CITY OF KELOWNA

BYLAW NO. 11500

A Bylaw for the purpose of preventing, abating and prohibiting nuisances and other objectionable situations

WHEREAS under Sections 8 and 64 of the *Community Charter*, Council may, by bylaw, regulate, prohibit and impose requirements in relation to nuisances, disturbances and other objectionable situations;

AND WHEREAS under Section 17 of the *Community Charter*, Council directs that if a person subject to a requirement fails to take the required action the municipality may fulfill the requirement at the expense of the person and recover the costs incurred from that person as a debt;

AND WHEREAS under Section 194 of the *Community Charter*, Council may, by bylaw, impose a fee payable in respect of all or part of a service of the municipality or the exercise of a regulatory authority by the municipality;

AND THEREFORE, the Council of the City of Kelowna, in an open meeting assembled, enacts as follows:

1. Introduction

1.1 This bylaw may be cited as "Good Neighbour Bylaw No. 11500".

2. Definitions

2.1 In this bylaw:

Building materials includes items and implements used in the construction of structures or in landscaping, including lumber, windows, doors, roofing materials, fill, soil, scaffolding, tools and equipment;

Bylaw Enforcement Officer means a bylaw enforcement officer appointed by Council of the City of Kelowna pursuant to section 36(1) of the *Police Act*, RSBC 1996, c. 367;

Bylaw Supervisor means the person appointed by Council of the City of Kelowna to exercise supervisory responsibility over **bylaw enforcement officers** or other persons;

Construction Noise means any noise or sound made by:

(i) the carrying on of works in connection with the construction, demolition, reconstruction, alteration or repair of any building or structure;
(ii) the carrying on of any excavation by machinery or heavy equipment; or
(iii) the moving or operating of any kind of machine, engine or construction equipment.

Customer Service Box means a distribution box for publications or a drop box for couriers;

Derelict means

(a) physically wrecked or disabled;

(b) in the case of a **motor vehicle**, incapable of operating under its own power or, in the case of a trailer, incapable of being towed in the manner a trailer is normally towed; or
(c) in the case of a **motor vehicle**, lacking number plates for the current year pursuant to the regulations under the *Motor Vehicle Act*, RSBC 1996, c. 318;

Development Engineering Manager means the person with supervisory authority over the City's department of Development Engineering;

Dumpster means a trash receptacle designed to be hoisted and the trash within it deposited into a truck;

Graffiti means one (1) or more letters, symbols or marks, however made, on any structure, place or thing, including a **utility kiosk**, **customer service box** or **dumpster**, but does not include marks made accidentally, or any of the following:

(a) a sign, public notice or traffic control devices authorized by the Public Works Manager appointed by Council of the City of Kelowna;
(b) a sign authorized by the Sign Bylaw, No. 8235, as amended or replaced from time to time;
(c) a public notice authorized by a City bylaw or by provincial or federal legislation; or
(d) in the case of **real property**, a letter, symbol or mark for which the **owner** or tenant of the **real property** on which the letter, symbol or mark appears has given prior, written authorization, such as a **mural**;

Motor Vehicle means a vehicle that is designed to be self propelled;

Mural means an artistic rendering or drawing painted or otherwise applied to a building or structure, and where permission has been granted by the **owner** of the building or structure to apply the **mural**;

Nuisance Abatement Fee means the fees, charges and amounts stated in Schedule "A" to this bylaw;

Nuisance Service Call means a response by a **bylaw enforcement officer** or RCMP member to, or abatement of, any activity, conduct or condition occurring on or near **real property** that is contrary to a provision within sections 4, 7, 8 or 9 of this bylaw;

Order to Comply means an order substantially in the form described in provision 10 of this bylaw;

Owner means the registered owner of an estate in fee simple, the tenant for life under a registered life estate, the registered holder of the last registered agreement for sale, the holder or occupier of land held in the manner referred to in section 228 or 229 of the *Community Charter*, and an Indian who is an owner under the letters patent of a municipality incorporated under section 9 of the *Local Government Act*.

