

# The Corporation of the City of Penticton

## Bylaw No. 2020-22

*A bylaw to regulate and authorize the construction of storefront uses on road right of ways*

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WHEREAS Council wishes to allow the use of road right of ways for retail, service and amenity use;

AND WHEREAS Council is authorized to regulate activities within highway right of ways pursuant to the *Community Charter*;

NOW THEREFORE the Council of the City of Penticton in open meeting assembled, hereby ENACTS AS FOLLOWS:

### 1. Title

This Bylaw may be cited as "Storefront Use Bylaw No. 2020-22".

### 2. Definitions

"active use"	means the period in which a business actively uses the storefront use space and anticipates customers using this space by placing merchandise or tables and chairs.
"block face"	means the shortest portion of a highway lying between two intersecting highways other than lanes.
"Director "	means the Director of Development Services or his/her designate.
"flex parking area"	means an area which has been specifically designed and surfaced to allow the easy conversion of vehicle parking into storefront uses, or vice versa.
"Infrastructure"	means any fixed asset owned or operated by the City intended to facilitate transportation, delivery of essential services or removal of waste and includes roads, sidewalks, street trees, fire hydrants, water lines, sewer lines, garbage receptacles, street furniture, street lights, utility poles, traffic control devices, bus stops and signage.
"Permit holder"	means the business or property owner applying for and receiving a permit to allow a storefront use.
"sales area"	means a portion of the City sidewalk located directly in front and not extending further than 1.8m from a storefront. This area can be used for displays, merchandising, bike racks or artwork.
"seating area"	means the portion of a sidewalk directly in front and not extending further than 1.8m from a storefront. It is typically used for the service of food and beverages.

“sidewalk café”	means a portion of a City sidewalk used for the service of food and beverages in connection with a restaurant or café use in an abutting building, which may include the sale of liquor as regulated by the Liquor Control and Licencing Branch.
“sidewalk treadway”	means an unobstructed area reserved exclusively for the passage of pedestrians.
“storefront width”	means the building frontage equal to the width of the associated business.
“storefront use”	means the use of a portion of a sidewalk (concrete) area adjacent to the business storefront width and may include a sales area, seating area or sidewalk café.

### **3. General Provisions**

3.1. This bylaw shall apply to any commercially zoned properties in the city.

### **4. Eligibility for a Storefront Use**

- 4.1. Subject to the provisions of this bylaw, a property owner or business owner shall be eligible to use the sidewalk adjacent to their property for a storefront use.
- 4.2. Storefront uses shall not exceed the business storefront width unless the permit holder enters into a written agreement with the adjacent property owner(s) to expand a storefront use or consolidate storefront uses, subject to the approval of the Director.
- 4.3. Storefront uses shall be approved by the Director of Development Services.
- 4.4. No person shall construct or otherwise establish a storefront use without a permit issued under this bylaw.
- 4.5. The City shall provide application and associated licence agreement forms required under this bylaw.
- 4.6. An application for a storefront use shall be made in writing to the Director.
- 4.7. A storefront use permit cannot be issued without a signed licence agreement, as prescribed by the Director and attached to the application.
- 4.8. On issuance for a storefront use, the applicant shall pay the applicable fees as prescribed in the fees and charges bylaw.
- 4.9. An applicant for a storefront use permit is entitled to have Council reconsider a decision of the Director of Development Services, and for this purpose:
  - 4.9.1 within 30 days of receiving the Director’s decision, the applicant shall submit to the Corporate Officer a written request for reconsideration and the Corporate Officer

shall set a date and time for the applicant to appear before Council and be heard regarding the decision; and

- 4.9.2 following the applicant's opportunity to be heard, Council may either confirm the Director's decision or render a different decision.

## **5. Construction of Storefront Uses**

- 5.1. The applicant shall bear all costs associated with constructing a storefront use.

