

COUNCIL POLICY



Lease, Encroachment and Property Use Policy

Policy Number:	2021-01
Approved by:	Council Resolution #2021-10-09 dated May 25, 2021
Revised by:	Council Resolution #2023-08-08 dated April 24, 2023
Effective date:	April 24, 2023
Departments:	Land and Building Services/Legislative Services

Purpose

To provide guidelines for managing the use and tenure of City-owned property.

Scope

City-owned land or premises not required for operational purposes will be considered for use by an individual, organization or corporation. It should be noted that this policy is designed to address land and premises that fall outside of City facilities managed under specific operational guidelines (such as Canada Games Centre, Takhini Arena).

This policy document is designed to complement and support the specific operational policies of the individual facilities. Where there is potential for conflict between policies, the specific facility operational policies shall govern.

This policy will address the use and tenure of City-owned property under the following three arrangements:

- Lease;
- Permit;
- Encroachment Agreement

Lease is further divided into the following two categories:

1. Market Value Lease
2. Non-Market Lease.

This policy does not address the sale of City-owned residential land to an individual or corporation. The City's Land Disposition Policy addresses the sale of City-owned land.

Objectives

The objectives of this policy are to ensure that when tenure is offered for a City-owned property, that:

- The City has considered the operational need for the property;
- All measures are taken to safeguard the public and the public asset; and
- Appropriate compensation, monetary and/or an in-kind service of benefit to the community is received.

Definitions

"Appurtenant" means adjacent to, adjoining or enjoyed with.

"Charitable purpose" means a society that does not carry on any business or activity for direct or indirect pecuniary gain to its members and whose sole or predominant objects or purposes and activities are:

- Relief of poverty or disease;
- The advancement of education; or
- The advancement of any cultural, recreational, athletic, or other activity or program which is beneficial to a Yukon community.

"City" means the City of Whitehorse.

"Downtown" means the area between the Yukon River (east and south), clay cliffs (west) and the boundary between Marwell and Downtown (north) as shown in the Official Community Plan.

"Encroachment" means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground (excluding sound attenuation structures or fences as required by the City), that extends on, over or under municipal lands and shall include, but is not limited to the following:

- Buildings and all projections (including eaves, cantilevers, etc.) and siding;
- Sheds (including those attached to a dwelling and/or fence);
- Fences;
- Sidewalks, curbs, parking pads, aprons or driveways (asphalt, concrete or brick);
- Structures (including decks, stairs, patios, etc.);
- Extension of adjacent lands by fill and retaining walls;
- Swimming pools and hot tubs;
- Shrubs, trees or other organic landscape materials planted in reserves or City owned parcels;
- Hard landscaping (including, but not limited to retaining walls, structures, fire pits, planters);
- Light standards; and
- Signs.

"Encroachment Agreement" means an agreement between the applicant and the City authorizing an encroachment and shall, among other things, include:

- Location and identification of the encroachment;
- Fees;
- Term;
- Termination notice;
- Cost and liability for removal; and
- Indemnification of the City, its agents or licensees.

"Market Rental Value" means the fair market value of property while rented out in a lease.

“Market Value” means the most probable price, as of a specified date, in cash or in terms equivalent to cash, or in precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, and assuming that neither is under undue duress.

“Mobile Food Vendor” (street vendor, street stand, food truck, etc.) means an independently operated vehicle, structure, or mobile food vending apparatus occupying public space, typically for the purpose of providing food and beverages, for commercial sale by a business entity, in an outdoor setting to either passers-by or seated patrons.

“Mobile Retail Vendor” (street vendor, street stand, etc.) means an independently operated vehicle, structure or vending apparatus occupying public space, typically for the purpose of providing retail products or services for commercial sale by a business entity, in an outdoor setting to either passers-by or seated patrons. No food or beverages shall be sold.

“Mobile Vendor Associations” (Farmers Market, business collective, etc.) means a collection of independent mobile vendors established through an organized association serving food, beverages, or specialized retail products in an outdoor setting to either passers-by or seated patrons by utilizing either vehicles, independent food preparation or retail vending apparatus’, or mobile shelters and occupying portions of public space.

“Non-Market Lease” means a lease that is valued at less than market value. In this policy, less than market value can equate to either a nominal amount or the market value reduced by a determined factor.

“Outdoor Merchant” (rack displays, outdoor tables, merchandise displays etc.) means a directly adjacent spatial accessory use to a business located on the main floor of a building, occupying portions of public space, for the purpose of displaying merchandise in an outdoor environment;

“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;

“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 stall(s) located on a roadway for the consumption of food and beverages sold to the public from an adjoining business.

“Permit Area” means an area identified by the City for commercial use by mobile vendors, outdoor merchants, pop-up patios and sidewalk cafés.

“Public Space” means sidewalks, rights-of-way, boulevards, street parking spaces, parks, and parking lots owned or leased by the City of Whitehorse.

“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 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.

1. Lease

1.1 Market Value Lease

General

In the management of its lands the City of Whitehorse considers the present and future need for its property from an operational perspective and from land use policies dictated by the City's Official Community Plan. In some cases, there is no present or future use for any municipal purpose and it may be beneficial to sell the property. In some cases, no present need is required but a future need is certain or even uncertain and the optimum form of disposition is through a lease arrangement.

Scope

This section applies to commercial or industrial property that has been deemed to have no present use for any municipal purpose and is available for lease by a commercial entity.

Objectives

1.1.1 To ensure that the City is fairly and appropriately compensated for disposal of its real property assets.

1.1.2 To establish guidelines for the commercial leasing of City-owned property.

Policy

General

1.1.3 Prior to granting tenure for any real property, the City will first consider its own immediate and future operational needs of the asset.

