

CITY OF KELOWNA

BYLAW NO. 9496

Amendment No. 11 to “City of Kelowna Parks and Public Spaces Bylaw No. 6819-91”

A bylaw to regulate the use of City of Kelowna boat launches, docks and moorage facilities.

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. That City of Kelowna Parks and Public Spaces Bylaw No. 6819–91 be amended by:
 - (a) renumbering the definitions of “Dog Off-leash Park” and “Dog Walking Park” to section 2.6.1 and section 2.6.2 respectively;
 - (b) adding the following definition in the appropriate location:
 - “2.10.1 “Passenger Ship” shall mean a watercraft that transports passengers, as defined by the Canada Shipping Act, R.S.C., c. S-9, as amended from time to time, on Lake Okanagan.”;
 - (c) adding new sections 4.7, 4.8 and 4.9 to **PART 4 – USES** as follows:
 - “4.7 No person shall moor or dock a Passenger Ship within a park or public space, or on or to a City of Kelowna boat launch, dock or moorage facility, or use any of these as a designated location for pick-up and drop-off of passengers unless the person holds a License to Use permit from the City of Kelowna, as attached to and forming part of this bylaw as Schedule C, and:
 - (a) holds a valid City of Kelowna Business Licence for operation of the Passenger Ship;
 - (b) holds insurance coverage for comprehensive liability for bodily injury and property damage, marina operators liability, marin protection and indemnity, owned and non-owned automobile liability and environmental impairment liability in forms and to limits of insurance coverage acceptable to the City of Kelowna’s Risk Manager or designate, and naming the City of Kelowna as a named insured;
 - (c) is properly certified by Transport Canada to operate a Passenger Ship; and
 - (d) operates the Passenger Ship under the command of a certified master, as defined by the Canada Shipping Act, R.S.C., c. S-9, as amended from time to time.
 - 4.8 No person holding a License to Use permit pursuant to section 4.7 of this bylaw shall moor a Commercial Passenger Vessel for a period of time longer than the time reasonably required to pick-up and drop-off passengers, and in no case longer than 20 minutes, except with express written permission of the City of Kelowna’s Civic Properties Manager or designate, or unless the person also holds a valid rental contract from the City of Kelowna for rental of designated moorage space and is docked at that designated space.

- 4.9 The Civic Properties Manager, or designate, is hereby authorized to rent City owned moorage located at the dock at the foot of Bernard Avenue on the parcel legally described as District Lot 4004, ODYD (and known as "the Sails dock") and at the dock adjacent to Kerry Park on the parcel legally described as District Lot 5118, ODYD (and known as "the Fintry Queen dock"), at the rates outlined in Schedule D, which is attached to and forms part of this bylaw.";

(d) deleting section 6.2 and replacing it with the following:

- "6.2 Every person who commits an offence against this bylaw is liable, upon summary conviction pursuant to the Offence Act, R.S.B.C., c. 338, as amended from time to time, to a fine of up to \$10,000.00. Any penalty imposed pursuant to this bylaw shall be in addition to, and not in substitution for, any other penalty or remedy imposed pursuant to any other applicable statute, law or legislation .";

(e) adding the "License to Use" permit, as attached to and forming part of this bylaw, as a new Schedule C to Bylaw No. 6819-91; and

(f) adding the "Passenger Ship Moorage Rental Rates – 2006/07", as attached to and forming part of this bylaw, as a new Schedule D to Bylaw No. 6819-91.

2. This bylaw shall be cited for all purposes as "Bylaw No. 9496, being Amendment No. 11 to City of Kelowna Parks and Public Spaces Bylaw No. 6819-91".
3. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this day of , 2006.

Notice given under section 59 of the Community Charter this day of , 2006.

Adopted by the Municipal Council of the City of Kelowna this day of , 2006.

Mayor

City Clerk

SCHEDULE C
LICENCE TO USE
(FOR COMMERCIAL PASSENGER VESSELS)

THIS LICENCE issued the _____ day of _____, 200_.