## **6. Right of Removal by City**

- 6.1. Notwithstanding anything in this bylaw, the City reserves the right to revoke a storefront use permit and remove, demolish, or destroy any structure, furnishings, chattels or other objects for any of the following purposes:

- 6.1.1. to construct capital works;
- 6.1.2. to repair or maintain City infrastructure;
- 6.1.3. to provide emergency services;
- 6.1.4. to correct an unsafe or unsightly condition in the area in which the storefront use is located;
- 6.1.5. to bring a storefront use into compliance with a bylaw of the municipality, or any other enactment; or
- 6.1.6. the permit holder no longer holds a valid business licence.

- 6.2. In the event of an action under section 6.1, the operator of a storefront use shall be given 14 days' notice and an opportunity to remove any structure, furnishings, chattels or other items owned by the operator of the storefront use.

- 6.3. Notwithstanding section 6.2, in the event of an emergency, the City shall be exempted from section 6.2 and shall provide as much notice as is reasonable and practical given the circumstances of the emergency.

## **7. Design Standards**

### *Protection and Access to City Infrastructure*

- 7.1. Storefront uses shall be constructed and laid out so as to allow unfettered access to City Infrastructure.
- 7.2. Storefront uses shall not impact any existing City infrastructure such as street trees, light standards or parking meters.

### *Excluded Areas*

- 7.3. Notwithstanding anything in this bylaw, a storefront use or sidewalk treadway shall not be located in any of the following areas:
  - 7.3.1. In an area necessary for parking firefighting equipment, including parking areas adjacent to fire hydrants;
  - 7.3.2. In an area necessary to provide access for public transportation.

### *Sidewalk Treadway Requirements*

- 7.4. The layout of a storefront use shall include a sidewalk treadway providing unobstructed pedestrian access through, or around the storefront use.
- 7.5. A sidewalk treadway shall be a minimum 1.8m in width.
- 7.6. Where a sidewalk treadway is not possible, the storefront use will not be permitted.
- 7.7. A sidewalk treadway shall be dedicated exclusively to the passage of pedestrians. No planters, signs, or other items shall be placed in the sidewalk treadway.
- 7.8. Overhead projections, such as an umbrella or awning, may project beyond the storefront use area if it is more than 2.1m above the pedestrian sidewalk treadway.
- 7.9. Except on the 200 and 300 Blocks of Main Street, a pedestrian treadway may extend over an on-street parking area or flex parking area, but may not extend within 300mm from a vehicle travel lane.
- 7.10. Where a pedestrian treadway extends into the flex parking area along the 200 Block of Martin Street, the following provisions shall apply:
  - 7.10.1. Railings between the sides of the sidewalk treadway and the area used for a storefront as in accordance with Section 7.15;
  - 7.10.2. City bollards, located by the city, along the outside edge of the flex parking areas; and
  - 7.10.3. Any other requirements where the Director has reasonable grounds to believe there is a need to prevent a collision between vehicles and pedestrians.
- 7.11. Where a pedestrian treadway extends into a parking area, the following provisions apply:
  - 7.11.1. A pedestrian platform, of a durable surface, accessible for persons of all abilities, must be installed following the grade of the sidewalk around the storefront use, provide a minimum 150mmx50mm storm drainage clearance along the existing curb, keeping a minimum continuous width of 1.8m;
  - 7.11.2. Pedestrian platforms shall not occupy more than 8 parking spaces along a block face unless authorized by the Director;

7.11.3. A durable, secure railing, coloured either black or grey, must be installed a minimum of 0.9m in height, separating the pedestrian treadway from the adjacent vehicle travel lane; and

7.11.4. Any other requirements where the Director has reasonable grounds to believe there is a need to prevent a collision between vehicles and pedestrians.

#### *Surfacing*

7.12. Unless authorized by the Director, tables and chairs and other features within the storefront use area shall not be permanently affixed to the pavement surface. Any damage caused to the pavement surface will be the responsibility of the property owner.

7.13. Unless authorized by the Director, there shall be no resurfacing over the existing concrete surface such as tiles, paints or other coatings.

7.14. The use of de-icing chemicals for snow and ice removal shall be confirmed with City staff.

#### *Access for Persons with Disabilities*

7.15. A storefront use shall be designed to allow reasonable access for persons with disabilities and shall be designed and constructed in a manner consistent with the British Columbia Building Access Handbook.