1.1.4 If it is deemed that a property is not required for immediate or future purposes, the City may elect that the property be sold.

1.1.5 City-owned property not required in the immediate term, but is or potentially is required in the future, may be granted by lease.

1.1.6 Property that is zoned Greenbelt or Environmental Protection pursuant to the City's current zoning bylaw will not be granted to any commercial organization under any tenure arrangement, but may be considered for a suitable non-profit use.

Fees

1.1.7 When real property that is not reserved, dedicated or otherwise required for municipal purposes is to be granted as a lease, the rent will, except as provided in section 1.2 of this document (Non-Market Leases), be the full current Market Rental Value plus a pro-rated payment in lieu of current property taxes, given that market value reflects the highest and best use of the land.

1.1.8 For land only leases, annual lease fees will be based on ten percent of the market value of the lease land as set by an independent appraiser. The applicant will be responsible for all costs associated with the appraisal.

Applications

- 1.1.9 Applications for City-owned land will be considered on a case-by-case basis. Applications will be received by administration and will be referred to the City's Development Review Committee for a recommendation on the appropriate disposition process.
- 1.1.10 Leases may be granted either as a sole source or by bid process.
- 1.1.11 Where a lease is identified for bid process, a notice of intent to lease will be posted on the City's website and advertised in the local newspapers for at least two consecutive weeks prior to the proposed lease being submitted to Council for approval.
- 1.1.12 In consideration of the appropriate disposition process, the following may be considered:
- (1) Whether the subject property is a fractional lot applied for by the adjoining owner and whether the subject lot may be of any benefit to any other person;
 - (2) The proposed length of the lease term;
 - (3) Whether the proposed use of the subject property has a public benefit or solely a private one; and/or
 - (4) The merits of a specific lease proposal in relation to community benefit.

1.2 Non-Market Value Lease

General

The City of Whitehorse recognizes the significant value of the services offered by non-profit organizations that enhance the educational, social, cultural and physical well-being of the community.

Scope

A Non-Market Lease is a means for Council to support organizations within the community that further Council's objectives to enhance the quality of life while delivering services economically to the citizens of Whitehorse.

For the purposes of establishing eligibility for Non-Market Lease arrangements, the following shall apply:

"Group A Societies" are those societies that:

- had revenues of \$150,000 or more;
- had assets of \$300,000 or more; or
- received grants or donations totalling \$50,000 or more.

"Group B Societies" are those societies that, during their fiscal year:

- had revenues of \$20,000 or more but less than \$150,000;
- had assets of \$100,000 or more but less than \$300,000; or
- received grants and donations totalling \$5,000 or more but less than \$50,000.

“Group C Societies” are those societies that are not Group A or Group B Societies.

Objectives

- 1.2.1 To ensure that the City is fairly and appropriately compensated for disposal of its real property assets.
- 1.2.2 To determine which organizations benefit the community, or some aspect of the community, and to prevent an arbitrary assistance program.

Policy

Nominal/Reduced Fee

- 1.2.3 The City of Whitehorse may lease the use of City facilities or land at a nominal or reduced rent/fee (Non-Market Lease) to non-profit societies offering community services for public benefit and the City considers it to be in the public interest to do so.
- 1.2.4 An application process will be used to determine whether a society is eligible for a nominal or reduced fee.
- 1.2.5 A nominal fee is available to only registered Group C Societies.
- 1.2.6 Group A Societies and Group B Societies are eligible for a reduced fee. The appropriate fee will be negotiated in relation to market value.
- 1.2.7 A society must be registered and in good standing with the Registrar of Societies for a period of at least one year to be eligible for a nominal or reduced rent.

Eligible Organizations

- 1.2.8 To be eligible for a Non-Market Lease, the society must demonstrate a Charitable Purpose and be registered and in good standing with the Registrar of Societies.
- 1.2.9 First priority for a Non-Market Lease will be provided to Group C Societies, where possible.
- 1.2.10 Community groups that exist primarily for political, sectarian or commercial purposes, or for the purpose of providing funding to other groups, are not eligible for assistance under this policy.

Application Review Criteria

- 1.2.11 The guidelines listed below will assist in determining the most suitable non-profit society for the available property:
 - (1) The primary service offered provides a demonstrable public benefit.
 - (2) Participation or membership is available to a broad demographic in the community or the non-profit society services an identified need to a broad demographic in the community. Priority shall be given to those programs which impact on the largest number of people in the community.

- (3) The society provides the only opportunity or one of only a few opportunities for the service, activity or benefit in the community.
- (4) The society does not generally compete directly with the business community in the service it provides or the society's services are offered in very different ways, or are accessible to persons who do not normally have access to the services or facilities in the private sector.
- (5) Taxpayers will otherwise expect the City to provide the service if the entity does not.
- (6) Service will be provided primarily to Whitehorse residents as demonstrated by a membership list or other suitable records.
- (7) The society must have a significant volunteer component. Societies with a large degree of community volunteer involvement within their last fiscal year shall be given priority over those with little or none.
- (8) The eligibility for subsidy will take into consideration the combined assistance that may be provided through Federal and Territorial sources. Member donations and in-house raffles are exempt.
- (9) The society must demonstrate that it is capable of efficient and effective administration of the assistance provided.
- (10) The society's past performance in achieving program objectives shall be considered.

Vacant Property

- 1.2.12 Non-profit societies interested in a non-market lease arrangement for City-owned property may initiate discussions with the City.
- 1.2.13 Non-profit societies may make an application for City-owned property as they become vacant.
- 1.2.14 When a property becomes available for lease it may be advertised in the local newspaper and a notice posted on the City's website.
- 1.2.15 The advertisement will include the following information:
 - (1) description and location of property;
 - (2) the application process;
 - (3) the due date for applications; and
 - (4) the eligibility criteria.

