# Agenda

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## Regular Council Meeting

**to be held at**
**City of Penticton Council Chambers**
**171 Main Street, Penticton, B.C.**

**Tuesday, September 18, 2018**
**at 1:00 p.m.**

1. **Call Regular Council Meeting to Order**

2. **Introduction of Late Items**

3. **Adoption of Agenda**

4. **Recess to Committee of the Whole**

5. **Reconvene the Regular Council Meeting**

6. **Adoption of Minutes:**

| | | | |
|---|---|---|---|
| 6.1 | Minutes of the September 4, 2018 Committee of the Whole | 1-2 | Receive |
| 6.2 | Minutes of the September 4, 2018 Public Hearing | 3-4 | Receive |
| 6.3 | Minutes of the September 4, 2018 Regular Council Meeting | 5-10 | Adopt |

7. **Consent Agenda** 11-19

7.1 Committee Minutes:

- Official Community Plan Task Force Draft Minutes of August 27, 2018
- Economic Development & Prosperity Task Force Draft Minutes of September 7, 2018
- Heritage & Museum Committee Draft Minutes of August 28, 2018

7.2 Release of Items from Closed Meeting:

- THAT Council direct staff to purchase 395 Norton Street;
  AND THAT staff be authorized to negotiate the purchase for a price that is up to 10% above the appraised value;
  AND THAT the purchase be funded through the land acquisition reserve.

- THAT Council appoint Kim Blagborne as the Penticton Industrial Development Association (PIDA) representative for the Penticton Creek and Ellis Creek Restoration Committee.

*Staff Recommendation: THAT Council approve the Consent Agenda.*

8. **Correspondence**

9. **Staff Reports:**

Bauer 9.1 Okanagan Hockey Group Lease Renewal 20-69

*Staff Recommendation: THAT Council approve the Okanagan Hockey Group facility master agreement dated September 18, 2018; THAT Council approve the Okanagan Hockey Group lease agreement dated September 18, 2018; AND THAT Council direct the Mayor and Corporate Officer to execute the Okanagan Hockey Group facility master agreement and lease agreement dated September 18, 2018.*

Laven 9.2 Carriage House Regulation Amendments 70-79

*Staff Recommendation: THAT "Zoning Amendment Bylaw No. 2018-71", a bylaw that makes changes to the City's carriage house regulations contained in Zoning Bylaw 2017-08, be given first reading and be forwarded to the October 2, 2018 Public Hearing for comment from the public;*
*AND THAT staff are directed, through the Official Community Plan update process, to investigate a city wide 'intensive residential development permit area' requiring a development permit for carriage houses, to address 'form and character' and 'neighbourhood fit'.*

*THAT "Zoning Amendment Bylaw No. 2018-72", a bylaw that adds as a site specific amendment to the R1 zone as follows: 'In the case of all properties addressed from Kendall Crescent and 1299, 1309, 1331, 1337, 1343, 1353, 1365 and 1375 Ridgedale Avenue, carriage houses are not a permitted use', be given first reading and be forwarded to the October 2, 2018 Public Hearing for comment from the public;*

*AND THAT notice of the Public Hearing be delivered to all affected properties (owners and residents), a minimum of 10 days prior to the Public Hearing.*

Coates 9.3 Permissive Tax Exemption Amendment Bylaw No. 2018-63 80-90

*Staff Recommendation: THAT Council give first, second and third reading to "Permissive Tax Exemption Amendment Bylaw No. 2018-63" granting $415,115 in permissive tax exemptions to all applicants qualifying for permissive tax exemption under the Community Charter and City of Penticton policy as listed in Schedule B at 100% of the applied for exemption.*

Kunka 9.4 Building Bylaw No. 2018-01 91-147

*Staff Recommendation: THAT Council give second reading as amended and third reading to "Building Bylaw No. 2018-01", a bylaw for the administration of the Building Code and regulation of construction.*

Moroziuk 9.5 South Okanagan Conservation Fund Grant 148-150
Re: Letter of Support

*Staff Recommendation: THAT Council provide a letter of support to the Penticton Fly Fishers for a grant application to the South Okanagan Conservation Fund for the detail design of Penticton Creek Reach 3A and 3B.*

10. **Public Question Period**

11. **Recess to a Closed Meeting**

*Resolution: THAT Council recess to a closed meeting of Council pursuant to the provisions of the Community Charter section 90 (1) as follows:*

*(a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;*
*(e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;*
*(f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;*
*(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;*
*(j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the Freedom of Information and Protection of Privacy Act.*

12. **Reconvene the Regular Council Meeting following the Public Hearing at 6:00 p.m.**

13. **Bylaws and Permits:**

| | | | |
|---|---|---|---|
| 13.1 | Zoning Amendment Bylaw No. 2018-04<br>Development Variance Permit PL2017-8121<br>Re: 799 Martin Street | 151-154 | Adopt<br>Approve |
| 13.2 | Zoning Amendment Bylaw No. 2018-44<br>Development Variance Permit PL2018-8240<br>Re: 783 Martin Street | 155-158 | Adopt<br>Approve |
| 13.3 | Zoning Amendment Bylaw No. 2018-64<br>Re: 337 Hastings Avenue | 159-161 | 2nd/3rd |
| 13.4 | Zoning Amendment Bylaw No. 2018-65<br>Re: 290 Bassett Street | 162-163 | 2nd/3rd |

14. **Land Matters:**

Haddad 14.1 Development Variance Permit PL2018-8345 164-182 Del/Sub
Re: 441 Heales Avenue

*Staff Recommendation: THAT Council approve "Development Variance Permit PL2018-8345" for Lot 23, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale Lytton) District, Plan 1138, located at 441 Heales Avenue, a permit to vary the following sections of Zoning Bylaw No. 2017-08:*

- *Section 10.6.2.3: to increase the maximum lot coverage from 40% to 43%; and*
- *Section 10.6.2.7.i: to reduce the minimum interior side yards from 1.5m to 1.2m.*

*AND THAT staff be directed to issue "DVP PL2018-8345".*

Haddad 14.2 Development Permit PL2018-8367 183-211
Re: 594 & 600 Winnipeg Street

*Staff Recommendation: THAT Council approve "Development Permit PL2018-8367", a permit for the construction of a four storey, 62-unit congregate housing building for the consolidated property of Parcel A (DD 111952F) of Lot 8, Block 17 District Lot 202, Similkameen Division Yale District (594 Winnipeg Street), and of District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan 269; and Parcel B (DD180509F) of Lot 8, Block 17, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District and of District Lot 202 Similkameen Division Yale District Plan 269 (600 Winnipeg Street); AND THAT staff are directed to issue DP PL2018-8367 upon completion of the lot consolidation.*

Haddad 14.3 Zoning Amendment Bylaw No. 2018-69 212-236
Development Variance Permit PL 2018-8356
Development Permit PL2018-8357
Re: 1087 Dynes Avenue

*Staff Recommendation: THAT "Zoning Amendment Bylaw No. 2018-69", a bylaw to rezone Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1017, located at 1087 Dynes Avenue from CT1 (Tourist Commercial) to RM2 (Low Density Multiple Housing), be given first reading and forwarded to the October 2, 2018 Public Hearing;*
*AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2018-69", a 3.0m x 3.0m northwest corner cut is registered with the Land Title Office.*

*THAT delegations and submissions for "Development Variance Permit PL2018-8356" for Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1017, located at 1087 Dynes Avenue, a permit to waive the one required visitor parking space and to decrease the minimum west interior side yard for a principal building from 3.0m to 1.5m, be heard at the October 2, 2018 Public Hearing.;*

*AND THAT Council consider "DVP PL2018-8356" following the adoption of "Zoning Amendment Bylaw No. 2018-69."*

*THAT Council, subject to adoption of "Zoning Amendment Bylaw No. 2018-69" approve "Development Permit PL2018-8357" for Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1017, located at 1087 Dynes Avenue, a permit that allows for the construction of two duplexes.*

Haddad 14.4 Zoning Amendment Bylaw No. 2018-70 237-256
Development Variance Permit PL 2018-8359
Re: 481 Wade Avenue East

*Staff Recommendation: THAT "Zoning Amendment Bylaw No. 2018-70", a bylaw to rezone Lot 16 District Lot 202 Similkameen Division Yale District Plan 933, located at 481 Wade Avenue East, from RD2 (Duplex Housing: Lane) to RM2 (Low Density Multiple Housing), be given first reading and be forwarded to the October 2, 2018 Public Hearing;*

*THAT delegations and submissions for "Development Variance Permit PL2018-8359" for Lot 16 District Lot 202 Similkameen Division Yale District Plan 933, located at 481 Wade Avenue East, a permit to vary the following section(s) of Zoning Bylaw No. 2017-08:*

1. *Section 10.8.2.8.i: to reduce the minimum exterior side yard setback from 4.5m to 3.0m; and*
2. *Section 6.5 (Table 6.5): to waive the requirement for one (1) visitor parking space,*

*be heard at the October 2, 2018 Public Hearing;*

*AND THAT Council consider "DVP PL2018-8359" following the adoption of "Zoning Amendment Bylaw No. 2018-70".*

15. **Notice of Motion**

16. **Business Arising**

17. **Council Round Table**

18. **Public Question Period**

19. **Adjournment**

# Minutes

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## Committee of the Whole
**held at City of Penticton Council Chambers**
**171 Main Street, Penticton, B.C.**

**Tuesday, September 4, 2018**
**Recessed from the Regular Council Meeting at 1:00 p.m.**

| | |
|---|---|
| **Present**: | Mayor Jakubeit<br>Councillor Picton<br>Councillor Watt<br>Councillor Martin<br>Councillor Sentes |
| **Absent:** | Councillor Sayeed<br>Councillor Konanz |
| **Staff:** | Peter Weeber, Chief Administrative Officer<br>Dana Schmidt, Corporate Officer<br>Jim Bauer, Chief Financial Officer<br>Len Robson, Public Works Manager<br>Anthony Haddad, Director of Development Services<br>Angie Collison, Deputy Corporate Officer |

1. **Call to order**

The Mayor called the Committee of the Whole meeting to order at 1:05 p.m.

2. **Adoption of Agenda**

**It was MOVED and SECONDED**
THAT the agenda for the Committee of the Whole meeting held on September 4, 2018 be adopted as presented.

**CARRIED UNANIMOUSLY**

3. **Delegations and Community Recognition**

3.1 Downtown Security Issues Update

Peter Weeber, Chief Administrative Officer, on behalf of the Downtown Penticton Association, Chamber of Commerce and City Working Group, provided Council with a summary of the downtown security issues.

3.2 Robinson Property – Planning Process

Len Robson, Public Works Manager and Ysabel Contreras, Parks Technician, provided Council with the proposed planning process for the Robinson Property, 2905/2983 South Main Street.

**It was MOVED and SECONDED**
THAT Council approve the proposed planning process for the Robinson Property.

**CARRIED UNANIMOUSLY**

3.3 Official Community Plan Update – Upcoming Community Engagement & Design Guideline Development

Ben Johnson, Special Projects Manager and JoAnne Kleb, Community Engagement, provided Council with an overview of the upcoming community engagement and design guideline development plans.

4. **Adjourn to Regular Meeting**

**It was MOVED and SECONDED**
THAT Council adjourn the Committee of the Whole meeting held September 4, 2018 at 2:20 p.m. and reconvene the Regular Meeting of Council.

**CARRIED UNANIMOUSLY**

Certified correct:

Dana Schmidt
Corporate Officer

Confirmed:

Andrew Jakubeit
Mayor

# Minutes

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## Public Hearing
**City of Penticton, Council Chambers**
**171 Main Street, Penticton, B.C.**

**Tuesday, September 4, 2018**
**at 6:00 p.m.**

| | |
|---|---|
| **Present**: | Mayor Jakubeit<br>Councillor Watt<br>Councillor Picton<br>Councillor Martin<br>Councillor Sentes |
| **Absent:** | Councillor Sayeed<br>Councillor Konanz |
| **Staff:** | Peter Weeber, Chief Administrative Officer<br>Dana Schmidt, Corporate Officer<br>Anthony Haddad, Director of Development Services<br>Jim Bauer, Chief Financial Officer<br>Blake Laven, Planning Manager<br>Angie Collison, Deputy Corporate Officer |

**1. Call to order**

Mayor Jakubeit called the public hearing to order at 6:00 p.m. for Official Community Plan Amendment Bylaw No. 2018-60 and Zoning Amendment Bylaw No. 2018-61. He explained that the public hearing was being held to afford all persons who considered themselves affected by the proposed bylaws an opportunity to be heard before Council.

The Corporate Officer read the opening statement and introduced the purpose of the bylaws. She then explained that the public hearing was being held to afford all persons who considered themselves affected by the proposed bylaws an opportunity to be heard before Council. She further indicated that the public hearing was advertised pursuant to the *Local Government Act*.

**2. <u>"Official Community Plan Amendment Bylaw No. 2018-60"&"Zoning Amendment Bylaw No. 2018-61" (3200 Evergreen Drive)</u>**

The purpose of "Official Community Plan Amendment Bylaw No. 2018-60" is to amend Official Community Plan Bylaw No. 2002-20 as follows:

Amend Schedule 'B' Future Land Use map and designate 3200 Evergreen Drive as Low Density Residential (LR), Medium Density Residential (MR), Parks & Recreation (PR) and Forestry Grazing (FG).
Amend Schedule 'H' Development Permit Area Map to include 3200 Evergreen Drive in the General Multiple Family DP Area, Hillside Hazard DP Area and Environmental Sensitive DP Area.
Replace Schedule 'E' Hazard Lands in its entirety with amended Schedule 'E'.
Replace Schedule 'M' Upper Wiltse Area Structure Plan in its entirety with amended Schedule 'M'.

The purpose of "Zoning Amendment Bylaw No. 2018-61" is to amend Zoning Bylaw No. 2017-08 as follows:

Designate 3200 Evergreen Drive as R1 (Large Lot Residential), RM1 (Bareland Strata Housing), FG (Forestry Grazing) and P2 (Parks and Recreation).
Add a site specific provision to the Forestry Grazing (FG) zone to permit two single family residences and a 20 room tourist accommodation resort with a maximum floor area of 1850m$^2$.

The Official Community Plan and Zoning Bylaw are being amended to include the newly annexed lands located on the eastern hillside of Penticton known as the "Bluffs at Skaha".

The Corporate Officer advised that one letter of concern has been received since the printing of the agenda and distributed to Council.

**DELEGATIONS**

Mayor Jakubeit asked the public for the first time if anyone wished to speak to the application.

- Donna Butler, Ecora Engineering, owners are in attendance. Spoke in support of application.
- Rolf Rybeck, Pineview Drive, representing climbers, delighted with expansion of Skaha Parks Bluff and protecting unique eco system in area. As a resident, moved here for community and spoke to positive impact of green spaces and local parks.

Mayor Jakubeit asked the public for the second time if anyone wished to speak to the application.

- No one spoke.

Mayor Jakubeit asked the public for the third and final time if anyone wished to speak to the application.

- No one spoke.

The public hearing for "Official Community Plan Amendment Bylaw No. 2018-60" and "Zoning Amendment Bylaw No. 2018-61" was terminated at 6:16 p.m. and no new information can be received on this matter.

Certified correct:

_____
Dana Schmidt
Corporate Officer

Confirmed:

_____
Andrew Jakubeit
Mayor

# Minutes



## Regular Council Meeting
**held at City of Penticton Council Chambers**
**171 Main Street, Penticton, B.C.**

**Tuesday, September 4, 2018**
**at 1:00 p.m.**

| | |
|---|---|
| **Present**: | Mayor Jakubeit<br>Councillor Picton<br>Councillor Sentes<br>Councillor Watt<br>Councillor Martin |
| **Absent:** | Councillor Sayeed<br>Councillor Konanz |
| **Staff:** | Peter Weeber, Chief Administrative Officer<br>Dana Schmidt, Corporate Officer<br>Jim Bauer, Chief Financial Officer<br>Len Robson, Public Works Manager<br>Anthony Haddad, Director of Development Services<br>Angie Collison, Deputy Corporate Officer |

**1. Call to Order**

The Mayor called the Regular Council meeting to order at 1:04 p.m.

**2. Introduction of Late Items**

**3. Adoption of Agenda**

391/2018 **It was MOVED and SECONDED**
THAT Council adopt the agenda for the Regular Council meeting held on September 4, 2018 as presented.

**CARRIED UNANIMOUSLY**

**4. Recess to Committee of the Whole**

Council recessed to a Committee of the Whole Meeting at 1:05 p.m.

**5. Reconvene the Regular Council Meeting**

Council reconvened the Regular Council Meeting at 2:20 p.m.

**6. Adoption of Minutes:**

6.1 Minutes of the August 21, 2018 Committee of the Whole

392/2018 **It was MOVED and SECONDED**
THAT Council receive the minutes of the August 21, 2018 Committee of the Whole as presented.

**CARRIED UNANIMOUSLY**

6.2 Minutes of the August 21, 2018 Public Hearing

393/2018 **It was MOVED and SECONDED**
THAT Council receive the minutes of the August 21, 2018 Public Hearing as presented.

**CARRIED UNANIMOUSLY**

6.3 Minutes of the August 21, 2018 Regular Meeting of Council

394/2018 **It was MOVED and SECONDED**
THAT Council adopt the minutes of the August 21, 2018 Regular Meeting of Council as presented.

**CARRIED UNANIMOUSLY**

**7. Consent Agenda**

395/2018 **It was MOVED and SECONDED**
THAT Council receive the draft minutes from the Arts, Creative and Cultural Innovations Committee Meeting of August 24, 2018.

**CARRIED UNANIMOUSLY**

**8. Correspondence**

**9. Staff Reports:**

9.1 Recycle BC Service Agreement Renewal

396/2018 **It was MOVED and SECONDED**
THAT Council approve the terms of the agreement and financial incentives offered by Recycle BC for the curbside collection, resident education and service administration for residential and multi-family recyclable materials collection; AND THAT the Mayor and Corporate Officer are authorized to execute the Recycle BC Agreement renewal on behalf of the City of Penticton.

**CARRIED UNANIMOUSLY**

9.2 Zoning Amendment Bylaw No. 2018-49
DVP PL2018-8297 & Amended DP PL2016-7756
Re: 201, 203, 225, 247 Vancouver Avenue (236 Marina Way)

397/2018 **It was MOVED and SECONDED**
THAT Council adopt "Zoning Amendment Bylaw No. 2018-49";
AND THAT Council approve and direct staff to issue "Development Variance Permit PL2018-8297";
AND THAT Council approve and direct staff to issue "Development Permit PL2016-7756" as amended, subject to the following conditions:

- Registration and creation of the subject lot with the Land Title Office;
- Submission of a detailed landscaping and irrigation plan;
- That all conditions are complete prior to March 1, 2019.

**CARRIED UNANIMOUSLY**

**10. Public Question Period**

**11. Recess to In-Camera Meeting**

398/2018 **It was MOVED and SECONDED**
THAT Council recess at 2:45 p.m. to a closed meeting of Council pursuant to the provisions of the *Community Charter* section 90 (1) as follows:

*(a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;*

*(e) the acquisition, disposition or expropriation of land or improvements if the Council considers that disclosure could reasonably expected to harm the interest of the municipality.*

**CARRIED UNANIMOUSLY**

**12. Reconvene the Regular Council Meeting following the Public Hearing at 6:00 p.m.**

Council reconvened the Regular Council Meeting at 6:16 p.m.

**13. Bylaws and Permits:**

13.1 Fees and Charges Amendment Bylaw No. 2018-59

399/2018 **It was MOVED and SECONDED**
THAT Council adopt "Fees and Charges Amendment Bylaw No. 2018-59".

**CARRIED UNANIMOUSLY**

13.2 Official Community Plan Amendment Bylaw No. 2018-60
Zoning Amendment Bylaw No. 2018-61
Re:3200 Evergreen Drive (Bluffs at Skaha)

400/2018 **It was MOVED and SECONDED**
THAT Council give second and third reading to "Official Community Plan Amendment Bylaw No. 2018-60";
AND THAT Council give second and third reading to "Zoning Amendment Bylaw No. 2018-61";

**CARRIED UNANIMOUSLY**

**14. Land Matters:**

14.1 Development Variance Permit PL2018-8333
Re: 193 Bennett Avenue

Delegations/Submissions:

- Nil

401/2018 **It was MOVED and SECONDED**
THAT Council deny "Development Variance Permit PL2018-8333" for Lot 6 District Lot 250 Similkameen Division Yale District Plan 8070, located at 193 Bennett Avenue, a permit to increase the maximum floor area of all accessory buildings from $75m^2$ to $90m^2$.

**CARRIED UNANIMOUSLY**

14.2 Zoning Amendment Bylaw No. 2018-64
Development Variance Permit PL2018-8313
Re: 337 Hastings Avenue

402/2018 **It was MOVED and SECONDED**

THAT "Zoning Amendment Bylaw No. 2018-64", a bylaw to rezone Lot 24, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District Plan 932, located at 337 Hastings Avenue, from R2 (Small Lot Residential) to RD2 (Duplex Housing: Lane) and allow a site specific provision inserted as Section 10.8.4.3 as follows: "In the case of Lot 24 Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan 932, located at 337 Hastings Avenue, the following regulations shall apply:

- Minimum lot width of 14.6m;
- Maximum Density, Floor Area Ratio (FAR) of 0.90;
- Maximum Lot Coverage of 48%;
- Maximum Building Height of 7.0m;
- Minimum Interior Side Yard of 1.6m; and
- Waive the requirement for one (1) visitor parking space

be given first reading and be forwarded to the September 18, 2018 Public Hearing;

AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2018-64", the following conditions be completed:

- Registration of a 3.0 m wide lane dedication from 337 Hastings Avenue and 340 Douglas Street,
- Registration of an easement to allow for the safe turning of vehicles at the west end of the lane.

AND THAT delegations and submissions for "Development Variance Permit PL2018-8313" for Lot 24, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District Plan 932, located at 337 Hastings Avenue, a permit to allow vehicle access to be from both the lane and the street (Hastings Avenue), be heard at the September 18, 2018 Public Hearing; AND THAT Council consider "DVP PL2018-8313" following the adoption of "Zoning Amendment Bylaw No. 2018-64".

THAT Council, in accordance with Section 507 of the *Local Government Act*, require the following excess and extended services:

- Full construction of the lane along the rear of 337 Hastings and 319 Hastings Avenue tying the works into the existing lane;
- Full construction of curb and sidewalk along the front of 337 Hastings Avenue and 319 Hastings Avenue, and tying the works into the existing sidewalk located in front of 305 Hastings Avenue.

**CARRIED UNANIMOUSLY**

14.3 Zoning Amendment Bylaw No. 2018-65
Development Variance Permit PL2018-8211
Re: 290 Bassett Street

403/2018 **It was MOVED and SECONDED**

THAT "Zoning Amendment Bylaw No. 2018-65", a bylaw to rezone Lot 9, Block 125 District Lot 2, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1175, Except Plan B4668, located at 290 Bassett Street, from R2 (Small Lot Residential) to RM2 (Low Density Multiple Housing), be given first reading and be forwarded to the September 18, 2018 Public Hearing;

AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2018-65", a 3.0m x 3.0m corner cut for lane dedication at the south east corner of the property be registered with the Land Title Office;

THAT delegations and submissions for "Development Variance Permit PL2018-8211" for Lot 9, Block 125 District Lot 2, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1175, Except Plan B4668, located at 290 Bassett Street, a permit to waive the requirement to provide one (1) visitor parking space, be heard at the September 18, 2018 Public Hearing;

AND THAT Council consider "DVP PL2018-8211" following the adoption of "Zoning Amendment Bylaw No. 2018-65".

THAT Council, in accordance with Section 507 of the *Local Government Act*, require the full construction of the lane along the south and east sides of the property tying the works into Bassett Street, representing an excess and extended service.

**CARRIED UNANIMOUSLY**

14.4 Development Permit PL2018-8360
Re: 32 Backstreet Boulevard

404/2018 **It was MOVED and SECONDED**

THAT Council approve "Development Permit PL2018-8360", a permit for a six (6) storey, mixed use building, with 36 residential units and ground floor retail, on Lot 1, District Lot 202, Similkameen Division Yale District, Plan EPP72675, located at 32 Backstreet Boulevard; AND THAT staff are directed to issue the permit.

**CARRIED**
**Councillor Watt, Opposed**

**15. Notice of Motion**

**16. Business Arising**

**17. Council Round Table**

**18. Public Question Period**

## 19. Adjournment

405/2018 **It was MOVED and SECONDED**
THAT Council adjourn the Regular Council meeting held on Tuesday, September 4, 2018 at 7:01 p.m.

**CARRIED UNANIMOUSLY**

Certified correct:

_____
Dana Schmidt
Corporate Officer

Confirmed:

_____
Andrew Jakubeit
Mayor

# Minutes

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## Official Community Plan Task Force Meeting

**Held at City of Penticton, Council Chambers**
**171 Main Street, Penticton, B.C.**

**Monday, August 27, 2018**
**at 5:30 p.m.**

Present: Andrew Jakubeit, Mayor
Judy Sentes, Councillor
Andre Martin, Councillor
Suzanne Moccia, Chair
Lynn Kelsey, Vice Chair
Kristi Estergaard, Interior Health Representative
Brian Symonds, Member at Large
Denis O'Gorman, Member at Large
Sharon Fletcher, Member at Large
Rhys Spencer, Member at Large
Warren Sanders, Member at Large
Wendy Hyer,School District 67 Representative
Dennis O'Gorman, Member at Large
Evelyn Riechert, RDOS Rep
Jillian Tamblyn, Member at Large
Lynn Allin, Downtown Penticton Association Representative

Staff: Ben Johnson, Special Projects Manager
Anthony Haddad, Director of Development Services
Blake Laven, Planning Manager
Jo Benson, Committee Clerk
Cheryl Hardisty, Executive Assistant

1. **Call to Order**

The Official Community Plan Task Force called to order at 5:30 p.m.

2. **Adoption of Agenda**

**It was MOVED and SECONDED**
THAT the Official Community Plan Task Force adopt the agenda for the meeting held on August 27, 2018 as circulated.

**CARRIED UNANIMOUSLY**

3. **Adoption of Minutes**

**It was MOVED and SECONDED**
THAT the Official Community Plan Task Force adopt the minutes of the June 4, 2018 meeting as amended to correct attendance.

**CARRIED UNANIMOUSLY**

4. **Business Arising from Prior Meetings**

4.1 Timeline Update

The Special Projects Manager gave an update on the OCP timeline and provided the Task Force a handout on the September Engagement plan. An Open House Roadshow (Seniors Centre, Safety Village & Gyro Park), is scheduled from September 11 – 22, 2018 to allow public to view and give feedback on the Policies and Land Use Plan developed by the OCP Task Force. In addition, a Design Charrette event planned for September 17 to 22, 2018 will involve OCP Task Force and will include a bus tour, stakeholder workshops and a display at the market. As an outcome of the events and public feedback, the Special Projects Manager would like to bring an update to Council on October 2, 2018 prior to the October 20 election. The Task Force concluded that staff should update Council on the draft OCP directions at this point and not seek formal endorsement. The Special Projects Manager is looking to have a finalized OCP approved by the new Council by year-end or early 2019.

Next step for the OCP is the creation of design guidelines. MODUS Planning, Design and Engagement consultants, hired to help create development permit guidelines.

5. **Consultancy Updates**

No updates at this time as meeting moved to presentation by South Okanagan Similkameen Conservation Program Representatives. See 5.2

6. **New Business**

6.1 Task Force Members Presentations

The Chair asked Rhys Spencer and Warren Sanders to offer a brief statement about their interest in the OCP, each gave a brief bio of themselves.

6.2 Environmental Development Permit Guidelines Approach

Environmental Planner and Program Manager from the South Okanagan Similkameen Conservation Program (SOSCP) provided a Powerpoint presentation on the conservation partnership in the South Okanagan. The SOSCP have been collaborating with local and regional governments to ensure they are working within Provincial and local laws within development permit protocols. The SOSCP offer a cost sharing approach to help with a variety of environmental components in the area. Environmental (sensitive ecosystems, species at risk upland habitat) and riparian

protection (shoreline, areas under the influence of water) and environmentally sensitive area regulations discussed and presented.

Local issues identified are, importance of mapping and our current map used by the OCP needs updating (including the stream mapping) to aid developers in addressing areas of concern, the riparian development permit is more straight forward, however the environmentally sensitive development permits are hard to understand and not consistent with other local governments in the region, or beyond. There are limitations to environmental regulation and enforcement broadly, this is why it is important to include at the local level. There were several suggestions for improving both the riparian and environmentally sensitive area provisions for the Task Force to consider. Marking setbacks for robust riparian protection and retention of vegetation to prevent overland flow, are a few ideas to mitigate the environmental effects of development and will help with flood mitigation. The Director of Development Services agreed that through this consultancy, environmental guidelines and mapping allow us to ensure we are providing specific protection and not compromising areas developed. Blanket vs targeted approach to environmentally sensitive development permit mapping discussed with no clear decision on how we will proceed. The OCP clearly needs to identify specific protection. Terms of Reference for reports can be elevated depending on the issues we face.

As the Environment Planner meets with staff, she will need to understand the Task Force's position, the pros and cons for updating the guidelines, maps and policies. Intent of their presentation and discussion with the group was to get a temperature check and a sense in the room of workable solutions.

The guest speakers from SOSCP left the meeting at 7:45 p.m.

6.3 Design Development Permit Guidelines Process

Carriage house issues discussed. The Special Projects Manager suggested carriage houses could be part of the OCP review. The Chair suggested that citizens should come out to the charrettes to discuss as part of the public engagement piece. The Planning Manager provided some details on the report Staff are currently working on to revise Carriage House language and the recommendations in the Building By-law. The report to be completed and ready to present at the September 18 Council meeting.

6.4 Draft Future Land Use Plan Discussions

The Special Projects Manager spoke about high-level land uses in the city, multiple zoning and the future of the city. Current needs, development trends and environmental issues are major factors to consider. A handout showing a summary of current land use and the draft for future land use presented to Task Force members.

The Director of Development Services left the meeting at 8:01 p.m.

The Special Projects Manager offered his thoughts on the role of the Task Force members to engage public, at the upcoming Open Houses, and help them understand the decisions and ideas developed by the OCP Task Force. Clarification of the zoning and proposed land use categories in the commercial and downtown areas as well as the visioning for the south-end of town, Skaha Lake corridor and SOEC area presented. The map will be a useful tool to share with the public at the different open houses. A Charette planned for September 17 - 22, 2018 will require the commitment from the Task Force to come out when they can. Provide the Special Projects Manager the times you are able to attend to enable an invite to Task Force members once the timeline for the day has been determined.

7. **Next Meeting**

The next scheduled meeting of the Official Community Plan Task Force to be determined.

8. **Adjournment**

**It was MOVED and SECONDED**
THAT the Official Community Plan Task Force adjourn the meeting held on August 27, 2018 at 8:20 p.m.

**CARRIED UNANIMOUSLY**

Certified Correct:

_____

Jo Benson
Committee Clerk

Draft

# Minutes

penticton.ca

## Economic Development & Prosperity Task Force Meeting

**Held at the City of Penticton, Room A**
**171 Main Street, Penticton, B.C.**

**Friday, September 7, 2018**
**at 8:00 a.m.**

**Present:** Mayor Andrew Jakubeit, Chair
Andy Oakes, Member at Large
Danielle Robinson, Member at Large (arrived at 8:27 a.m.)
Eric Corneau, Member at Large
Judy Richards, Member at Large
Kirk Marleau, Member at Large
Stephen Noton, Member at Large – via phone
Paulette Rennie, Member at Large

**Staff:** Anthony Haddad, Director Development Services
Jennifer Vincent, Economic Development Services
Jo Benson, Committee Clerk

**Guests:** Hugh McClelland, Baird McClelland Inc., Economic Development Consultant

1. **Call to order**

The Economic Development & Prosperity Task Force was called to order by the Mayor at 8:02 a.m.

2. **Adoption of Agenda**

**It was MOVED and SECONDED**
THAT the Economic Development & Prosperity Task Force adopt the agenda dated September 07, 2018 as circulated.

**CARRIED UNANIMOUSLY**

3. **Adoption of Minutes**

**It was MOVED and SECONDED**
THAT the Economic Development & Prosperity Task Force adopt the minutes of the July 25, 2018 meeting as circulated.

**CARRIED UNANIMOUSLY**

## 4. Business Arising from Prior Meetings

### 4.1 Industry Clusters Report

Hugh McClelland of Baird McClelland Inc. distributed and gave a PowerPoint presentation on the Penticton Industry Clusters Project Report and Recommendations document. In addition, he reported his findings of the stakeholder interviews and noted how apparent it is that Penticton's economy is dependent on external markets. "Flight risks", lack of local economic data, technology, training and or attracting local talent addressed in considerations for retention / expansion based on stakeholder input. Marijuana as an added value to agriculture and project feasibility for a Wine Centre for Excellence were also part of the discussion.

Task Force members are asked to review the document and provide feedback to the Director of Development Services and Baird McClelland Inc. within the next 10 days. The Director of Development Services expects to present the finalized report to Council on October 2nd, 2018 in order to drive the council and budget process for 2019.

Metric of school enrollment discussed with respect to the growing economy / demographics of Penticton. The Mayor has asked that we contact all schools to determine numbers and where people are coming from.

### 4.2 Penticton Business Toolkit

Presentation by the Economic Development Specialist of the new website, that is now live with all current data up to date. Developed in response to consistent feedback from business community that local data is hard to access, or easily interpret, the creation of a data portal website was an operational goal for 2018. Great visual aid, both for people looking at Penticton from a number of economic perspectives and livability, and as a platform to obtain data as reports can be generated from the new website.

### 4.3 FutureBiz Penticton

November 8th, Economic Outlook forum. Inaugural economic forum which brings in experts from across Canada. Registrants with Penticton Business licenses can attend at discounted rates. Great opportunity to gather our business community together to see where we've been and the future of business in Penticton. The goal is to have businesses thinking ahead to 2019. For keynote speakers and forum info visit www.futurebizpenticton.com

## 5. New Business

5.1 Early Budget Considerations/Operational Focusses for 2019 will be added to next meeting agenda.

## 6. Next Meeting

The next meeting of the Economic Development & Prosperity Task Force to be determined.

7. **Adjournment**

**It was MOVED and SECONDED**
THAT the Economic Development & Prosperity Task Force Meeting of September 07, 2018 adjourn at 9:38 a.m.

**CARRIED UNANIMOUSLY**

Certified Correct:

_____

Jo Benson
Committee Clerk

# Minutes

penticton.ca

## Heritage & Museum Committee Meeting

**held at City Hall, 171 Main St. Room A**
**Penticton, B.C.**

**Tuesday, August 28, 2018**
**at 8:45 a.m.**

**Present:** Judy Sentes, Councillor
Bill Allen, Chair
Randy Manuel, vice-chair
Heather Buzzell
Loraine Stephanson
Anne Hargraves
Karen Collins

**Staff:** Dennis Oomen, Museum Manager

1. **Call to Order**

The Heritage & Museum Committee was called to order by the Chair at 8:55 am

2. **Adoption of Agenda**

**It was MOVED and SECONDED**
THAT the Heritage & Museum Committee adopt the agenda for the meeting held on August 28, 2018.

**CARRIED UNANIMOUSLY**

3. **Adoption of Minutes**

**It was MOVED and SECONDED**
THAT the Heritage & Museum Committee adopt the minutes of the May 29th, 2018 meeting as circulated.

**CARRIED UNANIMOUSLY**

4. **Business Arising from Prior Meeting**

**4.1**

The notes from the planning meeting held on July 28th were not available, Dennis Oomen left the meeting and printed out copies for all committee members. Committee members were asked to study the notes and bring forward any suggestions.

5. **New Business**

**5.1**

It was agreed that all committee members should avail themselves of a copy of the 2005/2008 Penticton Heritage Strategy Study, as it is an important guide to heritage properties in Penticton.

**5.2**

Anne Hargrave suggested the committee compile a briefing book that outlines the committee's purpose and function for the use of new members. A discussion followed on the merits of publishing a book commemorating the 75th anniversary of Penticton achieving full city status.

**5.3**

Carriage Houses

After some discussion on the city's carriage house policy, the committee would like to make a recommendation that: **Where carriage house variances are applied for in neighborhoods generally recognized as having heritage value, that the proposal be presented to the committee for consideration.**

6. **Next Meeting**

The next meeting of the Heritage & Museum Committee is scheduled for September 25th, 2018

7. **Adjournment**

**It was MOVED and SECONDED** that the Heritage & Museum Committee adjourn the meeting held on August 28th, 2018.

Certified Correct:

**Dennis Oomen**
Name of person taking minutes.

# Council Report

penticton.ca

**Date:** September 18, 2018 File No:
**To:** Peter Weeber, Chief Administrative Officer
**From:** Jim Bauer, Chief Financial Officer

**Subject:** Okanagan Hockey Group Lease Renewal

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**Staff Recommendation**

THAT Council approve the attached Okanagan Hockey Group facility master agreement dated September 18, 2018;

THAT Council approve the attached Okanagan Hockey Group lease agreement dated September 18, 2018;

AND THAT Council direct the Mayor and Corporate Officer to execute the Okanagan Hockey Group facility master agreement and lease agreement dated September 18, 2018.

**Strategic priority objective**

This initiative aligns with the Council Priorities of:

Economic Vitality - by creating economic sustainability for a major City business that provides significant economic benefits to the community.

Community Building – focusing on the investment of services and infrastructure that are fundamental to the quality of life for a City business that brings a desirable services to citizens.

**Background**

The Okanagan Hockey Group has a long history in Penticton since it was originally founded in 1963. Since 2009 the Okanagan Hockey Group has leased 9,590 square feet for its operations of the hockey academy. The lease term was for a ten year period that is set to expire December 31, 2018.

The Okanagan Hockey Group has approached the City requesting the continued lease of the space for an additional 10 years to provide long term certainty for the ongoing growth and development of its business. The Okanagan Hockey Group (OHG) also requires certainty regarding ice use.

City Staff have worked with the OHG in conjunction with the renewal of the Spectra agreement to determine OHG's long term needs of both its leased facilities and ice use requirements. The master agreement was developed to ensure consistency with OHG's rights and obligations for the the lease agreement, four ice use agreements, and two advertising agreements.

The City will be a signatory on the master agreement and lease agreement. The ice use agreements and advertising agreements will be signed between OHG and Spectra (the City's third party facility operator for the SOEC complex).

**Financial implication**

The current agreement will result in $134,260 in basic rent plus property taxes of $11,843 to be collected by the City. Annual lease costs will be increased consistent with the BC Consumer Price Index (CPI).

**Analysis**

The OHG has been a quality tenant and is a major business in the community. As reflected by a recent economic impact report, the Academy generates over $19m annually in direct and induced benefits to the Community.

The proposed facility master agreement establishes a clear contractual framework to evidence the terms and conditions upon which the rights and obligations arising under the various agreements between OHG, the City and Spectra. The facility master agreement contains the following key terms:

- Minimum number of hours of ice Spectra will make available for OHG during different times in the season (consistent with current ice allocation and usage)
- Ice use facility substitution
- Decision making for capital reserve use
- Indemnifications by various parties

The proposed lease agreement is very similar to the existing lease agreement and contains the following key terms:

- 10 year term commencing January 1, 2019, with an option to renew for a further 10 years
- Lease rate is set at $134,260 or $14 sq/ft and includes a provision for lease rates to be increased by CPI annually, which is at current market rate
- Additional Rent will be paid by OHG including OHG's share of taxes and operating costs
- A provision for OHG to exit from the lease should it enter a new lease in a new City facility, should it become available

**Alternate recommendations**

THAT Council not approve the new facility master agreement and lease agreement presented by staff.
THAT Council provide staff with alternate direction.

**Attachments**

Attachment A – Facilities Master Agreement
Attachment B – Lease agreement

Respectfully submitted,



Jim Bauer
Chief Financial Officer

Approvals

| Director Recreation & Facilities | Chief Administrative Officer |
|---|---|
| BK | LD for PW |

**THIS MASTER FACILITIES AGREEMENT** is made effective as of January 1, 2019

BETWEEN:

**THE CORPORATION OF THE CITY OF PENTICTON**, of
171 Main Street, Penticton, British Columbia, V2A 5A9

("City of Penticton")

AND:

**GLOBAL SPECTRUM FACILITY MANAGEMENT, L.P. dba**
**SPECTRA VENUE MANAGEMENT**, an Ontario limited partnership,
of 853 Eckhardt Avenue West, Penticton, British Columbia, V2A 9C4

("Spectra")

AND:

**OKANAGAN HOCKEY GROUP INC.**, Inc. No. BC0095626, of
201 - 853 Eckhardt Avenue West, Penticton, British Columbia,
V2A 9C4

("OHG")

**BACKGROUND**

A. The City of Penticton owns multi-sport and entertainment facilities in Penticton, British Columbia, including the facilities known as the South Okanagan Events Centre (the "SOEC"), of which Memorial Arena ("MA"), SOEC arena ("SA") and the Okanagan Hockey Group Training Centre ("OHGTC") form part, and McLaren Arena ("McLaren") (collectively, the "Penticton Facilities" and individually, a "Penticton Facility").

B. Spectra operates and manages the SOEC for the City of Penticton pursuant to a facilities operation and management agreement.

C. OHG operates its hockey academy and hockey camp business out of the Penticton Facilities pursuant to the following agreements with the City of Penticton or Spectra:

(a) lease dated January 1, 2019 with respect to the premises at 201 - 853 Eckhardt Avenue West, Penticton, British Columbia;

(b) OHGTC naming rights agreement dated January 1, 2019;

(c) SOEC marquee branding agreement dated January 1, 2019;

(d) Hourly Ice License Agreement, OHGTC, dated January 1, 2019;

(e) Hourly Ice License Agreement, MA, dated January 1, 2019;

(f) Hourly Ice License Agreement, SA, dated January 1, 2019; and

(g) Hourly License Agreement, SA and OHGTG, Summer Ice, dated January 1, 2019;

(collectively, the "Penticton Facilities Agreements" and individually, a "Penticton Facility Agreement").

D. The parties wish to enter into this Master Facilities Agreement to evidence the terms and conditions upon which the rights and obligations arising under the various Penticton Facilities Agreements operate in relation to each other.

**Terms of Master Facilities Agreement**

In consideration of the premises and the covenants and agreements contained in this Master Facilities Agreement, the parties agree with each other as follows:

**1. Use of Penticton Facilities**

1.1 Minimum Aggregate Availability

For the purposes of clarity, OHG and Spectra agree that the minimum number of hours of ice availability to be provided to OHG by Spectra under the Penticton Facilities Agreements in the aggregate shall be:

(a) from September 1st to March 31st, 40 to 50 hours per week, Monday to Friday, and 20 to 25 hours per week on Fridays, Saturdays and Sundays; and

(b) from April 1st to June 15th, 20 to 30 hours per week, and 25 to 30 hours per week on Fridays, Saturdays and Sundays; and

(c) from July 1st to August 31st, Sunday to Friday, 7 a.m. to 11:00 p.m.

1.2 Substitution of Facility

If one Penticton ice sheet is not in a condition suitable for use by OHG under a particular Penticton Facilities Agreement, the City of Penticton and Spectra shall make available to OHG a comparable Penticton Facility at a time and for a duration and at a rate as similar to the contracted time, duration and rate as is reasonably possible to ensure the stated minimum hours of ice availability set out in section 1.1 are met.

1.3 Capital Reserve

OHG shall pay $12,000.00 to establish a capital reserve to Spectra on the execution of this Master Facilities Agreement, OHG, Spectra and the City shall decide on the use of such capital reserve fund annually and OHG shall pay to Spectra, annually, on the anniversary date of this Master Facilities Agreement the amount required to replenish the Capital Reserve Fund to $12,000.00.

1.4 Marketing in MA and OHGTC

Spectra and OHG agree to share revenue from interior sponsorship signage inventory in MA and OHGTC, with 60% of the revenue allocated to the seller of the signage and 40% to the non-selling party.

1.5 Indemnification

The City of Penticton and Spectra (the "Indemnitors") agree to indemnify, defend, save and hold harmless OHG, its successors and assigns, subsidiaries and affiliates (as applicable), officers, directors, employees and representatives (the "Indemnitee") from and against any and all claims, suits, losses, injuries, damages, liabilities and expenses, including, without limitation, reasonable legal fees (as incurred by the Indemnitee) and expenses ("Claims or Costs") incurred in connection with, arising or alleged to arise from, wholly or in part, any breach of this Master Facilities Agreement by the respective Indemnitor. This indemnity shall survive the expiry or termination of this Master Facilities Agreement. For certainty, this section only requires each Indemnitor to indemnity, defend and hold harmless from and against Claims or Costs incurred in connection with, arising or alleged to arise from its own breach of this Agreement. It does not require the City of Penticton to indemnify OHG for any Claim or Cost incurred in connection with, arising or alleged to arise from, wholly or in part, any breach by Spectra, and does not require Spectra to indemnify OHG for any Claim or Cost incurred in connection with, arising or alleged to arise from, wholly or in part, any breach by the City of Penticton.

OHG (the "Indemnitor"), agrees to indemnify, defend, save and hold harmless the City of Penticton, and Spectra, their respective successors and assigns, subsidiaries and affiliates (as applicable), officers, directors, employees and representatives (the "Indemnitees") from and against any and all claims, suits, losses, injuries, damages, liabilities and expenses, including, without limitation, reasonable legal fees (as incurred by the Indemnitee) and expenses ("Claims or Costs") incurred in connection with, arising or alleged to arise from, wholly or in part, any breach by the Indemnitor of this Master Facilities Agreement. This indemnity shall survive the expiry or termination of this Master Facilities Agreement.

## 2. General

2.1 Notices

Any demand, notice or other communication to be given in connection with this Master Facilities Agreement must be given in writing and will be given by personal delivery, (by registered mail) or by electronic means of communication addressed to the recipient as follows:

| | |
|---|---|
| To the City of Penticton: | 171 Main Street<br>Penticton, B.C. V2A 5A9 |
| To Spectra: | 853 Eckhardt Avenue West<br>Penticton, B.C. V2A 9C4 |
| To OHG: | 201 - 853 Eckhardt Avenue West<br>Penticton, B.C. V2A 9C4 |

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, (if given by registered mail, on the fifth business day following the deposit thereof in the mail and), if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. (If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.)

2.2 Time of Essence

Time is of the essence of this Master Facilities Agreement.

2.3 Severability

If any provision of this Master Facilities Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof, and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

2.4 Further Assurances

Each of the parties will execute and deliver such further documents and instruments and do such acts and things as may be reasonably required by another party to carry out the intent and meaning of this Master Facilities Agreement.

2.5 Proper Law

This Master Facilities Agreement will be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of British Columbia.

2.6 Entire Agreement

This Master Facilities Agreement contains the whole agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions between the parties and there are no representations, warranties, covenants, conditions or other terms other than expressly contained in this Master Facilities Agreement. In the event of a conflict between this Master Facilities Agreement and a Penticton Facilities Agreement, the terms of this Master Facilities Agreement shall prevail.

2.7 Assignment

This Master Facilities Agreement may not be assigned by any party without the prior written consent of the other party, which consent may be reasonably withheld.

2.8 Benefit and Binding Nature of the Master Facilities Agreement

This Master Facilities Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.

2.9 Amendments and Waiver

No modification of or amendment to this Master Facilities Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties and no waiver of any breach of any term or provision of this Master Facilities Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same, and unless otherwise provided, will be limited to the specific breach waived.

2.10 Counterparts and Delivery

This Master Facilities Agreement may be signed in counterparts, and this Master Facilities Agreement or a counterpart may be delivered by email. Each such counterpart, if any, will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.

2.11 Force Majeure

If the performance by any party of its obligations under this Agreement herein provided is interrupted or prevented by riot, war, governmental orders or regulations, embargoes, acts of God, strikes, delays in carriers, or other contingencies beyond the reasonable control of the party, then the party so affected shall be excused from the performance of such obligations while or to the extent that its performance is interrupted or prevented by any one or more of such causes, provided that no lack of money, financing, credit, or any increase in the cost of performing the obligation in question will excuse performance. The party whose performance is so interrupted shall use its best efforts to overcome the contingency in question so as to be able to perform its obligations as contemplated under this Agreement.

**AS EVIDENCE OF THEIR AGREEMENT** the parties have executed this Master Facilities Agreement as of the date and year first above written.

**THE CORPORATION OF THE CITY OF PENTICTON**

Per: _____

Per: _____

**GLOBAL SPECTRUM FACILITY MANAGEMENT, L.P.**

Per: _____

**OKANAGAN HOCKEY GROUP INC.**

Per: _____

THIS LEASE, dated the 1st day of January, 2019 is made and entered into by the Landlord and Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

## 1. Basic Terms, Schedules, and Definitions

### 1.1 Basic Terms

(a) Landlord: **THE CORPORATION OF THE CITY OF PENTICTON**

Address of Landlord: 171 Main Street, Penticton, B.C. V2A 5A9

(b) Tenant: **OKANAGAN HOCKEY GROUP INC.**

Mailing Address of Tenant: 201 – 853 Eckhardt Avenue West
Penticton, BC, V2A 9C4

(c) Leased Premises: Shown cross-hatched on Schedule A

(d) Rentable Area: 9,590 square feet plus or minus

(e) Term: Ten (10) years, subject to renewal for one further term of ten years

Commencement Date: January 1, 2019

(f) Annual Base Rent: $134,260.00 ($14.00 per square foot) in year 1. Annual Base Rent shall be adjusted in each successive year (on July 1 of such year) by the percentage change in the All-Items Consumer Price Index for British Columbia, published from time-to-time by Statistics Canada, or its successor in function.

(g) Permitted Use: For use as an office, hockey skills teaching centre, dry land training facility for hockey camps, hockey academy, combines, minor, junior and professional hockey players, equipment storage and repair, medical rehabilitation services and strength and conditioning services, and all other purposes necessary or incidental to the operation of a hockey camp, hockey academy and training facility.

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

**1.2 Schedules**

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

| Schedule | Subject | Clause |
|---|---|---|
| A | Floor Plan(s) of Leased Premises | 1.1(c) |
| B | Definitions | 1.3 |
| C | Rules and Regulations | 5.9, 6.5 |

**1.3 Definitions**

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

**2. Premises**

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Leased Premises.

**3. Term**

**3.1 Term**

The Term of this Lease shall be for the period set out in subclause 1.1(e), beginning on the Commencement Date, subject to renewal pursuant to Article 18.

**4. Rent**

**4.1 Rent**

The Tenant shall yield and pay for the Leased Premises unto the Landlord, at the office of the Landlord, or at such other place as the Landlord may direct in writing, during the Term in lawful money of Canada without any setoff, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in subclauses (a) and (b) below:

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in subclause 1.1(f) for each respective Lease Year; and

(b) Additional Rent

The aggregate of the following:

(i) the Tenant's Share of Tax Cost;

(ii) the Tenant's Share of Operating Cost;

(iii) such other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord pursuant to this Lease in addition to Annual Base Rent.

**4.2 Payment of Rent**

The Rent provided for in this Article 4 shall be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly installments in advance on the first day of each and every month during the Term. The first monthly installment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date.

(b) Additional Rent Payments

The amount of any or all of the items of Additional Rent under subclause 4.1(b) which the Tenant is to pay may be estimated by the Landlord for such fiscal period or portion thereof as the Landlord may determine, acting reasonably and the Landlord shall, upon request in writing provide the Tenant with that information that is relevant and necessary to the calculation of Additional Rent. The Tenant agrees to pay to the Landlord the amount of such estimate in monthly installments in advance in amounts and during the period specified by the Landlord on the dates and at the times for payment of the Annual Base Rent provided for in this Lease. The Landlord may make its estimates so that the Tenant's share of Additional Rent will be payable to the Landlord prior to the time the Landlord is obliged to pay the costs in respect of which the Additional Rent is payable. The Landlord may submit to the Tenant at any time during a period a re-estimate of the amount of Additional Rent payable by the Tenant under subclause 4.1(b) and a revised monthly installment amount. As soon as reasonably possible after the end of the fiscal period for which such estimated payments have been made, the

Landlord will make a final determination of Tax Cost and Operating Cost for such fiscal period and notify the Tenant of the actual amount required to be paid as Additional Rent under subclause 4.1(b). If necessary an adjustment shall be made between the parties and any money owing by or to one party shall be paid or credited within 30 days of such notice.

(c) Post-dated Cheques

If requested by the Landlord from time to time, the Tenant will provide to the Landlord without prejudice to any other right or remedy of the Landlord a series of cheques, post-dated to the respective due dates of payments, for the amounts of the Rent and estimates on account thereof which are periodically payable under this Lease.

**4.3 Waiver of Offset**

The Tenant hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Tenant or on its behalf.

**4.4 Application of Payments**

All payments by the Tenant to the Landlord under this Lease shall be applied toward such amounts then outstanding hereunder as the Landlord determines and the Landlord may subsequently alter the application of any such payment.

**4.5 Net Lease**

The Tenant acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the Leased Premises, and the Tenant, except as shall be otherwise provided in the specific provisions contained in this Lease, shall pay all charges, impositions, and costs of every nature and kind relating to the Leased Premises whether or not referred to herein and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

**5. Tenant's Covenants**

**5.1 Tenant's Covenants**

The Tenant covenants with the Landlord as follows:

**5.2 Rent**

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

**5.3 Occupancy and Permitted Use**

To use the Leased Premises only for the purpose set out in subclause 1.1(g) and not to use or permit to be used the Leased Premises or any part thereof for any other purpose. Without limiting the generality of the foregoing, the Tenant shall specifically not use the Leased Premises for any form of merchandising, advertising, sales or sponsorship promotion other than as necessary or incidental to the hockey camp, hockey academy, combines, training facility, medical rehabilitation services and strength and conditioning services business of the Tenant. Notwithstanding anything herein to the contrary, the Tenant may, with the prior written consent of the Landlord, such consent not to be unreasonably withheld, use the Leased Premises as a general sports training facility in conjunction with the use referred to in paragraph 1.1(g) herein.

