



The Corporation of the City of Courtenay

Bylaw No. 3190

A bylaw to regulate and require the provision of works and services in connection with the development of land.

WHEREAS Council is empowered under section 506 of the *Local Government Act* to regulate and require the provision of works and services, and prescribe standards for such works and services;

WHEREAS Council is empowered under section 506.03 of the *Local Government Act* to require the provision of works and services as a condition of approval of a subdivision or issuance of a building permit;

WHEREAS Council is empowered under section 509 of the *Local Government Act* to accept a deposit and enter into a servicing agreement in lieu of requiring the provision of works and services; and

WHEREAS Council intends to exercise the foregoing powers in connection with the development of land;

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the City of Courtenay, in open meeting assembled, enacts as follows:

PART 1 INTERPRETATION

1.1 This Bylaw shall be cited as “Subdivision and Development Servicing Bylaw No. 3190”.

1.2 In this bylaw,

- (a) **“Building Bylaw”** means the City of Courtenay’s Building Bylaw No. 3114;
- (b) **“Building Permit”** means a permit authorized under the Building Bylaw;
- (c) **“Cash in Lieu of Servicing”** means the amount described in Part 7 of this bylaw;
- (d) **“City”** means the Corporation of the City of Courtenay;
- (e) **“Council”** means the Council of the Corporation of the City of Courtenay;
- (f) **“Developer”** means the owner of land, or appointed agent for the owner, in respect of which an application for Subdivision or a Building Permit has been made;
- (g) **“Development”** means Subdivision of land or an activity for which a permit is required under the Building Bylaw;
- (h) **“Director of Development Services”** means the person with authority delegated by Council to approve servicing for Subdivisions by the City of Courtenay, or a designate;
- (i) **“Excess or Extended Services”** has the meaning provided in the Local Government Act;
- (j) **“Land Title Act”** means Land Title Act, RSBC 1996, c 250;
- (k) **“Local Government Act”** means Local Government Act, RSBC 2015, c 1;
- (l) **“MMCD”** means the Master Municipal Construction Documents, 2019 Edition, published by the Master Municipal Construction Documents Association, and any updates and revisions thereto;
- (m) **“MMCD Design Guidelines”** means Design Guidelines 2022 published by the Master Municipal Construction Documents Association, and any updates and revisions thereto;
- (n) **“Qualified Professional”** means a professional engineer who is registered or licensed to practice in British Columbia under the provisions of the *Professional Governance Act*, who is responsible for the design, construction, supervision and certification of all

Subdivision and Development Servicing Bylaw No. 3190

Works and Services on behalf of the Developer;

- (o) **“Servicing Security”** has the meaning provided in Part 6 of this bylaw.;
 - (p) **“Subdivision”** means a subdivision of land including the adjustment of existing parcel boundaries;
 - (q) **“Substantially Complete”**, in relation to any Works and Services, means the stage of construction when the combined value of deficiencies plus the value of incomplete work, as indicated in a deficiency list complete with a monetary value associated with each deficiency or incomplete work is less than the sum of the following, in reference to the total cost of the work:
 - (i) 3% of the first \$500,000.00;
 - (ii) 2% of the next \$500,000.00; and
 - (iii) 1% of the remaining cost;
 - (r) **“Works and Services”** has the meaning provided in Part 4 of this bylaw; and
 - (s) **“Works and Services Agreement”** has the meaning provided in Part 6 of this bylaw.
- 1.3 Every reference to a statute or bylaw shall be deemed to be a reference to the said statute or building code as amended or replaced from time to time.

PART 2 PURPOSE

- 2.1 The purpose of this bylaw is to promote the provision of works and services that are designed and constructed to certain standards prescribed herein to lands developed in the City of Courtenay.

PART 3 WORKS AND SERVICES AS CONDITION OF DEVELOPMENT

- 3.1 As a condition of issuance by the City of the approval of a Subdivision or a Building Permit, the Developer shall meet one of the following conditions:
- (a) the Developer has provided the Works and Services set out in Part 4 of this bylaw;
 - (b) the Developer has deposited the Servicing Security and has entered into a Works and Services Agreement with the City set out in Part 6 of this bylaw;
 - (c) the Developer has paid Cash in Lieu of Servicing set out in Part 7 of this bylaw. The determination that accepting Cash in Lieu of Servicing is in the public interest shall be made by the Director of Development Services, and should such determination be made, the Developer must meet this condition.

The Director of Development Services may waive all of the above conditions in relation to the approval of a Subdivision or a Building Permit if (i) the Developer is a charitable, philanthropic or other not for profit corporation, and (ii) the Development is intended exclusively for a purpose that is directly related to the purposes of the City.

