



**The Municipal Corporation of the
Town of Fort Erie
BY-LAW NO. 233-2001**

**BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO AN
AGREEMENT WITH BOARDVIEW ADVERTISING INC. FOR
ADVERTISING SERVICES AT ARENA FACILITIES**

WHEREAS Section 220.1(2)(c) of the *Municipal Act*, R.S.O. 1990, Chapter M.45 as amended provides inter alia despite any *Act*, a municipality may pass by-laws imposing fees or charges on any class of persons, for the use of its property including property under its control, and

WHEREAS the Corporation of the Town of Fort Erie is the owner of the Leisureplex and Crystal Ridge Community Centre, and

WHEREAS the Town of Fort Erie started advertising on the arena boards at the Leisureplex in 1996 in order to generate revenue, and

WHEREAS in an effort to increase these revenues, it is deemed desirable to enter into a contract with BoardView Advertising Inc. for new advertising customers above and beyond those advertising customers currently under contract with the Town of Fort Erie, and

WHEREAS it is deemed desirable to contract with BoardView Advertising Inc. for the solicitation and placement of advertising on the arena boards and the Zambonis at the arena facilities, and

WHEREAS the terms and conditions of the agreement have now been agreed upon and settled between the parties in the form of Schedule "A" annexed hereto to this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the entry into an agreement with BoardView Advertising Inc. for specific advertising services at the arenas in the form of Schedule "A" annexed hereto to this by-law be and it is hereby authorized and approved.
2. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the agreement annexed hereto as Schedule "A" to this by-law and to affix the corporate seal thereto.

By-law No. 233-2001

Page Two

3. THAT the Clerk of the Town of Fort Erie is hereby authorized to effect any minor revisions or corrections that may be necessary to complete the intent of the agreement prior to execution thereof.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 10th DAY OF DECEMBER, 2001.



MAYOR



CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 233-2001 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 2001.

SCHEDULE "A" TO BY-LAW NO. 233-2001

This Agreement made in triplicate this day of , 2001.

B E T W E E N:

THE CORPORATION OF THE TOWN OF FORT ERIE
hereinafter called "the Town"

OF THE FIRST PART;

- AND -

BOARDVIEW ADVERTISING INC.
hereinafter called "BoardView"

OF THE SECOND PART;

WHEREAS the Town is the owner of arena facilities containing arena board advertising capabilities, and

WHEREAS the Town is desirous of contracting out the arena board advertising service to BoardView to solicit advertisers to advertise on the arena boards at the Leisureplex and the Crystal Ridge Community Centre located at each of these facilities (hereinafter called the "Advertising Areas"), and

WHEREAS it is deemed desirable to enter into an agreement with BoardView for the provision of arena board and equipment advertising services;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants contained herein the Town and BoardView mutually agree as follows:

1. Term of Agreement

1.1 Subject to Articles 6.1 and 8.1 herein, the term of this agreement shall be for a period of five (5) years commencing January 1st, 2002 and terminating December 31st, 2006. If the parties mutually agree, this agreement may be renewed for a further five (5) year term according to similar terms and conditions contained herein.

2. Exclusive Rights

2.1 The Town hereby grants BoardView the exclusive right to solicit advertising and to affix same to the arena boards located in the Advertising Areas. However, this exclusivity does not apply to the advertising contracts currently held by the Town nor does it affect the revenues generated therefrom to the Town. In the event a current contract with the Town is cancelled, such business shall be available to BoardView.

2.2 The Town reserves the right at its sole discretion to determine whether or not this agreement applies to the Zamboni equipment at the facilities. If the Town determines to apply this agreement to the Zamboni equipment, the Town shall issue written notice to this effect to BoardView and the rate shall be as set out under Article. 3.1.

3. **Responsibilities of BoardView**

3.1 BoardView shall pay to the Town the following amount per annum for each sign BoardView contracts with an advertiser. BoardView shall remit the stated amount to the Town on a quarterly basis and the first installment shall be due and payable within ninety (90) days from the date of installation of the sign in or on the Advertising Areas:

Rink Board	\$300.00
Zamboni Sign, if applicable	\$100.00

3.2 In the event BoardView increases its contract fees with advertisers, it shall notify the Town in writing, of such increase within ten (10) days of the effective date and the Town shall be entitled to fifty percent (50%) of the increase in revenues based solely on media rates.

