

CITY OF NANAIMO

BYLAW NO. 7132

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

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WHEREAS Section 905 of the *Local Government Act* provides that Council may enter into a Housing Agreement with an owner 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 BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "HOUSING AGREEMENT BYLAW 2011 NO. 7132".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Manager of Legislative Services 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 "LOT 2, THAT PART OF SECTION 1, NANAIMO DISTRICT, PLAN EPP5225".
3. Upon execution of the Agreement by the Mayor and Manager of Legislative Services 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 2011-AUG-08  
PASSED SECOND READING 2011-AUG-08  
PASSED THIRD READING 2011-AUG-08  
ADOPTED 2011-AUG-22

\_\_\_\_\_  
J. R. RUTTAN  
MAYOR

\_\_\_\_\_  
J. E. HARRISON  
MANAGER  
LEGISLATIVE SERVICES

File: CIC0018  
Address: 477 Tenth Street  
Applicant: Tillicum Lelum Society

**SCHEDULE A**  
**HOUSING AGREEMENT**

THIS AGREEMENT made this                    day of                    , 2011

BETWEEN:

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

(the “**City**”)

OF THE FIRST PART

AND:

**TILlicum LELUM ABORIGINAL SOCIETY**  
927 Haliburton Street  
Nanaimo, BC  
V9R 6N4

Registration No. S0007994

(the “**Owner**”)

OF THE SECOND PART

WHEREAS:

- A. The City may, by agreement under section 905 of the *Local Government Act*, enter into a housing agreement with an owner regarding the occupancy of the Sleeping Units identified in the agreement, including but not limited to terms and conditions referred to in section 905(2) of the *Local Government Act*;
- B. The Owner is the registered owner in fee-simple of the lands described as:  
  
PID: 028-205-154  
Lot 2, That Part of Section 1, Nanaimo District, Plan EPP5225  
  
(the “**Lands**”);
- C. The Owner wishes to develop a youth safe house with eight beds (the “**Sleeping Units**”) intended for use by the occupants on the Lands as shown in the shaded area of Schedule A. A reduced copy of Schedule A is attached to this Agreement.
- D. The City wishes to enter into this agreement (the “**Agreement**”) to establish terms and conditions regarding the occupancy of the Sleeping Units identified in the Agreement and the Owner has agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to section 905 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 INTERPRETATION

1.1 The City and the Owner agree that the definitions in the City of Nanaimo's Zoning Bylaw 1993 No. 4000, as amended from time to time, and any enactment that may replace it, apply to the interpretation of the terms in this Agreement.

2.0 OCCUPANCY OF SLEEPING UNITS

2.1 The Owner covenants and agrees with the City that the Sleeping Units be occupied by persons who qualify as youths with a maximum age of 19 (nineteen) years.

3.0 ANNUAL REPORT

3.1 The Owner further covenants and agrees that during the term of this Agreement, it will, commencing on the first anniversary of the date an occupancy permit is issued for the building on the Lands, and on that anniversary date annually thereafter, provide to the City's General Manager of Community Safety and Development a report in writing confirming:

- (a) that the Sleeping Units continue to be occupied as required under this Agreement;
- (b) identification by number of the Sleeping Units that are being utilized by occupants who qualify under Part 2 of this Agreement; and
- (c) the total number of occupants of the Sleeping Units.

4.0 BINDING EFFECT

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

5.0 ENFORCEMENT AND WAIVER

5.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner. The waiver by a party of 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.

5.2 The parties agree that the City is not obligated to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the City obligated to remedy any default of this Agreement. A failure by the City to enforce this Agreement shall not constitute a waiver of any of the City's rights hereunder.

5.3 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.

5.4 The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the City is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

6.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

6.1 Notice of this Agreement shall be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 905 of the *Local Government Act*, and this Agreement shall be binding on all persons who acquire an interest in the Lands after registration of this notice.

7.0 TERM OF THE AGREEMENT

7.1 The City and the Owner agree that this Agreement shall have a term of 15 (fifteen) years, commencing on the date an occupancy permit is issued for the buildings on the Lands.

8.0 TERMINOLOGY

8.1 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.

9.0 BC LAWS GOVERN

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

**EXECUTED BY THE CITY** at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF NANAIMO by its authorized signatories )  
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\_\_\_\_\_)  
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\_\_\_\_\_)

**EXECUTED BY THE OWNER** at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2011.

TILlicum LELUM ABORIGINAL SOCIETY )  
by its authorized signatories )  
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