- 3.2 The Director of Development Services is authorized to permit a Developer to meet the requirement of Section 3.1 through a combination of two or more conditions prescribed there.
- 3.3 Section 3.1 shall not apply:
- (a) in relation to a Building Permit authorizing the construction of a single residential dwelling or a duplex dwelling, whether or not the dwelling contains a secondary suite (the meaning of relevant terms in this paragraph to be interpreted in accordance with the City’s Zoning Bylaw No. 2500, 2007); and

Subdivision and Development Servicing Bylaw No. 3190

- (b) in relation to underground wiring, conduit and vaults, in the case of any Subdivision resulting in the creation of fewer than 2 additional parcels in an area zoned for single-family residential use only, where the electrical and telephone services abutting the parcel being subdivided and all immediately abutting parcels are above-ground.

PART 4 WORKS AND SERVICES REQUIREMENTS

- 4.1 The following works and services shall be provided in relation to a Development, to the extent directly attributable to the Development ("**Works and Services**"):
 - (a) highways, sidewalks, boulevards, boulevard crossings, street lighting, transit bays or underground wiring;
 - (b) amenities, including benches, bollards, bicycle parking facilities, directional signage, parklets, street lamps, street signs, transit shelters or waste disposal and recycling containers;
 - (c) transportation infrastructure that supports walking, bicycling, public transit or other alternative forms of transportation, including traffic calming measures;
 - (d) sustainable design features that provide for energy and water conservation, reduction of greenhouse gas emissions and climate resilience;
 - (e) any other thing, or classes of things, prescribed by provincial regulation; or
 - (f) Excess or Extended Services, as determined by the Director of Development Services.
- 4.2 The City will not impose a requirement under Section 4.1 in respect of a subdivision under the *Strata Property Act*.
- 4.3 The Works and Services must be located:
 - (a) in relation to a Subdivision, on that portion of the highway immediately adjacent to the land being subdivided, up to the centre line of the highway; and
 - (b) in relation to a Building Permit, on each parcel for which such permit is sought and on that portion of the highway immediately adjacent to such parcel, up to the centre line of the highway.
- 4.4 The Works and Services must be provided:
 - (a) at the cost of the Developer; and
 - (b) to the standards set out in Part 5 of this bylaw.
- 4.5 If the Director of Development Services determines that Excess or Extended Services are required in relation to the Development, the following shall apply:
 - (a) The Developer may submit documentation certified by a Qualified Professional demonstrating that Excess or Extended Services are not required because of capacity available in the existing infrastructure. If such documentation is to the reasonable satisfaction of the Director of Development Services, the requirement shall be waived subject to approval by Council.
 - (b) If no documentation or insufficient documentation is provided under paragraph (a), the Director of Development Services shall require the Developer to bear the cost of Excess or Extended Services. All such costs shall be paid upfront by the Developer and may be recovered from the City under the latecomer scheme provided in section 508 of the *Local Government Act*.

Subdivision and Development Servicing Bylaw No. 3190

PART 5 TECHNICAL STANDARDS FOR WORKS AND SERVICES

- 5.1 The design capacity of Works and Services shall be established in accordance with the following (the documents to have priority in the order that they are listed):
- (a) Supplementary Design Guidelines provided in Schedule 1; and
 - (b) MMCD Design Guidelines.
- 5.2 All Works and Services shall be detailed and constructed in accordance with the following (the documents to have priority in the order that they are listed):
- (a) Supplementary Construction Specifications provided in Schedule 2;
 - (b) Division 01, 03, 26, and 31 to 34 of the Master Municipal Specifications of MMCD including any relevant definitions in the Master Municipal General Conditions of the same document (or the equivalent sections of the version applicable at the time of construction);
 - (c) Supplementary Standard Detailed Drawings provided in Schedule 3;
 - (d) Standards for Sanitary Lift Stations provided in Schedule 4, if applicable; and
 - (e) Standard Detail Drawings of MMCD.
- 5.3 The Director of Development Services is authorized to vary the requirements of Section 5.1 and Section 5.2 through consultation with the City's subject matter expert(s) if the Developer submits documentation certified by a Qualified Professional reasonably demonstrating that:
- (a) Works and Services already exist which are likely to meet the applicable standards;
 - (b) it would be unnecessary or unreasonable to impose the applicable standards in view of the particular physical circumstances of the Development; or
 - (c) a proposed innovative design or construction methodology meets or exceeds the intent of Section 5.1 and Section 5.2 as determined by the Director of Development Services.
- 5.4 Works and Services must be designed by a Qualified Professional in accordance with this bylaw, other City bylaws, provincial and federal statutes and regulations, and commonly accepted standards in the design of facilities similar to the Works and Services. The Developer shall submit it to the City:
- (a) at the time of application for Subdivision or a Building Permit, a written commitment to engage a Qualified Professional in relation to design and field review of Works and Services; and
 - (b) as a condition of the City's acceptance of plans or acceptance of any Works and Services, a written assurance issued by a Qualified Professional that the design or construction (as the case may be) of the Works and Services complies with the technical standards set out herein.
- 5.5 The Director of Development Services is authorized to issue the forms for the commitments and assurances set out in section 5.4.