Community Benefit Statement

- 1.2.16 A Community Benefit Statement is a statement of the organization's benefit to the community in monetary terms.
- 1.2.17 All eligible societies will be required to complete a Community Benefit Statement as part of the application process.

- 1.2.18 The value of the community benefits may include, but are not limited to:
- (1) free use of facilities for community groups/rescue groups;
 - (2) subsidies for junior or adult training/educational programmes;
 - (3) the value of work by volunteers which benefits the general public; and
 - (4) municipal taxes paid.

Application and Approval Process

- 1.2.19 Applicant societies will be evaluated using the eligibility and review criteria set forth in this policy.
- 1.2.20 The applicant must complete the application form including a Community Benefit Statement.
- 1.2.21 The application is submitted to the City's Development Review Committee for review and recommendation for submission to Council.
- 1.2.22 An administrative report and proposed lease agreement is submitted to Council for consideration.
- 1.2.23 Council considers the application and lease agreement and identifies the rental amount to be paid.
- 1.2.24 The applicant is notified of Council's decision.

1.3 Lease Agreements

Length of Term

- 1.3.1 The term of the lease agreement will not conflict with the City's operational requirement for the subject property for alternate purposes.
- 1.3.2 The lease term for established societies shall be for a maximum of ten years. Options for renewal will be determined on a case by case basis, taking into account the investment made by members in capital improvements to the leased property.
- 1.3.3 In no case will the lease term exceed the number of years the society has been in existence. In making its decision for any renewal, the City will consider a variety of factors developed on a case-by-case basis.
- 1.3.4 Non-profit status of the Lessee must be maintained through the term of the lease agreement.

Permitted use

- 1.3.5 The society shall not use the property in any way that is contrary to the permitted use stated in the lease.
- 1.3.6 The society shall not use the property in any way that is contrary to the policies or permitted uses prescribed in the City's Official Community Plan and zoning bylaw.

Subletting

- 1.3.7 A non-market lease cannot be assigned or sublet to any individual or corporation that operates solely for profit.
- 1.3.8 A non-market lease can only be assigned or sublet to another non-profit society in good standing with the Registrar of Societies with the consent of Council.

Maintenance

- 1.3.9 The Lessee will be required to maintain any buildings, grounds and all facilities and pay for all capital improvements and operating costs including but not limited to property taxes, if eligible, and utilities except that where the buildings and facilities have been constructed at the City's cost, the lessee's maintenance obligations will be considered on a case-by-case basis.

Dissolution

- 1.3.10 Where all of a society's fixed assets are affixed solely to municipal leased site(s), the society's constitution and/or bylaws must include an unalterable dissolution clause which provides that upon dissolution its assets must firstly be distributed to another non-profit society operating within the City of Whitehorse, in good standing with the Registrar of Societies, with similar objectives and only failing to transfer to another society with similar objectives would the assets be distributed to the City.

Insurance

- 1.3.11 The insurance requirements are outlined in section 4 of this Policy.

Lease Fees

- 1.3.12 The annual lease fee for group C societies qualifying under the non-market lease is \$10.00 per annum.
- 1.3.13 The documentation fee for all non-market leases is \$250.00, non-refundable (as amended from time to time).
- 1.3.14 When examining reduced rates for Group A and B societies, the City will calculate the net rental subsidy to assist in the lease rate negotiation.

Calculation of a net rental subsidy

- 1.3.15 (1) Fair market rental value at 10% of market value, based upon the permitted actual use as stated in the lease, or of the assessed land value (the rate of 10% per annum and the term vacant land value applies where the society has paid for the buildings and/or has incurred all maintenance costs including structural repairs and renovation costs, so that the City neither incurs capital costs nor property administration costs).

Less:

- (2) The negative value of any special constraints and lessee's obligations contained within the lease as shown in a Community Benefit Statement

prepared by the society for Council's consideration. The value of the community benefits may include:

- free use of facilities for community groups/rescue groups;
 - subsidies for junior or adult training/educational programmes;
 - the value of work by volunteers which benefits the general public; and
 - municipal taxes paid.
- (3) Fair annual rent = (1) – (2).
- (4) Annual nominal rent to be paid.
- (5) The difference between (3) and (4), if any, equals annual rental subsidy.
- (6) Add other benefits (other annual grants towards operating costs or capital expenditure).
- (7) Total net subsidy = (5) + (6).

2. Permits for the Use of Public Space

General

The City of Whitehorse acknowledges the economic and community benefit to creating vibrant public spaces and therefore encourages this function.

Objective

- 2.1 To ensure that public safety and convenience is maintained.
- 2.2 To encourage vibrant streetscapes and public spaces while ensuring appropriate location, massing and aesthetic design of vending establishments.
- 2.3 To ensure that the City is fairly compensated for the use of City-owned property.

Policy

- 2.4 Subject to the conditions of this policy, public space, including but not limited to sidewalks, rights-of-way, boulevards, parks and City-owned parking lots, may be authorized for use through a permit process.
- 2.5 Permits issued under this policy will be for temporary uses of a short duration (typically seasonal and for less than a year), that will be of an organized nature or for commercial purposes and will occupy public space.
- 2.6 Such permits shall be issued pursuant to the Temporary Use Development Permit section of the City's Zoning Bylaw.
- 2.7 All proposed uses applied for under this policy must adhere to the City's Zoning Bylaw. Permits issued for terms of less than one week may be exempt from specific land use regulations identified in the Zoning Bylaw due to the short duration.

