

AGENDA FOR THE REGULAR FINANCE / POLICY COMMITTEE OF THE WHOLE MEETING
TO BE HELD IN THE BOARD ROOM, CITY HALL,
ON MONDAY, 2011-JAN-31, COMMENCING AT 4:30 P.M.

1. **CALL THE REGULAR FINANCE / POLICY COMMITTEE OF THE WHOLE MEETING TO ORDER:**

2. **INTRODUCTION OF LATE ITEMS:**

3. **ADOPTION OF AGENDA:**

4. **ADOPTION OF MINUTES:**

- (a) Minutes of the Regular Finance / Policy Committee of the Whole Meeting held in the Board Room, City Hall, on Monday, 2011-JAN-17 at 4:30 p.m.

Pg. 5-9

5. **PRESENTATIONS:**

6. **DELEGATIONS PERTAINING TO AGENDA ITEMS: (10 MINUTES)**

- (a) Delegations Pertaining to the 2011 – 2015 Financial Plan.

7. **COMMISSION REPORTS:**

- (a) **Parks, Recreation and Culture Commission – 2011 Arts, Cultural and Festival Events Grants**

Pg. 10-11

Commission's Recommendation: That Council approve the following 2011 Arts, Cultural and Festival Events Grants:

GROUP	REQUESTED	RECOMMENDED
Nanaimo African Heritage Society	2,000	800
Art Gallery Festival of Banners	6,000	1,650
Nanaimo Arts Council	3,000	1,900
Nanaimo Ballroom Dance Society (Island Fantasy Ball)	5,000	2,450
The Beat of the Street	3,000	600
Blues Festival Society	1,500	1,125
City of Nanaimo - Canada Day Organizing Committee	2,500	2,000
Celtic Performing Arts (Celtfest)	10,000	1,850
Central Vancouver Island Botanical Garden Society	1,500	850
Crimson Coast Dance Society	3,800	2,675

GROUP	REQUESTED	RECOMMENDED
FRINGETASTIC! (Nanaimo's Fringe Festival)	7,500	2,482
Nanaimo Musicians Association Society (Pygmy Ballroom)	5,000	3,150
Nanaimo Sings! Choral Festival Society	2,500	1,775
Vancouver Island Children's Book Festival	1,000	1,000
Vancouver Island Exhibition	4,263	2,650
Vancouver Island Symphony (Symphony in the Harbour)	10,000	7,000
Nanaimo Highland Dancing Association	2,500	1,025
L'Association des francophone de Nanaimo	3,595	2,525
TOTALS:	\$80,658	\$37,507

(b) **Parks, Recreation and Culture Commission – 2011 Culture Operating Grants**

Pg. 12-13

Commission's Recommendation: That Council approve the following 2011 Cultural Operating Fund Grants:

GROUP	REQUESTED	RECOMMENDED
A Cappella Plus Choral Society	3,000	2,050
The Nanaimo Arts Alive Summer School	2,900	2,300
Nanaimo Arts Council	15,000	10,550
Nanaimo Blues Society	10,000	7,000
British Columbia Boys Choir	2,000	1,956
C.V.I. Centre for the Arts - Nanaimo Society	8,000	6,000
Nanaimo Chamber Orchestra	4,500	3,300
Nanaimo Concert Band Society	7,000	4,800
Nanaimo Conservatory of Music	10,000	7,400
Crimson Coast Dance Society	18,000	14,400
FRINGETASTIC!	2,000	1,300
Malaspina Choir	2,600	2,200
Pacific Institute of Bagpiping and Celtic Music Society	6,000	2,200
Nanaimo Theatre Group	10,000	5,400
TheatreOne	28,000	28,000
Nanaimo (BC) Chapter of SPEBSQSA (Tidesmen Barbershop Chorus)	2,000	1,400
Tozan Cultural Society	7,500	6,300
Vancouver Island Symphony	59,300	59,300
L'Association des francophones de Nanaimo	10,000	5,800
TOTALS:	207,800	\$171,656

- (c) **Parks, Recreation and Culture Commission – Community Program Development Grant Application – Cedar 4-H Sr. Advisory Council for Beban Park 4-H Barnyard** Pg. 14
- Commission's Recommendation:* That Council approve the Community Program Development Grant Application submitted by the Cedar 4-H Sr. Advisory Council in the amount of \$5,000 for the 2011 year.
- (d) **Parks, Recreation and Culture Commission – License of Use – Nanaimo Canoe and Kayak Club at 1844A Stewart Avenue** Pg. 15-27
- Commission's Recommendation:* That Council approve a License of Use for a portion of City property located at 1844A Stewart Avenue to the Nanaimo Canoe and Kayak Club (NCKC) for a term of ten (10) years, ending on 2020-NOV-30.
- (e) **Parks, Recreation and Culture Commission – License of Use – Nanaimo Marine Rescue Society for The Canadian Coast Guard Auxilliary Boathouse at 1844B Stewart Avenue** Pg. 28-40
- Commission's Recommendation:* That Council approve a License of Use for a portion of City property located at 1844B Stewart Avenue to the Nanaimo Marine Rescue Society (NMRS) for a term of ten (10) years, ending on 2020-NOV-30.
- (f) **Parks, Recreation and Culture Commission – Management and Operating Agreement – Nanaimo Museum in the Port of Nanaimo Centre** Pg. 41-54
- Commission's Recommendation:* That Council approve the Nanaimo Museum Management and Operating Agreement for a five (5) year term with an option to renew for another five (5) year term.

8. **COMMITTEE REPORTS:**

9. **STAFF REPORTS:** (blue)

COMMUNITY SERVICES:

- (a) **Request to Direct Award Musco Field Lighting System** Pg. 55
- Staff's Recommendation:* That Council approve a sole-source contract to Musco Lighting for sports field lighting at the new artificial turf field.

10. **INFORMATION ONLY ITEMS:**

- (a) Report from Mr. D. Bell, Captain, Fire and Loss Prevention Division, re: Fire Protection and Life Safety Bylaw. Pg. 56-89

11. **CORRESPONDENCE:**

- (a) Letter dated 2011-JAN-20 from Mr. Diego Marchese, Chief Operating Officer, Heart and Stroke Foundation of BC and Yukon, and Mr. Scott McDonald, President and CEO, BC Lung Association, regarding Smoke-Free Outdoor Public Places. *Pg. 90-91*
- (b) Email dated 2011-JAN-24 from Mr. Gary Korpan, regarding the reimbursement of Councillor Bestwick's legal fees. *Pg. 92*

12. **NOTICE OF MOTION:**

13. **OTHER BUSINESS:**

14. **DELEGATIONS PERTAINING TO ITEMS NOT ON THE AGENDA:
(10 MINUTES)**

- (a) None.

15. **QUESTION PERIOD:** *(Agenda Items Only)*

16. **PROCEDURAL MOTION:**

It was moved and seconded that Council move "In Camera" in order to deal with the following matters under the *Community Charter* Section 90(1):

- (b) personal information about an identifiable individual who is being considered for a municipal award or honour, or who has offered to provide a gift to the municipality on condition of anonymity;
- (c) labour relations or employee negotiations;
- (k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the municipality if they were held in public.

MINUTES OF THE REGULAR FINANCE / POLICY COMMITTEE OF THE WHOLE MEETING
HELD IN THE BOARD ROOM, CITY HALL,
ON MONDAY, 2011-JAN-17 COMMENCING AT 4:30 P.M.

PRESENT: Mayor J. R. Ruttan, Chair

Members: Councillor W. L. Bestwick
Councillor W. J. Holdom
Councillor D. K. Johnstone
Councillor J. A. Kipp
Councillor J. F. K. Pattje
Councillor L. J. Sherry
Councillor M. W. Unger

Staff: A. C. Kenning, City Manager
D. W. Holmes, Assistant City Manager and General Manager of
Corporate Services
A. W. Laidlaw, General Manager of Community Services
E. C. Swabey, General Manager of Community Safety and Development
I. Howat, Director of Strategic Relationships
T. L. Hartley, Director of Human Resources and Organizational Planning
B. E. Clemens, Director of Finance
T. M. Hickey, Director of Engineering and Public Works
T. P. Seward, Director of Development
A. J. Tucker, Director of Planning
R. J. Harding, Director of Parks, Recreation and Culture
J. Ritchie, Senior Manager of Parks and Civic Facilities
J. Holm, Manager of Current Planning
R. Churchill, Manager of Bylaw, Regulation and Security
T. Kraft, Manager of Engineering Projects
J. Kinch, Manager of Building Inspections
S. Graham, Manager of Financial Planning and Payroll
T. Neil, Manager of Permit Centre and Support Services
D. Mousseau, Manager of Engineering and Subdivision
M. Mauch, Project Manager, Engineering Construction
N. Richardson, Regulation Assistant, Building Inspections
H. Pirozzini, Administrative Assistant, Community Safety and
Development
J. E. Harrison, Manager of Legislative Services
T. Wilkinson, Recording Secretary

1. CALL THE OPEN MEETING TO ORDER:

The Regular Finance / Policy Committee of the Whole Meeting was called to order at 4:30 p.m.

2. INTRODUCTION OF LATE ITEMS:

- (a) Add Agenda Item 6 (b) – Delegations Pertaining to Agenda Items – Ms. Katherine Miller, 124 Green Lake Crescent, Lantzville, regarding Green Lake Local Area Service.

3. ADOPTION OF AGENDA:

It was moved and seconded that the Agenda, as amended, be adopted. The motion carried unanimously.

4. ADOPTION OF MINUTES:

It was moved and seconded that the Minutes of the Special Open Finance / Policy Committee of the Whole Meeting held in the Board Room, City Hall on Thursday, 2010-DEC-02 at 4:35 p.m. be adopted as circulated. The motion carried unanimously.

It was moved and seconded that the Minutes of the Regular Finance / Policy Committee of the Whole Meeting held in the Board Room, City Hall on Monday, 2010-DEC-06 at 4:30 p.m. be adopted as circulated. The motion carried unanimously.

5. PRESENTATIONS:

- (a) Mr. A. J. Tucker, Director of Planning, provided a presentation regarding the Planning Department budget.
- (b) Mr. T. P. Seward, Director of Development, provided a presentation regarding the Development Department budget.
- (c) Ms. T. L. Hartley, Director of Human Resources and Organizational Planning, provided a presentation regarding the Human Resources and Organizational Planning Department budget.
- (d) Mr. I. Howat, Director of Strategic Relationships, provided a presentation regarding the Strategic Relationships Department budget.

6. DELEGATIONS PERTAINING TO AGENDA ITEMS:

- (a) Ms. Katherine Miller, 124 Green Lake Crescent, Lantzville, advised that her property is within the proposed Local Area Service for Green Lake, and she is opposed to abandoning the project until the City of Nanaimo receives senior government grant funding.

7. STAFF REPORTS:

CORPORATE SERVICES

(a) 2011 Acting Mayor Schedule

It was moved and seconded that Council adopt the amended Acting Mayor Schedule for 2011 as follows:

ACTING MAYOR SCHEDULE – 2011			
Councillor Sherry	2010-DEC-06	to	2011-JAN-16
Councillor Unger	2011-JAN-17	to	2011-MAR-06
Councillor Holdom	2011-MAR-07	to	2011-APR-17
Councillor Johnstone	2011-APR-18	to	2011-JUN-05
Councillor Kipp	2011-JUN-06	to	2011-JUL-17
Councillor Bestwick	2011-JUL-18	to	2011-SEP-04
Councillor Pattje	2011-SEP-05	to	2011-OCT-23
To be determined	2011-OCT-24	to	2011-DEC-04

The motion carried unanimously.

(b) Park Dedication Bylaw

It was moved and seconded that Council direct Staff to prepare a detailed report on the advantages and disadvantages of the dedication of park land and other options that may be available to ensure the protection of park land. The motion carried unanimously.

COMMUNITY SERVICES:

(c) Green Lake Local Area Service

It was moved and seconded that Council abandon the establishment of a Local Area Service for the Green Lake area and put the Green Lake sewer project on hold until the City of Nanaimo receives senior government grant funding for this project. The motion was defeated unanimously.

It was moved and seconded that Council direct Staff to bring back a report on the potential for a 20% (owner) / 80% (City) division of costs for a Local Area Service to provide sewer to the Green Lake area, with mandatory hook-up. The motion carried unanimously.

8. INFORMATION ONLY ITEMS:

- (a) Report from Mr. M. Mauch, Project Manager, Engineering Construction, re: Schedule for the Second Artificial Turf Field.

- (b) Report from Mr. I. Howat, Director of Strategic Relationships, re: Combat Sports Events in the Vancouver Island Conference Centre.

It was moved and seconded that Council change Vancouver Island Conference Centre's food-primary license to a liquor-primary license. The motion was defeated on a tie vote.

Opposed: Councillors Johnstone, Kipp, Pattje and Unger

- (c) Report from Mr. K. Felker, Manager of Purchasing and Stores, re: Quarterly Contract Report.

9. CORRESPONDENCE:

- (a) Letter dated 2010-DEC-31 from Mayor Ken McRae, Chairman of the Board of Directors, Coastal Community Network, 4341 Shelbourne Street, Victoria, inviting Council to become a member of the Coastal Community Network (CCN) at a cost of \$280.

It was moved and seconded that Council become a member of the Coastal Community Network (CCN) at a cost of \$280. The motion carried unanimously.

10. OTHER BUSINESS:

Councillor Bestwick vacated the Board Room on a perceived conflict of interest.

- (a) Reimbursement of Legal Fees

Councillor Bestwick has requested that Council reimburse his legal fees related to the alleged conflict of interest on DVP156 in the amount of \$14,010.12 and \$381.55 for a total of \$14,392.27.

It was moved and seconded that Council reimburse Councillor Bestwick's legal fees related to the alleged conflict of interest on DVP156 in the amount of \$14,010.12 and \$381.55 for a total of \$14,392.27.

It was moved and seconded that Council amend the main motion to reimburse Councillor Bestwick's legal fees up to a maximum of \$2,800. The motion was defeated.

Opposed: Mayor Ruttan, Councillors Holdom, Johnstone, Kipp and Sherry

It was moved and seconded that Council amend the main motion to reimburse Councillor Bestwick's legal fees in the amount of \$10,000. The motion carried.

Opposed: Councillor Pattje

The vote was taken on the main motion as amended.

The motion carried.

Opposed: Councillor Pattje

Councillor Bestwick returned to the Board Room.

11. QUESTION PERIOD:

- Mr. Fred Taylor, re: parking revenue, funds spent on City advertising, Agenda's on the City's Website, dedication of parks, and sewer benefiting areas.

12. PROCEDURAL MOTION:

It was moved and seconded that Council move "In Camera" in order to deal with the following matters under the *Community Charter* Section 90(1):

- (e) the acquisition, disposition or expropriation of land or improvements, if the Council considers that disclosure might reasonably be expected to harm the interests of the municipality;
- (j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the *Freedom of Information and Protection of Privacy Act*; and,
- (k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the municipality if they were held in public.

The motion carried unanimously.

Council moved into "In Camera" at 8:10 p.m.

Council moved out of "In Camera" at 9:15 p.m.

13. ADJOURNMENT:

It was moved and seconded at 9:15 p.m. that the meeting terminate. The motion carried unanimously.

CHAIR

CERTIFIED CORRECT:

MANAGER,
LEGISLATIVE SERVICES

REPORT TO: MAYOR AND COUNCIL

FROM: DIANA JOHNSTONE, CHAIR
PARKS, RECREATION AND CULTURE COMMISSION

RE: 2011 ARTS, CULTURAL AND FESTIVAL EVENTS GRANTS

RECOMMENDATION:

That Council approve the following 2011 Arts, Cultural and Festival Events Grants:

Council ☐ Committee ☒ Flow
Open Meeting ☒ In-Camera Meeting ☐
Meeting Date: 2011-JAN-31

GROUP	REQUESTED	RECOMMENDED
Nanaimo African Heritage Society	2,000	800
Art Gallery Festival of Banners	6,000	1,650
Nanaimo Arts Council	3,000	1,900
Nanaimo Ballroom Dance Society (Island Fantasy Ball)	5,000	2,450
The Beat of the Street	3,000	600
Blues Festival Society	1,500	1,125
City of Nanaimo - Canada Day Organizing Committee	2,500	2,000
Celtic Performing Arts (Celtfest)	10,000	1,850
Central Vancouver Island Botanical Garden Society	1,500	850
Crimson Coast Dance Society	3,800	2,675
FRINGETASTIC! (Nanaimo's Fringe Festival)	7,500	2,482
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Nanaimo Sings! Choral Festival Society	2,500	1,775
Vancouver Island Children's Book Festival	1,000	1,000
Vancouver Island Exhibition	4,263	2,650
Vancouver Island Symphony (Symphony in the Harbour)	10,000	7,000
Nanaimo Highland Dancing Association	2,500	1,025
L'Association des francophone de Nanaimo	3,595	2,525
TOTALS:	\$80,658	\$37,507

EXECUTIVE SUMMARY:

The 2011 Parks, Recreation and Culture budget provides funds to local cultural groups for the purpose of initiating new, or expanding existing, art and cultural events in the City. The Parks, Recreation and Culture Commission advertise for applications requesting support for community cultural events, review the applications and recommend funding

distribution. The 2011 Parks, Recreation and Culture budget includes funding for this purpose in the amount of \$37,507. Requests for Arts, Cultural and Festival Events Grant Funds were \$80,658.

BACKGROUND:

All applications were reviewed by the Cultural Committee for funding according to how well each proposed event met the approved arts, cultural and festival event funding criteria.

At their meeting held on 2011-JAN-26 the Parks, Recreation and Culture Commission unanimously recommended that Council approve the above 2011 Arts, Cultural and Festival Event Grants.

Respectfully submitted,

A handwritten signature in cursive script that reads "Diana Johnstone".