**5.4 Waste and Nuisance**

Not to commit or permit any waste or injury to the Building or the Leased Premises including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Landlord acting reasonably, could impede the business of any other occupant of the Building or which constitutes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord, any other occupant of the Building, or anyone else; or any other use or manner of use which annoys or interferes with the operations of any other occupant of the Building or, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Building.

**5.5 Insurance Risks**

Not to do, omit to do, or permit to be done or omitted to be done upon the Leased Premises anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

**5.6 Cleanliness**

Not to permit the Leased Premises to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Leased Premises in a condition such as to reasonably facilitate the performance of the Landlord's janitorial and cleaning services referred to in clause 6.7.

**5.7 Compliance with Laws**

To comply at its own expense with all municipal, provincial, and federal sanitary, fire, and safety laws, bylaws, regulations, and requirements pertaining to the operation and use of the Leased Premises, the condition of the Leasehold Improvements, trade fixtures, furniture, and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein.

**5.8 Installations**

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Leased Premises necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in clause 5.7 and imposed after completion of the Landlord's original construction of the Building, and to permit ingress and egress to and from the Leased Premises by the Landlord or by other tenants of the Landlord or by their respective employees, servants, workmen, and invitees, by use of fire exit doors in case of fire or emergency.

**5.9 Rules and Regulations**

To observe, and to cause its employees, invitees, and others over whom the Tenant can reasonably be expected to exercise control to observe the Rules and Regulations attached as Schedule C, and such further and other reasonable rules and regulations and amendments and changes therein as may hereafter be made by the Landlord, of which notice in writing shall be given to the Tenant; and all such rules and regulations shall be deemed to be incorporated into and form part of this Lease.

**5.10 Overholding**

That if the Tenant shall continue to occupy the Leased Premises after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 150% of the monthly installment of Annual Base Rent plus Additional Rent payable by the Tenant as set forth in Article 4 during the last month of the Term and (except as to length of tenancy) on and subject to the provisions and conditions herein set out.

### 5.11 Signs

Without the Landlord’s prior written consent, such consent not be unreasonably withheld or delayed, not to paint, display, inscribe, place, or affix any sign, symbol, notice, or lettering of any kind anywhere outside the Leased Premises (whether on the outside or inside of the Building), or within the Leased Premises with the exception only of commercially reasonable signage at or near the entrance of the Building and the Leased Premises containing the name of the Tenant, its logo, and such other information that is reasonably necessary or useful for the purpose of advertising the business of the Tenant. Such signs shall be installed at the expense of the Tenant, and the Landlord reserves the right to install the signs as an Additional Service.

### 5.12 Inspection and Access

To permit the Landlord at any reasonable time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Leased Premises for the purpose of inspection, window cleaning, maintenance, providing janitorial service, or making repairs, alterations, or improvements to the Leased Premises or the Building, or to have access to utilities and services or to determine the electric light and power consumption by the Tenant in the Leased Premises, and the Tenant shall provide free and unimpeded access for the purpose, and shall not be entitled to compensation for any inconvenience, nuisance, or discomfort caused thereby, but the Landlord in exercising its rights hereunder shall proceed to the extent reasonably possible so as to minimize interference with the Tenant's use and enjoyment of the Leased Premises.

## 6. Landlord's Covenants

### 6.1 Landlord's Covenants

The Landlord covenants with the Tenant as follows:

### 6.2 Quiet Enjoyment

Provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Leased Premises for the Term hereby granted, without any interruption or disturbance from the Landlord or its assigns, or any other person or persons lawfully claiming by, from, through, or under the Landlord.

### 6.3 Interior Climate Control

To provide to the Leased Premises at all times, by means of a system for heating, cooling, filtering, and circulating air and processed air in such quantities, at such temperatures as shall maintain in the Leased Premises conditions of reasonable temperature and comfort in accordance with good standards of interior climate control generally pertaining at the date of this Lease applicable to similar buildings based on normal occupancy of premises for office purposes. The Landlord shall have no responsibility for any inadequacy of performance of the system unless the Landlord is negligent in maintaining or operating the system. The Tenant acknowledges that the comfort of the Tenant will be reduced if the Leased Premises include installed partitions or other installations in locations which interfere with the proper operation of the said system or if window coverings on exterior windows are not fully closed while such windows are exposed to direct sunlight. The Tenant agrees that the Landlord shall have no responsibility to provide for the removal of smoke, dust, or odours which originate from within the Leased Premises.

**6.4 Elevators**

Subject to the supervision of the Landlord, to furnish for use by the Tenant and its employees and invitees in common with other persons entitled thereto passenger elevator service to the Leased Premises, if applicable, and to furnish for the use of the Tenant in common with others entitled thereto at all times, elevator service to the Leased Premises for the carriage of furniture, equipment, deliveries, and supplies, provided however that if the elevators shall become inoperative or shall be damaged or destroyed the Landlord shall have a reasonable time within which to repair such damage or replace such elevator and the Landlord shall repair or replace the same as soon as reasonably possible, but shall in no event be liable for indirect or consequential damages or other damages for personal discomfort or illness during such period of repair or replacement.

**6.5 Entrances, Lobbies, and Other Common Areas**

To permit the Tenant and its employees and invitees to have the use at all times in common with others entitled thereto of the common entrances, lobbies, stairways, and corridors of the Building giving access to the Leased Premises (subject to the Rules and Regulations set out in Schedule C and such other reasonable limitations as the Landlord may from time to time impose).

**6.6 Washrooms**

To permit the Tenant and its employees and invitees in common with others entitled thereto to use the washrooms in the Building on the floor and floors on which the Leased Premises are situate.

### 6.7 Maintenance of Common Areas

To cause the elevators, common entrances, lobbies, stairways, corridors, washrooms, and other parts of the Building from time to time provided for common use and enjoyment to be swept, cleaned, or otherwise properly maintained.

## 7. Repair, Damage, and Destruction

### 7.1 Landlord's Repairs

The Landlord covenants with the Tenant:

(a) subject to subclause 7.3(b), and except as required of the Tenant under this Lease, to keep in a good and reasonable state of repair, and consistent with the general standards of buildings of similar age and character in the Okanagan valley, British Columbia:

(i) the Building (other than the Leased Premises and premises of other tenants) including the foundation, roof, exterior walls including glass portions thereof, the systems for interior climate control, the elevators, entrances, stairways, corridors, lobbies, and washrooms from time to time provided for use in common by the Tenant and other tenants of the Building and the systems provided for bringing utilities to the Leased Premises, and

(ii) the structural members or elements of the Leased Premises; and

(b) to repair defects in construction performed or installations made by the Landlord in the Leased Premises and Insured Damage.

### 7.2 Tenant's Repairs

The Tenant covenants with the Landlord:

(a) subject to subclause 7.3(b), to keep in a good and reasonable state of repair and consistent with the general standards of office buildings and training facilities of similar age and location in the Okanagan valley, British Columbia, reasonable wear and tear excepted, the Leased Premises including all Leasehold Improvements and all trade fixtures therein and all glass therein other than glass portions of exterior walls thereof, but with the exception of structural members or elements of the Leased Premises, defects in construction performed or installations made by the Landlord and Insured Damage therein;

(b) that the Landlord may enter at reasonable times and view the state of repair, and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Leased Premises in a good and reasonable state of repair, subject always to the exceptions referred to in subclause 7.2(a); and

(c) that if any part of the Building including the systems for interior climate control and for the provision of utilities becomes out of repair, damaged, or destroyed through the negligence or misuse of the Tenant or its employees, invitees, or others over which the Tenant can reasonably be expected to exercise control, the expense of repairs or replacements necessitated thereby shall be reimbursed to the Landlord promptly upon demand.

**7.3 Abatement and Termination**

It is agreed between the Landlord and the Tenant that in the event of damage to the Leased Premises or to the Building:

(a) if the damage is such that the Leased Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:

(i) unless the damage was caused by the fault or negligence of the Tenant or its employees, invitees, or others under its control, from and after the date of occurrence of the damage and until the Leased Premises are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Leased Premises not reasonably capable of use and occupancy, and

(ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Leased Premises is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and

(b) if either:

(i) the Leased Premises, or

(ii) premises, whether of the Tenant or other tenants of the Building, comprising in the aggregate 25% or more of the Rentable Area of the Building

are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then the Landlord may at its option, exercisable by written notice to the Tenant given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Leased Premises to the Landlord with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under subclause 7.3(a) by reason of the Leased Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

**7.4 Service Interruptions**

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord. During periods of such interruption and subject to the terms of the Master Facilities Agreement dated January 1, 2019 and made between the Landlord, Global Spectrum Facility Management, L.P. dba Spectra Venue Management and the Tenant (the “Master Facilities Agreement”), any obligation of the Landlord to provide access to such systems and facilities or common areas of the Building shall be suspended and clause 14.1 shall apply.

**8. Taxes and Operating Costs**

**8.1 Landlord's Tax Obligations**

The Landlord covenants with the Tenant, subject to clause 8.2, to pay to the taxing authority or authorities having jurisdiction, all Taxes.

**8.2 Tenant's Tax Obligations**

The Tenant covenants with the Landlord:

(a) to pay when due, all taxes, business taxes, business licence fees, and other taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Leased Premises by the Tenant, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Leased Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay to the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Land and Building that is attributable to any equipment, machinery, or fixtures on the Leased Premises which are not the property of the Landlord or which may be removed by the Tenant;

(b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Leased Premises; and

(c) to pay to the Landlord in the manner specified in subclause 4.2(b) the Tenant's Share of the Tax Cost.

**8.3 Goods and Services Tax**

The Tenant shall pay to the Landlord Goods and Services Tax in accordance with the applicable legislation at the same time as the amounts to which such goods and services tax apply are payable to the Landlord under the terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines. The Landlord will provide the Tenant with its Goods and Services Tax registration number. Notwithstanding any other section of this Lease, the amount payable by the Tenant under this clause shall be deemed not to be Rent, but the Landlord shall have the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease.

**8.4 Tenant's Tax Cost**

After the commencement of the Term of this Lease and prior to the commencement of each fiscal period determined by the Landlord thereafter which commences during the Term, the Landlord may estimate the Tax Cost, or any installment on account thereof, to become due on any date during the ensuing fiscal period or (if applicable) portion thereof, as the case may be, and the amount thereof which will be payable by the Tenant, and notify the Tenant in writing of such estimate. If the Tenant has overpaid such Tax Cost, the Landlord shall refund any excess paid, but if any balance remains unpaid, the Landlord shall fix monthly installments for the then-remaining balance of such fiscal period or portion thereof such that, after giving credit for installments paid by the Tenant hereunder in respect of such calendar year, the entire Tenant's Share of Tax Cost will be fully payable prior to the time the Landlord is obliged to pay the Taxes in respect of which the Tenant's Share of Tax Cost is payable. If for any reason the Tax Cost is not finally determined within such fiscal period or portion thereof, the parties shall make the appropriate readjustment when such Tax Cost becomes finally determined. The Landlord and the Tenant acknowledge that Taxes in respect of the Building may be payable during the course of a year as prepayment for the Taxes accruing due in respect of such year, and if the Term ends during a year, then the appropriate adjustment will be made. Any report of the Landlord's accountant as to the Tax Cost shall be conclusive as to the amount thereof for any period to which such report relates.

**8.5 Postponement of Payment of Taxes**

The Landlord may postpone payment of any Taxes payable by it under clause 8.1 to the extent permitted by law if prosecuting in good faith any appeal against the assessment of the Land and Building for Taxes or the imposition of Taxes.

**8.6 Receipts for Payment**

Whenever requested by the Landlord, the Tenant will deliver to it receipts for payment of all taxes, rates, duties, levies, and assessments payable by the Tenant under subclauses 8.2(a) and (b) and furnish such other information in connection therewith as the Landlord may reasonably require.

**8.7 Operating Cost**

During the Term of the Lease the Tenant shall pay to the Landlord in the manner set forth in clauses 4.1 and 4.2 the Tenant's Share of Operating Cost. Any report of the Landlord's accountant as to the Operating Cost shall be conclusive other than for manifest error as to the amount thereof for any period to which such report relates.

**8.8 Allocation to Particular Tenant**

Notwithstanding any of the foregoing, whenever in the Landlord's reasonable opinion any Operating Cost or item of Operating Cost properly relates to a particular tenant or tenants within the Building, the Landlord shall allocate such Operating Cost or item of Operating Cost to such tenant or tenants. Any amount allocated by the Landlord to the Tenant under this clause shall be payable by the Tenant forthwith upon demand.

## 9. Utilities and Additional Services

### 9.1 Additional Services

If the Tenant requires any janitorial or cleaning services to the Leased Premises additional to those required to be provided by the Landlord under clause 6.7, wishes to move furniture or equipment or make repairs or alterations within the Leased Premises, or requires other service in the Leased Premises, then the Landlord may at its option, by way of Additional Services, provide or have its designated agents or contractors provide such service. The Cost of Additional Services provided shall be paid to the Landlord by the Tenant from time to time promptly upon receipt of invoices therefor from the Landlord. The Cost of Additional Services charged directly to the Tenant and other tenants will be credited in computing Operating Cost to the extent that it would otherwise have been included.

### 9.2 Energy Conservation

The Tenant covenants with the Landlord:

(a) that the Tenant will cooperate with the Landlord in the conservation of all forms of energy in the Building, including without limitation the Leased Premises;

(b) that the Tenant will comply with all laws, bylaws, regulations, and orders relating to the conservation of energy and affecting the Leased Premises or the Building;

(c) that the Tenant will at its own cost and expense comply with all reasonable requests and demands of the Landlord made with a view to such energy conservation; and

(d) that any and all costs and expenses paid or incurred by the Landlord in complying with such laws, bylaws, regulations, and orders, so far as the same shall apply to or reasonably be apportioned to the Building by the Landlord, shall be included in Operating Cost.

The Landlord shall not be liable to the Tenant in any way for any loss, costs, damages, or expenses, whether direct or consequential, paid, suffered, or incurred by the Tenant as a result of any reduction in the services provided by the Landlord to the Tenant or to the Building as a result of the Landlord's compliance with such laws, bylaws, regulations, or orders.

## 10. Licenses, Assignments, and Sublettings

### 10.1 Licenses, Franchises, and Concessions

The Tenant shall not suffer or permit any part of the Leased Premises to be sublet, assigned, used or occupied by any persons other than the Tenant, and the employees of the Tenant, or suffer or permit any part of the Leased Premises to be used or occupied by any licensee, franchisee, or concessionaire, or suffer or permit any persons to be upon the Leased Premises other than the Tenant, and their respective employees, customers, and others having lawful business with them without the prior written consent of the Landlord, such consent not to be unreasonably withheld. Notwithstanding anything herein to the contrary, the Tenant may allow the clients of Penticton Minor Hockey, Sport BC, Penticton Vees, BC Hockey, Hockey Canada, NHL, OUC, SD 67 and nationally and provincially accredited ski organizations to have the use in conjunction with the Tenant of the weight training room which form part of the Leased Premises on the condition and understanding that the Tenant shall at all times be responsible for such clients.

## 11. Fixtures and Improvements

### 11.1 Installation of Fixtures and Improvements

The Tenant shall be responsible for all Leasehold Improvements to the Leased Premises. The Tenant will not make, erect, install, or alter any Leasehold Improvements or trade fixtures in the Leased Premises, any safe or special lock in the Leased Premises, or any apparatus for illumination, air-conditioning, cooling, heating, refrigerating, or ventilating the Leased Premises, in any case without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements or trade fixtures, the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, shall obtain all required building and occupancy permits, shall not alter or interfere with any installations which have been made by the Landlord without the prior written approval of the Landlord, and in no event shall alter or interfere with window coverings installed by the Landlord on exterior windows. The Tenant's request for any approval hereunder shall be in writing and accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications thereof. Any out-of-pocket expense

incurred by the Landlord in connection with any such approval shall be deemed incurred by way of Additional Services. All work to be performed in the Leased Premises shall be performed by competent contractors and subcontractors of whom the Landlord shall have approved (such approval not to be unreasonably withheld, but provided that the Landlord may require that the Landlord's contractors and subcontractors be engaged for any mechanical or electrical work). All such work shall be subject to inspection by and the reasonable supervision of the Landlord as an Additional Service and shall be performed in accordance with any reasonable conditions or regulations imposed by the Landlord and completed in good and workmanlike manner in accordance with the description of the work approved by the Landlord.

**11.2 Liens and Encumbrances on Fixtures and Improvements**

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Leased Premises, the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c.45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c.359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Leased Premises. If and when any builders' or other lien for work, labour, services, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefor shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 15.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 15.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, setoff, or defence.

### 11.3 Removal of Fixtures and Improvements

All Leasehold Improvements and trade fixtures in or upon the Leased Premises shall immediately upon affixation be and become the Landlord's property without compensation therefor to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements or trade fixtures shall be removed by the Tenant from the Leased Premises either during or at the expiration or sooner termination of the Term, except that the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefor new furniture and equipment. The Tenant shall, in the case of every removal of furniture or equipment either during or at the end of the Term, immediately make good any damage caused to the Leased Premises by the installation and removal.

### 11.4 Alterations by Landlord

Subject to Clause 17 the Landlord reserves the right from time to time to:

(a) make any deletions, changes, and additions to the equipment, appliances, pipes, plumbing, wiring conduits, ducts, shafts, structures, and facilities of every kind throughout the Building, including the Leased Premises;

(b) alter the location and nature of common areas of the Building, including Service Areas, make reductions therein, erect additions thereto, and extend any part thereof; and

(c) make alterations and additions to the Building;

and in exercising any such rights, the Landlord will take reasonable steps to minimize any interference caused to the Tenant's operations in the Leased Premises, but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of rent or other compensation from the Landlord.

## 12. Insurance and Liability

### 12.1 Landlord's Insurance

The Landlord shall be deemed to have insured (for which purpose it shall be a co-insurer, if and to the extent that it shall not have insured) the Building and all improvements and installations made by the Landlord in the Leased Premises, except to the extent hereinafter specified, in respect of perils and to amounts and on

terms and conditions which from time to time are insurable at a reasonable premium and which are normally insured by reasonably prudent owners of properties similar to the Building, as from time to time determined at reasonable intervals (but which need not be determined more often than annually) by insurance advisors selected by the Landlord, and whose written opinion shall be conclusive. Upon the request of the Tenant from time to time the Landlord will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Building. The Landlord may maintain such other insurance in such amounts and upon such terms as would normally be carried by a prudent owner.

**12.2 Tenant's Insurance**

The Tenant shall take out and keep in force during the Term:

(a) comprehensive general liability (including bodily injury, death, and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Leased Premises and the Tenant's use and occupancy thereof, of not less than $5,000,000 per occurrence, which insurance shall include the Landlord as a named insured and shall protect the Landlord in respect of claims by the Tenant as if the Landlord were separately insured; and

(b) insurance in such amounts as may be reasonably required by the Landlord in respect of fire and such other perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Tenant's trade fixtures and the furniture and equipment of the Tenant and (except as to Insured Damage) all Leasehold Improvements in the Leased Premises, and which insurance shall include the Landlord as a named insured as the Landlord's interest may appear with respect to the insured Leasehold Improvements and provided that any proceeds recoverable in the event of loss to Leasehold Improvements shall be payable to the Landlord, but the Landlord agrees to make available such proceeds toward the repair or replacement of the insured property if this Lease is not terminated under any other provision hereof;

and if the Landlord shall require the same from time to time, then also:

(c) tenant's fire legal liability insurance in an amount not less than the actual cash value of the Leased Premises; and

(d) insurance upon all plate glass in or which forms a boundary of the Leased Premises in an amount sufficient to replace all such glass.

All insurance required to be maintained by the Tenant hereunder shall be on terms and with insurers to which the Landlord has no reasonable objection and shall provide that such insurers shall provide to the Landlord 30 days' prior written notice of cancellation or material alteration of such terms. The Tenant shall furnish to the Landlord certificates or other evidence acceptable to the Landlord as to the insurance annually required to be effected by the Tenant and its renewal or continuation in force, either by means of a certified copy of the policy or policies of insurance with all amendments and endorsements or a certificate from the Tenant's insurer which, in the case of comprehensive general liability insurance, shall provide such information as the Landlord reasonably requires. If the Tenant shall fail to take out, renew, and keep in force such insurance the Landlord may do so as the agent of the Tenant and the Tenant shall repay to the Landlord any amounts paid by the Landlord as premiums forthwith upon demand.

**12.3 Limitation of Landlord's Liability**

The Tenant agrees that:

(a) except to the extent caused by the negligence of the Landlord or those persons for whom the Landlord is, in law responsible, the Landlord shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Tenant or its employees, invitees, or licensees or any other person in, on, or about the Building or the Land, or for any interruption of any business carried on in the Leased Premises, and, without limiting the generality of the foregoing, in no event shall the Landlord be liable:

(i) for any damage other than Insured Damage or for bodily injury or death of anyone which results from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Leased Premises or from the pipes, appliances, electrical system, plumbing works, roof, subsurface, or other part or parts of the Building or Land or from the streets, lanes, and other properties adjacent thereto,

(ii) for any damage, injury, or death caused by anything done or omitted by the Tenant or any of its servants or agents or by any other tenant or person in the Building,

(iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Landlord in effect from time to time or of any lease by another tenant of premises in the Building or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else,

(iv) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, or any other work in or about the Leased Premises or the Building,

(v) for loss or damage, however caused, to money, securities, negotiable instruments, papers, or other valuables of the Tenant or any of its servants or agents,

(vi) for the failure to supply interior climate control or elevator service when prevented from doing so by strikes, the necessity of repairs, any order or regulation of any body having jurisdiction, the failure of the supply of any utility required for the operation thereof, or any other cause beyond the Landlord's reasonable control, or

(vii) for any bodily injury, death, or damage to property arising from the use of, or any happening in or about, any elevator; and

(b) the Tenant releases and discharges the Landlord from any and all actions, causes of action, claims, damages, demands, expenses, and liabilities which the Tenant now or hereafter may have, suffer, or incur which arise from any matter for which the Landlord is not liable under subclause 12.3(a).

**12.4 Limitation of Tenant's Liability**

The Landlord releases the Tenant from all claims or liabilities in respect of any damage that is Insured Damage, to the extent of the cost of repairing such damage, but not from injury, loss, or damage which is consequential thereto or which arises therefrom where the Tenant is negligent or otherwise at fault.

**12.5 Indemnity of Landlord**

Except as provided in clause 12.4, the Tenant agrees to indemnify and save harmless the Landlord, its elected and appointed officials and employees, in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any assignee, subtenant, agent, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the Landlord in connection with or arising out of all such claims, including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the Landlord arising from any breach by the

Tenant of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.

## 13. Registration

### 13.1 Registration

The Landlord shall have no obligation to execute and deliver this Lease in registerable form, provided however that if the Tenant pays all costs, expenses, fees and taxes in connection with the registration of this Lease in the appropriate Land Title Office and the costs of any plans required for such registration, the Landlord shall execute and deliver this Lease in registerable form.

## 14. Occurrence of Default

### 14.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall be prevented, delayed, or restricted in the fulfillment of any obligations hereunder in respect of the supply or provision of any service or utility, the making of any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain any permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfillment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfillment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfillment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Leased Premises.

### 14.2 No Admission

The acceptance of any rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a subtenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

### 14.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the Landlord to payment in full of such sums.

## 15. Tenant's Default, Remedies of Landlord, and Surrender

### 15.1 Remedying by Landlord, Non-payment, and Interest

In addition to all the rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or the general law, the Landlord:

(a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things therein, and in such event all expenses of the Landlord in remedying or attempting to remedy such default together with an administrative charge equal to 18% of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;

(b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent;

(c) if the Tenant shall fail to pay any Rent promptly when due, shall be entitled, if it shall demand it, to interest thereon at a rate of 2% per month compounded annually (26.82% per annum); and

(d) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Landlord is or may be entitled hereunder.

### 15.2 Remedies Cumulative

The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as

excluding any other or additional rights and remedies available to the Landlord by statute or the general law.

**15.3 Right of Re-entry on Default**

Provided and it is expressly agreed that if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant notice requiring such payment; or if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, or regulations and other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant notice thereof; or if without the written consent of the Landlord the Leased Premises shall be used by any other persons than the Tenant or its permitted assigns or permitted subtenants or for any purpose other than that for which the Leased Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or if the Leased Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or if the Term or any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or if a receiver or receiver-manager is appointed of the business or property of the Tenant; or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or if any policy of insurance upon the Building from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Leased Premises by the Tenant or any assignee, subtenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Leased Premises and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or if the Landlord shall have become entitled to terminate this Lease or to re-enter the Leased Premises under any provision hereof including Clause 19.4 of this Lease; then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Leased Premises or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Leased Premises, and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forceable entry or any loss or damage in connection therewith.

**15.4 Termination and Re-entry**

If and whenever the Landlord becomes entitled to re-enter upon the Leased Premises under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Leased Premises notice in writing of such termination. Thereupon, this Lease and the Term shall terminate, and the Tenant shall immediately deliver up possession of the Leased Premises to the Landlord in accordance with clause 15.8.

**15.5 Certain Consequences of Termination and Re-entry**

If the Landlord re-enters the Leased Premises or if this Lease is terminated by reason of any event set out in clause 15.3, then without prejudice to the Landlord's other rights and remedies:

(a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;

(b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and

(c) the Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Leased Premises in good order, and the expenses of repairing the Leased Premises and preparing them for re-letting.

**15.6 Waiver of Distress and Bankruptcy**

The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that

notwithstanding any such statute none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for rent in arrears. The Tenant will not sell, dispose of, or remove any of the fixtures, goods, or chattels of the Tenant from or out of the Leased Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the owner of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the Landlord's consent, repudiate or disclaim or attempt to repudiate or disclaim or seek any order to permit it to repudiate or disclaim this Lease in any bankruptcy, insolvency, reorganization, or other proceeding or court application, and, if required by the Landlord, waives in favour of the Landlord the benefit of s.65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 as amended, and any provision of similar import.

**15.7 Re-letting and Sale of Personalty**

Whenever the Landlord becomes entitled to re-enter upon the Leased Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Leased Premises and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the rent therefor, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Leased Premises upon account of the rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

**15.8 Surrender on Termination**

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Leased Premises in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Leased Premises, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.3. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Leased Premises, the Building, or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Leased Premises.

**16. Miscellaneous**

**16.1 Notices**

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Landlord, in accordance with provisions of the *Community Charter* British Columbia; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Leased Premises.

Every such notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

**16.2 Extraneous Agreements**

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease or the Leased Premises save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant.

**16.3 Time of Essence**

Time shall be of the essence of this Lease.

**16.4 Area Determination**

The Rentable Area of any premises (including the Leased Premises) or the Building shall be determined by the Landlord's architect or surveyor from time to time appointed for the purpose. Such determination shall be conclusive.

**16.5 Successors and Assigns**

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant. References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is

comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

**16.6 Frustration**

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Lease, and notwithstanding any statutory provision to the contrary, the obligations and liabilities of the Tenant hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

**16.7 Waiver**

No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, no acceptance of rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing.

**16.8 Governing Law and Severability**

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Penticton or Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to either Penticton or Kelowna, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

**16.9 Captions**

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

**16.10 Acceptance**

Except for latent defects and deficiencies agreed to between the Landlord and the Tenant prior to signing of this Lease, the Tenant has inspected the Leased Premises prior to execution of this Lease and acknowledges that the Leased Premises are fit for the use by the Tenant for the purposes permitted in Clause 1.1(g). The tenant specifically acknowledges the Landlord has made no representation or warranty with respect to the Leased Premises or as to the fitness of the Leased Premises for the use referred to herein.

**17. Common License**

The Landlord hereby grants to the Tenant for the term of the Lease of such terms and conditions as the Landlord may determine from time to time and at its sole discretion the right, liberty and license for the Tenant, its customers, employees, invitees and licensees to use and enjoy the Land for the purposes of access and parking in common with the Landlord and any other persons permitted to use the same by the Landlord.

**18. Option to Renew**

18.1 If the Tenant duly and punctually observes and performs the covenants, agreements, conditions and provisos in this Lease on the part of the Tenant to be observed and performed, the Landlord shall at the expiration of the Term, at the written request of the Tenant delivered to the Landlord in the manner provided for in this Lease not earlier than 365 days and not later than 270 days prior to the expiration of the Term, grant to the Tenant a renewal lease of the Leased Premises for a further term of ten years (the "Renewal Term") from the expiration of the Term, upon all of the covenants, agreements, conditions and provisos contained in this Lease except this covenant for renewal and any provisions for Landlord's work, Tenant's work, exclusive use, free rent, bonuses, leasehold improvements or inducement, and except the Annual Base Rent to be paid during the Renewal Term.

18.2 The Annual Base Rent for the Renewal Term shall be the then-fair market rent for the Leased Premises, being the rent which would be paid for the Leased Premises in their then-current condition (including all leasehold improvement thereto) or in whatever condition the Landlord is entitled to require the Tenant to leave the Leased Premises at the expiration of the Term, whichever condition would result in

higher rent, as between persons dealing in good faith and at arm's length and without regard to any restrictive covenants as to use. If the Landlord and the Tenant have not mutually agreed on the amount of the Annual Base Rent three months prior to the commencement of the Renewal Term, then the Annual Base Rent shall be decided by binding arbitration pursuant to the *Arbitration Act*, RSBC 1996 c. 55, and any statutory modifications thereof, provided that the Annual Base Rent payable during the Renewal Term shall not be less than the Annual Base Rent payable during the last year of the Term.

18.3 The parties agree that the single arbitrator will be an independent, accredited and qualified appraiser with a minimum of five years' experience appraising commercial properties. The parties will share the cost of the arbitrator and related costs equally by placing such estimated costs in the Landlord's solicitor's trust account prior to the commencement of the arbitration. The decision of the single arbitrator shall be final and binding upon the Landlord and the Tenant and their respective successors and assigns.

18.4 The Landlord and the Tenant acknowledge and agree that under clause 18.1 the Tenant is given the option of renewing the Term only for one renewal term of ten years, and at the expiration of the Renewal Term there shall be no further right of renewal.

18.5 The exercise of the right of renewal is solely within the control of the Tenant, and nothing contained in this Lease obligates or requires the Landlord to remind the Tenant to exercise the right of renewal. The Landlord's acceptance of any future rent for the Renewal Term shall in no way be deemed a waiver of the Tenant's requirement to give notice within the time limit set out in clause 18.1 for renewing the Term.

18.6 The Renewal Term is deemed to incorporate all of the terms and provisions of the Lease as modified by this Article 18, and the parties ratify and confirm all of the terms and conditions of the Lease as so amended. The parties shall not be obliged to enter into a separate renewal lease for the Renewal Term to give effect to this Article 18 but the Tenant will, at the Tenant's cost, execute a separate renewal lease if required by the Landlord to do so.

## 19. Lease in Proposed New Arena

**19.1** If the City builds a new arena that contains space comparable to the Leased Premises that is suitable for the Permitted Uses under this Lease, and the Parties enter into a lease for such space, then the City shall permit the Tenant to surrender this Lease.

**20. Existing Agreements**

Subject to the Master Facilities Agreement, any existing contracts or agreements, whether written or oral, between the Landlord and the Tenant for the Tenant that have been granted to use and occupy any facilities of the Landlord are hereby terminated as of the Commencement Date and each party hereto is unconditionally released from any obligations thereto other than obligations as of the Commencement Date that have not been satisfied.

**21. Execution**

This document may be executed in any number of counterparts, each of which so executed shall be deemed an original and the counterparts together form a valid and binding document which may be sufficient evidence by any one such original counterpart.

IN WITNESS WHEREOF the parties have executed this Lease.

**THE CORPORATION OF THE CITY OF PENTICTON**
by its authorized signatories:

_____
Andrew Jakubeit, Mayor

_____
Dana Schmidt, Corporate Officer

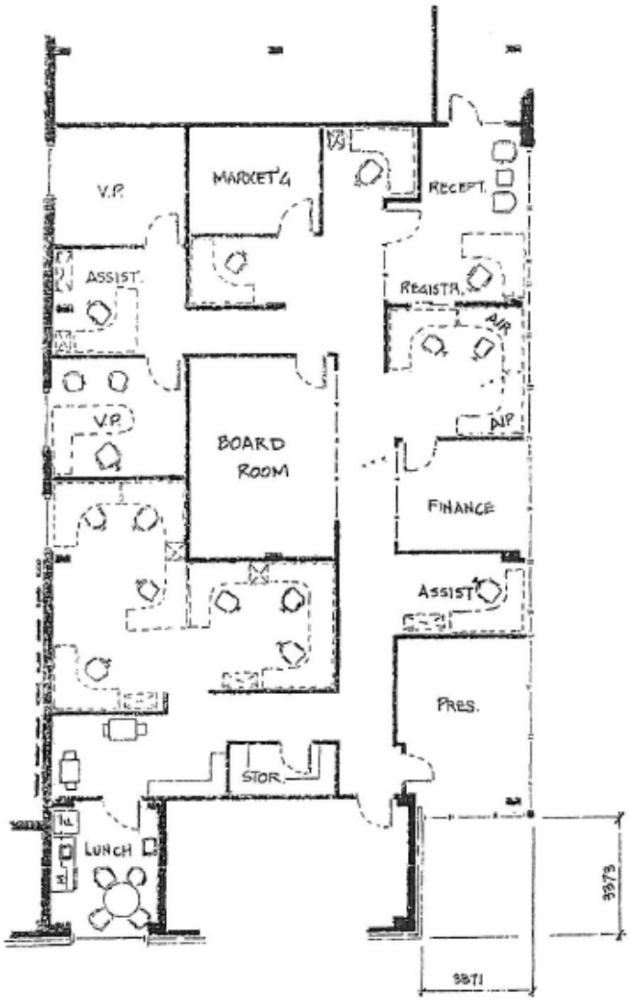
**OKANAGAN HOCKEY GROUP INC.**
by its authorized signatories:

_____
Authorized Signatory

_____
Authorized Signatory

# Schedule "A"

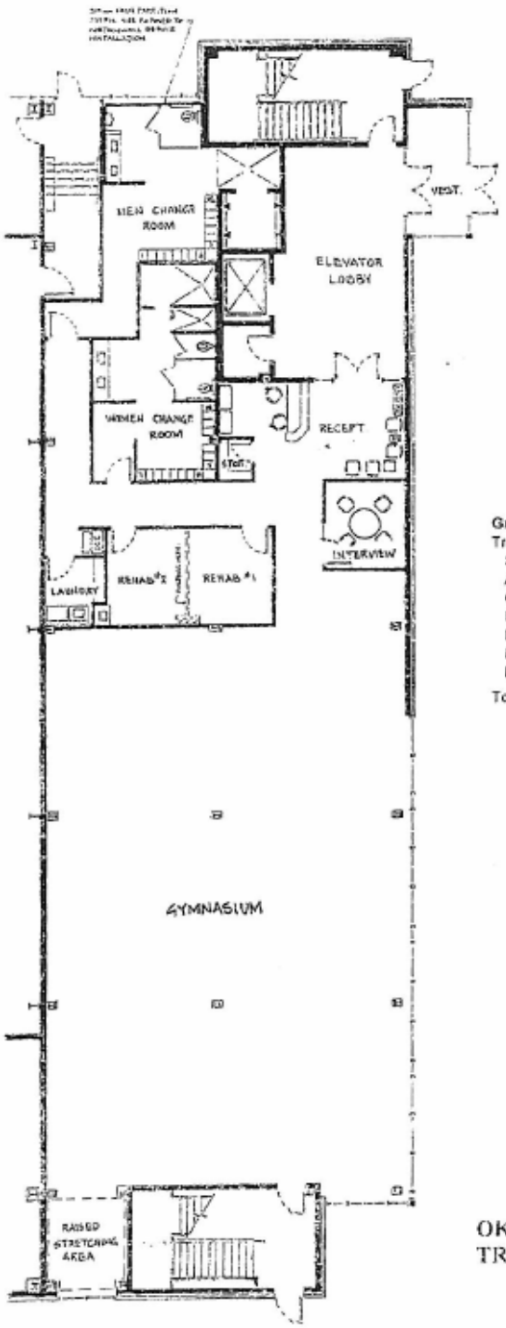
## Floor Plan of Leased Premises




OKANAGAN HOCKEY SCHOOL
ADMINISTRATION OFFICES
MAR-08

Concourse Level - Wellness Centre
Office Lease Space

| | | | |
|---|---|---|---|
| | 13.96 m x | 23.57 m = | 328.92 |
| Stair #9 | 7.50 m x | 4.25 m = | (31.88) |
| Adj Stair #9 | 3.67 m x | 3.37 m = | (13.06) |
| Total Concourse Level | | | 283.98 m2 |
| Overall Lease Space | | | 797.02 m2 |




Ground Floor - Wellness Centre
Training / Change Room Lease Space

| | | | |
|---|---|---|---|
| Stretch Area | 3.15 m x | 4.35 m = | 13.70 |
| Adj Stair #9 | 3.70 m x | 0.90 m = | 3.33 |
| Gym - Recept | 14.00 m x | 30.90 m = | 432.60 |
| Female Change | 6.65 m x | 3.05 m = | 20.28 |
| Male Change | 4.50 m x | 5.75 m = | 25.88 |
| Male Change | 3.95 m x | 2.05 m = | 8.10 |
| Male Change | 2.45 m x | 4.10 m = | 10.05 |
| Total Ground Floor | | | 513.93 m2 |

OKANAGAN HOCKEY SCHOOL
TRAINING / CHANGE ROOMS
MAR-08

## Schedule "B"

To Lease of Premises at Penticton, British Columbia

**Definitions**

In this Lease the following expressions shall have the following meanings:

**"Additional Rent"** means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Tenant;

**"Additional Services"** means the services and supervision supplied by the Landlord and referred to in clause 9.1 or in any other provision hereof as Additional Services; any other services which from time to time the Landlord supplies to the Tenant and which are additional to other services that the Landlord has agreed to supply under this Lease and to like provisions of other leases of the Building, or that the Landlord may elect to supply as included within the standard level of services available to tenants generally and in addition to those normally supplied; the provision of labour and supervision in connection with the moving of any furniture or equipment of the Tenant; the making of any repairs or alterations for the Tenant; and the provision to the Tenant or the Leased Premises of maintenance or other services not normally furnished to tenants or other leasable premises generally; and "Additional Service" means any such service;

**"Annual Base Rent"** means the annual rent set out in subclause 1.1(f) and payable by the Tenant as set forth in subclause 4.1(a);

**"Basic Terms"** means those terms set out in clause 1.1, some of which are more particularly defined in this Schedule B;

**"Building"** means that certain building and those certain areas and improvements to be constructed on the Land and all additions and replacements thereto;

**"Commencement Date"** means the date the Term commences as set forth in or determined under subclause 1.1(e);

**"Cost of Additional Services"** shall mean in the case of Additional Services provided by the Landlord a reasonable charge made therefor by the Landlord which shall not exceed the cost of obtaining such services from independent contractors, and in the case of Additional Services provided by independent contractors the Landlord's total cost of providing Additional Services to the Tenant including the cost of all labour (including salaries, wages, and fringe benefits) and materials and other direct expenses incurred, the cost of supervision and other indirect expenses capable of being allocated thereto (such

allocation to be made upon a reasonable basis) and all other out-of-pocket expenses made in connection therewith including amounts paid to independent contractors, plus an administration fee equal to 18% of each component thereof;

**"Goods and Services Tax"** means and includes any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other taxes imposed on the Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the rental of the Leased Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax, or otherwise;

**"Insured Damage"** means that part of any damage occurring to any portion of the Leased Premises for which the Landlord is responsible, of which the entire cost of repair, less deductibles, is actually recoverable by the Landlord under a policy of insurance in respect of fire and other perils from time to time effected by the Landlord, or, if and to the extent that the Landlord has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Landlord effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured;

**"Land"** means that parcel of land, more particularly described as:

P.I. 023-678-356
Lot 1, DL 2, Grp 7, SDY(F Y-L)D, Plan KAP58604;

**"Landlord"** means the person executing this Lease and includes its successors and assigns; and in the definition of "Operating Cost" references to "Landlord" include the owner of the Land and Building as registered in the applicable land title office and any and all beneficial owners of the Land and Building;

**"Lease Year"** means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year;

**"Leased Premises"** means that portion of the Building having the municipal address and located on those floor(s) set out in subclause 1.1(c), containing the aggregate number of square feet, more or less, of Rentable Area which is set out in subclause 1.1(d) and having the appropriate location and configuration shown cross-hatched on the plan(s) attached as Schedule A. The exterior face of the Building and any space in the Leased Premises used for stairways or passageways to other premises, stacks, shafts, pipes, conduits, ducts, or other building facilities, heating, electrical, plumbing, air conditioning, and other

Building systems supplied by the Landlord for use in common with other tenants are expressly excluded from the Leased Premises;

**"Leasehold Improvements"** means all fixtures, improvements, installations, alterations, and additions now or from time to time hereafter made, erected, or installed, whether by the Tenant, the Landlord or anyone else, in the Leased Premises or in other premises in the Building with the exception of trade fixtures and furniture and equipment not of the nature of fixtures, but includes all partitions however fixed (including movable partitions) and includes all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage;

**"Operating Cost"** means, subject to the exclusions and deductions set out below, the total, without duplication, of the costs, expenses, fees, rentals, disbursements, and outlays (in this definition referred to collectively as "costs") of every kind paid, payable, or incurred by or on behalf of the Landlord on an accrual basis consistent with generally accepted accounting principles and fully chargeable in the year in which they were incurred (except as expressly set out below) in accordance with generally accepted accounting principles in the maintenance, repair, operation, administration, and management of the Land and Building. Without limiting the generality of the foregoing, Operating Cost shall include:

(1) all salaries, wages, fringe benefits, severance pay, and termination payments paid to or for all personnel, including supervisory personnel and managers, and all costs of obtaining or dismissing such personnel, to the extent that they are employed by the Landlord (or a person with whom it does not deal at arm's length) in connection with the maintenance, repair, operation, administration, or management of the Land and Building or any part of it, and amounts paid to professionals and independent contractors, including any management companies, for any services provided in connection with the maintenance, repair, operation, administration, or management of the Land and Building or any part of it;

(2) costs of providing security, supervision, janitorial, landscaping, window cleaning, waste collection, disposal and recycling, and the costs of machinery, supplies, tools, equipment, and materials used in connection with the operation, administration, or management of the Land and Building or any rentals thereof;

(3) costs of providing electric light and power, fuel, water, telephone, steam, gas, sewage disposal, and other utilities, and costs of replacing building-standard electric light fixtures, ballasts, tubes, starters, lamps, light bulbs, and controls;

(4) costs of all insurance which the Landlord is obligated or permitted to obtain under this Lease;

(5) sales, goods and services, and excise or other taxes on goods and services provided by or on behalf of the Landlord in connection with the maintenance, repair, operation, administration, or management of the Building net of input tax credits, refunds, or rebates (to the extent the Landlord receives and utilizes same);

(6) Taxes levied against the Land and Building to the extent not charged to the Tenant under subclauses 4.1(b) and 8.2(b) and to other tenants of the Building under lease provisions similar to subclauses 4.1(b) and 8.2(b); and costs (including legal and other professional fees and interest and penalties on deferred payments) incurred by the Landlord in contesting, resisting, or appealing any Taxes;

(7) costs of repairs, alterations, and replacements to the Building (including those required to comply with applicable laws or the requirements of the Landlord's insurers which become effective or are imposed after substantial completion of the original construction of the relevant structure) to the extent reasonably allocated by the Landlord to any fiscal period; and amortization of the cost of any repairs, alterations, or replacements except to the extent charged in accordance with the foregoing provisions of this paragraph, in the case of each item of repair, alteration, or replacement to be calculated on a straight line basis over such period the Landlord determines is reasonable having regard to the nature of the repair, alteration, or replacement, or 15 years, whichever is lesser;

(8) depreciation (excluding depreciation on the costs of original components of the electrical, mechanical, and other systems installed as part of the original construction of the Building) of the costs of machinery, equipment, facilities, furniture, furnishings, systems, and property (in this paragraph called "machinery") installed in or used in connection with the Building (except to the extent that the costs are charged fully in the fiscal period in which they are incurred):

(a) if a principal purpose of such machinery is to conserve energy, reduce the cost of other items included in Operating Cost, or comply with applicable laws or requirements of the Landlord's insurers which become effective or are imposed after substantial completion of the Building, or such machinery is used for normal maintenance of the Building, or

(b) if, as in the case of the electrical, mechanical, and other systems, such machinery by its nature requires periodic or substantial replacement;

in the case of each item of machinery to be calculated on a straight line basis over its useful life or 15 years, whichever is lesser;

(9) interest on the unamortized or undepreciated portion of the costs referred to in paragraphs (9) and (10) of this definition, calculated monthly, from the date on which the relevant costs were incurred, at an annual rate of interest that is 0.5%

above the Prime Rate in effect on the first day of the fiscal period in which the relevant costs were incurred (the applicable rate of interest to be adjusted by the Landlord on the first day of each fiscal period to the annual rate of interest that is 0.5% above the Prime Rate then in effect);

(10) the fair market rental value (having regard to rent being charged for similar rentable space including additional rent for operating costs and property taxes) of space used by the Landlord, acting reasonably, in connection with the maintenance, repair, operation, administration, and management of the Land and Building; and

(11) management fees or management agent fees and administrative charges of a management company, if any, for the Land and Building or any part of it or, if the Landlord chooses to manage the Land and Building or any part of it through itself or through a company or other person with whom it does not deal at arm's length, a management fee to the Landlord in an amount comparable to that which would be charged by a first-class real estate management company for management of similar buildings in Penticton, British Columbia;

excluding therefrom the following (except as specifically included above):

(12) depreciation;

(13) capital costs of constructing the Building, of replacements of parts of the Building, and of additions to the Building to comply with all bylaws, regulations, and orders made by any governmental authority with respect to the Building and the operating systems of the Building;

(14) debt service costs;

and deducting therefrom the following:

(15) the cost of repairs and replacements to the foundation, building structure, roof, exterior walls and exterior glass;

(16) net recoveries by the Landlord from the tenants of the Building in respect of and to the extent (but only to the extent) of costs which have been charged as Operating Cost, other than recoveries from the Tenant under paragraph 4.1(b)(ii) and from other tenants under lease provisions similar to paragraph 4.1(b)(ii);

(17) net insurance proceeds received by the Landlord to the extent (but only to the extent) that such proceeds reimburse the Landlord for costs which have been charged as Operating Cost;

(18) net recoveries by the Landlord in respect of warranties or guarantees relating to the construction of the Building to the extent (but only to the extent) that the repair costs in respect of the work covered by such warranties or guarantees have been charged as Operating Cost; and

and in computing Operating Cost, if less than 100% of the Rentable Area of the Building is occupied during any period for which a computation must be made, the Landlord shall be responsible for the Operating Cost otherwise payable by a Tenant of such vacant space'

**"Prime Rate"** means that rate of interest declared from time to time by the main branch in Vancouver, British Columbia, of the Bank of Montreal to the Landlord as the annual rate of interest used by such bank as its reference rate in setting interest rates for commercial loans of Canadian dollars in Canada and commonly referred to by such bank as its "prime rate" and, if and during any period when no such rate is declared by such bank, means 18% per annum;

**"Rent"** means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for goods and services tax payable by the Tenant;

**"Rentable Area"**, whether in the case of a whole floor of the Building or in the case of premises comprising part of a floor of the Building, shall be determined by the Landlord's architect or land surveyor according to the American National Standard Method for Measuring Floor Areas in Office Buildings ANSI/BOMA Z65.1—1996 (reaffirmed 1989), as published by the Building Owners and Managers Association International and in effect as at the Commencement Date;

**"Service Areas"** shall mean the area of corridors, elevator lobbies, service elevator lobbies, refuse areas, washrooms, air-cooling rooms, fan rooms, janitor's closets, telephone, meter, mechanical, and electrical closets, and other closets on the floor serving the Leased Premises and other premises on such floor should the floor be a multiple-tenancy floor;

**"Taxes"** means all taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Building, the Land, or upon the Landlord in respect thereof, or which are from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, including those levied, imposed, or assessed for education, schools, and local improvements, and includes all costs and expenses (including legal and other professional fees and interest and penalties on deferred payments) incurred by the Landlord in contesting, resisting, or appealing any taxes, rates, duties, levies, or assessments, but excludes taxes and license fees in respect of any business carried on by tenants and

occupants of the Building and taxes upon the income of the Landlord to the extent such taxes are not levied in lieu of taxes, rates, duties, levies, and assessments against the Building or the Land or upon the Landlord in respect thereof;

**"Tax Cost"** for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year;

**"Tenant's Share"** means the fraction, the numerator of which is the Rentable Area of the Leased Premises and the denominator of which is the Total Rentable Area;

**"Term"** means the term of this Lease set forth in subclause 1.1(e) and any renewal or extension thereof and any period of permitted overholding; and

**"Total Rentable Area"** means the total Rentable Area of the Building, whether rented or not, calculated as nearly as possible as if the Building were entirely occupied by tenants renting whole floors. The calculation of the Total Rentable Area, whether rented or not, shall be adjusted from time to time to give effect to any structural change in the Building.

## Schedule "C"
## Rules and Regulations

The Tenant shall observe the following Rules and Regulations (as amended, modified, or supplemented from time to time by the Landlord as provided in the Lease):

(1) The Tenant shall not use or permit the use of the Leased Premises in such manner as to create any objectionable noises, odours, or other nuisance or hazard, or breach any applicable provisions of municipal bylaw or other lawful requirements applicable thereto or any requirements of the Landlord's insurers, shall not permit the Leased Premises to be used for cooking (except with the Landlord's prior written consent) or for sleeping, shall keep the Leased Premises tidy and free from rubbish, shall deposit rubbish in receptacles which are either designated or clearly intended for waste, and shall leave the Leased Premises at the end of each business day in a condition such as to facilitate the performance of the Landlord's janitorial services in the Leased Premises.

(2) The Tenant shall not abuse, misuse, or damage the Leased Premises or any of the improvements or facilities therein, and in particular shall not deposit rubbish in any plumbing apparatus or use it for other than purposes for which it is intended, and shall not deface or mark any walls or other parts of the Leased Premises.

(3) The Tenant shall not perform, patronize, or (to the extent under its control) permit any canvassing, soliciting, or peddling in the Building, and shall not permit food or beverages to be brought to the Leased Premises except by such means, at such times, and by such persons as have been authorized by the Landlord.

(4) The entrances, lobbies, elevators, staircases, and other facilities of the Building are for use only for access to the Leased Premises and other parts of the Building and the Tenant shall not obstruct or misuse such facilities or permit them to be obstructed or misused by its agents, employees, invitees, or others under its control.

(5) No heavy office equipment or safe shall be moved into or about the Building by or for the Tenant unless the consent of the Landlord is first obtained and unless all due care is taken. Such equipment shall be moved upon the appropriate steelbearing plates, skids, or platforms and subject to the Landlord's direction, and at such times, by such means, and by such persons as the Landlord shall have approved. No furniture, freight, or bulky matter of any description shall be moved in or out of the Leased Premises or carried in the elevators except during such hours as the Landlord shall have approved. Hand-trucks and similar appliances shall be equipped with rubber tires and other safeguards approved by the Landlord, and shall be used only by prior arrangement with the Landlord.

(6) The Tenant shall permit and facilitate the entry of the Landlord, or those designated by it, into the Leased Premises for the purpose of inspection, repair, window cleaning, and the performance of other janitorial services, and shall not permit access to main header ducts, janitorial and electrical closets, and other necessary means of access to mechanical, electrical, and other facilities to be obstructed by the placement of furniture or otherwise. The Tenant shall not place any additional locks or other security devices upon the doors of the Leased Premises without the prior written approval of the Landlord and subject to any conditions imposed by the Landlord for the maintenance of necessary access.

(7) The Landlord may require that all or any persons entering and leaving the Building at any time other than the Normal Business Hours satisfactorily identify themselves and register in books kept for the purpose, and may prevent any person from entering the Leased Premises unless provided with a key thereto and a pass or other authorization from the Tenant in a form satisfactory to the Landlord, and may prevent any person removing any goods therefrom without written authorization.

(8) The Tenant shall refer to the Building only by the name from time to time designated by the Landlord for it and shall use such name only for the business address of the Leased Premises and not for any promotion or other purpose.

(9) The Tenant shall not interfere with window coverings installed upon exterior windows, and shall close or (if such window coverings are remotely controlled) permit to be closed such window coverings during such hours from dusk to dawn as the Landlord may require, and shall not install or operate any interior drapes installed by the Tenant so as to interfere with the exterior appearance of the Building.

The foregoing Rules and Regulations, as from time to time amended, are not necessarily of uniform application, but may be waived in whole or in part in respect of other tenants without affecting their enforceability with respect to the Tenant and the Leased Premises, and may be waived in whole or in part with respect to the Leased Premises without waiving them as to future application to the Leased Premises, and the imposition of Rules and Regulations shall not create or imply an obligation of the Landlord to enforce them or create any liability of the Landlord for their non-enforcement.

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: 6700-20
**To:** Peter Weeber, Chief Administrative Officer
**From:** Blake Laven, Planning Manager

**Subject:** **Carriage House Regulation Amendments**

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**Staff Recommendation**

*Carriage House Regulatory Changes*

THAT "Zoning Amendment Bylaw No. 2018-71", a bylaw that makes changes to the City's carriage house regulations contained in Zoning Bylaw 2017-08, be given first reading and be forwarded to the October 2, 2018 Public Hearing for comment from the public;

AND THAT staff are directed, through the Official Community Plan update process, to investigate a city wide 'intensive residential development permit area' requiring a development permit for carriage houses, to address 'form and character' and 'neighbourhood fit'.

