

REPORT TO COUNCIL



Date: May 8, 2017

RIM No. 0940-00

To: City Manager

From: Community Planning Department (EW)

Application: RT16-0009

Owner: Sole Downtown Developments Ltd., Inc.No. BC1057689

Address: 1350 St Paul St

Applicant: Sole Downtown Developments Ltd.

Subject: Revitalization Tax Agreement

Existing OCP Designation: MXR – Mixed Use (Residential/Commercial)

Existing Zone: C7 – Central Business Commercial

1.0 Recommendation

THAT Council approves the City entering into a Revitalization Tax Exemption Agreement (Schedule "A") with Sole Downtown Developments Ltd. for Lot 1 District Lot 139 ODYD Plan KAP68461 located at 1350 St Paul St, Kelowna, BC in the form attached to the Report from the Community Planning Department dated May 8, 2017;

AND THAT the Mayor and City Clerk be authorized to execute the Revitalization Tax Exemption Agreement on behalf of the City of Kelowna.

2.0 Purpose

To enter into a Revitalization Tax Exemption Agreement with Sole Downtown Developments Ltd. on the subject property.

3.0 Proposal

The subject property is designated as MXR – Mixed Use (Residential/Commercial) in the Official Community Plan (OCP) and is zoned C7 – Central Business Commercial. The Development Permit for the 6-storey 40-unit mixed building was approved by Council on May 17, 2016 under DP16-0017 and DVP16-0019. The Building Permit Application for the building was submitted on April 25, 2016 for a Total Value of Building Construction of \$8,000,000.00.

The project is in the 'Tax Incentive Area 3' as described by the Revitalization Tax Exemption Program Bylaw No. 9561. A tax exemption will be considered within Area 3 for the first 200,000 sq.ft of

development to receive a building permit.¹ 'Tax Incentive Area 3' amounts to 50% of the Residential portion of Revitalization Amount on the parcel, for a project with a minimum floor area of 3,7156 m² as long as:

1. The Project involves construction that results in a new building;
2. The construction value based on the building permit(s) issued is \$50,000.00 or greater;
3. The Project is consistent with the land use for the area as set out in Zoning Bylaw No. 8000 and Official Community Plan Bylaw No. 10500;
4. The owner of the Parcels enters into an agreement with the City;
5. The form and character of the Project is consistent with the applicable Development Permit Area Design Guidelines contained within Chapter 14 of Official Community Plan Bylaw No. 10500
6. The property is located in a Revitalization Area as shown on Schedule 'A' of Revitalization Tax Exemption Program Bylaw No. 9561.

With all requirements met, the subject property qualifies to receive 50% of the Amount based on the square footage capacity that remains within Tax Incentive Area 3. Based on the 2016 Municipal Tax Rate for a Residential Property Class (3.711) and the total value of residential building construction estimated at \$6,000,000.00², the tax exemption would be approximately \$11,113 per year. For a period of 10 years from 2019-2028, the total exempt amount would be approximately \$111,330.

3.1 Development Permit and Development Variance Permit DP16-0017 and DVP16-0019

Elevation:



¹ If this RTE application (RTE16-0009) for 1350 St. Paul St and RTE16-0008 for 1775 Chapman Pl are approved by Council, Tax Incentive Area 3 would be removed from the Tax Exemption Program as the 200,000 sq.ft capacity has been reached.

² This residential estimate is based on total project estimate provided by the applicant as part of the Building Permit application.

4.0 Current Development Policies

Revitalization Tax Exemption Program Bylaw No. 9561.

5.0 Technical Comments

None.

6.0 Application Chronology

Date of Application Received: November 17, 2016

Report prepared by:	Emily Williamson, Planner I
Reviewed by:	Terry Barton, Urban Planning Manager
Reviewed by:	Matt Friesen, Accountant
Approved for Inclusion:	Ryan Smith, Community Planning Department Manager

Attachments:

Schedule "A" – Revitalization Tax Exemption Agreement

Schedule "B" – Tax Exemption Certificate

Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the ___ day of _____, 2017 is

BETWEEN:

SOLE DOWNTOWN DEVELOPMENTS LTD., INC.NO. BC1057689
101-1290 St. Paul Street
Kelowna, B.C.
V1Y 2C9

(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 **1350 ST PAUL ST** legally described as **LOT 1 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN KAP68461** (the "Parcel");
- B. Council has established a revitalization tax exemption program and has included within the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561 the designation of areas which include the Parcel as a revitalization area; and
- C. The Owner proposes to construct new 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 the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561. Without limiting the generality of the foregoing, the Owner covenants to use its best efforts to ensure that the Project will:
 - a. Include construction of a six storey mixed-use building with 40 residential units;
 - b. Provide parking under the building in a parkade;
 - c. Have a mix of apartment types, varying from studios to one bedroom.

