

CITY OF NANAIMO

BYLAW NO. 7427

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS Section 483 of the *Local Government Act* provides that Council may enter into a Housing Agreement, which may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement;

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

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

1. This Bylaw may be cited for all purposes as the City of Nanaimo "Housing Agreement Bylaw 2025 No. 7427".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule 'A', which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in the Agreement is legally described as LOT 1, SECTION 1, NANAIMO DISTRICT, PLAN EPP93752 (95 KENNEDY STREET).
3. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the City of Nanaimo, this Agreement shall be validly entered into as authorized by this Bylaw.

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

MAYOR

CORPORATE OFFICER

File: HA000015
Address: 95 KENNEDY STREET

SCHEDULE A

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND SECTION 219 COVENANT

THIS AGREEMENT is made the ____ day of _____, 202_

BETWEEN:

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

(the "**City**")

AND:

GRAHAM DREW MENEILLY
409 Nottingham Drive
Nanaimo, BC V9T 4T1

ALEXANDER MACDONALD MENEILLY
406 – 6715 Dover Road
Nanaimo, BC
V9V 1L8

(the "**Owner**")

WHEREAS:

- A. Under section 483 of the *Local Government Act*, the City may, by bylaw, enter into a Housing Agreement regarding the occupancy of housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of a municipality in respect of the use of land or construction on land;
- C. The Owner is the registered owner in fee simple of the Land as defined in this Agreement;
- D. The Owner intends to operate a Residential Shelter, as defined in the Zoning Bylaw, on the Land and wishes to secure a higher occupancy for the Residential Shelter by entering into a Housing Agreement pursuant to Section 6.21 of the Zoning Bylaw; and

- E. The City and Owner wish to enter into this Agreement to establish terms and conditions regarding the occupancy of the Residential Shelter as identified in the Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of one dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

1. DEFINITIONS

In this Agreement,

“**Agreement**” means this agreement, including its recitals;

“**Land**” means the parcel of land having the civic address of 95 Kennedy Street, Nanaimo, BC, and legally described as LOT 1, SECTION 1, NANAIMO DISTRICT, PLAN EPP93752, PID: 030-901-511.

“**Operator**” includes a person delegated by the Owner to operate the Residential Shelter as identified in the Agreement;

“**Residential Shelter**” means a residential shelter, as defined in the Zoning Bylaw, located on the Land; and

“**Zoning Bylaw**” means City of Nanaimo Zoning Bylaw 2011 No. 4500, as amended from time to time, and any enactment that may replace it.

2. MAXIMUM OCCUPANCY

The Residential Shelter must not be used as a residential shelter, or otherwise occupied, by more than ten (10) unrelated persons at one time.

3. ADMINISTRATION, MANAGEMENT AND NUISANCE

The Owner must ensure that the Residential Shelter is managed according to the following rules:

- a) the Land must remain clear of debris and refuse which would result in an unsightly premises;
- b) all landscaping, including yards, on the Land must be maintained;
- c) the Owner will not carry on, or do, or allow to be carried on or done on the Land anything that may be or become a nuisance to the City or the public;
- d) the Owner, if non-resident in the Residential Shelter, will delegate authority to an Operator. The Operator will be empowered to promptly respond to and address issues that may arise from the operation of the Residential Shelter. The Operator will be responsible to bring to the attention of the Owner any issues that arise in a timely manner. Ultimately the responsibility, management, and any delegation of authority related to the management and operation of the Residential Shelter will reside with the Owner;

- e) the Owner will undertake to operate or cause to be operated the Residential Shelter as a good neighbour ensuring that the operation of the Residential Shelter does not detract from the surrounding residents' right to peaceful enjoyment of their homes. The Owner or Operator will regularly seek and give due consideration to feedback received from the surrounding residents as to the operation and impact of the Residential Shelter. Should it be deemed necessary by the City, in its sole discretion, the Owner will enter into a Good Neighbour Agreement, developed and monitored jointly by the Owner, the Operator, and the City; and
- f) the Owner will comply or cause compliance with all laws that relate to this Agreement.

