

REPORT TO COUNCIL



Date: March 15, 2012
File: 1140-53
To: City Manager
From: Manager, Property Management
Subject: License of Occupation - Road Adjacent to 3865 Highway 97 N (Trailermaster Inc.)
Report Prepared by: *T. Abrahamson, Property Officer*

Recommendation:

THAT Council approves the City entering into a one (1) year License of Occupation with two (2) further one (1) year renewals at the City's sole discretion, with Trailermaster Inc. for road located adjacent to 3865 Highway 97 N. to be used for RV storage, in the form attached to the report of the Manager, Property Management, dated March 15, 2012;

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 enter into a one (1) year License of Occupation with Trailermaster Inc. for the purpose of RV storage, with two (2) further one (1) year renewals at the City's sole discretion.

Background:

Staff presented two (2) License of Occupation agreements for Enterprise RV & Auto Ltd. and Trailermaster Inc. at the Council meeting of July 14, 2011. Council requested confirmation that; the proposed licenses conformed to the City's zoning setback guidelines that sight lines were approved by the BC Ministry of Transportation and Council wanted to understand the method of calculating the license fee. These items are addressed as follows:

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

A handwritten signature in blue ink, located in the bottom right corner of the page.

- c) Both Licenses of Occupation were assessed at market rates based on 2% per annum on a value of \$100,000/acre. In addition to the license fee, the Licensees would insure and maintain their respective license areas at their sole expense.

The License of Occupation for Enterprise RV was approved; however, staff withdrew support for the License of Occupation to TrILERMASTER Inc. due to a pre-existing non-conforming use. The property was zoned C2 which did 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.

TrILERMASTER Inc. subsequently applied for a Temporary Use Permit and on February 21, 2012, Council approved the temporary change in zoning allowing for RV Sales on this site. As the zoning now allows for the existing use of the property, staff are able to support the License of Occupation to TrILERMASTER Inc. on adjacent roadway for RV storage.

The attached plan defines the license area and is outlined in red. The license may be renewed for two (2) further one (1) year terms at the City's sole discretion.

Internal Circulation:

City Clerk
Land Use Management

Legal/Statutory Authority:

Community Charter, Sec. 26 - Disposal of Municipal Property

Legal/Statutory Procedural Requirements:

Community Charter, Sec. 94 - Notice Requirements

External Agency/Public Comments:

BC Ministry of Transportation & Infrastructure

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:



Doug Gilchrist, Director, Real Estate & Building Services

cc: Director of Financial Services



LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference the 1st day of March, 2012.

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

TRAILERMASTER INC., a company duly incorporated under the laws of the Province of British Columbia and having its registered & records offices located at 3865 Highway 97 North, Kelowna, British Columbia, V1X 5C3

(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 One (1) year 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 One (1) year 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 Seventy-Seven Dollars and Seven Cents (\$377.07) per year, plus HST, and will be payable on the commencement date of the License.
5. **Extension** – The term of this Licence of Occupation may be renewed for Two (2) further One (1) year terms at the sole discretion of the City.
6. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires for any reason, the Licensee will cease all occupation of the Licence Area and will remove all equipment, chattels, fixtures, buildings and other improvements from the Licence Area. The Licensee 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 Licensee 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 Licensee. 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 Licensee.
7. **Non-exclusive Use** – The Licensee agrees that:
 - (a) the rights granted under this Agreement do not constitute any interest in the Licence Area or entitle the Licensee to exclusive possession of the Licence Area;
 - (b) the Licensee'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 Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
9. **Terms and Conditions** – The Licensee 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 Licensee acknowledges that the fact that the Licence is granted by the City does not excuse the Licensee from obtaining building permits, development permits, business licences and other required permissions.
10. **Maintenance** – The Licensee 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 Licensee 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 Licensee is undertaking pursuant to this Agreement to determine if the Licensee 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)
TRAILERMASTER INC. in the)
presence of:)



_____)
Signature of Witness)

TAMMY ABRAHAMSON
_____)
Print Name)

1435 WATER ST, KELOWNA
_____)
Address)

PROPERTY OFFICER
_____)
Occupation)
*As to both signatures)

TRAILERMASTER INC.


_____)
Print Name:)


_____)
Print Name:)

SCHEDULE A – LICENSE AREA