Diana Johnstone, Chair
Parks, Recreation and Culture Commission

File: A4-1-2 / A3-35-1
2011-JAN-27
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REPORT TO: MAYOR AND COUNCIL

**FROM: DIANA JOHNSTONE, CHAIR
PARKS, RECREATION AND CULTURE COMMISSION**

RE: 2011 CULTURE OPERATING GRANTS

RECOMMENDATION:

That Council approve the following 2011 Cultural Operating Fund Grants:

GROUP	REQUESTED	RECOMMENDED
A Cappella Plus Choral Society	3,000	2,050
The Nanaimo Arts Alive Summer School	2,900	2,300
Nanaimo Arts Council	15,000	10,550
Nanaimo Blues Society	10,000	7,000
British Columbia Boys Choir	2,000	1,956
C.V.I. Centre for the Arts - Nanaimo Society	8,000	6,000
Nanaimo Chamber Orchestra	4,500	3,300
Nanaimo Concert Band Society	7,000	4,800
Nanaimo Conservatory of Music	10,000	7,400
Crimson Coast Dance Society	18,000	14,400
FRINGETASTIC!	2,000	1,300
Malaspina Choir	2,600	2,200
Pacific Institute of Bagpiping and Celtic Music Society	6,000	2,200
Nanaimo Theatre Group	10,000	5,400
TheatreOne	28,000	28,000
Nanaimo (BC) Chapter of SPEBSQSA (Tidesmen Barbershop Chorus)	2,000	1,400
Tozan Cultural Society	7,500	6,300
Vancouver Island Symphony	59,300	59,300
L'Association des francophones de Nanaimo	10,000	5,800
TOTALS:	207,800	\$171,656

Council ☐ Committee ☒ P40w
Open Meeting ☒ In-Camera Meeting ☐
Meeting Date: 2011-03-31

EXECUTIVE SUMMARY:

The Cultural Operating Fund was initiated to assist non-profit cultural organizations with a portion of their operating cost the provision of cultural services to the community. The 2011 Parks, Recreation and Culture budget includes funding for this purpose in the amount of \$171,656.

BACKGROUND:

All applications for the 2011 Cultural Operating Grants were reviewed by the Cultural Committee based on guidelines approved by the Parks, Recreation and Culture Commission. After detailed review, and interviews with a number of the cultural groups, recommendations were made within the budgeted amount for this function.

At their meeting held on 2011-JAN-26, the Parks, Recreation and Culture Commission passed a motion recommending that Council approve the Cultural Operating Grant recommendations in the total amount of \$171,656.

Respectfully submitted,

A handwritten signature in cursive script, reading "Diana Johnstone".

Diana Johnstone, Chair
Parks, Recreation and Culture Commission

2011-JAN-27
File: A4-1-2 / A3-35-1
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REPORT TO: MAYOR AND COUNCIL

**FROM: DIANA JOHNSTONE, CHAIR
PARKS, RECREATION AND CULTURE COMMISSION**

**RE: COMMUNITY PROGRAM DEVELOPMENT GRANT APPLICATION
CEDAR 4-H SR. ADVISORY COUNCIL FOR BEBAN PARK 4-H BARNYARD**

RECOMMENDATION:

That Council approve the Community Program Development Grant Application submitted by the Cedar 4-H Sr. Advisory Council in the amount of \$5,000 for the 2011 year.

EXECUTIVE SUMMARY:

At their meeting of 2011-JAN-26, the Parks, Recreation and Culture Commission passed a motion supporting the recommendation that Council approve the Community Program Development Grant Application submitted by the Cedar 4-H Sr. Advisory Council in the amount of \$5,000 for the 2011 year.

As part of the 2009 Parks, Recreation and Culture Operating Budget planning process, staff recommended that the Cedar & District 4-H Club \$6,000 line item funding be reduced to zero over a three-year period.

The Parks, Recreation and Culture Commission created a funding program that would allow groups such as the Cedar & District 4-H Club to apply for funding on an annual basis. From this discussion the Community Program Development Grant was developed.

Previously there has only been \$6,000 available in this grant program. This was increased to \$10,000 in the 2011 provisional budget. Upon budget approval the remaining funding would be made available to groups via the grant program.

Respectfully submitted,



Diana Johnstone, Chair
Parks, Recreation and Culture Commission

2011-JAN-27

File: A4-1-2 / B3-5-13 / D1-1-5 / J4-9 / J10-2 / M1-22

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CommunityProgramDevelopmentGrantApplicationCedar4HSrAdvisoryCouncilForBebanPark4HBarnyard.docx

☐ Council
☒ Committee *FIPLOW*
☒ Open Meeting
☐ In-Camera Meeting
Meeting Date: 2011-JAN-31

REPORT TO: MAYOR AND COUNCIL

**FROM: DIANA JOHNSTONE, CHAIR
PARKS, RECREATION AND CULTURE COMMISSION**

**RE: LICENSE OF USE - NANAIMO CANOE AND KAYAK CLUB
AT 1844A STEWART AVENUE**

☐ Council
☒ Committee *File*
☒ Open Meeting
☐ In-Camera Meeting
Meeting Date: *2011-12-14-31*

RECOMMENDATION:

That Council approve a License of Use for a portion of City property located at 1844A Stewart Avenue to the Nanaimo Canoe and Kayak Club (NCKC) for a term of ten (10) years, ending on 2020-NOV-30.

EXECUTIVE SUMMARY:

At their meeting of 2011-JAN-26, the Parks, Recreation and Culture Commission passed a motion supporting the recommendation that Council approve a License of Use for a portion of City property located at 1844A Stewart Avenue to the Nanaimo Canoe and Kayak Club (NCKC) for a term of ten (10) years, ending on 2020-NOV-30.

The City has a thirty (30) year Head Lease with the Province for the area which includes the Brechin Boat Ramp, the Community Paddling Dock and Canadian Coast Guard Auxiliary (CCGA) Dock. NCKC has been operating from the Paddling Dock since 2008, as well as from Loudon Park at Long Lake for many years. NCKC is comprised of experienced volunteers who offer both recreational opportunities and structured competitive paddling programs to the public of all ages and skill levels.

NCKC has requested a ten (10) year License of Use to secure its float to the dock for the purpose of a marshalling and watercraft storage location within the lease area for nominal rent (see Attachment).

BACKGROUND:

The City entered into a thirty (30) year lease with the Province for 1.15 hectares of water covered and filled foreshore for nominal rent. The tenure commenced on 2010-SEP-01. The lease area includes the Brechin Boat Ramp, the Community Paddling Dock and CCGA Dock.

NCKC has requested a ten (10) year License of Use with the City. A nominal annual license fee reflects a partnership between the City and the NCKC.

The City of Nanaimo recognized the increase in public involvement with paddling sports and partnered with NCKC to jointly fund the float used as boat storage and a marshalling area.

Salient terms and conditions of the License of Use Agreement are as follows:

Licensee:	Nanaimo Canoe and Kayak Club
Property Address:	1844A Stewart Avenue
Use:	Boat ramp and canoe and kayak storage
License Fee:	\$10 for term
Occupancy Term:	Ten (10) years ending 2020-NOV-30
Termination:	Thirty (30) day reciprocal termination clause

Respectfully submitted,



Diana Johnstone, Chair
Parks, Recreation and Culture Commission

Attachment – License of Use Agreement and Schedule

LICENCE OF USE

THIS AGREEMENT made the day of 20 .

BETWEEN:

CITY OF NANAIMO

455 Wallace Street
Nanaimo, BC V9R 5J6

(the "**City**")

OF THE FIRST PART

AND:

NANAIMO CANOE KAYAK CLUB
(No. S-0025265)

1 – 5765 Turner Road
Suite 179
Nanaimo, BC V9T 6M4

(the "**Licensee**")

OF THE SECOND PART

W H E R E A S :

- A. The City is the lessee of certain land, including land covered by water under a lease from Her Majesty the Queen in Right of the Province of British Columbia, legally described as follows:

Those parts of DISTRICT LOT 2092, BLOCK L OF DISTRICT LOT 227
AND BLOCK M OF DISTRICT LOTS 227 AND 2092, NANAIMO
DISTRICT shown outlined in bold on Plan EPC579

(the "**Land**")

- B. The Licensee wishes to be granted this licence of use to use that portion of the Land shown outlined in bold and hatched on the sketch plan attached to this Agreement as Schedule "A" (the "**Licence Area**") and the City has agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the licence fee to be paid by the Licensee to the City and in consideration of the premises and covenants and agreements contained in this agreement (the "**Agreement**"), the City and the Licensee covenant and agree with each other as follows:

1.0 RIGHT TO OCCUPY

- 1.1 The City, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement and to earlier termination as provided in this Agreement, grants to the Licensee the non-exclusive right by way of licence for the Licensee, its agents, employees, and invitees to use the Licence Area for the purpose of a boat ramp and canoe and kayak storage and for no other purpose.
- 1.2 This Agreement does not grant any interest in the land comprising the Licence Area to the Licensee.

2.0 RESERVATION OF RIGHTS

- 2.1 The City hereby reserves to itself from the grant and the covenants made by it to the Licensee under section 1 above the right for the City, its agents, employees, contractors and subcontractors to have full and complete access to the Land, including the Licence Area, to carry out any operations associated with the City's use of the Land.

3.0 LICENCE FEE

- 3.1 In consideration of the right to use granted under this Agreement the Licensee must pay to the City the sum of TEN DOLLARS (\$10.00) for the Term payable on the 1st day of December, 2010.
- 3.2 The Licensee must pay the City an additional licence fee of One Hundred Twenty-Five Dollars (\$125.00) upon execution of this Agreement.

4.0 TERM

- 4.1 The Term of the Licence granted under this Agreement is from the 1st day of December 2010 to the 30th day of November 2020 (the "**Term**") unless earlier terminated under this Agreement.

5.0 TAXES

- 5.1 The Licensee must pay all taxes, rates, duties and assessments whatsoever, whether federal, provincial, municipal or otherwise charged

upon the Licensee or the City as a result of the Licensee's occupation of or use of the Licence Area. Without in any way restricting the generality of the foregoing, the Licensee must pay to the City Harmonized Sales Tax on the licence fee.

6.0 CONSTRUCTION

- 6.1 The Licensee must not construct or place any buildings or structures or make any improvements on the Licence Area without the prior written approval of the City.

7.0 INSURANCE

- 7.1 (a) The Licensee must take out and maintain during the Term a policy of comprehensive general liability insurance against claims for bodily injury, death or property damage arising out of the use of the premises by the Licensee in the amount of not less than Five Million Dollars (\$5,000,000.00) per single occurrence or such greater amount as the City may from time to time designate, naming the City as an additional insured party thereto and must provide the City with a certified copy of such policy or policies.
- (b) All policies of insurance must contain a clause requiring the insurer not to cancel or change the insurance without first giving the City thirty days prior written notice.
- (c) If the Licensee does not provide or maintain in force the insurance required by this Agreement, the City may take out the necessary insurance and pay the premium for periods of one year at a time and the Licensee must pay to the City as additional licence fees the amount of the premium immediately on demand.
- (d) If both the City and the Licensee have claims to be indemnified under any insurance required by this Agreement, the indemnity must be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Licensee.
- (e) The deductible on the policy of insurance must not be more than Five Thousand Dollars (\$5,000.00).

8.0 INDEMNIFICATION

- 8.1 The Licensee releases and must indemnify and save harmless the City, its elected officials, appointed officers, employees and agents from and against all lawsuits, damages, costs, expenses, liability or fees (including fees of solicitors on a solicitor and own client basis) which the Licensee or any of them or anyone else may incur, suffer or allege by reason of the

use of the Licence Area by the Licensee or by any person or the carrying on upon the Licence Area of any activity in relation to the Licensee's use of the Licence Area.

9.0 NOTICES

9.1 Notices

- (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the relevant party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.
- (b) The contact information for the parties is:

City of Nanaimo	Nanaimo Canoe and Kayak Club
455 Wallace Street Nanaimo, BC V9R 5J6 <u>Attention: Manager, Real Estate</u> Fax: (250) 755-4421	1 – 5765 Turner Road Suite 179 Nanaimo, BC V9T 6M4 <u>Attention: Commodore</u> Email: headcoach@NCKC.ca

- (c) Each Notice sent by electronic mail ("**E-Mail Notice**") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to section 9.1(e) through (g) each Notice shall be deemed to have been given or made at the following times:
 - (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or

- (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.
- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a business day, then the Notice shall be deemed to have been given or made on the next business day following.
- (f) Notice given by facsimile transmission in accordance with the Terms of this section 9.1 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (h) Each party shall provide Notice to the other party of any change of address, facsimile number, or e-mail address of such party within a reasonable time of such change.

10.0 TERMINATION

- 10.1 If the Licensee is in default on the payment of licence fees, or the payment of any other sum payable under this Agreement, or is otherwise in breach of this Agreement, and if the default continues for a period greater than ten (10) days after the giving of notice in writing by the City to the Licensee, then the City may immediately terminate this Agreement and reenter the Licence Area and the rights of the Licensee with respect to the Licence Area shall thereupon lapse and be absolutely forfeited.
- 10.2 Either party may, upon thirty (30) days written notice to the other party, terminate this Agreement.

11.0 FORFEITURE

- 11.1 The City, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of reentry upon breach of this Agreement, does not waive the City's rights upon any subsequent breach of the same or any other provision of this Agreement.

12.0 FIXTURES

- 12.1 That, unless the Licensee upon notice from the City removes them, all buildings, structures or improvements constructed on the Licence Area by the Licensee will, at the termination of the Agreement, become the sole property of the City at no cost to the City.

13.0 REPAIRS AND MAINTENANCE

- 13.1 The City will repair and maintain the Licence Area.
- 13.2 In making the repairs or doing the maintenance the City may bring and leave upon the Licence Area the necessary materials, tools and equipment and the City is not liable to the Licensee for any inconvenience, annoyance, loss of business or other injuries suffered by the Licensee by reason of the City effecting the repairs or maintenance.
- 13.3 The Licensee must ensure that the Licence Area is clean and litter-free after every use of the Licence Area.

14.0 ENVIRONMENTAL MATTERS

- 14.1 For the purposes of paragraph 14.2 below:
- (a) **“Contaminants”** means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, asbestos materials, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance which is now or hereafter prohibited, controlled, or regulated under Environmental Laws; and
 - (b) **“Environmental Laws”** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental authority having jurisdiction over the Licence Area now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity.
- 14.2 The Licensee covenants and agrees as follows:
- (a) not to use or permit to be used all or any part of the Licence Area for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any Contaminants, without the prior written consent of the City, which consent may be unreasonably withheld;

- (b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Licence Area;
- (c) to promptly provide to the City a copy of any environmental site assessment, audit, report, or test results relating to the Licence Area conducted by or for the Licensee at any time;
- (d) to maintain all environmental site assessments, audits, reports, and test results relating to the Licence Area in strict confidence and not to disclose their Terms or existence to any third party (including without limitation any governmental authority) except as required by law, to the Licensee's professional advisers and lenders on a need-to-know basis, or with the prior written consent of the City, which consent may be unreasonably withheld;
- (e) to promptly notify the City in writing of any release of a Contaminant or any other occurrence or condition at the Licence Area or any adjacent property which could contaminate the Licence Area or subject the City or the Licensee to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (f) on the expiry or earlier termination of this Licence, or at any time if requested by the City or required by any governmental authority under Environmental Laws, to remove from the Licence Area all Contaminants, and to remediate by removal any contamination of the Licence Area or any adjacent property resulting from Contaminants, in either case brought onto, used at, or released from the Licence Area by the Licensee or any person for whom it is in law responsible. The Licensee shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the Licensee, notwithstanding any rule of law or other provision of this Licence to the contrary and notwithstanding the degree of their affixation to the Licence Area; and
- (g) to indemnify the City and its elected officials, appointed officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the Licence Area and any adjacent property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this paragraph 14.2 by the Licensee; or

- (ii) any release or alleged release of any Contaminants at or from the Licence Area related to or as a result of the use and occupation of the Licence Area or any act or omission of the Licensee or any person for whom it is in law responsible.

14.3 The obligations of the Licensee under paragraph 14.2 above shall survive the expiry or earlier termination of this Agreement.

15.0 REMEDIAL ACTION

- 15.1 (a) If the Licensee fails to do anything required of the Licensee under this Agreement, (the "**Licensee Requirement**") the City may fulfill or complete the Licensee Requirement at the cost of the Licensee and may, if necessary, by its agents, officers, employees or contractors enter onto the Land to fulfill and complete all or part of the Licensee Requirement as the City determines in its sole discretion.
- (b) The Licensee releases the City, its elected officials, appointed officers, employees and agents from and waives any claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability which the Licensee may have against any or all of them in respect of an act of the City under this section or section 13 except insofar as such claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability arises from the negligence of the City, its elected officials and appointed officers, employees, agents or contractors.

16.0 REGULATIONS

16.1 The Licensee must:

- (a) comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon the City or the Licensee; and
- (b) indemnify the City from all lawsuits, damages, loss, costs or expenses that the City may incur by reason of non-compliance by the Licensee with legal requirements or by reason of any defect in the Licence Area or any injury to any person or damage to any personal property brought on to the Licence Area. The Licensee is responsible for any damage to the Licence Area occurring while the Licensee is exercising its rights under this Agreement.

17.0 NO COMPENSATION

- 17.1 The Licensee is not entitled to compensation for any loss, including economic loss, or injurious affection or disturbance resulting in any way from the termination of this Agreement or the loss of the Licensee's interest in any building, structure or improvement built or placed on the Licence Area.

18.0 MISCELLANEOUS

- 18.1 The Licensee warrants and represents that it has authority to enter into this Agreement, has taken all corporate steps necessary to authorize this Agreement and to authorize the execution of this Agreement by the person signing it.
- 18.2 The Licence is personal to the Licensee and the Licensee may not assign its interest to any other person without the written consent of the City, which consent may be withheld by the City in its sole discretion.

19.0 INTERPRETATION

- 19.1 (a) When the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require.
- (b) The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- (c) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- (d) This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- (e) All provisions of this Agreement shall be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.

(f) A provision in this Agreement granting the Municipality a right of approval shall be interpreted as granting a free and unrestricted right to be exercised by the Municipality in its discretion.

(g) This is the entire agreement between the parties.

