

Bill No. 4
2020

By-law No.

A by-law to authorize and approve an Agreement between The Corporation of the City of London (the "City") and Huff N' Puff Seniors Fitness Association of London, Ontario ("Huff N'Puff") regarding priority booking and reduced rates at certain City Facilities for seniors' programming, 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 municipality may provide any service or thing that the municipality considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the municipality, and the health, safety and well-being of persons;

AND WHEREAS section 107 of the *Municipal Act, 2001* provides that the municipality 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 the Municipal Council considers it to be in the interests of the municipality to provide a grant under section 107 of the *Municipal Act, 2001* to Huff N' Puff Seniors Fitness Association of London, Ontario ("Huff N' Puff") for its use of certain City Facilities, as solely determined by the City;

AND WHEREAS subsection 8(4) of the *Municipal Act, 2001* provides that a by-law under the Act may differentiate in any way and on any basis a municipality considers appropriate;

AND WHEREAS the Municipal Council considers it appropriate to provide priority booking and reduced rental rates to Huff N' Puff for use of certain City Facilities, as solely determined by the City, for the purpose of providing seniors' fitness programs and services for its members;

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

1. The Agreement attached as Schedule "1" to this by-law between The Corporation of the City of London (the "City") and Huff N' Puff Seniors Fitness Association of London, Ontario ("Huff N' Puff") regarding priority booking and establishing reduced rental rates for the use of certain City Facilities 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 December 10, 2019

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading - December 10, 2019
Second reading – December 10, 2019
Third reading – December 10, 2019

Schedule '1'

THIS AGREEMENT dated this _____ of December day of December 2019

BETWEEN:

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

and

HUFF N' PUFF SENIORS FITNESS ASSOCIATION of LONDON, ONTARIO
("Huff N' Puff")
(the "Parties")

WHEREAS the City owns and operates certain recreational facilities and community centres in the City of London;

AND WHEREAS Huff N' Puff is a not-for-profit corporation that offers programs for its older adult members to encourage fitness and social contact;

AND WHEREAS the City considers it in the interests of the municipality to provide support to Huff N' Puff and its programs as it provides services that benefit participants and the community;

AND WHEREAS the Parties agree that Huff N' Puff be afforded time-limited priority booking in the City's Facility Rental Contract process for certain days and hours at City Facilities, as solely determined by the City, for providing its programs and services to its seniors members;

AND WHEREAS the Parties agree that Huff N' Puff will use the City's Facility Rental Contract process for any bookings it wishes to make of City Facilities (other than Office Space and Storage Space);

AND WHEREAS the Parties agree that Huff N' Puff be afforded reduced rental rates for certain City Facilities as set out in this Agreement for the purpose of providing its programs and services to its seniors members;

THEREFORE IN CONSIDERATION of the premises and other good and valuable consideration of two (\$2.00) dollars, the receipt of which is hereby acknowledged and admitted, the parties agree as follows:

Part 1 – Definitions; Term and renewal

1.1 Definitions

"Huff N' Puff" means the organization of Huff N' Puff Seniors Fitness Association of London, Ontario

"City Facilities" means those portions of City-owned or City-operated recreation and community centre facilities that the City in its sole discretion determines may be eligible priority booking under this Agreement, at the days and times as determined solely by the City.

"City Representative" means the City's Managing Director, Neighbourhood, Children & Fire Services, or written designate, or the City Manager, or written designate.

"Facility Rental Contract" means the standard form for Facility Rental Contracts as approved by By-law No. A.-6965-181, or any successor Facility Rental Contract.

"Huff N' Puff Representative" means the President of Huff N' Puff or written designate.

1.2 Term:

1.2.1 Subject to the renewal provisions in section 1.2.2, the initial term of this Agreement shall commence December 25, 2019, and shall terminate December 31, 2023, or terminate at such earlier date pursuant to section 3.2 of this Agreement.

Automatic Renewal:

1.2.2 At the expiration of the initial term of this Agreement, the Agreement is automatically renewed for one year and continues in force from year to year for a maximum of three one-year renewals (ultimate termination Dec 31st, 2023), unless sooner terminated pursuant to section 3.2 of this Agreement.