Public Space means any **real property** or portions of **real property** owned or leased by the City to which the public is ordinarily invited or permitted to be in or on, and includes, but is not limited to, the grounds of public facilities or buildings, the surface of Okanagan Lake and the lake foreshore, any public transit exchange, transit shelter or bus stop, and public parkades or parking lots;

Public Works Manager means the person with supervisory authority over the City's department of Public Works;

Real Property means land, with or without improvements so affixed to the land as to make them in fact and law a part of it;

Residential Areas means lands that are used residentially in a zone that permits residential use under the City of Kelowna Zoning Bylaw No. 8000, as amended or replaced from time to time (the "Zoning Bylaw");

Revenue Supervisor means the municipal officer assigned responsibility as collector of taxes for the City;

Rubbish includes, but is not limited to, dead animals, paper products, crockery, glass, metal, plastics, plastic, metal or glass containers, wire, rope, pipes, machinery, tires, household appliances, litter, organic matter not in a closed and sealed composter, vehicle or mechanical parts, dilapidated furniture, and any other scrap or salvage, unless the materials are in a closed building or structure and not visible from another parcel or a **public space**, and for clarity, **rubbish** material covered by a tarp or other cover are not within a closed building or structure;

Street means any highway, roadway, sidewalk, boulevard, lane and any other way which the public is ordinarily entitled or permitted to use for the passage of vehicles or pedestrians, but does not include a private right-of-way on private property;

Utility Kiosk means an above-ground structure that is used for housing or storing electrical or communications components, circuits, devices, equipment, materials, cables, connections and the like.

3. General Prohibition

3.1 No person shall do any act or cause any act to be done which constitutes a nuisance at law.

4. Property Nuisances

4.1 No **owner** or occupier of **real property** shall permit any act to be done which constitutes a nuisance at law on that **real property**.

4.2 No **owner** or occupier of **real property** shall permit or allow the **real property** to become or remain unsightly.

4.3 Without limiting the generality of section 4.2 of this bylaw, an **owner** or occupier of **real property** must not:

(a) permit an accumulation of water, filth or **rubbish** on the **real property**;

(b) keep a **derelict motor vehicle**, vehicle, boat or trailer except as part of a lawful business operating under a license from the City;

(c) permit the accumulation on the **real property** of noxious, offensive or unwholesome materials, substances or objects;

(d) Except when specified as a permitted use in the Zoning Bylaw, allow or permit an accumulation of **building materials** on the **real property** for more than fifteen (15) days unless:

(i) the **owner** of the **real property** is in possession of a valid building permit; or

(ii) the **building materials** are stored in a closed building or structure such that they are not visible from another parcel or a **public space**.

4.4 Except as permitted by this bylaw, no **owner** or occupier of **real property** in **residential areas** as defined in this bylaw shall make or cause, or permit to be made or caused, any contamination of the atmosphere through the emission or smoke, dust, gas, sparks, ash, soot, cinders, fumes, or other effluvia that is liable

to foul or contaminate the atmosphere or make or cause, or permit to be made or caused any odour or dust which is liable to disturb the quiet, peace, rest, enjoyment, comfort of convenience of individuals or the public.

5. Graffiti

5.1 No person shall place **graffiti**, or cause **graffiti** to be placed on any wall, building, fence, sign or any other structure or surface, adjacent to a **street** or **public space**.

5.2 No **owner** or occupier of **real property** adjacent to a **street** or other **public space** shall permit **graffiti** to be placed on any wall, building, fence, sign, **utility kiosk, customer service box, dumpster** or other structure or surface.

5.3 Every **owner** or occupier of **real property** shall keep any wall, building, fence, sign or other structure or surface that is located on such **real property**, and adjacent to a **street** or **public space**, free of **graffiti**.

5.4 Every **owner** of a **motor vehicle** shall keep the **motor vehicle** free of **graffiti**.

6. Street and Public Space Nuisances

6.1 No person shall place **graffiti**, or cause **graffiti** to be placed on any wall, building, fence, sign or other structure or surface in a **street** or **public space**.

