



THE CORPORATION OF THE CITY OF NORTH VANCOUVER

**“North Vancouver Recreation and Culture
Commission Establishing Bylaw, 2009, No. 8020”**

CONSOLIDATED FOR CONVENIENCE – JUNE 23, 2014

Amendment Bylaw, 2014, No. 8380	June 23, 2014
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THE CORPORATION OF THE CITY OF NORTH VANCOUVER

BYLAW NO. 8380

A Bylaw to establish the North Vancouver Recreation and Culture Commission pursuant to sections 14 and 143 of the *Community Charter*

The Council of The Corporation of the City of North Vancouver, in open meeting assembled, enacts as follows:

1. This Bylaw shall be known and cited for all purposes as “**North Vancouver Recreation and Culture Commission Establishing Bylaw, 2009, No. 8020, Amendment Bylaw, 2014, No. 8380**” (Schedule A - North Vancouver Recreation and Culture Commission Agreement).
2. **Execution of Documents**
The Mayor and City Clerk are authorized to execute the agreement entitled North Vancouver Recreation and Culture Commission Agreement, which is attached to this bylaw as Schedule A.
3. **North Vancouver Recreation and Culture Commission**
Upon execution and delivery of the North Vancouver Recreation and Culture Commission Agreement, the North Vancouver Recreation Commission is continued as the North Vancouver Recreation and Culture Commission.

READ a first time by the Council on the 9th day of June, 2014.

READ a second time by the Council on the 9th day of June, 2014.

READ a third time and passed by the Council on the 9th day of June, 2014.

RECONSIDERED and finally adopted by the Council, signed by the Mayor and City Clerk and sealed with the Corporate Seal on the 23rd day of June, 2014.

“Darrell R. Mussatto”

MAYOR

“Karla D. Graham”

CITY CLERK

**SCHEDULE A TO BYLAW 8380
NORTH VANCOUVER RECREATION AND CULTURE COMMISSION AGREEMENT**

This Agreement, dated for reference the 31st day of May, 2014

BETWEEN:

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER, 355 West Queens Road,
North Vancouver, British Columbia, V7N 4N5

(the "District")

AND:

THE CORPORATION OF THE CITY OF NORTH VANCOUVER, 141 West 14th Street, North
Vancouver, British Columbia, V7M 1H9

(the "City")

Witnesses that Whereas:

- A. The District and the City wish to establish the Commission for the purpose of providing intermunicipal recreation and arts services pursuant to section 14 of the *Community Charter*, SBC c. 26, 2003;
- B. The District and the City wish to delegate to the Commission the authority, on behalf of the District and the City, to plan, develop and conduct, within the approved funding of any budget year, comprehensive and balanced recreation and arts services in the District of North Vancouver and City of North Vancouver for people of all ages and abilities; and
- C. The District and the City are committed to the cooperative delivery of recreation and arts services to the residents of the District and the City and to the equitable sharing of the costs of delivery of those services as set out in this Agreement.

NOW THEREFORE the District and the City agree as follows:

PART 1

Definitions

1. In this Agreement, the following definitions apply:
 - (a) "Agreement" means this Agreement and all Attachments, which are deemed to be included as part of this Agreement;
 - (b) "Appointed Financial Officer" means either the Chief Financial Officer for the District or the Director of Finance for the City, whichever one has been appointed to act in this capacity by the District and the City by mutual agreement in writing, and on the reference date of this Agreement means the District's Chief Financial Officer;
 - (c) "Arts Grants" means municipal grants to not-for-profit organizations involved in arts and cultural activities in North Vancouver as set out in a formal written grants policy approved by the City Council and the District Council from time to time, subject to annual funding limits set out in the City and District budgets;