PART 6 SERVICING SECURITY AND WORKS AND SERVICES AGREEMENTS

- 6.1 Pursuant to section 509 of the Local Government Act, the Developer may, as an alternative to providing the Works and Services as a condition of issuance by the City of the approval of a Subdivision or a Building Permit:

Subdivision and Development Servicing Bylaw No. 3190

- (a) deposit the Servicing Security with the City; and
 - (b) enter into a Works and Services Agreement with the City.
- 6.2 The Servicing Security shall be established and updated as follows.
 - (a) The Developer shall submit to the City a cost estimate including the following:
 - (i) a Class B/Class 3 cost estimate for construction of the Works and Services; and
 - (ii) a cost estimate of all design and permitting activities in relation to the Works and Services.
 - (b) Upon the Director of Development Services being reasonably satisfied that a cost estimate meets the foregoing requirements, the Director of Development Services shall issue written approval of the same. An amount equal to 125% of the total amount of the cost estimate so approved by the Director of Development Services shall constitute the **“Servicing Security”**.
- 6.3 The Servicing Security must be deposited in one of the following forms:
 - (a) cashier’s cheque; or
 - (b) unconditional, irrevocable and automatically renewing letter of credit drawn on a chartered bank or credit union.
- 6.4 The Developer shall forfeit the Servicing Security to the City if the Developer fails to Substantially Complete the Works and Services by the date specified in the Works and Services Agreement.
- 6.5 The Director of Development Services is authorized to prescribe a form of agreement between the City and the Developer containing the following provisions (**“Works and Services Agreement”**):
 - (a) scope of Works and Services;
 - (b) commitment by the Developer to Substantially Complete the Works and Services by a specified date and, if it fails to do so, forfeit the Servicing Security to the City;
 - (c) establishment of a warranty period within which the Developer shall be obligated to repair or replace the Works and Services containing defects or deficiencies;
 - (d) third party liability insurance in an amount and form reasonably acceptable to the Director of Development Services;
 - (e) indemnification of the City against third-party liability arising from causes within the Developer’s control;
 - (f) if applicable, grant of a statutory right of way to the City pursuant to Section 218 of the Land Title Act over the Development in relation to the Works and Services; and
 - (g) other terms that are consistent with Section 509 of the Local Government Act and are customarily included in similar agreements in British Columbia.
- 6.6 Works and Services Agreements shall be drafted in a form that is registrable under Section 219 and, if applicable, Section 218 of the Land Title Act against title to the land on which Development is proposed and each Works and Services Agreement shall, upon execution, be registered in the Land Title Office.
- 6.7 If applicable, the Developer shall submit to the City an indemnification letter from BC Housing prior to commencing construction of Works and Services.

Subdivision and Development Servicing Bylaw No. 3190

PART 7 CASH IN LIEU OF PROVIDING WORKS AND SERVICES

- 7.1 If the Director of Development Services determines, based on engineering and economic factors, that it is in the public interest for the Works and Services to be constructed at a later time or concurrently with the construction or alteration of Works and Services serving other lands, then Cash in Lieu of Servicing must be paid as a condition for approval of a Subdivision or a Building Permit.
- 7.2 The amount of Cash in Lieu of Servicing shall be equal to 100% of the total amount of the cost estimate approved by the Director of Development Services after following the process as that set out to establish the Servicing Security in Section 6.2.

PART 8 BYLAW ADMINISTRATION

- 8.1 Where this bylaw requires or permits the Director of Development Services to take an act or make a determination, the Director of Development Services shall be deemed to possess the delegated powers of the Council to take such an act or make such a determination.

PART 9 OFFENCE

- 9.1 Every person who:
- (a) violates a provision of this bylaw;
 - (b) permits, suffers or allows any act to be done in violation of any provision of this bylaw; and
 - (c) neglects to do anything required to be done under any provision of this bylaw,
- commits an offence and on summary conviction by a court of competent jurisdiction, the person is subject to a fine of not more than \$50,000.00, or a term of imprisonment not exceeding three months, or both, in addition to the costs of prosecution. Each day during which a violation, contravention or breach of this bylaw continues is deemed to be a separate offence.

PART 10 GENERAL

- 10.1 The following schedules are attached to and form part of this bylaw:
- (a) Schedule 1 – Supplementary Design Guidelines
 - (b) Schedule 2 – Supplementary Construction Specifications
 - (c) Schedule 3 – Supplementary Standard Detail Drawings
 - (d) Schedule 4 – Standards for Sanitary Lift Stations
- 10.2 The City of Courtenay Subdivision Control Bylaw No. 2919, as amended, is hereby repealed.

Read a first time [day] day of [month], [year]

Read a second time [day] day of [month], [year]

Read a third time [day] day of [month], [year]

Adopted this [day] day of [month], [year]

Subdivision and Development Servicing Bylaw No. 3190

Mayor Bob Wells

Corporate Officer Adriana Proton