*Kendall Crescent Neighbourhood Request*

THAT "Zoning Amendment Bylaw No. 2018-72", a bylaw that adds as a site specific amendment to the R1 zone as follows: 'In the case of all properties addressed from Kendall Crescent and 1299, 1309, 1331, 1337, 1343, 1353, 1365 and 1375 Ridgedale Avenue, carriage houses are not a permitted use', be given first reading and be forwarded to the October 2, 2018 Public Hearing for comment from the public;

AND THAT notice of the Public Hearing be delivered to all affected properties (owners and residents), a minimum of 10 days prior to the public hearing.

**Strategic priority objective**

Adjusting regulations to ensure development is happening in the interest of the existing community represents Council's strategic policy of Good Governance.

**Background**

*Carriage houses in general*

Carriage houses were introduced as a permitted use in all the single family residential zones in Penticton in 2010. Carriage houses followed the allowance of secondary suites as a way of gently densifying already

developed areas of the city in an attempt to provide needed affordable housing in the community. Carriage houses help with housing affordability in a number of ways. For one, they allow a property owner to afford a house that they may not be able to afford without the income generated by rental of the additional suite. The suite itself provides a modest dwelling unit that is generally less expensive than other forms of housing, allowing entry level housing for those entering the housing market or with lower incomes. Carriage houses, in some cases, also assist with family planning, by providing an independent dwelling unit on a property for an aging parent or parents to move into or the first step for a young adult to experience independent living.

The majority of communities in BC now have allowances for secondary suites, either more traditional within a house or detached in the form of a carriage house, laneway house or coach house. The carriage house regulations in Penticton are similar to those in other communities, which generally place limitations on the size, height and other requirements that help integrate the housing into existing neighbourhoods.

Over the past 8 years the Building Department has issued over 50 building permits for carriage houses with over 40 now constructed. This has given staff the ability to review, on the ground, how the regulations are being implemented. Through that review the following points are noted:

- Carriage houses are generally being integrated well into residential neighbourhoods.
- The regulations, as currently written, provide a better outcome on properties with lane access.
- The lack of a maximum square footage or restrictions on basements have resulted in larger carriage houses than intended or appropriate in certain situations.
- Not having design parameters or guidelines has resulted in carriage house designs that in some cases deviate drastically from the principal house design and that of neighbouring development.

Through this report staff are recommending some minor regulatory changes that will address situations where the outcome is less than desired.

*Kendall Crescent application*

In addition to staff's audit of carriage houses city wide, City Council has been presented with a petition from the Kendall Crescent neighbourhood requesting an amendment to the City's zoning bylaw creating an exclusion zone that would not permit carriage houses in that neighbourhood.

By way of background on the petition, at the Regular Meeting of Council on August 7, 2018, Council considered a development variance permit for a carriage house at 142 Kendall Crescent. The permit would have allowed a carriage house with three floors (two above ground and one below ground) and slightly taller and larger than permitted by the city's zoning bylaw. The permit included a variance to the maximum height of a carriage houses as well as an increase in total floor area. Based on opposition from neighbouring residents and lack of strong justification for the variances, Council ultimately denied the variance.

Coming out of the meeting, residents of the Kendal Crescent area submitted correspondence to the City outlining some concerns with the carriage house regulations as they currently exist, which ultimately led to the request for the exclusion zone. Of the 30 individual properties located in the area, the petition was endorsed by all but 6 property owners, representing 80% support for the zoning change.

**Proposal**

To address staff's noted deficiencies in the execution of carriage houses in the city, and the Kendall Crescent neighbourhoods request for an exclusion zone not permitting carriage houses in their neighbourhood, the following three actions are being proposed:

*1. Zoning Bylaw Amendments*

*"Zoning Amendment Bylaw 2018-71"*, amends bylaw 2017-08 as follows:

Add Definition to Section 3.2: *FLOOR AREA, CARRIAGE HOUSE (CHFA)* means the total floor area in a carriage house, measured from the outside face of the exterior wall. CHFA does include decks, balconies and covered patios or garages and other enclosed or open parking areas.

Amend Section 8.2.3.2 changing 'lot coverage' to 'lot area'

Adds: Section 8.2.3.9: Carriage House Floor Area (CHFA): Maximum CHFA in FG, A, RC zones is 150m2, Maximum CHFA in R1, R2, R3, RD1 and RD2 zone is 135m2.

Amends Section 8.2.3.3:

From: Height: Maximum height of 7.0m

To: Height: In FG, A and RC zones maximum height is 7.0m, In R1, R2, R3, RD1 and RD2 zones where a carriage house is accessed from a lane maximum height is 7.0m and two floors and where no lane exists maximum height is 5.0m and one floor.

Add Section 8.2.3.10: Privacy In the case of a carriage house having windows on a side yard within 1.5m of another property, all windows must be opaque.

If Council were to support giving this bylaw first reading it would be sent to a Public Hearing for comment from the public and neighbourhood.

*2. Requirement for a development permit*

Creation of an "Intensive Residential Development Permit Area" which will encompass the entirety of the City of Penticton and require a development permit prior to the issuance of a building permit for carriage houses. It is intended that these requirements would be implemented through the Official Community Plan review that is currently underway.

*3. Removal of Carriage as a permitted use on Kendall Crescent and those sections of Ridgedale included in the petition to Council*

Under a separate Zoning Amendment Bylaw Council will consider whether to add a site specific provision to the R1 zone, stating that in the case of all properties addressed from Kendall Crescent and 1299, 1309, 1331, 1337, 1343, 1353, 1365 and 1375 Ridgedale Avenue, carriage houses are not a permitted use.

If Council were to support giving this bylaw first reading it would be sent to a Public Hearing for comment from the public and neighbourhood. Letters would be sent and delivered to all affected properties.

**Financial implication**

The requirement for development permits for carriage house construction will create additional work for City Planning Department staff. This work will partially be offset by the application fees associated with the permit.

**Analysis**

*Regulatory changes*

Carriage houses are an important part of the city's housing stock. Through staff's review, it is thought that with some minor changes to the existing zoning regulations and making a requirement for a 'form and character' development permit, dealing with items such as neighbourhood fit and the look and feel of the carriage house, the outcome will be construction that better integrates into the existing neighbourhoods that are accepting this increased density.

Given the above staff are recommending that Council give first reading to the regulatory bylaw change and refer the bylaw to the October 2, 2018 Public Hearing for comment from the public.

*Kendall Crescent*

In the case of the Kendall Crescent neighbourhood, Council has the option of supporting the request to disallow carriage houses in that area. This would represent a separate amendment to the City's Zoning Bylaw. That amendment would add a site specific notation to the R1 zone with respect to the properties identified.

The residents of Kendall Crescent in favour of the proposal, have provided rationale describing their area as unique in terms of its character, topography and larger lot size. The single family neighbourhood character that exists in this area is something that they majority of neighbours in the area feel strongly about retaining and in order to protect this have requested the exclusion of carriage houses from the area.

Council should be cognizant however that the request for this change has not been unanimous. There are six (6) properties in the affected area, including the applicant of the variance permit application denied by Council spoken to above, that have not endorsed the request. If Council were to support the request from the larger neighbourhood, these outlying properties could be in a situation where their zoning is affected against their wishes. If any of those properties did want to construct a carriage house in the future, they would be required to go through a zoning amendment process to undue the carriage house prohibition for their lot.

Staff are recommending that Council give first reading to the bylaw adding the site specific provisions disallowing carriage houses in the Kendall Crescent area and refer the bylaw to the October 2, 2018 Public Hearing for comment from the neighbourhood. Staff have not heard directly from the neighbours that have not signed the petition, but will ensure they receive notification of the public hearing date and time.

Because this zoning amendment involves more than 10 properties, notice is not required to be posted on the lands and notice of development is not required to be delivered to any neighbouring residents. In this case however, staff are recommending that notices be sent to all affected property owners so that they may be adequately informed of the change and provided the opportunity to add additional support or voice concern to the proposal.

**Alternate recommendations**

1. THAT Council support the proposed carriage house regulatory changes as presented, but not exclude Kendall Crescent
2. THAT Council defer any changes to the carriage house regulations until after adoption of the OCP and introduction of the development permit requirements.
3. THAT Council support other changes to the carriage house regulations that Council feels are appropriate.
4. THAT Council maintain the status quo approach to carriage houses.

**Attachments**

Attachment A – Map showing properties subject to carriage house restrictions
Attachment B – Zoning Amendment Bylaw No. 2018-71 (Carriage House Regulatory Changes)
Attachment C – Zoning Amendment Bylaw No. 2018-72 (Removing carriage houses as a permitted use on Kendall Crescent)

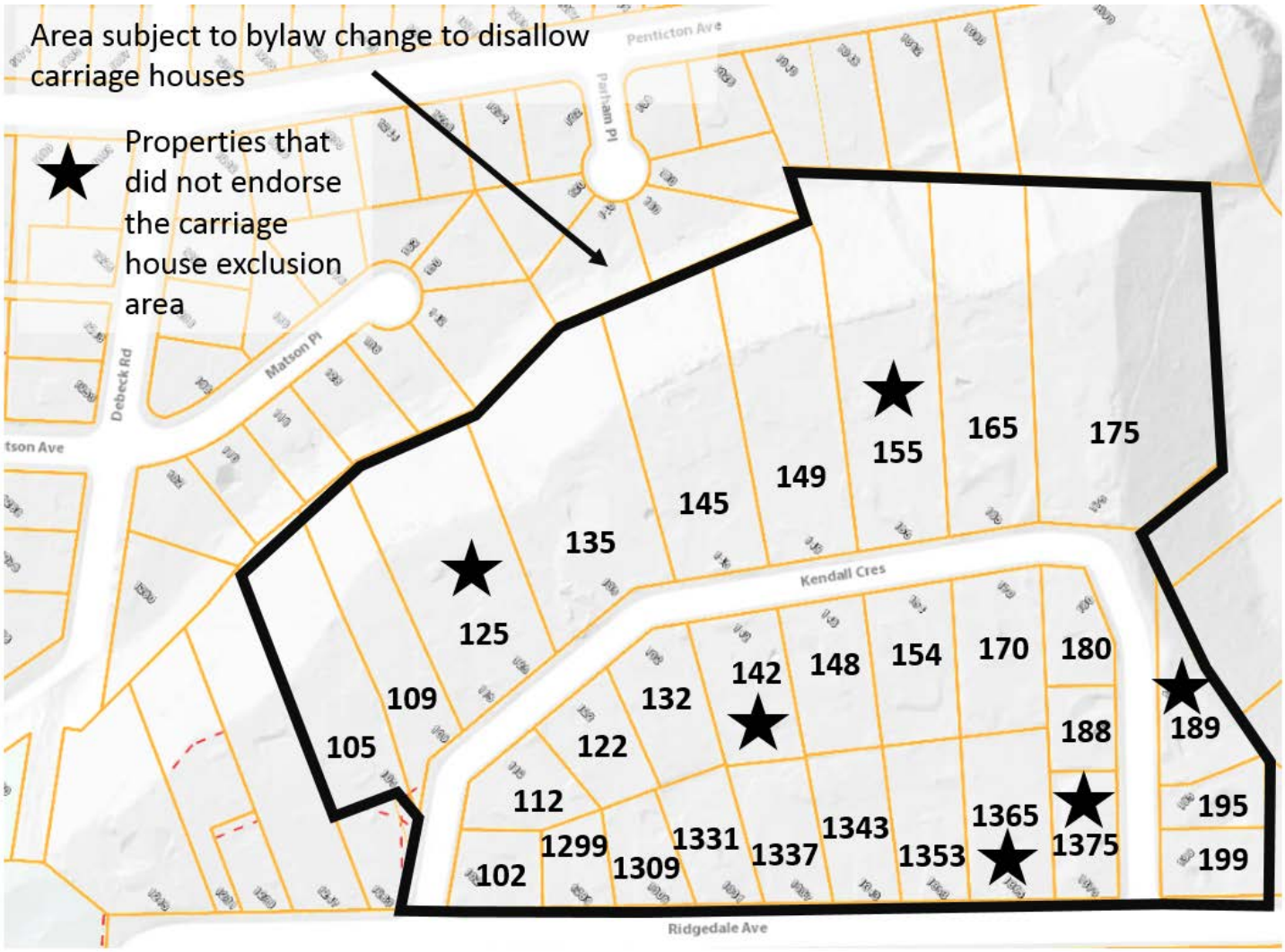
Respectfully submitted,

Blake Laven, MCIP, RPP
Planning Manager

Concurrence

| Director | Chief Administrative Officer |
| --- | --- |
| *AH* | LD for PW |

Attachment A



**The Corporation of the City of Penticton**

**Bylaw No. 2018-71**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-71".

2. **Amendment:**

Zoning Bylaw 2017-08 is hereby amended as follows:

2.1 Amend section 3.2 Definitions and add with the following:

**FLOOR AREA, CARRIAGE HOUSE (CHFA)** means the total floor area in a carriage house, measured from the outside face of the exterior wall. CHFA does not include decks, balconies and covered patios or garages and other enclose or open parking areas.

2.2 Amend section 8.2.3.2 by changing the words 'lot coverage' to 'lot area'.

2.3 Delete and replace section 8.2.3.3 with the following:

.3 Height: In FG, A and RC zones maximum height is 7.0m, In R1, R2, R3, RD1 and RD2 zones where a carriage house is accessed from a lane maximum height is 7.0m and two floors and where no lane exists maximum height is 5.0m and one floor.

2.4 Add section 8.2.3 Development Regulations

.9 Carriage House Floor Area (CHFA): Maximum CHFA in FG, A, RC zones is 150m$^2$, Maximum CHFA in R1, R2, R3, RD1 and RD2 zone is 135m$^2$.

2.5 Add section 8.2.3 Development Regulations

.10 Privacy: In the case of a carriage house having windows on a side yard within 1.5m of another property, all windows must be opaque.

| | | |
|---|---|---|
| READ A FIRST time this | day of | , 2018 |
| A PUBLIC HEARING was held this | day of | , 2018 |
| READ A SECOND time this | day of | , 2018 |
| READ A THIRD time this | day of | , 2018 |
| RECEIVED the approval of the Ministry of Transportation on the | day of | , 2018 |
| ADOPTED this | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the __ day of ____, 2018 and the __ day of ____, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Approved pursuant to section 52(3)(a) of the *Transportation Act*
this _____ day of _____, 2018

_____
for Minister of Transportation & Infrastructure

Dana Schmidt, Corporate Officer

**The Corporation of the City of Penticton**

**Bylaw No. 2018-72**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-72".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Add to 10.1.3 Site Specific Provisions:

.8 "In the case of all properties addressed from Kendall Crescent and 1299, 1309, 1331, 1337, 1343, 1353,1365 and 1375 Ridgedale Avenue, as identified on Schedule 'A' of Zoning Amendment Bylaw No. 2018-72, carriage houses are not a permitted use".

2.2 Schedule 'A' attached hereto forms part of this bylaw.

| | | |
|---|---|---|
| READ A FIRST time this | day of | , 2018 |
| A PUBLIC HEARING was held this | day of | , 2018 |
| READ A SECOND time this | day of | , 2018 |
| READ A THIRD time this | day of | , 2018 |
| ADOPTED this | day of | , 2018 |

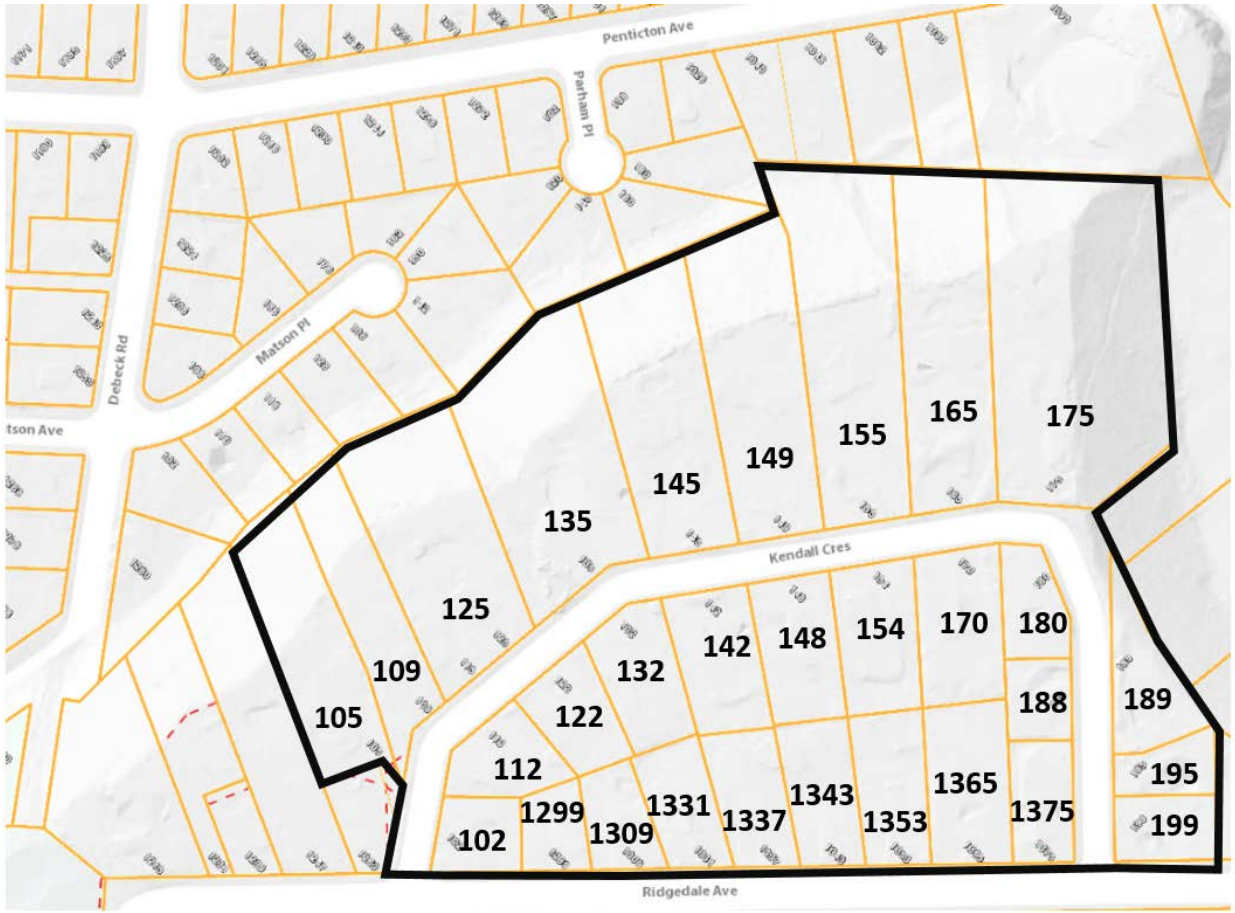
Notice of intention to proceed with this bylaw was published on the __ day of _____, 2018 and the __ day of _____, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

R1 (Large Lot Residential) Zone:
Site specific amendment for properties, outlined in heavy black, along Kendall Crescent and Ridgedale Avenue:

Carriage Houses are not a permitted Use




**City of Penticton – Schedule 'A'**

**Zoning Amendment Bylaw No. 2018-72**

**Date:** _____ **Corporate Officer:** _____

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: 1970-04
**To:** Peter Weeber, Chief Administrative Officer
**From:** Amber Coates, Revenue Supervisor
**Subject:** **Permissive Tax Exemption Amendment Bylaw No. 2018-63**

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**Staff Recommendation**

THAT Council give first, second and third reading to "Permissive Tax Exemption Amendment Bylaw No. 2018-63" granting $415,115 in permissive tax exemptions to all applicants qualifying for permissive tax exemption under the *Community Charter* and City of Penticton policy as listed in Schedule B at 100% of the applied for exemption.

**Background**

Pursuant to the *Community Charter*, on or before October 31st in any year, Council may, by bylaw, exempt land or improvement from taxation.

The Permissive Tax Exemption Policy endorsed by Council requires applicants to provide financial information, proof that the organization is in good standing with the Society Act and limits the exemption to the principal use of the property and not the non-profit status of the organization. It also requires the exemption to be pro-rated if necessary (if a portion of the property is commercial use).

The policy also states that exemptions will only be provided to those organizations that will experience financial hardship. Financial hardship is defined such that not receiving a Permissive Tax Exemption could seriously impair services to the community at large or impose significant hardship on the organization itself and the users of the facility. Staff's criteria for assessing hardship considers the intended use of the applicant's working capital.

The Permissive Tax Exemption Policy allows for Places of Worship, Private Schools, and Hospitals that meet certain criteria to complete multiple year applications. Exemptions already awarded for the 2019 tax year for these applicants are equivalent to $116,076 in taxation revenue, estimated using 2018 property assessment and general municipal tax rates (Attachment B). These applications were received and approved in 2016 for a three (3) year period. This is the last year for properties in this category; next year they will be reapplying for consideration for the 2020 – 2022 tax years.

**Financial implication**

Awarding all requested exemptions eligible under the *Community Charter* and that comply with City of Penticton Permissive Tax Exemption Policy at 100% has a taxation revenue opportunity cost equivalent of

$415,115. This would bring the total estimated exemption amount to $531,191 for 2019 when including the multi-year exemptions approved in 2016.

**Analysis**

There are two (2) new applicants requesting consideration for a Permissive Tax Exemption for the 2019 year:

- Community Foundation of the South Okanagan Similkameen (501 Main St.)
- Penticton & District Society for Community Living (1706 Main St.)

In total 98 applications were received as part of 2019 process. The new applicants represent the youth sector as well as development in the affordable housing sector, but do represent a significant combined ask of approximately $30,000 above last year.

The long-standing application for the Army, Navy & Air Force Veterans in Canada, Unit 97 at 257 Brunswick was not requested this year as the local unit has been dissolved. The group has five years to revive the unit and it is expected that if they do the City will begin to receive applications for the property once again.

All applicants this year meet the requirements of the *Community Charter*, and upon analysis of their individual working capital, meet the Permissive Tax Exemption Policy requirements as well. The various services provided by the applicants have been categorized to provide a general overview of where the exemptions would be used:

| Type of Service | Estimated 2019 Municipal Taxes Foregone (100%) |
|---|---|
| Housing | $159,151 |
| Other | $37,445 |
| Sports & Recreation | $96,948 |
| Arts & Historical | $44,920 |
| Community Wellness | $76,651 |
| **Grand Total** | **$415,115** |

**Alternate Recommendations**

THAT Council direct staff to prepare a Permissive Tax Exemption amendment bylaw to:

1. Award permissive exemptions at a 90% reduction rate resulting in a tax revenue reduction of $373,606.

OR

2. Award permissive exemptions at an 80% reduction rate resulting in a tax revenue reduction of $332,089.

**Attachments**

Attachment A – Permissive Tax Exemption Amendment Bylaw No. 2018-63
Attachment B – Schedule 'A' to 2017 Permissive Tax Exemption Bylaw No. 2016-57, updated
Attachment C – Permissive Tax Exemption Policy

Respectfully submitted,



Amber Coates
Revenue Supervisor

Approvals

| CFO | CAO |
| --- | --- |
| JWB | LD for PW |

**The Corporation of the City of Penticton**

**Bylaw No. 2018-63**

*A Bylaw to amend Permissive Exemption Bylaw*

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WHEREAS the *Community Charter* provides specific exemptions for certain type or uses of property;

AND WHEREAS the Council of the City of Penticton has adopted a Permissive Tax Exemption Bylaw pursuant to the *Community Charter*;

AND WHEREAS the Council of the City of Penticton wishes to amend "2017 Permissive Tax Exemption Bylaw 2016-57";

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. TITLE:

   This Bylaw may be cited for all purposes as the "Permissive Tax Exemption Amendment Bylaw No. 2018-63".

2. AMENDMENT:

   2.1 Remove Schedule "B" and replace it with Schedule "B" as attached hereto and forming part of the bylaw.

   2.2 The properties described on the attached Schedule "B" shall be permissively exempt from taxation with respect to land and improvements for the year 2019.

| | | |
|---|---|---|
| READ A FIRST time this | day of | , 2018 |
| READ A SECOND time this | day of | , 2018 |
| READ A THIRD time this | day of | , 2018 |
| ADOPTED this | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the 7 day of September, 2018 and the 12 day of September, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

_____

Andrew Jakubeit, Mayor

_____

Dana Schmidt, Corporate Officer

## Bylaw No. 2018-63 Schedule "B" : Not for Profits and Societies Exempt for One (1) Year (2019)

| Name of Applicant (Not-for-Profit or Society) | Civic Address | Comment | Estimated 2019 Municipal Taxes Foregone (100%) |
|---|---|---|---|
| Affordable Living for Today Society | 245 WARREN AVE W | | $3,887 |
| BC Wine Information Society | 101 - 553 VEES DR | | $3,639 |
| Care Closet | 574 MAIN ST | | $1,923 |
| Catalyst Community Developments Society | 285 NANAIMO AVE W | | $4,045 |
| Community Foundation of the South Okanagan Similkameen | 501 MAIN ST | | $21,753 |
| Fraternal Order of Eagles Aerie 4281 | 1197 MAIN ST | Class 8 Improvements used for charitable purposes | $4,045 |
| Good Samaritan Canada (A Lutheran Social Service Organization) | 270 HASTINGS AVE | | $57,128 |
| Governing Council of the Salvation Army Corps 344 | 2399 SOUTH MAIN ST | | $9,177 |
| Governing Council of the Salvation Army Corps 344 | 318 ELLIS ST | | $3,691 |
| LUSO Canadian Multicultural Society of Penticton | 135 WINNIPEG ST | | $2,169 |
| Okanagan Boys & Girls Club | 1295 MANITOBA ST | | $5,115 |
| Okanagan Similkameen Neurological Society | 103&104 - 550 CARMI AVE | | $1,431 |
| Ooknakane Friendship Centre | 146 ELLIS ST | | $4,684 |
| PDCRS Pregnancy Support Program | 200 BENNETT AVE | | $1,523 |
| Penticton & District Community Arts Council | 220 MANOR PARK AVE | | $10,543 |
| Penticton & District Community Resources Society | 470 EDMONTON AVE | | $2,833 |
| Penticton & District Community Resources Society | 500 EDMONTON AVE | | $991 |
| Penticton & District Community Resources Society | 2434 BASKIN ST | | $1,033 |
| Penticton & District Community Resources Society | 2450 BASKIN ST | | $1,036 |
| Penticton & District Community Resources Society | 150 MCPHERSON CRES | | $2,465 |
| Penticton & District Community Resources Society | 154 MCPHERSON CRES | | $2,465 |
| Penticton & District Community Resources Society | 330 ELLIS ST | | $11,288 |
| Penticton & District Community Resources Society | 1160 COMMERCIAL WAY | | $2,685 |
| Penticton & District Emergency Program Society | 251 DAWSON AVE | | $1,295 |
| Penticton & District Minor Hockey Association | 325 POWER ST | | $1,393 |
| Penticton & District Society for Community Living | 453 WINNIPEG ST | | $3,694 |
| Penticton & District Society for Community Living | 252 CONKLIN AVE | | $2,010 |
| Penticton & District Society for Community Living | 180 INDUSTRIAL AVE W | | $8,263 |
| Penticton & District Society for Community Living | 150 BRUCE CRT | | $3,645 |
| Penticton & District Society for Community Living | 234 VAN HORNE ST | | $2,332 |
| Penticton & District Society for Community Living | 1706 MAIN ST | | $9,080 |
| Penticton & Wine Country Chamber of Commerce | 102 ELLIS ST | | $2,443 |
| Penticton Art Gallery | 199 MARINA WAY | | $18,428 |
| Penticton BMX Society | 630 MUNSON MOUNTAIN RD | | $2,724 |
| Penticton Community Garden Society | 480 VANCOUVER AVE | | $1,829 |
| Penticton Curling Club | 505 VEES DR | | $12,184 |
| Penticton Disc Golf Club | 500 MARINA WAY | | $19,583 |
| Penticton Elks Lodge 51 | 343 ELLIS ST | Apportioned based on area used for liquor sales - 66.12% of land/improvements used for charitable purposes | $4,682 |

| Name of Applicant (Not-for-Profit or Society) | Civic Address | Comment | Estimated 2019 Municipal Taxes Foregone (100%) |
|---|---|---|---|
| Penticton Golf & Country Club | 600 COMOX ST | Approx. 172,000 square feet exempt for land and approx. 10,000 square feet exempt for buildings | $9,731 |
| Penticton Golf & Country Club | 852 ECKHARDT AVE W | | $13,341 |
| Penticton Horseshoe Pitchers Club | 2905 SOUTH MAIN ST | | $2,273 |
| Penticton Kinsmen Disability Resource Centre Society | 216 HASTINGS AVE | | $8,446 |
| Penticton Kiwanis Housing Society | 101 - 150 VAN HORNE ST | | $804 |
| Penticton Kiwanis Housing Society | 103 - 150 VAN HORNE ST | | $683 |
| Penticton Kiwanis Housing Society | 105 - 150 VAN HORNE ST | | $683 |
| Penticton Kiwanis Housing Society | 113 - 150 VAN HORNE ST | | $683 |
| Penticton Kiwanis Housing Society | 115 - 150 VAN HORNE ST | | $812 |
| Penticton Kiwanis Housing Society | 112 - 150 VAN HORNE ST | | $803 |
| Penticton Kiwanis Housing Society | 104 - 150 VAN HORNE ST | | $680 |
| Penticton Kiwanis Housing Society | 102 - 150 VAN HORNE ST | | $799 |
| Penticton Kiwanis Housing Society | 201 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 209 - 150 VAN HORNE ST | | $687 |
| Penticton Kiwanis Housing Society | 211 - 150 VAN HORNE ST | | $687 |
| Penticton Kiwanis Housing Society | 213 - 150 VAN HORNE ST | | $687 |
| Penticton Kiwanis Housing Society | 215 - 150 VAN HORNE ST | | $816 |
| Penticton Kiwanis Housing Society | 214 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 212 - 150 VAN HORNE ST | | $689 |
| Penticton Kiwanis Housing Society | 210 - 150 VAN HORNE ST | | $687 |
| Penticton Kiwanis Housing Society | 204 - 150 VAN HORNE ST | | $683 |
| Penticton Kiwanis Housing Society | 202 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 301 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 315 - 150 VAN HORNE ST | | $816 |
| Penticton Kiwanis Housing Society | 314 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 312 - 150 VAN HORNE ST | | $689 |
| Penticton Kiwanis Housing Society | 310 - 150 VAN HORNE ST | | $687 |
| Penticton Kiwanis Housing Society | 308 - 150 VAN HORNE ST | | $787 |
| Penticton Kiwanis Housing Society | 304 - 150 VAN HORNE ST | | $683 |
| Penticton Kiwanis Housing Society | 302 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 401 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 413 - 150 VAN HORNE ST | | $687 |
| Penticton Kiwanis Housing Society | 415 - 150 VAN HORNE ST | | $816 |
| Penticton Kiwanis Housing Society | 414 - 150 VAN HORNE ST | | $807 |
| Penticton Kiwanis Housing Society | 412 - 150 VAN HORNE ST | | $689 |
| Penticton Kiwanis Housing Society | 410 - 150 VAN HORNE ST | | $687 |
| Penticton Kiwanis Housing Society | 408 - 150 VAN HORNE ST | | $787 |
| Penticton Kiwanis Housing Society | 406 - 150 VAN HORNE ST | | $683 |
| Penticton Kiwanis Housing Society | 404 - 150 VAN HORNE ST | | $683 |
| Penticton Kiwanis Housing Society | 402 - 150 VAN HORNE ST | | $807 |
| Penticton Lawn Bowling Club | 260 BRUNSWICK ST | | $5,158 |
| Penticton Masonic Building Association | 416 WESTMINSTER AVE W | | $2,768 |
| Penticton Recovery Resource Society | 633 WINNIPEG ST | | $2,870 |

| Name of Applicant (Not-for-Profit or Society) | Civic Address | Comment | Estimated 2019 Municipal Taxes Foregone (100%) |
|---|---|---|---|
| Penticton Recovery Resource Society | 397 WADE AVE W | | $1,523 |
| Penticton Safety Village | 490 EDMONTON AVE | | $4,109 |
| Penticton Seniors' Drop-In Society | 2905 SOUTH MAIN ST | | $25,845 |
| Penticton Tennis Club | 675 MARINA WAY | | $2,886 |
| Royal Canadian Legion #40 | 502 MARTIN ST | Apportioned based on area used for liquor sales - 60.63% of land/improvements used for charitable purposes | $5,004 |
| S.S. Sicamous Restoration Society | 1175 LAKESHORE DR W | | $4,346 |
| S.S. Sicamous Restoration Society | 1101 LAKESHORE DR W | | $2,062 |
| S.S. Sicamous Restoration Society | 1099 LAKESHORE DR W | | $9,541 |
| South Okanagan Immigrant and Community Services | 340 ELLIS ST | | $4,266 |
| South Okanagan Similkameen Brain Injury Society | 742 ARGYLE ST | | $1,884 |
| South Okanagan Similkameen Brain Injury Society | 332 ECKHARDT AVE W | | $1,849 |
| South Okanagan Similkameen Medical Foundation | 1748 CAMROSE ST | | $4,527 |
| South Okanagan Similkameen Medical Foundation | 1802 CAMROSE ST | | $3,162 |
| South Okanagan Women in Need Society | UNDISCLOSED | | $686 |
| South Okanagan Women in Need Society | 102 - 1027 WESTMINSTER AVE W | | $1,409 |
| South Okanagan Women in Need Society | UNDISCLOSED | | $4,145 |
| The B.C. Society for the Prevention of Cruelty to Animals | 2200 DARTMOUTH DR | | $13,313 |

**Total One (1) Year Exemptions Estimated:** **98 Properties** **$415,115**

## Schedule 'A' to 2017 Permissive Tax Exemption Bylaw No. 2016-57, updated with current values

| Name of Applicant | Civic Address | Estimated 2019 Municipal (General) Tax Foregone |
|---|---|---|
| Cheers the Church | 639 MAIN ST | $5,677 |
| Christian Science Society | 608 WINNIPEG ST | $2,083 |
| Church of Jesus Christ of Latter Day Saints | 2946 SOUTH MAIN ST | $5,480 |
| Church of the Nazarene | 523 JERMYN AVE | $3,072 |
| Concordia Lutheran Church | 2800 SOUTH MAIN ST | $4,873 |
| Governing Council of the Salvation Army Corps 344 | 2469 SOUTH MAIN ST | $3,814 |
| Grace Mennonite Brethren Church | 74 PENTICTON AVE | $1,633 |
| Green Mountain Christian Congregation of Jehovah's Witnesses | 52 ROY AVE | $3,520 |
| Hellenic Community Society of Penticton | 1265 FAIRVIEW RD | $1,337 |
| Holy Cross School | 1299 MANITOBA ST | $3,632 |
| Oasis United Church | 2964 SKAHA LAKE RD | $9,705 |
| Our Redeemer Lutheran Church | 1370 CHURCH ST | $1,651 |
| Penticton Alliance Church | 197 BRANDON AVE | $4,158 |
| Penticton Bethel Pentecostal Tabernacle | 65 PRESTON AVE | $2,217 |
| Penticton Bethel Pentecostal Tabernacle | 973 MAIN ST | $3,710 |
| Penticton Bethel Pentecostal Tabernacle | 945 MAIN ST | $6,655 |
| Penticton Christian School Society | 1060 MAIN ST | $869 |
| Penticton First Baptist Church | 1498 GOVERNMENT ST | $5,424 |
| Penticton Free Presbyterian Church | 120 PRESTON AVE | $2,827 |
| Penticton New Beginnings Christian Fellowship | 96 EDMONTON AVE | $867 |
| Penticton Sikh Temple & Indian Cultural Society | 3290 SOUTH MAIN ST | $5,750 |
| Penticton United Church | 696 MAIN ST | $3,324 |
| Penticton Vineyard Community Church | 1825 MAIN ST | $10,117 |
| Roman Catholic Bishop of Nelson (St. Anne's) | 1296 MAIN ST | $6,112 |
| Seventh-day Adventist Church | 290 WARREN AVE W | $4,246 |
| St. Andrew's Presbyterian Church | 397 MARTIN ST | $1,387 |
| St. Andrew's Presbyterian Church | 157 WADE AVE W | $2,348 |
| St. John Vianney Church | 361 WADE AVE W | $2,925 |
| St. Saviour's Anglican Church | 150 ORCHARD AVE | $4,802 |
| Victory Church of Penticton | 352 WINNIPEG ST | $1,857 |
| **Estimated 2019 Permissive Tax Exemptions:** | | **$116,076** |

# COUNCIL POLICY MANUAL

Pages: 1 of 2
Approval Date: April 2, 2013
Council Resolution: 200/2013

**SECTION: FINANCE**
**SUBJECT: PERMISSIVE TAX EXEMPTION POLICY**

**GOAL:**

The Permissive Tax Exemption Policy is intended to provide clarity, consistency and certainty to the municipality, the public and the prospective applicants.

**SCOPE:**

The Permissive Tax Exemption Policy details the requirements for application for a Permissive Tax Exemption as well as what criteria organziations must meet in order to be considered.

**DEFINITIONS:**

Places of Worship, Private Schools and Hospitals: must be recognized by BC Assessment as operating in one of these capacities as well as be able to provide supporting documentation to that effect.

**POLICY:**

A permissive tax exemption is a means for Council to support organizations within the community which further Council's objectives to enhancing economic, social and/or cultural quality of life while delivering these services economically to the citizens of Penticton.

In order to provide guidance and to ensure that a broad range of community organizations are dealt with consistently and receive equal treatment and consideration for permissive tax exemption the following documentation must be provided and the applicant must meet the required criteria:

Applications for Permissive Tax Exemption

1. Yearly Applications with required supporting documentation must be received by the City by the deadline stipulated in the letter sent out annually.
2. Places of Worship, Private Schools and Hospitals may be eligible to complete a multiple year application which will be administered on a three year cycle. Only organizations meeting the following criteria are eligible for a multiple year application:
   a. Organization owns the land/building
   b. Location of organization is unchanged
   c. Use of land/improvements is unchanged
   d. Land/Improvements are in use by the organization and not leased to a third party
3. Organizations qualifying for a multiple year application are required to submit an annual confirmation form confirming that that the use of the property receiving the exemption has not changed. This form must be received by the City by the deadline stipulated in the letter sent out annually.

4. Yearly requests for permissive tax exemption must be submitted on the City's Permissive Tax Exemption Application form.
5. Yearly applications must include the following:
   a. Copy of the previous years audited or auditor review engagement financial statements;
   b. Financial budget (pro-forma Balance Sheet and Income Statement) for the current 12 month;
   c. Proof that the organization is in good standing with the registrar under the *Society Act* (if applicable);
   d. Number of persons belonging to or benefiting from the Association, Society or service provided;
   e. Copy of lease if not the registered owner of the lands applying for the permissive tax exemption; and
   f. Scale drawing of the property including buildings, parking lots, landscaping, playground, etc.
6. Council reserves the right to request any additional information which may be required to determine if a permissive tax exemption is warranted.

Criteria for Permissive Tax Exemption

1. The applicant must quality for consideration of a permissive tax exemption under the provisions of the *Community Charter*.
2. The applicant must be in compliance with municipal policies, plans, bylaws and regulations such as but not limited to business licence, zoning, etc.
3. Exemptions of land will be limited to that land which is required for off-street parking, plus ancillary lands required to make a reasonably shaped parcel.
4. A permissive tax exemption shall only be granted where the organization can show a financial need for the exemption. Determination of financial need would involve showing a lack of a tax exemption would seriously impair services to the community at large or would impose significant hardship on the users of the facility.
5. The activities carried out on the land or improvements must be of a type enjoyed by a significant proportion of the general public and must not cater only to a small minority.

Limitations

1. Permissive tax exemptions are based on the principal use of the property, not on the non-profit or charitable services of the organization. May be pro-rated based on property use.
2. Partial tax exemptions will be considered by Council.
3. Utility fees and user fees such as charges for sewer and garbage do not qualify to be tax exempt.
4. Caretaker's residence, church manse or other occupied dwellings on the lands will not receive a tax exemption.
5. Where a property's tax exempt use is restricted to a defined portion of the property, the balance of the property will not receive a tax exemption.
6. The facility must not be operated for profit or permit revenue generation in excess of cost of service.
7. Permissive tax exemptions will not be granted for land held for future development.
8. Permissive tax exemptions will not be granted for land greater than normally required for buffer zones.

9. Penalties may be imposed on an organization for knowingly breaching conditions of exemption, including but not limited to:
   a. Revoking exemption with notice.
   b. Disqualifying any future application for exemption for a specific period of time.
   c. Requiring repayment of monies equal to the foregone tax revenue.

| | |
|---|---|
| Pevious Revision/s: None | City Manager: |

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: 3760
**To:** Peter Weeber, Chief Administrative Officer
**From:** Ken Kunka, Building and Permitting Manager
**Subject:** **Building Bylaw No. 2018-01**

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**Staff Recommendation**

THAT Council give second reading as amended and third reading to "Building Bylaw No. 2018-01", a bylaw for the administration of the Building Code and regulation of construction.

**Strategic priority objective**

In the development of the Building Bylaw, staff have identified the following Council Priorities:

- Good Governance – Engaging with community in the development of major policy that will impact the interests of residents and building industry stakeholders.
- Fiscal Sustainability – Ensure City services are delivered in an economical and sustainable way assisting in the development of the city's tax base and reducing exposure to long term liability claims.
- Environmental Sustainability – Integration of environmental and socioeconomic values in the decision making process and incorporate strategies in line with the direction of the City's Corporate and Climate Action Plans.

**Background**

On August 21, 2018 Council supported first reading of "Building Bylaw No. 2018-01".

381/2018 It was MOVED and SECONDED

THAT Council give first reading to "Building Bylaw No. 2018-01", a bylaw for the administration of the Building Code and regulation of construction;

AND THAT staff be directed to engage in final public and industry stakeholder consultation and report back to Council at their regular meeting on September 18, 2018 with the results of the consultation for Council's consideration.

CARRIED UNANIMOUSLY

As part of the final consultation process, staff has created a City of Penticton ShapeYourCity information webpage, which includes the bylaw, Council report and explanatory information. This link was forwarded to specific stakeholders such as local surveyors, engineers, the Canadian Home Builders Association, the Development Services Advisory Committee (DSAC), and other local jurisdictions. A general notice was also forwarded to all industry contacts as well as a press release outlining the Bylaw changes, which included invitations to two bylaw workshops.

On the August 28th staff attended the public forum "Juicy Topics" to educate owners about the bylaw and answers questions about the permit process. As a whole, many home owners were not aware of the building bylaw and felt that a clear set of regulations would be beneficial to the City and protect the interests of the property owner. Comments related to ensuring a quick review process, education to homeowners and a common sense approach to renovation projects where noted. Concerns related to increased development and especially infill and accessory uses were noted for future consultation within the Official Community Plan.

On August 30th a builder's forum took place, which was attended by a wide variety of industry stakeholders including registered professionals, designers, builders and representation from the manufactured housing association. Questions arising from the building industry were the assurance of a consistent approach in implementing the bylaw and potential costs related to professional involvement in more housing projects. The proposed reduction in permit fees for increased engineering and step code provisions was outlined as well as the City's commitment in ensuring acceptable permit review times with the proposed reduction in permit fees for longer reviews.

During the workshop comments were also noted about the role of the Building Official when professionals were involved and wording related to liability. A review of the different levels of certification and competency within the industry took place and a priority will be the importance of continued engagement of the City and the Province with the building industry to strive for better building practices, a level playing field and dialogue between all parties.

Overall the Bylaw has been well received and serval comments were made on the improvements within the department over the last several years.

**Suggested Bylaw Amendments**

With the comments received to date from internal and external stakeholders, staff have proposed the following amendments to the Building Bylaw:

1. **General Amendments**
   General editing of section references and formatting have been completed.

2. **Part 11 – Registered Professional's Responsibilities**

   - Section 11.3 (g) – requirements for projects triggering a building envelope specialist has been changed from four (4) to five (5) dwelling for consistency with the Architects Act.

To read:

(g) if the building envelope components of the building fall under Division B Part 3 of the Building Code, the building contains more than 5 ( five) dwellings, or if the building envelopes do not comply with the prescriptive requirements of Division B Part 9 of the Building Code; and

**3. Part 14 - Permit Requirements**

- Section 14.5 (i) and 14.7(g) **–** reference to all site plans dimensions to be shown in imperial and metric measurements added to avoid conversion errors related to on-site placement of structures.

  To read:

  14.5(i) include a site plan prepared by a registered professional showing: (all dimensions are to be shown in metric and imperial measurements)

  14.7(g) include a site plan showing: (all dimensions are to be shown in metric and imperial measurements)

- Section 14.7 (m) – remove mandatory engineering requirements for all foundation designs for simple projects as staff felt this could still be verified by the building official under Part 9 of the BC Building Code. The Building department has been working with the other local jurisdictions and the Structural Engineers Association of BC to create a policy outlining when engineering will be triggered for simple projects. Geotechnical matters has remained due the geotechnical challenges within the city and has expanded to include storm water management design by a registered professional.

  To read:
  m) include an excavation & storm water management plan design prepared by a registered professional in accordance with the Building Code;

- Section 14.37(a) – altered to clarify sections referencing Simple projects and Complex projects.

  To read:
  a) a completed application in compliance with Sections 14.4 and 14.5 to 14.6 or 14.7 to 14.8, including all required supporting documentation, has been submitted;

- Section 14.61(c) – expiration times for Simple projects changed from 18 months to 24 months to match Complex projects. This was done for consistency for administration of expired permits.

  To Read:
  c) the work is not completed within 24 months for Simple and Complex projects, unless otherwise specified by the Building Official, of the date of issuance of the permit.

**4. Parts 15 through Part 22 – Standalone Permits**

Minor amendments to provide consistent approach for applications, on-site conditions, and completion requirements for standalone permit types.

**5. Part 23 – Solar Panel Permits**

Section 22.5 - added to outline final sign off by registered professionals (when applicable) and by request of the fire department a requirement of a signage and fire safety plan to outline shut down procedures in the event of an emergency. This request has been made to protect emergency responders by preventing injuries where the electrical service for a building has been disconnected but may still be energized by a solar panel.

To read:

Commissioning
22.5 Prior to operating a solar panel system the owner shall provide:

a) Verification from the registered professional of record, where applicable, and

b) for photo-voltaic systems a fire safety plan approved by the City of Penticton Fire Department for the identification of shut down procedures in the event of an emergency.

6. **Part 26 – Energy Conservation and GHG Emission Reduction**

Since the preparation of the August 21 introduction report the Province has made amendments to the Energy code related to residential construction. These changes will provide a clearer outline on the basic code requirements for meeting Steps 1,2 3 as well as making it easier for smaller homes (carriage homes) to comply with Step 2 and 3.

Staff have also continued to review implementation dates with other jurisdictions within the Okanagan valley as well as the general level of understanding within the building industry, availability of energy advisors and potential costs based on local practices. Also, the Canadian Home Builders have recently initiated their own cost analysis which will be completed prior to the end of October. With this information the City of Kelowna has delayed the final adoption of the their Step Code bylaw amendment until further information has been provided through this cost study, however their original implementation date is still proposed for April 01, 2019.

Staff believe that implementation of Step 01 will have not a significant impact on the cost of construction as this step is an evaluation for ensuring onsite compliance with the existing basic regulations of the current code. Staff also believe that there are enough energy advisors to meet the needs of the projects requiring an assessment. However with additional code changes coming into effect Dec 10, 2018 staff feel that additional time is required to allow the industry to fully prepare and recommends that the implementation of Step 01 be moved from January 15th to March 15th, 2019. Staff also propose to eliminate the additional delay for implementation for Accessory suites now that code changes have allowed for easier code compliance.

Staff will continue to work with other local jurisdiction as well as the local building industry in preparing a consistent approach for Step One implementation including the City co-hosting a hands on workshop with BCIT, Okanagan College and the Community Energy Association this November.

**To read:**

26.2 A building regulated by Part 9 of the Building Code must be designed and constructed to meet the minimum performance requirements specified in

a) Step 1 of the Step Code as of March 15, 2019 for all Part 9 residential buildings;
b) Step 3 of the Step Code as of March 15, 2020 for
   i) Single Detached Housing;
   ii) Duplex Housing;
   iii) Three-plex Housing;
   iv) Four-plex Housing;
   v) Row housing; and
   vi) Low Rise Apartment Housing; and
   vii) Accessory Suites

**Financial implication**

Long term, the proposed changes to the bylaw will improve building permit processing and increase the expectation for a better performing building saving costs for the owner. It will also reduce potential deficiencies that could result in time delays during the building process or ultimately costly repairs after the completion of the project exposing the city to joint and severability claims.

Suggested changes to permit fee reductions where increased professional reviews are triggered, Step Code incentives for Step 03 and delayed permit fee reductions has been reviewed with stakeholders and has been appreciated as a measure to offset any additional costs and commitment to department efficiencies.

In 2019, Development Services staff will also will be reviewing other development incentives including possible changes to the City's Development Cost Charges Bylaw to further encourage and support the development community in building more energy efficient residences and reducing greenhouse gas emissions.

**Analysis**

Building Bylaw No. 2018-01 will mark a significant change to the way construction is undertaken in the City of Penticton to meet the challenges with increased development and the complexity of projects, infill development, costs of construction projects and changes to provincial codes and regulations regarding the continued professional development of building officials, builders and professionals. The Bylaw will be the cornerstone for continued process improvements and ensure the long term viability of the built environment for the community at large.

As outlined within the report, staff have taken into consideration all consultation with stakeholders (internal and external) and the community at large in the development of Building Bylaw No. 2018-01. With support of 2nd and 3rd reading staff will complete updating of all City forms and education guides as well as amendments to the City's Bylaw Enforcement bylaws to ensure consistency with the new layout of the Building Bylaw.

**Proposed Bylaw Consultation & Implementation**

- September 2018:
  - Staff presentation with Canadian Home Owners Association of South Okanagan scheduled for September 11th;
  - Updating of application forms, guides and department website in preparation of final adoption of the bylaw.
- October 2018:
  - October 2nd
    - Adoption of bylaw;
    - Recommendation of amendments to City's Bylaw enforcement bylaws to match new Building Bylaw format;
  - Designer Workshop to review drawing standards and upcoming Code changes;
  - Continued education and completion of new application forms and checklists along with improvements to the department's website.
- November 2018:
  - November 01, 2018 – Building Bylaw comes into effect;
  - Step Code hands on education workshop;
  - Building Code change education workshop.

2019:

- Implementation of a Home Owners Permit awareness program in conjunction with the Canadian Home Owners Association home show;
- March 15, 2019 – Step 01 of the BC Energy Code takes affect for all new simple residential applications;
- April, 2019 – staff will prepare an update to Council and provide any necessary housekeeping amendments for consideration.

**Conclusion**

Based on the research, legal consultation and stakeholder engagement completed to date, staff recommends support of second reading as amended and third reading to "Building Bylaw No. 2018-01" allowing staff to completed necessary administration changes as well as required amendments to Bylaw enforcement bylaws for Council consideration October 2, 2018.

**Alternate recommendations**

1. THAT Council decline support of second reading as amended and third reading to "Building Bylaw No. 2018-01" and refer back to staff for further consultation and amendments as directed.

**Attachments**

Attachment A – Building Bylaw No. 2018-01

Ken Kunka, Building and Permitting Manager

| Director | Chief Administrative Officer |
|---|---|
| | LD for PW |

**The Corporation of the City of Penticton**

**Bylaw No. 2018-01**

*A Bylaw for the administration of the Building Code and the regulation of construction.*

WHEREAS the Council of the City of Penticton may, by bylaw, regulate, prohibit and impose requirements in respect to buildings and structures for the following:

(a) the provision of access to a building or other structure, or to part of a building or other structure, for a person with disabilities;

(b) the conservation of energy or water;

(c) the reduction of greenhouse gas emissions;

(d) the health, safety or protection of persons or property;

AND WHEREAS the Council of the City of Penticton is enacting this bylaw to regulate construction and administer the British Columbia *Building Code* in Penticton in accordance with the *Community Charter* and the *Building Act*;

AND WHEREAS the Council of the City of Penticton has employed trained building officials for the purpose of this bylaw;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

## PART 1. TITLE

### Citation

1.1. This bylaw may be cited as "Building Bylaw No. 2018-01".

## PART 2. SEVERABILITY

2.1. If a section, subsection, paragraph, subparagraph or phrase in this bylaw is for any reason declared invalid by a court of competent jurisdiction, the decision will not affect the validity of the remaining portions of this bylaw.

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## PART 4. INTERPRETATION

4.1. Every reference to this bylaw in this or another bylaw of the City is a reference to this bylaw as amended to the date of the reference.

4.2. Every reference to

(a) the Building Code is a reference to the current edition as of the date of application the building permit, and

(b) a section of the Building Code is a reference to the applicable successor sections, as the code or section may be amended or re-enacted from time to time.

4.3. Definitions of words and phrases used in this bylaw that are not included in the definitions in this part have the meanings commonly assigned to them in the context in which they are used in this bylaw, considering the specialized use of terms with the various trades and professions to which the terminology applies.