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

Manager of Legislative Services

NANAIMO CANOE KAYAK CLUB,
by its authorized signatories

Name:

Name:

SIGNED, SEALED AND DELIVERED
in the presence of:

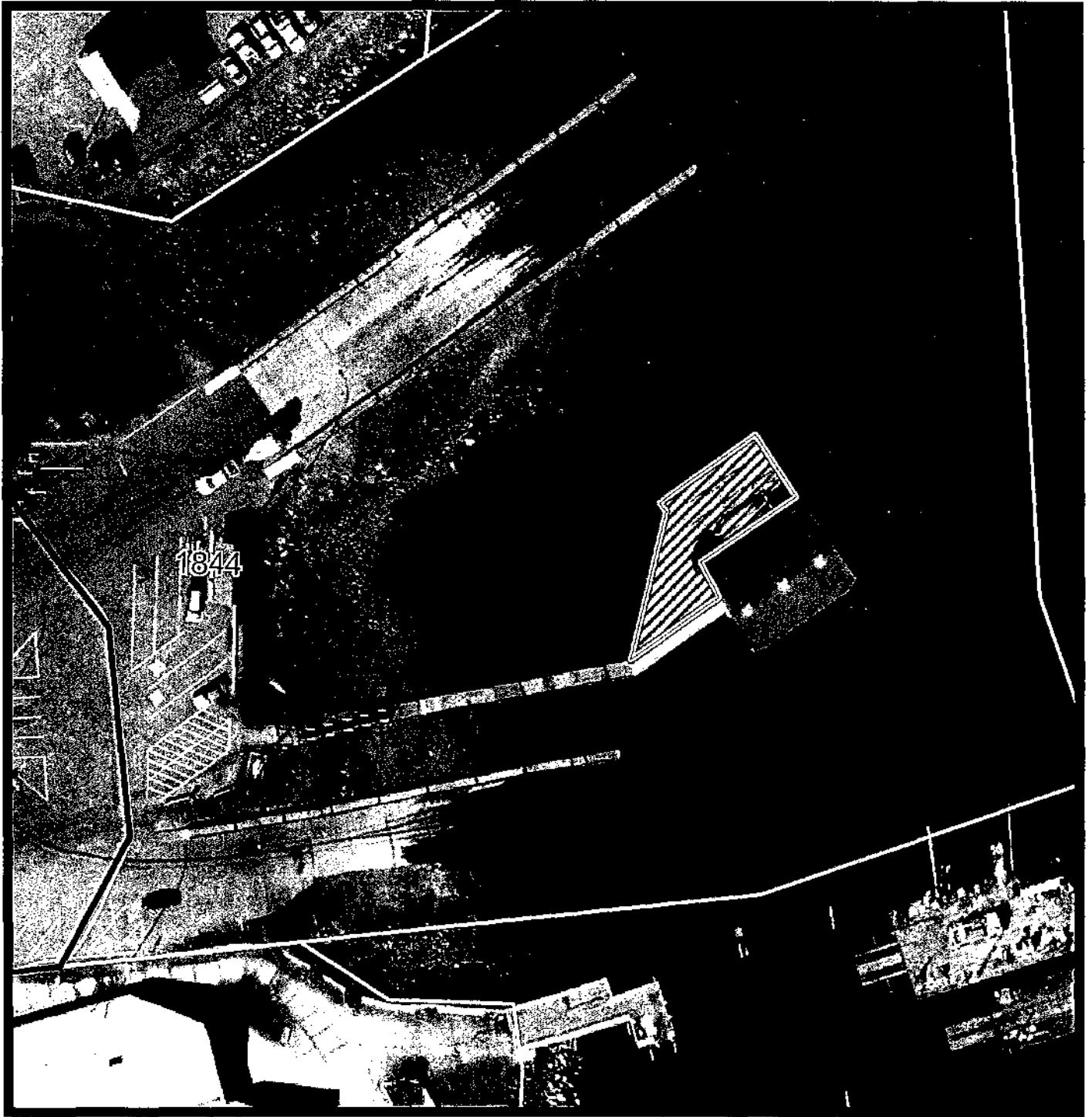
Witness (please print)

Address

Occupation

Witness Signature

SCHEDULE A



LICENSE AREA

 **Subject
Property**

Nanaimo Canoe and Kayak Club
Civic: 1844 Stewart Avenue, Nanaimo BC

REPORT TO: MAYOR AND COUNCIL

**FROM: DIANA JOHNSTONE, CHAIR
PARKS, RECREATION AND CULTURE COMMISSION**

**RE: LICENSE OF USE - NANAIMO MARINE RESCUE SOCIETY FOR THE
CANADIAN COAST GUARD AUXILIARY BOATHOUSE AT
1844B STEWART AVENUE**

☐ Council
☒ Committee *F/PCW*
☒ Open Meeting
☐ In-Camera Meeting
Meeting Date: *2011-JAN-31*

RECOMMENDATION:

That Council approve a License of Use for a portion of City property located at 1844B Stewart Avenue to the Nanaimo Marine Rescue Society (NMRS) for a term of ten (10) years, ending on 2020-NOV-30.

EXECUTIVE SUMMARY:

At their meeting of 2011-JAN-26, the Parks, Recreation and Culture Commission passed a motion supporting the recommendation that Council approve a License of Use for a portion of City property located at 1844B Stewart Avenue to the Nanaimo Marine Rescue Society (NMRS) for a term of ten (10) years, ending on 2020-NOV-30.

The City has a thirty (30) year Head Lease with the Province for the area which includes the Brechin Boat Ramp, the Community Paddling Dock and Canadian Coast Guard Auxiliary (CCGA) Dock. NMRS has been operating the Coast Guard Auxiliary Search and Rescue facility at the CCGA Dock since 2007. The CCGA is a Canada-wide organization made up of trained marine-certified volunteers on call to provide search and rescue services.

NMRS has requested a ten (10) year License of Use to secure the CCGA boathouse to the dock within the City lease area for nominal rent (see Attachment).

BACKGROUND:

The City entered into a thirty (30) year Lease with the Province for 1.15 hectares of water covered and filled foreshore for nominal rent. The tenure commenced on 2010-SEP-01. The lease area includes the Brechin Boat Ramp, the Community Paddling Dock and CCGA Dock.

NMRS has requested a ten (10) year License of Use with the City. A nominal annual license fee reflects a partnership between the City, the NMRS and CCGA. The search and rescue facility has operated at the Community Paddling and CCGA Dock since 2007.

The CCGA will be responsible for all maintenance and repairs to the boathouse. The boathouse, built with NMRS funds, houses rescue boats as well as marine safety equipment ancillary to its operation.

Salient terms and conditions of the License of Use Agreement are as follows:

Licensee:	Nanaimo Marine Rescue Society
Property Address:	1844B Stewart Avenue
Use:	Coast Guard Auxiliary Search and Rescue
License Fee:	\$10 for term
Occupancy Term:	Ten (10) years ending 2020-NOV-30
Termination:	Thirty (30) day reciprocal termination clause

Respectfully submitted,



Diana Johnstone, Chair
Parks, Recreation and Culture Commission

Attachment – License of Use Agreement and Schedule

File: A4-1-2 / C2-5 / Prospero File: LD002343

G:\Admin\PRCC\RptCouncil\PRCCRPT110131LicenseOfUse-

NanaimoMarineRescueSocietyForTheCanadianCoastGuardAuxiliaryBoathouseAt1844B-StewartAvenue.docx

LICENCE OF USE

THIS AGREEMENT made the day of 20 .

BETWEEN:

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

(the "**City**")

OF THE FIRST PART

AND:

NANAIMO MARINE RESCUE SOCIETY
(No. S-0038743)
Box 134, #4 – 1150 North Terminal Avenue
Nanaimo, BC V9S 5L6

(the "**Licensee**")

OF THE SECOND PART

W H E R E A S :

- A. The City is the lessee of certain land, including land covered by water under a lease from Her Majesty the Queen in Right of the Province of British Columbia, legally described as follows:

Those parts of DISTRICT LOT 2092, BLOCK L OF DISTRICT LOT 227
AND BLOCK M OF DISTRICT LOTS 227 AND 2092, NANAIMO
DISTRICT shown outlined in bold on Plan EPC579

(the "**Land**")

- B. The Licensee wishes to be granted this licence of use to use that portion of the Land shown outlined in bold and hatched on the sketch plan attached to this Agreement as Schedule "A" (the "**Licence Area**") and the City has agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the licence fee to be paid by the Licensee to the City and in consideration of the premises and covenants and agreements contained in this agreement (the "**Agreement**"), the City and the Licensee covenant and agree with each other as follows:

1.0 RIGHT TO OCCUPY

- 1.1 The City, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement and to earlier termination as provided in this Agreement, grants to the Licensee the exclusive right by way of licence for the Licensee, its agents, employees, and invitees to use the Licence Area for the purpose of a boat house and auxiliary coast guard facility and for no other purpose.
- 1.2 This Agreement does not grant any interest in the land comprising the Licence Area to the Licensee.

2.0 RESERVATION OF RIGHTS

- 2.1 The City hereby reserves to itself from the grant and the covenants made by it to the Licensee under section 1 above the right for the City, its agents, employees, contractors and subcontractors to have full and complete access to the Land, including the Licence Area, to carry out any operations associated with the City's use of the Land.

3.0 LICENCE FEE

- 3.1 In consideration of the right to use granted under this Agreement the Licensee must pay to the City the sum of TEN DOLLARS (\$10.00) for the Term payable on the 1st day of December, 2010.
- 3.2 The Licensee must pay the City an additional licence fee of One Hundred Twenty-Five Dollars (\$125.00) upon execution of this Agreement.

4.0 TERM

- 4.1 The Term of the Licence granted under this Agreement is from the 1st day of December 2010 to the 30th day of November 2020 (the "**Term**") unless earlier terminated under this Agreement.

5.0 TAXES

- 5.1 The Licensee must pay all taxes, rates, duties and assessments whatsoever, whether federal, provincial, municipal or otherwise charged upon the Licensee or the City as a result of the Licensee's occupation of or use of the Licence Area. Without in any way restricting the generality of the foregoing, the Licensee must pay to the City Harmonized Sales Tax on the licence fee.

6.0 CONSTRUCTION

- 6.1 The Licensee must not construct or place any buildings or structures or make any improvements on the Licence Area without the prior written approval of the City.

7.0 INSURANCE

- 7.1 (a) The Licensee must take out and maintain during the Term a policy of comprehensive general liability insurance against claims for bodily injury, death or property damage arising out of the use of the premises by the Licensee in the amount of not less than Five Million Dollars (\$5,000,000.00) per single occurrence or such greater amount as the City may from time to time designate, naming the City as an additional insured party thereto and must provide the City with a certified copy of such policy or policies.
- (b) All policies of insurance must contain a clause requiring the insurer not to cancel or change the insurance without first giving the City thirty days prior written notice.
- (c) If the Licensee does not provide or maintain in force the insurance required by this Agreement, the City may take out the necessary insurance and pay the premium for periods of one year at a time and the Licensee must pay to the City as additional licence fees the amount of the premium immediately on demand.
- (d) If both the City and the Licensee have claims to be indemnified under any insurance required by this Agreement, the indemnity must be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Licensee.
- (e) The deductible on the policy of insurance must not be more than Five Thousand Dollars (\$5,000.00).

8.0 INDEMNIFICATION

- 8.1 The Licensee releases and must indemnify and save harmless the City, its elected officials, appointed officers, employees and agents from and against all lawsuits, damages, costs, expenses, liability or fees (including fees of solicitors on a solicitor and own client basis) which the Licensee or any of them or anyone else may incur, suffer or allege by reason of the use of the Licence Area by the Licensee or by any person or the carrying on upon the Licence Area of any activity in relation to the Licensee's use of the Licence Area.

9.0 NOTICES

9.1 Notices

- (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the relevant party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.
- (b) The contact information for the parties is:

City of Nanaimo	Nanaimo Marine Rescue Society
455 Wallace Street Nanaimo, BC V9R 5J6 <u>Attention: Manager, Real Estate Section</u> Fax: (250) 755-4421	Box 134, #4 – 1150 North Terminal Avenue Nanaimo, BC V9S 5L6 <u>Attention: President</u> Fax: (250) 363-2944 Email: nmrspresident@nmrs.nisa.com

- (c) Each Notice sent by electronic mail ("**E-Mail Notice**") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to section 9.1(e) through (g) each Notice shall be deemed to have been given or made at the following times:

- (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or
 - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.
- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a business day, then the Notice shall be deemed to have been given or made on the next business day following.
- (f) Notice given by facsimile transmission in accordance with the Terms of this section 9.1 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (h) Each party shall provide Notice to the other party of any change of address, facsimile number, or e-mail address of such party within a reasonable time of such change.

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- 10.1 If the Licensee is in default on the payment of licence fees, or the payment of any other sum payable under this Agreement, or is otherwise in breach of this Agreement, and if the default continues for a period greater than ten (10) days after the giving of notice in writing by the City to the Licensee, then the City may immediately terminate this Agreement and reenter the Licence Area and the rights of the Licensee with respect to the Licence Area shall thereupon lapse and be absolutely forfeited.
- 10.2 Either party may, upon thirty (30) days written notice to the other party, terminate this Agreement.

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- 11.1 The City, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of reentry upon breach of this Agreement, does not waive the City's rights upon any subsequent breach of the same or any other provision of this Agreement.

12.0 FIXTURES

- 12.1 That, unless the Licensee upon notice from the City removes them, all buildings, structures or improvements constructed on the Licence Area by the Licensee will, at the termination of the Agreement, become the sole property of the City at no cost to the City.

13.0 REPAIRS AND MAINTENANCE

- 13.1 The Licensee must repair and maintain the Licence Area, including the boat house, to a good standard of repair and cleanliness.

14.0 ENVIRONMENTAL MATTERS

- 14.1 For the purposes of paragraph 14.2 below:

- (a) **"Contaminants"** means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, asbestos materials, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance which is now or hereafter prohibited, controlled, or regulated under Environmental Laws; and
- (b) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental authority having jurisdiction over the Licence Area now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity.

- 14.2 The Licensee covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Licence Area for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any Contaminants, without the prior written consent of the City, which consent may be unreasonably withheld;
- (b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Licence Area;

- (c) to promptly provide to the City a copy of any environmental site assessment, audit, report, or test results relating to the Licence Area conducted by or for the Licensee at any time;
- (d) to maintain all environmental site assessments, audits, reports, and test results relating to the Licence Area in strict confidence and not to disclose their Terms or existence to any third party (including without limitation any governmental authority) except as required by law, to the Licensee's professional advisers and lenders on a need-to-know basis, or with the prior written consent of the City, which consent may be unreasonably withheld;
- (e) to promptly notify the City in writing of any release of a Contaminant or any other occurrence or condition at the Licence Area or any adjacent property which could contaminate the Licence Area or subject the City or the Licensee to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (f) on the expiry or earlier termination of this Licence, or at any time if requested by the City or required by any governmental authority under Environmental Laws, to remove from the Licence Area all Contaminants, and to remediate by removal any contamination of the Licence Area or any adjacent property resulting from Contaminants, in either case brought onto, used at, or released from the Licence Area by the Licensee or any person for whom it is in law responsible. The Licensee shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the Licensee, notwithstanding any rule of law or other provision of this Licence to the contrary and notwithstanding the degree of their affixation to the Licence Area; and
- (g) to indemnify the City and its elected officials, appointed officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the Licence Area and any adjacent property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this paragraph 14.2 by the Licensee; or
 - (ii) any release or alleged release of any Contaminants at or from the Licence Area related to or as a result of the use and occupation of the Licence Area or any act or omission of the Licensee or any person for whom it is in law responsible.

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- (b) The Licensee releases the City, its elected officials, appointed officers, employees and agents from and waives any claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability which the Licensee may have against any or all of them in respect of an act of the City under this section or section 13 except insofar as such claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability arises from the negligence of the City, its elected officials and appointed officers, employees, agents or contractors.

16.0 REGULATIONS

- 16.1 The Licensee must:

- (a) comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon the City or the Licensee; and
- (b) indemnify the City from all lawsuits, damages, loss, costs or expenses that the City may incur by reason of non-compliance by the Licensee with legal requirements or by reason of any defect in the Licence Area or any injury to any person or damage to any personal property brought on to the Licence Area. The Licensee is responsible for any damage to the Licence Area occurring while the Licensee is exercising its rights under this Agreement.

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- 18.1 The Licensee warrants and represents that it has authority to enter into this Agreement, has taken all corporate steps necessary to authorize this Agreement and to authorize the execution of this Agreement by the person signing it.
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- (b) The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- (c) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- (d) This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- (e) All provisions of this Agreement shall be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.

- (f) A provision in this Agreement granting the Municipality a right of approval shall be interpreted as granting a free and unrestricted right to be exercised by the Municipality in its discretion.
- (g) This is the entire agreement between the parties.

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

Manager of Legislative Services

NANAIMO MARINE RESCUE SOCIETY,
by its authorized signatories

Name:

Name:

SIGNED, SEALED AND DELIVERED
in the presence of:

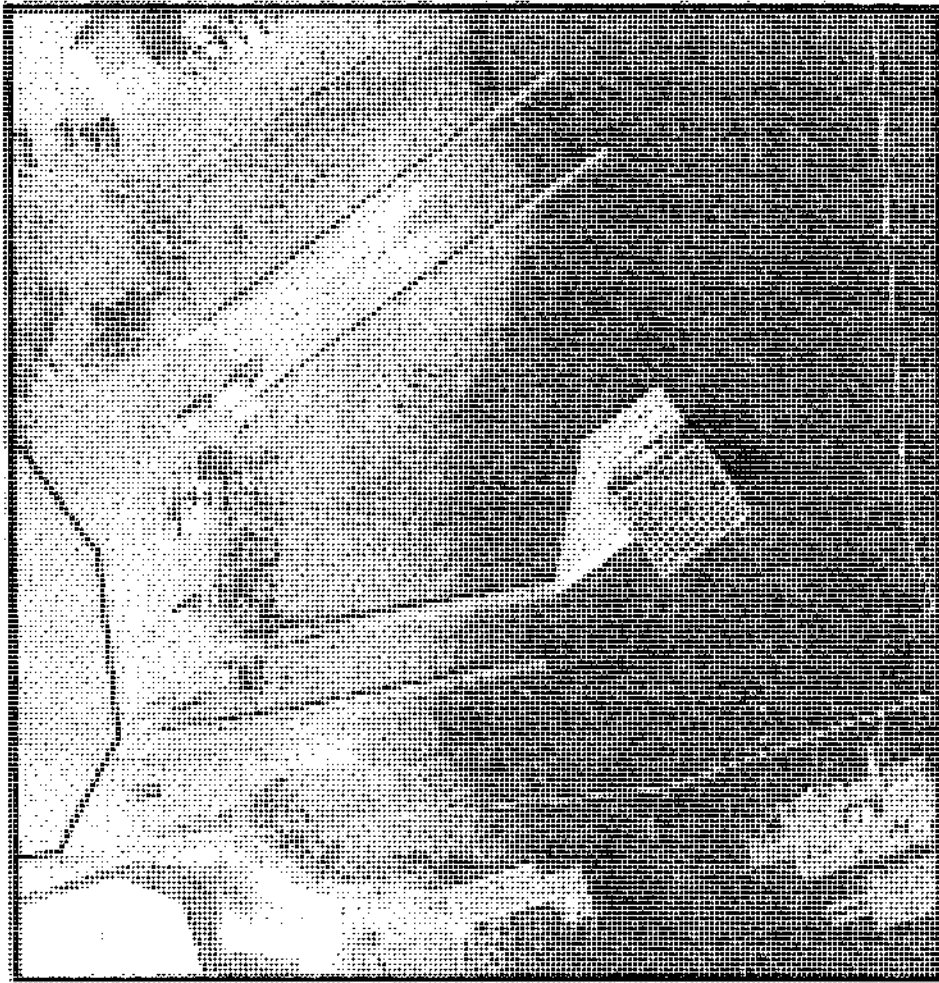
Witness (please print)

Address

Occupation

Witness Signature

SCHEDULE A



LICENSE AREA

Nanaimo Marine Rescue Society
Civic: 1844 Stewart Avenue, Nanaimo BC



**Subject
Property**

REPORT TO: MAYOR AND COUNCIL

**FROM: DIANA JOHNSTONE, CHAIR
PARKS, RECREATION AND CULTURE COMMISSION**

**RE: MANAGEMENT AND OPERATING AGREEMENT -
NANAIMO MUSEUM IN THE PORT OF NANAIMO CENTRE**

RECOMMENDATION:

That Council approve the Nanaimo Museum Management and Operating Agreement for a five (5) year term with an option to renew for another five (5) year term.