2.8 In general, permit holders shall:

- (1) Only operate in the areas and at the times specified by the City in the permit;
- (2) Comply with reasonable directions of City staff and other authorized persons in relation to any unacceptable practices or, to display evidence of the permit in prescribed manner;
- (3) Not assign their rights under this permit or attempt in any other manner to transfer their rights under the permit to any other person, it being clearly understood that the permit is issued to a particular individual and is not transferable unless approved by the City in accordance with this policy;
- (4) Indemnify and hold the City harmless from and against all damages, sums of money, costs, charges, expenses, actions, claims and demands which may be sustained or suffered or recovered or made against the City by any person for any loss of life or injury or damage any person may sustain due to the negligent act of an applicant whilst conducting their use on public space;
- (5) Agree that, notwithstanding any implication or rule of law to the contrary, the City shall not be liable for any damage or loss that any permit holder may suffer by the act, default or neglect of any other person or by reason of the City failing to do something on or to the public space used;
- (6) Take out and maintain in their name, for the duration of the term of the permit, public liability insurance for a minimum of five million dollars and produce documentary evidence of this at the time of application (see section 4);
- (7) Conduct their activities so that they do not dominate, monopolize and/or obstruct any sidewalks, stairways or pathways;
- (8) Manage the activities to minimize wear and tear on grassed areas (this includes rotating within the designated area and / or alternating activities);
- (9) Not create any noise from activities that unreasonably disturbs other users and adjacent residents;
- (10) Not suspend objects from trees and / or structures in public space areas;
- (11) Not display any advertising signage including banners or 'A' frame signs on public space, unless specifically authorized to do so by the permit process;
- (12) Be responsible for satisfying all occupational health and safety legislation and regulations; and
- (13) Supply an appropriate damage deposit waiver if required by the City.

2.9 General Public Use Permits

Application Procedure

- 2.9.1 All applications for the use of public space must include the following
- (1) A cover letter describing the current use, proposed use and duration of use on public space, to be addressed to the City's Development Officer;
 - (2) A description of the property (including municipal address or location to closest street);
 - (3) A sketch plan containing:
 - (a) dimensions of the proposed permit area
 - (b) the location of all existing and proposed improvements on the permit area
 - (c) including site access and egress, front, side and rear yard
 - (d) the location of any trees, shrubbery or natural features
 - (e) the location of public sidewalks, hydro poles, light standards,
 - (f) boulevard trees, fire hydrants and other related features;
 - (g) the location, size, and placement of signs

Approval

- 2.9.2 Permits are approved by the Development Officer.
- 2.9.3 Permits will not be approved for any applicant requiring but not in possession of a valid and current City Business License or having outstanding accounts with the City.
- 2.9.4 The City shall withhold the issuance of a permit if the permit area is not maintained in an attractive and safe condition. The City may remove poorly maintained structures at the owner's expense.
- 2.9.5 Permit applicants must obtain the necessary applicable permits from the City, the Yukon Health and Social Services Department, Yukon Liquor Corporation and any other relevant or applicable licensing or regulatory agencies for the specific permit area in which they are proposing to engage. Proof of this may be required as part of the permit approval process.

Theft

- 2.9.6 The City of Whitehorse assumes no responsibility for any theft of property owned by the vendor.

Insurance

- 2.9.7 Insurance requirements are outlined in section 4 of this Policy.

Term

- 2.9.8 Permits will be issued for a specified term of less than one year.

Permit Fees

2.9.9 The permit fee is as per the fees in the Fees and Charges Bylaw.

Permit Termination

2.9.10 The City reserves the right to terminate its agreement with a permit holder without notice if in its sole opinion it has determined that the permit holder has failed to comply with the reasonable direction of its staff or has breached the terms of the permit or the terms of this Policy.

2.10 Sidewalk Café, Pop-up Patio, Outdoor Merchant and Mobile Retail and Food Vendor Permits

Location of Permit Areas

2.10.1 A permit area will generally not be permitted where it may interfere with safe vehicle and pedestrian movements, such as within six metres of a stop sign or intersection (measured from the beginning of the curb return where there is no stop sign or from the stop sign for controlled intersections), 1.5m from the edge of a lane or driveway, or in a location where visibility or safety is deemed an issue, unless appropriate traffic control measures and third party approvals are in place. A permit area must not block exits/entryways from an adjacent business or block access to Fire Department connections and hydrants, or any utility maintenance features.

Sizing, Spacing and Conduct of Permit Area

2.10.2 All permit areas utilizing a sidewalk must leave a minimum width of 1.6 metres of sidewalk free and clear from obstructions for pedestrian use.

2.10.3 Sidewalk cafés and outdoor merchants located on sidewalk areas shall be limited in size to the linear frontage of their parent business unless written permission is received from adjacent business owners.

2.10.4 The permit area must be kept in a good, neat, and tidy condition at all times. The business holding the permit is responsible for the proper maintenance of all placed structures, including repairs, painting, cleaning and hazard mitigation. No third party signage is permitted, except upon pre-printed umbrellas.

2.10.5 There shall be no permanent modifications made to the permit area. The City shall repair any damage to the sidewalk or other public structures or infrastructure resulting from the use of the permit area and the vendor will pay all costs of repair.

