

# Memo



**Date:** July 20, 2011  
**File:** 1140-53  
**To:** City Manager  
**From:** Manager, Property Management  
**Subject:** License of Occupation - Road Adjacent to 3837 Hwy. 97 N (Enterprise Auto & RV Ltd.)  
Report Prepared by: *T. Abrahamson, Property Officer*

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## **Recommendation:**

THAT Council approves the City entering into a five (5) year License of Occupation, with Enterprise Auto & RV Ltd., for road located adjacent to 3837 Hwy. 97 N., to be used for storage of RV's, in the form attached to the report of the Manager, Property Management, dated July 20, 2011;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the License of Occupation Agreement and all documents associated with this transaction.

## **Purpose:**

To report back to Council on the setback guidelines for the proposed License, confirm sight lines with the BC Ministry of Transportation and advise the method of license fee calculation.

To enter into a five (5) year License of Occupation with Enterprise Auto & RV Ltd. for the purpose of RV storage.

## **Background:**

At the June 20, 2011 Council meeting, staff presented two (2) License of Occupation agreements for Enterprise RV & Auto Ltd. and TrILERMASTER Inc. Council requested confirmation that the proposed licenses conformed to the City's zoning setback guidelines, confirmation that sight lines were approved by the BC Ministry of Transportation, as well as the method of license fee calculation. These items are addressed as follows:

- a) Land Use Management confirmed that the setback requirements for buildings and structures abutting provincial highways is 15 meters. As no building or structure exists in the license area, Land Use Management confirmed this requirement is not applicable.
- b) BC Ministry of Transportation has provided written advice that the Ministry has no concerns with the City entering into a license for the purpose of RV storage and that sightlines will not be impacted by RV's located within the license area.

A handwritten signature in black ink, appearing to be the name of the Property Officer mentioned in the report.

- c) The License of Occupation for Enterprise Auto & RV Ltd. comprises an area of 620 sq.m. (0.1532 acre) and is assessed at market rate of return of 2% per annum on a value of \$100,000/acre, resulting in an annual fee of \$306.40. In addition to the license fee, the Licensee will insure and maintain the license area at its sole expense.

Staff are withdrawing support for a License of Occupation to TrILERMASTER Inc. due to the existing non-conforming use. This property is zoned C2 which does not allow RV Sales, and although licensed as an RV Sales outlet, a License of Occupation for this business would further promote a non-conforming use.

The attached plan defines the license area and is outlined in red. The license may be renewed for one further five (5) year term at the City's sole discretion.

**Internal Circulation:**

City Clerk  
Land Use Management

**External Agency/Public Comments:**

BC Ministry of Transportation & Infrastructure

**Legal/Statutory Authority**

Community Charter, Sec. 26 - Disposal of Municipal Property

**Legal/Statutory Procedural Requirements**

Community Charter, Sec. 94 - Notice Requirements

**Considerations not applicable to this report:**

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

Communications Comments:

Alternate Recommendation:

In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of this license.

Submitted by:



Ron Forbes, RPA  
Manager, Property Management

Approved for inclusion:



D. Edstrom, Manager, Strategic Land Development for  
D. Gilchrist, Director, Real Estate & Building Services

cc: Director of Financial Services





## LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of April, 2011.

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its  
office at 1435 Water Street, Kelowna, BC., V1Y 1J4

(the "City")

AND:

OF THE FIRST PART

ENTERPRISE AUTO & RV LTD. a company duly incorporated  
under the laws of the Province of British Columbia and  
having its registered & records offices located at  
#200 – 586 Leon Avenue, Kelowna, British Columbia, V1Y 6J6

(the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The City is the owner of a road bordering Rutland and Old Vernon Roads in the City of Kelowna (the "Dedicated Road");
- B. The Licensee wishes to occupy a portion of the Dedicated Road which will create an encroachment onto dedicated roadway (the "Encroachment"); and
- C. The City is prepared to grant the Licensee a Licence of Occupation pursuant to Section 35(11) of the *Community Charter*, S.B.C. 2003, c.26 for a term of Five (5) years over a portion of the Dedicated Road.

NOW THEREFORE in consideration of the payment of Rent as set out, and other good and valuable consideration, from the Licensee to the City, the City and the Licensee covenant and agree as follows:

- 1. **Grant** – The City grants to the Licensee the non-exclusive right and licence to enter onto and use that portion of the Dedicated Road shown in red on Schedule "A" which is attached hereto (the "Licence Area") for the purposes of parking and storage.
- 2. **Additional Rights** – For the purposes outlined in Section 1, the Licensee shall have the right to bring onto the Licence Area all necessary materials, vehicles, machinery and equipment.



