

TITLE 37
LUMMI NATION CODE OF LAWS
HOUSING AUTHORITY CODE

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**TITLE 37
LUMMI NATION CODE OF LAWS
HOUSING AUTHORITY CODE**

Chapter 37.01 Preamble and Purpose

37.01.010 Preamble

Pursuant to the authority vested in the Lummi Nation by its Constitution, and particularly by Article VI, Section 1(l) thereof, and its authority to provide for the health, safety, morals, and welfare of the Nation, the Lummi Indian Business Council of the Nation hereby enacts this Housing Authority Code which establishes the Nation's authorities, purposes, powers, and duties with regard to public housing development, management, and resident services within the traditional areas of the Lummi Nation.

37.01.020 Declaration of Need

It is hereby declared:

(a) that there exists on the Lummi Reservation unsanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of decent, safe, and sanitary dwelling accommodations available at rents or prices which persons of low income can afford; that such shortage forces such persons to occupy unsanitary, unsafe, and overcrowded dwelling accommodations and areas that are not otherwise used for human habitation; and

(b) that these conditions cause an increase in and spread of disease and crime and constitute a menace to public health, safety, morals, and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities; and

(c) that the shortage of decent, safe, and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprise; and

(d) that the providing of decent, safe, and sanitary dwelling accommodations for persons of low income are public uses and purposes for which money may be spent and private

property acquired and are governmental functions of Tribal concern; and

(e) that residential construction activity and a supply of acceptable housing are important factors to general economic activity and that the undertaking authorized by this Code to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

(f) that the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

37.01.030 Purposes

This Code is enacted for the following purposes:

(a) Remedying unsafe and unsanitary housing conditions that are injurious to the public health, safety, and morals;

(b) Alleviating the acute shortage of decent, safe, and sanitary dwellings for persons of low income; and

(c) Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration, or repair and operation of low income dwellings.

(d) Establishing a Tribally Designated Housing Entity

Chapter 37.02 Definitions

37.02.010 Definitions

The following terms, wherever used or referred to in this Code, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Area of Operation" means all areas within the jurisdiction of the Lummi Nation.

(b) "Board" means the Lummi Nation Housing Authority's Board of Commissioners.

(c) "Council" or "LIBC" means the Lummi Indian Business Council.

(d) "Federal Government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) "Homebuyer" means a person(s) who has executed a homeownership agreement with the LNHA.

(f) "Housing Project" or "Project" means, including but not limited to: rental, sale of individual units in single or multifamily structures under conventional condominium or cooperative sales contracts or lease-purchase agreements, loans, or subsidizing of rentals or charges, decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term "Housing Project" or "Project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration, or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

(g) "Nation" means the Lummi Nation.

(h) "Obligations" means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Lummi Nation

government pursuant to this Code.

(i) "Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation, or lessor devising to the LNHA property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the LNHA in respect to a housing project.

(j) "Persons of low income" means persons or families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

(k) "Tribally Designated Housing Authority" or "TDHE" means the Lummi Nation Housing Authority or LNHA

Chapter 37.03 Establishment of a Tribally Designated Housing Entity

37.03.010 Tribally Designated Housing Entity

By this Code, and by the Authority granted under Article VI of the Lummi Constitution, the LIBC hereby establishes the Lummi Nation Housing Authority (LNHA) as the entity responsible for fulfilling the Nation's housing needs, and for receiving funding and exercising the authority granted under the Native American Housing and Self Determination Act of (NAHASDA) of 1996, 25 U.S.C. § 4101, *et seq.*. Further, the LNHA shall function as the Tribally Designated Housing Authority of the Lummi Nation.

37.03.020 Purposes of LNHA

The purpose of the LNHA shall be those identified in Chapter 37.01.030 of this Code.

Chapter 37.04 Board of Commissioners

37.04.010 Establishment

The LNHA shall be governed by a Board of Commissioners. The Board shall be governed by the By-laws of the LNHA, adopted in initial form by the LIBC.