Sidewalk Cafés and Pop-up Patios

2.10.6 Pop-up patios will be restricted to the pop-up patio district, as identified in Appendix A.

2.10.7 Pop-up patios shall:

- (1) Be located in the general area of the associated business frontage and should generally not occupy more than three angle or perpendicular stalls, or two parallel stalls;
- (2) Be a maximum width of 1.8m for parallel parking stalls and 4.0m for angled parking stalls, measured from the curb face (*amended by Council motion May 9, 2022*);
- (3) Provide adequate space to allow for vehicle access/egress from adjacent parking stalls and driveways;
- (4) Not occupy a designated accessible parking stall;
- (5) Have partitions that separate the area from both vehicular traffic along all street sides and pedestrian traffic along the sidewalk side;
- (6) Provide a planter or other barrier on each end of the pop-up patios within parallel parking stalls, to ensure an adequate separation from vehicle parking;
- (7) Have an object marker sign (WA-36L or WA-36R from the Manual of Uniform Traffic Control Devices for Canada) on the side of the pop-up patio that is facing oncoming traffic; and
- (8) Not obstruct access to City utilities such as storm drains, maintenance chambers, valves, etc. Minimum setbacks from infrastructure are as follows:
 - a. Minimum of 1.0m clearance from maintenance chamber covers and storm drain inlets.
 - b. Minimum of 0.5m clearance from water valves.
 - c. Minimum of 5.0m horizontal clearance from fire hydrants.

2.10.8 Sidewalk café partitions shall:

- (1) Be 1.0 metres in height measured from the sidewalk level;
- (2) Have a bottom rail at 75mm above grade;
- (3) Unless transparent panel material is used, have vertical or horizontal wood or metal balusters that do not exceed 50mm in width and have at least a 50mm gap between balusters to allow transparency;
- (4) Have reflectors on the railings on all sides that are exposed to the street for visibility to traffic; and
- (5) Not be composed of predominately lattice type material.

2.10.9 A development officer may waive the requirement for partitions for sidewalk cafes if no alcohol will be served.

2.10.10 Pop-up patios require partitions.

2.10.11 The design, materials, and colours of all sidewalk cafés and pop-up patios and accessories shall compliment the architectural style and colours of the parent business's building facade. Accessories shall be of quality materials

and shall retain their visual appeal through regular maintenance or replacement.

- 2.10.12 All accessories, including but not limited to landscaping, flower boxes, umbrellas, awnings, and tables and chairs, shall be contained within the permit area. Trash receptacles are not permitted within the sidewalk café or pop-up patio area. The use of bollards and/or chain fencing is not permitted as it poses a hazard to pedestrians with a visual disability.
- 2.10.13 Advertising is not permitted to be attached to the railings of any partition.
- 2.10.14 Although the use of planters is encouraged, planters may not form a continuous solid barrier.
- 2.10.15 Decks, platforms and structures are not permitted, except to level a significant grade difference in the sidewalk or to harmonize indoor and outdoor seating levels. All proposed decks, platforms and structures are subject to a building permit application and approval process, and must be wheelchair accessible.
- 2.10.16 The hours of operation for a sidewalk café or pop-up patio shall be the same hours of operation as the parent business. However, the City may restrict hours of operation to no later than 11:00 p.m. in areas of close proximity to residences or commercial accommodation units.

Outdoor Merchants

- 2.10.17 All accessories, including but not limited to tables, racks, displays and signs, shall be contained within the permit area.
- 2.10.18 The use of bollards and/or chain fencing is not permitted as it poses a hazard to pedestrians with a visual disability.
- 2.10.19 The hours of operation for an outdoor merchant shall be the same hours of operation as the parent business.

Mobile Retail Vendors

- 2.10.20 Mobile retail vending on public sidewalks shall be permitted only on approved vending sites identified by the City.
- 2.10.21 Mobile retail vendors will be limited to two vendors or performers per linear block.
- 2.10.22 Vending units shall not block doorways, display windows, or impede pedestrian or vehicular access.
- 2.10.23 Vending units shall be of good quality and aesthetically pleasing in appearance. They shall not have any lights, sounds, or actions, which could be a distraction for motorists and/or pedestrians.
- 2.10.24 Mobile retail vendors may not use any amplified music after 9:00 p.m. and shall not at any time disturb the peace, rest, enjoyment, and comfort of persons within the neighbourhood or vicinity.

- 2.10.25 A mobile retail vendor permit is not required for operation within the permitted parent activities of a Mobile Vendor Association.
- 2.10.26 Where utilities, including electrical service, are provided to a mobile retail vendor, that vendor shall be responsible for paying all fees associated with the utilities.

Application Procedure (Pop-up Patios, Outdoor Merchants and Mobile Retail Vendors)

- 2.10.27 The applicant is required to submit:
- (1) a completed permit application form.
 - (2) a letter of intent that includes the hours and days of operation.
 - (3) a photograph of the building exterior where the parent business is located, or a photograph of the vending unit.
 - (4) a sketch plan showing:
 - (a) the location and dimensions of proposed permit area;
 - (b) the location and dimension of passageway free and clear of any obstruction (if the proposed permit area includes a sidewalk);
 - (c) the location and relative distance of any permanent fixtures placed by the City;
 - (d) the number of tables and chairs for a sidewalk café or pop-up patio;
 - (e) the type of fence or railing if required; and
 - (f) any proposed amenities or accessories such as heaters, flower baskets, umbrellas, awnings, display tables or racks, tables and chairs, etc.
 - (5) The permit fee.
 - (6) Proof of a current and valid Business License.
 - (7) Proof of required liability insurance (see section 4).
 - (8) Proof of any required third party permitting or licensing.

Mobile Food Vendors

- 2.10.28 Mobile food vending on public land shall be permitted only on approved vending sites identified by the City of Whitehorse through an annual request for applications process.
- 2.10.29 Mobile vending units shall not block doorways, display windows, or impede pedestrian or vehicular access.
- 2.10.30 Mobile vending units shall be of good quality and be aesthetically pleasing in appearance. They shall not have any lights, sounds, or actions which could be a distraction for motorists and/or pedestrians.

