon which an owner proposes a Project;
“Program”	means the revitalization tax exemption bylaw program established by this bylaw;
“Project”	means a revitalization project on a Parcel involving the construction of a new improvement, alteration or renovation of an existing improvement, which meets the requirements of this bylaw, and the construction of which is begun after an application for a Tax Exemption has been submitted to, and approved by, Council;
“Renovation”	means capital improvements that achieve any one or more of the following: adds services; adds rooms; improves the quality of the stay for the visiting public;
“Revitalization Area”	means a parcel which is currently within a land use zone that permits hotel/motel use;
“Tax Exemption”	means a revitalization tax exemption obtained pursuant to this bylaw;
“Tax Exemption Certificate”	means a revitalization tax exemption certificate issued by the City of Nanaimo pursuant to this bylaw, the relevant Agreement, and the provisions of the <i>Community Charter</i> , substantially in the form of Schedule “B”, which is attached to and forms part of this bylaw;

3. The Program is hereby established pursuant to the provisions of section 226 of the *Community Charter* which is intended to achieve its objectives by:
 - (1) providing tax certainty to property owners;
 - (2) reducing the municipal tax burden on motel and hotel property that undertake a Project; and,
4. The terms and conditions upon which a Tax Exemption Certificate may be issued are as set out in this bylaw, in the relevant Agreement entered into between the City and the Owner pursuant to this bylaw, and in the Tax Exemption Certificate in relation to a particular Parcel.

5. The amount of an annual Tax Exemption shall be equal to that part of the municipal portion of property taxes 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.
6. It shall not include an exemption from any local service tax or business improvement area tax payable in the designated area in which the Parcel is located.
7. Council may provide a Tax Exemption under this Bylaw to an owner of eligible lands where:
 - (1) the new construction value, or the demolition and reconstruction value of the Project, as determined based on the building permit(s) issued, must be two million dollars (\$2,000,000.00) or greater;
 - (2) the land use applicable to the Project is:
 - (a) one of the uses permitted in the applicable zone for the Parcel, as set out in City of Nanaimo Zoning Bylaw as amended from time to time,
 - (b) consistent with the future land use designation for the Parcel, as set out in the Official Community Plan Bylaw as amended from time to time, and
 - (c) meets all other applicable City policies and bylaws;
 - (3) the owner of the Parcel must enter into an Agreement with the City; and,
 - (4) the form and character of the Project must be largely consistent with the applicable Development Permit Area Design Guidelines contained within Official Community Plan Bylaw.
8. The following are not eligible for a Tax Exemption:
 - (1) a Parcel currently subject to another tax exemption from the City;
 - (2) a Parcel in respect of which there are property taxes in arrears; and,
 - (3) Projects involving proposals to alter buildings listed on the City of Nanaimo Heritage Register.
9. The maximum term of a Tax Exemption shall be ten years.
10. The Tax Exemption is attached to the Parcel and is transferable to subsequent property owners within the term of the agreement.
11. If an owner of a Parcel wishes Council to consider granting a Tax Exemption, the owner must apply to the City Manager or designate, in writing and must submit the following with the application:
 - (1) a copy of the current Property Assessment Notice for the Parcel as issued by the British Columbia Assessment Authority;
 - (2) a completed written application in a form prescribed by the City;

- (3) a description of the Project, including details regarding the extent and value of the Project, which will be confirmed via the building permit process;
 - (4) an Agreement in executable form.
12. Once the requirements established under this Bylaw and the tax exemption agreement have been fulfilled, a Tax Exemption Certificate must be issued for the Parcel in the form attached as Schedule "B" attached to and forming part of this bylaw.
 13. A Tax Exemption Certificate issued for the Parcel is subject to the condition that all of the conditions set out in the Agreement continue to be met.
 14. A Tax Exemption Certificate may be cancelled by Council if any of the conditions set out in the Agreement are not met.
 15. 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 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.
 16. If the amount is not paid under section 15, any amount unpaid will bear interest at a rate of 1.0% per month, compounded annually.
 17. 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 2011-OCT-31
PASSED SECOND READING 2011-OCT-31
PASSED THIRD READING 2011-OCT-31
RESCINDED THIRD READING 2012-JAN-23
PASSED THIRD READING, AS AMENDED 2012-JAN-23

Notice of intention to proceed with this bylaw was published on 2012-Feb-16 and 2012-FEB-23 in the Nanaimo News Bulletin, circulating in the City of Nanaimo, pursuant to Section 94 of the *Community Charter*.

ADOPTED 2012-FEB-27

MAYOR

MANAGER
LEGISLATIVE SERVICES

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, B.C.
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 2011 NO. 7143" the designation of a land use zone which includes the Parcel as a revitalization area; and
- C. 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 an 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 2011 NO. 7143" as amended from time to time or including any subject amendments thereto;
 - d. "Project" means a revitalization project on a Parcel involving the construction of a new improvement, alteration or renovation of an existing improvement, which meets the requirements of the Bylaw, and the construction of which is begun after an application for a Tax Exemption has been submitted to, and approved by, Council;
 - e. "Renovation" means capital improvements that achieve any one or more of the following: adds services; adds rooms; improves the quality of the stay for the visiting public;
 - f. "Tax Exemption" means a revitalization tax exemption determined in accordance with the Bylaw;
 - g. "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.
 - 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 in the Bylaw, the City shall issue a revitalization tax exemption certificate to the British Columbia Assessment Authority entitling the Owner to a property tax exemption in respect of the property taxes due (not including local service taxes) in relation to the improvements on the Parcel (the "Tax Exemption") 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 July 15, 20___;
 - 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 equal to that part of the municipal portion of property taxes calculated by deducting the Baseline Assessment from the current Assessed Value and applying the difference to the current municipal tax rate.
7. Term of Tax Exemption – provided the requirements of this agreement, and of the City of Nanaimo Revitalization Tax Exemption Bylaw No. 7143, 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 May 1; 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 May 1;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 within 30 days of cancellation an amount equal to the percentage of the amount of any Tax Exemption equivalent to the percentage of the year remaining from the date of cancellation.
13. If the amount is not paid under section 12, any amount unpaid will bear interest at a rate of 1.0% per month, compounded annually.
14. 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.
15. 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.
16. No Assignment – the Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
17. 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.
18. 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.
19. 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.
20. 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.

21. 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.
22. 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.
23. 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 2011 NO. 7143" (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 improvement portion(s) of the 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 an amount equal to the value of the exemption received after the date of the cancellation of the certificate.