37.04.020 Board Composition

The Board shall be composed of seven members. At least one of these members shall be [a] member[s] of the LIBC.

37.04.030 Board Appointment

All members of the Board shall be appointed by resolution of the LIBC.

Chapter 37.05 Power and Authority of the LNHA

37.05.010 General Authority

It is the purpose and intent of this Code to authorize the LNHA to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any project by the LNHA.

37.05.020 Perpetual Succession

The LNHA shall have perpetual succession in its corporate name.

37.05.030 Proof of Establishment

In any suit, action or proceeding involving the valid enforcement of, or relating to, any of its contracts, the LNHA shall be conclusively deemed established and authorized to transact business and exercise the authorities, powers, and duties related to public housing upon proof of the adoption of this Code.

37.05.040 Powers and Duties of Board

The specific powers, authorities, and duties of the Lummi Nation Housing Board of Commissioners shall be described in its By-laws.

37.05.050 Powers of the LNHA

The LNHA shall exercise all the powers necessary to fully implement the public housing purposes described herein. These powers shall include, but are not limited to the following:

(a) To enter into agreements, contracts, and understandings with any governmental agency, Federal, State, or local, or with any persons, partnership, corporation, or Indian tribe; and to agree to any conditions attached to federal financial assistance.

(b) To agree, notwithstanding anything to the contrary contained in this Code or in any other provision of law, to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or operation of projects; and the LNHA may include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid to the project.

(c) To obligate itself, in any contract with the federal government for annual contributions to the LNHA, to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the LNHA is subject; and such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project and funds in accordance with the terms of such contract; provided, that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the LNHA the project as then constituted.

(d) To lease property from the Nation and others for such periods as are authorized by law, and to hold and manage or sublease the same.

(e) To borrow or lend money, to issue temporary or long-term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Chapter 37.05 of this Code.

(f) To pledge the assets and receipts of the LNHA as security for debts and to acquire,

sell, lease, exchange, transfer, or assign personal property or interests therein.

(g) To purchase or sell land or interest in land or take the same by gift, to lease land or interests in land to the extent provided by law.

(h) To undertake and carry out studies and analyses of housing needs, to prepare housing plans, to execute the same, to operate projects and to provide for the construction, construction improvements, extension, alteration, or repair of any project or any part thereof.

(i) With respect to any dwellings, accommodations, lands, buildings, or facilities embraced within any project (including individual cooperative or condominium units), to lease or rent, enter into lease-purchase agreements, to establish and revise rents or required monthly payments, to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units, and to make such further rules and regulations as the LNHA may deem necessary and desirable to effectuate the powers granted by this Code.

(j) To finance the purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the funding agency of the state or federal government and/or financial institution.

(k) To terminate any lease or rental agreement or lease-purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of his obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring an action for eviction against such tenant or homebuyer, as appropriate and necessary to avoid financial loss.

(l) To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income.

(m) To purchase insurance from any stock or

mutual company for any property or against any risk or hazards.

(n) To invest such funds as are not required for immediate disbursement, consistent with the Lummi Nation Investment Policies.

(o) To employ an executive director, technical, and maintenance personnel and such other officers and employees, permanent or temporary, as the LNHA may require, and to delegate to such officers and employees any powers or duties as the LNHA deems proper.

(p) To take such further actions as are commonly engaged in by public bodies of this character as the LNHA may deem necessary and desirable to effectuate the purposes of the LNHA.

(q) To join or cooperate with any other public housing agency or agencies operating under the laws or Codes of a state or another tribe in the exercise, either jointly or otherwise, of any or all of the powers specified herein and such other public housing agency or agencies for the purpose of financing (including but not limited to the issuance of notes or other obligations and giving security thereof), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the LNHA or such other public housing agency or agencies. For such purpose, the LNHA may, by resolution, prescribe and authorize any other public housing agency or agencies, so joining or cooperating with the LNHA, to act on the LNHA's behalf with respect to the agent or otherwise in the exercise of any and all powers of such agency or agencies.

