

CITY OF KELOWNA
BYLAW NO. 9561, 2006

Revitalization Tax Exemption Bylaw

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

AND WHEREAS Council wishes to establish a revitalization tax exemption program in the Downtown Urban Centre and Rutland Urban Centre areas of the City of Kelowna;

AND WHEREAS Council has included within “*Kelowna 2020 – Official Community Plan Bylaw No. 7600*” a designation of parts of the Downtown Urban Centre and Rutland Urban Centre as revitalization areas and provided reasons for that designation, as required by the *Community Charter*;

AND WHEREAS notice has been provided of the creation of a revitalization tax exemption program, as required by the *Community Charter*;

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

1. This bylaw may be cited for all purposes as “City of Kelowna Revitalization Tax Exemption Bylaw No. 9561”.

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 “B” which is attached to and forms part of this bylaw;

“City” means the City of Kelowna;

“Council” means the Council of the City of Kelowna;

“Parcel” means a legal parcel, of which at least 50% of the parcel’s land area is within one of the Revitalization Areas, upon which an owner proposes a Project;

“Project” means a revitalization project on a Parcel involving the construction of a new improvement or alteration 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;

“Revitalization Area” means one of the areas outlined on Schedule “A”, which is attached to and forms part of this Bylaw;

“Tax Exemption” means a revitalization tax exemption pursuant to this bylaw;

“Tax Exemption Certificate” means a revitalization tax exemption certificate issue by the City pursuant to this bylaw, the relevant Agreement, and the provisions of section 226 of the *Community Charter*, in the form of Schedule “C”, which is attached to and forms part of this bylaw.

3. There is hereby established a revitalization tax exemption program pursuant to the provisions of section 226 of the *Community Charter*.

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:
 - a. 100% of the municipal share of the property tax due annually in relation to the improvements on the Parcel, where the Owner is the first developer to apply for an exemption and complete a Project in the applicable Revitalization Area under this bylaw; or
 - b. 100% of the municipal share of the property tax due annually on the Parcel, where
 - i. a portion of the Project includes residential units and where at least 10% of the total number of those residential units meet the affordability criteria as identified in the *Kelowna 2020 - Official Community Plan Bylaw No. 7600*, as amended from time to time; and
 - ii. the owner enters into a housing agreement with the City, pursuant to section 905 of the *Local Government Act*, as amended from time to time, which sets out the maximum rents that can be charged and limits the conversion of rental units to ownership units, during the term of the Tax Exemption; or
 - c. 75% of the municipal share of the property tax due annually on the Parcel, for any Project that does not fall under either a. or b. above;

but in any case shall not:

 - d. be more than the incremental increase in the assessed value of improvements on the Parcel between the year before the commencement of construction of the Project, and the year following the year in which the Tax Exemption Certificate is issued; nor
 - e. include an exemption from any local service tax payable.
6. In order for a Project to be considered by Council for a Tax Exemption:
 - a. the Project must involve construction that results in floor space being added to an existing building or in a new building altogether;
 - b. the construction value of the Project, as determined based on the building permit(s) issued, must be \$250,000.00 or greater.
 - c. the land use into which the Project is intended to fit must be one of the uses permitted in the applicable zone for the Parcel, as set out in City of Kelowna Zoning Bylaw No. 8000, as amended from time to time, is consistent with the future land use designation for the Parcel, as set out in *Kelowna 2020 – Official Community Plan Bylaw No. 7600*, as amended from time to time, and the Project must meet all other applicable City policies and bylaws; and
 - d. the owner of the Parcel must enter into an Agreement with the City.
7. Parcels currently receiving a municipal tax exemption shall not be considered by Council for a Tax Exemption.

8. Projects involving Parcels with any unpaid property taxes in arrears shall not be considered by Council for a Tax Exemption.
9. Projects involving proposals to alter buildings listed on the City of Kelowna Heritage Register shall not be considered by Council for a Tax Exemption.
10. The maximum initial term of a Tax Exemption shall be five years. An owner may apply to Council for a single renewal term of five additional years, pursuant to this bylaw and the applicable Agreement.
11. If an owner of a Parcel wishes Council to consider entering into an Agreement with him, the owner must apply to the Manager of Policy, Research & Strategic Planning, or her designate, in writing and must submit the following with the application:
 - a. A certificate that all taxes assessed and rates, charges and fees imposed on the Parcel have been paid and, where taxes, rates or assessments are payable by instalments, that all instalments owing at the date of the application have been paid;
 - b. A copy of the current Property Assessment Notice for the Parcel as issued by the British Columbia Assessment Authority;
 - c. A completed written application in a form prescribed by the City;
 - d. A description of the Project, including details regarding the extent and value of the Project, which will be confirmed via the building permit process;
 - e. An Agreement in executable form;
 - f. An application fee in the amount of \$250.00.
12. If, pursuant to the terms and conditions specified in the Agreement or the Tax Exemption Certificate, the certificate is cancelled, the owner of the Parcel for which the Tax Exemption Certificate was issued will remit to the City an amount equal to the value of any exemption received after the date of the cancellation.
13. The Director of Finance for the City, or his designate, is designated the municipal officer for the purpose of section 226(12) of the *Community Charter*.