6.2 No person shall on a **street** or in a **public space**:

(a) urinate or defecate;
(b) sleep in a **motor vehicle**; or
(c) participate in a violent confrontation or struggle.

6.3 No person shall on a **street** or in a **public space**:

(a) scatter, dump, or dispose of any garbage, glass, crockery, litter or other material, whether liquid or solid, and whether likely to injure any person, animal, vehicle or not;
(b) place or throw any circular, pamphlet, handbill or other paper material, whether or not the paper material had been previously placed upon any **motor vehicle** or other vehicle, without the consent of the **owner** or driver thereof;
(c) cut, remove or damage any tree, shrub or flower plant, bush or hedge;
(d) deface, injure or damage any **street**, ditch or fence or anything erected or maintained for purpose of lighting a **street**;
(e) dispose or place or leave any cement, mortar, lime, or any other substance having a damaging or destructive effect upon the concrete, asphalt, bushes, shrubs, or trees, or grass situate thereon;
(f) stamp, paint, post, affix or otherwise place any placard, bill, poster, notice advertisement without first having obtained the permission of the City; or
(g) remove to, or accumulate in from lands adjacent to a **street** or **public space**, grass cuttings, leaves or **rubbish**.

7. **Property Noise**

7.1 No person shall make or cause, or permit to be made or caused, any noise in or on a **street** or elsewhere in the City that is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.

7.2 No **owner** or occupier of **real property** shall allow or permit such **real property** to be used so that noise or sound which emanates therefrom is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public.

7.3 No person shall make, cause, or permit to be made or caused, noise or bass sound of a radio, television, player, or other sound playback device, public address system, or any other music or voice amplification equipment, musical instrument, whether live or recorded or live, whether amplified or not, in or on private property or in any **public space** or **street** in such manner that is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public.

7.4 No person shall own, keep or harbour any animal or bird which by its barks, cries or sounds is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.

8. Construction Noise

8.1 No person shall on any day before 0700 hours or after 2100 hours make or cause, or permit to be made or caused any **construction noise**.

8.2 A person may apply to the **public works manager** for permission to vary the time restrictions established in section 8.1 of this bylaw with respect to **construction noise** generated on **public spaces** or **streets**. A person may apply to the **development engineering manager** for permission to vary the time restrictions established in section 8.1 of this bylaw with respect to **construction noise** generated on **real property** that is not a **public space** or a **street**. An application in the form specified by the **development engineering manager** or **development engineering manager**, as appropriate, must be submitted at least five (5) business days prior to the date of the proposed activity.

8.3 Upon receiving an application submitted in accordance with section 8.2 of this bylaw, the **City** may, by written permit, vary the time restrictions set out in section 8.1 of this bylaw for a certain location and activity if, in the opinion of the **public works manager** or **development engineering manager**, as appropriate:

(a) public safety or traffic considerations make it necessary or expedient that the work or activity commence or continue beyond those time restrictions; or

(b) it is impossible or impractical to carry out, within those time restrictions:

(a) excavation;

(ii) concrete pouring or finishing;

(iii) major structural or mechanical component delivery or placement; or

(iv) relocation of a building; and

after considering whether there should be prior notification of the neighbourhood that would be affected, the **public works manager** or **development engineering manager**, as appropriate may impose such terms

and restrictions as deemed necessary in the circumstances to mitigate the impact of the **construction noise** on the adjacent neighbourhood.

8.4 Notwithstanding any provisions of this bylaw, a person may perform works of an emergency nature for the preservation or protection of life, health, or property but the onus shall be on the person performing the work to show that the work was of an emergency nature.

8.5 Notwithstanding the provisions of this bylaw, a person may apply for and receive from the City a permit for a special event which in Council of the City of Kelowna's opinion is in the public interest, in which case the provisions of this bylaw shall be inoperable to the extent the activities constituting the special event are permitted.

8.6 Notwithstanding the other provisions of this bylaw, where a normal farming practice as defined by the *Farm Practices Protection (Right to Farm) Act*, RSBC 1996, c. 131 involves the operation of machinery or equipment, this bylaw does not apply.