TO:

Licencee: [Note that if group or organization is not incorporated, an individual must be named]

Full Name (including incorporation number, if a society or company)

Full Address (including postal code)

Telephone

Fax

E-mail Address

If Licencee is a society or company, list contact information:

Contact Person:

Full Name and relationship to society or company

Full Address (including postal code)

Telephone

Fax

E-mail Address

Season or Time Period for Which Licence Issued:

Name and Description of Vessel Permitted to Dock:

SIGNATURE OF ISSUING OFFICIAL:

Terms and Conditions:

1. **LICENCE**

The Licence is granted to the Licencee to allow use of any one of the Licence Areas (listed on attached Appendix "A") for the purpose of picking-up and dropping-off of commercial passengers.

2. **USE**

- 2.1 The Licencee shall not use any one License Area for longer than the time reasonably required to pick-up and drop-off passengers, and in no case longer than 20 minutes at a time, except with express written permission of the City of Kelowna's Civic Properties Manager or designate or unless the person also holds a valid rental contract from the City of Kelowna for rental of designated moorage space, and is docked at that designated space.
- 2.2 Use of the moorage space must not interfere with public use of an existing dock. The Licencee shall conduct operations within the Licence Area to ensure the safety of both passengers and the public.
- 2.3 The Licencee must possess a valid Business Licence under the provisions of the City of Kelowna Business Licence and Regulation Bylaw No. 7878.
- 2.4 The vessel permitted to dock must be capable of moving under its own propulsion system. The Licencee must provide to the City proof of compliance with all Transport Canada requirements for a Passenger Ship, as defined in City of Kelowna Parks and Public Spaces Bylaw No. 6819-91.
- 2.5 The Licence does not provide any right to sell tickets, solicit business or advertise on City property.
- 2.6 The Licencee shall at all times leave the Licence Area free of equipment, structures, encumbrances or litter associated with use of the Licence Area.
- 2.7 The Licence is subject to immediate cancellation if the Licencee does not comply with the terms and conditions outlined herein.
- 2.8 The Licence is not an exclusive licence. Other Licences to Use the same Licence Areas may be issued by the City.
- 2.9 City of Kelowna reserves the right to add to or amend terms and conditions as required, and to add to or remove property or docks from the designated Licence Areas without notice.

3. **IMPROVEMENTS**

The Licencee shall not construct any buildings or structure upon the Licence Areas, nor use said Licence Areas for storage of any material or equipment, nor post any signs.

6. **FEE**

The Licencee is required to pay the City a fee of \$50.00 as outlined in City of Kelowna Parks and Public Spaces Bylaw No. 6819-91.

7. **ASSIGNMENT OR SUB-LICENSING**

The Licencee shall not assign or sub-Licence any part of the Licenced Area, nor mortgage or otherwise encumber its interest in this Licence, nor to permit the area to be used for any purpose other than authorized by this Licence.

8. INDEMNITY BY A LICENCEE

The Licencee shall reimburse the City for all expense, damages, loss or fines incurred or suffered by the City by reason of any breach, violation or non-performance by the Licencee of any provision of this Licence to Use or by reason of damage to the Licence Area, persons or property caused by the Licencee, its employees or agents or persons visiting or doing business with the Licencee; save for those caused by the independent acts and sole negligence of the City.

Licencee to Initial: _____

9. INSURANCE

The Licencee shall, without limiting its obligations or liabilities under this Licence to Use, procure and maintain at its own expense and cost policies of insurance of insurance to cover holds insurance coverage for comprehensive liability for bodily injury and property damage, marina operators liability, marine protection and indemnity, owned and non-owned automobile liability and environmental impairment liability in forms and to limits of insurance coverage acceptable to the City of Kelowna, and naming the City of Kelowna as an additional insured; in an amount of no less than \$2,000,000.00 per occurrence and in annual aggregate and naming the City as an additional insured, which shall be maintained continuously from the date of commencement of the Licence to Use until the expiry date of the Licence or such further period as may be specified by the City for a period of up to two years following expiry date of the Licence. The Licencee shall provide proof of such insurance in a form acceptable to the City's Risk Manager. The City may require limits in excess of \$2,000,000.00 per occurrence, or annual aggregate, depending on the operations of the licensee at the City's sole discretion.