Read a first, second and third time by the Municipal Council this day of , 2006.

Reconsidered, finally passed and adopted by the Municipal Council of the City of Kelowna this day of , 2006.

Mayor

City Clerk

SCHEDULE "A"

Revitalization Areas



SCHEDULE "B"

Revitalization Tax Exemption Agreement

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

BETWEEN:

XXXX
(the "Owner")

AND:

CITY OF KELOWNA
1435 Water Street,
Kelowna, B.C.
V1Y 1J4

(the "City")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of lands in the City of Kelowna at [*civic address*] legally described as [*legal description*] (the "Parcel");
- B. Council has established a revitalization tax exemption program in parts of the Downtown and Rutland Urban Centres, and has included within "*Kelowna 2020 – Official Community Plan Bylaw No. 7600*" a designation of an area which includes the Parcel as a revitalization area; and
- C. The Owner proposes to construct new improvements [*or alter 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. **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 section 6.2 of Chapter 6 of *Kelowna 2020 – Official Community Plan Bylaw No. 7600*. Without limiting the generality of the foregoing, the Owner covenants to use its best efforts to ensure that the Project will:
 - a.
 - b.
 - c.
2. **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.

3. **Revitalization Tax Exemption** – subject to fulfilment of the conditions set out in this agreement and in “City of Kelowna Revitalization Tax Exemption Bylaw No. 9561”, the City shall issue a revitalization tax exemption certificate (the “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 in the form of Appendix “B”, which is attached to and forms part of this agreement.
4. **Conditions** – the following conditions shall be fulfilled 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” and the Project must be officially opened for use as *[describe permitted use]* _____ (the “Exempt Use”) and for no other use, by no later than July 15, 20____;
 - c. The completed Project must substantially satisfy the performance criteria set out in Appendix “D” hereto, as determined by the City’s Director of Planning & Development Services in his sole discretion, acting reasonably;
5. **Calculation of Revitalization Tax Exemption** – the amount of the Tax Exemption shall be equal to *[choose one from below and insert applicable wording]*
 - a. *100% of the municipal share of the property tax due annually on the Parcel, where the Owner is the first developer to apply for an exemption, and complete a Project in the applicable Revitalization Area under this bylaw; or*
 - b. *100% of the municipal share of the property tax due annually on the Parcel, where*
 - i. *a portion of the Project includes residential units and where at least 10% of the total number of those residential units meet the affordability criteria as identified in the City’s Official Community Plan Bylaw No. 7600, as amended from time to time; and*
 - ii. *the owner enters into a housing agreement with the City, pursuant to section 905 of the Local Government Act, as amended from time to time, which sets out the maximum rents that can be charged and limits the conversion of rental units to ownership units, during the term of the Tax Exemption; or*
 - c. *75% of the municipal share of the property tax due annually on the Parcel, for any Project that does not fall under either a. or b. above;*

but in any case shall not be more than the incremental increase in the assessed value of improvements on the Parcel between the year before the commencement of construction of the Project, and the year following the year in which the Tax Exemption Certificate is issued.]
6. **Initial Term of Tax Exemption** – provided the requirements of this agreement, and of the City of Kelowna Revitalization Tax Exemption Bylaw No. 9561, are met the Tax Exemption shall be for the taxation years _____ to _____, inclusive.

7. **Renewal Term** – provided that the Tax Exemption Certificate is not cancelled by the City pursuant to the terms of this agreement, the Owner may, at its option, by written notice delivered to the City before September 1 in the last year of the initial term outlined in section 6 above, renew the Tax Exemption for one five year renewal term on all the same terms and conditions as herein set out, except that this section shall not apply and shall have no further force and effect.
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 and the Project in compliance with all statutes, laws, regulations 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. **Effect of Stratification** – if the Owner stratifies the Parcel or the Project under the *Strata Property Act*, 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;

so long as, where a Housing Agreement exists in relation to the Parcel or the Project which limits ability to stratify, the Housing Agreement is still complied with.

10. **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.

If such cancellation occurs, the Owner of the Parcel for which the Tax Exemption Certificate was issued will remit to the City an amount equal to the value of any Tax Exemption received after the cancellation of the Tax Exemption Certificate.

11. **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.
12. **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 KELOWNA
1435 Water Street,
Kelowna, B.C.

V1Y 1J4

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.

13. **No Assignment** – the Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
14. **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.
15. **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.
16. **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.
17. **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.
18. **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.
19. **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.
20. **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 KELOWNA by
Its authorized signatories:

Mayor

City Clerk

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 Tax Exemption Revitalization Agreement

Plans and Specifications for the Project

Appendix “D” to Tax Exemption Revitalization Agreement

Performance Criteria for the Project

SCHEDULE "C"

Tax Exemption Certificate

In accordance with the City of Kelowna Revitalization Tax Exemption Bylaw No. 9561 (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 Kelowna (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 _____, or the total amount of the municipal share of property tax due in relation to the improvements on the Parcel, whichever is less (the "Tax Exemption"), 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.

If any of these conditions are not met then the Council of the City of Kelowna 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.