

CORPORATION OF THE DISTRICT OF BURNABY

BY-LAW NO. 1669

A BY-LAW to enlarge and extend the time in which action may be commenced against the Corporation of the District of Burnaby at the instance of the Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority in certain cases.

WHEREAS the Corporation of the District of Burnaby (in the recitals herein contained referred to as the "Corporation") is a Municipality within the Sewerage District established by the "Vancouver and Districts Joint Sewerage and Drainage Act", being Chapter 79 of the Statutes of British Columbia 1914, and amending Acts;

AND WHEREAS the sum of money required by the Vancouver and Districts Joint Sewerage and Drainage Board to be paid by the Corporation on or before the first day of November, 1932 to the Minister of Finance for the purpose of the said board remains unpaid by the Corporation;

AND WHEREAS the Corporation was unable to pay the said sum or any part thereof within one year after the cause of action or actions in respect of the said sum arose;

AND WHEREAS it is inter alia provided by Subsection 2 of Section 487 (formerly Section 451 as amended) of the "Municipal Act" being Chapter 199 of the Revised Statutes of British Columbia 1936, that the Council of a Municipality may enlarge and extend the time for commencement of action against the Municipality for such period of time as may be designated by the Council in any particular case;

AND WHEREAS, invoking the provisions of the said "Municipal Act" mentioned in the immediately preceding paragraph a By-law known as the "District of Burnaby Vancouver and Districts Joint Sewerage and Drainage Board Account Payment Extension By-law 1933" was passed by the Corporation on the 25th day of October, A.D. 1933, reconsidered by the Commissioner thereof, finally adopted and signed by him and executed under the Corporate Seal on the 30th day of October, 1933 and approved by the Lieutenant-Governor in

Council on the 7th day of November, 1933, whereby the Corporation did consent and agree that any action or actions against the said Corporation for recovery of the said sum might be commenced by the said Board or other proper authority at any time up to the first day of November, 1937 inclusive, and that if so commenced the Corporation should be absolutely barred, estopped and prohibited from pleading, alleging, contending or in any way taking advantage of the terms of the "Municipal Act" or any other act or law dealing with or having reference to the limitation of time within which such action may be brought or commenced, all as more fully set forth in the said By-law which is numbered 1463;

AND WHEREAS by a further By-law of the Corporation passed on the 29th day of September, A.D. 1937, reconsidered by the Commissioner of the Corporation and finally adopted and signed by him and the Clerk of the Corporation and sealed with the Corporate Seal of the Corporation on the 6th day of October, A.D. 1937 and approved by the Lieutenant-Governor in Council on the 15th day of October, 1937, (which By-law is known as the "District of Burnaby Vancouver and Districts Joint Sewerage and Drainage Board Account Payment Extension By-law 1937" and is numbered 1610) the Corporation did consent and agree that any action or actions against the said Corporation for recovery of the said sum might be commenced by the said Board or other proper authority at any time up to the first day of November, 1940 inclusive, all as more fully set forth in the said By-law;

AND WHEREAS the balance of the said sum now remaining unpaid by the Corporation is Twenty-eight Thousand Nine Hundred and Eleven Dollars and Sixty Cents (\$28,911.60) (hereinafter called the "principal sum") plus interest thereon at the rate of six per centum (6%) per annum from the said first day of November, 1932;

AND WHEREAS to induce the Corporation to pay the principal sum being the said amount of \$28,911.60 immediately and in consideration of its so doing, the said Board has agreed not to

demand or commence proceedings of any nature whatsoever to enforce payment of the said interest on the said principal sum until the 15th day of August, 1965;

AND WHEREAS Hugh M. Fraser was appointed Commissioner of the Municipality of Burnaby under Part XXIII of the "Municipal Act" on the 12th day of February, 1934 and as such, has under the said Statute, power to pass such by-laws and exercise such powers as might have been passed and exercised by the Council of the Municipality;

AND WHEREAS the said Commissioner, acting as such, is desirous of designating a period of time beyond the said first day of November, 1940, within which action or actions may be commenced against the Corporation in respect of the said interest on the said principal sum; it being understood and agreed between the Corporation and Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority that, notwithstanding any judgment or order, opinion, submission, contention or argument, if any, which may have been or may be made, held or advanced to the contrary, the amendment to the "Interpretation Act", being Chapter 1 of the Revised Statutes of British Columbia 1924 as enacted by section 5 of the "Interpretation Act Amendment Act, 1934", now being subsection 1 of section 28 of the "Interpretation Act", Chapter 1 of the Revised Statutes of British Columbia 1936, enables the said Commissioner again to extend the time within which action or actions may be commenced by the Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority for the recovery of the said interest on the said principal sum as hereinafter appearing;

THEREFORE, in consideration of the Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority refraining from commencing any action or actions against the Corporation before the 15th day of August, 1965 in respect of the said interest on the said principal sum or any part thereof, the said Commissioner, in exercise of all the powers in that behalf him thereunto enabling, ENACTS AS FOLLOWS:-

1. IT SHALL be lawful for the Corporation of the District

of Burnaby to consent and agree, and the said Corporation hereby consents and agrees, that any action or actions against the Corporation for the recovery of the said interest on the said principal sum or any part thereof, separately or collectively, may be commenced by the Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority at any time up to the first day of November, 1965, inclusive, and that if so commenced the Corporation shall be absolutely barred, estopped and prohibited from pleading, alleging, contending or in any way taking advantage of the terms of the "Municipal Act" or any other act or law dealing with or having reference to the limitation of time within which such action or actions may be brought or commenced;

2. That the period between the first day of November, 1940 and the first day of November, 1965 shall be regarded as a further period of time designated by the said Commissioner within which action or actions may be commenced for the recovery of the said interest on the said principal sum, or any part thereof.

3. That the Corporation of the District of Burnaby shall be and is hereby estopped and precluded from alleging or pleading or in any way contending that the intent and meaning of the provisions of the said "Interpretation Act" hereinbefore referred to is other than that agreed to between the Corporation and the Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority as before set forth enabling the said Commissioner to pass this By-law as valid and enforceable in all its provisions; that the same shall not be capable of being revoked, repealed or rescinded in any way, and that a copy thereof, certified to be a true copy under the hand of the Commissioner and sealed with the Corporate Seal of the Corporation of the District of Burnaby and delivered to the Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority shall be regarded as an agreement entered into under seal by the said Corporation and enforceable against it at the instance of the Vancouver and Districts Joint Sewerage and Drainage Board or other proper authority according to its terms.

4. That in the event of its being alleged or found at any time that the powers herein exercised by the Commissioner should have been exercised by him by way of resolution in place of By-law, this By-law shall in that event be regarded as a resolution, and as such be obligatory upon the Corporation of the District of Burnaby, according to its full tenor and purport.

5. This By-law shall not come into force and effect unless and until it shall have received the approval of the Lieutenant-Governor in Council.

6. This By-law may be cited for all purposes as the "DISTRICT OF BURNABY VANCOUVER AND DISTRICTS JOINT SEWERAGE AND DRAINAGE BOARD INTEREST ACCOUNT PAYMENT EXTENSION BY-LAW 1939."

PASSED by the Commissioner of the Corporation of the District of Burnaby on the Fourteenth (14th) day of June, A.D. 1939.

RECONSIDERED AND FINALLY PASSED by the said Commissioner and signed by him and the Clerk of the said Corporation, and sealed with the Corporate Seal on the Twenty first (21st) day of June, A.D. 1939.



Hugh W. Fraser

COMMISSIONER.

Charles B. Brown

CLERK.