- (d) “Arts Services” means those arts and culture activities, programs and services that may be engaged in or offered by the Commission, as provided in the approved Commission budget from time to time, but does not include capital costs of the City and District public art programs;
- (e) “City” means the City of North Vancouver;
- (f) “City CAO” means the City’s chief administrative officer
- (g) “Commission” means the North Vancouver Recreation and Culture Commission;
- (h) “Commissioner” means a person duly appointed to the Commission pursuant to the terms hereof;
- (i) “Community Programs” means any community-oriented programs and services that are not included in the Recreation Services or the Arts Services, and that are or may be offered by a Service Provider through any Facility, and are not funded through Commission joint funding but rather are funded by the Facility Owner or by way of other funding sources;
- (j) “Core Facility” means any Facility, owned by the District or the City, that serves the residents of both the District and the City and is included in Appendix A hereto, as amended from time to time by the District and the City in accordance with section 19 herein;
- (k) “Director of Recreation and Culture” means the person hired by the Commission as director of the Commission under this Bylaw;
- (l) “District” means the District of North Vancouver;
- (m) “District CAO” means the District chief administrative officer;
- (n) “Facility” or “Facilities” means any facility in which Recreation Services, Arts Services, and Community Programs (if any), are provided to the residents of the District and/or the City;
- (o) “Facility Owner” means the District or City with respect to any Facility owned by, and located in, the District or the City, respectively;
- (p) “Partnering Agreement” has the meaning given to it under the *Community Charter*, SBC c. 26, 2003;
- (q) “Recreation Services” means those fitness, sport, social recreation, aquatic, arena and outdoor activity and other recreation programs and services that may be engaged in offered by the Commission, as provided in the approved Commission budget from time to time;
- (r) “Schedule of Facilities” means the list of Core Facilities attached hereto as Appendix “A”, as may be amended from time to time by the District and the City in accordance with section 19 herein; and
- (s) “Service Provider” means any public, not-for profit, or private organization responsible for delivering Community Programs at any Facility, and, if applicable, responsible for delivering Recreation Services or Arts Services at any Facility.

PART 2

THE COMMISSION

Mandate

2. The District and the City are committed to the joint delivery of quality recreation and arts services to residents of both municipalities, and mandate the Commission, on behalf of the District and the City, to:
 - (a) plan, develop, evaluate, and jointly and seamlessly deliver, within the approved funding of any budget year, an appropriate array of quality Recreation Services and Arts Services in the District of North Vancouver and City of North Vancouver to meet the needs of District and City residents regardless of age, ability, gender or economic status. In carrying out this mandate, the Commission will act in the best interest of the District and the City and in the best interests of residents of both municipalities;
 - (b) implement the North Vancouver Cultural Plan adopted by the City and the District in 2002 (or subsequent plans related to arts and culture approved by the District Council and the City Council) and to undertake periodic reviews of the said North Vancouver Cultural Plan; and
 - (c) administer the Arts Grants.

Powers, Duties and Functions of Commission

3. The parties agree that the powers, duties and functions of the Commission are as set out in the District's and City's companion North Vancouver Recreation and Culture Commission Delegation Bylaws No. 7988, 2014, and No. 8381, 2014, respectively, as amended from time to time.

North Vancouver Recreation and Culture Commission Delegation Bylaws

4. The City agrees that it will not adopt any bylaws to amend its Delegation Bylaw No. 8381, 2014, without first consulting with the District, and the District agrees that it will not adopt any bylaws to amend its Delegation Bylaw No. 7988, 2014, without first consulting with the City.

Director of Recreation and Culture

5. The District and the City agree that:
 - (a) the Commission is responsible for employing a person in the capacity of Director of Recreation and Culture in accordance with the District's and City's companion North Vancouver Recreation and Culture Commission Delegation Bylaws No. 7988, 2014, and No. 8381, 2014, respectively; and
 - (b) the powers, duties and functions of the Director of Recreation and Culture are as set out in the said Delegation Bylaws.

Composition of Commission

6. The Commission will consist of eleven (11) Commissioners.

Appointment of Commissioners

7. The District:
 - (a) at the first Council meeting in every December or as soon as practical thereafter,
 - (i) will appoint two (2) members of District Council to serve as Commissioners for a one-year term; and
 - (ii) may appoint one (1) alternate member of District Council who may, on behalf of an absent Commissioner appointed under 7(a)(i) above, take the place of, vote and generally act in all matters for the absent Commissioner; and
 - (b) at the inaugural meeting of Council following each municipal election, or as soon as practical thereafter, will appoint four (4) non-elected representatives to serve as Commissioners for a three-year term.
8. The City:
 - (a) at the first Council meeting in every December or as soon as practical thereafter,
 - (i) will appoint two (2) member of City Council to serve as Commissioners for a one-year term; and
 - (ii) may appoint one (1) alternate member of City Council who may, on behalf of an absent Commissioner appointed under 8(a)(i) above, take the place of, vote and generally act in all matters for the absent Commissioner; and
 - (b) at the inaugural meeting of Council following each municipal election, or as soon as practical thereafter, will appoint two (2) non-elected representatives to serve as Commissioners for a three-year term.
9. The Board of School District #44 will be requested to appoint one member of the Board to serve as Commissioner for a one-year term.
10. For certainty, the term of any Commissioner appointed pursuant to Sections 7 to 9 above continues and will be deemed to be extended until the first meeting of the Commission following new appointments pursuant to those sections.