**Definitions**

4.4. In this bylaw the following words and terms have the meanings:

(a) set out in Section 1.4.1.2. of the Building Code as of the date of the adoption of this bylaw: accessible assembly occupancy, building, building area, building height, business and personal services occupancy, care occupancy, constructor, coordinating registered professional, designer, detention occupancy, excavation, field review, firewall, first storey, grade, high hazard industrial occupancy, industrial occupancy, low hazard industrial occupancy, major occupancy, medium hazard industrial occupancy, mercantile occupancy, occupancy, post disaster occupancy, private sewage disposal system, registered professional, residential occupancy, treatment occupancy or unsafe condition;

(b) subject to this bylaw, set out in the Schedule to the *Community Charter*; assessed value, highway, land, occupier, parcel, public authority, service and soil; and

(c) subject to this bylaw, set out in Section 29 of the *Interpretation Act*: may, must obligation, person, property, writing, written and year.

4.5. In this bylaw, the following words are defined:

**"**accepted**"** means reviewed by the building official under the applicable provisions of the Building Code and this bylaw;

"addition" means an alteration to any building which will increase the total aggregate floor area or the building height (in storeys), and includes the provision of two or more separate buildings with openings between each other for intercommunication;

"agent" includes a firm, corporation or other person representing the owner, by written designation or contract, and includes a hired tradesperson or constructor who may be granted a permit for work within the limitations of his or licence;

"alternative" solution means an alternative solution authorized under the Building Code;

"alteration" means a change, repair or modification of the construction or arrangement of or use of any building or structure, or to an occupancy regulated by this bylaw;

"Architects Act" means the Architects Act RSBC 1996, c. 17;

"building" means any construction used or intended for supporting or sheltering any use or occupancy and includes a mobile home;

"Building Act" means the Building Act RSBC 2015;

"Building Code" means the British Columbia Building Code as adopted by the Minister responsible under provincial legislation, as amended or re-enacted from time to time;

"building official" means the person designated in or appointed to that position by the City and other such person or persons as they may designate from time to time as their assistants;

"change of use or occupancy" means changing the use of a building, or portion of a building, to an alternative use, even if no construction or alterations are anticipated;

"complex building" means

(a) a building used for a major occupancy classified as
    (i) assembly occupancy;
    (ii) care or detention occupancy;
    (iii) high hazard industrial occupancy;
    (iv) treatment occupancy; or
    (v) post-disaster building;
(b) a building exceeding 600m$^2$ in building area or exceeding three storeys in building height used for a major occupancy classified as
    (i) residential occupancy;
    (ii) business and personal services occupancy;
    (iii) mercantile occupancy; or
    (iv) medium and low hazard industrial occupancy;

"coordinating registered professional" means a registered professional retained pursuant to the Building Code to coordinate all design work and field reviews of the registered professionals required for a development;

"construct" or "construction" includes to build, erect, install, repair, alter, add, enlarge, move, locate, relocate, reconstruct, demolish, remove, excavate or shore;

"constructor" means a person who constructs;

"City" means the City of Penticton;

"City Engineer" means the City of Penticton Engineer or designate;

"Engineers and Geoscientists Act" means the Engineers and Geoscientists Act RSBC 1996, c. 116;

"existing", in respect of a building, means the portion of a building constructed prior to the submission of a permit application required under this bylaw;

"foundation" means a system or arrangement of foundation units through which the loads from a building are transferred directly to supporting soil or rock and includes any portion of the exterior walls of a building that lie below the finished grade immediately adjacent to the building;

"GHG" means greenhouse gas;

"health and safety aspects of the work" means design and construction regulated by Parts 3, 4, 5, 6, 7, 8, 9 and 10, Division B, of the Building Code; and subject to Parts 1 and 2 in relation to Parts 3 through 10, Division B;

"mobile home" means a manufactured home constructed to the requirements of the CSA National Standard CAN/CSA-Z240MH Series-09 or any preceding or replacement standard;

"modular home" means a manufactured home conforming to the requirements of the CSA National Standard CAN/CSA A277-08 or any preceding or replacement standard for certified factory-built homes;

"on-site services" means utilities and features which provide for servicing a project within the property on which it is located and includes water service piping and distribution systems, storm and sanitary sewer collection, access roads, natural gas, electric and cable;

"off-site services" means services required pursuant to the City Subdivision and Development Bylaw of the day, that are required to be located on public road, public land or statutory right-of-way at final approval of the subdivision or development as the case may be;

"owner" means the registered owner of an estate in fee simple of land, or an agent duly authorized by the owner in writing in the prescribed form, and also where the context or circumstances so require

(a) a tenant for life under a registered life estate;
(b) a registered holder of an agreement for sale;
(c) a holder or occupier of land held in the manner mentioned in Sections 228 and 229 of the *Community Charter*; or
(d) a lessee with authority to build on land;

"permit" means permission or authorization in writing by the building official to perform work regulated by this bylaw and, in the case of a final inspection notice, to occupy a building or part of a building;

"pool" means a structure or constructed depression used or intended to be used for swimming, bathing, wading or diving which is designed to contain water and has a depth, at any point, exceeding 600mm, including an in-ground pool and hot tub;

"professional design" means the plans and supporting documents bearing the date, seal or stamp, and signature of a registered professional;

"project" means any construction operation;

"qualified plumber" means a person who holds a current Certificate of Qualification issued by the Province of British Columbia as a journeyman plumber for which a statement of compliance and assurance is being provided pursuant to Certificate of Plumbing Test;

"retaining wall" means any structure other than a building that holds or retains soil or other earth material behind it;

"simple building" means a building of three storeys or less in building height, having a building area not exceeding 600$m^2$ and used for a major occupancy classified as

(a) residential occupancy;
(b) business and personal services occupancy;
(c) mercantile occupancy; or
(d) medium and low hazard industrial occupancy;

"Step Code" means the Energy Step Code as references in the British Columbia Building Code Section 9.36.6 as amended from time to time.

"structure" means a construction or portion of construction, of any kind, whether fixed to, supported by or sunk into land, airspace or water, and includes foundations or supporting framework for exterior signs, equipment and machinery, interior storage racking greater than 2.6 m in height, retaining walls and pool fences, but specifically excludes paving, fences and landscaping;

"temporary building" includes a sales office, construction office or a structure in which tools are stored during construction of a building or other structure;

"work" means the same as construct as defined in this bylaw.

## PART 5. PURPOSE OF THE BYLAW

5.1. Despite any other provisions in this bylaw, this bylaw must be interpreted in accordance with this part.

5.2. Every permit issued under this bylaw is issued expressly subject to the provisions of this part.

5.3. This bylaw is enacted to regulate, prohibit and impose requirements in regard to construction in the City in the public interest.

5.4. The purpose of this bylaw does not extend to

(a) the protection of owners, designers, constructors, or any other persons from economic loss;

(b) the assumption by the City or any building official of any responsibility for ensuring the compliance by any owner, his or her representatives or any employees, constructors or designers retained by the owner, with the Building Code, the requirements of this bylaw, or other applicable enactments, codes or standards;

(c) providing any person a warranty of design or workmanship with respect to any building or structure for which a building permit or occupancy permit is issued under this bylaw;

(d) providing any person a warranty or assurance that construction undertaken under building permits issued by the City is free from latent, or any, defects; or

(e) the protection of adjacent real property from incidental damage or nuisance.

## PART 6. SCOPE AND EXEMPTIONS

### Application

6.1. This bylaw applies to the geographical area of the City and to land, the surface of water, air space, buildings or structures in the City.

6.2. This bylaw applies to the design, construction or occupancy of new buildings or structures, and the alteration, reconstruction, demolition, removal, relocation or occupancy or change of use or occupancy of existing buildings and structures~~,~~ including Farm Buildings as regulated by the National Farm Code.

6.3. This bylaw does not apply to

(a) except as set out in Part 21 of this bylaw, a fence;

(b) an accessory building with a floor area of less than $10m^2$, that does not constitute a potential unsafe condition;

(c) a trellis or arbour;

(d) a retaining wall supporting soil that is:

(i) less than 1.2m in height,

(ii) a sequence of retaining walls less than 1.2m in height spaced greater than two horizontal to one vertical, or

(iii) in the opinion of the building official does not constitute a potential unsafe condition;

(e) landscaping or other surfacing of land, except when creating a public parking lot;

(f) bridges other than pedestrian and vehicular bridges attached to buildings;

(g) docks or wharves;

(h) decks or patios which are less than 600mm from the ground or finished grade, which are not attached to a building and have no walls or roofs;

(i) factory built housing and components complying with CAN/CSA-Z240 MH Series standard, but this exemption does not extend to on site preparations (foundations, mountings), connection to services and installation of appliances;

(j) repair and maintenance of lawfully-conforming structures where the level of life safety and building performance shall not be decreased below a level that already exists;

(k) the cleaning or repair of mechanical heating and ventilation systems; and

(l) the clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, or the replacement of tubs, showers, toilets, lavatories or sinks if the work does not involve or require the rearrangement of valves, pipes or fixtures or hot water tanks.

**Limited Application to Existing Buildings**

6.4. Except as provided in the Building Code or to the extent an existing building is under construction or does not have an occupancy permit, when an existing building has been constructed before the enactment of this bylaw, the enactment of this bylaw is not to be interpreted as requiring that the building must be reconstructed and altered, unless it is expressly so provided by this or another bylaw, regulation or statute.

6.5. This bylaw applies if the whole or any part of an existing building is moved either within or into the City, including relocation relative to parcel lines created by subdivision or consolidation. Part 15 applies to building moves.

6.6. If an alteration is made to an existing building the alteration must comply with this bylaw and the Building Code and the entire building must be made to comply with this bylaw and the Building Code, but only to the extent necessary to addresses any new infractions in the remainder of the building as a result of the alteration.

6.7. If an alteration creates an addition to an existing building, the alteration or addition must comply with this bylaw and the Building Code and the entire building must be made to comply with this bylaw and the Building Code, but only to the extent necessary to address any new infractions introduced in the remainder of the building as a result of the alteration or addition.

## PART 7. PROHIBITIONS

7.1. A person must not commence or continue any construction, alteration, excavation, reconstruction, demolition, removal, relocation or change the use or occupancy of any building or structure, including other work related to construction

(a) except in conformity with the requirements of the Building Code and this bylaw; and

(b) unless a building official has issued a valid and subsisting permit for the work under this bylaw.

7.2. A person must not occupy or permit the occupancy of any building or structure or part of any building or structure

(a) unless a subsisting final inspection notice has been issued by a building official for the building or structure or the part of the building or structure; or

(b) contrary to the terms of any permit issued or any notice given by a building official.

7.3. A person must not knowingly submit false or misleading information to a building official in relation to any permit application or construction undertaken pursuant to this bylaw.

7.4. Except in accordance with this bylaw, including acceptance of revised plans or supporting documents, a person must not erase, alter or modify plans and supporting documents after the same have been reviewed by the building official, or plans and supporting documents which have been filed for reference with the building official after a permit has been issued.

7.5. A person must not, unless authorized in writing by a building official, reverse, alter, deface, cover, remove or in any way tamper with any notice, permit or certificate posted or affixed to a building or structure pursuant to this bylaw.

7.6. A person must not do any work that is substantially at variance with the accepted design or plans of a building, structure or other works for which a permit has been issued, unless that variance has been authorized in writing by a building official.

7.7. A person must not interfere with or obstruct the entry of a building official or other authorized official of the City on property in the administration of this bylaw.

7.8. A person must not construct on a parcel unless the civic address is conspicuously posted on the front of the premises or on a sign post so it may be easily read from the public highway from which it takes its address.

7.9. A person must not contravene an administrative requirement of a building official made under Section 8.6 or any other provision of this bylaw.

7.10. A person must not change the use, occupancy or both of a building or structure or a part of a building or structure without first applying for and obtaining a building permit under this bylaw.

## PART 8. POWERS OF A BUILDING OFFICIAL

### Administration

8.1. Words defining the authority of building officials are to be construed as internal administrative powers and not as creating a duty.

8.2. A building official may

(a) administer this bylaw, but owes no public duty to enforce or administer this bylaw;

(b) keep records of applications received, permits, notices and orders issued, inspections and tests made, and may retain copies of all papers and documents connected with the administration of this bylaw;

(c) establish or require an owner to establish whether a method or type of construction or material used in the construction of a building or structure complies with the requirements and provisions of this bylaw and the Building Code; and

(d) direct that tests of materials, equipment, devices, construction methods, structural assemblies or foundations be carried out, or that sufficient evidence or proof be submitted by the owner, or at the owner's sole expense, where such evidence or proof is necessary to determine whether the material, equipment, device, construction or foundation condition complies with this bylaw and the Building Code.

### Refusal and Revocation of Permits

8.3. A building official may refuse to issue a permit where in their opinion

(a) the proposed work will contravene the requirements of the Building Code or the provisions of this or any other bylaw of the City, and must state the reasons in writing;

(b) the results of the tests on materials, devices, construction methods, structural assemblies or foundation conditions are not satisfactory to the building official; or

(c) the parcel referred to in the permit application does not

(i) have vehicular access; or

(ii) meet requirements of other City bylaws.

8.4. A building official may revoke a permit if, in their opinion,

(a) a condition under which the permit was issued;

(b) a requirement of the Building Code or of this or another bylaw of the City;

(c) the permit was issued in error;

(d) cancellation or termination of Homeowner Protection Office Registration occurs prior to finalization of permit;

(e) the permit was issued on the basis of false or incorrect information; or

(f) such permit revocation may be delivered by mail to the owner.

**Right of Entry**

8.5 Subject to Section 16 of the *Community Charter*, a building official may enter any property at any time to ascertain whether the requirements of this bylaw are being met, or if the building official has any reason to believe that an unsafe condition exists.

**Powers**

8.6 Subject to applicable enactments, a building official may, by notice in writing, require

(a) a person who contravenes any provision of this bylaw to comply with that provision within the time ordered;

(b) an owner to stop work on a building or structure, or any part of a building or structure, if the work is proceeding in contravention of this bylaw, the Building Code, or any other enactment of the City or other applicable enactments, or if there is deemed to be an unsafe condition, and may enter any property to affix or post a stop work order in the prescribed form;

(c) an owner to remove or prevent any unauthorized encroachment on a public parcel, a statutory right of way or easement, or a setback or yard required under an enactment;

(d) an owner to remove any building or structure, or any part of a building or structure, constructed in contravention of a provision of this bylaw;

(e) an owner to have work inspected by a building official prior to covering;

(f) an owner to uncover and replace, at the owner's expense, any work that has been covered without inspection contrary to this bylaw or an order issued by a building official;

(g) a person to cease any occupancy in contravention of a provision of this bylaw;

(h) a person to cease any occupancy if any unsafe condition exists because of work being undertaken but not complete and where the building official has not issued a final inspection notice for the work;

(i) an owner to correct any unsafe condition; and

(j) an owner to correct any work that contravenes this bylaw, the Building Code, or any other enactment.

8.7 Every reference to "owner" in Section 8.6 includes a reference to the owner's agent or constructor.

8.8 Every person served with a notice under this part must comply with that notice

(a) within the time ordered, or

(b) if no time is ordered, immediately.

## PART 9. OWNER'S RESPONSIBILITIES

### Owner's Obligations

9.1. Every owner must

(a) comply with the Building Code, the requirements of this bylaw and the conditions of a permit, and must not omit any work required by the Building Code, this bylaw or the conditions of a permit;

(b) ensure that all permits, all plans and specifications and supporting documents on which a permit was based, all municipal inspection certificates, and all professional field reviews are available at the site of the work for inspection during working hours of the building official, and that all permits are posted conspicuously on the site during the entire execution of the work; and

(c) prior to the issuance of a building permit, execute and submit to the City an owner's undertaking in the prescribed form, where required by the building official.

9.2. Every owner and every owner's agent, must carry out construction or have the construction carried out in accordance with the requirements of the Building Code, this bylaw and other bylaws of the City and none of the issuance of a permit under this bylaw, the review of plans and supporting documents, or inspections made be a building official or a registered professional shall relieve the owner, or his or her agent, from full and sole responsibility to perform the work in strict accordance with this bylaw, the Building Code and all other applicable codes, standards and enactments.

9.3. Every owner must allow a building official to enter any building or premises at any reasonable time to administer and enforce this bylaw.

9.4. Every owner to whom a permit is issued must, during construction,

(a) post a civic address on the property so that it may be easily read from the public highway from which the property takes its address;

(b) post the permit placard on the property so that it may be easily read from the public highway from which the property takes its address;

(c) provide building officials with safe access to the work site and all areas requiring inspection.

### Damage to Municipal Works

9.5. Every owner to whom a permit is issued is responsible for the cost to repair any damage to municipal works or land that occurs during and arises directly or indirectly from the work authorized by the permit.

9.6. In addition to payment of the security deposit under City bylaws, every owner must pay to the City, within 30 days of receiving an invoice for same from the City, the cost to repair any damage to public property or works located on public property arising directly or indirectly for which a permit was issued.

### Notice

9.7. Every owner must, at least 24 hours prior to commencing work at a building site, give written or online notice to a building official of the date on which the owner intends to begin such work.

9.8. Every owner must give written or online to a building official of any change in or termination of engagement of a registered professional, including coordinating registered professional, during construction, within 24 hours of when the change or termination occurs.

9.9. If an owner or a registered professional terminates the engagement of the registered professional, including a coordinating registered professional, the owner must terminate all work under a building permit until the owner has engaged a new registered professional, including a coordinating registered professional, and has delivered to a building official new letters of assurance in the form of a Schedule A and or B as outlined in the Building Code.

9.10. Without limiting Sections 14.45 to 14.50, every owner must give at least 24 hours' online or written notice to a building official

(a) of intent to do work that is required or ordered to be corrected during construction;

(b) of intent to cover work that is required under this bylaw to be, or has been ordered to be inspected prior to covering; and

(c) when work has been completed so that a final inspection can be made.

9.11. Every owner must give notice in writing to a building official and pay the non-refundable fee set out in the City's Fees & Charges Bylaw immediately upon any change in ownership or change in the address of the owner, which occurs prior to the issuance of an occupancy permit.

9.12. Every owner must give such other notice to a building official as may be required by the building official or by a provision of this bylaw.

9.13. Every owner shall obtain, prior to the occupancy of a building or part thereof, written permission from the building official to occupy the building or part thereof, pursuant to Part 14.

## PART 10. OBLIGATIONS OF OWNER'S CONSTRUCTOR

10.1. Every constructor must ensure that all construction is done in compliance with all requirements of the Building Code, this bylaw and all other applicable codes, standards and enactments.

10.2. Every constructor must ensure that no excavation or other work is undertaken on public property, and that no public property is disturbed, no building or structure erected, and no materials stored thereon, in whole or in part, without first having obtained approval in writing from the appropriate authority over such public property.

10.3. For the purposes of the administration and enforcement of this bylaw, every constructor is responsible jointly and severally with the owner for all work undertaken.

## PART 11. REGISTERED PROFESSIONAL'S RESPONSIBILITIES

### Professional Design and Field Review

11.1. The provision by the owner to the City of letters of assurance in accordance with the requirements of the Building Code shall occur prior to

(a) the pre-occupancy site review coordinated by the coordinating registered professional or other registered professional for a complex building; or

(b) a final inspection for a simple building in circumstances where letters of assurance have been required in accordance with the requirements of the Building Code, in which case the owner must provide the City with letters of assurance in the form of Schedules C-A or C-B, as appropriate, as outlined in the Building Code.

11.2. If a registered professional provides letters of assurance in accordance with the Building Code, they must also provide proof of professional liability insurance to the building official.

### Requirement for a Registered Professional

11.3. The owner must retain a registered professional to provide a professional design and plan certification and letters of assurance in the form of Schedules A , B, C-A and C-B as referred to in the Building Code, in respect of a permit application

(a) prior to the pre-occupancy site review coordinated by the coordinating registered professional or other registered professional for a complex building; or

(b) prior to a final inspection for a simple building in circumstances where letters of assurance have been required in accordance with the requirements of the Building Code, in which case the owner must provide the City with letter of assurance in the form of Schedules C-A or C-B, as appropriate, referred to in the Building Code;

(c) foundation and excavation components of new simple buildings and additions greater than 55m$^2$ to simple buildings in accordance with the Building Code; except where an unsafe condition may exist;

(d) a building that is designed with common egress systems for the occupants and requires the use of firewalls in accordance with the Building Code;

(e) prior to alterations to a building, or to structural component of a building described in paragraph (b);

(f) for a building in respect of which the building official determines that site conditions, size or complexity so warrant in the interests of safety or persons or protection of property under the Building Code;

(g) if the building envelope components of the building fall under Division B Part 3 of the Building Code, the building contains more than 5 ( five) dwellings, or if the building envelopes do not comply with the prescriptive requirements of Division B Part 9 of the Building Code; and

(h) for a parcel of land on which a building or structure is proposed if the building official believes the parcel is or is likely to be subject to flooding (including high ground water), mud flows, debris flows, debris torrents, erosion, land slip, rock falls, subsidence or avalanche, and the requirements for a professional design is in addition to a requirement under Division 8 of Part 3 of the *Community Charter*

(i) for a report certified by a professional engineer with experience in geotechnical engineering that the parcel may be used safely for the use intended; and

(ii) that the plans submitted with the application comply with the relevant provisions of the Building Code and applicable bylaws of the City.

11.4. The building official may require any registered professional carrying out the professional design and field review required under Section 11.1 to 11.3 to provide evidence that they have experience and expertise in respect of the professional design and field review of the context and scope required and at the discretion of the building official, a peer review may be required prior to the acceptance of any design or field reviews conducted by a registered professional.

11.5. Any registered professional required by this bylaw to provide letters of assurance shall show proof of professional liability insurance at time of building permit application.

## PART 12. REQUIRED PERMITS

12.1. Subject to Part 12 of this bylaw, every owner must apply for and obtain a permit, prior to:

(a) construction or placement of new buildings and structures;

(b) additions to buildings and structures;

(c) interior and exterior alterations of buildings and structures;

(d) construction of foundations for, and installation of manufactured homes;

(e) installation of plumbing systems;

(f) alterations and addition to plumbing systems including the installation of solar hot water systems;

(g) installation and alteration of fire protection sprinkler systems;

(h) installation and alteration of fire alarm systems;

(i) installation of temporary buildings; including fabric covered structures;

(j) installation or alteration of heating and ventilation systems for residential simple buildings;

(k) installation or alteration of mechanical exhaust and fire protection systems for commercial cooking equipment pursuant to NFPA 96 Ventilation Control and Fire Protection of Commercial Cooking Operations;

(l) installation or alteration of spray booths or spray room equipment pursuant to NFPA 33 and wood dust collection systems pursuant to NFPA 664;

(m) construction, installation or alteration of chimneys or fireplaces;

(n) installation of solid fuel burning appliances;

(o) construction of retaining walls

(i) over 1.2m in height,

(ii) a sequence of retaining walls less than 1.2m in height but spaced less than two horizontal to one vertical, or

(iii) in the opinion of the building official constitutes a potential unsafe condition;

(p) the moving or relocating of new or existing buildings, including site construction;

(q) construction or alteration of pools or pool fences;

(r) change of occupancy classification for a building or part of a building;

(s) construction of a new secondary or accessory suite;

(t) demolition of buildings or structures;

(u) installation of solar photovoltaic systems being connected into City of Penticton Electrical system, and for

(v) new or altered driveway access, sidewalk(s) and crossover(s) to a city highway.

unless the works are the subject of another valid and subsisting building permit.

## PART 13. CONDITIONS OF PERMIT

13.1. A permit is required if work regulated under this bylaw is to be undertaken.

13.2. A building permit or an application for a building permit that is in process may not be transferred or assigned until the owner has notified the building official in writing, the building official has authorized the transfer or assignment in writing and the owner has paid the non-refundable fee required in the City's Fees and Charges Bylaw. The transfer or assignment of a building permit is not an extension of a building permit.

13.3. The review of plans and supporting documents and issuance of a building permit do not prevent the building official from subsequently requiring the correction of errors in the plans and supporting documents, or from prohibiting building construction or occupancy being carried on when in violation of this or another bylaw.

13.4. Neither the issuance of a permit under this bylaw, nor the acceptance or review of plans, drawings, specifications or supporting documents, nor any inspections made by or on behalf of the City will in any way

(a) relieve the owner (and if the owner is acting through an agent, the agent of the owner) from full and sole responsibility to perform the work in respect of which the permit was issued in strict compliance with this bylaw, the Building Code, and all other applicable codes, standards and enactments;

(b) constitute a representation, warranty, assurance or statement that the Building Code, this bylaw or any other applicable enactments respecting safety, protection, land use and zoning have been complied with;

(c) or constitute a representation or warranty that the building or structure meets any standard of materials or workmanship.

## PART 14. PERMIT APPLICATION REQUIREMENTS FOR SIMPLE AND COMPLEX BUILDINGS

14.1. Every owner shall apply for and obtain a permit before constructing, altering, repairing demolishing or moving a building or structure.

### Forms ~~and Schedules~~

14.2. The City shall provide application forms for all application processes required under this bylaw. Forms shall be adopted by the City through policy from time to time.

### Additional Permits

14.3. Where required, separate permits and inspections may be required in the following cases:

(a) Building Move in accordance with Part 15;

(b) Demolition or partial demolition of buildings in accordance with Part 16;

(c) Fire Alarms in accordance with Part 17;

(d) Mechanical Ventilation or Heating Systems in accordance with Part 18;

(e) Plumbing and Fire Suppression Systems in accordance with Part 19;

(f) Pool Permit in accordance with Part 20;

(g) Retaining Walls in accordance with Part 21;

(h) Solar Panel Systems in accordance with Part 22;

(i) Temporary Buildings in accordance with Part 23.

14.4 Prior to an application of a building permit, the owner must satisfy the following requirements or conditions:

(a) the owner must apply for and obtain a development permit if the building or structure is in an area designated by the City's Official Community Plan as a development permit area;

(b) the owner must ensure the proposed building or structure complies with all bylaws of the City, except to the extent a variance of a bylaw is authorized by a development permit, development variance permit or order of the Board of Variance;

(c) an approving officer must have approved the subdivision plan that, once registered, would create the parcel on which the proposed building or structure will be constructed, and the subdivision plan must have been registered in the Land Title Office;

(d) the owner must provide evidence to the building official showing that the person applying for the building permit is either the owner of the parcel that is the subject of the proposed building permit, or is the agent of the owner, in which case, the agent must provide the name and contact information of the owner;

(e) the subject property or building shall be addressed in accordance with City bylaws;

(f) the owner must show proof of application for registration or exemptions for home warranty for projects governed under the *Home Protection Act*;

(g) if the parcel that is the subject of the building permit application is not intended to be connected to the City's sewage disposal system, the owner must apply for and obtain approval from the City and other applicable public authorities for an alternate private sewage disposal system;

(h) if the parcel that is the subject of the building permit application is not intended to be connected to the City's water system, the owner must apply for and obtain approval from the City and other applicable public authorities for an alternate water supply system;

(i) if the parcel that is the subject of the building permit application must provide design for on-site storm water drainage system unless the owner applies for and obtains approval from the City to connect the City's storm water system;

(j) if all on-site and off-site works and services required by the City bylaws and other enactments have not been completed in accordance with the enactments, the owner must enter into a completion agreement with the City and deliver to the City letters of credit or cash security for completion of the works and service.

**Building Permit Applications for Complex Buildings**

14.5 An application for a building permit with respect to a complex building must:

(a) be made in the prescribed form and signed by the owner, or a signing office if the owner is a corporation;

(b) pay applicable application fee as prescribed with the City of Penticton Fees & Charges Bylaw;

(c) be accompanied by the owner's acknowledgement of responsibility and undertaking in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(d) include a copy of a title search for the relevant property made within 30 days of the date of the permit application;

(e) ensure that plans submitted with a permit application bear the name, phone number, address and email address of the designer of the building or structure;

(f) include a Building Code compliance summary including the applicable edition of the Building Code, such as without limitation whether the building is designed under Part 3 or Part 9 of the Building Code, major occupancy classification(s) of the building, building area, and building height, number of streets the building faces, and accessible entrances, work areas, washrooms, firewalls and facilities;

(g) include a copy of a survey plan prepared by a British Columbia Land Surveyor except that the building official may waive the requirement for a survey plan, in whole or in part, where conditions warrant;

(h) include a construction fire safety plan, material staging and trucking route plan;

(i) include a site plan prepared by a registered professional showing: (all dimensions are to be shown in metric and imperial measurements)

i. the bearing and dimensions of the parcel taken from the registered subdivision plan;
ii. the legal description and civic address of the parcel;
iii. the location and dimensions of existing and proposed statutory rights of way, easements and setback requirements, adjacent streets and lane names;
iv. the location and dimensions of existing and proposed buildings or structures on the parcel;
v. setbacks to the natural boundary of any lake, swamp, pond or watercourse;
vi. north arrow;
vii. if applicable, location of an approved existing or proposed private or other alternative sewage disposal system, water supply system, or storm water drainage system;
viii. zoning compliance summary;
ix. the location, dimensions and gradient of parking and parking access;
x. proposed and existing setbacks to property lines;
xi. natural and finished grades in geodetic elevations at building corners and significant breaks in the building plan and proposed grade around the building faces in order to ascertain foundation height;
xii. on-site storm water management plan;
xiii. first storey floor elevation in geodetic elevation;
xiv. location, setbacks and elevations of all retaining walls, steps, stairs and decks;
xv. line of upper floors and maximum building height in geodetic elevations;
xvi. location and geodetic elevations of curbs, driveways, sidewalks, manholes, and service poles;
xvii. location and depth of existing and proposed service connections;

xviii. location of top bank and water courses;
xix. access routes for firefighting;
xx. accessible paths of travel from the street to the building;
xxi. geodetic elevation of the underside of a wood floor system or the top of a finished concrete slab of a building or structure where the City's land use regulations or provincial flood mapping regulations establish siting requirements related to minimum floor elevation, and
xxii. Where the parcel of land contains slopes in excess of 15%, and upon the request of the Building Official, be accompanied by;

1. 0.5 meter contours of the existing ground surface of the parcel;
2. 0.5 meter contours of the proposed final grading
3. The elevation of all floor areas of the building, the location of all retaining, driveways, parking areas and other structures on the parcel;
4. The drainage provisions as outlined in the approved subdivision grading plans, if any, or the approved sedimentation control and storm water management plans.

except that the building official may waive, in whole or in part, the requirements for a site plan, if the permit is sought for repair or alteration of an existing building or structure;

(j) include floor plans showing the dimensions and uses and occupancy classification of all areas, including: the dimensions and height of crawl and roof spaces; the location, size and swing of doors; the location, size and opening of windows; floor, wall and ceiling finishes; fire separations; plumbing fixtures; structural elements; and stair dimensions;

(k) include a minimum of two cross-sections through the building or structure in sufficient detail and locations to illustrate foundations, drainage, ceiling heights and constructions systems, including thermal and building envelope assemblies;

(l) include elevations of all side of the building or structure showing finish details, roof slopes, windows, doors, natural and finished grade, spatial separations and ridge height to comply with the Building Code and to illustrate that the building or structure conforms with the City Zoning Bylaw and development permit area guidelines;

(m) include cross-sectional details drawn at an appropriate scale and at sufficient locations to illustrate that the building conforms to the Building Code;

(n) include all other requirements of Sections 2.2.1., 2.2.3, 2.2.4, 2.2.5, 2.2.6 and 2.2.9, Division C of the Building Code;

(o) include copies of approvals required under any enactment relating to health and safety, including, without limitations, sewage disposal permits, highway access permits and Ministry of Health approvals;

(p) include a letter of assurance in the form of Schedule A referred to in the Building Code, signed by the owner, or a signing officer is the owner is a corporation, and the coordinating registered professional;

(q) include letter of assurance in the form of Schedule B referred to in the Building Code, each signed by such registered professionals as the building official or Building Code may require to prepare the design for and conduct field reviews of the construction of the building;

(r) include two sets of drawings at a suitable scale of the design prepared by each registered professional containing the information set out in (g) to (m) of this section;

(s) include fire flow calculations confirming adequate water supply for firefighting;

(t) include all documentation required by City procedure, as amended from time to time.

14.6 In addition to the requirements of Section 14.5 of this bylaw, a building official may require the following to be submitted with a permit application for the construction of a complex building if the complexity of the proposed building or structure or siting circumstances warrant

(a) site servicing and on-site storm water management drawings, including sufficient detail of off-site services to indicate locations at the property line, prepared and sealed by a registered professional, in accordance with the City's Bylaws;

(b) a section through the site showing grades, buildings, structures, parking areas and driveways where any slopes on the subject parcel exceed 15%; and

(c) any other information required by the building official or the Building Code to establish substantial compliance with this bylaw, the Building Code and other bylaws and enactments relating to the building or structure.

**Building Permit Applications for Simple Buildings**

14.7 An application for a building permit with respect to a simple building must

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed with the City's Fees and Charges Bylaw;

(c) be accompanied by the owner's acknowledgement of responsibility and undertaking in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(d) include a copy of a title search for the relevant property made within 30 days of the date of the permit application;

(e) ensure that plans submitted with a permit application bear the name, phone number, address and email address of the designer of the building or structure;

(f) include a copy of a survey plan prepared by a British Columbia Land Surveyor except that the building official may waive the requirement for a survey plan, in whole or in part, where conditions warrant;

(g) include a site plan showing: (all dimensions are to be shown in metric and imperial measurements)

i) the bearing and dimensions of the parcel taken from the registered subdivision plan;

ii) the legal description and civic address of the parcel;

iii) the location and dimensions of existing and proposed statutory rights of way, easements and setbacks requirements, adjacent streets and lane names;

iv) the location and dimensions of existing and proposed buildings or structures on the parcel;

v) setbacks to the natural boundary of any lake, swamp, pond or watercourse;

vi) north arrow;

vii) if applicable, location of an approved existing or proposed alternative private or other sewage disposal system, water supply system or storm water drainage system;

viii) the location, dimensions and gradient of parking and parking access;

ix) proposed and existing setbacks to property lines;

x) natural and finished grades in geodetic elevations at building corners and datum determination points;

xi) on-site storm water management;

xii) first storey floor elevation in geodetic elevations;

xiii) location, setbacks and elevations of all retaining walls, steps, stairs and decks;

xiv) line of upper floors and maximum building height in geodetic elevations;

xv) location and geodetic elevation of curbs, driveways, sidewalks, manholes and service poles;

xvi) location and depth of existing and proposed service connections;

xvii) location of top bank and water courses;

xviii) access routes for firefighting;

xix) accessible paths of travel from the street to the building;

xx) zoning compliance summary; and

xxi) the geodetic elevation of the underside of a wood floor system or the top of a finished concrete slab of a building or structure where the City's land use regulations or provincial flooding mapping regulations establish siting requirements related to minimum floor elevation, and

xxii) where the parcel of land contains slopes in excess of 15%, and upon the request of the Building Official, be accompanied by;

a. 0.5 meter contours of the existing ground surface of the parcel;

b. 0.5 meter contours of the proposed final grading;

c. The elevation of all floor areas of the building, the location of all retaining, driveways, parking areas and other structures on the parcel;

d. The drainage provisions as outlined in the approved subdivision grading plans, if any, or the approved sedimentation control and storm water management plans.

except that for a simple building the building official may waive, in whole or in part, the requirements for a site plan if the permit is sought for the repair or alteration of an existing building;

(h) include floor plans showing the dimensions and uses of all areas, including: the dimensions and height of crawl and roof spaces; the location, size and swing of doors; the location, size and opening of windows; floor, wall and ceiling finishes; plumbing fixtures; structural elements; and stair dimensions;

(i) include a minimum of two cross-sections through the building illustrating foundations, drainage, ceiling heights and construction systems, including thermal and building envelope assemblies;

(j) include elevations of all sides of the building showing finish details, roof slopes, windows, doors, the grade, the maximum building height line, ridge height, spatial separations and natural and finished grade to comply with the Building Code and to illustrate that the building or structure conforms with the City of Penticton Zoning Bylaw and Official Community Plan;

(k) include cross-sectional details drawn at an appropriate scale and at sufficient locations to illustrate that the building or structure substantially conforms to the Building Code;

(l) include copies of approvals required under any enactment relating to health and safety, including, without limitations, sewage disposal permits, highway access permits and Ministry of Health approvals;

(m) include a ~~foundation and~~ excavation & storm water management plan design prepared by a registered professional in accordance with the Building Code;

(n) include geotechnical letters of assurance, in addition to a required geotechnical report, if the building official determines that the site conditions so warrant;

(o) include two sets of drawings at a suitable scale of design including the information set out in (f) to (i) of this section;

(p) include a Building Code compliance summary including the applicable edition of the Building Code, such as, without limitation, whether the building is designed under Part 3 or Part 9 and compliance with article 2.2.2.1.(2), Division C of the Building Code; and

(q) include all documentation required by City procedures, as amended from time to time.

14.8 In addition to the requirements of Section 14.7 of this part, if a project involves

(a) two or more buildings, the gross floor areas of which in the aggregate total more than 1000m$^2$;

(b) two or more buildings that will contain four or more dwelling units; or

(c) otherwise if the complexity of the proposed building or structure or siting circumstances warrant,

(d) a building official may require the following be submitted with a permit application for the construction of each simple building in the project:

i) site servicing drawings, including sufficient detail of off-site services to indicate locations at the property line, prepared and sealed by a registered professional, in accordance with the City's Bylaws;

ii) a construction fire safety, material staging and trucking route plan;

iii) a section through the site showing grades, buildings, structures, parking areas and driveways;

iv) a roof plan and roof height calculations in geodetic elevations;

v) structural, electrical, plumbing, mechanical or fire suppression drawings prepared and sealed by a registered professional;

vi) letters of assurance in the form of Schedule B referenced in the Building Code, signed by a registered professional;

vii) any other information required by the building official or the Building Code to establish substantial compliance with this bylaw, the Building Code and other bylaws and enactments relating to the building or structure, and

**Professional Plan Certification**

14.9 The letters of assurance in the form of Schedules A and B as referred to in the Building Code referred to in Sections 11.1 and 11.3 are relied upon by the City and its building officials as certification that the design and plans to which the letters of assurance refer comply with the Building Code, this bylaw and other applicable enactment.

14.10 Letters of assurance must be in the form of Schedules A and B referred to in the Building Code.

14.11 For a building permit issued for the construction involving a registered professional, the building official shall provide the owner with a notice that the building permit is issued in reliance on the certification of the registered professional that the professional design and plans submitted in support of the application for the building permit comply with the Building Code and other applicable enactments. Any failure on the part of the building official to provide the owner with the notice will not diminish or invalidate the reliance by the City or its building officials on the registered professionals.

14.12 If a building permit is issued for a construction involving registered professionals, the permit fee is to be reduced as prescribed within the City's Fees and Charges Bylaw.

**Alternate Solutions**

14.13 An owner who wishes to provide alternative solutions to satisfy one or more of the requirements of the Building Code or this bylaw must submit sufficient evidence, certified by a professional engineer or architect, to demonstrate that the proposed alternative solutions will provide the level of performance required by the Building Code or this bylaw and pay the fee specified in City's Fees and Charges Bylaw.

**Site and Location Information**

14.14 Without limiting Sections 14.5(g) or 14.7 (g) of this part, the building official may in writing require an owner to submit an up-to-date plan or survey prepared by a registered British Columbia Land Surveyor which contains sufficient information respecting the site and location of any building to

(a) establish, before construction begins, that all the provisions of this bylaw in relation to this information will be complied with;

(b) verify, on completion of the construction, that all provisions of this and other applicable bylaw have been complied with;

(c) in relation to an existing building, substantiate its location, size, including appurtenances whether above, at or below ground level, relative to the site or its relationship to neighbouring grades; and

(d) in relation to construction of a new building, or addition to an existing building, prior to and after the placement of concrete for foundations and footings, show the elevation at proposed top of concrete on all building elevations and at all significant changes of elevation to substantiate its size, location and elevation,

and every person served with a written requirement under this section must comply with this requirement.

**Building Permit Fee**

14.15 Before receiving a building permit for a building or structure, the owner must first pay to the City

(a) the building permit fee prescribed in the City's Fees and Charges Bylaw; and

(b) any fees, fines, charges, levies or taxes imposed by the City and payable under an enactment at the time of issuance of the building permit.

14.16 The application fee shall be credited against the permit fee when the permit is issued.

**Valuation for Permit**

14.17 The valuation of construction set out in the application for a permit shall be the total current monetary worth of all construction or work related to the building or structure, and shall include

(a) site preparation and civil work including excavation and the use of hoisting, pile driving, compaction or erection devices;

(b) all design documents, labour and fees involved in the design, investigative testing, consulting services, construction labour and management, even if provided by the owner, or donated

voluntarily by others, contractor's profit and overhead, sales taxes and the construction insurance; and

(c) all mechanical, electrical, plumbing, drainage and gas installations necessary for the carrying out of the construction to its completed form.

14.18 The building official may place a value on the construction or work for the purposes of determining applicable permit fees by using an appropriate method from the "Marshall Valuation Services" publications with the updated "current cost multipliers," or such universal source of calculating valuation, as the building official deems reasonable, practical and expedient.

**Security Deposit with Building Permit Application**

14.19 An applicant for a building permit must pay to the City, at the time of application, the following security deposit as prescribed within the City of Penticton Fees and Charges Bylaw for:

(a) Building Moves;

(b) Demolition permits;

(c) Foundation only building permits for Complex projects; and

(d) Temporary Building permits.

14.20 The security deposit sum set out in Section 14.19 of this part

(a) covers the cost borne by the City to maintain, restore or replace any public works or public lands which are destroyed, damaged or otherwise impaired in the carrying out of the work referred to in any building permit held by the applicant;

(b) covers the cost borne by the City to make the site safe if the permit holder abandons or fails to complete the work as designated on the permit;

(c) serves as a security deposit to effect compliance with any condition under which the permit was issued.

14.21 The security deposit or applicable portion must be returned to the applicant

(a) when the City is satisfied that no further damage to public works or public lands will occur;

(b) when the inspections required by this bylaw are complete and acceptable to the building official; and

(c) when the conditions or provisions of a provisional certificate of occupancy are completed to the satisfaction of the building official;

only if the applicant has requested the return of the security.

14.22 Any credit greater than the amount of the security deposit used by the City for the purposes described in Part 14 will be returned to the permit holder unless otherwise so directed by the permit holder. Any

amount in excess of the security deposit required by the City to complete corrective work to public lands, public works, or the site is recoverable by the City from the permit holder, the constructor or the owner of the property.

14.23 If the proposed work includes excavation or construction on lands within 3.0 meters of works or services owned by the City, the owner must deliver to the building official a signed agreement in a form prescribed by the City under which the owner acknowledges and agrees that any damage to municipal works or services arising from the construction associated with the building permit will be repaired by the owner at its expense and to the satisfaction of the City's Public Works Superintendent, and the owner must deposit with the City security in accordance with Sections 14.19 to 14.20.

**Permit Fee Refunds**

14.24 No fee or part of a fee paid to the City may be refunded if construction of the building has started.

14.25 The building official may approve a refund of an application fee or portion thereof only if plan checking has not commenced.

14.26 A building permit or other permit fee may be partially refunded as set out in the City bylaws, only if

(a) the owner has submitted a written request for a refund;

(b) the building official has certified a start has not been made on the construction of the building or structure; and

(c) the permit has not expired.

14.27 A building permit or other permit fee is not refundable after the permit has been extended under Section 14.64 of this part.

14.28 Except as otherwise provided in this bylaw, all fees and charges paid or payable under this bylaw shall be non-refundable.

**Design Modification**

14.29 If an issued building permit or other permit is active and the owner proposed modification to the building design whereby the value of the work does not increase or the value of the work decreases, the owner must pay to the City a building permit fee based on the plan review hourly rate set out in City's Fees and Charges bylaw.

**Construction Before Permit Issued**

14.30 The building permit or other permit fee is doubled for every permit application if construction commenced before the building official issued a permit, to a maximum of $10, 000.

14.31 If construction has advanced without inspection to a stage where compliance with this bylaw or other applicable bylaws or enactments cannot be readily determined, the building official may require tests and investigations by an independent agency at the owner's expense to establish compliance or provide recommended remedial measures to be taken, prior to the issuance of a permit.

**Expiration of Application for a Permit**

14.32 A building permit or permit application expires 90 days from a date an application is received under this part if the building permit or permit is not issued by the application expiration date, unless the permit is not issued only due to delays caused by the City.

**Cancellation of Application**

14.33 When an application is cancelled

(a) the application fee is forfeited to the City; and

(b) the applicant will be notified in writing confirming cancellation of application and that plans and related documents submitted with the application will be held for a period of 30 days, then destroyed.

**Confirmation of Permit Application Reviews**

14.34 Upon receiving a completed permit application, the building official shall provide written confirmation that the city will either issue a permit, or refuse issuance with reasons for the denial within:

(a) 21 days for Simple building permit applications; or

(b) 45 days for Complex building permit applications.

14.35 If the denial notice is not provided within the timeframes outlined in Section 14.34 (a) or (b), the permit fee is to be reduced as prescribed within the City's Fees and Charges Bylaw.

**Issuance of a Building Permit**

14.36 Each building, structure or part thereof constructed on a site requires a separate permit and shall be assessed a separate permit fee based on the value of that building, structure or part thereof.

14.37 If

(a) a completed application in compliance with Sections 14.4 and 14.5 to 14.6 or 14.7 to 14.8, including all required supporting documentation, has been submitted;

(b) the owner has paid all applicable fees set out in Sections 14.15, 14.16 and 14.17 to 14.23 of the part and the City bylaws;

(c) the owner or his representative has paid all charges and met all requirements imposed by any other statute or bylaw;

(d) the owner has retained a professional engineer or geoscientist if required under this bylaw;

(e) the owner has retained an architect if required under this bylaw;

(f) no covenant, agreement, resolution or regulation of the City requires or authorizes the permit to be withheld; and

(g) the owner has provided a hazardous materials assessment and remediation compliance letter for additions or alterations to buildings constructed prior to 1992.

the building official must issue the permit, in the prescribed form, for which the application is made, and the date of issuance is deemed to be the date the City gives written notice to the owner that the permit is ready to be picked up by the owner.

**Compliance with the Homeowner Protection Act**

14.38 If the application in respect of a building that includes, or will include, a residential occupancy governed by the *Homeowner Protection Act*, the building permit must not be issued unless the owner provides evidence under Section 30(1) of the *Homeowner Protection Act*, that the proposed building

(a) is covered by home warranty insurance; and

(b) the constructor is a licensed "residential builder" as defined in that Act.

14.39 Section 12.30 of this part does not apply if the owner is not required to be licensed and to obtain home warranty in accordance with Sections 20(1) or 30(1) of the *Homeowner Protection Act*.

14.40 Every permit is issued subject to the owner and constructor maintaining compliance with the *Homeowner Protection Act* and negotiations under it during the term of the permit.

**Issuance of Partial Permits**

14.41 The building official may issue a permit for a portion of a building or structure before the design, plans and supporting documents for the entire building or structure have been reviewed provided sufficient information has been provided to the City to demonstrate to the building official that the portion authorized to be constructed substantially complies with this and any other applicable City bylaws and the permit fee applicable to that portion of the building or structure has been paid. Notwithstanding the issuance of the permit, the requirements of this bylaw shall apply to the remainder of the building or structure as if the permit for the portion of the building or structure had not been issued.

14.42 If a site has been excavated under a building permit for excavation issued under this bylaw and a building permit is not subsequently issued or a subsisting building permit has expired under Section 14.41, but without the construction of the building or structure for which the building permit was issued having commenced, the owner must fill in the excavation to restore the original gradients to the site within 60 days of being served notice by the City to do so.

14.43 If a building permit has expired and partial construction has progressed, with no extension requested of the building official under Section 14.42, permanent type fencing with privacy screen complying with the City's Zoning Bylaw, must be erected around the building site for protection to the public.

**Sanitary Facilities during construction**

14.44 During the time a building permit has been issued and remains valid under this bylaw, the owner must provide on the parcel of land in respect of which the permit has been issued, sanitary facilities for the disposal of human waste from individual persons who enter on the parcel in relations to the work referred to in the permit, which facilities must be accessible and unlocked when not occupied while work is being carried out on the parcel under this bylaw, and every sanitary facility that is not connected to a

(a) sanitary sewer; or

(b) septic disposal system approved under the *Health Act*,

by plumbing that complies with the Building Code and this bylaw, must be provided, at all times the facility is required under this bylaw, with toilet paper, a locking door for privacy, and ventilation, and must be kept in sanitary condition without leaking beyond the facility and without overflowing within the facility. Such facilities must be located so as not to create a nuisance to neighbouring parcels or highways.

**Inspections for Simple Buildings**

14.45 Despite the requirement for the building official's acceptance of the work outlined in Section 14.48, if a registered professional provides letters of assurance, the City will rely solely on field reviews undertaken by the registered professional and the letters of assurance submitted pursuant to this bylaw as assurance that the aspects of the construction referenced by those letters of assurance substantially conform to the design, plans and specifications and that the construction complies with the Building Code, this bylaw and other applicable enactments respecting safety. Copies of all field reviews must be submitted to the City.

14.46 Despite Section 14.45 of this part, a building official may attend the site from time to time during the course of construction to ascertain that the field reviews are taking place and to monitor the field reviews undertaken by the registered professionals.

14.47 A building official may attend periodically at the site of the construction of simple buildings or structures to ascertain whether the work is being carried out in substantial conformance with the Building Code, this bylaw and any other applicable enactments concerning safety.

14.48 For all work in respect of simple buildings the owner must give at least 24 hours' notice to the City when requesting an inspection and must obtain an inspection and receive a building official's written acceptance of the following aspects of the work prior to concealing them:

(a) Pre-construction site review when required by the building official;

(b) footings, after preparation for footings are complete, prior to placement of concrete;

(c) foundation, after forms for foundation walls are completed, prior to placement of concrete;

(d) after damp-proofing and foundation drainage are in place, prior to backfilling;

(e) sanitary sewer service, after sewer line is in place and under test, prior to backfilling;

(f) domestic water service, after the water service lines are in place and water has been turned on, prior to backfilling;

(g) under-slab plumbing and underground fire suppression supply lines, prior to covering;

(h) under-slab, after slab preparation for soil gas requirements, the preparation of ground, including ground cover when required, perimeter insulation of inside of concrete foundation walls are in place, prior to covering;

(i) installation of rough-in plumbing, when complete and under test, prior to covering;

(j) installation of mechanical ventilation and heating systems, prior to covering;

(k) framing, sheathing, fire stopping, bracing, with installation of chimney and ductwork, rough wiring, rough plumbing, rough heating, gas venting, exterior doors and windows, but prior to the installation of insulation, interior finishes, sheathing paper or exterior finishes which would conceal such work;

(l) insulation, air and vapour barrier, after all insulation and vapour barrier is in place but prior to interior finish being applied which conceal the work;

(m) exterior sheathing membrane and flashing prior to exterior finishes being applied;

(n) installation of required fire separations prior to completing;

(o) on-site constructed tubs or showers and tub or shower trap tests; and

(p) occupancy and final, after the health and safety aspects of the work and the conservation, GHG emissions reduction and accessibility aspects of the work when the building or structure is substantially complete, ready for occupancy but prior to occupancy.

14.49 A building official will only carry out an inspection under Section 14.48 if the owner or the owner's agent has requested the inspection online or in writing in accordance with this bylaw.

14.50 No person may conceal any aspect of the work referred to in Section 14.48 of this bylaw until a building official has accepted it in writing.

**Complex Building Commissioning**

14.51 For work in respect of complex buildings, the owner must

(a) give at least 48 hours' online or written notice to the City when requesting a preconstruction meeting with the building official prior to the start of construction, and the owner or his or her representative must ensure that the coordinating registered professional, the constructor, as well as representatives of major trades, are in attendance;

(b) give at least 48 hours' online or written notice to the City when requesting a pre-occupancy coordinated by the coordinating registered professional or other registered professional to have the owner, the constructor, and the registered professionals demonstrate to the building official and City Fire Department the compliance with the health and safety aspects of the work, the coordination and integration of the fire and life safety system, applicable City requirements and other enactments respecting safety and the conservation, GHG emissions and accessibility aspects of the work; and

(c) cause the coordinating registered professional, at least 48 hours prior to the pre-occupancy coordinated site review coordinated by the coordinating registered professional, to deliver to the building official the Confirmation of Required Documentation described in the prescribed form, complete with all documentation in a hard covered three ring binder and in digital pdf format on a memory stick.

**Stop Work Orders**

14.52 The building official may direct the immediate suspension or correction of all or a portion of the construction on a building or structure by attaching a stop work order notice in the prescribed form on the premises when it is found that the work is not being performed in accordance with the requirements of the Building Code, any applicable bylaw of the City or the applicable provisions of the *Homeowner Protection Act*.

14.53 The coordinating registered professional may request, in writing, that the building official order the immediate suspension or correction of all of a portion of the construction on a building or structure by attaching a stop work order notice on the premises. The building official must consider such request and, if not acted upon, must respond, in writing, to the coordinating registered professional and give reasons.

14.54 If a registered professional's services are terminated, the owner must immediately stop any work that is subject to his or her design or field review and the building official is deemed to have issued a stop work order under Section 14.52.

14.55 The owner must immediately, after the posting of a notice under Section 14.52, secure the construction and the lands and premises surrounding the construction in compliance with the safety requirements of every statute, regulation or order of the Province or of a Provincial agency and of every applicable bylaw of the City.

14.56 Subject to 14.52, no work other than the required remedial measures may be carried out on the parcel affected by the notice referred to in Section 14.52 until the stop work order notice has been removed by the building official.

14.57 The notice referred to in Section 14.52 must remain posted on the premises until that which is contrary to the enactments has been remedied.

**Do Not Occupy Notice**

14.58 If a person occupies a building or structure or part of a building or structure in contravention of this bylaw, a building official may post a Do Not Occupy Notice in the prescribed form on the affected part of the building or structure.