EXECUTIVE SUMMARY:

At their meeting of 2011-JAN-26, the Parks, Recreation and Culture Commission passed a motion supporting the recommendation that Council approve the Nanaimo Museum Management and Operating Agreement for a five (5) year term with an option to renew for another five (5) year term.

With the relocation of the Nanaimo Museum to in the Port of Nanaimo Centre the Museum continued to operate the facility under the previous License Agreement.

A new Management and Operating Agreement is attached which clarifies the responsibilities of both the Nanaimo & District Museum Society and the City of Nanaimo in the operation and financing of the Museum. The Nanaimo Museum and City Staff worked together to develop this Agreement.

The Nanaimo & District Museum Society has reviewed the Agreement and support it.

Respectfully submitted,



Diana Johnstone, Chair
Parks, Recreation and Culture Commission

Attachment - 1

2011-JAN-27

File: A4-1-2 / C2-5 / M1-18

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PRCCRPT110131ManagementAndOperatingAgreement-NanaimoMuseumInThePortOfNanaimoCentre.docx

☐ Council
☒ Committee *Flow*
☒ Open Meeting
☐ In-Camera Meeting
Meeting Date: *2011-JAN-31*

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT made the day of 2011.

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, British Columbia
V9R 5J6

(the "**Municipality**")

OF THE FIRST PART

AND:

NANAIMO & DISTRICT MUSEUM SOCIETY
100 Museum Way
Nanaimo, British Columbia
V9R 5J8

(the "**Society**")

OF THE SECOND PART

W H E R E A S :

- A. The City of Nanaimo (herein called the "City") and the Nanaimo & District Museum Society (herein called the "Society") by Agreement September 2004 agreed that there would be constructed the Vancouver Island Conference Centre (herein called the "Land") a Museum (herein called the "Museum").
- B. It was further agreed that the City shall be the owner of the Land and the Museum and that the Museum be managed and operated by the Society under terms and conditions of a Management and Operating Agreement between the City and the Society.
- C. This Management and Operating Agreement (herein called the "Agreement") is intended to provide the terms of reference for the occupancy, operation and management of the Museum and the obligations of the Society and City in that regard.
- D. This Agreement is intended to provide sufficient flexibility so as to satisfy the Society's mandate and the City's ownership of the Land and the Museum.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the foregoing and the mutual covenant and Agreements set out in this Agreement, the parties covenant and agree each with the other as follows:

1.0 LICENSE TO OCCUPY

- 1.1 The City hereby grants to the Society the right to occupy the Museum upon the Land subject to all of the terms and conditions including earlier termination as set out in this Agreement and as illustrated in Appendix 4.

2.0 TERM

- 2.1 The Society shall have the right to occupy the Museum for a term of five consecutive years commencing January 01, 2011, and ending December 31, 2015, unless earlier terminated in accordance with the terms and conditions of this Agreement at which date the right to occupy shall cease.

2.2 Renewal Options

Provided that the Society is not in default under this Agreement, the Society may, by delivering notice in writing to the City ninety (90) days before the 5th anniversary of the Commencement Date, renew this Agreement for a further term of five (5) years on the same terms and conditions as are herein contained save and except for the renewal option. The City and the Society shall meet at least one (1) year prior to the termination of the Agreement and negotiate the provisions for a further term, or terms, subject to the approval of City Council to renewal. If Agreement has not been reached by the expiry date of this Agreement, then the Society will continue to remain in occupation of the Museum, on a month to month basis, on the terms and conditions set out in this Agreement.

3.0 THE SOCIETY AS MANAGER AND OPERATOR (See appendix 2 for other sites)

- 3.1 The City hereby grants to the Society the right to manage and operate all aspects of the Museum for the Term in accordance with and subject to the terms and conditions set forth in this Agreement. The Nanaimo & District Museum Society collection shall be collected, preserved, insured and interpreted by the Society on behalf of the City of Nanaimo and its citizens. The City will designate a representative to deal on its behalf with the affairs of the Museum, herein after called the City Representative.

3.2 Rules and Regulations

The Society shall make such rules and regulations as are required to provide for the proper operation and management of the Museum provided that such rules and regulations shall not be inconsistent with:

- a) the bylaws of the Society;
- b) the provisions, terms and conditions of this Agreement; and
- c) all applicable Federal, Provincial and City laws, by-laws and regulations.

3.3 Access and Use

The Society shall use the Museum to accommodate all types of temporary and permanent exhibits, public and school programming, gift shop and venue rental for public and private assembly activities. Access to and use of the Museum by members of the Society and by the general public shall be in accordance with guidelines developed by the Society for the operation of the Museum, drawing where appropriate on relevant guidelines contained in City documents.

3.4 Programming and Operation

The Society shall be responsible for all aspects of the operation of the Museum (save those exclusively to be performed by the City as described in this Agreement) including without limitation:

- a) all programming and booking of events in the Museum;
- b) all responsibilities and functions delegated by the Society to the General Manager of the Museum, herein after called the General Manager.
- c) Appendix 2 describes the Museum interpretation responsibilities for the Bastion, the locomotive shelter and the Miners cottage in Piper Park. The City will be responsible for all maintenance with these buildings and the Museum shall assist wherever possible.

3.5 Ownership

The Society shall own and be responsible for all exhibit, shop, office and other fixtures and furnishings of the Museum as listed in Appendix 1.

3.6 Powers and Duties of the Society Negotiation and Signing of Agreements

The Society shall be responsible for the negotiation of all Agreements with third parties for the use or occupancy of the Museum. Except as otherwise provided in this Agreement, the Society shall have the power to make any Agreement in respect of the Museum which relates to the long-term operation, use or occupancy of the Museum during the period of time that the Society has the right to occupy the Museum under this Agreement.

3.7 Payment of Expenses and Operating Costs

The Society shall be responsible for the general administration of the Museum and, without limiting the generality of the foregoing; this shall include all expenses incurred in the operation and management of the Museum.

3.8 Museum Policy

All policy governing the operations of the Museum shall be in accordance with the provisions of this Agreement and shall be approved and determined by the Society with the Society being responsible for initiating such policy. The Society shall inform the City Representative with respect to policy matters and shall keep the City Council advised.

4.0 REPAIR AND MAINTENANCE OF THE MUSEUM (see Appendix 1, 2 & 3 for Detail)

- 4.1 (a) The Nanaimo & District Museum Society is responsible for all Museum furnishings, fixtures and equipment purchase, repair and maintenance. (see appendix 1 for detail.)

- (b) The City is responsible for maintaining and repairing the roofs, exterior walls and windows, external horticulture, outside sidewalks, foundations and electrical, heating, ventilation and air conditioning units.

4.2 Entrances, Sidewalks, Snow and Ice Removal

The City shall be responsible for the maintenance of and snow removal from the access roads, walkways, plaza and sidewalks. The Society will be responsible for the cleaning of and snow removal from the sidewalk directly adjacent to the Commercial St. entrance of the Museum.

4.3 Liens

In the event that any claim of builders lien is registered against the title of the Land pursuant to the provisions of the Builders Lien Act with respect to any work performed pursuant to Item 7.1 herein, then the Society shall, within 30 days notification thereof, cause any such claim to be discharged from the title of the Lands. Should the Society fail to discharge any such lien within the time aforesaid, the City shall have the right to make application pursuant to Section 32 of the Builders Lien Act to have sufficient funds paid into Court to cause any such lien to be discharged from the title of the Land and the Society shall be responsible for payment to the City of any such sum, together with the costs thereof calculated on a solicitor and own client basis.

5.0 MAINTENANCE OF INSURANCE

5.1 Property Insurance

The City shall insure the Museum building and fixtures against the perils and under the terms and conditions that the City insures other similar types of buildings and fixtures owned by the City. The Society shall insure the contents and equipment of the Museum.

5.2 Liability Insurance

The Society shall provide and maintain comprehensive General Liability Insurance, with the City to be an additional named insured to cover the functions of both parties in the management and operation of the Museum and its various facilities in the minimum amount of THREE MILLION (\$3,000,000) DOLLARS. Such liability insurance shall be in the standard form carried by the City, and approved through the City Representative. The policy shall provide for 30 days notice to the City before cancellation and should such policy lapse or be cancelled the City may, at the cost of the Society, place insurance as provided in this section.

5.3 Effects Insurance

The Society shall not, without the prior consent of the City, permit anything to be brought into the Museum that would invalidate or increase the premium payable for policies of insurance held by the City or the Society in relation to the Museum or that would injure or deface the Museum. The Society in its contractual arrangements will undertake to assign culpability to contractual users of the Museum, and ensure that adequate Effects Insurance is provided.

5.4 Indemnification of City

The Society will indemnify and save harmless the City from and against any and all liabilities, obligations, damages, penalties, claims, costs (including reasonable solicitors' fees), fines, suits, demands and causes of action to, by or on behalf of any person, group, firm or corporation arising from the occupation or use of the Museum by the Society or its invitees, employees, agents, members or any other person or persons for whose acts the Society is liable in law, or from any breach of the Society of any covenant, term or provision of this Agreement by the Society or its members, servants or agents or that might arise during the occupancy of the Museum by the Society under this Agreement; save and except where any such matter is the cause of an act by the City or anyone for whom the City is in law responsible.

5.5 Strikes

The Society in its contractual arrangements with users will absolve itself of liability arising out of strikes or lockouts and thereby release the City from any responsibility or liability whatsoever that might arise out of the City failing to provide the Museum or any services to the Museum under the terms of this Agreement arising out of any strike or lockout between the City and its employees or as a result of any other labour dispute, provided reasonable notice of any situation that might give rise to a labour action has been provided to the Society such that the Society has had the opportunity to modify its operations to minimize its risk.

6.0 ACCOUNTING, FINANCES AND REPORTING

6.1 Financial Records

Proper and separate books of account and financial records of the Museum's operation, as required by the Society Act, shall be kept by the Society at its expense during the occupancy by the Society of the Museum. The City Representative or any person authorized by the City shall have free access to the Society's financial records at all reasonable times and notice.

6.2 Budget

The Society's Board of Directors shall approve its annual Operating and Capital Budgets. The budget shall be submitted to the City Representative.

6.3 Annual Audit Statement

The Society will prepare and deliver to the City on an annual calendar year basis an audited statement of expense and income with respect to all revenues from and expenses for the use and operation of the Museum as well as an audited statement of all related assets and liabilities. The Society will cause such annual financial statements to be audited by its auditor and thereafter submitted to the City Representative for consideration no later than April 30th in each year.

6.4 Financial Statements

The Society shall provide quarterly unaudited financial statements to the City's Representative and Director of Finance.

6.5 Annual Report

The Society shall submit an annual report to the City Council's Parks, Recreation and Culture Commission stating the previous year's operating and capital results and the previous year's operation statistics.

6.6 City's Financial Contribution

The City will consider each year the inclusion in its budget a 2% increase to the annual management fee to the Society to be paid in equal quarterly amounts at the beginning of the quarter. The Society may submit a request for consideration to increase the amount of the annual fee for a higher service level need. The Society shall participate in the City budget preparation process through the City's Parks, Recreation and Culture Commission.

6.7 Revenue

All revenue obtained from operations shall become the property of the Society. The Society covenants and agrees that all revenue shall be used exclusively for the Museum operations.

6.8 Surplus

Should there be a surplus in any year as a result of operating revenues and the City contribution exceeding operating costs, the Society shall be entitled to retain the surplus for operations and reserves. The Society will not incur a deficit in excess of available accumulated surpluses. The City will be aware of the Society's financial performance during a year through the quarterly reporting mechanism outlined in Item 13.1.

6.9 Adjustments

The City will consider requests from the Museum for adjustments regarding the overhead billings from the Vancouver Island Conference Centre to be determined at annual review.

6.10 Storage

The Old Museum building shall be available to the Society for storage and workshop space on an interim basis. The City will work with the Society for supplementary space for these needs as to maintain the "A" status of the new Museum facility.

7.0 EVENTS OF DEFAULT AND REMEDIES

7.1 Termination

This Agreement may be terminated by the Society or the City upon giving to the other party six months notice of its intention to terminate, such notice to be given in writing on the last day of any month.

7.2 Termination for Breach

Upon breach by the Society of any term or condition of this Agreement, the City may give to the Society 30 days notice to commence action to correct such breach to the satisfaction of the City, and if such breach is not corrected within an agreed reasonable period, the City may without further notice declare this Agreement terminated and may enter into possession of the Museum and retain all moneys received by the Society under this Agreement and may recover all fees, costs and damages due to the City under this Agreement by suit or otherwise.

7.3 Termination for Other Reasons

In the event that:

- (a) The Society shall make an assignment for the benefit of creditors; or
- (b) The Society, for an unjustifiable reason fails to hold a general meeting of members for a period of eighteen (18) months or longer; or
- (c) The Society becomes bankrupt or insolvent or takes the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors; or
- (d) Any order shall be made for the winding up of the Society; or
- (e) The Society is struck off the Register by the Registrar for any just reason whatsoever;

the City may give to the Society 30 days notice to rectify the matter in question after which time, if the problem is not rectified to the satisfaction of the City, the right to occupy the Museum by the Society shall be terminated.

7.4 Vesting on Termination

In the event that the City terminates this Agreement in accordance with the terms and conditions contained herein, or in the event this Agreement expires without further renewals, then the City will assume all outstanding contractual obligations and debts.

7.5 Tenders

The Society agrees that it shall adhere to a competitive system of tendering for purchased goods and services for the Museum. Purchasing Policy shall be as approved by the Society. The Society shall have the option of joining with the City on tenders or to purchase merchandise from City suppliers.

7.6 Amendments

All amendments proposed to the terms and conditions of this Agreement shall be submitted in writing for consideration.

7.7 Communications

All communications relating to this Agreement between the Society and the City (apart from the ongoing exchange of operating information), shall be done in writing.

7.8 Notices

Any notice herein provided or permitted to be given by the Society to the City shall be sufficiently given if delivered to the City at:

City Hall
455 Wallace Street,
Nanaimo, BC V9R 5J6
Attention: Director, Parks, Recreation and Culture.

Any notice herein provided or permitted to be given by the City to the Society shall be sufficiently given if delivered to the Society addressed to:

Nanaimo & District Museum Society
100 Museum Way
Nanaimo, BC V9R 5J8
Attention: General Manager

Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address for such party for the giving of notice there under. The word "notice" in this paragraph shall be deemed to include any request, statement or other writing in this Agreement provided or permitted to be given by the City to the Society or by the Society to the City. Such notices may be given by personal delivery, mail or by fax and if given by mail shall be deemed to have been received five days after the date of mailing.

7.9 Conflict of Interest

Society Board Members and Staff shall be subject to the Society's "Conflict of Interest" policies.

7.10 Appeals

In the event that Agreement between the City Representative and the Society cannot be reached on matters involving the City's and/or Society's interests, the Society or the City Representative may appeal the matter to the City Council. A decision of the Council shall be final and be binding on all matters which require City consent or approval.

7.11 Agents

It is understood and agreed that the Society and all agents, servants and employees of the Society are not and shall not be deemed to be agents, servants or employees of the City.

7.12 Assignment

This Agreement shall enure to the benefit of and be binding upon the parties hereto.
This Agreement is personal to the Society and cannot be assigned to any other person.

7.13 Interpretation

Wherever the singular and masculine are used throughout this Agreement the same shall be constructed as meaning the plural or feminine or the body corporate or politic as the context requires.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as on the _____ day of _____ 2011.

by its authorized signatories)

Mayor)

Manager of Legislative Services)

by its authorized signatories)

President of the Board)
NANAIMO & DISTRICT MUSEUM SOCIETY)

General Manager)
Nanaimo Museum)

SIGNED, SEALED AND DELIVERED)
in the presence of:)

Witness (please print))

Witness Signature

Address)

Occupation)

Appendix 1

Equipment/Fixtures Owned and Maintained by Museum

- All shelving and other storage contents of Artifact Storage area.
- All exhibit and display components including non track lighting fixtures and all video/audio components and monitors and signage in building.
- All cupboards and counters in all areas of Museum.
- All Lighting and track systems.
- All office, kitchen, gift shop and other furniture and fixtures except for VICC chairs and tables.
- All carpentry and maintenance equipment and supplies.
- All computer equipment.

Appendix 2

The Bastion, Locomotive Shelter and Miners Cottage

The Museum responsibilities for these sites include:

- Interpretation and admittance to the public during times set by the Museum.
- Notice to the City of any recognized maintenance needs.
- Installation and maintenance of all exhibit materials.
- Posted summer hours open to the public for the Bastion including regularly scheduled cannon firings.
- Cannon maintenance.
- Fundraising for all interpretive and exhibit costs.
- Insure contents.

City Responsibilities for these sites includes:

- All building maintenance.
- Annual contribution for Bastion summer program of \$15,000 to be included in annual operating grant total.
- Moving and storage of cannons as requested by Museum.
- Insure the buildings.

Appendix 3

Repair and Maintenance Detail Museum Area

The Society takes responsibility for notifying the City of any system failure, anticipated failure or damage in a timely fashion. The City shall have a representative meet with the Society on a regular basis to ensure that communication and planning coordination is current.