- 2.10.31 Mobile food vendors must have all required governmental approvals, including but not limited to those required by the Yukon Department of Health and Social Services, Environmental Health Services Branch.
- 2.10.32 Mobile food vendors may not use any amplified music after 9:00 p.m. and shall not at any time disturb the peace, rest, enjoyment, and comfort of persons within the neighbourhood or vicinity.
- 2.10.33 Mobile food vendors shall cease operating by 11:00 p.m., but may be allowed overnight parking of vending units.
- 2.10.34 A mobile food vendor permit is not required for operation within the permitted parent activities of a Mobile Vendor Association.
- 2.10.35 A mobile food vendor may operate at other locations including festivals and special events. However, vendors may not operate at other approved vending sites currently being occupied by other vendors.
- 2.10.36 A mobile food vendor may operate on private land, as long as all other required government approvals, bylaws and policies are met. Permission from the property owner must be provided.
- 2.10.37 Where utilities, including electrical service, are provided to a mobile food vendor, that vendor shall be responsible for paying all fees associated with the utilities.

Application Procedure (Mobile Food Vendors)

- 2.10.38 The City issues a request for applications prior to May 1 each year. The request for applications includes a mobile food vendor application form.
- 2.10.39 The request for applications contains the mobile food vendor stall locations. Each applicant is to clearly identify their preferred choices for their vendor stall locations.
- 2.10.40 At the end of the request for applications period, the City conducts a lottery process, whereby the applicant names are drawn.
- 2.10.41 In each lottery, only one site will be awarded per vendor.
- 2.10.42 Successful lottery applicants will be required to provide the required documentation as part of the permitting and licensing process. If the successful applicant is unable to obtain the required permits and/or licenses to secure a vending site, that site shall be forfeited and be made available over the counter on a first-come, first-serve basis.
- 2.10.43 During the permitting process the applicant is required to submit:
 - (1) a completed permit application form.
 - (2) a letter of intent that includes the hours and days of operation.
 - (3) a photograph of the vending unit.
 - (4) a sketch plan showing:
 - (a) the location and dimensions of proposed permit area;

- (b) the location and dimension of passageway free and clear of any obstruction (if the proposed permit area includes a sidewalk);
 - (c) the location and relative distance of any permanent fixtures placed by the City;
 - (d) any proposed amenities or accessories such as heaters, flower baskets, umbrellas, and awnings.
- (5) the permit fee.
 - (6) proof of a current and valid Business License.
 - (7) proof of required liability insurance (see section 4).
 - (8) proof of any required third party permitting or licensing.
 - (9) a site inspection may be conducted as part of the review process.
- 2.10.44 Vendor stall locations not obtained through the lottery process may be obtained over the counter on a first-come, first-serve basis.
- 2.10.45 The application procedure shall be repeated every year to ensure a fair and balanced process for all mobile food vendors.
- 2.10.46 Notwithstanding the above procedure, mobile food vendors who operated on established vendor sites prior to 2013, are eligible to be granted a first right of refusal for their previously occupied sites. These vendors must indicate in writing to the City by March 31 each year whether they wish to keep their current location or whether they wish to pursue a new approved vendor site in the lottery, at which point they lose their first right of refusal status. The first right of refusal provision is not transferable if there is a change in business ownership.

Approval

- 2.10.47 Sidewalk café, pop-up patio, outdoor merchant and mobile vendor permits are approved by the Development Officer.
- 2.10.48 Permits will not be approved for any applicant requiring but not in possession of a valid and current City Business License or having outstanding accounts with the City.
- 2.10.49 As part of the approval of a sidewalk café or pop-up patio, the vendor must post the approved sketch plan in a visible location in proximity to the permit area.
- 2.10.50 The City shall withhold the issuance of a permit if the permit area is not maintained in an attractive and safe condition. The City may remove poorly maintained structures at the owner's expense.
- 2.10.51 The City reserves the right to terminate its agreement with a permit holder without notice if in its sole opinion it has determined that the permit holder has failed to comply with the reasonable direction of its staff or has breached the terms of the permit or the terms of this Policy.

- 2.10.52 Permit applicants must obtain the necessary applicable permits and/or approvals from the City, the Yukon Health and Social Services Department, Yukon Liquor Corporation and any other relevant or applicable licensing or regulatory agencies for the specific permit area in which they are proposing to engage. Proof of this may be required as part of the permit approval process.

Theft

- 2.10.53 The City of Whitehorse assumes no responsibility for any theft of property owned by the vendor.

Insurance

- 2.10.54 Insurance requirements are outlined in section 4 of this policy.

Term

- 2.10.55 Permits will be issued on a seasonal basis or for a specified term of less than one year.
- 2.10.56 Sidewalk Café and pop-up patio seasonal terms will generally fall between the period of April 1st and October 31st of each year unless otherwise extended beyond this period at the discretion of the Development Officer. All structures must be removed by the end of the specified term noted in the approval permit.
- 2.10.57 Mobile Food and Retail Vendor seasonal terms begin on May 1st and expire on October 31st of each year unless otherwise extended beyond this period at the discretion of the Development Officer. All structures must be permanently removed by the end of the term.

Special Events

- 2.10.58 Unless otherwise determined by City Council an individual assigned an "approved vending site" shall also have authority to provide vending services at that site during special events.

Permit Termination

- 2.10.59 The City reserves the right to terminate its agreement with a permit holder without notice if in its sole opinion it has determined that the permit holder has failed to comply with the reasonable direction of its staff or has breached the terms of the permit or the terms of this Policy.

3. Encroachment Agreements

General

The City of Whitehorse recognizes that encroachments exist and will continue to be discovered on municipal land. The City has established this policy and procedures to provide a consistent process for evaluating applications for encroachment authorization.

