

“HOUSING AGREEMENT BYLAW 2018 NO. 7262”

Consolidated Version

2019-FEB-04

Includes amendment: 7262.01

CITY OF NANAIMO

BYLAW NO. 7262

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS Section 905 of the *Local Government Act* provides that Council may enter into a Housing Agreement, which may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement; and

WHEREAS the Council wishes to enter into such an Agreement with respect to certain housing units located in the City of Nanaimo;

THEREFORE the Council of the City of Nanaimo, in open meeting assembled, HEREBY ENACT AS FOLLOWS:

1. This Bylaw may be cited for all purposes as "HOUSING AGREEMENT BYLAW 2018 NO. 7262"
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule 'A', which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in the Agreement is legally described as:

Parcel Identifier: 028-341-198
Lot A, Suburban Lots 8,9 And 10, Newcastle Townsite, Section 1, Nanaimo District,
Plan EPP7820, Except Part In Plans EPP8336 & EPP7821
Civic Address: 1406 Bowen Road, Nanaimo, BC V9R 5J6
3. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the City of Nanaimo, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING: 2018-MAY-07
PASSED SECOND READING: 2018-MAY-07
PASSED THIRD: 2018-MAY-07
ADOPTED: 2018-MAY-28

W. B. MCKAY
MAYOR

S. GURRIE
CORPORATE OFFICER

'Schedule A'

HOUSING AGREEMENT – 1406 BOWEN ROAD

THIS AGREEMENT made this ____ day of _____, 2019

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC
V9R 5J6

(the "City")

OF THE FIRST PART

AND:

NANAIMO ABORIGINAL CENTRE SOCIETY
2595 McCullough Road
Nanaimo, BC
V9S 4M9

(the "Owner")

OF THE SECOND PART

WHEREAS:

- A. The City may, by agreement under Section 483 of the *Local Government Act*, enter into a housing agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in Section 483(2) of the *Local Government Act*,
- B. The Owner is the registered owner in fee-simple of the lands described as:

PID 028-341-198, LOT A, SUBURBAN LOTS 8,9 AND 10, NEWCASTLE TOWNSITE, SECTION 1, NANAIMO DISTRICT, PLAN EPP7820, EXCEPT PART IN PLANS EPP8336 & EPP7821, CIVIC ADDRESS: 1406 BOWEN ROAD, NANAIMO BC V9R 5J6.
- C. The Owner has requested the City grant permission to develop the Land into 25 units of affordable housing (the "**Project**").
- D. The City is willing to grant permission and enter into this Agreement (the "**Agreement**") to establish terms and conditions regarding the occupancy of the dwelling units identified in the Agreement and the Owner has agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *Local Government Act* and in consideration of the premises and covenants contained in this Agreement, the parties hereto covenant and agree with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement the following words and terms have the following meanings:

- a) "Dwelling Unit" means a habitable room consisting of a self-contained unit with a separate entrance for the residential accommodation of only one family and contains a cooking facility but excludes all accommodation for the travelling public other than a bed and breakfast.
- b) The City and the Owner agree that the definitions in the City of Nanaimo's "ZONING BYLAW 2011 NO. 4500" as amended from time to time, and any enactment that may replace it, apply to the interpretation of the terms in this Agreement.
- c) The "Project" refers to the totality of dwelling units and ancillary spaces constructed on the subject property by the Owner.

2.0 OCCUPANCY OF HOUSING UNITS

2.1 The Owner covenants and agrees with the City that all dwelling units on the site shall be used for the provision of affordable housing.

3.0 ADMINISTRATION, MANAGEMENT AND NUISANCE

3.1 The Owner shall ensure that the Project is managed according to the following rules:

- (a) That the monthly rent charged to the tenants of the dwelling units in The Project be "affordable", consistent with the desire of both parties to this agreement to have The Project contribute to the provision of affordable rental housing in the community. The definition of "affordable" should be construed for the purposes of this agreement to mean monthly rents that are less than the "low end of market" as per the average rents set out by Canada Mortgage and Housing Corporation in their quarterly Rental Reports for Nanaimo. Further, a minimum of 20% of the dwelling units shall be rented at or about the shelter rate as set by the Ministry of Social Development and Poverty Reduction for recipients of Income Assistance.
- (b) That the Owner will undertake to operate The Project as a good neighbour ensuring that the operation of The Project does not detract from the surrounding resident's right to peaceful enjoyment of their homes. The Owner will regularly seek and give due consideration to feedback received from the neighbours as to the operation and impact of the Project. Should it be deemed necessary by the City, the City will require the Owner enter into a Good Neighbour Agreement developed and monitored jointly by the Owner, the City and the neighbours.
- (c) That the Owner will comply with all laws that relate to this Agreement.