9 Deemed Objectionable Noises

9.1 No person shall launch a motor boat from any lands in the City or operate a motor boat in the City if the motor boat is equipped with an exhaust system that permits the exhaust gases from the engine to be expelled directly into the air without first passing through water unless the motor boat is equipped with a muffling device that ensures the exhaust gases from the engine are cooled and expelled without excessive noise.

9.2 No person shall operate a motor boat powered by an engine equipped with the exhausting devices commonly described as dry stacks or dry headers.

9.3 No person shall operate a motor boat powered by an engine equipped with exhausting devices commonly described as water injected headers or over-transom water cooled exhaust unless a properly operating muffler is installed thereon.

9.4 No person shall operate a motor boat so as to cause noise which disturbs the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.

9.5 Without limiting the generality of sections 7.1 to 8.1 and 9.1 to 9.4 of this bylaw, the following noises or sounds are considered by Council of the City of Kelowna to be liable to disturb the quiet, peace, enjoyment, comfort or convenience of individuals or the public:

(a) any noise or sounds, the occurrence of which extends continuously or intermittently for fifteen (15) minutes or more, created by the following:
    (i) a gathering of two or more persons, where at least one (1) human voice is raised beyond the level of ordinary conversation;
    (ii) barking, howling or any other sound by a dog that is kept or harboured; and
    (iii) yelling, shouting or screaming,

(b) any noises or sounds produced within or outside a **motor vehicle** and created by:
    (i) the vehicle's engine or exhaust system when such noises or sounds are loud, roaring or explosive;
    (ii) a **motor vehicle** horn or other warning device except when authorized by law; and

(iii) a **motor vehicle** operated in such a manner that the tires squeal, and

(c) noise or sound generated from the operation of a power lawn mower or power garden tool before 0700 hours or after 2100 hours on any day.

10 Compliance Orders

10.1 Pursuant to section 154 (1) (b) of the *Community Charter*, Council of the City of Kelowna delegates to the **bylaw supervisor** its powers, duties and functions to require that something be done to remedy a contravention of this bylaw.

10.2 Where a condition exists that is a contravention of any of the provisions in sections 4 and 5 of this bylaw, the **bylaw supervisor** may issue an **order to comply** requiring the person to remedy the nuisance or non-compliance within fourteen (14) days of deemed service or ten (10) days in the case of a contravention of section 5.3 of this bylaw, or on a date the **bylaw supervisor** considers reasonable in the circumstances if in the opinion of the **bylaw supervisor** a further period of time is required due to:

(a) the quantity of **rubbish** or other material or amount of **graffiti** to be removed;
(b) any disability or physical limitations of the person to whom the **order to comply** is directed; or
(c) weather conditions at the time of issuing an **order to comply**.

10.3 An **order to comply** may be served on an **owner** or occupier of **real property** and is deemed to be served when the City has:

(a) mailed, by registered mail, a copy of the **order to comply** to the address of the **owner** shown on last revised **real property** assessment roll;
(b) delivered a copy of the **order to comply** to the **owner** of the **real property** at the address shown on the last revised real property assessment roll;
(c) placed the **order to comply** in a mailbox or other receptacle for the receipt of mail on the **real property**; or
(d) posted a copy of the **order to comply** on the **real property**.

10.4 Every person shall comply with an **order to comply**.

10.5 If the nuisance or non-compliance in an **order to comply** has not been remedied by the date specified therein set out and the **owner** has had an opportunity to be heard in respect of the matter, the City, by its employees, contractors and agents may enter the **real property** and effect compliance with the **order to comply** at the expense of the **owner**. The **bylaw supervisor** shall certify to the **revenue supervisor** all costs incurred by the City in effecting compliance, and such costs shall constitute a debt due and owing by December 31 in the year compliance was effected and, if unpaid by December 31, the cost shall be added to and form part of the taxes for the **real property** as taxes in arrears.

11. Enforcement

11.1 The provisions of this bylaw may be enforced by any **bylaw enforcement officer** and members of the Royal Canadian Mounted Police.