3. **Term** – The duration of this Agreement and Licence herein granted shall be for a term of Five (5) years commencing on the date of execution of this Agreement, unless earlier terminated in accordance with Section 18.
4. **Rent** – The Licensee will pay Three Hundred Six Dollars and Forty Cents (\$306.40) per year, plus HST, for each year of the Term, payable on the anniversary date of the License Agreement.
5. **Extension** – The term of this Licence of Occupation may be renewed for a further Five (5) year period (the "Renewal Period") at the City's sole discretion.
6. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires for any reason, the Licencee will cease all occupation of the Licence Area and will remove all equipment, chattels, fixtures, buildings and other improvements from the Licence Area. The Licencee will leave the Licence Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. In the event that the Licencee fails to remove any equipment or chattels upon termination of this Agreement then the City may do so and recover the expense thereof from the Licencee. All buildings, improvements and fixtures remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Licencee.
7. **Non-exclusive Use** – The Licencee agrees that:
  - (a) the rights granted under this Agreement do not constitute any interest in the Licence Area or entitle the Licencee to exclusive possession of the Licence Area;
  - (b) the Licencee's rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area.
8. **No Waste or Nuisance** – The Licencee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
9. **Terms and Conditions** – The Licencee will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the Licence Area. The Licencee acknowledges that the fact that the Licence is granted by the City does not excuse the Licencee from obtaining building permits, development permits, business licences and other required permissions.
10. **Maintenance** – The Licencee will at its own expense keep the Licence Area in a safe, clean and tidy condition, and will erect boarding and fencing around the Licence Area prior to any construction.
11. **Compliance with Laws** – The Licencee will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.

12. **Inspection by the City** – The City may review and inspect the Licence Area and the work which the Licencee is undertaking pursuant to this Agreement to determine if the Licencee is in compliance with the terms of this Agreement.
13. **No Transfer** – The rights granted to the Licencee under this Agreement may not be sub-licensed, assigned or otherwise transferred.
14. **Risk** – The Licencee accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by the Licencee, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the Licence Area except in the case of negligence or wilful act or omission by the City, its employees, agents or invitees.
15. **Indemnity** – The Licencee will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Licencee or any default of the Licencee under this Agreement or any wrongful act, omission or negligence of the Licencee or its officers, employees, contractors, agents or others for whom the Licencee is responsible. This indemnity will survive the expiry or sooner termination of this Agreement.
16. **Release** – The Licencee hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the *Property Law Act* (collectively "Claims"), which the Licencee may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the Licence Area, the expiry or termination of this Licence, the exercise by the City of any of its rights under this Licence or from or in any way connected with the Licencee's use of the Licence Area, except claims arising from the exclusive negligence of the City.
17. **Insurance** – During the term of this Agreement, the Licencee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licencee and the City under this Agreement in an amount not less than \$5,000,000.00 per occurrence, and any other type of insurance that the City may reasonably require. The Licencee will provide the City with proof of insurance at the time of execution of this Agreement and at other times upon request.
18. **Termination** – The City reserves the right to terminate this Agreement if the Licencee breaches any of its obligations under this Agreement and fails to remedy the breach with thirty (30) business days of receiving written notice from the City. The City will not be liable to compensate the Licencee for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.
19. **Notices** – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile



transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices to the City must be marked to the attention of the City Clerk.

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

20. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.
21. **Severance** – If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.
22. **Further Actions** – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
23. **Waiver or Non-action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.
24. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.
25. **General** –
  - (a) This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
  - (b) The Schedules attached to this Agreement form part of this Agreement;
  - (c) This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement;

- (d) Time is of the essence of this Agreement;
- (e) This Agreement must be construed according to the laws of the Province of British Columbia.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this Agreement below on the dates written below.

SIGNED, SEALED & DELIVERED by the )  
CITY OF KELOWNA, in the presence of: )

\_\_\_\_\_  
Signature of Witness )

\_\_\_\_\_  
Print Name )

\_\_\_\_\_  
Address )

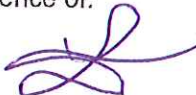
\_\_\_\_\_  
Occupation )  
\*As to both signatures )

CITY OF KELOWNA by its authorized  
signatories:

\_\_\_\_\_

\_\_\_\_\_

SIGNED, SEALED & DELIVERED by )  
ENTERPRISE AUTO & RV LTD., in the )  
presence of: )


  
\_\_\_\_\_  
Signature of Witness )

LAURIE HOWE  
\_\_\_\_\_  
Print Name )

8363 PEREGINE RD  
\_\_\_\_\_  
Address )

PROFESSIONAL  
\_\_\_\_\_  
Occupation )  
\*As to both signatures )

ENTERPRISE AUTO & RV LTD.

