

CITY OF WHITEHORSE
BYLAW 2021-27

A bylaw to regulate the temporary closure of a portion of a highway and allow the construction and use of sidewalk cafés and pop-up patios in the City of Whitehorse

WHEREAS section 265(j) of the *Municipal Act* provides that council may pass bylaws subject to the *Highways Act*, for the management and control of municipal highways, including temporary and permanent opening and closing of the roadway, sidewalks, boulevards and all property adjacent thereto; and

WHEREAS section 126(1) of the *Motor Vehicles Act* provides that a municipality may, with respect to highways under its direction, control and management, make bylaws controlling and regulating the use of highways, sidewalks, and other public places.

NOW THEREFORE the council of the municipality of the City of Whitehorse in open meeting assembled, hereby ENACTS AS FOLLOWS:

SHORT TITLE

1. This bylaw may be cited as the "**Sidewalk Café and Pop-up Patio Bylaw**".

DEFINITIONS

2. In this bylaw:

“Applicant” means an applicant for the temporary closure of a portion of a highway for the operation of a sidewalk café or pop-up patio, and for the purposes of this bylaw, also means the person operating the sidewalk café or pop-up patio in the closed area;

“Application” means an application to temporarily close a portion of a highway for the operation of a sidewalk café or pop-up patio;

“Boulevard” means the portion of a highway that extends from the edge of the roadway to the property line of the adjacent property, not including the sidewalk;

“Closed area” means the portion of a highway temporarily closed for the operation of a pop-up patio;

“Council” means the council for the City of Whitehorse;

“Development Officer” means a Development Officer as defined in the City of Whitehorse *Zoning Bylaw*;

“Highway” means all of the road or street shown on a plan of survey registered in the Yukon Land Titles Office, and includes the roadway, boulevard and sidewalk;

“Permit” means a temporary use development permit issued under the *Zoning Bylaw*;

Sidewalk Café and Pop-up Patio Bylaw 2021-27

“Pop-up Patio” means a group of tables, chairs and other accessories situated and maintained on a roadway which includes the temporary conversion of designated parking stalls located on a roadway for the consumption of food and beverages sold to the public from an adjoining business;

“Parking Stall” means any portion of a roadway marked by one or more painted lines, number, meter, pole, sign or other device to indicate that it is intended for the parking of a vehicle;

“Roadway” means the part of a highway that is intended for the passage or parking of vehicles and includes the area from centre line to the curb or edge;

“Sidewalk” means that part of a highway especially adapted to the use of or ordinarily used by pedestrians; and

“Sidewalk Café” means a group of tables, chairs and other accessories situated and maintained on a public sidewalk or boulevard for the consumption of food and beverages sold to the public from an adjoining business.

Authority of the Development Officer

3. The Development Officer is authorized to:
 - (1) Determine the form of application to erect a sidewalk café or pop-up patio;
 - (2) Issue a permit for a term of less than a year which shall temporarily close a portion of the highway shown in the permit for the development and operation of a pop-up patio or a sidewalk cafe;
 - (3) Attach such conditions to the permit as the Development Officer deems advisable;
 - (4) Suspend, amend, revoke or cancel any temporary highway closure made pursuant to this bylaw, without compensation to the applicant, for the following:
 - (a) Contravention of any of the conditions of the application or the conditions of the permit;
 - (b) The closed area being temporarily closed on the basis of incorrect information;
 - (c) The closed area being temporarily closed in error; or
 - (d) The closed area is required for the installation or service of municipal infrastructure.

Application Conditions

4. The City may temporarily close a portion of a highway for a sidewalk café or pop-up patio only when the following conditions are met:
 - (1) An application has been submitted by the applicant in accordance with the application procedures and information requirements, including a

Sidewalk Café and Pop-up Patio Bylaw 2021-27

- sketch plan as required by the Lease, Encroachment and Property Use Policy and accepted as complete by the Development Officer;
- (2) The proposed sidewalk café or pop-up patio to be constructed complies with this bylaw and all other applicable bylaws;
 - (3) The applicant has submitted the prescribed fees as specified in the *Fees and Charges Bylaw*;
 - (4) The applicant provides evidence of a comprehensive general liability insurance policy in the amount of five million dollars; and
 - (5) The City is listed as an insured party in the applicant's liability insurance policy with respect to any loss, claims, actions, damages, costs, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from the design, construction, maintenance, operation, or removal of the sidewalk café or pop-up patio or from sidewalk or roadway remediation related thereto.
 - (6) The proposed sidewalk café or pop-up patio:
 - (a) can be conducted safely and with a minimum risk of injury to persons, damage to or loss of property;
 - (b) will not inconvenience neighbouring businesses or residents; and
 - (c) will not be a public nuisance;

Permit Conditions

5. All applicants shall obtain a Temporary Use Development Permit pursuant to the City's Zoning Bylaw and such other licenses and permits as are required to erect and operate the sidewalk café or parking patio.
6. All permits are deemed to include the following conditions:
 - (1) The applicant shall comply with this bylaw and all applicable conditions set out in the *Lease, Encroachment and Property Use Policy*;
 - (2) The applicant shall hold a valid City of Whitehorse Business Licence or be exempt from holding a Business Licence;
 - (3) The applicant shall serve Alcoholic beverages only in accordance with the terms a valid Liquor Licence issued by the Yukon Liquor Corporation;
 - (4) The applicant shall submit a request to the City to have the sidewalk café or pop-up patio inspected before use and not use the closed area until the City has approved the use of the closed area;
 - (5) The applicant shall be bound by any waiver and indemnity which forms part of the application for temporary highway closure;
 - (6) The applicant shall remove all modifications made to the closed area upon expiry of the permit; and

Sidewalk Café and Pop-up Patio Bylaw 2021-27

(7) The applicant shall obtain such other licences and permits as are required to erect and operate the sidewalk café or pop-up patio.

7. This bylaw shall come into full force and effect upon the final passing thereof.

FIRST and SECOND READING: May 10, 2021

THIRD READING and ADOPTION: May 25, 2021



Handwritten signature of Dan Curtis in blue ink.

Dan Curtis, Mayor

Handwritten signature of Norma L. Felker in blue ink.

Norma L. Felker, Assistant City Clerk