4.0 TERM

4.1 Subject to earlier termination in accordance with this Agreement, this Agreement granted shall be for an initial term of ten (10) years commencing on the date of the original bylaw (2018-MAY-07) and ending on the 1st day of May 2028 (the "Term"). As long as the Owner is not in default of the terms and conditions of this Agreement, this Agreement shall be automatically renewed each year, unless:

- a) this Agreement is terminated in accordance with its terms; and,
- b) this Agreement is deemed to be terminated pursuant to Section 5.

5.0 TERMINATION

5.1 The parties acknowledge and agree that:

- a) notwithstanding any provision to the contrary in this Agreement, if the Owner is in default of its obligations in this Agreement then the City may, by written notice to the Owner require such default to be corrected within thirty (30) days after receipt of such notice.
- b) If within the thirty (30) days after receipt of such notice the default has not been corrected or reasonable steps to correct the default have not been taken, the City, without limiting any other right it might have, will withdraw the rights it has granted herein and terminate this Agreement. The City will provide to the Owner (60) days written notice of their intent to terminate the Agreement indefinitely. The City shall not be liable in any way to the Owner for any cost, damage, liability or loss suffered as a result.
- c) notwithstanding termination under this section, the City shall be entitled to proceed with the enforcement of any indemnity or other term or condition of this Agreement in satisfaction of any claim, loss, damage or expense of the City arising under this Agreement or from the license hereby granted.

6.0 INDEMNITY AND RELEASE

6.1 The Owner covenants and agrees to indemnify and save harmless the City, its elected officials and appointed officers, employees, contractors, agents, successors and assigns from and against any claim, demand, suit, action, cause of action, liability, damage, loss (including personal injury and death), expense and cost (including all legal fees) arising out of or related to:

- a) the Owner's breach of this Agreement; and,
- b) the Owner's use or occupation of the Land.

The Owner shall waive, release and discharge the City, its elected officials, appointed officers, employees, contractors, agents, successors and assigns from and against any claim, suit, action, liability, damage, loss, expense and payment whatsoever whether known or unknown which the Owner, may now or in the future have against the City arising from or related to the Land.

7.0 ASSIGNMENT

7.1 This Agreement shall not be transferred or assigned by the Owner.

8.0 AMENDMENT

8.1 Except as otherwise provided herein, this Agreement shall not be amended without the prior written consent of the parties.

9.0 BINDING EFFECT

9.1 This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, administrators and permitted assignees.

10.0 NO WAIVER

10.1 The waiver by a party or any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

11.0 NO RELIEF

11.1 It is understood, covenanted and agreed by and between the parties hereto that no provision of these presents and no act or omission or finding of negligence, whether joint or several, as against the City, in favour of any third party, shall operate to relieve, or be deemed to relieve, the Owner in any manner whatsoever from any liability to the City with respect to this Agreement, or under the provisions of the *Community Charter*, the *Local Government Act*, or any bylaw of the City and amendments thereto.

12.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

12.1 Notice of this Agreement shall be registered in the *Land Title Act* by the City, at the cost of the Owner, in accordance with Section 483 of the *Local Government Act*, and this Agreement shall be binding on all persons who acquire an interest in the Land after registration of this notice.

13.0 TERMINOLOGY

13.1 Wherever the singular, masculine or neuter are used throughout this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic, as the context requires.

14.0 B.C. LAWS GOVERN

14.1 This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

CITY OF NANAIMO by its authorized signatories

_____)
_____)
_____)
Mayor, Leonard Krog))
_____)
_____)
_____)
Corporate Officer)

NANAIMO ABORIGINAL CENTRE SOCIETY by its authorized signatories:

_____)
_____)
_____)
_____)
_____)
_____)