All planning and execution of these repairs / replacement jobs shall be done by the Society, or in coordination with the Society, to ensure that operational impact is kept to a minimum.

1. Electrical

The City is responsible for:

- Maintenance of all electrical feed to the museum space.

The Society is responsible for:

- Maintenance of all breaker panels, all electrical equipment and distribution at 120volt.
- Installation of additional circuits as required.

2. HVAC

The City is responsible for:

- Maintenance contract for HVAC system.
- Inspection, maintenance (routine and annual) and repair of all working parts.

3. Plumbing / Water

The City is responsible for:

- Maintenance and repair of all water connections leading to and from the Museum.
- Maintenance, repair and inspection of pipes involved in building systems located within Museum space.

The Society is responsible for:

- Ongoing maintenance of hot and cold water systems within the museum, for all plumbing fixtures and water connections within the museum space.
- Replacement of domestic hot water tanks.

4. Structural

The City is responsible for:

- Maintaining and repairing exterior walls and building foundations.
- Elevators repair and maintenance.

5. Fire Suppression / Fire Alarm / Sprinkler

The City is responsible for:

- All components of fire alarms and suppression systems within and leading to museum.
- Ongoing maintenance and care.
- Annual testing and inspection.

6. Interior Surfaces

The Society is responsible for:

- Maintenance and repair of all interior surfaces as required, including all interior doors and hardware.

7. Exterior

The City is responsible for:

- All exterior wall finishes, plaster, paint.
- All window repairs due to breakage and system failure.
- Window maintenance and trim.
- Landscaping and sidewalk maintenance.
- Garbage pick-up of sidewalk trash cans.
- Painting of all exterior handrails.
- Maintenance of exterior doors including automatic doors.

The Society is responsible for:

- Snow removal on sidewalks directly adjacent to Commercial Street entrance door.
- Window cleaning of museum windows inside and out.
- Our share of garbage and recycling contract for removal.

8. Alarm and Security

The City is responsible for:

- Repair and maintenance of alarm and security systems.

The Society is responsible for:

- Security costs within the museum space.

9. Janitorial/Housekeeping

The City is responsible for:

- Exterior wall and sidewalk cleaning including graffiti removal.

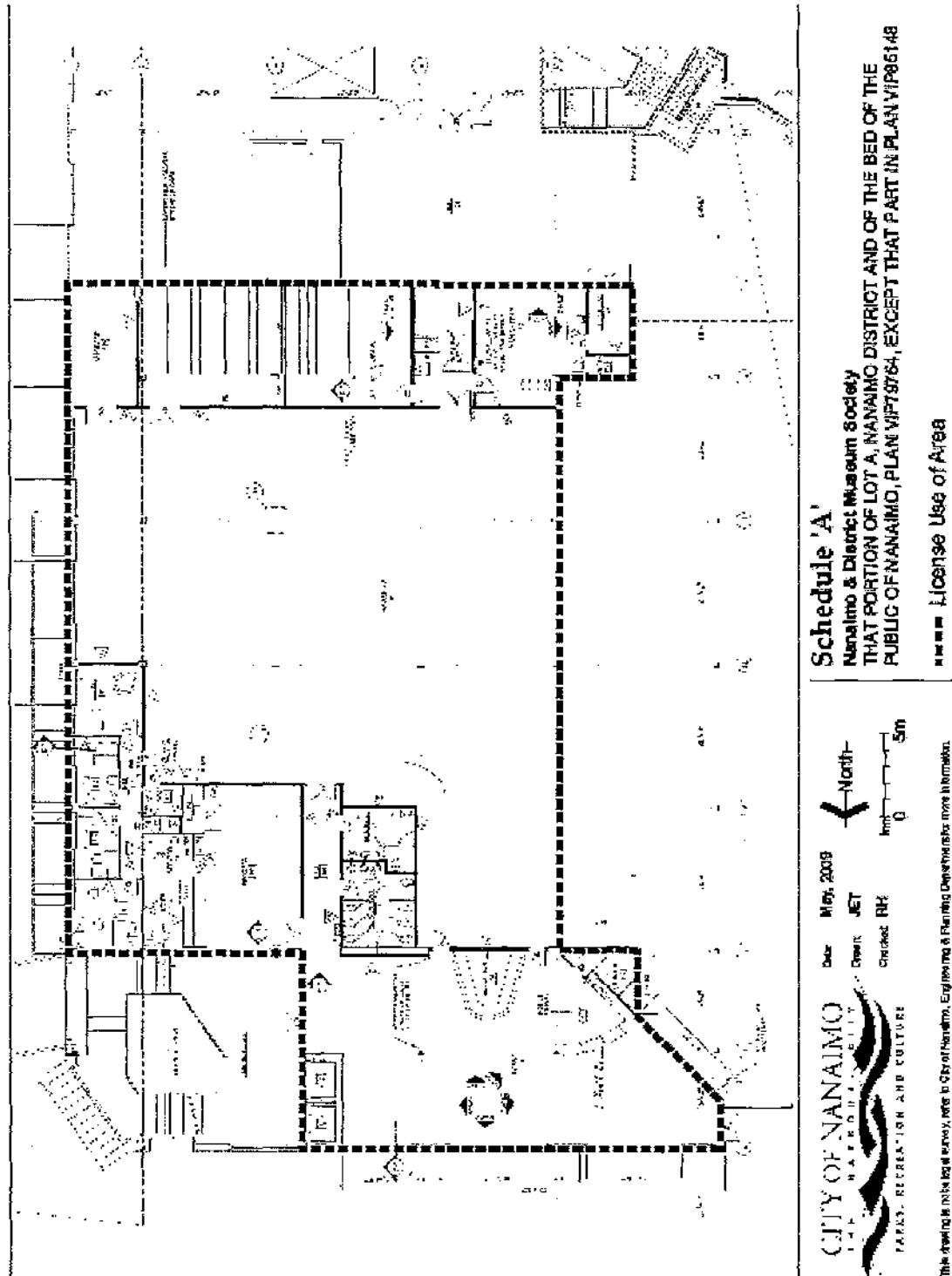
The Society is responsible for:

- All interior janitorial cleaning within Museum space.

Appendix 4

Museum Floor Plan

The Municipality is the owner of land described as: that portion of Lot A, Nanaimo District and of the bed of the public of Nanaimo, Plan VIP79754, except that part in Plan VIP85148.



STAFF REPORT

REPORT TO: R. HARDING, DIRECTOR, PARKS, RECREATION AND CULTURE

FROM: M. MAUCH, PROJECT MANAGER, ENGINEERING CONSTRUCTION

RE: REQUEST TO DIRECT AWARD MUSCO FIELD LIGHTING SYSTEM

RECOMMENDATION:

That Council approve a sole-source contract to Musco Lighting for sports field lighting at the new artificial turf field.

EXECUTIVE SUMMARY:

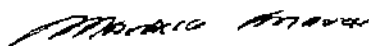
The new artificial turf field, adjacent to Merle Logan Field, requires a sports field lighting system complementary to the existing system. The existing Musco lighting system at Merle Logan has performed well and was designed so that only two (2) more poles would be required for the second field. The cost of the additional lighting for the second field is \$69,000.00.

BACKGROUND:

Merle Logan artificial turf field was constructed in 2005; the field is illuminated by a Musco Sports Field Lighting System. The Musco lighting system has performed well on the first field since opening. The system was designed with consideration given for the easy expansion for a second field; with the construction of the second artificial turf field, only two (2) additional light standards are required to fully illuminate the field. The lighting system will be installed as part of the Tendered Work for the project

Pricing from Musco has been provided and is within budget.

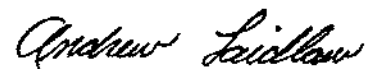
Respectfully submitted,



M. Mauch, Project Manager
Engineering Construction



R. Harding, Director
Parks, Recreation & Culture



Andy Laidlaw, General
Manager
Community Services

Council: 2011-JAN-31

MM:wj

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☐ Council
☒ Committee *FLPCOW*
☒ Open Meeting
☐ In-Camera Meeting
Meeting Date: *2011-JAN-31*

INFORMATION ONLY REPORT

REPORT TO: RON LAMBERT, FIRE CHIEF

FROM: DOUG BELL, CAPTAIN, FIRE & LOSS PREVENTION DIVISION

RE: FIRE PROTECTION AND LIFE SAFETY BYLAW

STAFF'S RECOMMENDATION:

That Council receive the report.

☐ Council
☒ Committee FLPCOW
☒ Open Meeting
☐ In-Camera Meeting
 Meeting Date: 2011-JAN-31

EXECUTIVE SUMMARY:

To facilitate a safer community in respect to fire and life safety, it is proposed that the current "FIRE PROTECTION AND CONTROL BYLAW 1991 NO. 3879" and amendments be repealed and replaced with "FIRE PROTECTION AND LIFE SAFETY BYLAW 2011 NO. 7108" (draft bylaw attached). The rationale for the replacement bylaw is due to the numerous changes required to keep abreast of a growing community and life safety requirements. Revisions reflect fire related problems and manage fire protection within the City.

BACKGROUND:

The previous Fire Protection Bylaw has been in place for a number of years and required significant revisions to stay abreast of a growing community and evolving fire protection issues. Staff has worked extensively with the City's legal counsel in drafting the bylaw. Because of the extensive changes required, it is proposed that "FIRE PROTECTION AND CONTROL BYLAW 1991 NO 3879" and all amendments be repealed in whole and replaced with "FIRE PROTECTION AND LIFE SAFETY BYLAW 2011 NO. 7108", which is a new, more effective bylaw.

A significant number of changes are proposed in the new bylaw. A brief highlight of additions and changes is provided:

- Part 1 Administration
 - 3.0 Fire Code: The provincial Fire Code is adopted and considered a provision of the bylaw.
 - 10.0 Fees: A number of fees for services, such as permits etc., have been updated and expanded. This would include services such as file searches, special non-scheduled inspections and other services provided such as fire extinguisher training (outlined in Schedule "B"). The most notable change is a fee for the re-inspection of a building or property when the owner or occupier refuses to comply with fire and life safety requirements.
- Part 2 Fire Incident Response & Operations
 - 13.1: A new section has been added to require that no person drives over or is within nine (9) metres of a fire hose in use. This particular section is intended to

- protect fire hose damage and enhance firefighter safety at incident scenes and is subject to a fine.
- 13.5 and 13.6 are new sections to secure premises where a fire has occurred. This addition allows the City to manage liability without absorbing the costs of securing structures, fencing or security services after a fire has occurred. It provides a mechanism to pass on such costs or apply them to property taxes if there is a default in payment.
- Part 3 Prevention of Hazards
 - 14.0 to 14.7: Enhancements have been made to provide for an improved remediation of fire hazards and re-distributes the costs of doing so away from the City. It provides a similar mechanism as 13.5 and 13.6 above in cases where security measures are required in vacant buildings, structures and properties where a fire hazard exists. This addition provides for the City to require such action to protect the public from hazards as well as placing the costs associated with securing structures be paid for by the property owner or insurer. It also applies costs to property taxes if there is a default in payment.
- Part 4 Inspections Under *Fire Services Act*
 - 15.1 and 15.2: New sections to address the requirement of Section 26 of the *Fire Services Act* to maintain a regular system of fire inspections. It mandates the Department to re-establish the frequency of inspections based on property use and the related risk, away from the building classification historically used. This will re-distribute the fire inspection workload to place inspection frequency emphasis on higher risk occupancies and reduce frequency on low risk occupancies. It provides for more effective utilization of manpower and focus toward potential fire problem buildings regardless of classification.
- Part 5 Fire and Life Safety Equipment and Standards
 - 16.1 and 16.2: New sections to enhance the Department's ability to enforce regular fire drill system in accordance with the Fire Code in occupancies with sleeping accommodations, such as care facilities, and hotels, as well as schools and child care facilities.
 - 17.1 to 17.3: New sections for the requirement for Fire Safety Plans in buildings having a fire alarm system to be reviewed and submitted annually by an owner or occupier. This requirement facilitates the Departments tracking of changes to fire and life safety equipment in buildings and provides accurate response information.
 - 18.1 and 18.2: Similar to section 17, buildings without a fire alarm system are to provide a pre-incident plan to the Department with up-to-date property contact, utility and life safety equipment information for use in times of emergencies.
 - 23.1 to 23.3: New sections to incorporate requirements of the *Fire Services Act* regarding the exit and fire doors to enhance the enforcement capability of the Department through the bylaw. This provides for expeditious compliance eliminating the extensive legal steps associated with enforcement of the *Act*.
 - 24.1 – 24.6 has been added to provide similar enforcement capabilities as 23 above. These new sections incorporate requirements in the *Fire Services Act* regarding exits and access requirements providing greater enforcement capabilities through fines. This would include blocking fire access and fire lanes, as well as egress signs and exit plans required by the Building Code. These sections expedite compliance with applicable Fire and Building Codes.
 - 25.1: New section providing authority to Fire Rescue Department Officers to issue a written Order requiring the property owner to take action to repair or alter a means of egress or fire and life safety equipment required in Part 5 of the bylaw.

- 26.1 to 26.4: New sections to provide the Department with the authority for evacuation in situations where imminent or serious danger to life for occupants. It requires posting a notice of the fire hazard and requires an order for evacuation or portions not occupied.
- 27.1: New section requiring fire protection technicians to inform the Department of installing, altering or taking fire and life safety equipment out of operation as well as the utilization of service tags on such equipment. This assists in communicating the requirements for such under the Fire Code. In addition, it may assist in reducing the number of false alarms associated with maintenance to fire protection systems in structures.
- 28.1 – 28.7: New section to set expectations around automatic alarms in buildings, including contacts, the requirement to attend, provide access and secure and/or remedy problems. There is also provision authorizing forcible entry when access is not provided, as well as security thereafter with the building owner or agent responsible for costs.
- Part 6 Burning Permits
 - The general requirements for open burning have not changed although the language has been restructured to provide additional clarity.
 - 29.1: New section to permit the Fire Rescue Department to set open fires for the purpose of training members.
 - Cooking fires has been eliminated with exception of City Park facilities.
- Part 7 Fire Hydrants & Fire Connections
 - 31: New sections on the general requirements, maintenance, inspection, and servicing of private fire hydrants on private properties. The schedules are consistent to that of City-owned fire hydrants.
- Part 8 Street Addresses
 - 37: A new section that requires the installation and maintenance of civic address numbers and building complex numbers to facilitate emergency response.
- Part 9 Interpretation and Penalties
 - 38:1, 38.2: New sections for schedules to form part of the bylaw.
 - Schedule A provides updated definitions.
 - Schedule B provides updated fines and fees consistent with municipal standards.
 - Schedule C provides for emergency contact information as required in Part 5
 - Schedule D provides an Order Form used by an Officer in accordance with Part 5, Section 26 (2) for the remedy of unsafe conditions.
 - Schedule E provides an Evacuation Order in accordance with Part 5, Section 26(1).
 - Schedule F provides a Burning Permit for special events or other purposes. It also sets requirements for safe burning.
 - Schedule G provides a Private Fire Hydrant Service Report in accordance with Part 7.
 - Schedule H provides an Application to Remove or Install Fuel Tanks. This is a Fire Code requirement and places fees for the permit and related inspections.

The comprehensiveness of the proposed bylaw will provide Fire Staff with additional tools to ensure a safer community, both from a fire, as well as life safety perspective. In particular, a

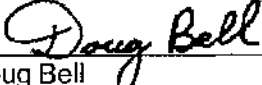
number of sections, as outlined, duplicate the *Fire Services Act* and eliminate the enforcement complications and time delays consistent with relying solely on the *Act*. It also adopts the provincial Fire Code as a provision of the bylaw. In essence, it assists in streamlining the achievement of a safer community in a cost-effective manner.

Open burning remains a contentious issue within the community. Currently, open burning is permitted during April and October on properties one acre or larger and on Protection Island. Many complaints regarding smoke and air quality are received during burning periods, however, because of no inherent safety issues, no changes are currently recommended within the new bylaw. Notwithstanding, should Council wish to address the issue of smoke and air quality further, it is proposed that it be referred to the Advisory Committee on the Environment for deliberation and consideration.

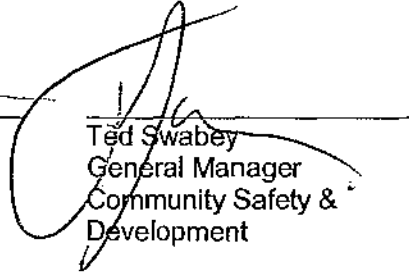
One significant change that is contained within the proposed bylaw is the revision of cooking fires. Historically, the complaint response experience has identified that individuals have used this to have campfires. When fire crews investigate a complaint, the occupant will produce food. This complaint type has become most common and is a technical loophole. Because there is an abundance of barbeques and other exterior cooking appliances, the proposed bylaw eliminates cooking fires on private properties.

Overall, the revisions and additions will enhance life safety in the City of Nanaimo. As such, Staff is recommending adoption of "FIRE PROTECTION AND LIFE SAFETY REGULATION BYLAW 2011 NO. 7108.

Respectfully submitted,


Doug Bell
Captain, Chief Fire Prevention
Officer


Ron Lambert
Fire Chief


Ted Swabey
General Manager
Community Safety &
Development

F/P C.O.W.: 2011-Jan-31

CITY OF NANAIMO

BYLAW NO. 7108

A BYLAW TO REGULATE FIRE PROTECTION AND LIFE SAFETY
AND PROVIDE EMERGENCY SERVICES

WHEREAS the Council of the City of Nanaimo may, by bylaw pursuant to sections 8(3)(g), 63 and 66 of the *Community Charter*, S.B.C. 2003, c. 26, ("Community Charter") prohibit, impose requirements and establish regulations for the protection of persons and property and authorize the Fire Chief and members of the Fire Rescue Department to exercise certain powers;

AND WHEREAS the Council of the City of Nanaimo may, by bylaw, impose fees pursuant to sections 194 and 196 of the *Community Charter*;

AND WHEREAS the Council of the City of Nanaimo, may by bylaw, pursuant to section 154 of the *Community Charter* delegate its powers, duties and functions to an officer or employee of the City;

AND WHEREAS the Council of the City of Nanaimo may, by bylaw regulate, prohibit and impose requirements in relation to burning pursuant to sections 8(3)(i) and (h), 15 and 64(a) and (c) of the *Community Charter* and in relation to municipal services pursuant to section 8(3)(a) of the *Community Charter*;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo, in open meeting assembled, ENACTS AS FOLLOWS:

1. Title

This Bylaw may be known and cited as "FIRE PROTECTION AND LIFE SAFETY REGULATION BYLAW 2010 NO. 7108".