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 Amount** - Refers to the municipal portion of property tax calculated in relation to the increase in the assessed value of improvements on the property resulting from the construction or alterations as outlined in section 1 of this agreement;
4. **Revitalization Tax Exemption** - subject to fulfilment of the conditions set out in this agreement and in “City of Kelowna Revitalization Tax Exemption Program 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 Revitalization Amount on the Parcel (the “Tax Exemption”) for the calendar year(s) set out in this agreement.
5. **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 **April 30, 2016;**
 - 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 “A” and the Project must be officially opened for use as a mixed-use building with apartment housing (the “Exempt Use”) and for no other use, by no later than **July 31, 2018;**
 - c. The Owner must submit a copy of the Occupancy Permit and Revitalization Tax Exemption Agreement to the City of Kelowna’s Revenue Branch before the City will issue the Tax Exemption Certificate.
 - d. The completed Project must substantially satisfy the performance criteria set out in Appendix “B” hereto, as determined by the City’s Urban Planning Manager or designate, in their sole discretion, acting reasonably.
6. **Calculation of Calculation of Revitalization Tax Exemption** - the amount of the Tax Exemption shall be equal to:

- a) For “Tax Incentive Area 3,” 50% of the Residential portion of Revitalization Amount on the Parcel, for a project with a minimum floor area of 3,716 m² (40,000 sq. ft.);
7. **Term of Tax Exemption** - provided the requirements of this agreement, and of the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561, are met the Tax Exemption shall be for the taxation years **2019 to 2028**, inclusive.
8. **{deleted}**
9. **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.
10. **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:
- 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
 - 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.
11. **Cancellation** - the City may in its sole discretion cancel the Tax Exemption Certificate at any time:
- on the written request of the Owner; or
 - 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.

12. **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.
 13. **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:

SOLE DOWNTOWN DEVELOPMENTS LTD., INC.NO. BC1057689
101-1290 St. Paul Street
Kelowna, B.C.
V1Y 2C9

Attention: Paul Whitewood
Fax: 778-484-7078
- 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.
14. **No Assignment** - the Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
 15. **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.
 16. **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.
 17. **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.
 18. **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.

19. **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.
20. **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.
21. **Enurement** - this agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
22. Any construction of a new improvement or alteration of an existing improvement as of this bylaw undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration
23. The maximum Revitalization Tax Exemption authorized under this Bylaw must not exceed the Revitalization Amount on the Property between:
 - a. the calendar year before the construction or alteration began, as outlined under Section 1 of this agreement; and
 - a. the calendar year in which the construction or alteration, as outlined under Section 1 of this agreement, is completed.
24. The Property's assessed value of improvements must not be reduced below the amount assessed in the calendar year prior to construction or alteration, as a result of the Revitalization Tax Exemption.

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 SOLE DOWNTOWN DEVELOPMENTS LTD. by its
Authorized signatories:

Name:

Name:

Appendix "A": Plans and Specifications

Schedule "C"

Tax Exemption Certificate

In accordance with the City of Kelowna Revitalization Tax Exemption Program 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 Sole Downtown Developments Ltd., Inc.No. BC1057689 (the "Owner"), the registered owner(s) of Lot 1 District Lot 139 Osoyoos Division Yale District Plan KAP68461 (the "Parcel):

This certificate certifies that the Parcel is subject to a Revitalization Tax Exemption, for each of the taxation years **2019 to 2028** inclusive, equal to:

1. "Tax Incentive Area 3," 50% of the Revitalization Amount attributed to Building Permit No. BP 52827 between 2016 and **2018**;

Any construction of a new improvement or alteration of an existing improvement, on the Parcel described above, undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration;

The maximum Revitalization Tax Exemption authorized must not exceed the increase in the assessed value of improvements on the property resulting from the construction or alterations attributed to Building Permit No. BP 52827 between 2016 and **2018**;

The Property's assessed value of improvements must not be reduced below the amount assessed in the calendar year prior to construction or alteration, as a result of the Revitalization Tax Exemption.

The Revitalization 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.