Part 2 - Priority Booking and Reduced Rental Rates

2.1 Priority Booking

2.1.1 (a) By August 1st of each year, the City Representative shall provide the Huff N' Puff Representative with a schedule indicating those City Facilities (including specified days of the week and times of day) which the City in its sole discretion proposes to make available to Huff N' Puff for the subsequent calendar year. Huff N' Puff shall then have a period of thirty (30) days to advise the City, in writing, of Huff N' Puff's desired usage of City Facilities so made available. Huff N' Puff understands that following such thirty (30) day period, the City will be making available to the public those City Facilities which Huff N' Puff has not indicated an interest in. The Reduced Rental Rate as set out in section 2.2.3 shall apply to any such bookings made under this subsection.

(b) If after the period of thirty (30) days has expired and Huff N' Puff determines that it wishes to use a City Facility during one of the dates and times as presented by the City in (a), and if the City Facility is still available for booking, Huff N' Puff may book the facility, and the Reduced Rental Rate as set out in section 2.2.3 shall apply to any such bookings.

(c) For greater certainty, the Reduced Rental Rate as set out in section 2.2.3 shall only apply to bookings made by Huff N' Puff that fall within (a) or (b) above, and otherwise the City's regular rates as set out in its Fees and Charges By-law shall apply.

2.1.2 Notwithstanding any other provision in this Agreement, the City shall have complete discretion in determining which portions of its facilities, if any, and during which dates and times, if any, it will offer for booking to Huff N' Puff.

2.2. Reduced Rental Rates:

2.2.1 Huff N' Puff shall use the City's Facility Rental Contract process for any bookings it wishes to make of City Facilities. The terms and conditions of any such Facility Rental Contract entered into by the Parties shall govern such booking.

2.2.3 The rental rate to be imposed by the City with respect to bookings approved under subsections 2.1.1 (a) or (b) for Huff N' Puff's use of the applicable City Facility shall be 33.33% of the applicable fee that is set out in the City's Fees and Charges By-law, as at the date the Facility Rental Contract is entered into.

Part 3: General Provisions:

Monthly Statistics

3.1 Huff N' Puff shall provide the City Representative, on a monthly basis, the previous month's statistics reporting numbers of Huff N' Puff members use of the City Facilities per program.

Termination:

Termination by the City

- 3.2 The City may terminate this Agreement immediately without liability. Any waiver by the City of any breach by Huff N' Puff 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.
- 3.3 In the event of termination of this agreement, the City shall have no further obligations to Huff N' Puff, other than those set out in any Facility Rental Contract entered into between the parties. For greater certainty, in the event of termination of this agreement, the terms of any Facility Rental Contract will continue to govern any booking of a City Facility.

Notice:

- 3.4 Any notice required to be given to the City or Huff N' Puff 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.

City's Address

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

Huff N' Puff's Address

Huff N' Puff Seniors Fitness Association
North London Optimist Community Centre
1345 Cheapside Street
LONDON, ON. N5V 3N9

Status of Huff N' Puff:

- 3.5 Huff N' Puff 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 Huff N' Puff, nor any person employed by or associated with Huff N' Puff 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.
- 3.6 Notwithstanding paragraph 3.5 above, it is the sole and exclusive responsibility of Huff N' Puff 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.
- 3.7 Huff N' Puff shall operate independently of the City and is not the agent or servant of the City for any purpose.
- 3.8 Nothing in this Agreement shall entitle or enable Huff N' Puff 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, warranty or guarantee binding upon, or otherwise to bind the City. Each of Huff N' Puff, any subcontractor of Huff N' Puff and the City is independent and not the agent, employee, partner or joint ventures of any of the others.

Circumstances beyond the Control of Either Party

3.9 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 Huff N' Puff including strike, lockout or any other action arising from a labour dispute, fire (other than a fire caused by Huff N' Puff'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.

Execution

3.10 Huff N' Puff acknowledges that it has read this agreement, understands it and agrees to be bound by its terms and conditions.

Independent Legal Advice

3.11 Huff N' Puff 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

HUFF N' PUFF SENIORS FITNESS ASSOCIATION LONDON, ONTARIO

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

Ed Holder, Mayor

Date

Catharine Saunders, City Clerk