Policy

- 3.1 It is the policy of the City of Whitehorse that there shall be no unauthorized encroachments onto road allowances or City property, including park property.
- 3.2 A property owner shall seek prior permission from the City to encroach onto a road allowance or municipal property and subject to Council approval, enter into an Encroachment Agreement with the City and pay the required fees.
- 3.3 Where an encroachment exists without City approval, the owner shall be required to remove the encroachment at his/her own expense, or seek permission from the City for the encroachment to remain.
- 3.4 New encroachments will be considered only in unique circumstances.
- 3.5 The City will generally support new encroachments in the historic areas of the City (i.e. Old Town) where the architectural character of the area is such that new encroachments are proposed to complement existing historic architectural elements.
- 3.6 New encroachments said to have resulted from an error will be investigated to determine:
 - (1) if the said encroachment did in fact result from an error; and
 - (2) whether the encroachment presents a safety hazard and should be authorized or removed.
- 3.7 New construction shall not result in encroachments onto a City street and/or lane, unless:
 - (1) construction is for the sole purpose of improving energy efficiency in existing buildings through an energy retrofit that extends no more than 203 mm (8 inches) from the existing building face;
 - (2) the City is satisfied that the proposed encroachment does not interfere with the design and use of existing City infrastructure, including sidewalks and lanes; and
 - (3) the energy retrofit wall assembly must be approved under Building and Plumbing Bylaw 99-50.

Agreement Period

- 3.8 A permanent Encroachment Agreement shall be for a period not exceeding the life of the encroachment, or the life of the appurtenant building or structure.
- 3.9 An encroachment once authorized by the City may continue to be used but the encroachment shall not be added to, rebuilt or structurally altered except:
 - (1) as may be necessary to remove the encroachment, or
 - (2) as may be necessary for the routine maintenance of the encroachment.

- 3.10 If an encroachment or the structure benefitting from the encroachment is damaged or destroyed to the extent of more than 75% of the replacement value of the encroachment or such structure, the encroachment shall not be repaired or reconstructed and shall be removed from the municipal lands unless the repair or reconstruction has been authorized by the City.

Minor Encroachments Exempt from Agreement

- 3.11 The City may issue written consent for the use and existence of encroachments, which comprise only grassed areas, access sidewalks, steps, fences, rockeries, hedges or garden areas, provided that the City is satisfied as to the safety and advisability of such encroachment. Where the City is satisfied as to the safety and advisability of such encroachment, an agreement is not required, and the owner of the real property to which such encroachment is appurtenant shall not be required to pay an annual charge.

- 3.12 When issuing written consent for the use and existence of encroachments, the City may consider the following:

- (1) Encroachment is no more than 150mm into public space and has a combined lateral width not exceeding 300mm for each 20 metres of site frontage;
- (2) Encroachment is not into public space between ground / footpath level and 1.0m above ground / footpath level;
- (3) Encroachment does not narrow the width of a footpath or public space to (or that is already) less than 1.8 metres wide;
- (4) Encroachment does not encroach over a City street and has a minimum setback of 600mm from the curb face;
- (5) Encroachment is not considered to pose a hazard, particularly to pedestrians or other users of public space. For example, it is not below hip height or between shoulder and head height, or is not at risk of detaching from the building;
- (6) Encroachment cannot be incorporated within the private property boundary;
- (7) Encroachment does not interrupt pedestrian movement or public space;
- (8) Encroachment is designed to improve mobility for persons with a disability (wheelchair ramps);
- (9) Encroachment is constructed so as to prevent water dripping or discharging or ice falling onto City land;
- (10) Encroachment does not cause any interference to public services;
- (11) Encroachment is constructed in accordance with the requirements of the *National Building Code of Canada*; and

- (12) Council has not deemed that an Encroachment Agreement is required for any other reason.

Application Procedures

- 3.13 A request for an encroachment must be reviewed and approved by the City prior to the issuance of a building permit and/or prior to construction if a building permit is not required. Applications shall be submitted initially to the Planning and Development Services Department, and will be presented to the City's Development Review Committee, and shall include the following:
- (1) Letter of intent describing the encroachment situation;
 - (2) Photographs clearly showing the existing encroachment;
 - (3) Four paper prints of a survey signed by a Canada Land Surveyor (CLS) showing the whole property and the area of encroachment with full dimensions;
 - (4) Certificate of Title for the property, which will benefit from the encroachment, showing last transfer including full legal description of the property and address of the owner;
 - (5) Application fee payable to the City of Whitehorse; and
 - (6) Certificate of Insurance (submitted at the time the Encroachment Agreement is signed by the property owner).

Insurance Requirement

- 3.14 The insurance requirements are outlined in section 4 of this policy.

Approval

- 3.15 Encroachment Agreement shall be approved by Council by the adoption of a bylaw.

Encroachment Application and Agreement Fees

- 3.1 The application fee is \$500. This fee is to cover the City's costs to prepare the Encroachment Agreement and register the documents in the Land Titles Office. Amendments or changes to an existing Encroachment Agreement are also subject to the application fee.
- 3.16 The size of the encroachment is used in the calculation of the annual fee. This fee is calculated by taking 10% of the current market value of the land containing the encroaching entity pro-rated by the size of the encroachment. Once calculated, this annual fee is added to the tax bill of the property owner in accordance with section 344 of the *Municipal Act*.
- 3.17 The minimum annual fee, regardless of the area, is \$250.00.