3.3 BoardView may establish the term of such contracts with each and every advertiser but no term of any advertising contract entered into between BoardView and the advertiser shall extend beyond the term of this agreement.

3.4 BoardView shall be responsible for the cost of installation and maintenance of all advertisement signs placed in the Advertising Areas.

3.5 BoardView shall exercise discretion in the types of advertising that it solicits and agrees to for placement in the Advertising Areas. Such advertising shall be suitable for children and families. Any other type of advertising shall not be permitted. The Town shall have the right to approve the artwork, content, colours and graphic symbolism of each sign prior to installation in the advertising area.

3.6 BoardView acknowledges that the Town shall retain its current advertising contracts for the Advertising Areas and retain 100% of the associated revenues. The contract with BoardView shall be for new customers only acquired after January 1st, 2002.

4. Responsibilities of the Town

- 4.1 The Town shall provide BoardView and their agents reasonable access to the facilities and Advertising Areas in order to install and maintain the advertisement signs.
- 4.2 The Town shall keep the advertising signs in a clean state according to its normal maintenance standards.
- 4.3 The Town shall not remove, cause to be removed or permit to be removed any advertisement signs installed by BoardView during the term of this agreement or to be obscured from vision. In the event it is necessary for the Town to cover any advertising sign for more than seven (7) consecutive days, the Town shall provide ten (10) days written notice to BoardView.
- 4.4 The Town shall make available to BoardView, upon request:
 - (i) Estimated annual attendance figures of the facilities;
 - (ii) General information pertaining to the usage of the facilities;
 - (iii) Information pertaining to any previous agreements and/or contracts involving the facilities which might conflict with a potential advertiser.
- 4.5 The Town shall provide thirty (30) days written notice to BoardView should the Town plan to implement any other advertising program(s) within the facilities.

5. Liability and Indemnification

- 5.1 BoardView shall furnish the Town with a copy of a liability insurance policy, covering public liability and property damage in a minimum amount of Two Million Dollars (\$2,000,000.00). Such policies shall contain:
 - (a) an endorsement certifying that the Town is included as an additional insured, and;
 - (b) an endorsement to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days advance written notice to the Town.
- 5.2 Except to the extent caused by the Town, or any of its agents, contractors, employees or servants, BoardView shall indemnify and save the Town harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence as a result of this agreement, the occupancy or use by BoardView of the said advertising areas or any part thereof, or occasioned wholly or in part by any act or omission of BoardView, its agents, contractors, employees, servants, licenses or concessionaires or invitees. In case the Town

shall, without fault on its part, be made a party to any litigation commenced by or against BoardView, then BoardView shall protect and hold the Town harmless and shall pay all costs, expenses and solicitor and counsel fees on a solicitor/client basis incurred or paid by the Town in connection with such litigation.

- 5.3 The Town shall not be held responsible for any damage caused to any BoardView advertising signs that are the subject of this agreement unless such damage was caused by the negligence of the Town.

6. **Default**

- 6.1 Failure to comply with any of the terms and conditions of this agreement, shall be just cause for the cancellation of the agreement provided that the defaulting party has received at least thirty (30) days written notice from the non-defaulting party and an opportunity to rectify the failure to the sole satisfaction of the non-defaulting party prior to cancellation.

7. **Assignability**

- 7.1 This agreement shall not be assigned by either party unless mutually agreed.

8. **Termination**

- 8.1 Either party may terminate this agreement upon ninety (90) days written advance notice served upon the other party personally or by registered mail for any reason. Should this agreement be so terminated, any advertising contracts held by BoardView shall remain in effect to the termination date thereof and BoardView shall not enter into any additional contracts after notice of termination of this agreement has been served, if that be the case.

9. **Notice**

- 9.1 Any notice under this agreement shall be given in writing and may be delivered by regular prepaid mail or by facsimile transmission as follows:

Notice to the Town: The Corporation of the Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6
Attention: C. Kett, Municipal Clerk
Fax: 1-905-871-4022

Notice to BoardView: BoardView Advertising Inc.
14 Tresillian Road
Toronto, ON M3H 1L6
Attention: Jory Sigismund, President
Fax: 1-416-633-9668