37.05.060 Property Acquisition

No Code or other enactment of the Lummi Nation with respect to the acquisition, operation, or disposition of Nation property shall be applicable to the LNHA in its operations pursuant to this Code.

Chapter 37.06 Financial Obligations

37.06.010 Authority to Issue Obligations

The LNHA may issue obligations from time to

time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The LNHA may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable:

(a) exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the federal government in aid of such project;

(b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or

(c) from its revenues generally. Any of such obligations may be additionally secured by a pledge of any revenues of any project or other property of the LNHA.

37.06.020 No Personal Liability

Members of the Board shall not be liable personally on the obligations by reason of issuance thereof.

37.06.030 LNHA Debts

The notes and other obligations of the LNHA shall not be a debt of the Nation and the obligations shall so state on their face.

37.06.040 Tax Exemption

Obligations of the LNHA are declared to be issued for an essential public and governmental purpose and to be a public instrumentality and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Nation. The tax exemption provisions of this Code shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this Code and without necessity of being restated in the obligations, a contract between the LNHA and the holders of obligations and each of them, including all transferees of the obligations from time to time.

37.06.050 Sale of Obligations

Obligations shall be issued and sold in the

following manner:

(a) Obligations of the LNHA shall be authorized by a resolution adopted by a vote of a majority of the full Board and may be issued in one or more series.

(b) The obligations shall bear such dates, mature at such time, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The obligations may be sold, at not less than par value, at public or private sale.

(d) In case any of the Board members of the LNHA whose signatures appear on any obligations cease to be Board members before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the Board members had remained in office until delivery.

37.06.060 Negotiability

Obligations of the LNHA shall be fully negotiable. In any suit, action, or proceeding involving the validity or enforceability of any obligation of the LNHA or the security thereof, any such obligation reciting in substance that it has been issued by the LNHA to aid in financing a project pursuant to this Code shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of this Code.

37.06.070 Issuance of Obligations - Powers

In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the LNHA, subject to the limitations in this Code, may:

(a) Pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence.

(b) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligee may enforce any covenant or rights securing or relating to the obligations.

(c) Covenant against pledging all or part of its rents, fees, and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(d) Covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any project or any part thereof.

(e) Covenant as to what other or additional debts or obligations may be incurred by it.

(f) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) Provide for the replacement of lost, destroyed, or mutilated obligations.

(h) Covenant against extending the time for the payment of its obligations or interest thereon.

(i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof.

(k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service reserves, or other purposes, and covenant as to the use and disposition of the money held in such funds.

(l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.

(m) Covenant as to the use, maintenance, and replacement of this real or personal property, the insurance to be carried thereon, and the use and disposition of insurance monies.

(n) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

(o) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(p) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.

(q) Exercise all or any part or combination of the powers granted in this section.

(r) Make covenants other than and in addition to the covenants expressly authorized in this section of like or different character.

(s) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the LNHA, tending to make the obligations more marketable although the covenants, acts, or things are not enumerated in this section.

Chapter 37.07 Cooperation In Connection With Projects

37.07.010 Agreements by Tribe

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of projects, the Nation hereby agrees that:

(a) It will not levy or impose any real or personal property taxes or special assessments upon its public housing program and/or assets.

(b) It will furnish or cause to be furnished to the occupants of projects all services and facilities of the same character and to the same extent as the Nation furnishes from time to time without cost or charge to other dwellings and inhabitants.

(c) Insofar as it may lawfully do so, it will grant such deviations from any present or future building or housing Codes of the Nation as are reasonable and necessary to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development and protection of such project, and the surrounding territory.

(d) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the undertaking of planning, construction, or operation of projects.

(e) The Tribal Government hereby declares that the powers of the Tribal Government shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations including action through the appropriate courts.

(f) The Tribal Courts shall have jurisdiction to hear and determine an action for eviction of a tenant or homebuyer. The Tribal Government hereby declares that the powers of the Tribal Courts shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations.