4. Insurance

- 4.1 Prior to the approval of any lease agreement or issuance of any permit contemplated herein for the use of City-owned property, insurance coverage will be required to be provided in accordance with the following:
- 4.2 The level and type of activity to take place will be reviewed with the City's insurance broker to determine the appropriate limit of insurance coverage. The minimum will be five million dollars.
- 4.3 If only land is being leased or permitted, the following extensions to a basic policy will be required:
 - (1) Blanket Written Contractual;
 - (2) Contractors and Owners Protective Liability, as applicable;
 - (3) Non-owned automobiles;
 - (4) Attached machinery;
 - (5) Cross liability;
 - (6) Incidental medical malpractice;
 - (7) Medical payments; and
 - (8) Loss of use without property damage.
- 4.4 If both land and buildings are being leased or permitted, all of the above plus the following shall be included in the insurance coverage required from the lessee:
 - (1) Broad form of property damage; and
 - (2) All risks tenant's legal liability, with policy limits at least equal to the value of the premises occupied by the lessee.
- 4.5 If liquor will be served while occupying City-owned property the applicant is required to provide confirmation that the general liability policy extends to provide "host liquor" or the policy does not exclude the cover.
- 4.6 The City of Whitehorse must be added as an additional insured and be provided 30 days prior notice of cancellation on all general liability policies.
- 4.7 A Certificate of Insurance is required to be provided prior to approval of the lease agreement or issuance of the permit. Renewal Certificates of Insurance must be submitted annually.

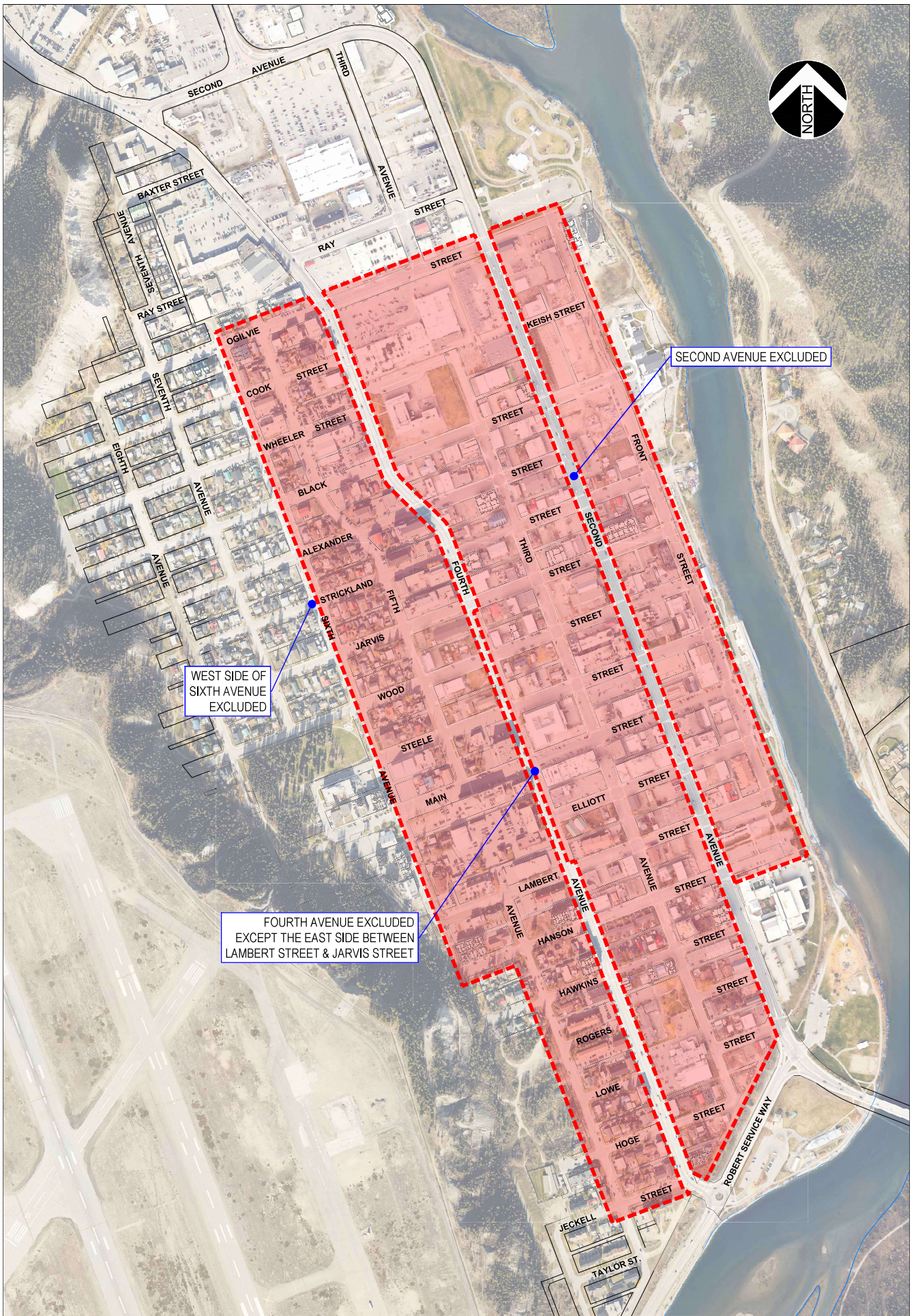
Supporting References

Municipal Act
City of Whitehorse Zoning Bylaw

History of Amendments

Date of Council Decision	Resolution #	Description
June 27, 2011	2011-11-04	Initial Approval Date
March 25, 2013	2013-03-25	Revised Policy Adopted
May 25, 2021	2021-10-09	Revised Policy Adopted
March 14, 2022	2022-05-05	Section 2.10.33 amended
May 24, 2022	2022-12-07	Section 2.10 amended
April 11, 2023	2023-07-09	Section 2.10.57 amended
April 24, 2023	2023-08-08	Section 3.7 amended

Appendix A



APPENDIX A
POP-UP PATIO DISTRICT