4. COMPLIANCE

The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is in compliance with this Agreement.

5. TERM

Subject to early termination in accordance with Section 6, the term of this Agreement will be for an initial term of one (1) year commencing on the date first written above on these Terms of Instrument and ending on the ___ day of ____ 202_. This Agreement will automatically be renewed on the same terms herein for a period of one (1) year, upon the expiry of the previous term, unless the City has issued written notice of default, as set out in section 6, and in the City's sole opinion the Owner has not taken reasonable steps to correct the default set out in the written notice.

6. TERMINATION

The Owner and City acknowledge and agree that:

- a) notwithstanding any provision to the contrary in this Agreement, if the Owner is in default of its obligations in this Agreement then the City may, by written notice to the Owner, require such default to be corrected within thirty (30) days after receipt of such notice or in the case of a default which cannot reasonably be cured within the thirty (30) day period, if the Owner does not take reasonable steps to commence to correct the defect within the said thirty (30) day period and thereafter diligently and continuously proceed with such correction;
- b) if within the thirty (30) days after receipt of such notice the default has not been corrected or reasonable steps to correct the default have not been taken, the City, without limiting any other right it might have, may withdraw the rights it has granted herein and terminate this Agreement. The City will provide to the Owner ninety (90) days' written notice of its intent to terminate the Agreement. The City will not be liable in any way to the Owner for any cost, damage, liability or loss suffered as a result of the termination of this Agreement;
- c) the Owner may at any time, by written notice to the City, terminate this Agreement as of a date specified in such notice; and
- d) notwithstanding termination under this section, the City will be entitled to proceed with the enforcement of any indemnity or other term or condition of this Agreement in satisfaction of any claim, loss, damage or expense of the City arising under this Agreement.

7. INDEMNITY

The Owner must indemnify, defend and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- a) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- b) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Land or Residential Shelter; or
- c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

8. RELEASE

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- a) construction, maintenance, repair, ownership, lease, license, operation or management of the Land or Residential Shelter under this Agreement; or
- b) except to the extent arising from the negligence or willful misconduct of the City or those for whom it is at law responsible, the exercise by the City of any of its rights under this Agreement.

9. CITY'S POWERS UNAFFECTED

This Agreement does not:

- a) affect, fetter or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Land;
- b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- c) affect or limit any enactment relating to the use or subdivision of the Land; or
- d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

10. AGREEMENT FOR THE BENEFIT OF THE CITY ONLY

The Owner and the City agree that:

- a) this Agreement is entered into only for the benefit of the City;
- b) this Agreement is not intended to protect the interests of the Owner, any future Owner, lessee, occupier, or user of the Land or the Residential Shelter.

11. NO PUBLIC LAW DUTY

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

12. TIME

Time is of the essence in this Agreement.

13. BINDING EFFECT

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

14. NO WAIVER

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

15. NO RELIEF

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

16. NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

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

17. TERMINOLOGY

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

18. ENTIRE AGREEMENT

This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

19. LAW APPLICABLE

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

20. PRIORITY

At the Owner's expense, the Owner must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Land.

21. NOTICE

Any notice to be given pursuant to this Agreement must be in writing and delivered personally or sent by registered mail. The addresses of the parties for the purpose of notice are the addresses on the first page of this Agreement and in the case of any subsequent owner, the address will be the address shown on the title to the Land in the Land Title Office. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is sent by mail, it will be considered given 5 days after mailing. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice for the purposes of this agreement must do so by delivery as provided in this section. A party may change its address for the purposes of this section by giving notice in accordance with this section.

22. EXECUTION IN COUNTERPARTS & ELECTRONIC DELIVERY

This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

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,)
_____)
_____)
Corporate Officer

GRAHAM DREW MENEILLY, authorized signatory:

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_____)

ALEXANDER MACDONALD MENEILLY, authorized signatory:

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