Term Limitation

11. No person appointed under sections 7(b) or 8(b) may serve more than two (2) consecutive 3-year terms as a Commissioner.

Qualifications

12. Subject to Section 13, a Commissioner appointed pursuant to section 7(a), 8(a) or 9 may hold office as a Commissioner only for such time as he or she holds office as a member of the Council or Board, respectively.
13. A Commissioner appointed pursuant to section 7(b) or 8(b) may only be appointed and hold office for such time as he or she is an elector in either the City or the District.

Conflict of Interest

14. The conflict of interest rules in Division 6 of Part 4 of the *Community Charter*, as amended or replaced from time to time, apply to all Commissioners.

Vacancy

15. In the event of a vacancy on the Commission due to death, resignation, loss of office, loss of qualifications or any other reason, the District, City or Board of School District #44 will, so soon as reasonably possible, make a replacement appointment pursuant to section 7(a), 7(b), 8(a), 8(b) or 9 as applicable.

Failure to Attend Meetings

16. A Commissioner, whether or not he or she is represented by an alternate appointed pursuant to sections 7(a)(ii) or 8(a)(ii), who fails to attend three consecutive regular meetings of the Commission is deemed to have resigned effective at the end of the third such meeting, unless the Chair deems the failure to attend to be acceptable and unavoidable.

PART 3

RECREATION FACILITIES

Construction of Facilities

17. The parties agree that the design and capital construction costs of each Facility are the sole responsibility of the Facility Owner.

New Facilities

18. Either the District or the City may create a new Facility but the Facility will not be a Core Facility unless the District and the City mutually agree that:
 - (a) the proposed Facility meets the standard of construction generally applicable to other Core Facilities;
 - (b) the anticipated operating costs of the Facility are appropriate; and
 - (c) the proposed Facility will serve the needs of residents of both the District and the City.
19. Each new Core Facility will be included in the Schedule of Facilities.

Closing Facilities

20. A Facility Owner may, in its sole discretion, close any Facility (including any Core Facility) that the Facility Owner determines is unsafe, requires significant capital improvements, renovations or repairs, no longer serves a useful function, or the operation of which is no longer in the public interest. For certainty, no Facility Owner will be obliged to replace any closed Facility.

Role of Facility Owner

21. For any Facility, the Facility Owner may
 - (a) direct the Commission to operate the Facility and provide Recreation Services and Arts Services within the Facility;

- (b) approve a partnership agreement between the Commission and a Service Provider for the operation of the Facility, such agreement to be developed in accordance with any principles that may be established by agreement of the District and City;
- (c) select Service Providers for the purpose of providing Community Programs in the Facility; and
- (d) direct and control the delivery of Community Programs by the Service Provider in a Facility and determine the appropriate governance and reporting structure for the Service Provider.

Community Programs

22. The parties agree that all Community Programs offered through any Facility will not be jointly funded through the Commission but be wholly funded by the Facility Owner and/or others.

