

Bill No. 445
2011

By-law No. A.-

A By-law to authorize and approve a Licence Agreement between The Corporation of the City of London and the Optimist Club of Byron regarding the use of the Byron Optimist Community Centre; and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

AND WHEREAS section 107 of the *Municipal Act, 2001* provides that the City may make grants (including the power to provide for the use by any person of land owned or occupied by the municipality upon such terms as may be fixed by council) to any person, group or body, for any purpose that council considers to be in the interests of the municipality;

AND WHEREAS council considers it to be in the interests of the municipality to provide a licence to Optimist Club of Byron for use of the Byron Optimist Community Centre;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Licence Agreement attached as Schedule "A" to this by-law between The Corporation of the City of London and Optimist Club of Byron regarding the use of portions of property owned by the City located at **1308 Norman Avenue** (known as Byron Optimist Community Centre), is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on November 7, 2011.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading - November 7, 2011
Second Reading – November 7, 2011
Third Reading – November 7, 2011

Schedule "A"
License Agreement – Boyle Memorial Community Centre

THIS LICENCE AGREEMENT, dated this _____ day of _____, 2011, with effect as of the 1st day of April, 2011.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
("City")

and

OPTIMIST CLUB OF BYRON
("Licensee")

WHEREAS the City owns the property located at 1308 Norman Avenue, in the City of London, in the County of Middlesex, upon which is located the Byron Optimist Community Centre ("Centre");

AND WHEREAS the Licensee is a not-for-profit corporation that runs various community and recreational programs, events, and activities for the community.

AND WHEREAS the City considers it in the interests of the municipality to provide support to the Licensee and its services, as these services benefit the community;

AND WHEREAS the Licensee has requested permission to use portions of the Centre including the dividable **gymnasium (112)**, **dividable meeting room (107)**, **kitchen (111)** and **storage room (114)** as noted on the floor plan attached hereto as **Schedule "A"**, ("Premises"), for the purpose of supporting and providing recreation and community-building programs and special events;

THEREFORE IN CONSIDERATION of the premises and the mutual covenants and agreements herein, the parties agree as follows:

1. Licence:

1.1 The City grants this licence to permit the Licensee to use those portions of the Premises set out below in this section, and pursuant to the terms and conditions contained in this Agreement:

(a) **Dividable Meeting Room(s) – Rm. 107**

The Club shall have the non-exclusive license to use a portion of a dividable meeting room during hours as specified below and as per the annual Approved Plan:

- Tuesday and Thursday evenings, 5:30 p.m. to 10:00 p.m. year round.

(b) **Dividable Gymnasium – Rm. 112**

The Club shall have the non-exclusive license to use a portion of a dividable gymnasium during hours as specified below and as per the annual Approved Plan:

- Tuesday 5:30 p.m. to 10:00 pm. September (day following Labour Day) to June 30th;
- Thursday 7:00 p.m. to 10:00 p.m. September (day following Labour Day) to June 30th.

(c) **Kitchen – Rm. 111**

The Licensee shall have the non-exclusive licence to use the kitchen as per the annual Approved Plan.

(d) **Gymnasium Storage Room – Rm. 114**

The Licensee shall have the exclusive licence to use gymnasium storage room "Rm. 114" (as outlined in red and shaded on the floor plan attached hereto in **Schedule "A"**).

(e) **Use of Space outside 1.1. (a) – (d) above**

The Licensee shall have the non-exclusive license to use certain portions of the Premises at times outside those specified above for occasional one-time or annual events as specified in the Approved Plan.

1.2 **Closures, Emergencies:** Notwithstanding the use granted by this licence, the Premises shall not be available to the Licensee on days during which the City has closed the Centre for any reason (including but not limited to inclement weather and holidays) or if there is an emergency requiring the use of the Centre as an Emergency Reception Centre.

1.3 In the event that the Licensee determines that it will not be using a portion of the Premises during the allocated dates and times set out in section 1.1 of this Agreement, the Licensee shall notify the City in writing of the cancellation at least 72 hours prior to the allocated date and time. In these cases, the City may at its sole discretion, permit use of that portion of the Premises by another party.

1.4 Subject to section 1.2, at the sole discretion of the City's Executive Director of Community Services, and upon providing at least two weeks' written advance notice, the City may cancel the Licensee's use of the Premises for any allocated date or time set out in section 1.1 of this Agreement.

2. Term:

2.1 The term of this Licence Agreement shall commence October 31, 2011 and shall terminate August 31, 2016, or shall terminate at such earlier date pursuant to section 10 of this agreement.