  
\_\_\_\_\_  
Print Name: DARRIN GRANT

\_\_\_\_\_  
Print Name:

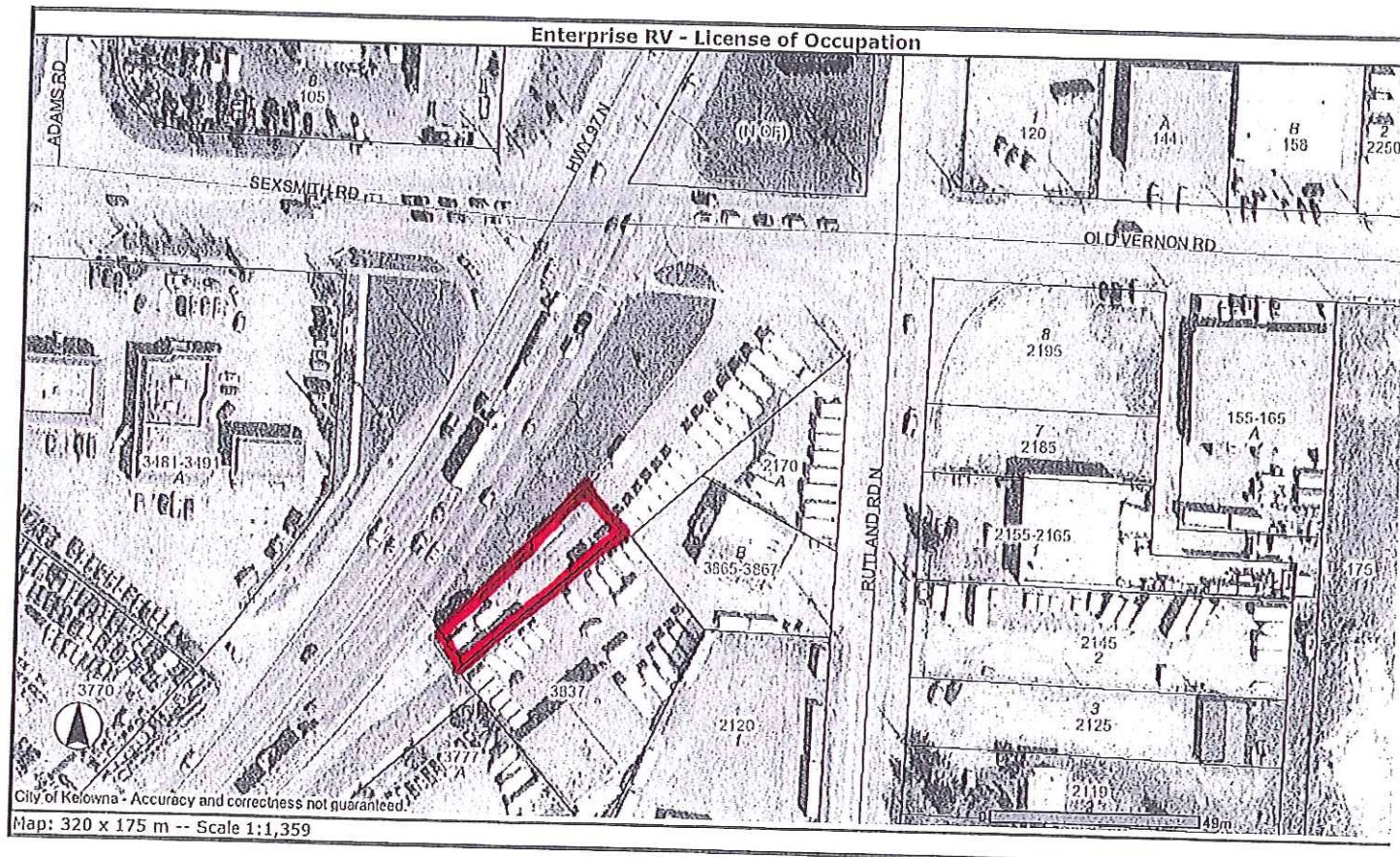


Schedule "A"

[LICENCE AREA]

Map Output

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*This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.*