

THE CORPORATION OF THE DISTRICT OF PEACHLAND

BYLAW NUMBER 1869

A Bylaw to regulate the Lakefront Area as a public place within the District

WHEREAS Section 8 of the *Community Charter* authorizes Council, by bylaw, to regulate, prohibit and impose requirements in relation to public places;

AND WHEREAS Section 46 of the *Community Charter* provides:

“46(1) Except as permitted by bylaw or another enactment, a person must not excavate in, cause a nuisance on, obstruct, foul or damage any part of a highway or other public place.

(2) A council may, by bylaw,

(a) authorize the seizure of things unlawfully occupying a portion of a highway or public place,

(b) establish fees for such seizure that are payable by the owner of the thing, and

(c) provide for the recovery of those fees from the owner of the thing, including by sale of the thing if the owner refuses to pay or cannot be identified after reasonable efforts.

(3) If a thing is seized under subsection (2), by a municipality, neither the municipality nor a person to whom the thing is disposed of is liable, in damages or otherwise, for or in respect of any claim that may arise in respect of the thing after its disposal in accordance with this Act.”

AND WHEREAS the District of Peachland holds, by lease from the Province of British Columbia, that foreshore and water areas described as:

“District Lots 1205, 1308, 4042, 1450, 4828, 4827, 4000 and 4912, together with all that unalienated and unencumbered foreshore being part of the bed of Okanagan Lake, Osoyoos Division of Yale District, more particularly described as covering a distance of 183 metres from the high water mark lying within the boundaries of the District of Peachland, containing approximately 200 hectares”,

which area is shown on the plan attached to this Bylaw as Schedule “A” and which area is referred to in this Bylaw as the “Shoreland Plan Area”;

AND WHEREAS the District of Peachland wishes, by this Bylaw, to regulate the Lakefront Area as a public place and prohibit the construction and installation of marinas, wharfs, docks and buoys without a sublease or license from the District;

NOW THEREFORE Council of the District of Peachland, in open meeting assembled, enacts as follows:

Repeal

1. That bylaw known as “Construction of Wharves and Piers Bylaw No. 1436, 1997” and all amendments to it are hereby repealed.

Citation

2. This Bylaw may be cited as “Lakefront Area Public Place Regulation Bylaw No. 1869, 2011”.

Designation

3. The Lakefront Area is hereby designated as a public place for the purposes of this Bylaw.

Prohibition on New Construction

4. No person may construct or install, or permit on his behalf, the construction or installation, of any marina, wharf, dock, pier, buoy or similar structure or object on or within the Lakefront Area without a sublease or license from the District.

Requirement for Removal of Unlawful Construction

5. Every owner shall immediately remove from the Lakefront Area any marina, wharf, dock, pier, buoy or similar structure or object belonging to him that is not permitted or that is no longer permitted by a valid and subsisting sublease or license from the District.

Delegation

6. Council hereby delegates to the Director of Planning and Development Services and the Building Inspector both hereinafter referred to as the Licensing Inspector, the authority to consider, make requirements in relation to, issue, refuse, renew, transfer, enforce, use security in relation to, terminate and otherwise administer subleases and licenses for marinas, wharfs, docks, piers, and buoys on the Lakefront Area, pursuant to Council’s policy from time to time.
7. Subleases and licenses issued pursuant to section 6 may be executed on behalf of the District by any two of the Licensing Inspector, the Mayor, and the Corporate Officer.
8. If the Licensing Inspector should in any case choose not to exercise the power delegated in section 6, the Licensing Inspector may require a person to apply to Council of the District for issuance of the sublease or license.
9. All of the following apply to any decision by a delegate under section 6:
 - (a) Any owner of property that is subject to a decision under section 6 who is dissatisfied with the decision is entitled to have the decision reconsidered by Council in accordance with this section;
 - (b) An owner who wishes to have a decision reconsidered by Council must apply for the reconsideration by delivering to the Chief Administrative Officer or the Corporate Officer, within 30 days after the decision is communicated in writing to the owner, a reconsideration application in writing, which must set out all of the following;

- (i) the name of the delegate who made the decision, the date of the decision and the nature of the decision;
 - (ii) reasons why the owner wishes the decision to be reconsidered by Council;
 - (iii) the decision the owner requests be made by Council, with brief reasons in support of the requested decision; and
 - (iv) a copy of any materials considered by the owner to be relevant to the reconsideration by Council;
- (c) a reconsideration application must be considered by Council at a regular meeting of Council held at least two weeks after the date on which the reconsideration application is delivered to the District;
- (d) the Chief Administrative Officer or Corporate Officer must:
- (i) place each reconsideration application on the agenda for a regular meeting of Council in accordance with section 9(c);
 - (ii) before each reconsideration by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered;
- (e) In reconsidering a decision the Council must consider the material that was considered by the delegate in making the decision;
- (f) At a reconsideration of a decision, the owner and any other person who is interested in the decision are entitled to be heard by Council;
- (g) Council is entitled to adjourn a reconsideration of a decision; and
- (h) After having reconsidered a decision, Council may either confirm the decision or may set aside the decision and substitute the decision of Council.

Seizure

10. Any bylaw enforcement officer, or the Licensing Inspector, may seize any marina, wharf, dock, pier, buoy or similar structure or object on or within the Lakefront Area that has not been permitted by or that is no longer permitted by a sublease or license from the District, and the seizure may include all boats, signs, flags, footings, and other items attached to or appurtenant to the object.

Seizure Fees

11. In the event of a seizure under section 10 of this Bylaw, the following fees for the seizure are payable by the owner of the thing seized: The actual cost of the seizure including all costs incurred by the District relating to the administration of that seizure.

Recovery of Fees

12. The fees outlined in section 11 of this Bylaw are a debt immediately due and payable to the District by the owner of the thing seized, and must be paid by the owner to the District before the return of the thing seized, and if within 30 days after the seizure, the owner refuses to pay or the owner cannot be identified after reasonable efforts, the District may recover the seizure fee by

selling the thing seized, and any shortfall remains a debt due and owing by the owner, and any excess above the seizure fee shall be paid to the owner, if the owner has been identified.

Severability

13. If a court should find any provision or part of a provision in this Bylaw illegal, unenforceable or void, the remaining provisions or parts of provisions of this Bylaw will continue to have full force and effect.

Offences

14. Every person who violates any provision of this Bylaw, or who permits any act or thing to be done in violation of any provision of this Bylaw, is guilty of an offence against this Bylaw which is punishable upon summary conviction by a fine not exceeding \$10,000.00 and not less than \$1,000.00 for each offence, plus the costs of prosecution.
15. Each day that a violation of any provision of this Bylaw continues to exist is a separate offence against this Bylaw.

READ A FIRST TIME this 8th day of March, 2011

READ A SECOND TIME this 8th day of March, 2011

READ A THIRD TIME this 8th day of March, 2011

FINALLY RECONSIDERED AND ADOPTED this 12th day of April, 2011

Mayor

Corporate Officer

DATED at Peachland this ____ day of _____, 2011