Renewal:

2.2 At the expiration of the initial term of this Agreement, the Agreement is automatically renewed annually for a maximum of five one-year renewals, unless sooner terminated pursuant to section 10 of this Agreement.

3. Licence Fee:

3.1 The Licensee shall pay to the City a monthly licence fee of \$0.00.

4. Obligations of the Licensee:

4.1 Use of Premises

(a) The Licensee shall use the Premises solely for the purposes of supporting and providing community-building and/or recreation activities, events and programs.

(b) The Licensee shall not use the Premises directly for the purposes of fund-raising activities under this Agreement.

4.2 Keys

(a) The Licensee shall not be provided with keys for exterior access to the Centre. The Licensee shall ensure that any of its volunteers or members who require keys to access interior areas of the Centre sign the keys out and sign the keys in from the Facility's "key lock box". The Licensee shall ensure that these keys do not leave the Centre.

(b) The Licensee shall ensure that no duplicates of the keys are made. The Licensee shall ensure that only individuals for whom it is at law responsible have access to the keys. The Licensee shall notify the City forthwith of any lost keys, or if the Licensee becomes aware that duplicate keys have been made. Should the City be required to change any locks as a result of lost keys or duplicate keys being made, the cost of same shall be borne by the Licensee.

4.3 Access – Not Outside Program Hours

The Licensee and those for whom it is responsible at law shall not access the Centre except during times when the Centre is open to the public and when the Centre is supervised by City staff.

If the Licensee wishes to use the Centre on other dates or times not set out in this Agreement, it may only do so using the City's normal booking system (e.g. the CLASS system).

4.4 Where the Licensee charges an admission fee for any program or special event, the Licensee shall be responsible for collecting such fees and such fees shall not be a fee or charge of the City.

4.5 Sports Equipment Damage

If the City provides sports equipment for temporary use by the Licensee, the Licensee shall repair or replace sports equipment where the sports equipment is damaged due to a willful act or due to the negligence of the Licensee or those for whom the Licensee is at law responsible.

5. Licensee Covenants:

5.1 The Licensee covenants and agrees as follows:

- a) to use the Premises only for the purpose set out in this Agreement;

- b) to maintain the appearance of the Premises in a neat, tidy, clean and well-kept manner, free from garbage and debris;
- c) to ensure that no rubbish, refuse, or material that in the sole opinion of the City is objectionable, accumulates in or about the Premises;
- d) to reimburse the City for extraordinary custodial work necessary as a result of Licensee activities;
- e) to promptly inform the City of, and document, all damages or repairs;
- f) to reimburse the City in full for any repairs the City makes as a result of Licensee activities;
- g) to ensure that appropriate supervision is provided during the Licensee's use of the Premises;
- h) not to bring into the Premises or store at the Premises dangerous materials, including but not limited to flammable or explosive materials;
- i) to ensure:
 - i. smoking is not permitted on the Premises in contravention of the City's smoking by-laws or Provincial law;
 - ii. drinking of alcoholic beverages is not permitted on the Premises unless in compliance with an ACGO permit and City alcohol policy;
 - iii. that there is no storage of alcoholic beverages on the Premises;
 - iv. that vehicles will be parked on the Centre only in designated parking areas;
- j) to comply with all Federal and Provincial Legislation, Rules, Regulations, Municipal By-laws and applicable Policies; and
- k) the complete care, custody and control of the Centre and Premises, shall at all times remain with the City through its management, supervisory, custodial and maintenance employees, excluding contents owned by the Licensee or its members, invitees, or persons for whom it is at law responsible.

6. Obligations of the City:

Orientation

- 6.1 The City, in its sole discretion, will provide any required orientation on all security systems, including emergency procedures such as fire evacuation, reporting procedures regarding injuries, property damage and theft.

Custodial Services

- 6.2 The City will be responsible for all custodial services for the Premises in accordance with its usual practices.

- 6.3 The City agrees as follows, to a standard as determined solely in the City's discretion:

- (a) to keep the sidewalks and parking areas on the Premises clean and reasonably free of ice and snow;
- (b) to clean and maintain the Centre and the entrance to the Centre;
- (c) to keep the Premises in a good state of repair, except that the City's obligation to repair shall not extend to any repairs, damages, injuries or maintenance which arises from or results from the willful or negligent act or omission of the Licensee or its agents or of those for whom it is at law responsible.

7. General Provisions:

- 7.1 The Licensee accepts the Centre and Premises in the condition as of the date of this Agreement and shall not call upon the City to do or pay for any work or call upon the City to supply any equipment to make the Centre or Premises more suitable for the proposed use by the Licensee.