PART 4

COMMISSION FINANCES

Definitions

23. In this Part 4:

- (a) “Arts Office Services” means the services previously provided by the North Vancouver Office of Cultural Affairs pursuant to the North Shore Arts Commission Establishment Agreement, including the services set out and described in Appendix B hereto, but not including the capital costs of the City or District public art programs. For further certainty, this is a transitional term relevant only for the purpose of section 34(a) herein. This term is without prejudice to the definition of “Arts Services” in section 1;
- (b) “City Share” means City’s share of the total net operational funding contribution required in any budget year for Core Funding in any Facility or for any Program Funding determined in accordance with Sections 30 and 31;
- (c) “City Use” means the percentage use by City residents of any Facility in any budget year determined through the User Statistics Program;
- (d) “Core Funding” means the funding provided to the Commission for building maintenance and operation of a Core Facility and for Recreation Services and Arts Services offered at Core Facilities, including any plant, equipment, fixtures, fittings, off-street parking areas, walkways and landscaped grounds, and including capital upgrading and repair costs as required to maintain the Core Facility;
- (e) “District Share” means the District’s share of the total net operational funding contributions required in any budget year for any Core Funding in any Facility or for any Program Funding determined in accordance with Sections 30 and 31;
- (f) “District Use” means the percentage use by District residents of any Facility in any budget year determined through the User Statistics Program;
- (g) “Program Funding” means the funding provided by the Commission for Recreation Services and Arts Services offered at any locations other than at Core Facilities and included in operating financial plan approved by District and City Councils in accordance with this Agreement; and

- (h) "Special Projects" means any special operating program or additional maintenance or similar undertaking desired by a Facility Owner for a specific Facility; and
- (i) "User Statistics Program" means the program, as approved by the District and City, used by the Commission to measure and calculate the use by residents of the District and residents of the City, respectively, of Recreation Services and Arts Services in any Facility in any budget year.

Operating Financial Plan

24. The District and the City agree that the operating financial plan for the Recreation Services and the Arts Services must include:
- (a) the estimated operational expenditures for
 - (i) Core Funding for each Core Facility;
 - (ii) Program Funding;
 - (iii) other functions of the Commission; and
 - (iv) the Arts Grants;
 - (b) the anticipated revenues for each Facility;
 - (c) the difference between estimated revenues and operational expenditures for each Facility;
 - (d) the District Share and City Share required for Core Funding for each Facility and for Program Funding, as applicable;
 - (e) the contribution required by each of the District and the City for any District or City Special Projects, respectively; and
 - (f) the contribution required by each of the District and the City for estimated net operational expenditures not attributable to a Facility, calculated on the District Share and City Share formula.
25. For certainty, funding for Community Programs offered through any Facility is the sole responsibility of the Facility Owner and/or other Owner and is not to be included in the Commission's operating financial plan for any budget year.

Capital Plan

26. The parties agree that the capital financial plan for the Recreation Services and Arts Services must include:
- (a) the estimated capital expenditures for any new Facility or major addition to an existing Facility with separate amounts indicated for
 - (i) design and management,
 - (ii) construction, and
 - (iii) fittings, furnishings and equipment;
 - (b) the estimated capital expenditures for internal alterations and additions to any Facility;
 - (c) the estimated capital expenditures for the acquisition or replacement of equipment for each Facility;

- (d) the estimated capital expenditures for the acquisition or replacement of equipment where such expenditures are not attributable to any particular Facility; and
- (e) the estimated amount required to maintain an emergency capital replacement fund.

Operating Plan Approval

27. District and City Councils will each consider for approval (or for amendment and then approval) the operating financial plan provided by the Director of Recreation and Culture for the provision of the Recreation Services and the Arts Services.

Capital Plan Approval

28. District and City Councils will each consider for approval (or for amendment and then approval) the capital plan provided by the Director of Recreation and Culture for the Core Facilities and for jointly funded capital expenditures in relation to the provision of the Recreation Services and the Arts Services.

Operating and Capital Plan Amendments

29. The District and City agree that in considering, amending and approving the operating financial plan and the capital plan the District Council and the City Council will be governed by the following principles:
- (a) the operating financial plan and the capital plan will be reasonable and made in good faith;
 - (b) the operating financial plan and the capital plan will endeavour to achieve an equitable allocation of operating and capital funds to programs and services in both District and City Facilities; and
 - (c) the operating financial plan and the capital plan will achieve a reasonable level of program and service quality.