14.59 If a notice is posted under Section 14.58, the owner of a parcel on which a Do Not Occupy Notice has been posted, and every other person, must cease occupancy of the building or structure immediately and refrain from further occupancy until all applicable provisions of the Building Code and this bylaw have been substantially complied with and the Do Not Occupy Notice has been rescinded in writing by a building official.

**Inspection and Other Fees**

14.60 In addition to the fees required under other provisions of this bylaw, the owner must pay the non-refundable fee set out in City bylaws for

(a) a second and each subsequent re-inspection where it has been determined by the building official that due to non-compliance with the provisions of this bylaw or due to non-complying work, more than one visit is required for any required inspection;

(b) a special inspection during the City's normal business hours to establish the condition of a building, or if an inspection requires special arrangements because of time, location, or construction techniques; and

(c) an inspection required under this bylaw which cannot be carried out during the City's normal business hours.

**Permit Expiration**

14.61 Every permit is issued on the condition that the permit expires and the rights of the owner under the permit terminate if

(a) the work authorized by the permit is not commenced within 180 days from the date of issuance of the permit unless extended under Part 12;

(b) work is discontinued for a period of 180 days; or

(c) the work is not completed within 24 months for Simple and Complex projects, unless otherwise specified by the Building Official, of the date of issuance of the permit.

14.62 Where a permit has expired, the work shall cease and the construction shall be removed, unless a new permit application is made within 90 days of the expiry date of the permit.

14.63 Where a permit has expired, and a new permit application is made, all construction shall comply with this bylaw, the Building Code and any other City bylaws and enactments in force at the time of the new application.

**Permit Extension**

14.64 Where construction has not commenced within 180 days from the date the permit was issued, the building official may extend the permit for a period not more than 180 days from the date of expiry of the original permit, but the permit shall then be void if construction has not started within 360 days from the original date of the issuance of the permit, if

(a) application for the extension is made at least 30 days prior to the date of permit expiration, and

(b) the non-refundable fee set out in the City's Fees and Charges Bylaw has been paid.

14.65 Where construction has commenced and has not been discontinued or suspended for a period of more than 180 days, the building official may extend the expiry date for the permit for such period of time as the building official considers reasonable, where the building official is satisfied that there exists a reasonable excuse for the delay in completing construction, if

(a) application for the extension is made at least 30 days prior to the date of permit expiration; and

(b) the non-refundable fee set out in the City's Fees and Charges Bylaw has been paid.

**Building Permit Cancellation by Owner**

14.66 A building permit, or a building permit application, may be cancelled by the owner, or his or her agent, on delivery of written notification of the cancellation to the building official.

14.67 On receipt of the written cancellation notice, the building official must mark on the application, and a permit if applicable, the date of cancellation and the word “cancelled”.

14.68 If the owner, or his or her agent, submits changes to an application after a permit has been issued and the changes, in the opinion of the building official, substantially alter the scope of work, design or intent of the application in respect of which the permit was issued, the building official may cancel or amend the permit and mark on the permit the date of cancellation or amendment and the work “cancelled” or “amended”.

14.69 If a building permit application or permit is cancelled, and construction has not commenced under the permit, the building official must return to the owner any fees deposited under the City’s Fees and Charges Bylaw.

**Partial Occupancy**

14.70 A building official may issue a final inspection notice for partial occupancy of a portion of a building or structure under construction when

(a) that portion of the building or structure is self-contained and provided with essential services respecting health and safety aspects of the work, and if applicable, accessibility, GHG emissions and conservation; and

(b) the requirements set out in Section 14.75 have been met with respect to it, and

(c) security deposit fees are paid as prescribed by the City of Penticton Fees and Charges Bylaw.

14.71 The owner, developer or builder shall ensure that no unsafe condition exists or will exist resulting from the work being undertaken or not completed.

14.72 The building official may withhold an occupancy permit until the building, structure or part thereof complies with this bylaw, the Building Code and any other applicable bylaws or enactments.

14.73 The building official may revoke an approval for occupancy for failure to comply with any conditions of the approval.

**Occupancy**

14.74 No person may occupy a building or structure or part of a building or structure until a final inspection notice has been issued by a building official for

(a) the first occupancy of a building or structure or part thereof after completion of construction; or

(b) any change of class of occupancy of any building or structure or part thereof.

14.75 A final inspection notice will not be issued unless

(a) all letters of assurance have been submitted when required in accordance with this bylaw;

(b) all aspects of the work requiring inspection and acceptance pursuant to Sections 14.48 to 14.49 and 14.51 of this bylaw have both been inspected and accepted or the inspections and acceptance are not required in accordance with this bylaw;

(c) the owner has provided to the City a building survey prepared by a British Columbia Land Surveyor showing the building height, size, location and elevation determined in accordance with the City's land use regulations;

(d) all other documentation required under applicable enactments has been delivered to the City;

(e) where any of the requirements for life and fire safety have been deemed to be satisfied by an alternate solution pursuant to provisions of the Building Code, the owner shall submit to the building official, prior to use or occupancy of the building or structure, certification from the registered professional responsible for the equivalency, that the construction substantially complies with the requirements set out in the alternate solution report.

14.76 When a registered professional provides letters of assurance in accordance with this bylaw, the City will rely solely on the letters of assurance when issuing a final report authorizing occupancy as assurance that the items identified on the letters of assurance substantially comply with the design, the Building Code, this bylaw and other applicable enactments respecting safety.

## PART 15. BUILDING MOVE PERMIT

15.1 Without limiting Section 6.3 of this bylaw, no person shall relocate a manufactured home, structure, building or part thereof into the City or from one property to another within the City unless the owner or agent has first obtained a building permit for that purpose as provided for in this bylaw.

**Application Requirements**

15.2 An application for a building permit with respect to a building move permit must:

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City of Penticton Fees and Charges Bylaw;

(c) provide a site plan showing:

i) the location of the proposed building and any accessory buildings in relation to existing buildings on the property in the form of a site plan drawn to scale;
ii) distances from the proposed building and all existing buildings to the property boundaries;

(d) drawings showing construction details for on-site construction as outlined in Section 14.5 or 14.7; and

(e) written confirmation from the manufactured home park owner or authorized representative.

15.3 The relocation of manufactured homes factory constructed and assembled more than 30 years prior to the date of permit application is prohibited. The year, make, model and serial numbers shall be determined by the CSA Rating Plate and/or the Province of British Columbia Mobile Home Registry.

15.4 A building official may require a report from an accredited restoration company or registered professional with experience in environmental engineering stating that there are no environmental issues or hazards regarding health and safety to occupants prior to issuing a building permit to relocate a manufactured home, mobile home or other building.

15.5 Where a manufactured home or mobile home is less than five years old, the building evaluation may be waived by the building official.

**Permit Issuance**

15.6 The building official may issue a permit for construction involved in the moving of any building, structure or part thereof into or within the City when the owner has

(a) finalized disconnection of services;

(b) finalized any outstanding taxes owing and utility billing accounts to the City;

(c) have approval for safe route transport in the form of Schedule G as prescribed by the City's Public Works department;

(d) provided a hazardous assessment and clearance letter for the demolition of any existing on-site construction for buildings constructed prior to 1992, and

(e) deposited with the City a security deposit as prescribed within the City's Fees and Charges Bylaw.

**Permit Completion Conditions**

15.7 All construction including relocations, alterations and additions for relocated manufactured homes, mobile homes or other buildings shall be completed with 180 days of the date the permit was issued.

15.8 If the owner does not move the building, structure or part thereof for which a permit is issued and complete construction within the time specified in Section 15.7, the building official may notify the owner in writing and direct the owner to complete that work within 30 days from the date of the notice.

15.9 If the work is not completed within the 30 days, the City or its agent may enter, clean and tidy the site at the expense of the owner and the costs shall be deducted from the security deposit.

15.10 If the building, structure or part thereof to be moved is located on a property in the City, then the property must be returned to a safe, clean and tidy condition within 120 days from the date of issuance of the permit.

## PART 16. DEMOLITION PERMITS

16.1 Without limiting Section 6.3 of this bylaw, a person must not demolish or partially demolish a building or structure without making application and receiving a valid building permit.

### Application Requirements

16.2 An application for a building permit with respect to a demolition permit must

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City of Penticton Fees and Charges Bylaw;

(c) provide a site plan showing all buildings and structures and servicing locations;

(d) provide vacancy date;

(e) provide a hazardous materials assessment and remediation clearance letter for buildings constructed prior to 1992;

(f) pay capping fees as set out in the City's bylaws governing water, electrical and sewer utilities; and

(g) ensure that all municipal services and other services are capped and terminated at the property line in a City standards.

### Demolition sites

16.3 The following items shall be required at demolition sites to the satisfaction of the building official:

(a) the demolition of buildings and structures shall be in accordance with Part 8 of the Building Code "Safety Measures at Construction and Demolition Sites";

(b) all construction material and debris, including concrete foundations and septic tanks are to be removed from the site;

(c) all services and utilities are to be disconnected at the property lines;

(d) the site shall be left in a clean and tidy condition within 90 days from the date of issuance of the demolition permit;

(e) should demolition not have commenced by the 90 day expiry date the building official may at his or her discretion cancel the permit by written notification. There shall be no refund for the demolition inspection permit and where applicable the security deposit shall be returned;

(f) any request to extend the 90 day time limit shall be received 30 days prior to the date of expiry. The request shall be in writing from the owner or their agent and approved in writing by the building official; and

(g) where required for industrial and commercial demolition sites the *Environmental Management Act* shall apply.

**Delayed Demolition Requests**

16.4 Upon written request by the owner, a demolition permit may be issued without service disconnects or hazardous materials remediation for a period of up to 180 days.

**Security for Demolitions**

16.5 Security deposits for demolition permits shall be required for all demolitions of buildings or structure requiring a permit in an amount prescribed within the City of Penticton Fees and Charges Bylaw.

(a) the security deposit shall be held by the City until the site is restored to a safe and tidy condition to the satisfaction of the building official;

(b) if the owner fails to leave the site in a clean and tidy condition to the satisfaction of the building official with the 90 day time limit the City or its agent may enter, clean and tidy the site at the expense of the owner and costs shall be deducted from the security deposit;

(c) if the security deposit is insufficient to cover the costs of tidying and cleaning the site the owner shall within 30 days of invoice from the City pay the balance of the costs over the amount of the security deposit; and

(d) if the costs are unpaid on the 31st day of December in the year on which the demolition occurred the costs shall be added to and form part of the property taxes payable as taxes in arrears.

## PART 17. FIRE ALARM PERMITS

17.1 Without limiting Section 6.3 of this bylaw, a person must not install, replace or alter a fire alarm system without making application and receiving a valid building permit.

**Application Requirements**

17.2 An application for a mechanical permit with respect to a residential occupancy for Simple buildings must

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed with the City of Penticton Fees and Charges Bylaw, and

(c) two (2) sets design drawings and specifications prepared by a registered professional along with letters of assurance.

**Professional Design and Commissioning**

17.3 The design, installation, commissioning and maintenance shall conform to:

(a) the B.C. Building Code; and

(b) all relevant standards of the National Fire Protection Agency, (NFPA), pertaining to fire suppression systems.

17.4 Where a permit is required, no engineered mechanical system shall be put into use until it has been tested and accepted by the registered professional who is responsible for its design, as applicable.

## PART 18. MECHANICAL VENTILATION AND HEATING PERMITS

18.1 Without limiting Section 6.3 of this bylaw, a person must not install, replace or alter a mechanical ventilation or heating system without making application and receiving a valid building permit.

**Application Requirements**

18.2 An application for a mechanical permit with respect to a residential occupancy for Simple buildings must

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City of Penticton Fees and Charges Bylaw;

(c) provide heat load worksheet, appliance selection worksheet, and ventilation checklist.

18.3 An application for commercial cooking system, spray booth operation or wood dust collection system permit shall

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City of Penticton Fees and Charges Bylaw;

(c) two (2) sets design drawings, prepared by a registered professional along with letters of assurance.

**Design Standards**

18.4 The design, installation and maintenance for commercial cooking system, spray booth operation or wood dust collection system shall conform to:

(a) the B.C. Building Code, Division B, Part 6 Heating and Ventilation and Air-conditioning;

(b) the B.C. Building Code, Division B, Part 3, Section 3.2.5 Provisions for Fire Fighting; and

(c) all relevant standards of the National Fire Protection Agency, (NFPA), pertaining to fire suppression systems.

**Inspections and Commissioning**

18.5 Where a mechanical and ventilation system has been installed or altered under permit for simple buildings or residential use, an inspection shall be requested before:

(a) the system is covered up; or

(b) the system is used.

18.6 Where a mechanical system has installed or altered under permit for a commercial kitchen, spray booth or wood dust collection system, it shall not be put into use until it has been tested and accepted by the registered professional who is responsible for its design, as applicable.

## PART 19. PLUMBING AND FIRE SUPPRESSION PERMITS

19.1 Without limiting Section 6.3 of this bylaw, a person must not install, replace or alter a plumbing or fire suppression system making application and receiving a valid building permit.

**Application Requirements**

19.2 An application for a plumbing or fire suppression permit shall

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City of Penticton Fees and Charges Bylaw;

(c) provide two (2) sets of isometric drawings where works are not performed by a qualified plumber for single family dwellings projects; or

(d) provide two (2) sets drawings including design drawings, including storm water management systems, prepared by a registered professional along with letters of assurance.

19.3 The design, installation and maintenance of plumbing and fire suppression systems shall conform to:

(a) the B.C. Plumbing Code;

(b) the B.C. Building Code, Division B, Part 3, Section 3.2.5 Provisions for Fire Fighting; and

(c) all relevant standards of the National Fire Protection Agency, (NFPA), pertaining to fire suppression systems.

**Inspections and Commissioning**

19.4 Where a plumbing system has been installed or altered under permit for a simple building, an inspection shall be requested before:

(a) the system is covered up; or

(b) the system is used.

19.5 Where a plumbing system or fire suppression system has been installed or altered under permit for a complex building it shall not be put into use until it has been tested and accepted by the registered professional who is responsible for its design, as applicable.

## PART 20. POOL PERMITS

20.1 Without limiting Section 6.3 of this bylaw, a person must not construct, or structurally repair, a pool without making application and receiving a valid building permit.

**Application Requirements**

20.2 An application for a building permit with respect to a pool permit must:

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City's Fees and Charges Bylaw;

(c) provide a site plan showing the location and distances of the proposed pool and any accessory buildings in relation to existing buildings on the property;

(d) construction details for the pool and the proposed method of enclosure of the pool area; and

(e) approval of design from the Local Health Authority having jurisdiction, if the pool is accessible for public use.

**Professional Design**

20.3 In accordance with Section 11.3 of this Bylaw, professional design and field reviews may be required, subject to the complexity of the design and the condition of soils where the pool is to be located.

**Fencing**

20.4 A swimming pool, including a spa or hot tub must be enclosed within a fence constructed without footholds or grips that children may use to climb into the enclosed area, having a minimum height of 1.22m and no openings greater than 100mm at their greatest dimension. Where the access to the swimming pool is from a dwelling located on the same property as the swimming pool, the access may be directly from the dwelling.

20.5 The fence or equivalent barrier referred to in Section 16.1 shall be of chain link type material, solid material with a flat vertical surface, or vertically oriented material.

20.6 A swimming pool fence or equivalent temporary barrier shall be in place, inspected and approved prior to placing the water in a pool.

**Pool Gate**

20.7 Access through a fence enclosing a swimming pool, spa or hot tub must be only through a self-closing and self-latching gate designed and constructed or installed so as to cause the gate to return to a closed position when not in use and secured by a latch located on the swimming pool, spa or hot tub side of the gate.

20.8 All openings or gates in the fence or barrier shall be locked closed when not in use.

**Spa or Hot Tub Lid**

20.9 In lieu of a fence, a spa or hot tub may be covered with a locking cover, which would prevent unauthorized access to the water.

**Above Ground Pools**

20.10 A swimming pool which is located above ground and has vertical sides of at least 1.2m may be protected from access by fencing the access ladder to limit access, with a child resistant self-closing and self-latching gate through the fence.

**Maintenance**

20.11 A person may not use or occupy a swimming pool, including a spa or hot tub unless the owner or occupier of property on or in which a pool, spa or hot tub is located maintains every fence or cover required under Sections 20.4 to 20.10 in good order, and without limitation maintains and repairs in good order at all times all sagging gates, loose parts, torn mesh, missing materials, worn latches, locks or broken or binding members.

**Leaks or Other Failures**

20.12 A person may not obtain a valid and subsisting building permit for or use or occupy a pool without first delivering to the building official at the time of the building permit application an opinion of a registered professional that the design of the pool will not cause or result in leaks or other failures of the pool.

**Drainage**

20.13 Drainage from pools must be contained and disposed of on the same property as the pool is located and discharged to ground where practical to do so.

**Public Pools**

20.14 Pools intended for public use shall not be occupied until an Operating Permit for the pool has been issued by the Local Health Authority.

## PART 21. RETAINING WALL PERMITS

21.1 Without limiting Section 6.3 of this bylaw, a person must not construct, or structurally repair, a retaining wall without a valid building permit.

**Application Requirements**

21.2 An application for a building permit with respect to a retaining building permit must

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City of Penticton Fees and Charges Bylaw;

(c) provide a site plan showing all buildings and structures and servicing locations.

**Professional Design and Permit closure**

21.3 A registered professional shall undertake the design and conduct field reviews of the construction and drainage of a retaining structure greater than 1.2m in height or where a sequence of walls are located closer than 2 horizontal to 1 vertical.

**Site Safety Conditions**

21.4 If a building official determines that an unsafe condition exists as the result of the construction of a retaining wall requiring a building permit, a guard or fence may be required.

## PART 22. SOLAR PANEL PERMIT

22.1 Without limiting Section 4.3 of this bylaw, a person must not install or alter a solar panel system without making application and receiving a valid building permit.

**Application Requirements**

22.2 An application for a building permit with respect to solar panel system must

(a) be made in the prescribed form and signed by the owner, or a signing officer if the owner is a corporation;

(b) pay applicable application fee as prescribed in the City's Fees and Charges Bylaw;

(c) be accompanied by plans showing the location of the proposed solar panel location in relation to existing buildings on the property in the form of a site plan drawn to scale;

(d) construction details for the attachment of the panels to the building and provide a sealed drawing by a registered professional to confirm loading on structural members of building are designed to accommodate the anticipated loads for hot water solar systems and where photo-voltaic systems incorporate a ballast system.

22.3 For hot water systems, compliance with CAN/CSA-F383-87, Installation Code for Solar Domestic Hot Water Systems, as referred to in the British Columbia Building Code.

22.4 Prior to obtaining a permit for a photovoltaic solar panel system with connection to the City's electric system shall enter into a net-metering agreement with the City.

**Commissioning**

22.5 Prior to operating a solar panel system the owner shall provide:

(a) verification from the registered professional of record, where applicable, and

(b) for photo-voltaic systems a fire safety plan approved by the City of Penticton Fire Department for the identification of shut down procedures in the event of an emergency.

## PART 23. TEMPORARY BUILDING PERMIT

23.1 Subject to the bylaws of the City and order of Council, the building official may issue a building permit for the erection or placement of a temporary building or structure for occupancy if

(a) the permit is for a period not exceeding one year; and

(b) the building or structure is located in compliance with the City's Zoning Bylaw, built in compliance with the Building Code and this bylaw, and connected, as required by enactments, to City utility services.

**Application requirements**

23.2 An application for a building permit for the erection or placement of a temporary building or structure must be made in the form of a temporary permit application on the prescribed form, signed by the owner or agent, and must include:

(a) plans and supporting documents showing the location and building height of the building or structure on the parcel;

(b) plans and supporting documents showing construction details of the building or structure;

(c) application fee as prescribed in the City's Fees and Charges Bylaw;

(d) a statement by the owner indicating the intended use and duration of the use;

(e) plans and supporting documents showing the proposed parking and loading space;

(f) a written description of the project explaining why the building is temporary;

(g) a copy of an issued development permit, if required;

(h) in the case of a manufactured building, a CSA label in respect of manufacture and, without limitation, a Quonset or other steel building must be certified in accordance with CSA Standard A660;

(i) a report or drawing by an engineer, architect or designer confirming compliance with the Building Code, this bylaw, the City's Zoning Bylaw and other applicable bylaws;

(j) security as prescribed in the City's Fees and Charges Bylaw, which security may be used by the City to remove the building after one year of the date of the final inspection required under this bylaw; or

(k) must be returned to the owner if the owner removes the temporary building within one year of the date of the final inspection of the temporary building required under this bylaw; and

(l) in the case of a temporary building, information to comply with article 1.1.1.1(2)(f), Division C of the Building Code.

23.3 Before receiving a building permit for a temporary building or structure for occupancy, the owner must pay to the City the applicable building permit fee set out in the City's Fees and Charges Bylaw.

A permit fee for a temporary building or structure is not refundable.

## PART 24. ACCESS ROUTE FOR FIRE DEPARTMENT ACCESS

24.1 Prior to the issuance of a building permit for a Simple building of multi-family or commercial occupancy under Part 9 of the Building Code, the owner must satisfy the building official that the building or structure for which the permit is issued will be served by a fire access route that satisfies the following:

(a) the width of an access route must be not less than 6.0 meters;

(b) the centerline radius of an access route must be less than 12.0 meters;

(c) the overhead clearance of an access route must be 5.0 meters;

(d) the gradient of the access route must not change more than 1 in 12.5 over a minimum distance of 15.0 meters;

(e) the access route must comply with the bearing load and surface material standards of the City's Subdivision and Servicing Bylaw, as amended or replaced from time to time; and

(f) the length above which a dead-end portion of an access route requires turnaround facilities is 90.0 meters.

## PART 25. CLIMATIC DATA

25.1 The climatic data for the design of buildings in the City shall be the date listed in the current edition of Division B Appendix C to the Building Code for Penticton, British Columbia.

## PART 26. ENERGY CONSERVATION and GHG EMISSIONS REDUCTION

### Step Code Requirements

26.1 In relation to the conservation of energy and the reduction of greenhouse gas emissions, the City incorporates by reference the Step Code as outlined in the Building Code in accordance with Sections 26.2 and 26.3.

26.2 A building regulated by Part 9 of the Building Code must be designed and constructed to meet the minimum performance requirements specified in

(a) Step 1 of the Step Code as of March 15, 2019 for all Part 9 residential buildings;

(b) Step 3 of the Step Code as of March 15, 2020 for

i) Single Detached Housing;
ii) Duplex Housing;
iii) Three-plex Housing;
iv) Four-plex Housing;
v) Rowhousing; and
vi) Low Rise Apartment Housing; and
vii) Accessory Suites

~~a) Step 3 of the Step Code as of January 1, 2021 for~~

~~i) Accessory Suites.~~

26.3 Any dwelling which achieves a minimum of Step 3, of the Step Code , prior to March 15, 2020, will receive a building permit fee discount rebate as prescribed within City of Penticton Fees and Charges Bylaw for which the permit was authorized.

## PART 27. FINISHED GRADES and SLOPE RETENTION

27.1 Except as certified by a professional engineer with expertise in geotechnical engineering registered in the Province of British Columbia, fill material placed or excavation into natural grade on a parcel must not have a surface slope exceeding a ratio of one linear unit vertically to two linear units horizontally, unless restrained by a permitted retaining wall.

27.2 Retaining walls are not permitted to be constructed of stacked un-cemented rock or boulders or creosoted timbers.

27.3 No person may occupy a building unless the finished grade complies with all applicable enactments.

27.4 The maximum grade for a residential driveway shall not exceed 20%.

## PART 28. NUMBERING OF BUILDINGS

28.1 Immediately upon issuance of a building permit governing the construction, alteration or repair of a building, or prior to and during occupancy of a building, the owner or occupant must display the address number assigned to it by the City:

(a) on or over the entrance to the building or where landscaping or structures obscure the visibility of a building entrance from the adjacent highway, on the building property within sight of the adjacent highway; and

(b) until such time as the building is removed from the site or has been demolished.

28.2 Despite Section 28.1 the City's Engineer may renumber or alter the assigned numbers in respect of any building or any parcel, including those already in existence or numbered.

28.3 Without limiting Sections 28.1 or 28.2, a building official must, on the issuance of a building permit, designate a house number or set of house numbers related to the building authorized by the permit. The owner or occupier must post the number or numbers on the site immediately after obtaining the building permit and keep the numbers posted in a conspicuous location at all times during construction.

28.4 Without limiting Sections 28.1 through 28.3, on issuance of an occupancy permit, the owner or occupier of the parcel must affix the numbers permanently in a conspicuous place on the building such that the number is visible from an adjacent highway that is not a lane.

## PART 29. TEMPORARY RESIDENCE DURING PERIOD OF CONSTRUCTION

29.1 Where a temporary residence is required during the period of construction of a new residence, the following conditions shall apply:

(a) no more than one temporary residence shall be permitted on a lot and the lot shall be not smaller than 0.4ha (0.9884 acres);

(b) the temporary residence may include a modular manufactured home or an existing single family dwelling legally sited on the subject property;

(c) a manufactured home or modular manufactured home that is used for a temporary dwelling shall be sited in conformity with the regulations of this bylaw and the Provincial Health Act and shall not be sited on a permanent foundation with a basement excavation;

(d) the temporary residence shall be removed from the owner's land within 30 days of the end of the period of construction of the new residence except that the temporary residence may be converted to any non-residential use permitted within the applicable zone subject to compliance with all other regulations of the applicable zone with respect to density and the siting, size, and dimensions of the building;

(e) removal of all kitchen and bathroom cabinets, plumbing fixtures, hot water tanks, furnaces, and sewer connections except that some of said facilities may be retained for home occupation and workshop purposes as determined by the building official;

(f) refinishing of the exterior of the building to portray a building intended for the proposed use; and

(g) completion of the conversion within 30 days of the end of the period of construction of the new residence;

(h) a covenant shall be registered pursuant to Section 219 of the Land Title Act to permit the temporary residence during the period of construction and to prohibit the temporary residential use from continuing after the period of construction ends. The covenant shall also include an agreement by the owner to indemnify and save harmless the City against all costs and expenses incurred by the City, in default by the owner, in the conversion, demolition, or removal of the temporary residence, and/or legal costs incurred in pursuing such legal remedies as the City sees fit. The covenant shall be registered as a condition precedent to the issuance of a building permit for the new residence;

(i) a blanket statutory right-of-way shall be granted to the City permitting the City to enter onto the owner's land for the purpose of converting, demolishing, or removing the temporary residence in the event that the owner defaults. The statutory right-of-way plan shall be registered as a condition precedent to the issuance of a building permit for the new residence;

(j) an irrevocable unconditional letter of credit shall be drafted in favour of the City, to be held as security for performance by the owner of his covenants and obligations with respect to the conversion, demolition or removal of the temporary residence. The amount of the letter of credit shall be 1.5 times the estimated cost of conversion, demolition, or removal of the temporary residence, which estimate shall be obtained from a qualified building, demolition, or moving contractor. The letter of credit shall be provided as a condition precedent to the issuance of a

building permit for the new residence. Notwithstanding the above provisions and where a manufactured home is intended to be used as the temporary residence, a letter of credit or certified cheque in the amount of $1,500.00 may be accepted by the Building Official. Where a modular manufactured home is intended to be used as the temporary residence, a letter of credit or certified cheque in the amount of $3,000.00 may be accepted by the building official; and

(k) for the purposes of this section, "period of construction" shall mean the period of time commencing when a building permit is issued for the new residence and ending either one year from the date of issuance of the permit or when a notice of conversion, demolition, or removal is delivered to the owner, whichever event first occurs. The notice of conversion, demolition, or removal of the temporary residence shall be in writing and delivered from the office of the building official of the City.

## PART 30. OFFENCES AND ENFORCEMENT

### Violations

30.1 Without limiting Part 7 of this bylaw, every person who

(a) violates a provision of this bylaw;

(b) permits, suffers or allows any act to be done in violation of any provision of this bylaw; and

(c) neglects to do anything required to be done under any provision of this bylaw;

commits an offence and on summary conviction by a court of competent jurisdiction, the person is subject to a fine of not more than $10,000.00, a term of imprisonment not exceeding three months, or both, in addition to the costs of prosecution. Each day during which a violation, contravention or breach of this bylaw continues is deemed to be a separate offence.

30.2 Every person who fails to comply with any order or notice issued by a building official, or who allows a violation of this bylaw to continue, contravenes this bylaw.

30.3 Every person who commences work requiring a building permit without first obtaining such a permit must, if a Stop Work Order is issued and remains outstanding for 30 days, pay an additional charge as outlined in the City bylaws.

### Deemed Offence

30.4 An owner is deemed to have knowledge of and be liable under this bylaw in respect of any construction on the parcel the owner owns and any change in the use, occupancy or both of a building or structure or part of a building or structure on that parcel.

30.5 No person is deemed liable under Section 30.4 who establishes, on a balance of probabilities, that the construction of change of use or occupancy occurred before they became the owner of the parcel.

30.6 Nothing in Section 30.5 affects

(a) the City's right to require and the owner's obligation to obtain a permit; and

(b) the obligation of the owner to comply with this bylaw.

**Ticketing**

30.7 The offences in the Bylaw Notice Enforcement Bylaw and Municipal Ticketing Information Bylaw are designated for enforcement under Section 264 of the *Community Charter*.

## PART 31. UNSAFE CONDITIONS

31.1 If the supply of electricity or natural gas has been disconnected due to a hazardous or potentially hazardous situation existing in the building or structure or part thereof, the supply of electricity or natural gas to the building or structure shall not be reconnected, the building shall not be occupied until

(a) the owner has applied to the building official for a special safety inspection pursuant to this part and has paid the required fees;

(b) the building, structure or part thereof has been inspected by the building official and, if considered necessary by the building official, by the City Fire Chief for compliance with this bylaw and any other bylaws or Provincial statutes or regulations relating to building, electrical, gas or fire safety;

(c) the owner has obtained permits required to carry out the works necessary to bring the building, structure or part thereof into compliance with the bylaws, statutes, and regulations; and

(d) all of the works referred to in Section 31.1(c) have been completed and the building or structure has been brought into compliance with bylaws, statutes and regulations.

## PART 32. REPEAL

32.1 "City of Penticton Building Bylaw No. 94-45 (1994)" and all amendments thereto are hereby repealed upon adoption of this bylaw.

## PART 33. IN FORCE

33.1 This bylaw comes into force and takes effect on November 1, 2018.

| | | | |
|---|---|---|---|
| READ A FIRST time this | 21 | day of | August, 2018 |
| READ A SECOND time as AMENDED this | | day of | , 2018 |
| READ A THIRD time this | | day of | , 2018 |
| ADOPTED this | | day of | , 2018 |

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: 1855-01
**To:** Peter Weeber, Chief Administrative Officer
**From:** Mitch Moroziuk, General Manager of Infrastructure

**Subject:** **South Okanagan Conservation Fund Grant Letter of Support**

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**Staff Recommendation**

THAT Council provide a letter of support to the Penticton Fly Fishers for a grant application to the South Okanagan Conservation Fund for the detail design of Penticton Creek Reach 3A and 3B.

**Strategic priority objective**

Financial Sustainability Priority:

- Undertaking asset management to ensure the sustainability of municipal infrastructure; and
- Identifying opportunities to increase revenues from non-taxpayer sources.

Environmental Sustainability Priority:

- Ensure the sustainability of the environment and the ecosystems within our community.

**Background**

The South Okanagan Conservation Fund grant application process is now open. This grant is intended to provide local financial support for important projects that will contribute to the conservation of our valuable natural areas. The funds are to support undertaking and administering activities and projects that include, but are not limited to, water, environment, wildlife, land and habitat conservation efforts to protect natural areas within the participating areas of the Regional District of Okanagan-Similkameen. Grant applications must be made by not for profit organizations.

The Penticton Fly Fishers, a key member of the Penticton Creek and Ellis Creek Restoration Committee, are applying for a grant to the South Okanagan Conservation Fund for 100% of the detail design Reach 3A and 3B from the Nanaimo Avenue Bridge to a point 300 m upstream, see Figure 1 and will partner with the City of Penticton on the project. The City of Penticton Grant Writer will prepare the grant application.

A letter of support from Penticton City Council to the Penticton Fly Fishers with respect to their grant application would be a welcome addition to the grant submission package.

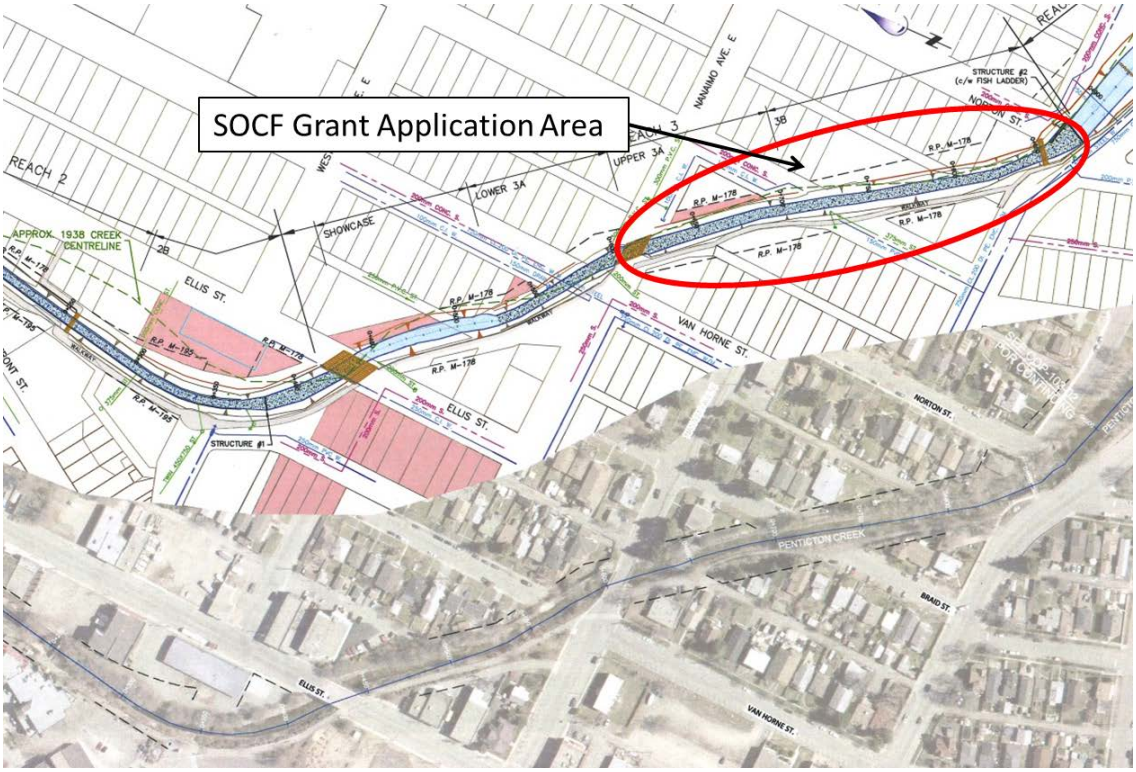



**Figure 1 – SOCF Grant Application Area**

**Financial implication**

The estimated cost of the preparation of the grant application is $2,500. The estimated cost of the Detail Design and Project Management for Reach 3A and 3B is estimated at $760,000. The estimated cost of construction for Reach 3A and 3B is $2,590,000.

**Analysis**

Providing a Letter of Support to the Penticton Fly Fishers for the Grant application to the South Okanagan Conservation Fund for the detail design of Penticton Creek Reach 3A and 3B will aid them in their submission. Should they be successful in their submission the City will save the cost of detail design for these two reaches of creek and will be shovel ready should any other grant applications opportunities present themselves. Should Council not support the initiative of the Penticton Fly Fishers they could elect not to provide a letter of support.

**Alternate recommendations**

Alternative 1 - THAT Council not provide a Letter of Support to the Penticton Fly Fishers for their Grant Application for Penticton Creek Reach 3A and 3B.

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA
General Manager of Infrastructure

Approvals

| CFO | CAO |
| --- | --- |
| JWB | LD for PW |

**The Corporation of the City of Penticton**

**Bylaw No. 2018-04**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-04".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot A District Lot 202 Similkameen Division Yale District Plan 1557, located at 799 Martin Street from RD1 (Duplex Housing) to RM3 (Medium Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

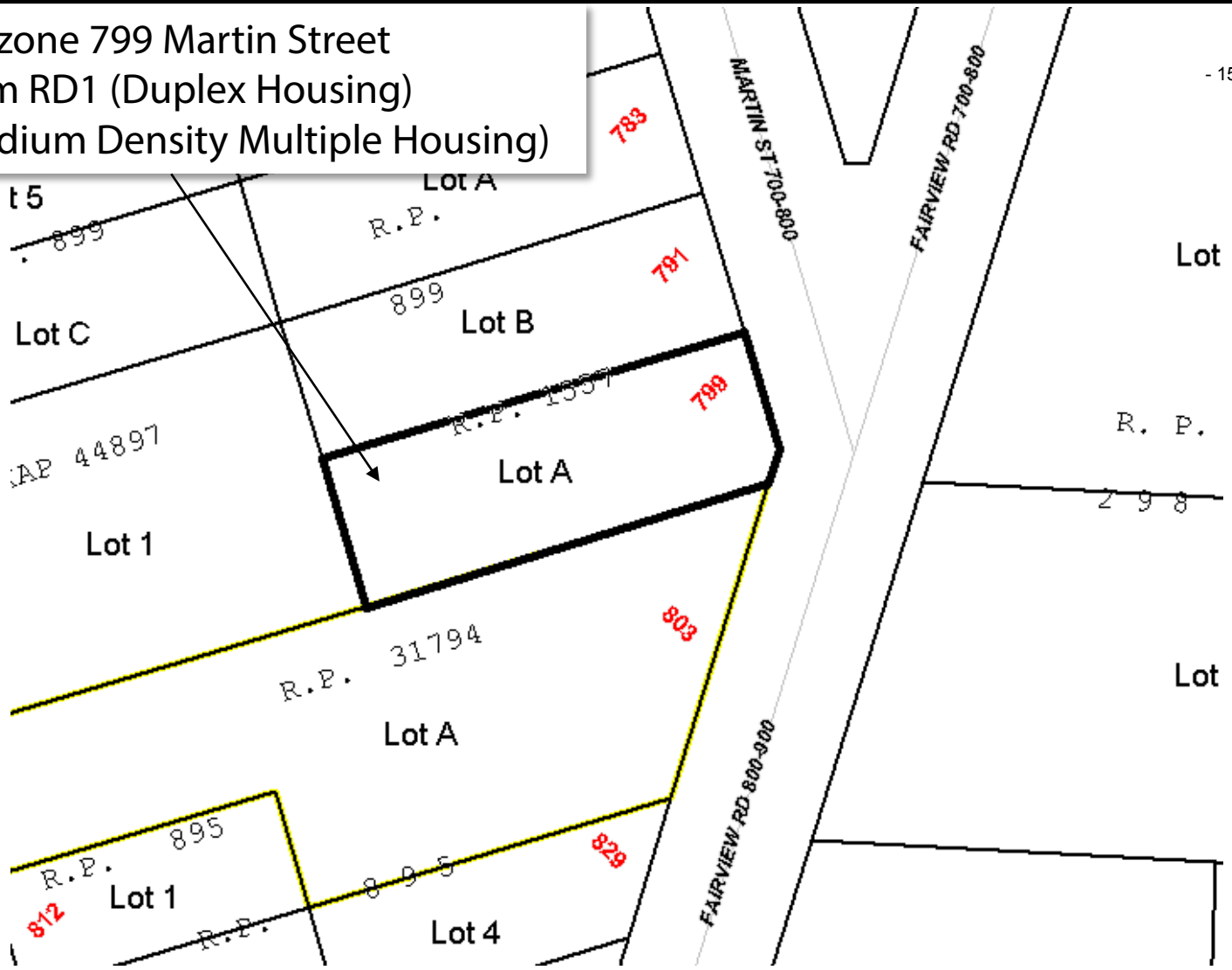
| | | | |
|---|---|---|---|
| READ A FIRST time this | 6 | day of | February, 2018 |
| A PUBLIC HEARING was held this | 20 | day of | February, 2018 |
| READ A SECOND time this | 20 | day of | February, 2018 |
| READ A THIRD time this | 20 | day of | February, 2018 |
| ADOPTED this | | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the 9 day of February, 2018 and the 14 day of February, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Rezone 799 Martin Street
From RD1 (Duplex Housing)
To RM3 (Medium Density Multiple Housing)




**City of Penticton – Schedule 'A'**

**Zoning Amendment Bylaw No. 2018-04**

**Date:** _____ **Corporate Officer:** _____

**City of Penticton**
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

# Development Variance Permit

**Permit Number: DVP PL2017-8121**

Name:
Address:

**Conditions of Permit**

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

   Legal: Lot A District Lot 202 Similkameen Division Yale District Plan 1557
   Civic: 799 Martin Street
   PID: 011-713-232

3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following sections of Zoning Bylaw 2017-08 to allow for the construction of a nine-unit townhouse development.

   - Section 10.9.2.7.i: to reduce the minimum north interior side yard from 4.5m to 3.9m.
   - Section 10.9.2.8: to reduce the minimum rear yard from 6.0m to 4.4m.
   - Section 10.9.4.1: to increase the maximum hard surfacing of a lot from 60% to 71%.

**General Conditions**

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.

5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.

6. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department**.

7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the 20 day of February, 2018.

Issued this _____ day of _____, 2018

_____
Dana Schmidt,
Corporate Officer

**The Corporation of the City of Penticton**

**Bylaw No. 2018-44**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-44".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot A, District Lot 202, Similkameen Division Yale District Plan 899, located at 783 Martin Street from RD1 (Duplex Housing) to RM3 (Medium Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

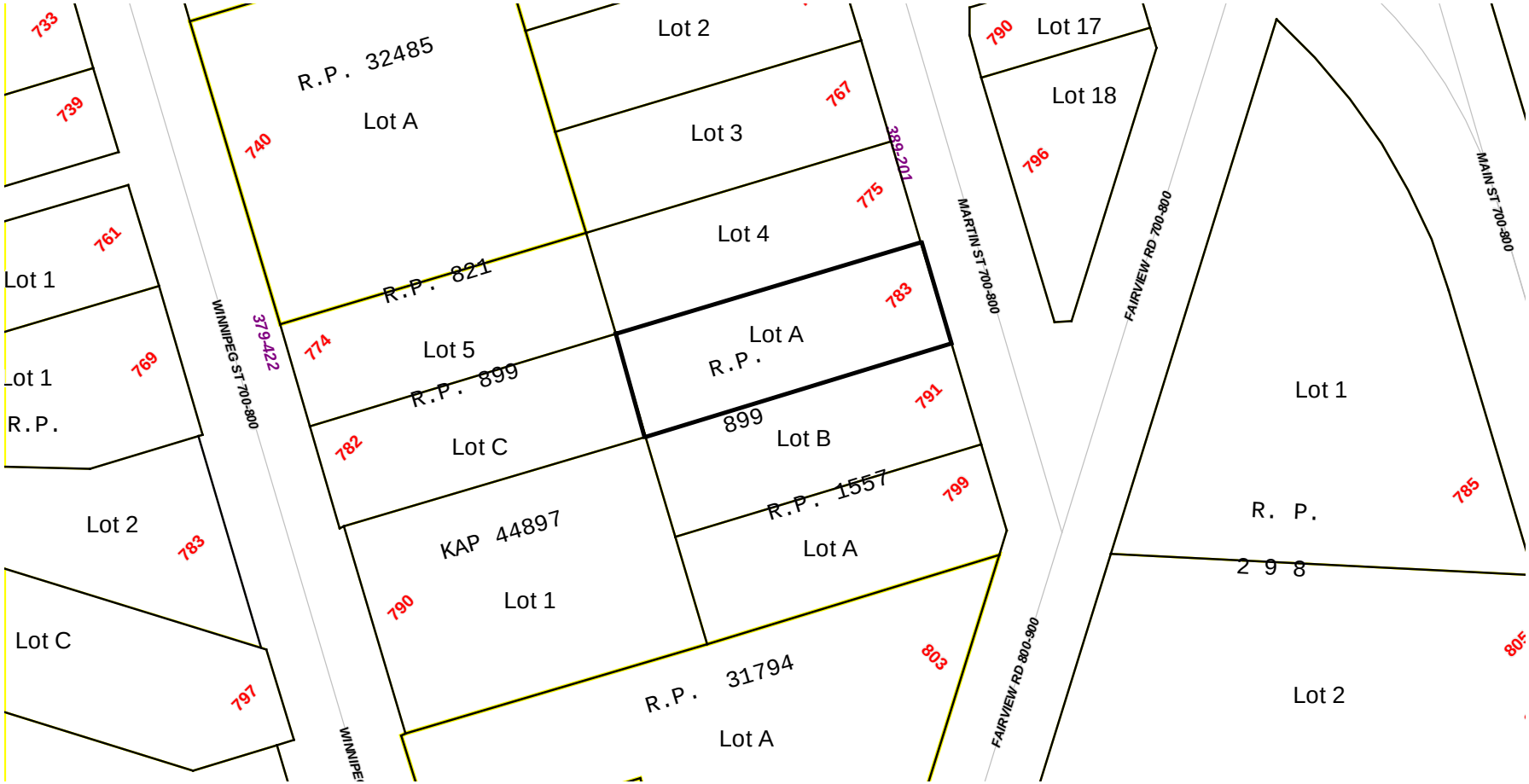
| | | | |
|---|---|---|---|
| READ A FIRST time this | 5 | day of | June, 2018 |
| A PUBLIC HEARING was held this | 19 | day of | June, 2018 |
| READ A SECOND time this | 19 | day of | June, 2018 |
| READ A THIRD time this | 19 | day of | June, 2018 |
| ADOPTED this | | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the 8 day of June, 2018 and the 13 day of June, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

# 783 Martin Street – Rezone
# From RD1 (Duplex Housing) to RM3 (Medium Density Multiple Housing)




**City of Penticton – Schedule 'A'**

**Zoning Amendment Bylaw No. 2018-44**

**Date:** _____ **Corporate Officer:** _____

**City of Penticton**
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

# Development Variance Permit

**Permit Number: DVP PL2018-8240**

Name:
Address:

**Conditions of Permit**

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

   Legal: Lot A District Lot 202 Similkameen Division Yale District Plan 899
   Civic: 783 Martin Street
   PID: 011-015-253

3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following sections of Zoning Bylaw 2017-08 to allow for the construction of a seven-unit townhouse development.

   - Table 5.2: to decrease the minimum width of a landscape buffer abutting a residential zone from 3.0m to 0.5m.
   - Section 10.9.2.8: to reduce the minimum rear yard from 6.0m to 5.0m.
   - Section 10.9.4.1: to increase the maximum hard surfacing of a lot from 60% to 81%.

**General Conditions**

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.

5. In accordance with Section 504 of the *Local Government Act,* if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.

6. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department**.

7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the __ day of _____, 2018.

Issued this _____ day of _____, 2018

_____
Dana Schmidt,
Corporate Officer

**The Corporation of the City of Penticton**

**Bylaw No. 2018-64**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-64".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone that part of Lot 24, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District Plan 932, located at 337 Hastings Avenue, as shown on Schedule 'A', from R2 (Small Lot Residential) to RD2 (Duplex Housing: Lane).

2.2 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone that part of Lot 24, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District Plan 932, located at 337 Hastings Avenue, as shown on Schedule 'A', from R2 (Small Lot Residential) to RM2 (Low Density Multiple Housing) and by adding the following site specific provisions to section 10.8.4:

.3 "In the case of Lot 24, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan 932, located at 337 Hastings Avenue, the following regulations shall apply:

- Minimum lot width of 14.6m;
- Maximum Density, Floor Area Ratio (FAR) of 0.90;
- Maximum Lot Coverage of 48%;
- Maximum Building Height of 7.0m;
- Minimum Interior Side Yard of 1.6m; and
- Waive the requirement for one (1) visitor parking space.

2.3 Schedule 'A' attached hereto forms part of this bylaw.

| | | | |
|---|---|---|---|
| READ A FIRST time this | 4 | day of | September, 2018 |
| A PUBLIC HEARING was held this | 18 | day of | September, 2018 |
| READ A SECOND time this | | day of | , 2018 |
| READ A THIRD time this | | day of | , 2018 |
| RECEIVED the approval of the Ministry of Transportation on the | | day of | , 2018 |
| ADOPTED this | | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the 7 day of September, 2018 and the 12 day of September, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Approved pursuant to section 52(3)(a) of the *Transportation Act*
this _____ day of _____, 2018

_____
for Minister of Transportation & Infrastructure

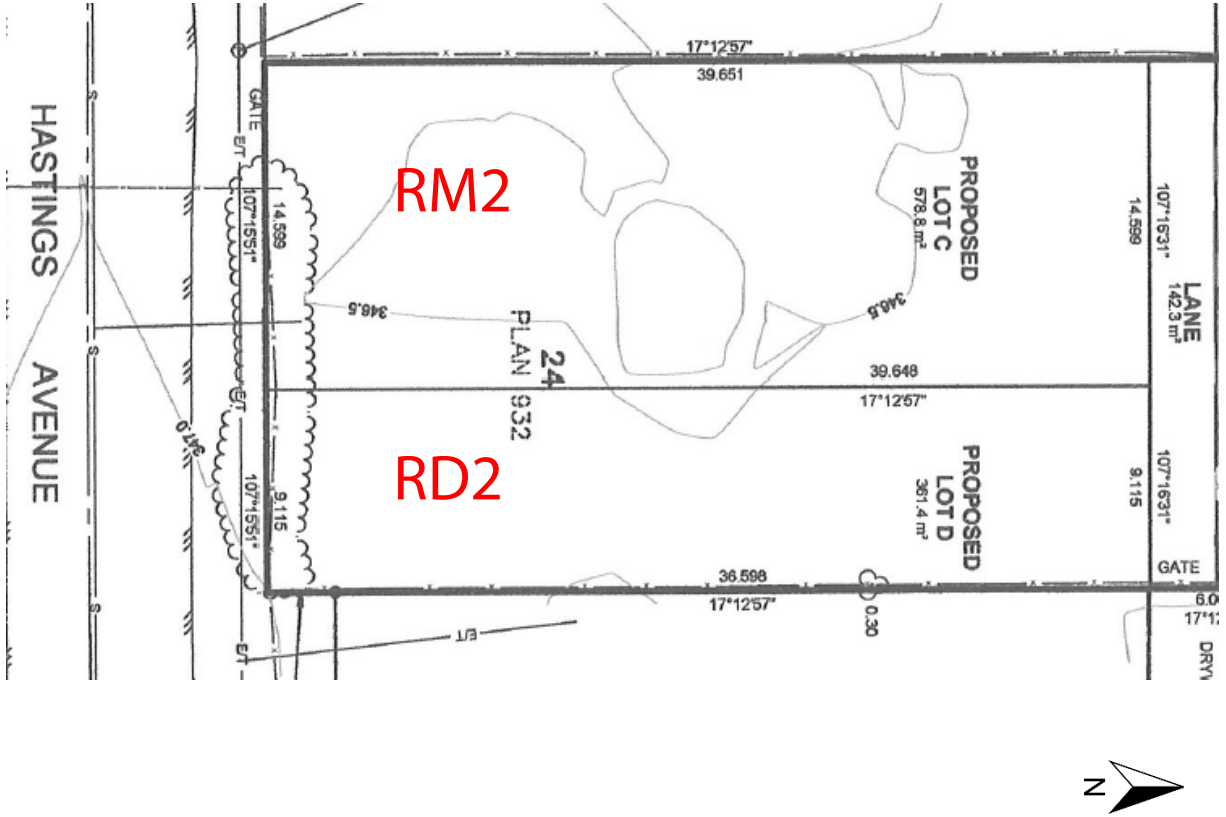
Dana Schmidt, Corporate Officer

# 337 Hastings Avenue

Rezone a portion of the lot from R2 (Small Lot Residential) to RM2 (Low Density Multiple Housing) and add the following site specific provisions to the RM2 zone:

- Minimum lot width of 14.6m;
- Floor Area Ratio (FAR) of 0.90;
- Maximum Lot Coverage of 48%;
- Maximum Building Height of 7.0m;
- Minimum Interior Side Yard of 1.6m; and
- Waive the requirement for one (1) visitor parking space, and

Rezone a portion of the lot from R2 (Small Lot Residential) to RD2 (Duplex: Housing Lane)




**City of Penticton – Schedule 'A'**

**Zoning Amendment Bylaw No. 2018-64**

**Date:** _____ **Corporate Officer:** _____

**The Corporation of the City of Penticton**

**Bylaw No. 2018-65**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-65".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot 9, Block 125 District Lot 2, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1175, Except Plan B4668, located at 290 Bassett Street, from R2 (Small Lot Residential) to RM2 (Low Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

| | | | |
|---|---|---|---|
| READ A FIRST time this | 4 | day of | September, 2018 |
| A PUBLIC HEARING was held this | 18 | day of | September, 2018 |
| READ A SECOND time this | | day of | , 2018 |
| READ A THIRD time this | | day of | , 2018 |
| RECEIVED the approval of the Ministry of Transportation on the | | day of | , 2018 |
| ADOPTED this | | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the 7 day of September, 2018 and the12 day of September, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Approved pursuant to section 52(3)(a) of the *Transportation Act*
this _____ day of _____, 2018

_____
for Minister of Transportation & Infrastructure

Dana Schmidt, Corporate Officer

Rezone 290 Bassett St. from R2 (Small Lot Residential) to RM2 (Low Density Multiple Housing)




**City of Penticton – Schedule 'A'**

**Zoning Amendment Bylaw No. 2018-65**

**Date:** _____ **Corporate Officer:** _____

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: PRJ2018-188
**To:** Peter Weeber, Chief Administrative Officer
**From:** Nicole Capewell, Planner 1
**Address:** 441 Heales Avenue
**Subject:** **Development Variance Permit PL2018-8345**

---

## Staff Recommendation

THAT Council approve "Development Variance Permit PL2018-8345" for Lot 23, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale Lytton) District, Plan 1138, located at 441 Heales Avenue, a permit to vary the following sections of Zoning Bylaw No. 2017-08:

- Section 10.6.2.3: to increase the maximum lot coverage from 40% to 43%; and
- Section 10.6.2.7.i: to reduce the minimum interior side yards from 1.5m to 1.2m.