Donations

- 7.2 Any items donated by the Licensee to the City shall become the property of the City and the City may use or dispose of such items as in its sole discretion it sees fit. Any items remaining in the premises for more than 15 days following termination of this License shall be deemed a donation to the City.

Inspections by City

- 7.3 The City may inspect the Premises at any time to ensure compliance with the terms of this Agreement and any Federal or Provincial Legislation, Regulations, Municipal By-laws and applicable Policies.

Not Responsible for Damage/Theft

- 7.4 The City shall not be responsible for any damage or theft to vehicles parked in the parking areas. The City shall not be responsible for any loss or damage to the Licensee's equipment or property in or on the Premises or the Centre. The City shall not be responsible for any loss or damage to the equipment or property of persons for whom the Licensee is at law responsible.

No Assignment

- 7.5 The Licensee shall not assign this agreement or sublicense any part of the Premises without first obtaining the written consent of the City.

Repairs/Construction

- 7.6 (a) The Licensee acknowledges that the City may make repairs, additions and/or construction to the Centre and/or Premises from time to time. The Licensee agrees that at such times it may be required to vacate such location as and when directed by the City, and the City shall not be liable to pay any refund or damages to the Licensee resulting from same.
- (b) The Licensee acknowledges that the Premises may contain toxic or other harmful substances.
- (c) Neither the Licensee, nor any person for whom the Licensee is responsible at law, shall make any alterations to the Premises, without the prior written express approval of the Executive Director of Community Services. Alterations that shall not be made without such approval include, but are not limited to, the following: drilling holes in any walls, floors or ceilings; inserting nails into any walls, floors or ceilings; making any structural changes; painting walls.
- (d) The Licensee shall advise any person utilizing the Premises of subsections (b) and (c) of this Agreement.

Use of Premises for Events and Programs – Approved Plan

- 7.7 (a) On or before March 1st of each year of this agreement, the Licensee shall seek the written approval of the City for its annual program plan for use of all non-exclusive licensed spaces within the Premises. The Licensee shall set out in its program plan the following:
- (i) dates, times, locations of programs and events within the Premises;
 - (ii) number of people expected for each program and event; and
 - (iii) goal and target audience for each program and event.
- (b) If the program plan meets the City's criteria, the City may at its sole discretion, approve in writing the program plan ("Approved Plan").
- (c) In the event that the Licensee does not provide the City with a program plan, or if the City does not approve the program plan for that year, the Licensee shall utilize the most recent Approved Plan, with any modifications to the Approved Plan as determined by the City.

8. Insurance and Indemnification:

8.1 Insurance

- (a) Throughout the term of this agreement, the Licensee shall obtain and maintain the coverage shown below and shall provide that the following insurance will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry:
- (i) Third party general liability insurance covering all claims for negligence, nuisance, property damage and bodily injury, including death, arising out of the use of the Centre and Annex by the Licensee. Such policy shall include the City as an additional insured with respect to this Agreement and be in an amount not less than **five million (\$5,000,000.00) dollars** including personal injury liability, broad form property damage liability, contractual liability, owners' and contractors' protective liability, non-owned automobile liability, contingent employer's liability, and shall contain a severability of interests clause and cross-liability clauses.
 - (ii) Tenants legal liability insurance in an amount not less than \$200,000.00 and
 - (iii) Standard all-risk property insurance covering the property of the Licensee, including leasehold improvements, in an amount not less than the full replacement cost value with a deductible of no more than \$2,500.00; such policy shall include a waiver of subrogation in favour of the City;
- (c) The Licensee shall not do, omit to do, or permit to be done or omitted to be done on or at the Centre anything that may increase premiums or void coverage under the property insurance policies carried by the City on the Premises described in this agreement.
- (d) Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this agreement.

- (e) The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this agreement as the City may reasonably require from time to time.

8.2 Indemnification

The Licensee agrees to protect, defend, indemnify and save the City harmless from and against:

- (a) all liability, loss, claims, demands, actions, proceedings, fines or penalties, including any costs and expenses incurred by the City thereby, including reasonable legal fees, for loss, damage or injury, including death, to any person or persons and to any property arising in connection with this licence as a result of any act or omission of the Licensee or the group represented by or affiliated with the Licensee or their members, officers, employees, agents or contractors, invitees, or other persons for whom the Licensee is at law responsible; and
- (b) any claim or finding that any of the Licensee, the Licensee's employees or persons for whom the Licensee is at law responsible are employees of, or are in any employment relationship with, the City or are entitled to any Employment Benefits of any kind; and (c) any liability on the part of the City, under the Income Tax Act (Canada) or any other statute (including, without limitation, any Employment Benefits statute), to make contributions, withhold or remit any monies or make any deductions from payments, or to pay any related interest or penalties, by virtue of any of the following being considered to be an employee of the City, from Licensee; Licensee's employees or others for whom Licensee is at law responsible in connection with the licensing of the Premises or otherwise in connection with Licensee's operations.