12. Penalty

12.1 Every person who violates any provisions of this bylaw or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this bylaw or who neglects to do or refrains from doing anything required to be done by any of the provisions of this bylaw, or who does any act which constitutes an offence against the bylaw is guilty of an offence against this bylaw and liable to the penalties hereby imposed. Each day that the violation continues to exist, shall constitute a separate offence;

Every person who commits an offence against this bylaw is liable on conviction, to a minimum fine of not less than $100.00 and a maximum fine of not more than $10,000 in the case of a conviction or a term of incarceration for a period of not more than ninety (90) days, or both. Any penalty imposed pursuant to this bylaw shall be in addition to, and not in substitution for, any other penalty or remedy imposed pursuant to any other applicable statute, bylaw or legislation.

13. Repeat Service Calls

13.1 Where a **bylaw enforcement officer** or member of the RCMP are required to respond to **real property** for more than three **nuisance service calls** within any twelve (12) month period, the **owner** of the **real property** shall pay a Nuisance Abatement Fee for each **nuisance service call** in excess of three within any twelve (12) month period.

13.2 Despite section 13.1 of this bylaw, where legal title to the **real property** is transferred, **nuisance service calls** occurring before the date the new **owner** obtains legal title to the **real property** shall not apply to the determination under section 13.1 of this bylaw whether **Nuisance Abatement Fees** are payable or with respect to the amount that is payable.

13.3 Before an **owner** of **real property** is liable to pay a **Nuisance Abatement Fee**, the City shall provide written notice to the **owner** that:

(a) describes the nature of the contravention or nuisance conduct, activity or condition; and

(b) advises the **owner** of **Nuisance Abatement Fees** and that such fees are in addition to the City's right to seek other legal remedies or actions for abatement of the nuisance or contravention.

13.4 Service of the notice under section 13.3 of this bylaw may be effected and is deemed to have been served in the manner provided for in section 10.3 of this bylaw.

13.5 **Nuisance Abatement Fees** shall be paid by the **owner** within fourteen (14) days of receipt of an invoice from the City.

13.6 The City may impose a **Nuisance Abatement Fee** despite a person not being charged with an offence relating to the nuisance or contravention, a person charged with an offence relating to a nuisance or contravention being acquitted of any or all charges or if the charges are withdrawn, stayed or otherwise do not proceed.

14. Entry and Inspection

14.1 The **bylaw supervisor** and **bylaw enforcement officers** may enter at all reasonable times on any **real property** that is subject to this bylaw to ascertain whether the requirements of this bylaw are being met and the regulations in this bylaw are being observed and no person shall interfere with, hinder or obstruct the **bylaw supervisor** or a **bylaw enforcement officer** from doing so.

15. Severability

15.1 If a section, subsection, sentence, clause or phrase of this bylaw is for any reason held to be invalid by the decision of a Court of competent jurisdiction, it shall be severed and such decision shall not affect the validity of the remaining portions of this bylaw.

16. Effective Date

16.1 This bylaw shall take full force and effect as and from the date of adoption.

17. Repeal

17.1 City of Kelowna "Kelowna Noise and Disturbances Control Bylaw No. 6647" and all amendments thereto, are hereby repealed.

17.2 City of Kelowna "Residential Nuisance Bylaw No. 7782" and all amendments thereto, are hereby repealed.

17.3 City of Kelowna "Unsightly Premises and Visual Nuisance Bylaw No. 8217" and all amendments thereto, are hereby repealed.

17.4 City of Kelowna "Anti-Litter Bylaw, 1972, No. 3477" and all amendments thereto, are hereby repealed.

Read a first, second and third time by the Municipal Council this 30th day of October, 2017.

Adopted by the Municipal Council of the City of Kelowna this

_____

Mayor

_____

City Clerk

SCHEDULE "A"

NUISANCE ABATEMENT FEES

1) Nuisance service call response fee: $250.00 per response by City of Kelowna, Bylaw Enforcement;
2) Nuisance service call response fee: $250.00 per response by RCMP;
3) Nuisance service call response fee: $250.00 per response by Kelowna Fire Department.