AND THAT staff be directed to issue "DVP PL2018-8345".

## Strategic Objective

The subject application demonstrates that it is aligned with the Council Priorities of Community Building, Economic Vitality and Environmental Sustainability. The application represents smart growth by increasing density in areas where existing services are in place. This proposal is a form of urban infill, which is aligned with the City's Official Community Plan. The proposal is also a demonstration of creating more sustainable forms of development.

## Background

The applicants are proposing to construct a passive house at their property located at 441 Heales Avenue. A passive house is a building that is designed to consume less heating and cooling energy than conventional buildings. Due to the increased thickness of exterior walls required to build these homes more efficiently, there is often less livable floor space within the building. As such, the applicants have requested a variance to allow a slight increase in the maximum lot coverage, as well as lessened side yard setbacks.

The subject property (Attachment 'B') is zoned RD2 (Duplex Housing: Lane) and is designated in the City's Official Community Plan as MFLD (Multi-Family Low Density). Photos of the site are included as Attachment 'D'. The subject property is approximately 283 $m^2$ (3,050 sq. ft.) in area. The existing house was constructed in the early 1900s and is intended to be demolished prior to construction of the new house.

The property is located within a neighbourhood undergoing transition. Much of Heales Avenue contains single family dwellings, however the City's OCP designation envisions a slightly higher density. The neighbourhood is located within walking distance of the downtown core, Okanagan Lake, elementary schools, the community center and many other desired amenities. The proposed development will consist of a single family dwelling with a secondary suite.

**Proposal**

The applicant is proposing to construct a single family dwelling with a building footprint of 125.8m$^2$ (1,354 sq. ft.). The proposed dwelling will be constructed as a Passive House. Due to the thicker walls required to construct a Passive House, the applicant is requesting a Development Variance Permit to vary the following sections of Zoning Bylaw No. 2017-08:

- Section 10.6.2.3: to increase the maximum lot coverage from 40% to 43%; and
- Section 10.6.2.7.i: to reduce the minimum interior side yard from 1.5m to 1.2m.

**Financial Implication**

This application does not pose any financial implications to the City. All development costs are the responsibility of the developer.

**Technical Review**

This application was reviewed by the City's Technical Planning Committee (TPC). No significant issues arose in the process. Servicing and building code requirements have been identified and will be addressed as part of the building permit process. The property owner will be required to upgrade a portion of the lane located directly behind the property. It is the property owner's responsibility to provide services and/or upgrade existing services where required.

**Development Statistics**

The following table outlines the proposed development statistics on the plans submitted with the application:

| | Requirement Carriage House R1 Zone | Provided on Plans |
|---|---|---|
| **Maximum Lot Coverage:** | 40% | 43% - **Variance Requested** |
| **Vehicle Parking:** | 3 | 4 |
| **Required Setbacks**<br>Front Yard (Heales Avenue):<br>Interior Side Yards:<br>Rear Yard: | <br>4.5 m<br>1.5 m<br>6.0 m | <br>4.5 m<br>1.2 m - **Variance Requested**<br>6.0 m |
| **Maximum Building Height** | 10.5 m | 7.3 m |
| **Other Information:** | • The proposed single family dwelling will contain a secondary suite, which is permitted.<br>• The property is located within the Downtown Multiple Family Development Permit Area, however a single family dwellings are not required to attain a development permit. | |

**Analysis**

Development Variance Permit

*Approve Development Variance Permit*

Both of the requested variances can be attributed to the applicant's desire to construct a passive house and relatively small size of the lot. Passive houses are designed to be low-energy buildings. One of the key components of constructing a passive house, is the requirement for thicker exterior walls, for better performing energy efficiency. The applicant has identified that they will be using exterior walls that are up to 14 inches in width. This is approximately twice the width of a standard exterior wall for a single family dwelling.

Utilizing thicker walls during construction can result in an overall loss to the available living space inside the home, especially given the size of the lot. As such, the applicant has requested a variance to reduce the side yard setbacks from 1.5m to 1.2m. This variance will allow for a slightly larger building envelope on the property. Additionally, the applicant has requested an increase to the maximum lot coverage from 40% to 43% to also accommodate the increased building envelope.

The total area of living space that will be created within the proposed passive house is 200m2 (2,153 sq. ft.), not including the garage. This area includes a one-bedroom secondary suite (395 sq.ft.), located at the rear of the building. The building will also allow for a single car garage (300 sq.ft.). The remainder of the parking is surface parking. There are a total of 4 parking spots identified on the plans, with all of the parking coming from the lane.

The directly adjacent neighbours of the subject property would be those most impacted by the proposed development. Impacts associated with increasing the building envelope through reduced setbacks and increased lot coverage can include:

- Reduced privacy of directly adjacent neighbours; and
- Potential for a tall building wall very close to property line.

The design that has been proposed mitigates the impact on the adjacent neighbours by not being built to the full potential of the zone. The height of the proposed building will be 7.6m (25 ft.), which is well under the maximum 10.5m (34 ft.) height permitted in the RD2 (Duplex Housing: Lane) zone.

On the second floor of the building, there is one deck being proposed, which will be located at the rear of the building and face directly towards the lane (thus attempting to minimize overlook). This deck will be utilized by the occupant(s) of the secondary suite. The main dwelling also has a patio area on the ground floor located within the front yard setback of the property. This design of outdoor amenity space located on the ground level will limit the overlook into the neighbouring properties.

There is a mix of housing within the surrounding neighbourhood along Heales Avenue. There are single family homes, which were constructed in the earlier 1900's, as well as newer single and multi-family developments (Figure 2 – Subject Property). Much of the newer builds have been built to a higher lot coverage than the older single family homes. Newer homes utilize very close to the maximum 40% lot coverage permitted in the RD2 zone. While the older single family houses use lesser, around 15-20% of the lot area. As Heales Avenue develops, it is likely that properties will construct around the 40% permitted lot coverage, to best utilize the lot area.

In conclusion, the proposed variances are minimal in nature, and do not negatively impact the direct neighbours. Approval will create a more livable space for the ultimate residents of the house and create a house that is representative of energy efficient construction design.

Given the above, staff find the variance request reasonable and recommend that Council support the application.

*Deny Development Variance Permit*

Council may consider that the proposed variance will negatively affect the neighbourhood, in particular, the adjacent neighbours. Council may decide that the applicant should reduce the size of the proposed building to meet the setbacks and lot coverage requirements. If this is the case, Council should deny the variance.

**Alternate Recommendations**

1. THAT Council support "Development Variance Permit 2018-8345" with conditions.
2. THAT "Development Variance Permit 2018-8345" be referred back to staff.

**Attachments**

| | |
|---|---|
| Attachment A: | Subject Property Location Map |
| Attachment B: | Zoning Map of Subject Property |
| Attachment C: | Official Community Plan Map of Subject Property |
| Attachment D: | Images of Subject Property |
| Attachment E: | Letter of Intent |
| Attachment F: | Proposed Site Plan |
| Attachment G: | Proposed Floor Plans |
| Attachment H: | Proposed Building Elevations |
| Attachment I: | Proposed Renderings |
| Attachment J: | Draft Development Variance Permit (DVP) |

Respectfully submitted

Nicole Capewell
Planner 1

Approvals

| Director Development Services | Chief Administrative Officer |
|---|---|
| AH | LD for PW |

Attachment A – Subject Property Location Map

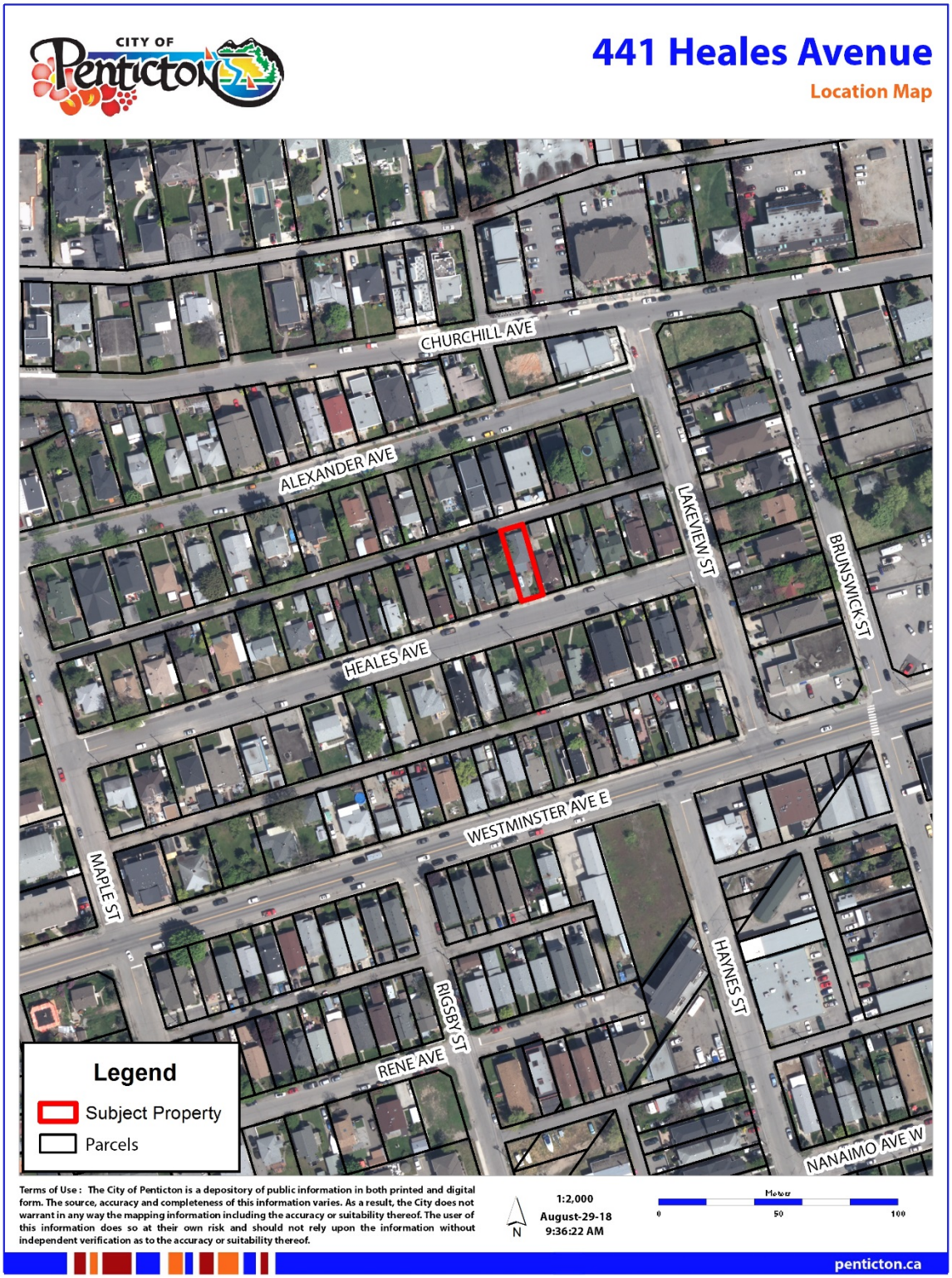



Figure 1 – Subject Property Highlighted in Red




Figure 2 – Subject Property Highlighted in Red

Attachment B – Zoning Map of Subject Property




Figure 3 – Subject Property Currently Zoned RD2 (Duplex Housing: Lane)

Attachment C – Official Community Plan Map of Subject Property

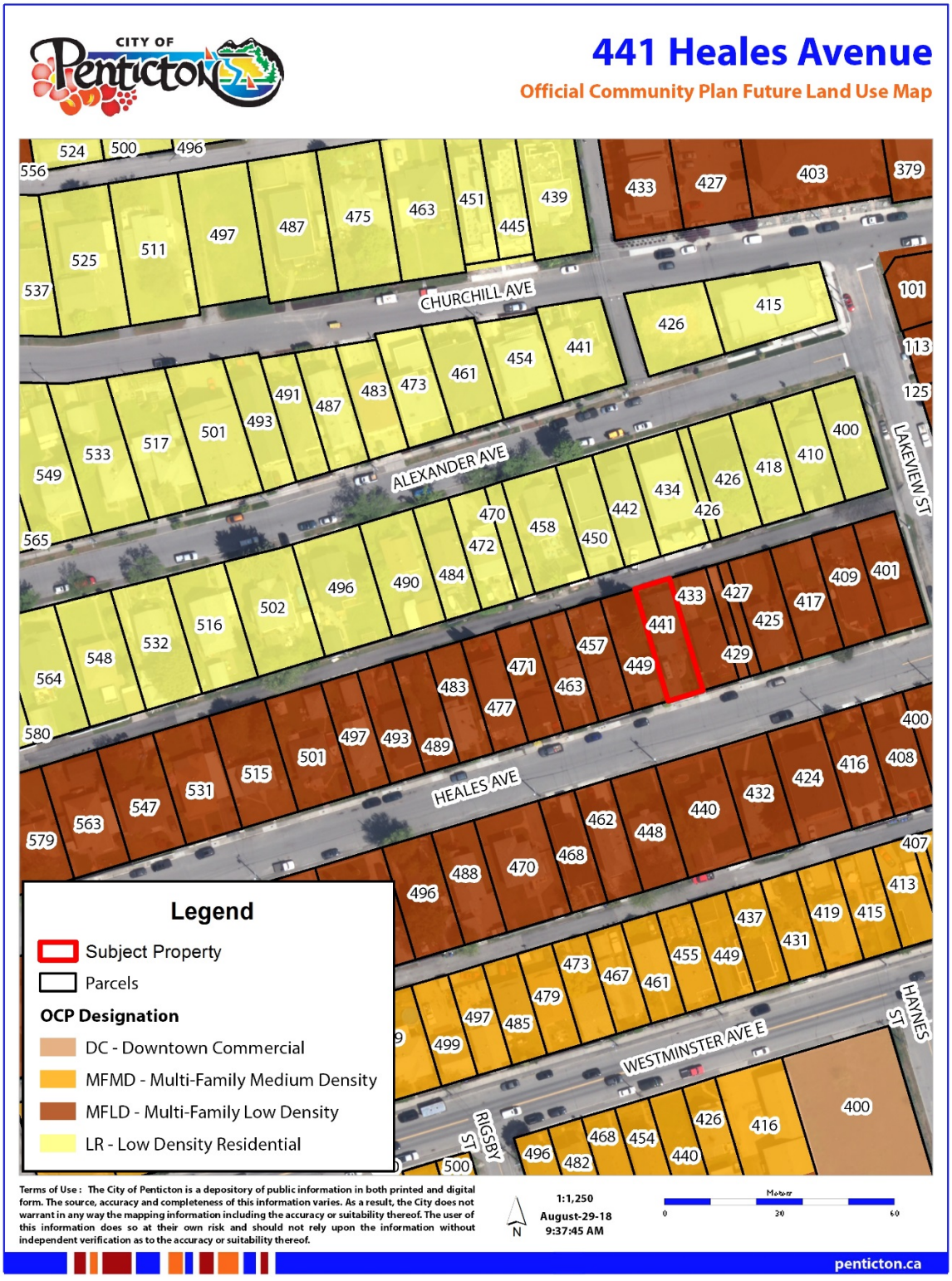



Figure 4 – Subject Property Currently Designated as MFLD (Multi-Family Low Density) within Official Community Plan

Attachment D – Images of Subject Property

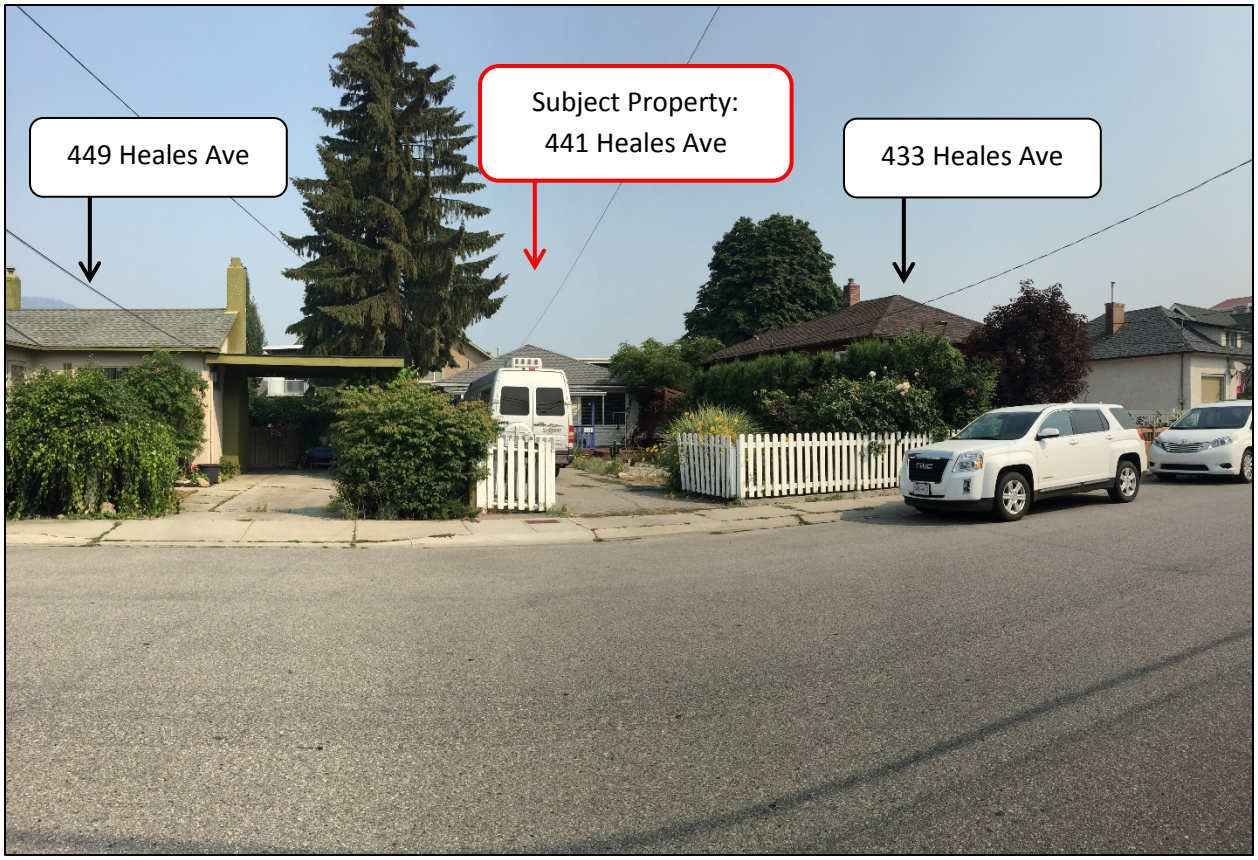



Figure 5 – Looking toward front of 441 Heales Avenue from the street




Figure 6 – Looking down east property line of 441 Heales Avenue from the street




Figure 7 – Looking toward front of 441 Heales Avenue from the street




Figure 8 – Looking down west property line of 441 Heales Avenue from the street

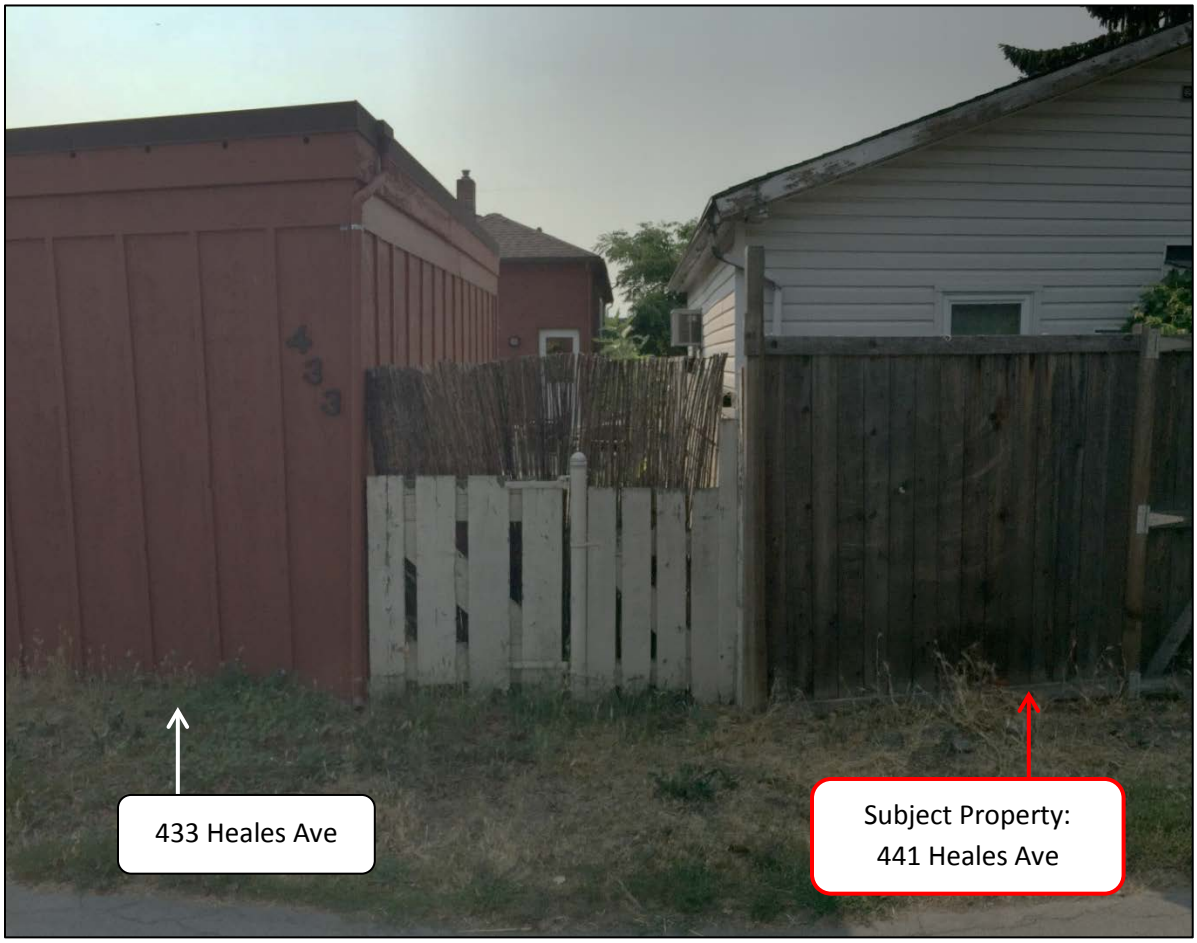



Figure 9 – Looking down east property line of 441 Heales Avenue from the lane




Figure 10 – Looking down west property line of 441 Heales Avenue from the lane

Attachment E – Letter of Intent

**Michaela and Stuart Wooldridge**

441 Heales Avenue, Penticton, BC, V2A 1G5
stuart@orcastrategy.com 604-817-0534

July 23, 2018

City of Penticton
171 Main Street
Penticton, BC V2A 5A9
VIA EMAIL

RE: LETTER OF INTENT

Dear Council and Staff:

It is our intention to re-build a residence on our property at 441 Heales Avenue which currently holds a non-conforming old-timer bungalow on an RD2 zoned small lot.

Having worked for several months with NIDO Design, our plans involve building a 2-storey single family house with secondary suite over an attached garage. The house will be built as a high-performance home based on passive house design principles that include 14-inch exterior walls. We are seeking the following variances:

- 1.2 metre side-yard set-backs
- 43% lot coverage

These variances will allow the home to achieve appropriate net square footage without impacting front and rear set-backs.

Thank you for your consideration,

***"Stuart and Michaela Wooldridge"***

St

**Figure 11 – Letter of Intent**

Attachment F – Proposed Site Plan

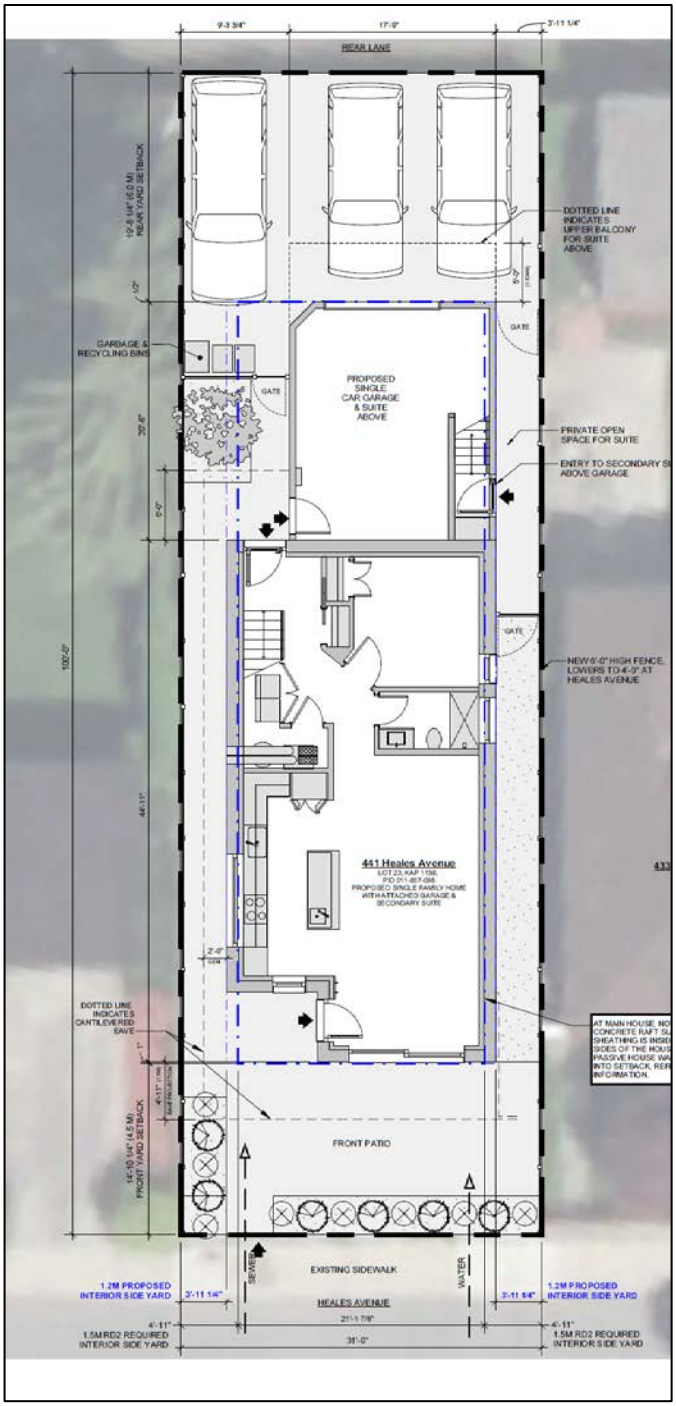



Figure 12 – Proposed Site Plan

Attachment G – Proposed Floor Plans

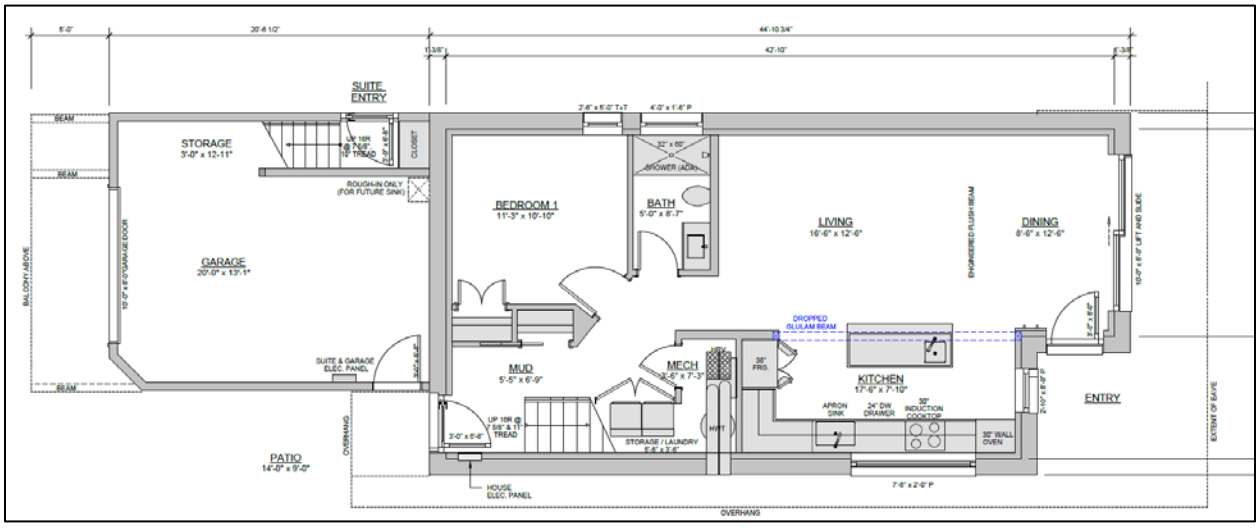



Figure 13 – Proposed Main Floor Plan

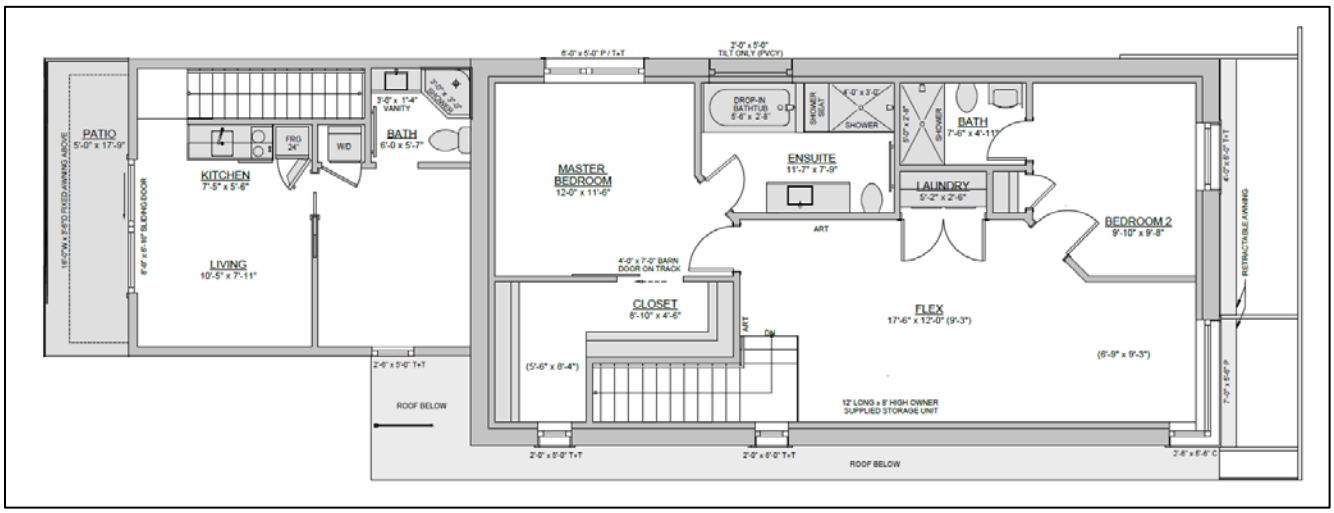



Figure 14 – Proposed Second Floor Plan

# Attachment H – Proposed Building Elevations



Figure 15 – Proposed East Elevation



Figure 16 – Proposed North Elevation



Figure 17 – Proposed South Elevation

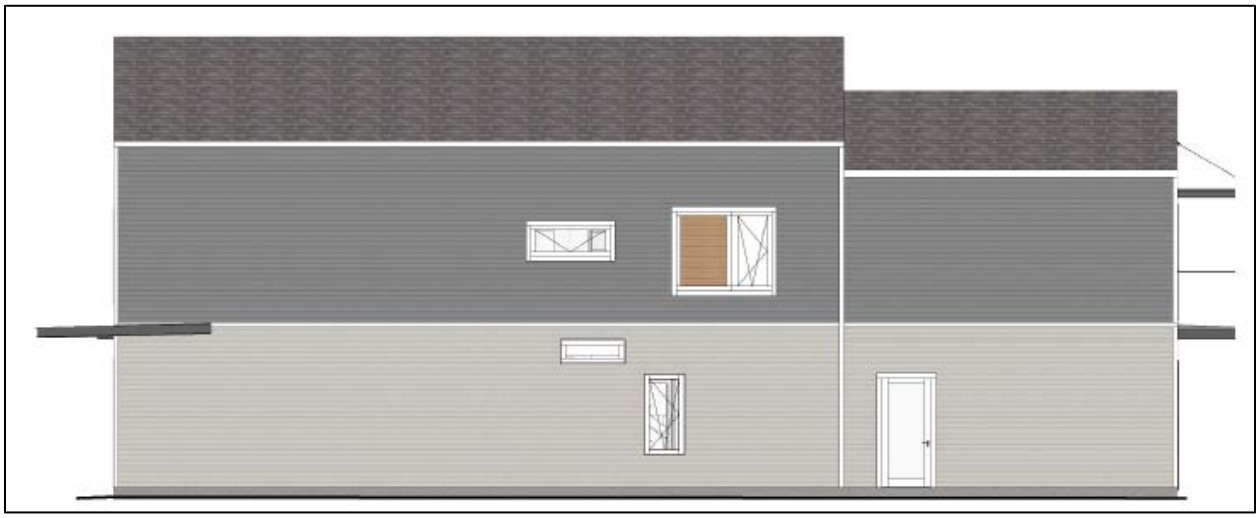


Figure 18 – Proposed West Elevation

Attachment I – Proposed Renderings













Attachment J – Draft Development Variance Permit (DVP)

**City of Penticton**
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

# Development Variance Permit

**Permit Number: DVP PL2018-8345**

Owner Name
Owner Address

**Conditions of Permit**

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

   Legal: Lot 23 District Lot 4 Group 7 Similkameen Division Yale (Formerly Yale Lytton) District Plan 1138
   Civic: 441 Heales Avenue
   PID: 011-837-098

3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following sections of Zoning Bylaw 2017-08 to allow for the construction of a single family dwelling:

   a. Section 10.6.2.3: to increase the maximum lot coverage from 40% to 43%; and
   b. Section 10.6.2.7.i: to reduce the minimum interior side yard from 1.5m to 1.2m.

**General Conditions**

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule 'A'.

5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.

6. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.**

7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

DRAFT

Authorized by City Council, the _____ day of _____2018

Issued this _____ day of _____, 2018

_____

Dana Schmidt,
Corporate Officer

DRAFT

Page 2 of 2

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: PRJ2018-201
**To:** Peter Weeber, Chief Administrative Officer
**From:** Nicole Capewell, Planner 1
**Address:** 594 & 600 Winnipeg Street
**Subject:** **Development Permit PL2018-8367**

---

### Staff Recommendation

THAT Council approve "Development Permit PL2018-8367", a permit for the construction of a four storey, 62-unit congregate housing building for the consolidated property of Parcel A (DD 111952F) of Lot 8, Block 17 District Lot 202, Similkameen Division Yale District (594 Winnipeg Street), and of District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan 269; and Parcel B (DD180509F) of Lot 8, Block 17, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District and of District Lot 202 Similkameen Division Yale District Plan 269 (600 Winnipeg Street);

AND THAT staff are directed to issue DP PL2018-8367 upon completion of the lot consolidation.

### Strategic Objective

The subject proposal meets the Council priority of Social Development and Community Building, by supporting and advocating for affordable housing, including housing for those at risk of homelessness and persons dealing with mental health and addictions.

### Background

At their December 19, 2017 regular meeting, City Council supported entering into a memorandum of understanding (MOU) with BC Housing for the development of supported housing in Penticton. This housing is part of the province's rapid response to homelessness program, which intends to build 2,000 units of supported housing in the province. Entering into the MOU signified the City's willingness to work with the province "in a cooperative and collaborative manner" on creating this type of housing.

BC Housing has recently purchased the subject properties with the intent of demolishing the two single family houses and constructing 62 units of supportive housing, in a four storey congregate housing building. This building is unique in that it is intended to be factory built and assembled on site. This will be the first such building constructed in Penticton. Supports available on-site will include counselling, 24/7 staffing, meals and other services intended to give opportunities for the residents to transition to more stable and permanent housing options.

The subject property (Attachment 'A') is currently zoned RM3 (Medium Density Multiple Housing) and is designated for high density residential by the City's Official Community Plan (OCP). The zoning was put in place through a development application for an 18-unit apartment building in 1994. The proposal submitted herein meets all regulations of the RM3 zone and does not require any variances. The subject

property is located within the High Density Development Permit Area, and requires approval prior to applying for a Building Permit.

**Proposal**

The applicant is proposing to construct a four storey, 62-unit congregate housing building at the consolidated parcel of 594 Winnipeg Street and 600 Winnipeg Street. The applicant is requesting the issuance of a Development Permit, which will allow the construction of the proposed building at this location.

**Financial Implication**

As this project is intended to provide housing for those at risk of homelessness, BC Housing is eligible for a Development Cost Charges (DCC) waiver (Development Cost Charges Reduction Bylaw No 2010-11, Section 5a). The DCC Reduction Bylaw allows for the opportunity to waive 100% of DCC's for eligible supportive housing developments. The development must involve a partnership with BC Housing and:

1. limits the form of the tenure of the housing units to rental tenure,
2. requires the initial monthly rate is less than the median market rent levels (and limits the rate of increase of the monthly rate),
3. restricts occupancy of the units to persons at risk of homelessness and support services providers, and
4. is valid for a period of not less than 20 years.

Without the waiver, the DCC's would be approximately $12,830.00.

**Technical Review**

This application was reviewed by the City's Technical Planning Committee. No extraordinary servicing or technical issues were identified as part of this review. The developers will be responsible for all standard costs of the project, including servicing of the new building, minor frontage improvements and all building permit and other applicable fees.

The following table outlines the proposed development statistics on the plans submitted with the rezoning application:

| | Requirement RM3 Zone | Provided on Plans |
|---|---|---|
| **Minimum Lot Width:** | 25 m | 36.45 m |
| **Minimum Lot Area:** | 1400 $m^2$ | 2023 $m^2$ |
| **Maximum Lot Coverage:** | 50% | 41% |
| **Maximum Density:** | 1.6 Floor Area Ratio (FAR) | 1.45 Floor Area Ratio (FAR) |
| **Maximum Hard Surfacing:** | 60% | 59% |
| **Vehicle Parking:** | 12<br>*(1 per 5 beds)* | 12<br>*3 small car stalls (which is 25% of the required stalls)* |

| | | |
|---|---|---|
| **Required Setbacks**<br>Front Yard (Winnipeg St):<br>Interior Side Yard (north):<br>Interior Side Yard (south):<br>Rear Yard (east): | <br>3.0 m<br>4.5 m<br>4.5 m<br>6.0 m | <br>3.0 m<br>12.4 m<br>4.5 m<br>11.5 m |
| **Maximum Building Height** | 24 m | 15.25 m |
| **Other information** | The proposed development meets the Zoning Bylaw, and requires no variances.<br>The subject property is within the High Density Development Permit Area. | |

**Public Consultation**

BC Housing, in conjunction with Ask Wellness, who is intended to be the operator of the building, hosted an open house on September 10, 2018, at Victory Church at 352 Winnipeg Street to introduce the proposed project to the surrounding neighbourhood. In addition to BC housing and Ask Wellness, representatives from the RCMP, local not-for profit housing groups and city Staff were in attendance to provide information and answer questions.

The majority of those who attended the open house were residents of the area. There was a mixed response from those who attended, while many were supportive of providing housing to those in need, residents raised concerns with the proposed development including:

- limited availability of parking proposed,
- the number of units proposed,
- concern as to what would occur if funding was lessened or removed,
- concern that the building is a too large, without enough variation to the façade (although the building elevations shown were not the most up-to-date – see building analysis below),
- security of their property near the proposed development.

**Legislative authority for development permit issuance**

The authority to create development permit areas and establish guidelines for development within those areas is outlined in the Local Government Act. The High Density Residential DPA was created to control form and character of residential development. Section 490(2) of the *Act* states that the authority to issue a permit must only be exercised in accordance with the applicable guidelines intended for the area.

**Analysis**

*Support Development Permit*

The subject building is intended to be a factory built modular construction, but has been designed to fit within the location that it is intended for. The scale of the building at four storeys is slightly larger than the directly adjacent properties, which are two storey buildings. The OCP, however, designates much of this area for high density in the Future Land Use (Attachment 'C'), which envisions buildings within the 4-8 storey range. The directly adjacent buildings are institutional (church buildings), and do not require multi-storey buildings. In the surrounding neighbourhood, there is a mix of single family and multi-family residential

buildings ranging from single storey to six storeys (Ashley's Dream and the Tower Apartments) located on Winnipeg Street.

For lands within a development permit area (DPA), any proposed developments are reviewed against the applicable DPA guidelines contained in the Official Community Plan. In this case, the lands at 594 and 600 Winnipeg Street are located within the High Density DPA. The High Density DPA objective is to preserve and enhance successful and valued elements of the community's physical structure and to introduce new elements considered appropriate to the development and maintenance of:

1. A high standard of livability;
2. A high standard of development;
3. A high quality public realm; and
4. A special Penticton character.

As this building is within the High Density Development Permit Area (DPA), the building and site plan have been designed to meet these guidelines. The High Density DPA places an emphasis on building scale and form, parking design, open space, landscaping, and refuse, recycling and service areas. The DPA guidelines set a high standard for development within this DPA.

In general, the proposed design meets the DPA guidelines. The following is a brief summary of how the development meets the High Density DPA guidelines. A thorough analysis of how the proposal meets these guidelines can be found as Attachment 'F' (Development Permit Analysis).

1. Building Scale and Form
    a. The building has been designed at an appropriate scale for the subject properties. There are developments of similar height in the surrounding area.
    b. The front of the building has been located close to the front property line to create a connection to the public right of way. This front entrance has also been incorporated into the overall site plan and landscaping plan.
    c. The front of the building enhances the pedestrian environment through open areas and landscaping. The main entrance to the building has been designed at the rear of the property to minimize loitering along the public right of way.
2. Parking
    a. The proposed site design places parking along the side of the building and incorporates landscaping throughout to soften the presence of a large number of vehicles.
    b. The site design incorporates a variety of materials for the parking and drive areas. The drive aisle is proposed as asphalt, which will assist in reducing dust and gravel. Parking areas are designed with permeable pavers to reducing hard surfacing on the site.
3. Open Space
    a. Given the intended use of the site, the design has focused on incorporating Crime Prevention Through Environmental Design (CPTED) principles.
    b. There is adequate amenity space located on the site for the intended residents. This includes a dog run, gazebo, seating area and bike and scooter storage.
4. Landscaping
    a. The site has been designed to incorporate a variety of landscaping materials throughout the site, and into the City boulevard. There will be street trees installed along the boulevard area to match the other areas of Winnipeg Street.
    b. There are a variety of tree and plant species on site. There is also a 3.0m landscaping buffer along the front property line to improve the appearance of the lot from the public street.

5. Refuse, Recycling and Service Areas
    a. The refuse and recycling area on site has been placed in a location to be both convenient for use and access, as well to not pose a nuisance to the public and residents of the development.
    b. There is adequate screening on all sides of the refuse and recycling area, which will ensure it is out of public view from the right of way.

The proposal also fits many objectives within the City's Official Community Plan, including:

- Facilitating a variety of housing forms that respond to the diverse needs of the community.
- Facilitating the development of affordable housing.
- Ensuring residential intensification in areas where existing services can accommodate high density.
- Encouraging innovative forms of housing.

Given the above, there is adequate policy provided through the OCP to support the issuance of the subject Development Permit.

The design presented by the applicant has been created with street presentation and architectural interest in mind. The proposed development is supported through OCP Policy to increase density within established areas where servicing exists, and encourage a variety of housing forms for all residents of the City. As such, Staff recommend Council approve the Development Permit.

*Deny Development Permit*

Council may consider that the developer can change the design to more accurately fit within the Development Permit guidelines, or soften the impact of the development on neighbouring properties. The subject property is currently zoned RM3 (Medium Density Multiple Housing), which allows for the proposed use. The applicant is not requiring any variances, as the development was designed to fit the RM3 zone. Therefore, as discussed above in the section on Legislative authority, Council may only review the form and character of the development against the applicable Development Permit Area guidelines. Staff caution Council that it would likely be improper to deny the permit based on any other considerations, such as the intended use of the property given zoning is already in place for the proposed use.

Alternatively, Council could support the issuance of the permit subject to specific design changes that Council feels are appropriate, such as reducing the density. When Council entered into the original MOU with BC Housing, the project was to be 52 units. Council may feel that the project density should be reduced to that unit count.

**Alternate Recommendations**

1. THAT Council support "Development Permit PL2018-8367",
   AND THAT staff are directed to issue the permit subject to the following changes:
    a) A reduction in the unit count to 52 units; and
    b) Design changes to reflect the reduction in unit count to reduce the massing of the building's front façade.

2. THAT Council give support for DP PL2018-8367 with conditions that Council feels are appropriate.
3. THAT Council refer DP PL2018-8367 back to staff to work with the developer.

**Attachments**

| | |
|---|---|
| Attachment A: | Subject Property Location Map |
| Attachment B: | Zoning Map of Subject Property |
| Attachment C: | Official Community Plan Map of Subject Property |
| Attachment D: | Images of Subject Property |
| Attachment E: | Letter of Intent |
| Attachment F: | Development Permit Analysis |
| Attachment G: | Proposed Site Plan |
| Attachment H: | Proposed Landscape Plan |
| Attachment I: | Proposed Floor Plans |
| Attachment J: | Proposed Building Elevations |
| Attachment K: | Proposed Renderings |
| Attachment L: | Draft Development Permit (DP) |

Respectfully submitted,

Nicole Capewell
Planner 1

Approvals

| Director Development Services | Chief Administrative Officer |
|---|---|
| AH | LD for PW |

Attachment A – Subject Property Location Map




Figure 2 – Subject Properties Highlighted in Red

Attachment B – Zoning Map of Subject Property




Figure 3 – Subject Properties Currently Zoned RM3 (Medium Density Multiple Housing)

Attachment C – Official Community Plan Map of Subject Property




Figure 4 – Subject Property Currently Designated as HR (High Density Residential) within Official Community Plan

Attachment D – Images of Subject Property




Figure 5 – Looking toward subject properties from Winnipeg Street




Figure 6 – Looking toward subject properties from Winnipeg Street




Figure 7 – Looking toward subject properties from Winnipeg Street

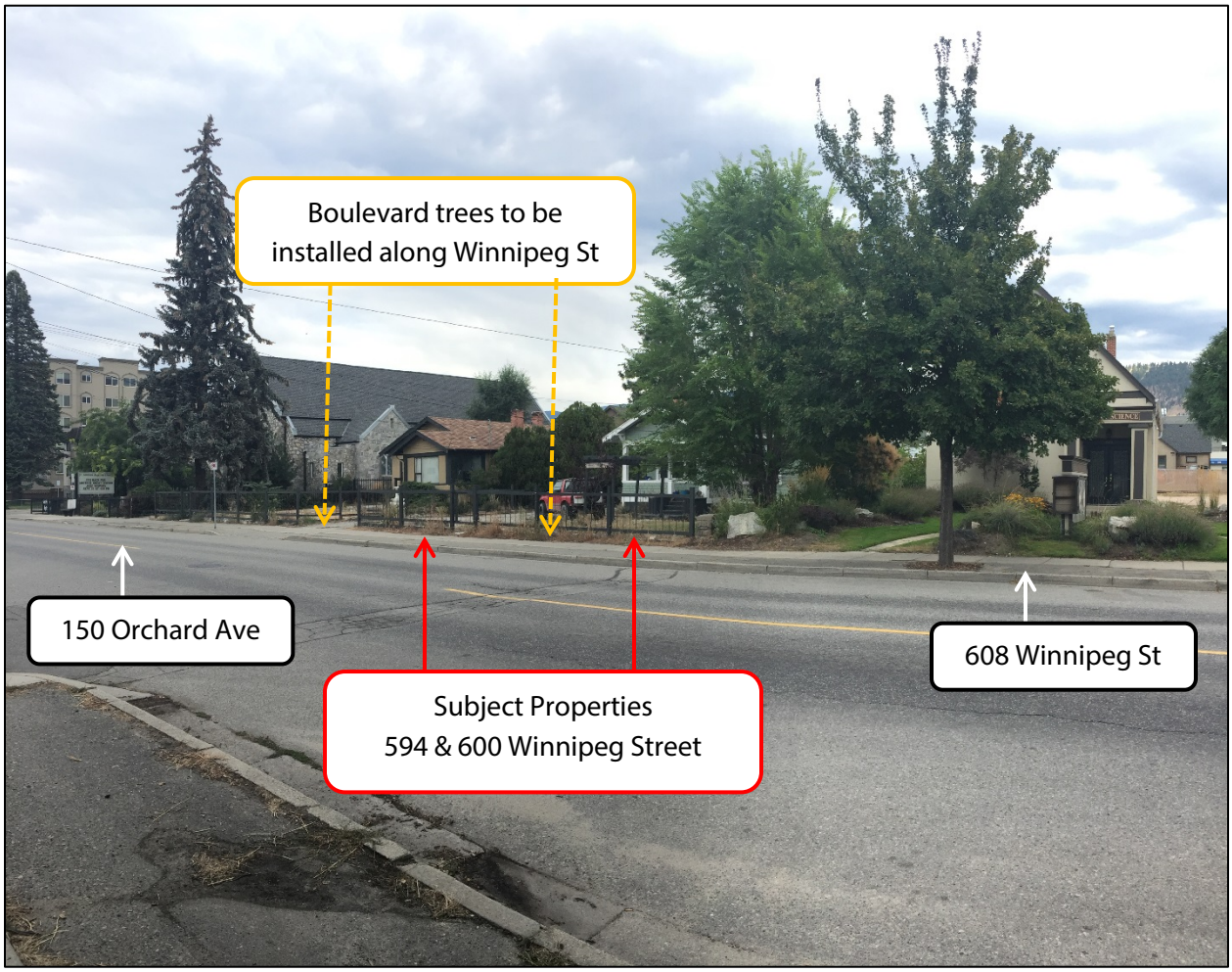



Figure 8 – Looking toward subject properties from Winnipeg Street




Figure 9 – Looking toward south property line from parking area at rear of Christian Science Services (608 Winnipeg St)




Figure 10 – Looking toward rear of subject properties from 579 Martin Street

Attachment E – Letter of Intent

# Letter Of Intent – Penticton Supportive Housing

## 1 Background

### Site & Neighbourhood Overview

The site to be consolidated is currently composed of two lots at 594 and 600 Winnipeg Street. They are zoned RM3 – Medium density multiple housing, and are located within the OCP High Density Development Permit Area. To the north of the site is the Saint Saviour's Anglican Church, occupying the corner of Winnipeg Street and Orchard Avenue. Beyond Orchard a variety of multifamily residences are located, from three to five storeys in height. To the south of the site is the Christian Science Society building, followed by a two-storey multi-residential building and a number of single family dwellings. Across from the site are single family dwellings, two-storey apartments, a bed & breakfast, and a former funeral chapel.

This neighbourhood is composed of a variety of uses, sizes, building types, and an array of materials and colours. Exterior finish materials range from vinyl and lap siding, brick and stone cladding, and stucco within the same neighborhood context. Colours range from whites and creams to blues and browns, and accent colours range from red to blue to green to yellow. There is also a variety of fencing from metal to wood to retaining walls, and areas with no fencing along front property lines. The boulevards beside the concrete sidewalks are paved with asphalt and have trees at widely spaced intervals. On-street parking is allowed on both sides of the street up to a point nearer the corner of Orchard Avenue. Overhead power lines run along the west side of the street. A variety of mature trees exist in the neighbourhood and landscaping of varying plants and grass lawns.

### Proposed Building

This application proposes a four storey supportive living facility comprised of wellness services and amenities as well as 62 small individual units with a bed and private bathroom facilities. This use falls within the Congregate housing category permitted by the RM3 zoning designation.

## 2 Design Rationale

### Site planning

The site is planned with the objective of presenting a friendly face to the street. In considering this, fencing and landscaping was used to provide spatial definition and to graduate from public to semi-public to private space as one moves along from west to east on the property. A low decorative metal fence delineates the beginning of the property line, and a variety of trees and shrubs placed alongside the interlocking brick pavers create an urban "room" tied to the porch-like area with the stair and canopy projections. The site planning provides private supervised amenity space towards the back of the property. Parking and waste and recycling services are screened and facility loading is proposed from the street with direct access to the pantry and kitchen area

The parking and waste services area is separated from view by both plantings and wood fencing/screening. A decorative metal rolling gate provides the opportunity to



Figure 11 – Letter of Intent (1/2)

## Letter Of Intent – Penticton Supportive Housing

secure the area at night. Alternate paving treatment is proposed for the parking with permeable pavers to provide additional soft-scaping. The site configuration does not facilitate a large service vehicle from turning around on the property, and it is proposed that waste and recycling collection be near the street to facilitate curb-side loading or by a quick back-up maneuver to the bins. It is proposed that pantry loading occur at the south side of the property and that one stall of on-street parking adjacent be designated a loading stall. Bicycle parking and scooter storage is provided at the rear of the site in an attractive post and beam covered pergola-style structure.