2. Interpretation

Unless otherwise defined as follows, or the context otherwise requires, all words and phrases in this Bylaw shall be construed in accordance with the meaning assigned to them in the *Building Code*, *Fire Services Act* and *Fire Code*.

"APPARATUS" means any vehicle provided with machinery, devices, equipment or materials for fire fighting as well as vehicles used to transport fire fighters or supplies.

"BUILDING CODE" means the British Columbia *Building Code* as amended from time to time

"BUILDING" means a structure that is used or intended to be used for the support enclosure and/ or the shelter of persons, animals or property, except those prescribed by regulation as exempted from the *Building Code*.

"CITY PARK" means any community park operated and maintained by the City.

"CITY"	means the City of Nanaimo.
"COMBUSTIBLE LIQUID"	means any liquid having a flash point at or above 37.8 degrees Celsius and below 93.3 degrees Celsius.
"COMBUSTIBLE REFUSE"	means any combustible materials that are to be landfilled or recycled.
"CONSTRUCTION MATERIAL"	means any waste or refuse created by the clearing of land, or the construction, repair or demolition of a Building or Structure, including without limitation, trees, branches, stumps, and roots.
"CONTACT PERSON"	means a person designated by the occupier or owner of a Building or Structure at which a Fire Alarm System is installed who is able to attend at the Building or Structure when the Fire Alarm System has been activated.
"COOKING FIRE"	means an outdoor cooking fire provided the fire is contained in a device such as a BBQ or grill designed for cooking and containing the fire and where the fire may only utilize propane, natural gas or briquettes.
"COUNCIL"	means the Municipal Council of the City of Nanaimo
"EQUIPMENT"	means any tools, contrivances, devices or materials used by the Fire Rescue Department at any Incident or other emergency.
"FALSE ALARM"	means the activation of a fire alarm system resulting in the direct or indirect notification of the Fire Rescue Department to attend the address of the Fire Alarm System, where there is in fact no Incident at that address.
"FIRE ALARM SYSTEM"	means all equipment, including without limitation, batteries, alarm gongs, horns, buzzers, switches, wiring, relay equipment, sensors, and other accessories designed to issue a warning of a fire by activating an audible alarm signal or alerting a monitoring service but does not include a fire alarm or smoke detector that is intended to alert only the occupants of a single dwelling unit.
"FIRE AND LIFE SAFETY EQUIPMENT"	includes, but is not limited to, Fire Alarm Systems, automatic Sprinkler Systems, special extinguishing systems, portable extinguishers, emergency lighting, water supply systems for fire protection, standpipe and hose systems, smoke control measures, emergency power installations, voice communication systems and fire fighter elevators.

"FIRE CHIEF"	means a person appointed by resolution of Council to be in charge of the Fire Rescue Department, and includes the Deputy Fire Chief and any other person authorized to act on behalf of the Fire Chief.
"FIRE CODE"	means the British Columbia <i>Fire Code</i> as amended from time to time.
"FIRE PREVENTION OFFICER"	means a member the Fire Rescue Department authorized in writing by the Fire Chief to be a Fire Prevention Officer and a Local Assistant Fire Commissioner.
"FIRE PROTECTION TECHNICIAN"	means a person who has provided the Fire Rescue Department with acceptable documentation from a manufacturer of Fire And Life Safety Equipment certifying that he or she has been trained to install and service their equipment or from the agency known as the Applied Science Technologist and Technicians of British Columbia certifying that he or she is able to perform inspections and testing on fire extinguishers, Fire Alarm Systems, Sprinkler systems, and other Fire And Life Safety Equipment or a person approved by the Fire Chief.
"FIRE RESCUE DEPARTMENT"	means the City of Nanaimo Fire Rescue Department.
"FIRE SAFETY PLAN"	is a set of emergency procedures and guidelines to be followed by the occupants of a Building in the event of a fire or an emergency in a Building or Structure; and may include the locations of utilities and emergency shutoffs for gas and water, and operational information of Fire and Life Safety Equipment.
"FIRE SERVICES ACT"	means the <i>Fire Services Act</i> , R.S.B.C. 1996, c.144.
"FIREFIGHTER"	means every Member of the Fire Rescue Department other than an Officer, whose duties include fire prevention, fire suppression, or emergency response.
"INCIDENT"	means a fire or any other class of circumstance that may cause harm to persons or property, and includes rescue, medical aid, hazardous material incidents or other similar situations that are a threat to life.
"MEMBER"	means any person that is duly appointed by the Fire Chief as a member of the Fire Rescue Department and is an employee of the City.
"OCCUPANCY"	means the use or intended use of a Building or part thereof for the shelter or support of persons, animals or property.

"OFFICER"	means any member of the Fire Rescue Department holding the rank of: <ul style="list-style-type: none">(a) Fire Chief(b) Deputy Fire Chief(c) Assistant Fire Chief(d) Captain(e) Lieutenant(f) Fire Prevention Officer
"OFFICER IN COMMAND"	means the highest-ranking Officer in attendance at an Incident. In the event that an Officer is not in attendance at an Incident, the most senior Member in attendance at that Incident will assume command in accordance with Section 11(1).
"OPEN BURNING"	means a fire in the open air but does not include a Cooking Fire or a fire where the products of combustion from the fire are conveyed to and disposed of by means of a chimney in a Building or Structure constructed and maintained in accordance with the <i>Building Code</i> .
"PEACE OFFICER"	means any RCMP member or a Bylaw Enforcement Officer.
"PREMISES"	means a Building or Structure together with its grounds and appurtenances.
"PRE-INCIDENT PLAN"	means a series of documents containing plans, drawings and written descriptions identifying the type and location of Buildings, fire fighting hazards, Fire and Life Safety Equipment and utilities".
"PRIVATE HYDRANT"	means a fire hydrant on private property or common property within a strata property.
"SINGLE DWELLING UNIT"	is a suite operated as a housekeeping unit under a single tenancy.
"SMOKE ALARM"	means a combined smoke detector and audible alarm device designed to sound an alarm, within the room in which it is located upon the detection of smoke within the room.
"SPRINKLER SYSTEM"	includes all equipment forming part of or used in connection with a fire sprinkler system, including without limitation, all heads, valves, piping, switches, sensors, relay equipment, and other accessories.

"STRUCTURE"

means any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite matter; that which is built or constructed, an edifice or building of any kind whether fixed to, supported by or sunk into land or water including, combinations of materials to form a construction for Occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land, but specifically excludes landscaping, fences, paving and retaining structures less than 1.5 meters in height.

"VEHICLE"

means a device in, upon, or by which a person or thing is or may be transported or drawn upon a highway, except a device designed to be moved by human power or used exclusively upon stationary rails or tracks.

PART 1 - ADMINISTRATION

3. **Provincial Fire Code Adopted**

Pursuant to Section 15 of the *Community Charter*, the Council adopts and establishes for the City the *Fire Code*. The provisions of the *Fire Code* adopted and established are made part of this Bylaw and shall be considered as provisions of this Bylaw.

4. **Confirmation of Fire Rescue Department**

The Fire Rescue Department as established is hereby confirmed.

5. **Confirmation and Appointment of Fire Chief**

- (1) The position of Fire Chief as established is hereby confirmed.
- (2) The Fire Chief shall be appointed by a resolution of Council.

6. **Responsibilities and Duties of Fire Chief**

- (1) The Fire Chief is the Director of the Fire Rescue Department and is responsible for the efficient management of all Members, Apparatus, Equipment, responses to incidents and the provision of fire prevention and protection services to the City. The Fire Chief shall ensure that the Fire Rescue Department is staffed with Members in accordance with Council policy and direction.
- (2) The Fire Chief shall establish rules, regulations and policies necessary for the proper organization, administration and operation of the Fire Rescue Department including but not limited to:
 - (a) the use, care and protection of Fire Rescue Department property;
 - (b) the conduct and discipline of Members of the Fire Rescue Department;
 - (c) the safe and efficient operation of the Fire Rescue Department; and
 - (d) the duties and responsibilities of Members.

- (3) The Fire Chief shall take responsibility for all fire protection matters and other Incidents including the enforcement of applicable sections of the Fire Services Act and its regulations, and the *Fire Code* and shall assume the responsibilities of a local assistant to the Fire Commissioner.
- (4) The Fire Chief may appoint or designate other Officers of the Fire Rescue Department to act as Fire Chief on his behalf and may, in writing, authorize Officers to exercise the powers of a local assistant to the Fire Commissioner.
- (5) Council authorizes the Fire Chief to exercise all the powers of the Fire Commissioner under section 25 of the *Fire Services Act* and for these purposes that section applies.

7. Appointment and Accountability of Officers and Members

- (1) All Members of the Fire Rescue Department shall be appointed by the Fire Chief.
- (2) Officers shall be appointed by the Fire Chief, as vacancies occur or as needs dictate, from firefighters meeting the qualifying standards.
- (3) Members are accountable to the Fire Chief for the actions and affairs of the members under their command.
- (4) All Officers are responsible for ensuring that Members adhere to any and all applicable City and Fire Rescue Department policies, procedures, rules and regulations.

8. Rank Structure of Fire Rescue Department

The rank structure of the Fire Rescue Department, in descending order shall be as follows:

- (a) Fire Chief;
- (b) Deputy Fire Chief;
- (c) Assistant Fire Chief;
- (d) Captain;
- (e) Lieutenant;
- (f) Fire Prevention Officer;
- (g) Firefighter;
- (h) On Call Firefighter.

9. Jurisdiction of Fire Rescue Department

The limits of the jurisdiction of the Fire Chief and the Members of the Fire Rescue Department will extend to the area and boundaries of the City of Nanaimo, and neither the Fire Chief or Members shall supply fire fighting services or respond to an Incident nor shall any part of the fire Apparatus or Equipment be used outside the boundaries of the City without the consent of the other local government or express authority of a written agreement between the City and the other local government providing for the supply of fire fighting services, or other Incident response outside the City boundaries.

10. Fees

A person must pay a fee as prescribed in Schedule "A" attached to and forming part of this Bylaw for the following:

- (a) a search of City files for any Fire Code violations, inspection infractions or information about environmental contamination existing on the Premises;
- (b) a Fire Rescue Department inspection of a Building, Premises or property that is not a regular scheduled inspection, and the fee is payable by the person who requested the inspection;
- (c) Fire Extinguisher Training Course, however, the fee may be discounted one hundred (100) percent if the Fire Extinguishing Training course is given to a non-profit Society;
- (d) a re-inspection of a Building, Premises or property where the Fire Prevention Officer finds that an owner or occupier has not complied with a Fire Rescue Department Order;
- (e) a third inspection of a Building, Premises or property by a Fire Prevention Officer that is required because the owner or occupier has failed to comply with the requirements in an inspection report;
- (f) the Fire Rescue Department response to a False Alarm where it is the third or greater number of False Alarms originating from one Fire Alarm system in any twelve (12) month period and the fee is payable by the owner or occupier of the property in which a Fire Alarm system is installed;
- (g) a Burning Permit; and,
- (h) a Fuel Tank Permit.

PART 2 – FIRE INCIDENT RESPONSES AND OPERATIONS

11. Control, Direction and Management

The Fire Chief or Officer In Command at an Incident, shall have control, direction and management of all Fire Rescue Department Apparatus, Equipment, and Members assigned to an Incident and, where an Officer In Command is in charge, he shall continue to act in that capacity until relieved by a more senior Officer.

12. Authorization to Enter Property

- (1) The Fire Chief and Members are authorized to enter onto property and inspect Premises, with or without Apparatus and Equipment, for conditions that may cause a fire, increase the danger of a fire or increase the danger to persons or property from a fire.
- (2) The Fire Chief and Members are authorized to enter onto property and into Buildings or Structures to inspect and determine whether all regulations, prohibitions and requirements are being met in relation to any matter contained in this Bylaw, the *Fire Services Act* and its regulations and the *Fire Code*.

- (3) The Fire Chief and Members are authorized to enter onto property and into Buildings or Structures, including those adjacent to an Incident, with or without Apparatus and Equipment, to take measures to prevent and suppress fires or deal with another form of Incident.

13. Regulations at Incident

Fire Hose

- (1) No person shall drive over, or be within nine (9) metres of a Fire Rescue Department hose that is in use or filled with water, without the permission of the Officer In Command at an Incident.

Assistance in the Fighting of Fires

- (2) The Officer In Command is authorized to require a person to assist in the fighting of any fire or in the preserving of any property threatened by fire, or to assist in the salvaging and safeguarding of property threatened by fire.

Evacuation of Buildings and Hazard Areas

- (3) The Fire Chief is authorized to order the evacuation of any Building or area where there is an emergency arising from a fire hazard, risk of explosion or a panic. In such a case no person, other than the Fire Chief, the Officer In Command, a Member of the Fire Rescue Department, or other person authorized by the Fire Chief or Officer In Command shall remain in or shall enter those Buildings or areas.

Demolition of Adjacent Buildings or Structures

- (4) The Fire Chief or Officer In Command at any Incident is authorized to prevent and suppress a fire by causing to be pulled down or demolished a Building or Structure when he considers it necessary to prevent or suppress any fire.

Securing Vacant Buildings and Structures Where Fire Has Occurred

- (5) If requested by an Officer, a property owner or occupier shall secure a Premises that has been damaged by fire, in a manner approved by the Officer which will include but not be limited to one or more of the following:
 - (a) boarding up the Building or Structure;
 - (b) fencing; or
 - (c) supplying twenty-four (24) hour security services by a licensed security company.
- (6) If the property owner or occupier cannot be located or fails to undertake the securing of any Premises damaged by fire, the City will carry out the work of securing the Premises and the costs will be billed to the property owner and, if unpaid by December 31st in the year that the property owner or occupier failed to take the required action, will be added to and form part of the property taxes in relation to the Premises.

Commandeering of Privately Owned Equipment

- (7) The Fire Chief or Officer In Command at any Incident is hereby empowered to commandeer privately owned equipment, which he considers necessary to deal with such Incident.

Compliance with Direction

- (8) No person shall fail to comply with a direction of the Officer In Command, or any Member of the Fire Rescue Department made in accordance with this Bylaw at an Incident.
- (9) No person shall interfere with or impede the use of Equipment by the Fire Chief or a Member at an Incident.

PART 3 – FIRE PREVENTION

14. Prevention of Fire Hazards

Fire Hazards

- (1) No person, being an owner or occupier of any Premises shall:
- (a) maintain the Premises in such a state of disrepair that a fire starting in them might spread rapidly to endanger life or other property;
 - (b) use or occupy the Premises in such a manner that fire would endanger life or property or increase the danger of fire;
 - (c) keep combustible or explosive material on the Premises, except as permitted by this Bylaw or other enactment, or allow other flammable conditions to exist in the Premises so as to endanger life or property;
 - (d) allow a fire hazard to exist on the Premises.

Remediation of Fire Hazards

- (2) Where an Officer determines that one or more conditions as indicated in Section 14(1)(a), (b), (c), or (d) exists, the Officer may issue to an owner or occupier of a Premises a Fire Rescue Department Order in the form attached as Schedule "C" to and forming part of this Bylaw, requiring the owner or occupier of the Premises to do one or more of the following:
- (e) Repair the Building or Structure on the Premises;
 - (f) Remove or destroy the Building or Structure on the Premises;
 - (g) Alter the use or Occupancy of the Premises;
 - (h) Remove combustible or explosive material from the Premises or remedy a flammable condition at the Premises;
 - (i) Remove or take any precautions required against the fire hazard present at the Premises.
- (3) An Officer may specify a date by which the owner or occupier of the Premises must comply with the Fire Rescue Department Order.

- (4) Should the owner or occupier of the Premises having received a Fire Rescue Department order in accordance with section 14(2) fail to comply with the terms of the Order, the City may carry out the work associated with the terms of the Order and the costs of doing so will be billed to the owner or occupier of the Premises, and if unpaid by December 31 in the year in which the owner or occupier failed to take the required action under the Order, will be added to and form part of the property taxes on the property owner's Premises.
- (5) If a Fire Rescue Department Order is issued under section 14(2), the owner or occupier of a Premises may appeal to the Fire Chief in writing within seven (7) days after receipt of the Order and the Fire Chief will promptly investigate the appeal and, in writing, either affirm, modify or revoke the Fire Rescue Department Order issued under section 14(2).

Securing of Vacant Buildings, Structures and Properties where Fire Hazard

- (6) If directed by the Fire Chief or Officer, a property owner shall secure a vacant Building, Structure or property which contains a fire hazard or has been used or occupied so as to create a fire hazard, in a manner approved by the Fire Chief or Officer, which shall include, but not be limited to one or more of the following:
 - (j) boarding up the Building or Structure;
 - (k) fencing; or
 - (l) supplying twenty-four (24) hour security services by a licensed security company.
- (7) Should the property owner fail to undertake the securing of any Building, Structure or property as required in accordance with section 14(4), the City will carry out the work and the costs of doing so will be billed to the property owner and, if unpaid by December 31st in the year in which the property owner failed to take the required action, will be added to and form part of the property taxes on the property owner's property.

PART 4 – INSPECTIONS UNDER FIRE SERVICES ACT

15. Frequency of Inspections Delegated

- (1) The authority and duty of the Council under the *Fire Services Act* to establish, revise and implement a regular system of inspections of hotels, public buildings, churches theatres, halls, or other Buildings used as a place of public resort in the City is delegated to the Fire Chief and for this purpose the Fire Chief is delegated the authority to establish a system of regular inspections which will provide different frequencies of inspection depending on a building's National Building Code building classification, its use, age and fire risk assessment.
- (2) The Fire Chief must report to Council as and when requested by Council on the inspection system created and implemented under section 15(1) of this Bylaw.

PART 5 – FIRE AND LIFE SAFETY EQUIPMENT AND STANDARDS

16. Fire Drills

- (1) The owner or occupier of a hotel, hospital, community care facility or other Building with sleeping accommodation and used for the care of persons, must adopt, and have employees in the Building practice a fire drill system in accordance with the *Fire Code*.
- (2) The owner or occupier of a school, child care facility, children's home or other institution for children's education or care, shall adopt and have all persons in these Premises practice a fire drill system in accordance with the *Fire Code*.