37.07.020 Duration

The provisions of this Title shall remain in effect with respect to any project, and said provisions shall not be abrogated, charged, or modified without the consent of the Lummi Indian Business Council, so long as

(a) the project is owned by a public body or

governmental agency and is used for low income housing purposes;

(b) any contract between the LNHA and any public or private agency or institution for loans or annual contributions, or both, in connection with such project, remains in force and effect; or

(c) any obligations issued in connection with such project or any monies due to any public or private agency or institution in connection with such project remain unpaid, whichever period ends the latest.

If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing, including the federal government, the provisions of this section shall accrue to the benefit of and be enforced by such public body or governmental agency.

Chapter 37.08 Miscellaneous

37.08.010 Annual Report

The LNHA shall submit an annual report, signed by the Chairman of the Board, to the LIBC. The report shall include:

- (a) a summary of the year's activities;
- (b) the financial condition of the LNHA's Public Housing Programs and Operations;
- (c) the condition of the properties under the management of the LNHA;
- (e) any significant problems, number of units affected by the problems, and accomplishments;
- (f) plans for the future; and
- (g) such other information as the Council shall deem necessary and appropriate.

37.08.020 Accounting Standards

The accounting practices of the LNHA shall conform to the General Accounting Practices and Procedures (GAPP).

37.08.030 Prohibition Against Acquisition of Interest

During the tenure and for one year thereafter, no commissioner, officer, or employee of the Board, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, they disclose his interest in writing to the Board and such disclosure is entered upon the minutes of the Board, and the Board member, officer, or employee shall not participate in any action by the Board relating to the property or contract in which he has any such interest.

If any Board member, officer, or employee of the LNHA involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as Board member, officer, or employee, the officer or employee, in any such event, shall immediately disclose their interest in writing to the Board, and such disclosure shall be entered upon the minutes of the Board, and the Board member, officer, or employee shall not participate in any action by the Board relating to the property or contract in which they have any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office.

This section shall not be applicable to the acquisition of any interest in obligations of the LNHA issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in this Code.

37.08.040 Application of Federal Statutes

Each project developed or operated under a contract providing for federal financial

assistance shall be developed and operated in compliance with all requirements of such contract and applicable federal legislation, and with all regulations and requirements prescribed from time to time by the federal government in connection with such assistance.

37.08.050 Bonding

The LNHA shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

37.08.060 Profit-Making Prohibited

The LNHA shall not construct or operate any project for profit.

37.08.070 Tax Exemption

The property of the LNHA is declared to be public property used for essential public and governmental purposes and such property and the LNHA are exempt from all taxes and special assessments.

37.08.080 Exemption From Levy and Execution

All property including funds acquired or held by the LNHA pursuant to this Code shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the LNHA be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the LNHA on its rents, fees, or revenues or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this Code or the right of the LNHA to bring eviction actions in accordance with this Code.

37.08.090 Sovereign Immunity

As a governmental entity created by this Title and the LIBC, the LNHA retains the sovereign immunity inherent to the Lummi Nation. However, the LNHA shall have the authority to waive this immunity for claims brought in the Lummi Nation Tribal Court or Court of

Appeals. Such waiver shall only be made through a resolution adopted by the Board. Further, any waiver shall be subject to the following limitations:

(a) Waiver of immunity for tort claims shall be limited to:

(1) Declaratory and prospective injunctive relief for actions.

(2) Monetary damages for any claim covered by an active and enforceable insurance policy held by the LNHA, up to the amount of coverage provided in the policy.

(b) Waiver of immunity for contract claims shall be limited to:

(1) Declaratory and prospective injunctive relief for actions., provided that the relief does not impair the essential governmental functions of the LNHA.

(2) Monetary damages limited to a specifically designated fund or specific collateral approved by the Board, the loss of which will not impair essential operations of the LNHA.

37.08.100 Severability

If any portion of this Title is held unconstitutional, the remaining portions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein.

Title37pub08