#### *Storefront Use Railings*

7.16. The following designed standards are to be used for construction of storefront use railings:

7.16.1. Other than sidewalk cafes, the storefront use can remain open, or permanent or temporary railings may be installed, depending on the needs of the business;

7.16.2. If temporary railings, or stanchions, are used to delineate a storefront area, they shall be removed when the business is not in active use.

7.16.3. Permanent railings shall be constructed of a durable ridged material; affixed in a secure fashion to the satisfaction of the Director; be either black, grey or a colour matching the aesthetic quality of the business; and, be a minimum 0.9m in height.

7.16.4. Railings shall not be covered with signage, trellis or other decorative material unless approved by the Director.

### **8. Duration of Storefront Use Permits**

8.1. Storefront uses shall be permitted to operate throughout the calendar year of permit issuance.

### **9. Structures within Storefront Uses**

9.1. Property owners must comply with any Building Code regulations regarding construction of the enclosure and may require Development Permit approval.

- 9.2. The design of the storefront use area shall not result in the removal or relocation of existing City infrastructure (trees, light standard, street furniture, etc.).
- 9.3. The structural attachment to city property shall be reviewed by staff prior to any installation.
- 9.4. There shall be no outdoor storage of seats or tables within a storefront use when not in use during winter months.
- 9.5. Temporary fabric metal framed structures, must be taken down when the business is not in active use.
- 9.6. The installation of electrical or gas units, such as temporary or permanent heaters, shall be in conformance with BC Safety Authority regulations.
- 9.7. Except for roof structures, there shall be no enclosure of storefront use areas by means of plastic or fabric coverings, glass, solid panels or signage.
- 9.8. Roof structures within a storefront use area shall have a minimum vertical clearance of 2.1m from the pavement surface to the underside of any awning or roof structure.

## **10. Music**

- 10.1. Amplified music shall not be permitted directly within the storefront use area.
- 10.2. Non-amplified live music is permitted but shall not cause a nuisance disturbance for surrounding residential properties.

## **11. Hours of Operations**

- 11.1. Storefront uses may operate during the normal business hours, except that no storefront use operation shall go past 11 p.m.

## **12. Other Bylaws Apply**

- 12.1. All Storefront Uses must be carried out in compliance with this Bylaw and the bylaws of the City in general.

## **13. Enforcement and Penalty**

- 13.1. No person shall do any act or suffer or permit any act or thing to be done in contravention of this bylaw.
- 13.2. Every Person who violates any provision of this bylaw, or who permits any act or thing to be done in violation of the bylaw, or who fails to do any act or thing required by this bylaw, shall be deemed to have committed an offence against this bylaw and shall be liable to a fine set out in the City of Penticton Bylaw Enforcement Notice Bylaw as amended from time to time.
- 13.3. Each day that an offence against this bylaw continues shall be deemed a separate and distinct offence.

#### 14. Severability

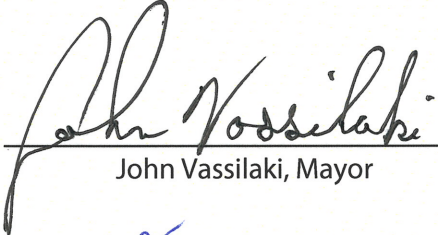
14.1. If any section, sub-section, sentence, clause, sub-clause or phrase of this bylaw is for any reason held invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this bylaw.

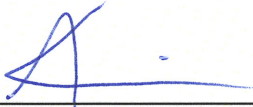
#### 15. Repeal

15.1 "Martin Street Storefront Use Bylaw No. 2014-12" and "Main Street Storefront Use Bylaw No. 2016-42" and all amendments thereto are hereby repealed upon adoption of this bylaw.

READ A FIRST time this	2 day of	June, 2020
READ A SECOND time this	2 day of	June, 2020
READ A THIRD time this	2 day of	June, 2020
ADOPTED this	2 day of	June, 2020

In accordance with the Province of BC Ministerial Order No. M139, the Council of the City of Penticton may adopt a bylaw on the same day as third reading.

  
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John Vassilaki, Mayor

  
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Angie Collison, Corporate Officer