17. Fire Safety Plans

- (1) The owner or occupier of a Building or Structure that has a Fire Alarm System shall submit annually in a form acceptable to the Fire Chief a Fire Safety Plan.
- (2) The owner or occupier of a Building or Structure who has submitted a Fire Safety Plan to the Fire Chief shall each year, before the expiry of one (1) year from the last approval of Fire Safety Plan, revise it and resubmit it to the Fire Chief if any changes are necessary as a consequence of changes to the Building, utilities or Fire and Life Safety Equipment.
- (3) The owner or occupier of a Building or Structure who has submitted a Fire Safety Plan to the Fire Chief must post a notice visible to all occupants of the Building or Structure of the location where a copy of the current Fire Safety Plan may be reviewed by the occupants.

18. Pre-Incident Plan

- (1) An owner of a Building without a Fire Alarm System, other than a Single Dwelling Unit, duplex or triplex, shall submit annually in a form acceptable to the Fire Chief a current Pre-Incident Plan.
- (2) The owner of a Building or Structure who has submitted a Pre-Incident Plan to the Fire Chief shall each year, before the expiry of one (1) year from the last approval of this Pre-Incident Plan, revise it and resubmit it to the Fire Chief if any changes are necessary as a consequence of changes to the Building, utilities or Fire And Life Safety Equipment.

19. Smoke and Fire Alarms and Sprinklers

- (1) Where required by the *Building Code*, an owner or occupier of a Building shall install, or cause to be installed, Sprinkler Systems, fire alarms and Smoke Alarms in accordance with the *Building Code* Standards.

20. Containers for Collection of Combustible Refuse

- (1) All containers used for the collection of Combustible Refuse in quantities exceeding five cubic feet shall be constructed of solid sheet non-combustible material.
- (2) Each container referred to in section 20(1) shall have easy closing lids that must be operational at all times. Lids may be constructed of heavy plastic.
- (3) Containers referred to in section 20(1) shall be located at least ten feet from any Building or fuel supply tank unless otherwise approved by the Fire Chief.
- (4) Containers that are intended for temporary collection of combustible Construction Material are exempt from section 20(2) and 20(3) of this Bylaw.

21. Storage of Flammable or Combustible Materials

- (1) No person shall store clean up rags or shop towels for products subject to spontaneous combustion except in a non-combustible container referred to in section 20(1) with tight fitting self-closing metal lid.
- (2) No person shall allow lids to remain open on any container referred to in 20(1) that contains clean-up rags or shop towels that are subject to spontaneous combustion.
- (3) An owner or occupier of a Premises shall store flammable or Combustible Liquids or products in accordance with this Bylaw and the *Fire Code*.

22. Fuel Tanks for Flammable or Combustible Liquids

An owner or occupier of the Premises may not undertake installation, removal, repair or upgrade to an underground or aboveground fuel oil tank of any size over 2500 litres (550 gal) or install, remove, replace or repair fuel distribution piping or dispensing equipment unless the owner or occupier of the Premises first obtains a permit from the Fire Rescue Department in the form attached to and forming part of this Bylaw as Schedule "G".

23. Exit and Fire Doors

- (1) The owner or occupier of a hotel, public Building, church or Building to which the public is invited shall ensure that the smoke and fire doors are kept closed when not in use for access unless they are automatically controlled to close by a system approved by the Fire Chief.
- (2) No person shall alter or install exit doors in a church, hotel, public Building or Building to which the public is invited unless they open freely outward and the alterations or installations are approved by the Fire Chief.
- (3) No person shall install locking devices on any required exit doors in a hotel, public Building, church or Building to which the public is invited unless the locking devices are approved by the Fire Chief.

24. Exit and Access Requirements

- (1) No person shall install a fire lane gate without review and approval by the Fire Rescue Department prior to installation.
- (2) No owner or occupier of a Premises shall block any primary or secondary vehicular access with a gate without review and approval by the Fire Rescue Department prior to installation.
- (3) The owner or occupier of a hotel or public Building shall install or cause to be installed in all main halls and at the intersection of all cross halls of the hotel or public Building conspicuous signs indicating the means of exit where required by the *Building Code* and in accordance with the *Building Code*.
- (4) The owner or occupier of a hotel or public Building shall post or cause to be posted in each room a conspicuous notice describing the means of exit, with instructions to be followed in the event of fire where required by the *Building Code* and in accordance with the *Building Code*.
- (5) An owner or occupier of a hotel or public Building shall ensure that the means of exit are illuminated where required by the *Building Code* and in accordance with the *Building Code*.
- (6) No person shall sit, stand, place, or leave any article or thing or matter in such a manner as to interfere with the means of ingress and egress inside or outside any Building.

25. Fire and Life Safety Equipment Orders

If the owner or occupier of a hotel or public Building fails to provide, keep in good repair, alter or improve a means of exit, or fire and life safety equipment required by Part 5 of this Bylaw, an Officer may issue to the owner or occupier of the hotel or public Building a written Fire Rescue Department Order requiring that the owner or occupier of the hotel or public Building take action to meet the requirements of Part 5 of this Bylaw within a specified period of time.

26. Evacuation or No Occupancy Order

- (1) The Fire Chief or Fire Prevention Officer may issue a Fire Rescue Department Evacuation Order in the form shown in Schedule "D" attached to and forming part of that Bylaw to an owner or occupier of a Building, Structure or area to evacuate the Building, Structure or area immediately, if the Fire Chief or Fire Prevention Officer believes there is an imminent and serious danger to life or property of the occupants or of a panic arising from a fire hazard or risk of explosion.
- (2) The Fire Chief or Fire Prevention Officer may post a notice on any Building or Structure or area warning that Occupancy of the Building, Structure or area may be hazardous or that there is "no occupancy" of the Building, Structure or area due to a fire hazard, and the notice shall be in the form shown in Schedule "C" attached to and forming part of this Bylaw.
- (3) No person shall remove, alter, or deface any notice posted pursuant to this Bylaw.

- (4) No person shall remain in a Building or Structure that has been ordered evacuated or not to be occupied in accordance with an Order under sections 26(1) or 26(2) Fire Rescue Department without prior approval and permission by the Fire Chief or Fire Prevention Officer.

27. Fire Protection Technician's Obligations

Fire Protection Technicians when servicing Fire and Life Safety Equipment will:

- (a) notify the Fire Rescue Department prior to any service, test, repair, maintenance, adjustment, alteration or installation of a sprinkler standpipe or Fire Alarm System, and prior to any sprinkler standpipe or Fire Alarm Systems or part of those systems being taken out of service; and,
- (b) after any required servicing of Life and Fire Safety Equipment attach to the Life and Safety Equipment a service tag approved by Fire Chief.

28. Fire Alarm Systems

Contact Persons for Fire Alarm Systems

- (1) An owner or occupier of a Building or Structure at which a Fire Alarm System is installed shall, on the same day on which the Fire Alarm System becomes operational, submit to the Fire Rescue Department a list of emergency Contact Persons in the form shown on Schedule "B" attached to and forming part of this Bylaw.
- (2) The owner or occupier of a Building or Structure at which a Fire Alarm System is installed shall inform the Fire Rescue Department of any changes to the information about the Monitoring Service or Contact Persons by notice in writing immediately when changes to this information arise.
- (3) The owner or occupier of a Building or Structure at which a Fire Alarm System has been installed shall ensure that the Contact Persons whose names are provided pursuant to section 28(2) are persons who are:
 - (a) available to receive telephone calls from the Fire Rescue Department or Monitoring Service in the event that the alarm system at the owner's or occupier's Building or Structure is activated;
 - (b) able to attend at the address of the owner's or occupier's property within thirty minutes of being requested to do so by the Fire Rescue Department or Monitoring Service;
 - (c) capable of gaining access to the owner's or occupier's Building or Structure where the Fire Alarm System has been activated; and,
 - (d) capable of operating the Fire Alarm System and able to secure the owner's or occupier's Building or Structure where the Fire Alarm System has been activated.

- (4) An owner or occupier of any Building or Structure at which a Fire Alarm System has been installed shall notify the Fire Rescue Department immediately of any False Alarm incident.
- (5) When a Fire Alarm System has been activated and the owner or occupier of the Premises at which the Fire Alarm System has been activated or that person's Contact Person cannot be reached or is unable to attend the Premises, the Fire Rescue Department will forcibly enter the Building at which the Fire Alarm System is activated to suppress a fire, or determine the cause of the alarm. The Fire Rescue Department will secure the Building or provide 24-hour security until the Building can be secured. The owner or occupier will be charged the fee for the cost of security or securing the Premises as prescribed in Schedule "A" attached to and forming part of this Bylaw.
- (6) No owner or occupier of a Building or Structure at which a Fire Alarm System has been installed shall service, test, repair, adjust, alter or install any parts or items to the Fire Alarm System that might activate a False Alarm without first notifying the Fire Rescue Department.
- (7) No owner or occupier of a Building or Structure where a False Alarm has been activated or that person's Contact Person shall leave the Premises unless the problem that gave rise to the False Alarm is identified and corrected or security by a security company is posted until such time as the problem giving rise to the False Alarm is identified and corrected.

PART 6 – BURNING PERMITS

29. Open Burning

- (1) Fires and Open Burning set for the purpose of training Members and all fires located at the Nanaimo Fire Training Centre are exempt from this section of the Bylaw.
- (2) No person shall ignite any Open Burning fire or cause or permit any Open Burning fire to be ignited at any time unless the person first obtains a Burning Permit.
- (3) Where, in the opinion of the Fire Chief, adverse atmospheric conditions do not permit, or are not conducive to, the ready dissipation of smoke, the Fire Chief may impose a general ban on all Open Burning for the duration of the said adverse condition.
- (4) No person shall cause, allow or permit Cooking Fires in any City Park contrary to a general burning ban.
- (5) No person shall cause, allow or permit any Open Burning in any City Park contrary to signage banning such Open Burning and without a Burning Permit and written permission from Nanaimo Parks, Recreation and Culture.

30. Burning Permits

- (1) Burning Permits may be issued, cancelled or suspended solely at the discretion of the Fire Chief or an Officer.
- (2) Burning Permits may be issued for an Open Burning fire:
 - (a) by telephone for burning organic yard waste such as garden refuse, pruning, and wood branches on lots that are one (1) acre in size or greater or lots located on Protection Island;
 - (b) for special events in a form prescribed in Schedule "E" attached to and forming part of this Bylaw.
- (3) No person who has been issued a Burning Permit, for an Open Burning fire on a lot that is one (1) acre in size or greater or a lot on Protection Island, shall ignite or maintain a fire except on Fridays and Saturdays from sunrise to sunset during the period from April 01 to April 30th and November 1st to November 30th of each year.
- (4) No person who has been issued a Burning Permit for a special event shall ignite or maintain a fire:
 - (a) except on the dates and times permitted on the Permit;
 - (b) contrary to the permit conditions.
- (5) No persons shall:
 - (a) maintain an Open Burning fire greater than one and half (1.5) metres across in size;
 - (b) locate an Open Burning fire less than three (3) metres from any combustibles; and
 - (c) fuel the Open Burning fire except by hand feeding it.
- (6) No person shall cause, allow or permit open burning of construction materials, stumps, land clearing materials and debris or household garbage.
- (7) No person possessing a Burning Permit shall maintain an Open Burning fire without keeping a competent person at all times in charge of such fire until such times as the fire is completely extinguished and without providing the competent person with sufficient equipment in order to prevent the fire from getting out of control or causing damage or becoming dangerous to life or property.

PART 7 – FIRE HYDRANTS AND FIRE CONNECTIONS

31. General Requirements

- (1) The owner of a Private Hydrant must request a City of Nanaimo Hydrant Identification Number from the Fire Rescue Department and must clearly label the Private Hydrant with the Identification Number.
- (2) All service work will be identified by the use of the hydrant identification number.

- (3) During construction, servicing or repairs, the owner of a Private Hydrant and contractors for such owners shall ensure that all fire hydrant conditions affecting fire safety such as fire hydrants temporarily out of service, low water volumes or pressures are made known to the Fire Rescue Department immediately.
- (4) All Private Hydrants which are out of service for repair, or not yet in service, must be wrapped with burlap or black polyethylene plastic sheeting.
- (5) The owner or contractor for the owner of a Private Hydrant must notify the Fire Rescue Department immediately when a Private Hydrant has either been taken out of operation or put back into operation.
- (6) No person shall place, leave or allow any vehicle, article, thing or other matter to interfere with access to or to be located within one (1) metre of a fire hydrant or fire connection.
- (7) Should any matter or thing be located within one (1) metre of a fire hydrant or fire connection and is or could cause interference with access to the fire hydrant or connection, the Fire Rescue Department may cause the matter or thing to be removed by any Member or Peace Officer or any contractor immediately during an Incident, or if not during an Incident, within a time specified in an Order in the form attached as Schedule "C" to this Bylaw and served on the owner or occupier of the property where the matter or thing is located.

32. Maintenance & Inspections

- (1) The owner of every Private Hydrant shall have all components of the hydrant inspected, serviced and tested by a qualified Fire Protection Technician not less than once a year and the Fire Hydrant Service Report form attached to and forming part of this Bylaw as Schedule "F" must be submitted to the Fire Rescue Department within thirty (30) days of the Private Hydrant servicing.
- (2) Records of Private Hydrant inspections and servicing must be kept by the owner or contractor for three (3) years.
- (3) All fire hydrants in the City of Nanaimo will be painted, red with yellow top and caps.
- (4) The owner of a property adjacent to a fire hydrant or on which a Private Hydrant is located must:
 - (a) maintain, clear and keep unobstructed an area having a radius of one (1) metre around every hydrant;
 - (b) keep hydrants clear of ice, snow, shrubs, trees, Structures and other obstructions; and,
 - (c) clearly identify their locations.

33. Service After Each Use

The owner of a Private Hydrant is responsible to conduct or have conducted the following minimum inspection requirements after each use:

- (a) examine the exterior for broken, cracked or missing parts;
- (b) check to ensure that the hydrant hose ports are the proper elevation and facing a direction for the most efficient use;
- (c) check to ensure that the hydrant is not obstructed by tall grass, shrubbery or other items;
- (d) check for worn, rusted or obstructed threads, which may hamper efficient use; and,
- (e) inspect hydrant barrels to determine if water has been accumulated as a result of leaking main valve, plugged or damaged drain valve.

34. Semi-Annually Inspection

The owner of a Private Hydrant is responsible to conduct or have conducted the following minimum inspection requirements semi-annually:

- (a) examine the exterior for broken, cracked or missing parts;
- (b) check to ensure that the hydrant hose ports are the proper elevation and facing a direction for the most efficient use;
- (c) check to ensure that the hydrant is not obstructed by tall grass, shrubbery or other items;
- (d) check for worn, rusted or obstructed threads which may hamper efficient use;
- (e) inspect hydrant barrels to determine if water has been accumulated as a result of leaking main valve, plugged or damaged drain valve;
- (f) check for non-drainage of hydrant, leakage past valve seat, plugged drains; and,
- (g) after winter, the hydrant should be checked for damage caused by frost, ground heave, snow, road salt or sand.

35. Annually Servicing

The owner of a Private Hydrant is responsible to conduct or have conducted the following minimum inspection requirements annually:

- (a) hydrants shall be flushed with main valve and outlet valves fully open until the water runs clear of any visible debris; and,
- (b) check the operation of the main line valve by closing the isolating valve.

36. Three Year Servicing

The owner of a Private Hydrant is responsible to conduct or have conducted the following inspection every three (3) years:

- (a) disassemble the hydrant and check for worn or broken parts and leaks;
- (b) lubricate all external and internal working parts during reassembly;
- (c) check water pressure; and,
- (d) reopen main line valve and check to see if hydrant operates and close hydrant valve.

PART 8 – STREET ADDRESSES

37. Civic Street Numbers

- (1) An owner or occupier of a Building or Structure must ensure that the civic address for the property at which the Building or Structure is located is posted so as to be clearly visible from the road using numbers that shall be a minimum of 7.63 millimeters (3 inches) in height and of a colour that contrasts with a surface on which they are mounted.
- (2) The owner or occupier of a commercial or multi-residential use property shall ensure that the unit number for each individual unit within a commercial or multi-residential use property are posted in a visible location at the entry to each unit, are a minimum of 7.63 millimetres (3 inches) in height and of a colour that contrasts with the surface on which they are mounted.
- (3) The owner or occupier of a multi-residential complex shall post a site plan at the main driveway entry to the complex which shall be clearly visible upon entry to the complex and indicate the number of each unit and the location of access to each unit within the complex.

PART 9 – INTERPRETATION AND PENALTIES

38. Schedules

- (1) The schedules in this Bylaw form part of this Bylaw and are enforceable in the same manner as this Bylaw.
- (2) Council authorizes Schedule "A", "B", "C", "D", "E", "F" and "G" to be established by Resolution.

39. Severability

In the event that any portion of this Bylaw is declared ultra vires by a Court of competent jurisdiction, then such portion shall be deemed to be severed from the Bylaw with the intent that the remainder of the Bylaw shall continue in full force and effect.

40. Penalties and Enforcement

- (1) A person who contravenes, violates or fails to comply with any provision of this Bylaw, or who suffers or permits any act or thing to be done in contravention or violation of this Bylaw, or who fails to do anything required by this Bylaw, commits an offence and shall be liable upon conviction, to a fine of not more than \$10,000.00, or, if an information is laid by means of a ticket, in accordance with the procedures set out in the *Offence Act* to a fine not less than that prescribed in Schedule "A" of this Bylaw for the offence, the cost of prosecution and any other penalty or order imposed pursuant to the *Community Charter* (British Columbia), or the *Offence Act* (British Columbia), as amended from time to time.
- (2) Each day a violation continues to exist shall constitute a separate offence.

41. Repeal

The "FIRE PROTECTION AND CONTROL BYLAW 1991 NO. 3879" and amendments thereto are hereby repealed.