Share Determination

30. The District Share and City Share have been determined by agreement of the District and City Directors of Finance every 3 years commencing in 2002 on the basis of the annual District Use and City Use percentages in the previous 3 year period, and the parties agree, subject to Section 33 and Section 34, to continue with this arrangement. The Directors of Finance will advise the Director of Recreation and Culture in advance of the preparation of the annual operating budget of any change to the District Share and City Share.
31. For each new Core Facility, the District Share and City Share in each of the first two years of the operation of the Facility will be determined on the basis of use estimates prepared by the Director of Recreation and Culture, after which the actual user statistics for the Facility will be used to modify, if necessary, the District Share and City Share determinations in Section 30.
32. The Appointed Financial Officer shall direct the administration of the User Statistics Program as required in respect of each Facility to determine the percentages of total annual use that represent District Use and City Use and report findings promptly to the District and City Directors of Finance, and to ensure that the User Statistics Program is properly conducted and audited to permit an equitable revision of the District Share and City Share as and when necessary.

33. The City and the District may, by mutual agreement in writing, modify the method of determining the District Share and the City Share in respect of the Core Funding in any Facility or in respect of Program Funding.
34. Notwithstanding any other provision in this Agreement to the contrary, but subject always to any modifications made by mutual consent pursuant to section 44:
 - (a) for the 2014 calendar year, the District and the City will share the costs of providing the Arts Office Services and the cost of administering and funding the Arts Grants on a 50/50 basis, provided that, unless otherwise agreed to in writing by the parties hereto, only costs that were attributed to the Arts Office Services and split 50/50 between the City and the District prior to the date of this Agreement will be included in the costs of the Arts Office Services and split 50/50 between the City and the District; and
 - (b) for the 2015 calendar year and for all years thereafter, the District and the City will share the costs of providing the Arts Services and administering the Arts Grants in accordance with section 30 herein, and the costs of funding the Arts Grants on a 50/50 basis.

Funding Contributions

35. The District will, upon approval by District Council and City Council of the Commission operating financial plan and capital plan, pay the following amounts:
 - (a) The District Share for any applicable Facility;
 - (b) The District Share the amount calculated in the Commission's operating financial plan for estimated net operational expenditures not attributable to a Facility;
 - (c) 100% of the contribution calculated in the Commission's capital plan for any Facility owned by the District;
 - (d) The District Share of the amount calculated in the Commission's capital plan for any non-attributable capital expenditures; and
 - (e) The District Share of the contribution required to maintain an emergency capital replacement fund.
36. The City will, upon approval by District and City Council of the Commission operating financial plan and capital plan, pay the following amounts:
 - (a) The City Share for any applicable Facility;
 - (b) The City Share of the amount calculated in the Commission's operating financial plan for estimated net operational expenditures not attributable to a Facility;
 - (c) 100% of the contribution calculated in the Commission's capital plan for any Facility owned by the City;
 - (d) The City Share of the contribution calculated in the Commission's capital plan for any non-attributable capital expenditures; and
 - (e) The City Share of the contribution required to maintain the emergency capital replacement fund.

Fees and Rental Charges

37. The District and City Councils agree to each consider adopting the bylaw setting the agreed fees recommended by the Commission for the purpose of having consistent fees for the Recreation Services and Arts Services across all Facilities.

Financial Over-Sight and Annual Audit

38. The Appointed Financial Officer will be responsible for oversight of the Director of Recreation and Culture with respect to all matters relating to financial administration, including responsibility for ensuring compliance with all statutory financial requirements. The Appointed Financial Officer will also be responsible for the annual financial audit of the Commission.

Reimbursement of Costs

39. The anticipated cost of providing the financial administration services, including overhead costs, shall be included in the Commission's annual operating financial plan based on a detailed estimate from the District or the City, as the case may be. The District's or the City's actual costs of providing these services will be reimbursed by the Commission, with said reimbursement funded by the District and the City in accordance with the funding formula herein.

Examination of Records

40. Either the City or the District may conduct audits or examinations to obtain information or determine that adequate financial controls are being maintained by the Commission. The parties will cooperate with each other in the conduct of any such audits particularly in respect to access to financial records, user statistics and other information of the Commission.

Budget Year

41. The budget year of the Commission is that of the District and the City.

Ownership of Capital Assets

42. Each Facility and every capital asset utilized by the Commission from funds contributed pursuant to the capital plan and separately funded by either the District or the City remains the separate property of the District or City, as applicable.
43. Every capital asset that has been jointly funded under this Agreement, including without limitation any real or personal property, fixtures, chattels, vehicles, equipment, computer system software and proprietary information remains, at the termination of the Agreement, the joint property of the District and the City, and may
- (a) be acquired by agreement by either the District or the City for exclusive use, on payment to the other party of the applicable proportion of the other party's contribution to the asset at its then depreciated value in accordance with the Canada *Income Tax Act*;
 - (b) be sold, if neither party wishes to acquire the asset for exclusive use; or
 - (c) where both parties wish to acquire the asset for exclusive use, be acquired by either party following negotiations between the parties or if agreement is not reached, remain the joint property of the District and the City.