The amenity space at the rear of the building is privately fenced and provides a variety of spaces for use, including a pet area, a gazebo, a trellis, picnic benches, grassy areas, and a covered deck. The occupant dining area leads to the amenity space through the back and office areas are situated to overlook and supervise the area.

### Architecture

The proposed building is composed of individual residential units and their accompanying support services and amenities. Effort was made to identify the more private residential uses and the more public service/amenity uses though the façade and overhang treatments. The warm sandy colour dominates the more semi-public realm and the trellis-like canopy extends over the entry and amenity decks, wrapping the corner as a sun shade over the adjacent windows. The building massing is further broken up into divisions by the colouration of the panels. Further texture and interest added in the detailing of the panels and the change to lap siding, within the rhythm of the pilasters. Enough fenestration is allowed for light and views balanced with environmental and contextual considerations. Gated courts and trellised entries are used as points of transition from the public realm to the private.

A neutral colour palette was chosen which ties to the larger urban and natural landscape – a warm sandy colour, a grey not unlike the stones and water, whites found in plants and sky, and a warm brown reminiscent of steppe grasses. A textural variety also adds interest to the colours, from smooth to wood-grained.

### Landscaping

The landscape has been designed to provide functional and aesthetic value. Continuous paths and walks are provided around the site. The vegetation proposed is combination of drought tolerant shrubs, ground covers and residential scale trees. Plantings are a mix of native and adapted plants. Trees and shrubs proved buffer to neighbours, particularly along the south and east property borders. Plantings frame walkways with flowering and other seasonal display. Small lawn areas are limited to what can be used as gathering areas in the amenity space. Brick pavers alongside the plantings at the front of the building provide reduced watering requirements. An efficient irrigation system will be provided to plantings and small lawn areas.



Figure 12 – Letter of Intent (2/2)

Attachment F – Development Permit Analysis

City of Penticton
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

## Development Permit Analysis

| **High Density Development Permit Area** | |
|---|---|
| **Building Scale and Form** | |
| DPA Guideline | Provided on Plans |
| The front edge of built form, including the porch and trellis elements should be no more than 4.5m back from the property line, and opaque frontages or sloping banks should be no more than pedestrian eye level (1.8m tall) unless they incorporate an active land use. | *The front of the building has been designed to be along the 3.0m front yard setback. There are also front stairs that project into this yard setback, connecting to the public right of way.* |
| Building entrances and facades should provide separate and distinct identities for business and residents, and reinforce a scale and rhythm to the street complementary to local uses, pedestrian activities, street tree planting, landscaping. Major building entrances should create a focal point for the development with public seating and clear, pedestrian-oriented signage. | *The wall face fronting Winnipeg Street has been designed to create a minimal focal point, so as to create a connection to the public realm. This front entrance has also been designed to not promote loitering, and pushes residents to recreate in the rear yard, where the majority of common space is located.* |
| Provide exterior staircases up to the first habitable level wherever appropriate. Exterior stairs should be designed to be integrated into the overall architectural and/or landscape concept of the development. At least one staircase on each site should lead directly to the street level. | *The proposed design incorporates stairs into the front entrance of the building. These stairs have been incorporated into the overall design of the building, and have also been included in the landscaping plan.* |

Figure 13 – Development Permit Analysis (1/7)

| **Building Scale and Form** | |
|---|---|
| DPA Guideline | Provided on Plans |
| New development should be street-oriented and enhance the existing pedestrian environment. | *The proposed development has been designed to acknowledge the street, and create minor street presence, while maintaining the majority of available amenity space in the rear of the property. This design creates a comfortable pedestrian experience* |
| Employ features such as front stairs, stoops, gateways, porches, and weather protection to enhance the residential quality of unit and building entries, the visibility of such entries, a comfortable architectural rhythm along the street, and a human scale. | *The proposed design incorporates stairs at the front entrance off of Winnipeg Street. There is also a small platform at the top of the stairway leading into the building. At the bottom of the stairs, there is a 1.2m (4ft.) high fence, to delineate between public and private property. This fence will have a gate at the bottom of the stairs, to allow pedestrians access through to the building, without walking through the driveway entrance.* |
| Create an attractive street frontage, using windows and doors to help animate the building façade and promote a more human scale character. Windows and doors should be oriented street ward. | *As noted in many of the previous points, the building has been designed to be street oriented and enhance the pedestrian environment, while minimizing areas for loitering by providing amenity space to the rear of the building. The building has an entrance fronting onto Winnipeg Street, and there are many windows facing the frontage located on all proposed floors.* |

Page 2 of 7

Figure 14 – Development Permit Analysis (2/7)

| **Parking** | |
|---|---|
| DPA Guideline | Provided on Plans |
| Parking should be located at the rear or side of buildings or in communal lots. | *The proposed site design provides the required parking spaces along the side of the building.* |
| New development should minimize the visual impact of parking lots and structures. They should be screened from public streets, and attempt to improve the impact of existing lots and structure. | *The proposed site plan and landscaping plan incorporates screening in front of all parking areas. There is fencing across the drive aisle to further screen the parking area from the public street.* |
| Minimize the surface area of blacktop parking areas and access driveways through alternative paving treatments, emphasizing permeable paving treatments for storm water management. Varying paving treatments through the use of decorative paving materials at driveway entrances. | *The proposed site design has included a variety of materials for the parking and drive areas. The drive aisle is proposed as an asphalt material, which will assist in reducing dust and gravel. The parking areas will be designed with permeable pavers, which help in reducing the amount of hard surfacing on the site, and allow for natural storm water management.* |
| Use a variety of decorative surface treatments, e.g. stamped concrete or grey pavers, to soften the visual impact of driveways. | *As noted above, the proposed site design has incorporated asphalt, permeable pavers* |
| Show variety and change of use through variations in the colour and texture of materials for patios, walkways, and roadways. Use changes in paving materials near entrances to walkways and children's play areas. | *As noted above, the proposed site design has incorporated a variety of materials for the parking area. There is also a proposed dog run area along the south side of the building, which will be built with gravel. The dog run area will be connected via a concrete path through the landscaped areas.* |
| Parking lot lighting shall be energy efficient and oriented directly into the parking lot and away from residential areas to avoid visual intrusion into the adjacent residential areas. | *The proposed site design identifies where lighting will be located, which will be placed to reduce glare into neighbouring properties and also to ensure security on site. It is also noted that the property directly to the north (adjacent to proposed parking) is an institutional use, and is not residential.* |

Page 3 of 7

Figure 15 – Development Permit Analysis (3/7)

| **Parking** | |
|---|---|
| DPA Guideline | Provided on Plans |
| Parking lots should have landscaping between each block of four parking spaces. | *The site design has been designed to meet this requirement. There are landscaping buffers between every three or four parking spaces.* |
| Landscaping should be used to soften the presence of large number of vehicles, both in the parking lot and on the surrounding streets. | *As noted above, the parking area has been designed with landscaping buffers every four parking spaces. This helps significantly to break up the presence of a large area for vehicle parking. There is also a large landscaping buffer located along the street, and street trees are proposed.* |
| Parking lots should be visible by tenants from several units to facilitate recognition between neighbours, and informal surveillance. | *The proposed location of parking spaces will be along an entire side of the building. On the second, third and fourth floors, there will be 9 units on each floor looking out towards the parking area. There will be a substantial number of units looking into this area, as well the staff office and reception area on the first floor will face this way.* |
| Resident parking should not be visible from the street and generally screened from public view. | *The required parking for congregate housing is based on beds. The applicant has met parking requirements based on this calculation. They have placed the majority of parking spaces (10) behind a locked fence. There are also 2 spaces located near the front of the property, which could be used by visitors to the property.* |
| Resident lots may have gates and should be locked and controlled by access keys and should be separate from public parking. | *As previously noted, the majority of parking spaces are located behind the gated area. There are two parking spaces that can be accessed closer to the street.* |

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Figure 16 – Development Permit Analysis (4/7)

| Open Space | |
|---|---|
| DPA Guideline | Provided on Plans |
| Crime Prevention Through Environmental Design (CPTED) principles should guide design in the public realm. | *Given the intended use for this site, the design of the development has focused on CPTED principles. This has been applied to the site design, in encouraging residents to use amenity space at the rear of the property, incorporating appropriate types of landscaping, and maintaining sightlines to allow for natural security by residents and occupants of the development.* |
| Outdoor activity space is encouraged adjacent to building fronts to allow use or activity in the building to be extended onto the sidewalk without obstructing pedestrian circulation. | *The proposed design has incorporated a small area in front of the building to be used as a 'public' space on the property. There is limited area in this location to prevent loitering along the street and public sidewalk.* |
| Provide strong linkages with neighbourhoods, adjacent areas, and complementary centres and uses. | *The site that has been chosen is an ideal location for the intended use. There are centres located within close proximity that can also provide services to the potential residents of this development.* |
| Residential streetscapes should define the street edge through landscaping with layers of planting, low walls, hedges, or changes in grade along the property line. | *The landscaping plan has included landscaping along the front of the building and property line. This includes a 1.2m (4 ft.) high fence to delineate between public and private property.* |
| "Public" yards adjacent to streets, lanes, public walkways, and pathways should be designed to be open and inviting, and allow good visibility from adjacent public areas to building entries. | *The front entrance to the building has been designed with limited features and amenity areas to encourage users to move towards the rear of the building. The front has been designed open to the street, to allow good visibility from the street and public sidewalks through to the building entryway.* |

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Figure 17 – Development Permit Analysis (5/7)

| **Landscaping** | |
|---|---|
| DPA Guideline | Provided on Plans |
| Street trees should be incorporated along the street frontage of each development. This provides both a measure of screening from the visual impact of large buildings, and shade for walking. | *The proposed landscaping plan incorporates street trees within the City boulevard. Currently, there are no street trees in front of the subject properties. There are street trees in front of the properties to the south, and the installation of these new trees will result in this block of Winnipeg Street having continuous street trees.* |
| Trees should be planted along all street frontages and internal roadways with spacing appropriate to the species. | *As noted above, there will be street trees installed along the City boulevard. Additionally, there is a 3.0m wide landscaping buffer located along the front property line, which includes appropriate trees, shrubs and grass.* |
| Maximize the amount of landscaped areas on a site and minimize the amount of impervious surfaces to increase the natural absorption of storm water. | *The applicant has supplied a landscaping plan, which meets required landscaping buffers. Permeable pavers have been installed in the parking areas to reduce the amount of impervious surfaces, which increases natural absorption of storm water.* |
| A diversity of tree species is encouraged to increase the survival ratio of new landscaping. | *The proposed landscaping plan has proposed three different tree species to be incorporated onsite. There will also be trees planted in the boulevard, which will be reviewed by the City's Parks Department to ensure appropriate trees are selected to ensure viability, limit branches becoming a nuisance, etc.* |
| Provide landscaping, fencing, and other appropriate treatments to improve the appearance of lots along public streets. | *The landscaping plan has been developed with the site design to incorporate features of the site. As previously noted, there is a 3.0m landscaping buffer along the front property line, which will improve the appearance of the lot from the public street.* |

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Figure 18 – Development Permit Analysis (6/7)

| **Refuse, Recycling and Service Areas** | |
|---|---|
| DPA Guideline | Provided on Plans |
| Refuse/recycling areas, shipping, loading or utility areas, satellite dishes, and other similar structures, such as outdoor vents, mechanical equipment, or transformers should be located out of public view. | *The proposed location for garbage and recycling has been located at a distance setback from the public street, to ensure it is located out of public view. This area will also be screened with fencing and landscaping as noted in the landscaping plan. The location of garbage services is pulled back enough from the street to not pose a nuisance, yet is situated so that it can safely be accessed by garbage services.* |
| Garbage facilities and related uses should not be located adjacent to the primary public realm and should be screened and appropriately lighted. | *As noted above, the garbage area has been setback significantly from the street to ensure it is located out of public view. The area will be significantly screened with fencing and landscaping.* |

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Figure 19 – Development Permit Analysis (7/7)

# Attachment G – Proposed Site Plan

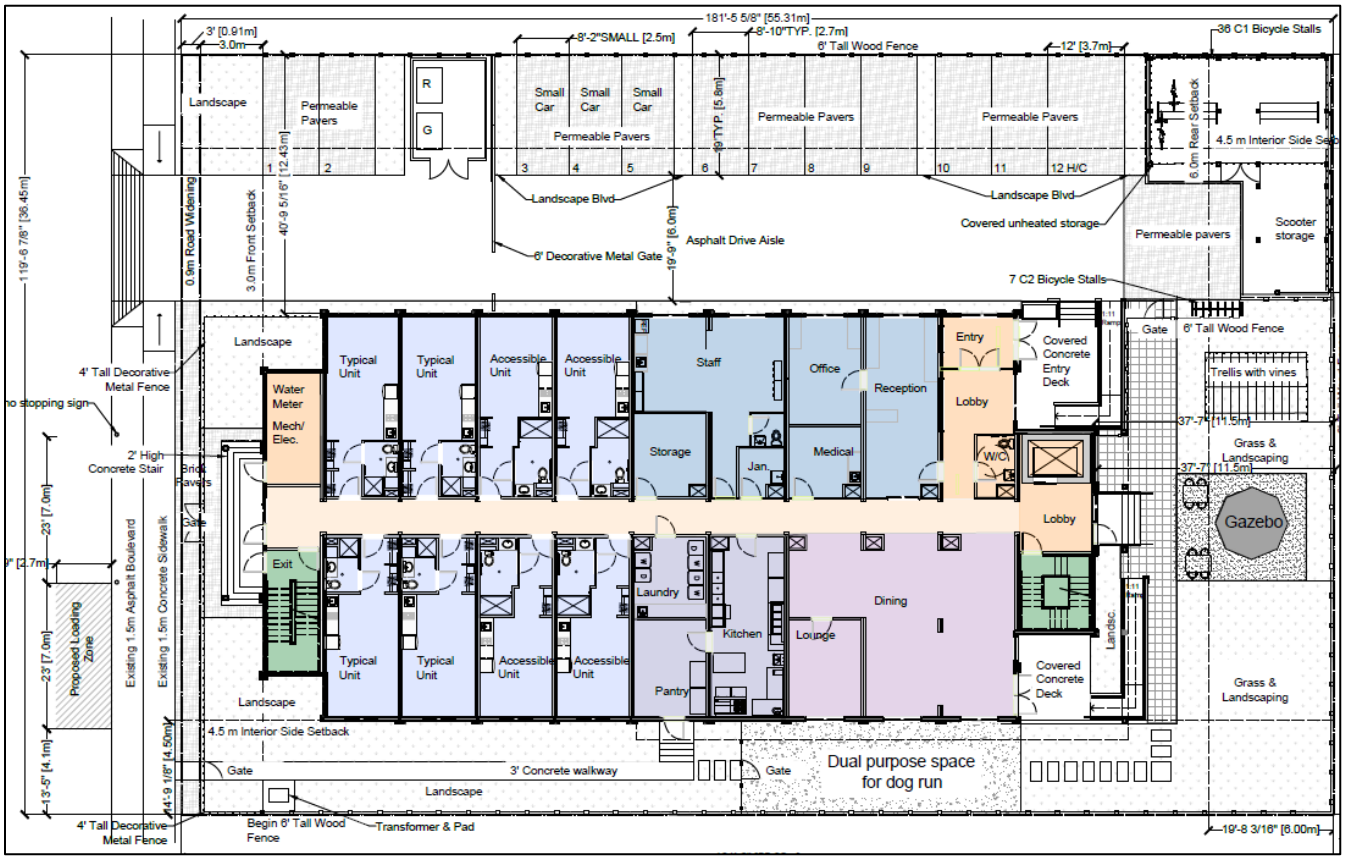



**Figure 20 – Proposed Site Plan**

# Attachment H – Proposed Landscape Plan

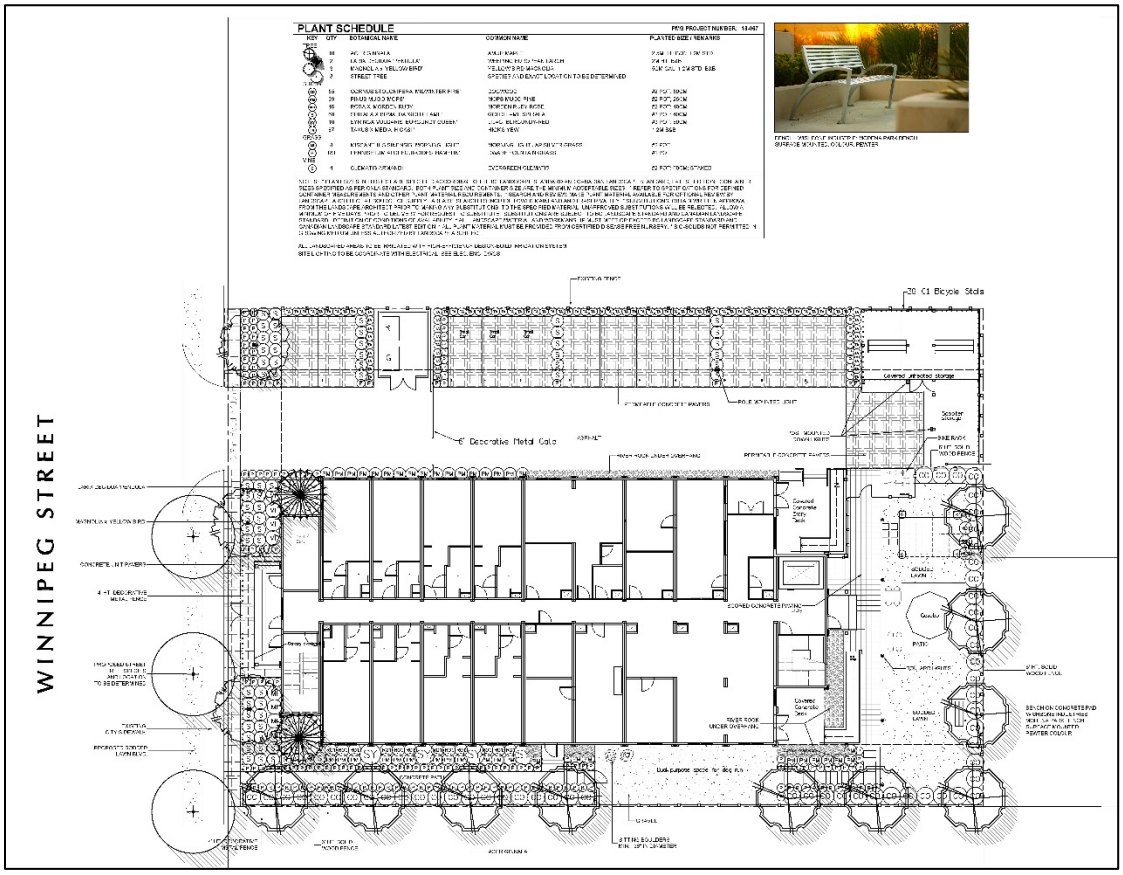



Figure 21 – Proposed Level Four Floor Plan

# Attachment I – Proposed Floor Plans

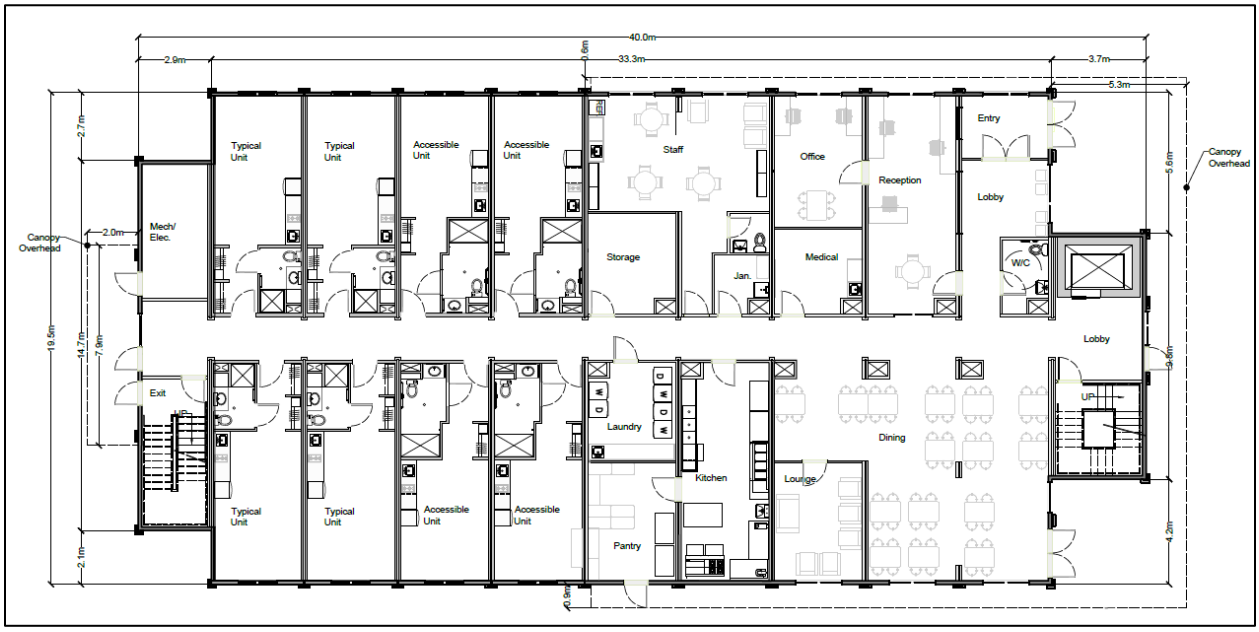



Figure 22 –Main Level Floor Plan

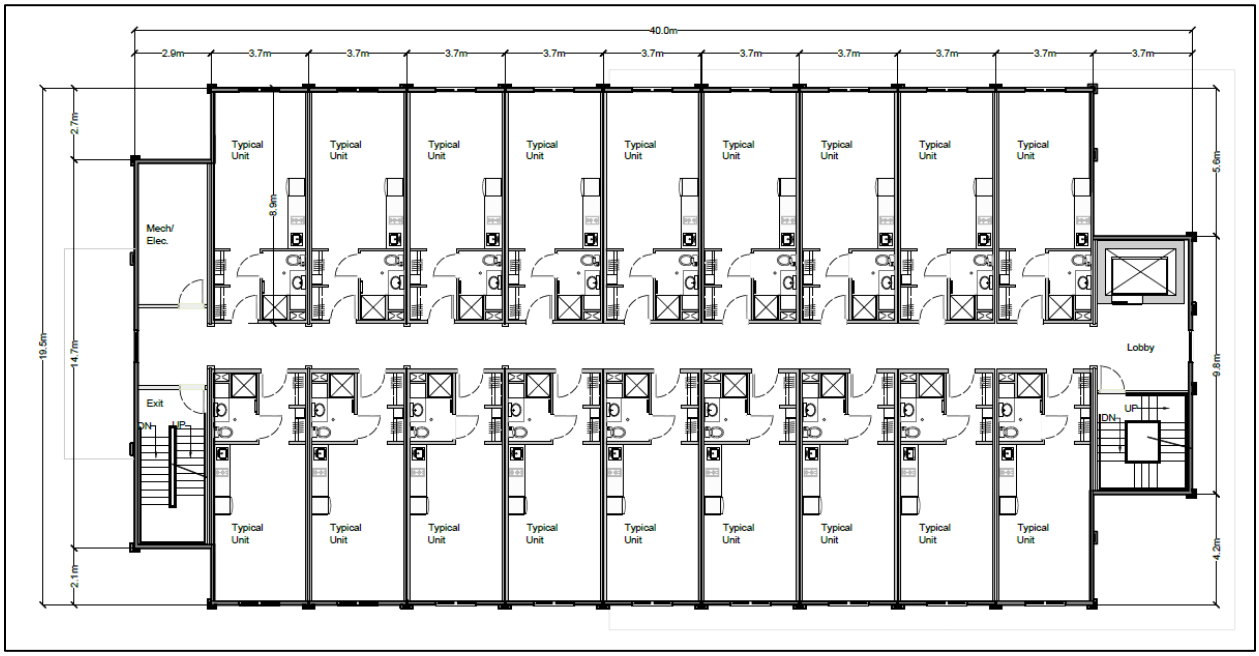



Figure 23 – Second to Fourth Level Floor Plan

# Attachment J – Proposed Building Elevations



Figure 24 – Proposed Front (West) Elevation



Figure 25 – Proposed Rear (East) Elevation




Figure 26 – Proposed Side (North) Elevation




Figure 27 – Proposed Side (South) Elevation




Figure 28 – Proposed Façade Materials

Attachment K – Proposed Renderings



Figure 29 – Proposed Rear Entrance Rendering



Figure 30 – Proposed Parking Area Rendering

Attachment L – Draft Development Permit (DP)

**City of Penticton**
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

# Development Permit

**Permit Number: DP PL2018-8367**

Owner Name
Owner Address

**Conditions of Permit**

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

   Legal: Insert Legal of Consolidated Lot
   Civic: Insert Civic Address of Consolidated Lot
   PID: Insert PID of Consolidated Lot

3. This permit has been issued in accordance with Section 489 of the *Local Government Act*, to permit the construction of a four storey, 62-unit congregate housing building as shown in the plans attached in Schedule 'A'.

4. In accordance with Section 502 of the Local Government Act a deposit or irrevocable letter of credit, in the amount of $56,407.96 must be deposited prior to, or in conjunction with, an application for a building permit for the development authorized by this permit. The City may apply all or part of the above-noted security in accordance with Section 502(2.1) of the Local Government Act, to undertake works or other activities required to:

   a. correct an unsafe condition that has resulted from a contravention of this permit,
   b. satisfy the landscaping requirements of this permit as shown in Schedule 'A' or otherwise required by this permit, or
   c. repair damage to the natural environment that has resulted from a contravention of this permit.

5. The holder of this permit shall be eligible for a refund of the security described under Condition 4 only if:

   a. The permit has lapsed as described under Condition 8, or
   b. A completion certificate has been issued by the Building Inspection Department and the Director of Development Services is satisfied that the conditions of this permit have been met.

DRAFT

6. Upon completion of the development authorized by this permit, an application for release of securities (Landscape Inspection & Refund Request), must be submitted to the Planning Department. Staff may carry out inspections of the development to ensure the conditions of this permit have been met. Inspection fees may be withheld from the security as follows:

| | |
|---|---|
| 1st Inspection | No fee |
| 2nd Inspection | $50 |
| 3rd Inspection | $100 |
| 4th Inspection or additional inspections | $200 |

**General Conditions**

7. In accordance with Section 501(2) of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule 'A'.

8. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.

9. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.**

10. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

11. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the _____ day of _____, 2018

Issued this _____ day of _____, 2018

_____

Dana Schmidt,
Corporate Officer

DRAFT

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: 2018 PRJ-195
**To:** Peter Weeber, Chief Administrative Officer
**From:** Randy Houle, Planner I
**Address:** 1087 Dynes Avenue

**Subject:** **Zoning Amendment Bylaw No. 2018-69**
**Development Variance Permit PL2018-8356**
**Development Permit PL2018-8357**

## Staff Recommendation

*Zoning Amendment*

THAT "Zoning Amendment Bylaw No. 2018-69", a bylaw to rezone Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1017, located at 1087 Dynes Avenue from CT1 (Tourist Commercial) to RM2 (Low Density Multiple Housing), be given first reading and forwarded to the October 2, 2018 Public Hearing;

AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2018-69", a 3.0m x 3.0m northwest corner cut is registered with the Land Title Office.

*Development Variance Permit*

THAT delegations and submissions for "Development Variance Permit PL2018-8356" for Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1017, located at 1087 Dynes Avenue, a permit to waive the one required visitor parking space and to decrease the minimum west interior side yard for a principal building from 3.0m to 1.5m, be heard at the October 2, 2018 Public Hearing.;

AND THAT Council consider "DVP PL2018-8356" following the adoption of "Zoning Amendment Bylaw No. 2018-69."

*Development Permit*

THAT Council, subject to adoption of "Zoning Amendment Bylaw No. 2018-69" approve "Development Permit PL2018-8357" for Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1017, located at 1087 Dynes Avenue, a permit that allows for the construction of two duplexes.

## Background

The subject property (Attachment A) is zoned CT1 (Tourist Commercial) and designated by the City's Official Community Plan as MFMD (Multi-Family Medium Density). Photos of the sites are included as Attachment D.

The subject property is approximately 481.0m$^2$ (5,177ft$^2$) in area and has been vacant since an older single family was demolished in 2013. The property is located in close proximity to the Okanagan Beach, Riverside Village and Loco Landing. A lane separates the property from the Bowmont hotel to the west. A single family dwelling borders the subject property to the east, with shrubs and hedges acting as a buffer between properties. The surrounding properties are primarily zoned for tourist commercial, single and multiple family. The OCP calls for more residential density on the subject property and the properties to the east.

**Proposal**

The applicant is proposing to construct two duplexes for a total of four new units on the site. Since multiple duplexes are not permitted in the CT1 (Tourist Commercial) zone, a rezoning to RM2 (Low Density Multiple Housing) is required.

Secondly, the applicant is requesting a Development Variance Permit to vary the following sections of Zoning Bylaw No. 2017-08:

- Section 6.5 (Table 6.5): to waive the one required visitor parking space.
- Section 10.8.2.7.i: to decrease the minimum west interior side yard for a principal building from 3.0m to 1.5m.

Lastly, the property is located within the Downtown Multiple Family Development Permit area and requires approval for the form and character of the proposed development and to address landscaping requirements.

**Financial implication**

The City will receive Development Cost Charges from the developer at a rate of $5,548 per dwelling unit for a total of $22,192 in addition to servicing connection fees and building permit fees, based on the cost of construction.

**Technical Review**

This application was forwarded to the City's Technical Planning Committee and reviewed by the Engineering and Public Works Departments. As per City of Penticton Building Bylaw 94-95 section 7.1.5, storm water/drainage is to be maintained on site. Currently there are issues with storm water accumulating in the lane on the west side of the property. This issue will be addressed by a geotechnical engineer as part of the building permit application. A 3.0m x 3.0m corner cut in the northwest portion of the property will be obtained as part of the application to allow for enough space for a vehicle to turn the corner without driving on the subject property. Additionally, the developer will be required to upgrade the lane as part of the building permit application. The developer will also be responsible for street frontage upgrades which includes curb, gutter and sidewalk with an irrigated grass boulevard. The existing power pole in the SW corner of the property will be re-located at the developer's expense to accommodate two on-street parking spaces. A boulevard tree will be installed by the Parks department at a cost of approximately $472.50 to the developer. Servicing upgrades will be required based on fixture counts. If the requests for the zoning amendment, variances and development permit are supported, BC Building Code and City bylaw provisions, such as height restrictions, will apply.

**Development Statistics**

The following table outlines the proposed development statistics on the plans submitted with the rezoning application:

| Item | Requirement RM2 zone | Proposed |
|---|---|---|
| **Maximum Lot Coverage:** | 40% | 39% |
| **Maximum Density:** | 0.8 FAR | 0.8 |
| **Minimum Lot Width:** | 18.0m | 12.192m* (see below) |
| **Minimum Lot Area:** | 540m$^2$ | 481m$^{2*}$ (see below) |
| **Vehicle Parking:** | 1 space per dwelling unit + 0.25 per unit for visitors (5 total) | 4 spaces (variance required) |
| **Required Setbacks** | | |
| Front yard (south, Dynes Avenue): | 3.0m | 3.0m |
| Rear yard (north, lane): | 6.0m | 6.0m |
| Interior yard (west, lane): | 3.0m | 1.5m (variance required) |
| Interior yard (east): | 3.0m | 3.0m |
| **Maximum Building Height:** | 12.0m | 7.0m |
| **Amenity Area:** | 20m$^2$ per unit (80m$^2$ total) | 20.0m$^2$+ |
| **Other Information:** | - The subject property is located within the Downtown Multiple Family Development Permit Area, thus a development permit is required.<br>- **The minimum parcel standards (in terms of width and area) only apply when a new parcel is being created, not through rezoning of an existing parcel.* | |

**Analysis**

***Zoning Amendment***

*Support "Zoning Amendment Bylaw No. 2018-69"*

The OCP designation for this site is MFMD (Multi-Family Medium Density) which supports the proposed development. Staff consider that the zoning amendment to allow for the proposed development represents best use of the land for the following reasons:

- The proposal is consistent with the OCP's view that infill residential development is an appropriate method of maximizing the use of land and increasing housing choices for Penticton residents.
- The OCP encourages densification in areas where existing services can accommodate higher densities, which is the case here.
- The proximity to the downtown, Okanagan beach, Riverside Village and other nearby services encourages more walking and active forms of transportation.

- The current proposal will convert an underutilized lot into four new dwelling units in a desirable location.

Staff considers that the design is suitable and consistent with the redevelopment trends in the area. The location of the site and characteristics of the surrounding neighbourhood make it appropriate for residential densification. The proposed rezoning is in line with the OCP designation for the property. Given the above, staff recommends that Council support "Zoning Amendment Bylaw No. 2018-69" and forward the application to the October 2, 2018 Public Hearing for comments from the public.

*Deny/Refer Zoning Amendment*

Council may consider that the proposed amendment is not suitable for this site and that the zoning shall remain for tourist commercial. If this is the case, Council should deny the bylaw amendment. Alternatively, Council may wish to refer the matter back to staff to work with the applicant with any direction that Council considers appropriate.

***Development Variance Permit***

*Support Variance*

When considering a variance to a City bylaw, staff encourages Council to be mindful as to whether approval of the variance would cause a negative impact on neighbouring properties and if the variance request is reasonable.

*Section 6.5 (Table 6.5): to waive the one required visitor parking space*.

- In the preliminary drawings, a tandem visitor parking space was proposed. It was located behind a parking space for one of the units. Staff felt that it would be more appropriate to relocate the electrical pole on the street to allow for two on-street parking spaces to accommodate visitors. Additionally, this would allow for the developer to construct storage lockers in-between the units, to store bikes and garbage and recycling containers. Council has recently supported waiving visitor parking requirements.

*Section 10.8.2.7.i: to decrease the minimum west interior side yard for a principal building from 3.0m to 1.5m.*

- The required setback for an interior yard in the RM2 (Medium Density Residential) zone is 3.0m. The developer is proposing a variance to 1.5m along the west side. This will allow the developer to construct sizeable units while allowing a 3.0m buffer on the east side, adjacent to the single family dwelling. A lane acts as a buffer from the proposed development and the Bowmont Hotel. It is unlikely that reducing the setback will have any negative impacts on the neighbourhood. The proposed duplexes will be two storeys in height, which is smaller than the three storeys permitted in the RM2 zone. The reduced height will further limit the negative visual impacts that a building with a reduced setback will have on the lane.

For the reasons listed above, Staff feel that the variance request is reasonable, does not unreasonably impact the adjacent area and recommend that Council support the application.

*Deny/Refer Variances*

Council may consider that the proposed variances will negatively affect the adjacent properties. Council may consider requiring the developer to reduce the width of the buildings to meet the west interior yard setback or re-configure the parking spaces on the lot to accommodate the visitor space. If this is the case, Council should deny the variances.

***Development Permit***

*Support Development Permit*

The subject property is located within the Downtown Multiple Family Development Permit Area. As a consequence, a Development Permit is required. The Development Permit Area guidelines are intended to address the form and character of new multi-family buildings. The objective of these guidelines, according to the OCP, is to "ensure that the citing, form, character and landscaping of new multi-family development and exterior renovations and additions to existing buildings in the downtown area are compatible with the context of the traditional neighbourhood character in some downtown neighbourhoods." The proposed development meets the intent of the bylaw as explained below:

- The building shape, roof line and architectural features such as window and door detailing are sufficiently varied and create visual interest. The cantilevered address block in the front elevation adds unique character to the development.
- The landscape plan features a variety of different plants, flowers and trees. The developer is proposing to add eight trees to an empty lot, including one in the City boulevard.
- Street frontage upgrades, including sidewalk, trees and a grass boulevard will improve the streetscape which benefits the neighbouring properties.
- Private amenity space is provided for each residence.
- Garbage and recycling areas will be screened.

Staff consider that the plans submitted meet the intent of the DPA guidelines and generally conform to the zoning bylaw. As such, staff recommend that Council approve the Development Permit application.

*Deny/Refer Development Permit*

Council may consider that the proposal does not reflect the current built form of the neighbourhood, or that the development should soften the impact on neighbouring properties. If this is the case, Council should deny the permit.

**Alternate Recommendations**

1. THAT Council deny first reading of "Zoning Amendment Bylaw No. 2018-69" and deny support for DVP PL2018-8356 & DP PL2018-8357.
2. THAT Council give first reading to "Zoning Amendment Bylaw No. 2018-69" but deny support for DVP PL2018-8356 & DP PL2018-8357.
3. THAT Council give first reading to "Zoning Amendment Bylaw No. 2018-69" and support DVP PL2018-8356 & DP PL2018-8357 with conditions that Council feels are appropriate.

**Attachments**

| | |
|---|---|
| Attachment A: | Subject Property Location Map |
| Attachment B: | Zoning Map |
| Attachment C: | OCP Map |
| Attachment D: | Photos of Subject Property |
| Attachment E: | Site Plan |
| Attachment F: | Landscape Plan |
| Attachment G: | Elevations |
| Attachment H: | Proposed Renderings |
| Attachment I: | Floor Plans |
| Attachment J: | Letter of Intent |
| Attachment K: | Development Variance Permit PL2018-8356 |
| Attachment L: | Development Permit PL2018-8357 |
| Attachment M: | Zoning Amendment Bylaw No. 2018-69 |

Respectfully submitted,

Randy Houle
Planner I

Approvals

| DDS | CAO |
|---|---|
| AH | LD for PW |

Attachment A – Subject Property Location Map




Figure 1: Subject Property Location Map

Attachment B – Zoning Map

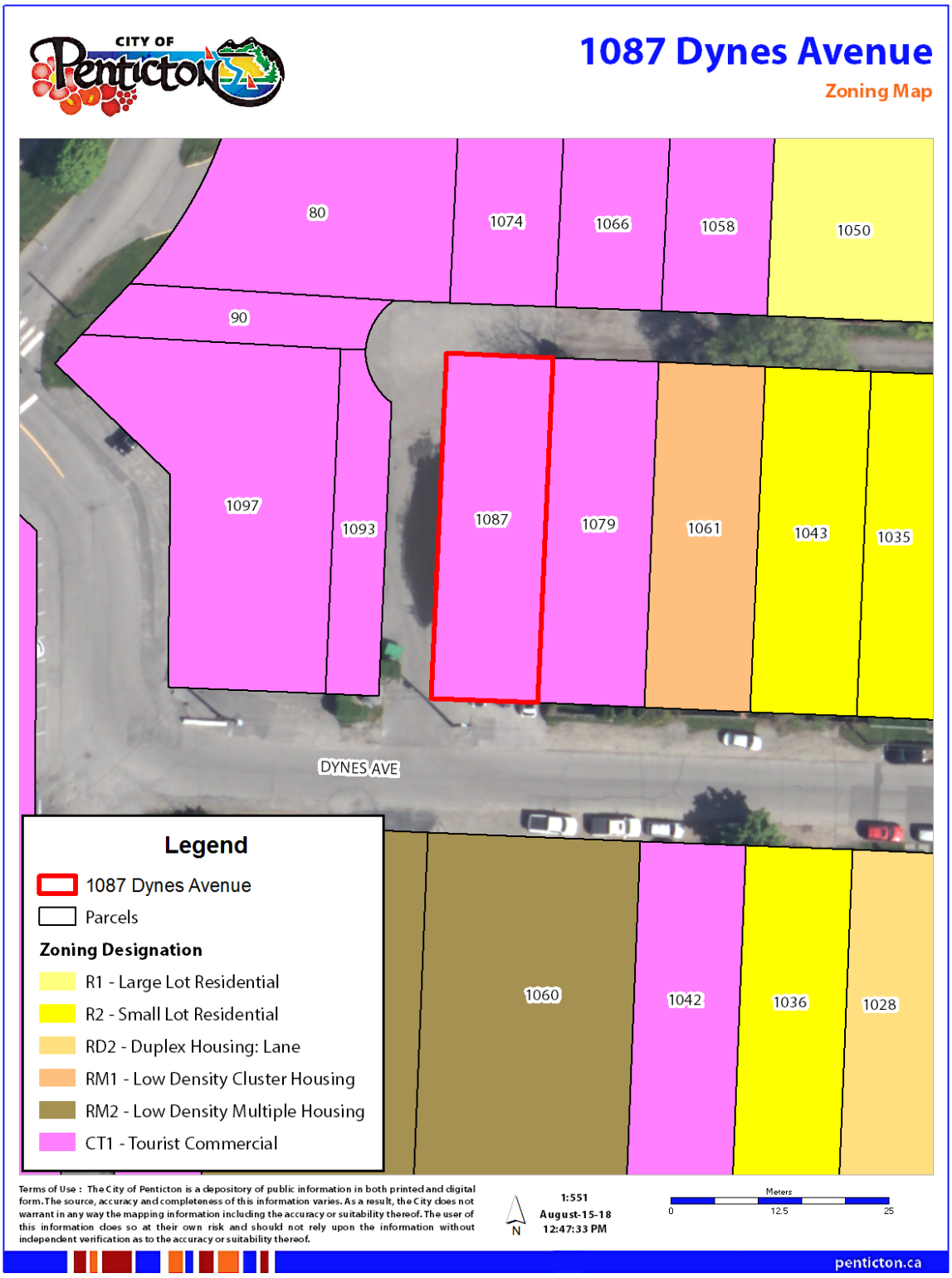



Figure 2: Zoning Map

Attachment C- OCP Map

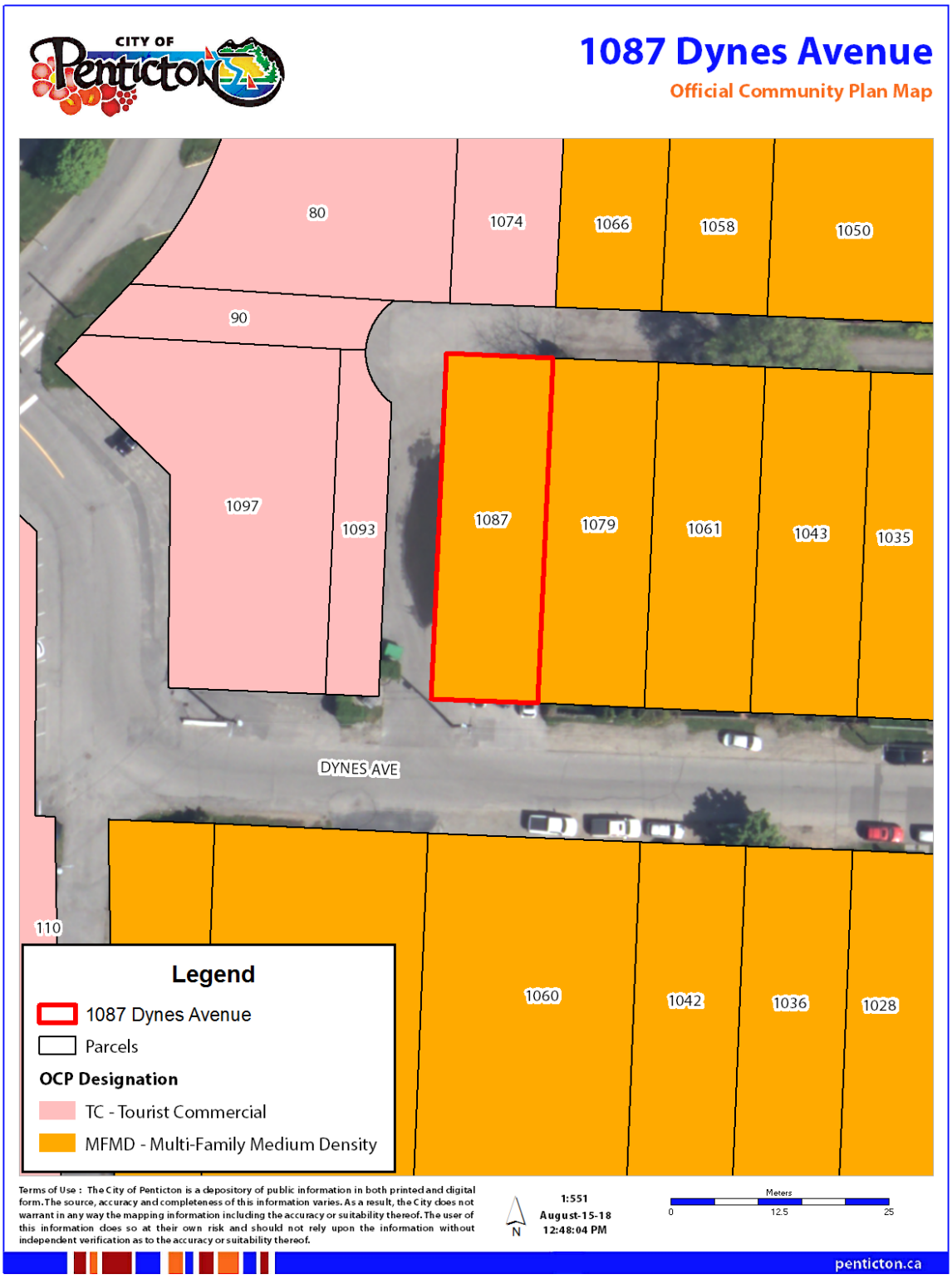



Figure 3: OCP Map

# Attachment D – Photos of Subject Property



Figure 4: South View of Subject Property (from Dynes Avenue)



Figure 5: South West View of Subject Property



Figure 6: West View of Subject Property



Figure 7: North View of Subject Property

Attachment E – Site Plan

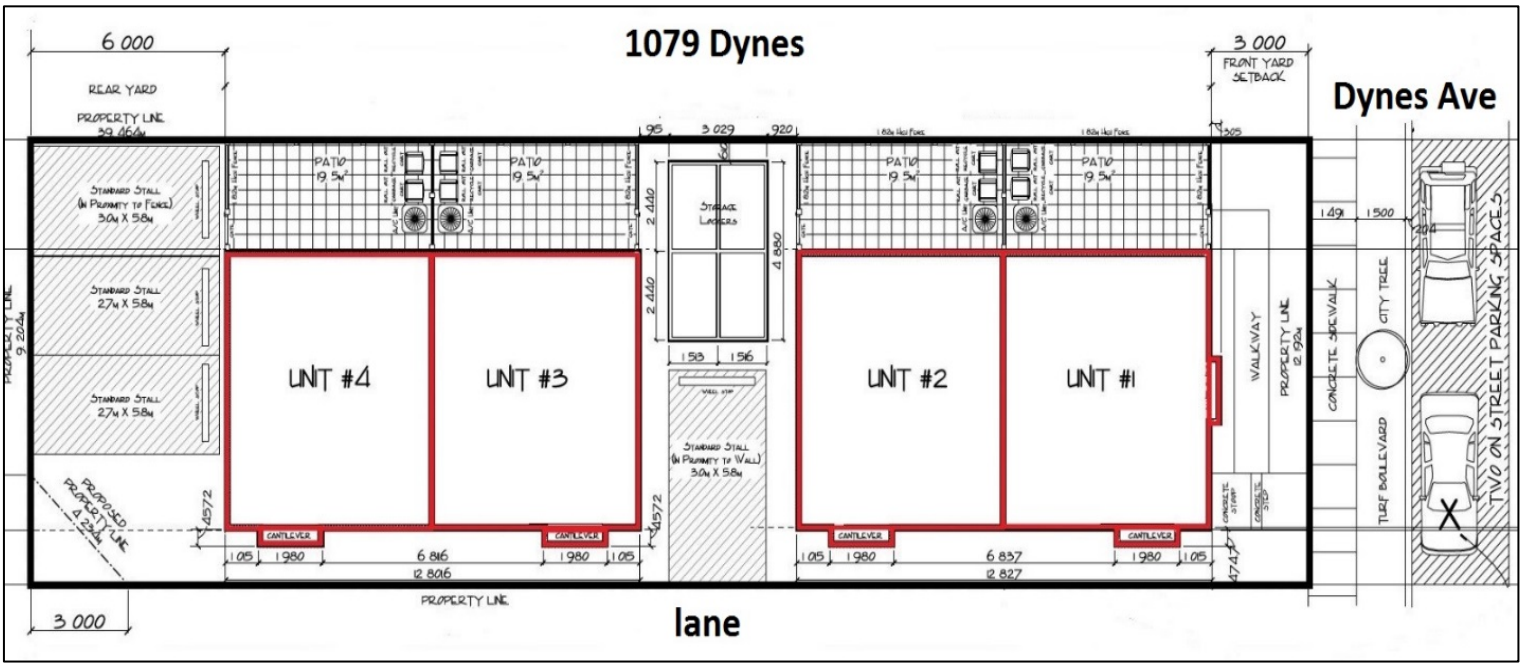



Figure 8: Site Plan

Attachment F – Landscape Plan

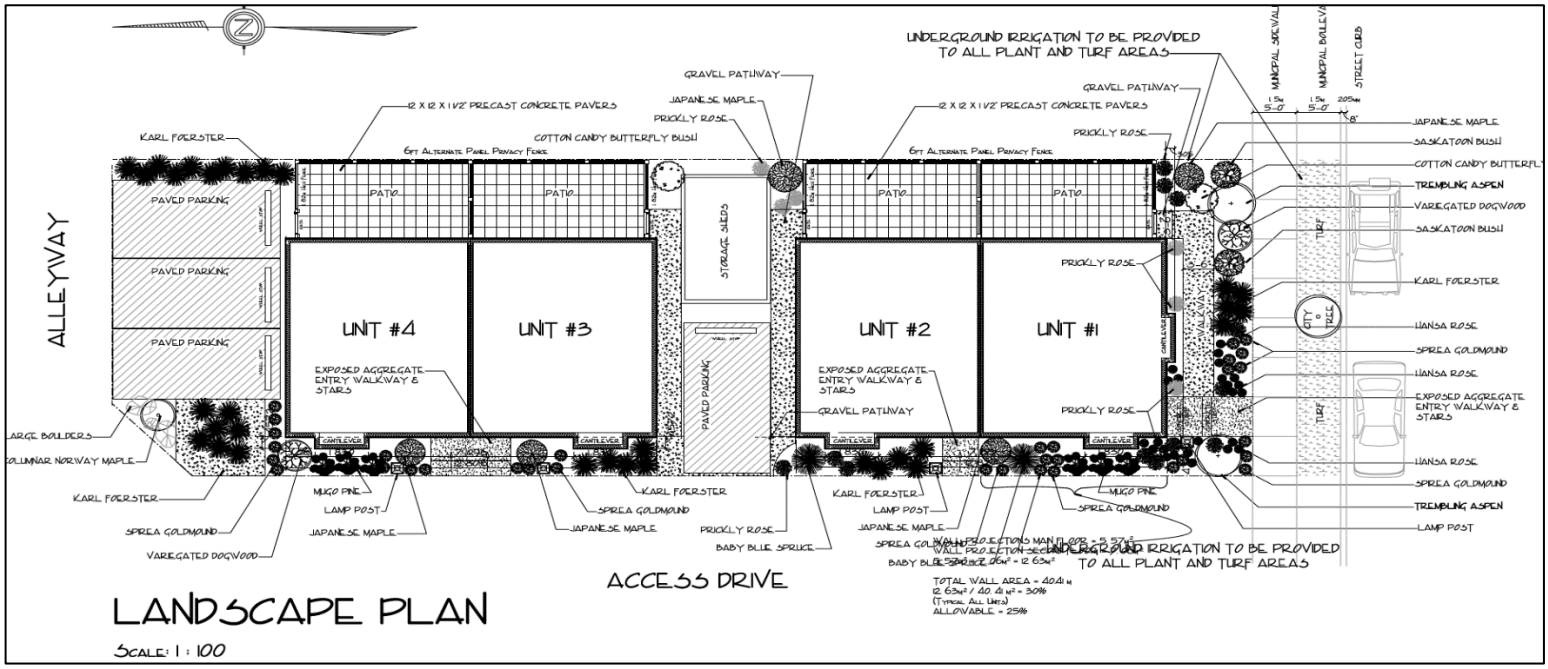



Figure 9: Landscape Plan

Attachment G – Elevations

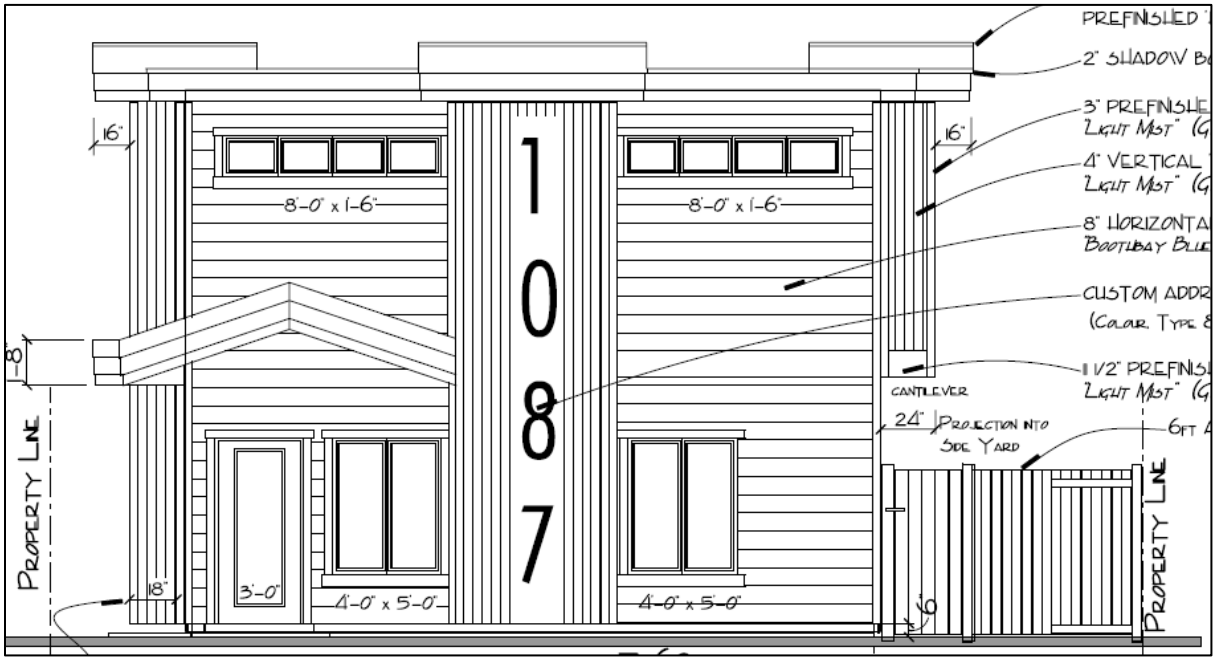



Figure 10: South Elevation (from Dynes Avenue)