9. **Status of Licensee:**

- 9.1 The Licensee acknowledges and agrees this Agreement shall in no way be deemed or construed to be an Agreement of Employment. Specifically, the parties agree that it is not intended by this Agreement that the Licensee, nor any person employed by or associated with the Licensee is an employee of, or has an employment relationship of any kind with the City or is in any way entitled to employment benefits of any kind whatsoever from the City whether under internal policies and programs of the City, the *Income Tax Act*, R.S.C. 1985 c.1 (1st Supp); the *Canada Pension Act*, R.S.C. 1985, c.C-8; the *Employment Insurance Act*, S.O. 1996,c.23; the *Workplace Safety and Insurance Act*, 1997 S.O. 1997, c.26 (Schedule "A"); the *Occupational Health and Safety Act*, R.S.O. 1990, c.o.1; the *Pay Equity Act*, R. S. O. 1990, c.P.7; the *Health Insurance Act*, R.S.O. 1990, c.H.6; or any other employment related legislation, all as may be amended from time to time, or otherwise.
- 9.2 Notwithstanding paragraph 9.1 above, it is the sole and exclusive responsibility of the Licensee to make its own determination as to its status under the Acts referred to above and, in particular, to comply with the provisions of any of the aforesaid Acts, and to make any payments required thereunder.
- 9.3 The Licensee shall operate independently of the City and is not the agent or servant of the City for any purpose.
- 9.4 Nothing in this Agreement shall entitle or enable the Licensee or any subcontractor to act on behalf of, or as agent for, or to assume or create any obligation on behalf of, or to make any representation, promise, and warranty or guarantee binding upon, or otherwise to bind the City. The Licensee and any subcontractor of the Licensee and the City is independent and not the agent, employee, partner or joint venturer of any of the others.

10. **Termination:**

Termination by the City

- 10.1 If the Licensee defaults in performing any of its obligations under this Agreement, the City may terminate the licence granted under this Agreement immediately without liability. Any waiver by the City of any breach by the Licensee of any provisions of this Agreement shall be without prejudice to the exercise by the City of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
- 10.2 The City may terminate this Agreement for any reason without liability by providing notice in writing seven (7) calendar days prior to the date of such termination.
- 10.3 In the event of termination of this agreement, the City shall have no further obligations to the Licensee.

Termination by the Licensee

- 10.4 The Licensee may terminate this Agreement without liability upon thirty (30) days' prior written notice for any reason.

11. Notice:

- 11.1 Any notice required to be given to the City or the Licensee under this Agreement shall be sufficiently given if delivered personally or by courier, transmitted by fax, or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery if delivered personally, by courier or by fax, or in the case of mailing, three (3) business days after it was delivered to the post office. In the event that the Licensee's corporate mailing address changes, it is the responsibility of the Licensee to notify the City immediately of the address change.

City's Address

City Clerk
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
LONDON, ON N6A 4L9

Licensee's Address

Optimist Club of Byron
P.O. Box 20088
431 Boler Road
London, ON N6K 4G8

12. Circumstances Beyond the Control of Either Party

- 12.1 Neither party will be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the City and the Licensee including strike, lockout or any other action arising from a labour dispute, fire (other than a fire caused by the Licensee's negligence), natural flood, act of God, war, riot or other civil insurrection, lawful act of public authority, all of which cannot be reasonably foreseen or provided against.

13. Execution

- 13.1 The Licensee acknowledges that it has read this agreement, understands it and agrees to be bound by its terms and conditions. Further the Licensee agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreement, oral or written, and all other communications between the parties relating to the subject-matter of this Agreement.

4. Independent Legal Advice

14.1 The Licensee acknowledges that it has had the opportunity to obtain independent legal advice with respect to this agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement

SIGNED SEALED AND DELIVERED

OPTIMIST CLUB OF BYRON

Date

Per (Signature): _____

Print Name: _____

Print Title: _____

I Have the Authority to Bind the Corporation

Date

Per (Signature): _____

Print Name: _____

Print Title: _____

I Have the Authority to Bind the Corporation

THE CORPORATION OF THE CITY OF LONDON

Date

Joe Fontana, Mayor

Date

Catharine Saunders, City Clerk

SCHEDULE "A"
PLAN SHOWING PREMISES