PART 5
MISCELLANEOUS

Amendments

44. The District and the City will, in good faith, negotiate any proposed amendment to this Agreement upon request of either party, all amendments to be in writing and executed by the parties. Without limiting the generality of the foregoing, the funding arrangements provided for in Part 4 herein may be amended by agreement of the parties in writing.

Dispute Resolution

45. The District and the City will submit any dispute arising out of the interpretation or application of this Agreement:
- (a) first, to the District CAO and City CAO to resolve the dispute, such resolution will be final and binding upon the parties;
 - (b) second, if the District CAO and City CAO are unable to resolve the dispute within 60 days, to the Councils of the District and the City in a joint meeting where, if a resolution is adopted by the majority vote of each Council, the resolution will be final and binding upon the parties; and
 - (c) third, if the Councils are unable to reach a resolution to resolve the dispute, to the Inspector of Municipalities, or at the election of the parties, a commercial arbitrator appointed by agreement or, failing agreement, appointed pursuant to the *Commercial Arbitration Act*, for final determination, and the determination of the Inspector or arbitrator as applicable will be final and binding upon the parties.

Term

46. This Agreement continues in effect until terminated by either party upon one year's written notice to the other party, or by agreement of both parties.

North Vancouver Recreation Commission Agreement

47. Upon execution and delivery of this Agreement, the North Vancouver Recreation Commission Agreement entered into between the District and the City and dated for reference June 30th 2009 and the North Shore Arts Commission Establishment Agreement entered into between the District and the City and dated July 26, 1989, and all amendments thereto, shall terminate and be of no further force or effect.

IN WITNESS WHEREOF the District and the City have executed this Agreement on the date first above written.

THE CORPORATE SEAL of THE)
CORPORATION OF THE DISTRICT OF)
NORTH VANCOUVER was hereunto)
affixed in the presence of:)
)
"Richard Walton")
_____) C/S
Mayor)
)
"James Gordon")
_____)
Municipal Clerk)

THE CORPORATE SEAL of THE)
CORPORATION OF THE CITY OF)
NORTH VANCOUVER was hereunto)
affixed in the presence of:)
)
"Darrell R. Mussatto")
_____) C/S
Mayor)
)
"Karla D. Graham")
_____)
City Clerk)

Appendix A
Schedule of Facilities

Core Facilities

The following facilities are Core Facilities (Facility Owner):

- (a) Harry Jerome Community Recreation Centre (City)
- (b) William Griffin Community Recreation Centre (District)
- (c) Karen Magnussen Community Recreation Centre (District)
- (d) Ron Andrews Community Recreation Centre (District)
- (e) Delbrook Community Recreation Centre (District)
- (f) Seylynn Community Recreation Centre (District)
- (g) Lynn Valley Community Recreation Centre (District)
- (h) Mickey McDougall Community Recreation Centre (City)
- (i) Memorial Recreation Community Centre (City)
- (j) Centennial Theatre (City)
- (k) Parkgate Community Centre (District)
- (l) North Vancouver Tennis Centre (District)
- (m) John Braithwaite Community Centre (City)

Appendix B

Arts Services

1. Serving as a resource to City and District Council and staff in relation to arts and cultural planning and other related;
2. To create and recommend policy; and to manage, administrate the City's and District's individual Public Art Programs;
3. Providing recommendations to the District and the City regarding requests for Arts Grants;
4. Supporting, promoting, planning and coordinating arts and cultural activities for City and District residents;
5. To provide expert advice and recommendation to City and District Council on arts and cultural matters;
6. Receiving and responding to referrals from the City and the District regarding arts and cultural issues;
7. Engaging in dialogue with the community on current endeavours and future plans relating to the arts;
8. Facilitating North Vancouver arts projects and events; and
9. Assisting North Vancouver arts and cultural organizations to fulfill their artistic objectives.