PASSED FIRST READING _____
PASSED SECOND READING _____
PASSED THIRD READING _____
ADOPTED _____

MAYOR

MANAGER
LEGISLATIVE SERVICES

SCHEDULE "A"**FINES AND FEES****FINES**

Section	Description	Amount In Dollars (\$)
13(1)	Drive over fire hose	200.00
13(2)	Failure to assist	250.00
13(3)	Failure to obey evacuation order	250.00
13(5)	Failure to secure a premise after fire	200.00
13(8)	Failure to comply with direction	250.00
13(9)	Interfere with fire equipment	250.00
0	Building in state of disrepair	200.00
0	Endanger life or property	200.00
0	Allow flammable conditions	200.00
0	Allow a fire hazard to exist	200.00
(e)	Failure to repair	200.00
(f)	Failure to remove or destroy	200.00
(g)	Failure to alter the use or occupancy	200.00
(h)	Failure to remove materials	200.00
(i)	Failure to remove or take precautions	200.00
14(4)	Failure to Secure Premises where Fire Hazard	250.00
16(1)	Failure to practice fire drill	200.00
16(2)	Failure to practice fire drill	200.00
17(1)	Failure to submit Fire Safety Plan	200.00
17(2)	Failure to resubmit Fire Safety Plan	200.00
17(3)	Failure to notify Fire Safety Plan location	200.00
18(1)	Failure to submit Pre-Incident Plan	200.00
18(2)	Failure to resubmit Pre-Incident Plan	200.00
19(1)	Failure to install Smoke alarm/s	200.00
19(1)	Failure to install Sprinkler	200.00
19(1)	Failure to install fire alarm	200.00
20(1)	Failure to store combustible materials in proper container	200.00
20(2)	Container without lid	200.00
20(3)	Store within 10 feet of building or fuel tank	200.00
21(1)	Failure to supply proper container	200.00
21(2)	Failure to close lids on container	200.00
21(3)	Improper storage contrary to Fire Code	200.00
22(1)	Failure to obtain permit	250.00
23(1)	Failure to keep doors closed	100.00
23(2)	Alter exit door/s without approval	200.00
23(3)	Install locking device	200.00
24(1)	Install access gate without approval	200.00
24(2)	Secure without approval	200.00
24(3)	Failure to post exit signs	200.00
24(4)	Failure to post exit plan	200.00
24(5)	Failure to illuminate exit sign	200.00
24(6)	Interfere with egress or access	200.00

26(3)	Alter or deface notice posted	200.00
26(4)	Failure to evacuate	250.00
27(1)(a)	Failure to notify before servicing	200.00
27(1)(b)	Failure to tag Life and Fire Safety Equipment	200.00
28(1)	Failure to supply contact person information	200.00
28(2)	Failure to notify of changes to information	200.00
28(3)	Failure to ensure Contact Person is able	200.00
28(4)	Failure to notify of false alarm	200.00
28(6)	Failure to notify prior to servicing	200.00
28(7)	Failure to remedy false alarms	250.00
29(2)	Open burning Fire without permit	200.00
29(3)	Burning contrary to general fire ban	200.00
29(4)	Cooking fires in City Park	200.00
29(5)	Open burning fire in City Park.	200.00
30(3)	Open burning outside permitted times	200.00
30(4)	Emission of offensive smoke or ash	200.00
30(5)(a)	Fire too large	200.00
30(5)(b)	Fire too close to combustibles	200.00
30(5)(c)	Fire fuel not hand fed	200.00
30(6)	Burning prohibited materials	200.00
30(7)	Fire Unattended	200.00
31(1)	Failure to mark ID on hydrant.	200.00
31(3)	Failure to notify before servicing or repairing hydrant	200.00
31(4)	Failure to cover hydrants	200.00
31(5)	Failure to notify when hydrant non-operational	200.00
31(6)	Interfere with access to hydrant	200.00
32(1)	Failure to submit report	200.00
32(2)	Failure to keep records	200.00
32(3)	Hydrant not correct colors	200.00
32(4)	Failure to keep hydrant unobstructed	200.00
33(1)	Failure to follow service requirements	250.00
34(1)	Failure to conduct Semi Annual Inspection	250.00
35(1)	Failure to conduct Annual Inspection	250.00
36(1)	Failure to conduct three year service	250.00
37(1)	Failure to post civic address	200.00
37(2)	Failure to post unit number	200.00
37(3)	Failure to post site plan	200.00

Fees

Section	Description	Fee in Dollars (\$)
10(1)(a)	File Searches	150.00 per file
10(1)(b)	Special Property Inspection	100.00
10(1)(c)	Fire Extinguisher Course Fee	15.00
10(1)(d)	Order Re-Inspection Fee	100.00
10(1)(f)	False Alarm Fee	300.00
10(1)(g)	Obtaining a Burning Permit	50.00
10(1)(h)	Obtaining a Fuel Tank Removal Permit	100.00
10(1)(h)	Obtaining an above ground Fuel Tank Permit under 25,000 litres	200.00
10(1)(h)	Obtaining an above ground Fuel Tank Permit over 25,000 litres	.002 cents per litre
10(1)(h)	Obtaining a below ground Fuel Tank Permit under 5,000 litres	100.00
10(1)(h)	Obtaining a below ground Fuel Tank Permit between 5,001 and 25,000 litres	250.00
10(1)(h)	Obtaining a below ground Fuel Tank Permit between 25,001 and 50,000 litres	350.00
28(5)	False Alarm Entry Where No Contact Person	300.00

SCHEDULE "B"

EMERGENCY CONTACT PERSON FORM

Owner Name: _____

Occupier Name (if any): _____

Address of *Premises* with Fire Alarm System: _____

Owner Telephone Number: _____

Occupier Telephone Number (if any): _____

First Emergency Contact Person Name: _____

Relation to Owner or Occupier: _____

Emergency Telephone Number: _____

Second Emergency Contact Person Name: _____

Relation to Owner or Occupier: _____

Emergency Telephone Number: _____

Third Emergency Contact Person Name: _____

Relation to Owner or Occupier: _____

Emergency Telephone Number: _____

Please print clearly the above information.

SCHEDULE "C"

ORDER FORM

NANAIMO FIRE RESCUE DEPARTMENT ORDER

TO _____

Having inspected the *Premises* _____ by you to
(owned or occupied)
wit: _____ located at _____, British Columbia
(type of occupancy) (civic address)
and legally described as _____ (the "Premises"),
(legal description)
on the _____ day of _____,
(Day) (Month) (Year)

I, _____, being the Fire Chief or a Fire Prevention Officer with the Nanaimo
(Name of Officer)
Fire Rescue Department FIND THAT:

THEREFORE, pursuant to the authority vested in me and under the "Fire Protection and Life Safety Regulation Bylaw 2010 NO. 7108" you are **HEREBY ORDERED TO:**

The action or work specified in this Order must be completed within _____ days after receipt of this Order. Should any requirement of this Order not be carried out or completed within the time prescribed, a \$100.00 fee shall be billed to the Owner or Occupier for any subsequent inspection required.

Owner or Occupier Name: _____

Fire Chief or Fire Prevention Officer: _____

I, Served a copy of this Order on _____ at _____,
(Owner or Occupier) (Location)

BRITISH COLUMBIA on _____,
(Date)

Signed: _____
Fire Prevention Officer

Signed: _____
Owner or Occupier acknowledging
receipt of Order

SCHEDULE "D"

EVACUATION ORDER

Evacuation Order

By Order of the Nanaimo *Fire Rescue Department*

The building located at _____, Nanaimo,
British Columbia (Civic Address)

and legally described as _____, (the "*Premises*") is
ordered to be evacuated under the City of Nanaimo Fire Protection and Life Safety Regulation
Bylaw 2010, No. 7108 Section 26.1.

(Reason for Evacuation)

NO PERSON shall enter this building without the authorization of the *Fire Chief*.

Date of Posting _____

No person shall remove, alter or deface or cause to be removed altered or defaced, this notice
as per Section 26.3 of the City of Nanaimo Fire Protection and Life Safety Regulation Bylaw
2010, No. 7108.

Order posted at the *Premises* on:

Fire Chief or Fire Prevention Officer

(Date)

SCHEDULE "E"

BURNING PERMIT

Burning Permit \$50.00

- ☐ Special Event Burning Permit ☐ Cooking Fire
☐ Ceremonial Fire Permit ☐ Campground ☐ Other

Date: _____, Authority granted to: _____ Phone: _____
("Hereinafter the Permittee")

Fire Location and Event: _____

Ceremonial Training by: _____ Tribal Name: _____
("Elder's Name")

Number of Fires: _____ Permit valid From: _____ to: _____
Inclusive ("Date & Time") ("Date & Time")

Subject to the following conditions:

The Permit Holder shall be responsible for the fire/s authorized by this permit and shall during light-up and for the duration of the fire, undertake the following:

- Provide one adult person equipped with a garden hose connected to a water source and shovel suitable to effectively safeguard the fire.
- Shall insure the safeguarding forces to extinguish the fire/s authorized by this permit until the fire/s have been completely extinguished.
- Shall not start or rekindle fire/s during windy weather and shall take such extra precautions as are necessary to prevent fire from escaping during windy periods.
- Shall totally extinguish all fires authorized by this permit on or prior to the expiry date of this permit; or shall extinguish them forthwith upon suspension or cancellation of the permit; or when instructed to do so by the *Fire Chief* or designate.
- Shall not allow burning to continue, where that burning, in the opinion of the *Fire Chief*, is a nuisance because of the emission of smoke and ash.
- Shall be responsible for all costs incurred to suppress any fire that escapes or threatens to escape from burning or that causes a nuisance because of smoke or ash.
- In the event of the Permit Holder failing to suppress any fire to the satisfaction of the *Fire Chief*, the *Fire Chief* may cause such fire/s to be immediately suppressed.
- It is prohibited to burn rubber tires, tar, asphalt shingles, or any other like substances, which produce heavy black smoke on or in any fire authorized by this permit.
- This permit is subject to cancellation or suspension at any time at the discretion of the *Fire Chief* or an *Officer* of *Nanaimo Fire Rescue Department* where there is a violation of any condition under which the permit was issued.

I have read and understand the conditions of this burning Permit.

Permit Holder _____ (Signature)

Issued By _____ Title _____ *Nanaimo Fire
Rescue Department*

SCHEDULE "F"

PRIVATE HYDRANT SERVICE REPORT

Hydrant Service Report

Fire Protection Technician: _____

Owner: _____

Hydrant No.: _____ Test Date: _____

Location: _____

Main Size: _____ Flow Rate: _____ Ports: _____

Out of Service: ☐ Yes ☐ No

Comments: _____

Pressure: _____ Make: _____ Distance to isolation valve: _____

Branch valve operated: ☐ Yes ☐ No Service top end: ☐ Yes ☐ No

Serviced bottom end: ☐ Yes ☐ No Service threads: ☐ Yes ☐ No

Flushed out: ☐ Yes ☐ No Pressure tested: ☐ Yes ☐ No

Greased: ☐ Yes ☐ No Drains properly: ☐ Yes ☐ No

Painted: ☐ Yes ☐ No Weed eaten: ☐ Yes ☐ No

Comments: _____

Further work recommendation: _____

SCHEDULE "G"

APPLICATION TO REMOVE OR INSTALL FUEL TANKS

Application to Remove and/or Install a Fuel Storage Tank and Piping
COMMERCIAL PROPERTY

The applicant hereby applies for permission to (check all that apply):

Remove	Number of Tanks to be removed: <input type="text"/>	Tank and Piping
<input type="checkbox"/> Above Ground,	<input type="checkbox"/> Underground,	<input type="checkbox"/> Piping Only, <input type="checkbox"/> Tank Only

Install <input type="checkbox"/>	Size of Tank(s) to be Installed (in litres): <input type="text"/>	Tank and Piping
<input type="checkbox"/> Above Ground,	<input type="checkbox"/> Underground,	<input type="checkbox"/> With Piping, <input type="checkbox"/> Tank Only

In accordance with the particulars and plans submitted herewith, it is understood that completion of this form constitutes an application only and that the work applied for will not be commenced until a permit to install and/or remove has been issued.

Civic Address: _____
Full Name of Registered Owner: _____
Mailing Address of Registered Owner: _____
Name of Contractor/Installer: _____
Address of Contractor: _____
Phone _____ Number _____ of _____ Contractor: _____
Name of Applicant (if different): _____

City of Nanaimo - Planning Department	
Date Application Received: _____	
Approved: YES <input type="checkbox"/>	or NO <input type="checkbox"/>
Comments: _____	
Signature: _____	

SCHEDULE "G"

**Application to Remove and/or Install a Fuel Storage Tank and Piping
COMMERCIAL PROPERTY**

1. Fill out application form and fax or deliver to the Fire & Loss Prevention Division of Nanaimo Fire Rescue.
2. The Fire & Loss Prevention Division will process application within seven (7) business days and will contact the applicant to arrange for pick-up of the permit(s).
3. Applicant will pay for permit(s) at the time of issue.
4. On-site inspection is required during tank removal by the *Fire Rescue Department*.

Permit Costs,

Permit for Underground Fuel Storage Tank Removal per Tank = \$100.00

Permit for the Installation of Above Ground Fuel Storage Tanks: 2,500 Litres (550 Gallons) to 25,000 Litres (6640 Gallons) = \$200.00. Each Litre over 25,000 = .002cents per litre

Permit for the Installation of Below Ground Fuel Storage Tanks -up to 5,000 Litres = \$100.00, up to 25,000 Litres = \$250.00, Up to 50,000 Litres = \$350.00



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www.bc.lung.ca

January 20, 2011

Mayor John Ruttan and Members of Council
City of Nanaimo
455 Wallace St
Nanaimo, BC V9R 5J6

☐ Council
☒ Committee *F/Plow*
☒ Open Meeting
☐ In-Camera Meeting
Meeting Date: *2011-JAN-31*

Dear Mayor Ruttan and Members of Council:

SUBJECT: *Smoke-Free Outdoor Public Places*

We are writing on behalf of the Heart and Stroke Foundation of BC & Yukon and the BC Lung Association, which make up the Clean Air Coalition of B.C. The Coalition's mission is to raise public awareness about the serious health risks of tobacco use and exposure to second-hand smoke. We are writing to encourage you to pursue legislated smoke-free environments in your municipality.

Increasingly, municipalities in BC and around the world are implementing smoke-free policies and bylaws. The most recent trend is to extend these smoking restrictions to outdoor public places as, contrary to long held public belief, second-hand smoke does not quickly dissipate in outdoor settings. Depending upon the specific situation, smoke levels generally do not decrease to the background level for fine particles or carcinogens until approximately 7 metres, or about 25 feet, from the source, even in outdoor settings.

The health hazards associated with second-hand smoke are well documented and irrefutable. In a 2006 report, the U.S. Surgeon General concluded that second-hand smoke causes cancer, coronary heart disease, and respiratory illnesses, and that there is no safe level of exposure to it. Health conditions, such as asthma, emphysema, high blood pressure and diabetes are exacerbated by even brief exposure to second-hand smoke.

Children in particular are more susceptible to these health problems associated with exposure to second-hand smoke since their lungs and respiratory systems are not yet fully developed. As such, banning smoking in places where children play, such as parks, playgrounds and beaches, is of even greater importance.

Cigarette litter also poses a health and environmental risk. Many people who smoke cigarettes routinely dispose of their cigarette butts on the ground. This litter may pose a potential fire hazard, especially in periods of dry weather. The litter leaches toxins into the ground and waterways which damages living organisms that are in contact with the toxins. Cigarette filters do not break down easily, resulting in costly clean up of this litter on a routine basis.

There is strong public support for expanding smoke-free laws in British Columbia. A BC Stats poll conducted for the Clean Air Coalition of B.C. in January 2008 for the *Imagine! A Smoke-Free BC* campaign, found that 73% of British Columbians support smoking bans in outdoor public places. Given that eighty-five percent of British Columbians aged fifteen and older do not use tobacco products, the balance in society is shifting to

.../2

support expanding more outdoor smoke-free environments. As the public becomes more aware of the health risks of exposure to second-hand smoke, they no longer accept the premise that breathing other people's smoke – even in outdoor settings – is a nuisance to be tolerated.

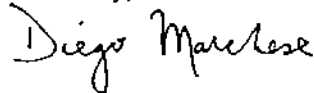
Moreover, scientific peer reviewed studies have concluded that comprehensive smoking bans save lives. Smoking bans are the impetus for many people to quit smoking, which in turn leads to lower levels of acute and chronic illnesses associated with smoking.

We have listed on the Clean Air Coalition of B.C. website the Provincial regulations on smoking bans in public places, as well as all municipalities in BC that have implemented smoke-free public places bylaws that exceed provincial regulations. This information can be found at http://www.cleanaircoalitionbc.com/ktf_smokefree_legislation.html. Outdoor public places where smoking has been banned in several municipalities, around which is a no-smoking buffer zone, are:

- Customer service area patios i.e. of bars and restaurants
- In parks, on playgrounds, on playing fields, in outdoor stadiums and other public gathering places where people sit or stand in close proximity, and on beaches
- At special events where people sit or stand within close proximity
- At public transit or vehicle for hire (i.e. taxi) stops

We would welcome the opportunity to discuss this matter with you further or assist in any way we can to implement a smoke free public places bylaw or strengthen an existing bylaw. We encourage you to contact our director, Jack Boomer at 250.721.4268 in Victoria or via email at jackboomer@shaw.ca.

Sincerely,



Diego Marchese
Chief Operating Officer
Heart and Stroke Foundation of BC & Yukon



Scott McDonald
President & CEO
BC Lung Association

cc. Gene Chin, Provincial Coordinator, Clean Air Coalition of B.C.

Good morning Joan
I am sending this as
a formal submission
to Mayor & Council.
I request confirmation
of its receipt as Council
Correspondence.
I further request response
on any action taken on
it by Council.
Thank you.
Gary

Public right to know

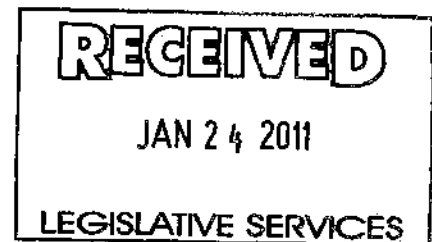
Like most citizens, I am appalled
at Council's decision to
"reimburse" Councillor
Bestwick's exorbitant and
unnecessary legal fees on the
"conflict of interest" allegations.

Now that they have done so,
we, the taxpayers whose money
actually paid for it, are entitled
to see the contents of the legal
opinions we paid for.

In fact, I call upon the City and
Mr. Bestwick to release the full
contents of all legal opinions
and pertinent staff reports
immediately to allow Nanaimo
citizens to judge for themselves the
scope of the "conflict of interest".

If this is not done within a week,
I am sure the local media
watchdogs will file "freedom
of information" requests to
finally shed light on this
disgraceful cover-up.

Gary Korpan



☐ Council
☒ Committee *F/PCOW*
☒ Open Meeting
☐ In-Camera Meeting
Meeting Date: *2011-JAN-31*