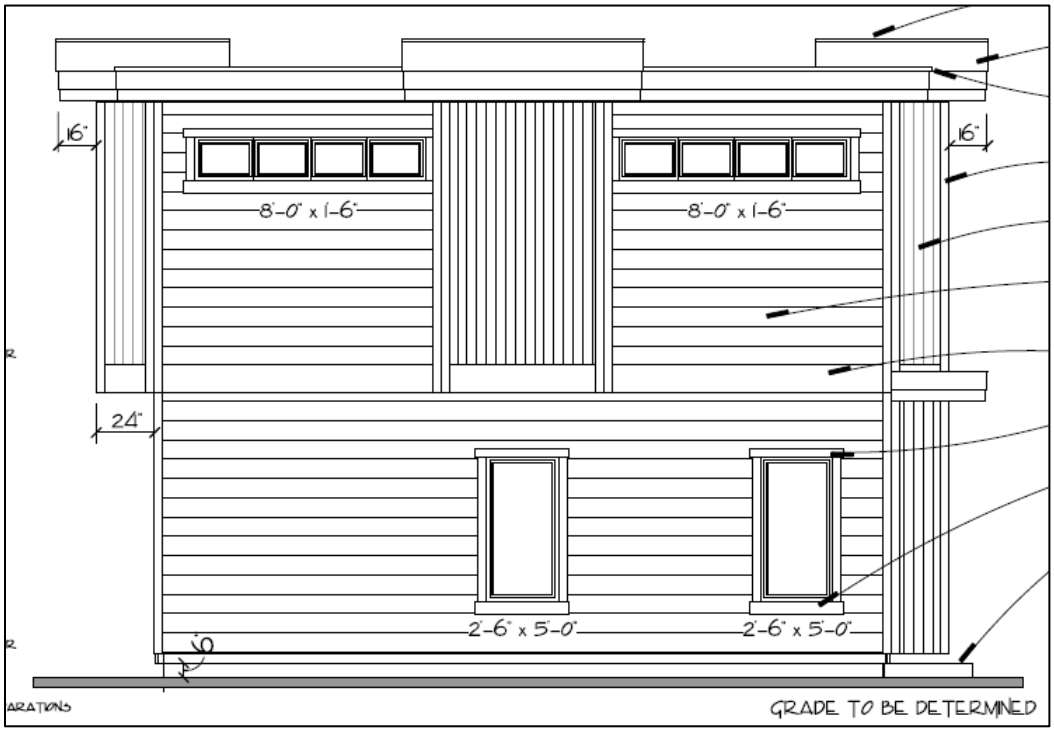



Figure 11: Rear Elevation (from the lane)

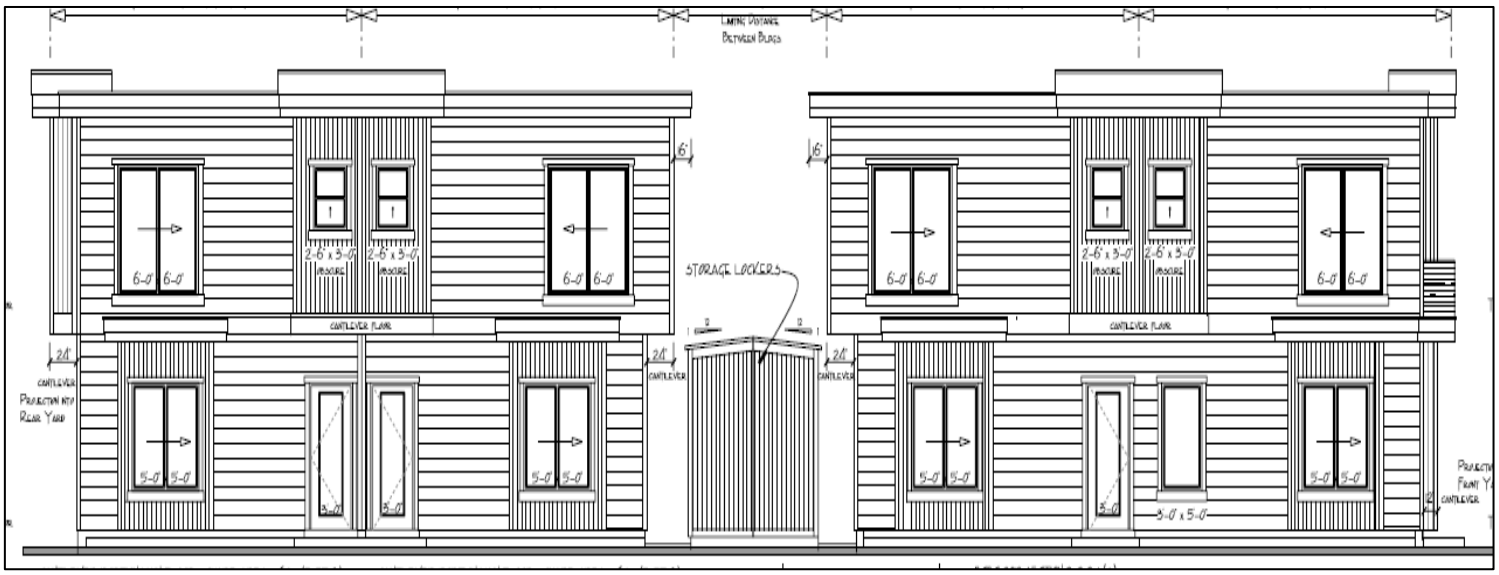



Figure 12: West Elevation (from the lane)




Figure 13: East Elevation (from neighbouring property)

Attachment H – Proposed Renderings




Figure 14: South Rendering (from Dynes Avenue)




Figure 15: Southwest Rendering



Figure 16: West Rendering

Attachment I - Floor Plans

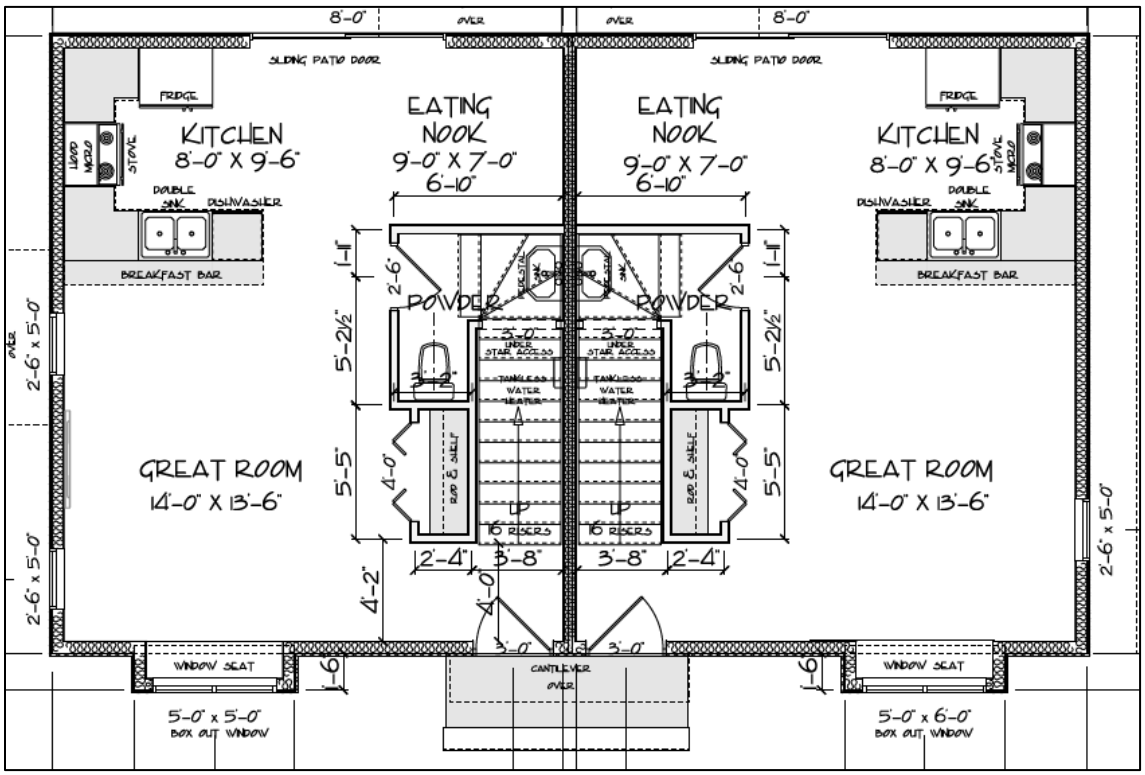



Figure 17: Typical Main Floor

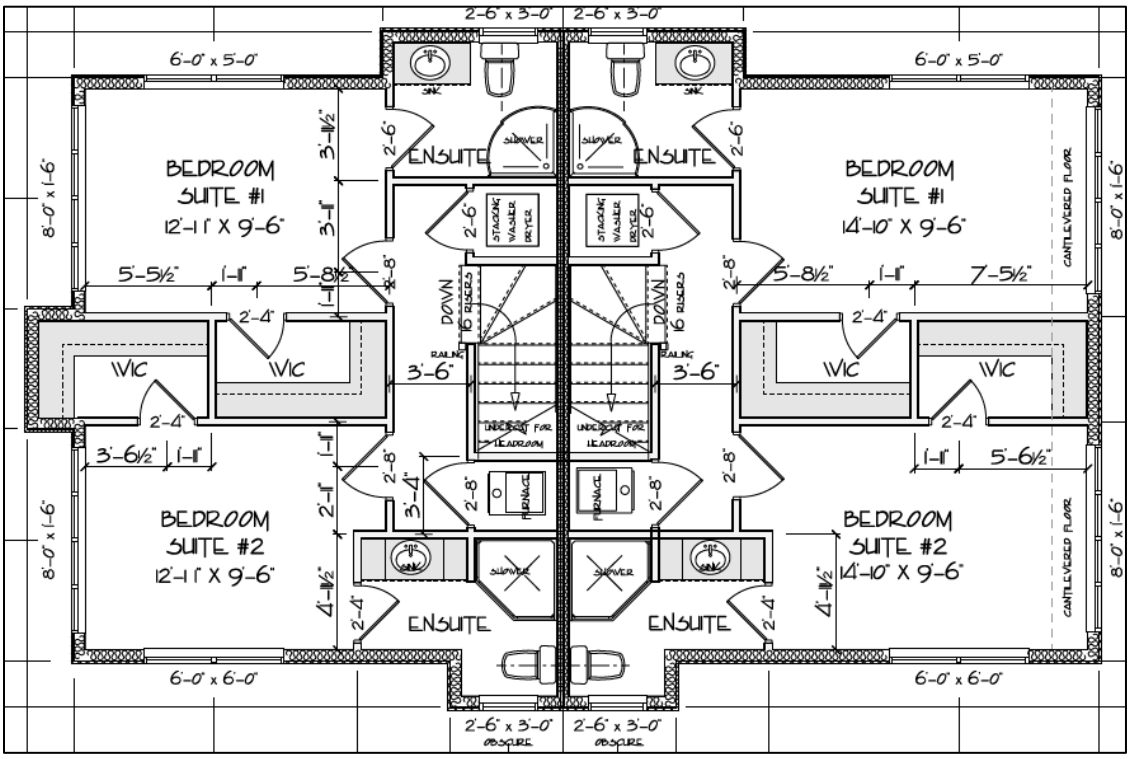



Figure 18: Typical Second Floor

Attachment J - Letter of Intent

**Letter of Intent regarding subject property 1087 Dynes Ave, Penticton BC.**

To whom it may concern.

The team at 1167378 BC Ltd. Is extremely excited to put together this application for rezone and development. It marks the first project for us in Penticton, and we are grateful for the opportunity. We also feel a great responsibility to put together a project that benefits the neighbourhood, fits in the OCP, and leaves a positive impact that we can be proud to say we built.

We feel 1087 Dynes Avenue has amazing potential to be a benchmark project for the street as it gives us the ability to help transition the area from the Hotel into the Residential, set the tone for future development on the street, upgrade needed services, and obviously improve a site that desperately needs a face lift. It will be a positive impact on property values, and the overall appearance of the neighbourhood.

As the previous statement touched on, we would be looking for a rezone from CT1 to RM2 to help with that transition. This zoning would be a perfect fit for the lot, and obviously works within the structure of the remaining street given a mix of single family homes, apartment buildings, and other duplexes etc. This projected zoning also fits within the OCP, and would not require an amendment to the OCP.

To accommodate the 3m by 3m corner cut that engineering has asked for, we have run into a small parking challenge on the lot. We feel that we have provided ample parking on the lot, but need a small variance to accommodate a visitor spot, which would be on Dynes Ave, on the street in front of the 1st unit. Also a small request to help us achieve some extra square footage needed in the units, we have asked for a 1.5m variance on the interior lane. This would not affect the lane usage, but would be very nice to complete the design and look of the project, as well as get the FAR as close to .80 as possible.

My team would like to thank you for your time, and consideration of our applications, and look forward to working with you very soon.

If you have any questions, or concerns, please feel free to contact me.

Sincerely,

**Darrell Richards**, President

1167378 BC Ltd.

250.488.3900

Sold@DarrellRichards.ca

Figure 19: Letter of Intent

Attachment K - Development Variance Permit PL2018-8356

City of Penticton
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

# Development Variance Permit

**Permit Number: DVP PL2018-8356**

Name:
Address:

**Conditions of Permit**

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

   Legal: Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale Lytton) District Plan 1017
   Civic: 1087 Dynes Avenue
   PID: 002-548-658

3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following section of Zoning Bylaw 2017-08 to allow for the construction of two duplexes.

   - Section 6.5 (Table 6.5): to waive the one required visitor parking space.
   - Section 10.8.2.7.i: to decrease the minimum west interior side yard for a principal building from 3.0m to 1.5m.

**General Conditions**

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.

5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.

6. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.**

7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the __ day of _____, 2018.

Issued this _____ day of _____, 2018

_____
Dana Schmidt,
Corporate Officer

City of Penticton
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

# Development Permit

**Permit Number: DP PL2018-8357**

Name:
Address:

**Conditions of Permit**

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

   Legal: Lot 14 District Lot 3 Group 7 Similkameen Division Yale (Formerly Yale Lytton) District Plan 1017
   Civic: 1087 Dynes Avenue
   PID: 002-548-658

3. This permit has been issued in accordance with Section 489 of the *Local Government Act*, to permit the construction of two duplexes as shown in the plans attached in Schedule A.

4. In accordance with Section 502 of the *Local Government Act* a deposit or irrevocable letter of credit, in the amount of $6,213.00 must be deposited prior to, or in conjunction with, an application for a building permit for each phase for the development authorized by this permit. The City may apply all or part of the above-noted security in accordance with Section 502(2.1) of the *Local Government Act*, to undertake works or other activities required to:

   a. correct an unsafe condition that has resulted from a contravention of this permit,
   b. satisfy the landscaping requirements of this permit as shown in Schedule A or otherwise required by this permit, or
   c. repair damage to the natural environment that has resulted from a contravention of this permit.

5. The holder of this permit shall be eligible for a refund of the security described under Condition 5 only if:

   a. the permit has lapsed as described under Condition 8, or
   b. a completion certificate has been issued by the Building Inspection Department and the Director of Development Services is satisfied that the conditions of this permit have been met.

6. Upon completion of the development authorized by this permit, an application for release of securities, provided in Schedule B, must be submitted to the Planning Department. Staff may carry out inspections of the development to ensure the conditions of this permit have been met. Inspection fees may be withheld from the security as follows:

| | |
|---|---|
| 1st Inspection | No fee |
| 2nd Inspection | $50 |
| 3rd Inspection | $100 |
| 4th Inspection or additional inspections | $200 |

**General Conditions**

7. In accordance with Section 501(2) of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.

8. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.

9. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.**

10. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

11. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the __ day of _____, 2018.

Issued this _____ day of _____, 2018

_____
Dana Schmidt,
Corporate Officer

**The Corporation of the City of Penticton**

**Bylaw No. 2018-69**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-69".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot 14, District Lot 3, Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1017, located at 1087 Dynes Avenue from CT1 (Tourist Commercial) to RM2 (Low Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

| | | |
|---|---|---|
| READ A FIRST time this | day of | , 2018 |
| A PUBLIC HEARING was held this | day of | , 2018 |
| READ A SECOND time this | day of | , 2018 |
| READ A THIRD time this | day of | , 2018 |
| RECEIVED the approval of the Ministry of Transportation on the | day of | , 2018 |
| ADOPTED this | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the __ day of ____, 2018 and the __ day of ____, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Approved pursuant to section 52(3)(a) of the *Transportation Act*
this _____ day of _____, 2018

_____
for Minister of Transportation & Infrastructure

_____
Andrew Jakubeit, Mayor

_____
Dana Schmidt, Corporate Officer

Rezone 1087 Dynes Ave From CT1 (Tourist Commercial) To RM2 (Low Density Multiple Housing)




**City of Penticton – Schedule 'A'**

**Zoning Amendment Bylaw No. 2018-69**

**Date:** _____ **Corporate Officer:** _____

# Council Report

penticton.ca

**Date:** September 18, 2018 File No: PRJ2018-196
**To:** Peter Weeber, Chief Administrative Officer
**From:** Nicole Capewell, Planner 1
**Address:** 481 Wade Avenue East
**Subject:** **Zoning Amendment Bylaw No. 2018-70**
**Development Variance Permit PL2018-8359**

---

## Staff Recommendation

*Zoning Amendment Bylaw*

THAT "Zoning Amendment Bylaw No. 2018-70", a bylaw to rezone Lot 16 District Lot 202 Similkameen Division Yale District Plan 933, located at 481 Wade Avenue East, from RD2 (Duplex Housing: Lane) to RM2 (Low Density Multiple Housing), be given first reading and be forwarded to the October 2, 2018 Public Hearing;

*Development Variance Permit*

THAT delegations and submissions for "Development Variance Permit PL2018-8359" for Lot 16 District Lot 202 Similkameen Division Yale District Plan 933, located at 481 Wade Avenue East, a permit to vary the following section(s) of Zoning Bylaw No. 2017-08:

1. Section 10.8.2.8.i: to reduce the minimum exterior side yard setback from 4.5m to 3.0m; and
2. Section 6.5 (Table 6.5): to waive the requirement for one (1) visitor parking space,

be heard at the October 2, 2018 Public Hearing;

AND THAT Council consider "DVP PL2018-8359" following the adoption of "Zoning Amendment Bylaw No. 2018-70".

## Strategic Objective

The subject application demonstrates that it is aligned with the Council Priorities of Community Building and Economic Vitality. The application represents smart growth by increasing density in areas where existing services are in place, and in areas close to transit, commercial and employment centers.

## Background

The applicant is requesting to rezone 481 Wade Avenue East from RD2 (Duplex Housing: Lane) to RM2 (Low Density Multiple Housing) to facilitate the development of a four-unit townhouse. The applicant has also requested a variance to reduce the exterior side yard along Townley Street to create a larger backyard space for the units, and to waive the requirement for one (1) visitor parking space.

The subject property is currently zoned RD2 (Duplex Housing: Lane), and is designated for MR (Medium Density Residential) by the City's Official Community Plan. The site currently has an older single family

dwelling, which was constructed in approximately 1951. Photos of the site are included as Attachment 'D'. The intent of the applicant will be to demolish the existing home prior to building the townhouse units. The property is located within the General Multiple Family Development Permit Area. The Developer will be required to attain a Development Permit prior to Building Permit issuance. The Development Permit will be issued by staff at a later date, should Council support the rezoning application.

The City's OCP designates much of this neighbourhood (Attachment 'C') as MR (Medium Density Residential), which supports transitioning this property to a higher density. This property is located within close proximity of the KVR trail, the downtown core, Penticton Creek pathway, Okanagan Lake and other desired amenities. The zoning map of the neighbourhood (Attachment 'B') indicates that there is currently a mix of zones within the neighbourhood including RM2 (Low Density Multiple Housing), RM3 (Medium Density Multiple Housing), and RD1 (Duplex Housing). As indicated in the Future Land Use map (Attachment 'C'), this neighbourhood is identified for medium and high density development.

**Proposal**

The applicant is proposing to construct a four-unit townhouse development at 481 Wade Avenue East. To facilitate this development, the applicant is requesting to rezone the property from RD2 (Duplex Housing: Lane) to RM2 (Low Density Multiple Housing).

The applicant is also requesting a variance to reduce the exterior side yard along Townley Street from 4.5m to 3.0m, and to waive the requirement to provide one (1) visitor parking space.

The applicant will be required to attain a Development Permit for the proposed development, as the property is located within the General Multiple Family Development Permit Area. This will be issued by staff at a later date, should Council support the rezoning application.

**Technical Review**

This application was reviewed by the City's Technical Planning Committee. No significant issues arose in the process. Typical frontage upgrades and servicing requirements have been identified for the Building Permit stage of the project, if rezoning and variance permit applications are supported by Council. The proposed building is required to conform to the BC Building Code. These items have been communicated to the applicant.

**Financial Implication**

The application does not pose any significant financial implications to the City. Development costs are the responsibility of the Developer.

**Development Statistics**

The following table outlines the proposed development statistics on the plans submitted with the rezoning application:

| | Requirement RM2 Zone | Provided on Plans |
|---|---|---|
| **Maximum Lot Coverage:** | 40% | 39% |
| **Maximum Density:** | 0.8 Floor Area Ratio (FAR) | 0.79 Floor Area Ratio (FAR) |

| | | |
|---|---|---|
| **Vehicle Parking:** | 5<br>(1 per unit, plus 0.25/unit for visitor parking) | 6 |
| **Required Setbacks**<br>Front Yard (Wade Ave E):<br>Interior Side Yard (west):<br>Exterior Side Yard (Townley St):<br>Rear Yard (north): | <br>3.0 m<br>3.0 m<br>4.5 m<br>6.0 m | <br>3.05 m<br>4.57 m<br>3.05 m<br>6.10 m |
| **Maximum Building Height** | 12 m | 10.9 m |
| **Other Information:** | • The development will be required to attain a Development Permit, which will be reviewed and issued by Staff at a future date. | |

**Analysis**

*Support Zoning Amendment Bylaw*

The Official Community Plan designation for the subject property is MR (Medium Density Residential), which support townhouses, cluster housing, condominiums and other forms of increased density. The applicant is proposing to construct a four-unit townhouse development. Staff consider that the proposed zoning amendments will allow for a development that is supported through the following City Policies:

- OCP goal to facilitate the provision of a variety of housing types, tenures and densities that will continue to respond to the diverse needs, including income levels, of individuals and families in Penticton in varying stages of their life.
- OCP policy which promotes residential infill development as an appropriate method of maximizing the use of land and increasing housing choices for Penticton residents.
- The subject property is located within close proximity of the KVR trail, the downtown core, Penticton Creek pathway, Okanagan Lake and other desired amenities, which encourages more walking and active forms of transportation.

The plans submitted are conceptual in nature and an application for a development permit will be required prior to any approval for construction on the lands. The development permit drawings will have more details on the elevations, to include: building types, materials and colours. The development permit will also require a detailed landscaping plan from the applicant, which will allow staff to review the landscaping being proposed as part of the development. The subject property is located within the General Multiple Family Development Permit Area, and staff will review the plans to ensure conformance with these guidelines when reviewing for Development Permit issuance.

Given the above, there is adequate policy to support the proposal to rezone from RD2 (Duplex Housing: Lane) to RM2 (Low Density Multiple Housing), and support is recommended for First Reading of "Zoning Amendment Bylaw No. 2018-70"

*Deny Zoning Amendment Bylaw*

Council may consider that the proposed development is not appropriate for the subject property. If this is the case, Council should deny First Reading of Zoning Amendment Bylaw No. 2018-70".

Development Variance Permit

*Approve Development Variance Permit*




When considering a variance to a City bylaw, staff encourages Council to consider whether approval of the variance would cause a negative impact on neighbouring properties and if the variance request is reasonable. The proposed variances are to reduce the exterior side yard setback from 4.5m to 3.0m, and to waive the requirement to provide one (1) visitor parking space.

1. *Section 10.8.2.8.i: to reduce the minimum exterior side yard setback from 4.5m to 3.0m.*
    - The applicant is requesting a variance to reduce the minimum exterior side yard setback (along Townley Street) from 4.5m to 3.0m.
    - Larger exterior side yard setbacks are often required to accommodate front yards and green space between developments and the street. This can aid in creating a buffer between the street and the developments, which often accommodates landscaping. The boulevard space along Townley Street is already of significant width (5.6m wide), as shown in Attachment 'F'.
    - In reducing the setback along Townley Street, the applicant has increased the interior setback along the western property line from the minimum 3.0m required to 4.5m.
    - The requested variance is not increasing the size of building that could be built on the property, rather the variance would allow the building to be located farther from the west property line (where there is a directly adjacent neighbour) and closer to the eastern property line (where there is no direct neighbour).
    - Given that there is a wide (5.6m) boulevard between the subject property and Townley Street, the impact of a lessened exterior side yard is significantly reduced.
    - The applicant will be required to complete typical frontage improvements along both Wade Avenue East and Townley Street. These improvements will include landscaping to meet City standards, including boulevard trees, grass and shrubs.
    - The proposed elevations of the development indicate there may be small balconies facing the western property (463 Wade Ave E). An increased side yard width along this property line will assist in minimizing the overlook into the neighbouring property. The Developer will be required to attain a Development Permit prior to construction of the development, and at this time landscaping will be reviewed.

    In summary, a variance to the exterior side yard (to facilitate moving the building to the east) will have a positive impact on the western property by increasing the distance between the subject development and the property line. Should Council deny the variance request, the building would remain the same size, but would be built at only 3.0m from the west side yard, in order to accommodate the 4.5m exterior side yard along the eastern property line.

2. *Section 6.5 (Table 6.5): to waive the requirement for one (1) visitor parking space.*
    - The applicant is also requesting a variance to waive the requirement to provide one (1) visitor parking space.

- The proposed site plan provides four townhouse units, each of which will have an attached garage (two double garages and two single garages) (Attachment 'G'). The garages will provide a total of six (6) parking spaces located within the garages.
- Visitor parking spaces are required to be clearly marked as 'Visitor Parking', and therefore cannot be tandem in front, or within a garage. As such, a variance is required.
- All required parking spaces must be located completely on the subject property. In front of the proposed garages, there is only 3.4m (11 ft.) to the property line, which does not meet the minimum length of 5.8m for a parking stall.
- The actual number of parking spaces available would be 12 spaces, due to the large boulevard area (5.6m), although the parking spaces in the driveways are partly within the boulevard.
- In the preliminary drawings, an additional visitor parking space was proposed along the northern property line, accessed from Townley Street. Staff felt this would be more appropriate to be utilized as green space, due to the large amount of space already used to accommodate driveways.

In summary (following the parking requirements within the Zoning Bylaw) there are only six (6) parking spaces located fully on the subject property. None of which meet the requirements for visitor parking spaces. Due to the actual number of spaces that will be available (total 12 spaces), there will be an adequate amount of parking available, and staff felt it would be more appropriate to maintain the green space along the northern property line.

In staff's opinion, the proposed variances will not have a negative impact on the neighbourhood. The requested variances will provide the benefit of larger green (yard) space to the end user of the townhouse development, and maintaining buffer space between neighbouring properties. The large boulevard area will also assist in maintaining a large amount of greenspace along the eastern edge of the property.

Given the above, staff find the variance requests reasonable and recommend that Council support the application.

*Deny Development Variance Permit*

Council may consider that the proposed variances will have a negative impact on the neighbourhood. Council may decide that the applicant should adjust the site plan to meet the required setbacks, and provide the required visitor parking space. If this is the case, Council should deny the variance.

**Alternate Recommendations**

1. THAT Council deny first reading of "Zoning Amendment Bylaw No. 2018-70" and deny support for DVP PL2018-8359.
2. THAT Council give first reading to "Zoning Amendment Bylaw No. 2018- 70", but deny support for DVP PL2018-8359.
3. THAT Council give first reading to "Zoning Amendment Bylaw No. 2018- 70", and give support for DVP PL2018-8359 with conditions that Council feels are appropriate.

**Attachments**

| | |
|---|---|
| Attachment A: | Subject Property Location Map |
| Attachment B: | Zoning Map of Subject Property |
| Attachment C: | Official Community Plan Map of Subject Property |
| Attachment D: | Images of Subject Property |
| Attachment E: | Letter of Intent |
| Attachment F: | Conceptual Site Plan |
| Attachment G: | Conceptual Elevations |
| Attachment H: | Draft Development Variance Permit (DVP) |
| Attachment I: | Zoning Amendment Bylaw No. 2018-70 |

Respectfully submitted

Nicole Capewell
Planner 1

Approvals

| Director Development Services | Chief Administrative Officer |
|---|---|
| AH | LD for PW |

Attachment A – Subject Property Location Map

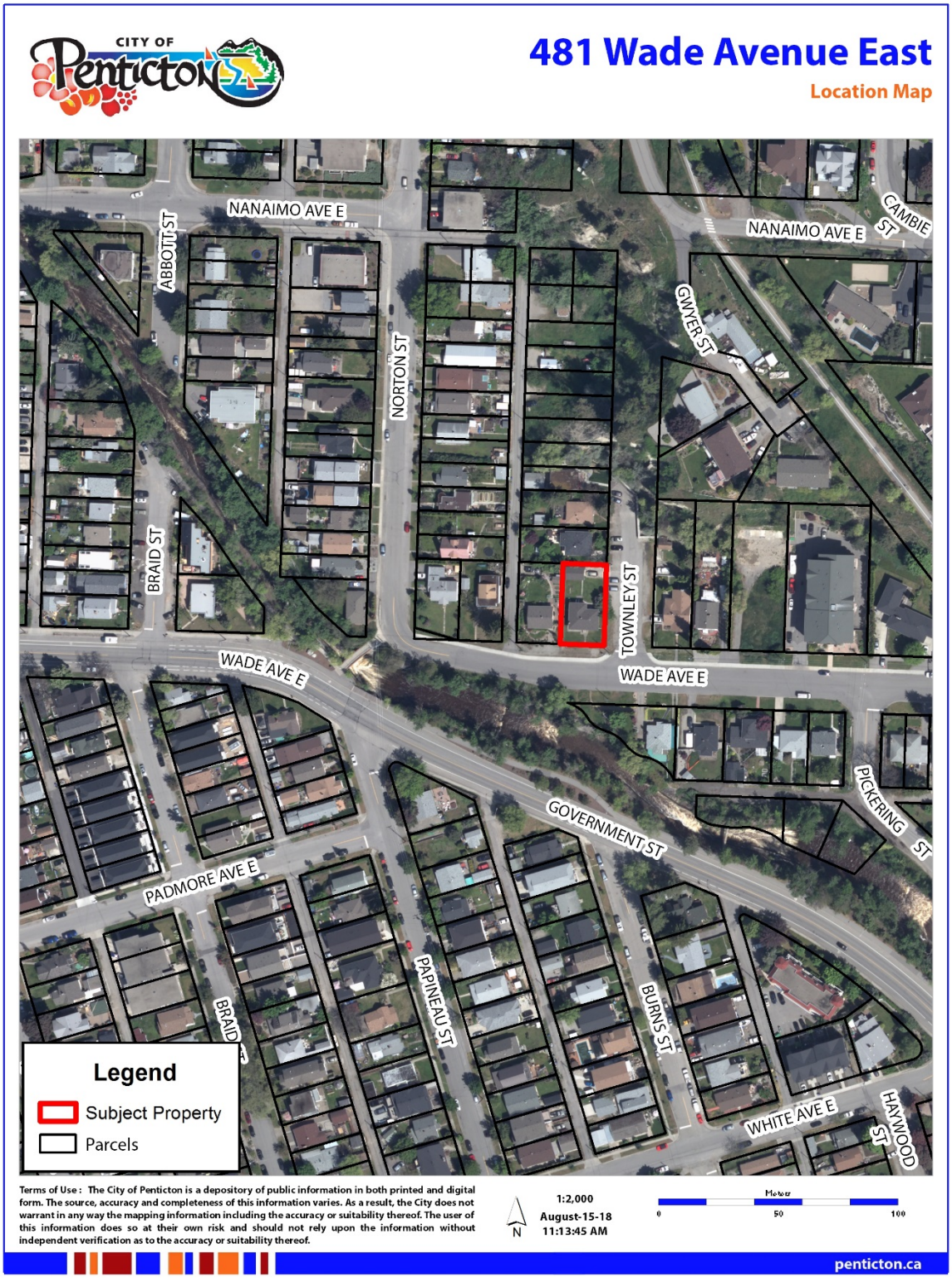



Figure 1 – Subject Properties Highlighted in Red

Attachment B – Zoning Map of Subject Property

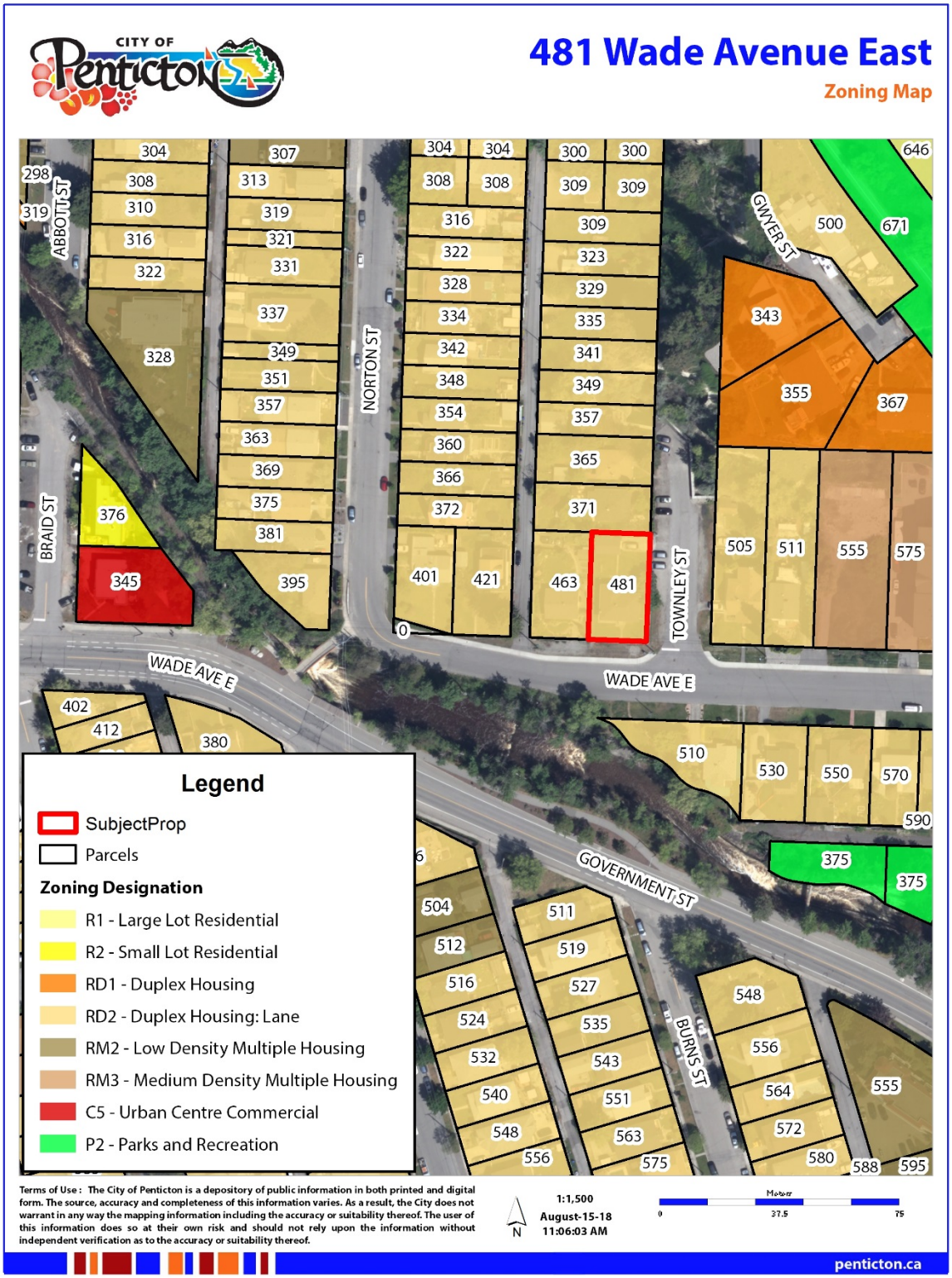



Figure 2 – Subject Properties Currently Zoned RD2 (Duplex Housing: Lane)

Attachment C – Official Community Plan Map of Subject Property




Figure 3 – Subject Properties Currently Designated as MR (Medium Density Residential) within Official Community Plan

Attachment D – Images of Subject Property




Figure 4 – Looking toward front of 481 Wade Avenue East from corner of Wade Ave and Townley Street

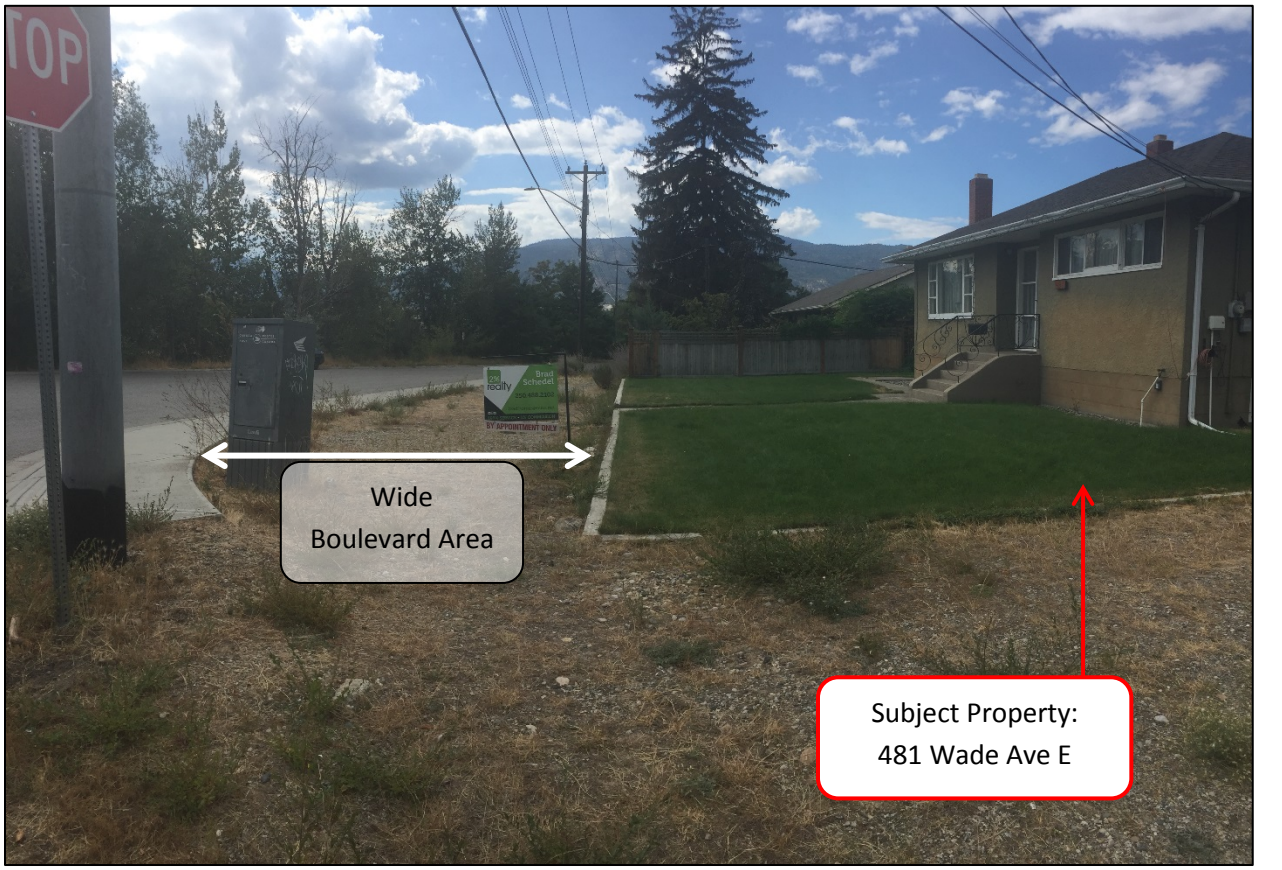



Figure 5 – Looking west from Townley Street




Figure 6 – Looking toward 481 Wade Ave E from Wade Ave E

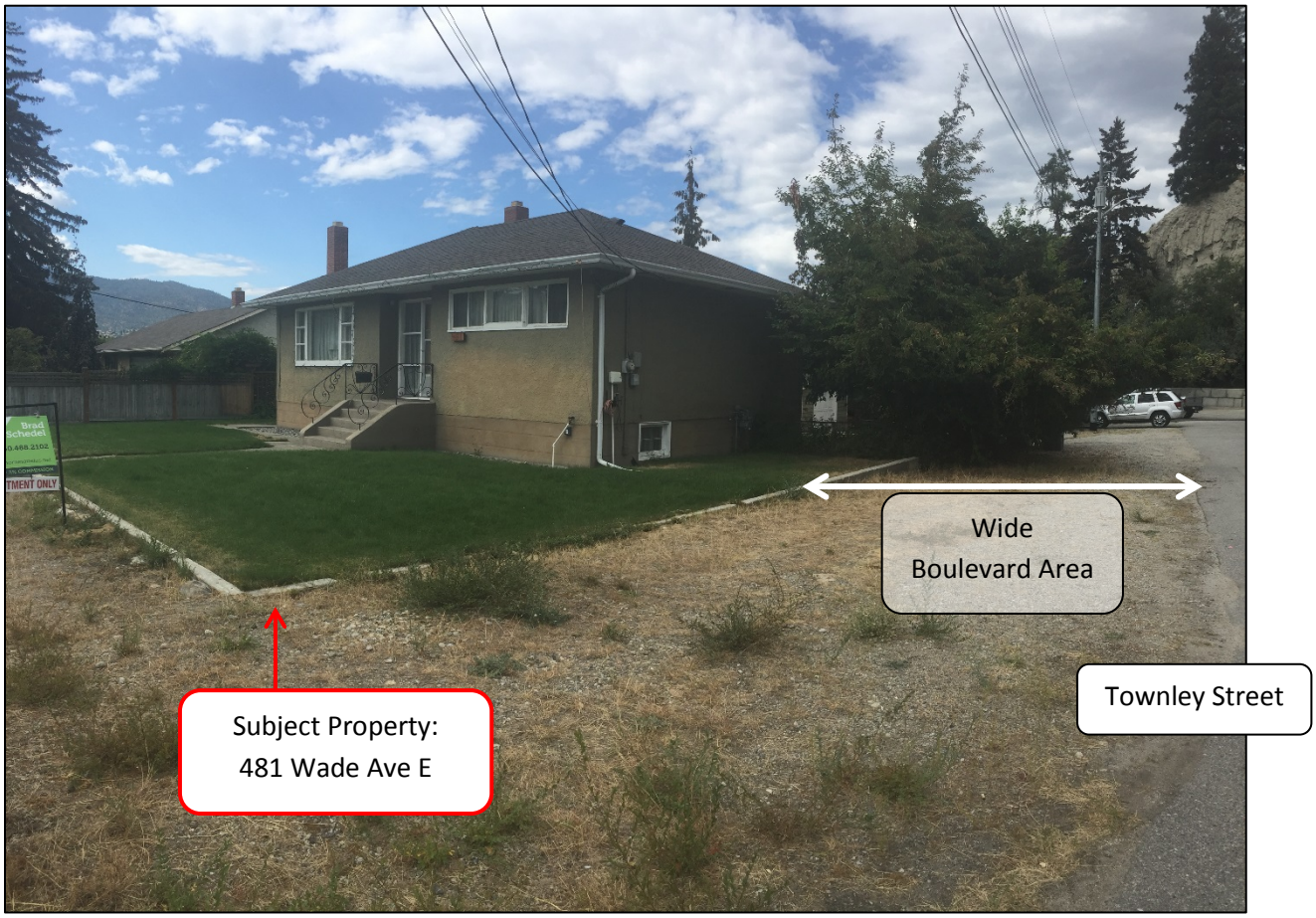



Figure 7 – Looking at corner of 481 Wade Ave E from Wade Ave E and Townley St




Figure 8 – Looking at 481 Wade Ave E from Townley Street




Figure 9 – Looking at 481 Wade Ave E from Townley Street

Attachment E – Letter of Intent

BURGART PROJECTS Inc.

SUITE 389
113 – 437 MARTIN STREET
PENTICTON, BC
V2A 5L1

778 931 2887

info@burgartprojects .com

**481 Wade Avenue East**

Rezoning Application

**Letter of Intent**

August 9 2018

Attention: City of Penticton – Planning Department

The intent of this project is to build a new 4 unit townhouse on the corner of Wade Avenue East and Townley Street. The building will be 3 stories tall with one unit main entrance facing Wade Avenue, two entrances facing Townley Street and one entrance facing the rear yard (north). There will be parking for 6 vehicles in garages; the garage doors will face Townley Street. The architecture of the building will be Transitional style with off-white stucco, bronze window frames and black metal accents (deck railings, gutters).

The project will feature irrigated 'xeriscape' landscaping and lawn. Plant species will be chosen to colourful and the least attractive to deer. Each unit will have an enclosed/fenced yard.

We are requesting the property be rezoned from the existing RD2 to RM2. This is consistent with the MR designation as per the OCP. We are requesting two Zoning Bylaw variances:

1) The exterior side yard (east side / Townley Street) be relaxed from the required 4.5m to 3.0m. There is a large city boulevard from the east property line to the street (approximately 5.6m), so the building will still be set well back from the street. The 3.0m east side yard allows the building is sited towards the east side of the property to create a generous, usable 4.5m interior side yard on the west side.

2) Visitor parking stall: There is room for the required visitor parking stall at the rear of the property. However, City of Penticton Planning staff have recommended this area be reserved for landscaping. Although the current proposal does not include the one required visitor stall as defined by the Zoning Bylaw, the project does include 6 parking stalls in 4 garages, parking for 6 more cars on the driveways and 44m of street frontage that could be used for visitor parking. The property owners feel these areas will fully meet the practical parking needs of the townhouse residents and visitors.

Figure 10 – Letter of Intent (1/2)

Although the economics of the proposed project is constrained by the typical factors – location, size and form, as the property owner, designer and builder our intention is build a high quality project. We believe the scale and style of the building are complimentary to the existing neighbourhood and works well as the neighbourhood transitions from older single family homes to a higher density community consistent with the long term vision of the Official Community Plan (OCP).

We are excited by the long term prospects for the city of Penticton and for the potential re-development of existing inner city properties. We look forward to proceeding with this project and the completion of many more in the future.

Regards,



Brendan Burgart

Burgart Projects Inc.

President

**Figure 11 – Letter of Intent (2/2)**

Attachment F – Conceptual Site Plan

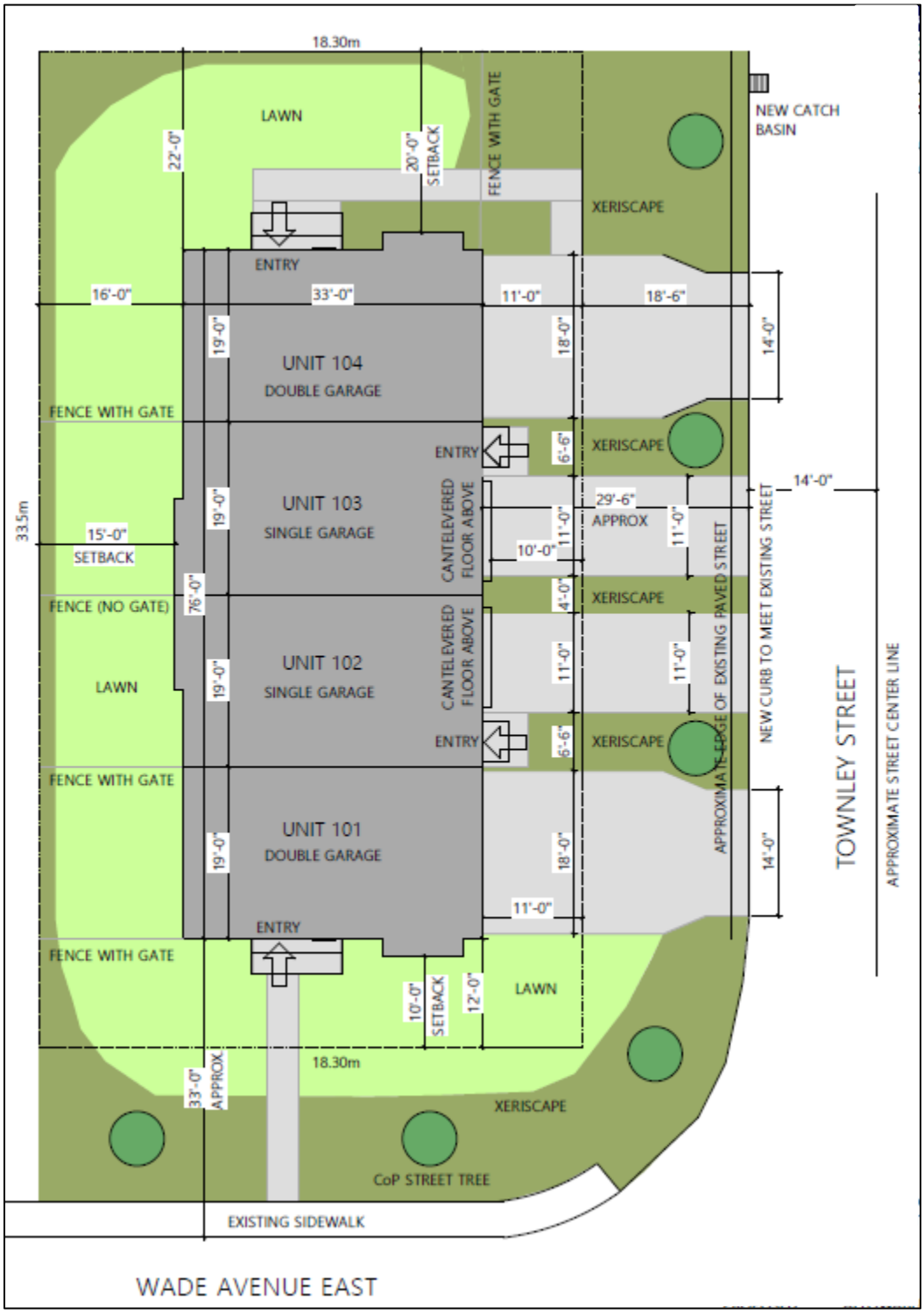



Figure 12 – Conceptual Site Plan

# Attachment G – Conceptual Elevations




Figure 13 – Conceptual East Elevation (Facing Townley Street)




Figure 14 – Conceptual South Elevation




Figure 15 – Conceptual North Elevation




Figure 16 – Conceptual West Elevation

Attachment H – Draft Development Variance Permit (DVP)

**City of Penticton**
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

# Development Variance Permit

**Permit Number: DVP PL2018-8359**

Owner Name
Owner Address

**Conditions of Permit**

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

   Legal: Lot 16 District Lot 202 Similkameen Division Yale District Plan 933
   Civic: 481 Wade Avenue East
   PID: 011-895-462

3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following sections of Zoning Bylaw 2017-08 to allow for the construction of a four-unit townhouse development:

   a. Section 10.8.2.8.i: to reduce the minimum exterior side yard setback from 4.5m to 3.0m; and

   b. Section 6.5 (Table 6.5): to waive the requirement for one (1) visitor parking space.

**General Conditions**

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule 'A'.

5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.

6. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.**

7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

DRAFT

Authorized by City Council, the _____ day of _____ 2018

Issued this _____ day of _____, 2018

_____

Dana Schmidt,
Corporate Officer

DRAFT

**The Corporation of the City of Penticton**

**Bylaw No. 2018-70**

*A Bylaw to Amend Zoning Bylaw 2017-08*

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2018-70".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot 16, District Lot 202 Similkameen Division Yale District Plan 933, located at 481 Wade Avenue East, from RD2 (Duplex Housing: Lane) to RM2 (Low Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

| | | |
|---|---|---|
| READ A FIRST time this | day of | , 2018 |
| A PUBLIC HEARING was held this | day of | , 2018 |
| READ A SECOND time this | day of | , 2018 |
| READ A THIRD time this | day of | , 2018 |
| ADOPTED this | day of | , 2018 |

Notice of intention to proceed with this bylaw was published on the __ day of ____, 2018 and the __ day of ____, 2018 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Rezone 481 Wade Ave E From RD2 (Duplex Housing: Lane) To RM2 (Low Density Multiple Housing)




**City of Penticton – Schedule 'A'**

**Zoning Amendment Bylaw No. 2018-70**

**Date:** _____ **Corporate Officer:** _____