Licencee to Initial: _____

10. CANCELLATION

The City shall have the right to cancel this Licence to Use in any of the following instances:

- (a) In the event the Licencee fails to pay any fees by the prescribed due date.
- (b) In the event the Licencee shall be in breach of the terms and conditions of this Licence and not remedy same after seven (7) days notice in writing from the City to do so.
- (c) For any reason, after giving the Licencee ninety (90) days notice of the City's intention to do so.

The City shall not be liable for payment of any compensation or claim for expenses as a result of this Licence or its cancellation.

By signing below, the Licencee agrees to be bound by all the terms and conditions of this Licence to Use.

If the Operator is a society or company, execute below:

_____ by its)
authorized signatory(ies):)
)
)
Name: _____)
)

C/S

Bylaw No. 9496- 6 -

Name: _____

Date:

If the Operator is an individual, execute below:

Signed, sealed and delivered on the _____
Day of _____, 20____ in the
Presence of:

Witness Name:

Address

Occupation

Signature of Applicant

Appendix "A"

LICENCE AREAS

The Licence Areas are those lands and water legally owned or leased by the City for the purposes of boat launch and boat moorage, including but not limited to the following:

- the boat launch and floating dock located at the west end of Queensway Avenue, Kelowna, B.C., and legally described as District Lot 1527, Osoyoos Division of Yale District (ODYD);
- the floating dock in City Park adjacent to the Park Pavilion Office, and legally described as District Lot 5002, ODYD;
- the Cook Road boat launch and floating dock legally described as District Lot 134 & 5225 and Block A, District Lot 5225, ODYD;
- the Sails dock located at the west end of Bernard Avenue and legally described as District Lot 4004, ODYD;
- the Fintry Queen dock located in Kerry Park and legally described as District Lot 5118, ODYD;
- the Water Street boat launch and floating dock at the west end of Smith Street, Kelowna, BC, legally described as Lot 1, Plan 46717; and
- the Sutherland Boat Launch legally described as District Lot 5148, ODYD.

SCHEDULE D

Passenger Ship Moorage Rental Rates – 2006/07

Base Rate:

Moorage Space	Annual Rent
Sails Dock	
1	\$6,500
2	\$6,000
3	\$5,500
4	\$5,000
5	\$4,500
6	\$4,000
7	\$4,500
“Fintry Queen” Dock	
1	\$12,000
2	\$12,000

Notes:

- refer to attached sketch SK-1 for berth numbering
- rental agreements require a \$5,000 damage deposit
- maintenance is included in the base rate
- all spaces are charged for utilities as an additional charge cost + 5% administration charge:
 - unmetered utilities (e.g. water and garbage) are apportioned equally among occupied spaces
 - metered utilities (e.g. electricity) are charged to the relevant berth
- the rate structure has a multiplier that recognizes the value of proximity to the dock access ramp(s) and the visual exposure to the shoreline promenade
- spaces allocations shall be offered to qualified operators according to the following sequence:
 1. Consensus of all parties, including due consideration for safety as it relates to technical specifications of qualified passenger ships, AND FAILING THIS;
 2. The determination of the Civic Properties Manager in collaboration with Transport Canada in consideration of the stated priorities of qualified operators; OR
 3. Where all things are equal, a random draw.
- where the number of qualified Passenger Ships exceeds the available spaces, the opportunity to rent a space shall be based on a request for proposals process, referring to the Base Rate Chart above as the “reserve rates”.

Berth Numbering Sketch SK-1

