

# City of Mississauga Corporate Report



Date: November 16, 2020  To: Chair and Members of Planning and Development Committee  From: Andrew Whittemore, M.U.R.P., Commissioner of Planning & Building	Originator's file: CD.21-SPE
	Meeting date: December 9, 2020

## Subject

**PUBLIC MEETING INFORMATION/RECOMMENDATION REPORT (ALL WARDS)**  
**COVID-19 Recovery – Support for Outdoor Business Activities**  
**File: CD.21-SPE**

## Recommendation

1. Subject to applicable prohibitions and restrictions established by the Provincial regulations under the Keeping Ontario Safe and Open Framework, that Council temporarily permit outdoor retail sales and display and outdoor recreational and entertainment establishments, for a period of time expiring on December 31, 2021, through a temporary use by-law in accordance with the regulations contained in the staff report dated November 16, 2020 from the Commissioner of Planning and Building.
2. That a by-law be enacted to exempt the application of City of Mississauga by-laws that prohibit or require fees to be paid for temporary outdoor retail sales and display and temporary outdoor recreational and entertainment establishments until December 31, 2021.
3. That a recommendation report regarding the amendment of the City's Building By-law 203-2019, to waive building permit application fees associated with temporary outdoor retail sales and display and temporary outdoor recreational and entertainment establishments until December 31, 2021, from the Commissioner of Planning and Building be scheduled for a Planning and Development Committee meeting to conduct a public meeting to meet the statutory requirements under the provisions of the *Building Code Act*.
4. That City staff are hereby authorized to negotiate the encroachment permit between The Corporation of the City of Mississauga, as property owner, and the applicant, to use City-owned lands as required in connection with temporary outdoor retail sales and display or temporary outdoor recreational and entertainment establishments, in form and content satisfactory to Legal Services.

## Report Highlights

- Temporary outdoor retail sales and display and outdoor recreational and entertainment establishment uses are proposed in a range of Commercial, Employment, Downtown Core, Open Space and Parkway Belt zones, with restrictions on parking and setbacks to Residential zones.
- The proposed temporary outdoor uses will support some of the City's small businesses during the pandemic, allowing them to operate outdoors, provided that they are permitted by Provincial regulations under the Keeping Ontario Safe and Open Framework.
- Communications with the public and the business community will emphasize that Provincial regulations take precedence over municipal zoning permissions.

## Background

A meeting was held by General Committee on November 18, 2020, at which time a Direction Report was received (see Appendix 1) and gave direction to staff to hold a statutory public meeting with respect to a temporary use by-law. Recommendations GC-0308-2020 were adopted by Council on November 25, 2020.

1. That Council authorize City staff to prepare a temporary use by-law effective to December 31, 2021, to permit outdoor retail sales and display and outdoor recreational and entertainment establishments in accordance with the regulations in the staff report dated November 2, 2020, from the Commissioner of Planning and Building, as amended.
2. That notwithstanding planning protocol, that an information/recommendation report from the Commissioner of Planning and Building be scheduled for a Council meeting to be held on December 9, 2020, to conduct a public meeting to meet the statutory requirements under the provisions of the *Planning Act*.

## Comments

On November 23, 2020, the Province of Ontario placed the Region of Peel in the Grey-Lockdown level of the Keeping Ontario Safe and Open Framework. Measures under the Lockdown include, but are not limited to:

- Retail stores are permitted to be open for curbside pick-up or delivery only, with certain exceptions such as supermarkets, grocery stores, pharmacies, hardware stores, discount and big box retailers selling groceries, beer, wine and liquor stores, safety supply stores, and convenience stores, which will be allowed to operate at 50% capacity per room that is open to the public;
- Restaurant, bars, and food and drink establishments will only be able to provide takeout, drive-through and delivery;
- Personal care services closed;
- Casinos, bingo halls and other gaming establishments closed;

- Indoor sports and recreational facilities, including pools, closed with limited exceptions;
- Drive-in cinemas and performing arts permitted; and
- Outdoor markets permitted.

Since drive-in cinemas, drive-in performing arts, and outdoor markets are permitted under the Provincial Lockdown level, some of the proposed outdoor uses that are being considered under the temporary use by-law would be permitted under the current public health and municipal zoning regulations. Some other uses that would be permitted by the temporary use by-law may be required to be closed under the Lockdown level, such as an outdoor bingo hall. It will be properly communicated to the public and businesses that Provincial regulations and public health directives take precedence over any municipal zoning permissions.

### **COMMUNITY ENGAGEMENT**

Notice of the public meeting was placed in the Mississauga News on November 19, 2020, in compliance with the regulations of the *Planning Act*. Given the rising number of COVID-19 cases in Peel, staff have avoided heavily publicizing this initiative at the current time, over the concern of the potential risk of large outdoor gatherings occurring. Through proper implementation and adherence to public health guidelines, it may help small businesses supplement their revenue making this a valuable initiative to support small business in a period where their operations are constricted. More importantly, having the temporary use by-law in place will allow these outdoor uses to operate without delay when Peel is moved out of the Lockdown level, particularly in the spring and summer of 2021.

### **TEMPORARY USE BY-LAW**

Temporary use by-laws are regulated under the *Planning Act*. In Section 19.9 of Mississauga Official Plan, a temporary use which conforms to Mississauga Official Plan is permitted to deal with unfamiliar issues on a trial basis. Permitting recreational and entertainment establishment uses to operate outdoors is an unfamiliar issue. Prior to the pandemic, these uses were restricted to indoor operations and there was no need to move these operations outdoors. Additionally, permitting outdoor retail sales and display in a broad range of zones is an unfamiliar issue because outdoor markets are currently only permitted in specific Downtown Core zones.

The temporary permission to allow these uses conforms to Mississauga Official Plan. The proposed amendments would permit outdoor recreational and entertainment establishments in zones that already permit them indoors. Outdoor retail sales and display is proposed in zones where retail stores are already permitted. The exception to the above statements are the Open Space zones that allow passive and active recreational uses, which also aligns with the outdoor nature of the proposed uses. With rare exception, lands with OS1, OS2 and PB1-6 zoning are owned by the City and are used for parks and community facilities.

The proposed amendments are consistent with the Provincial Policy Statement, and conform to the Growth Plan for the Greater Golden Horseshoe and the Region of Peel Official Plan. The Greenbelt Plan policies do not apply. The Parkway Belt West Plan policies only apply as they pertain to Iceland Arena, which is designated 'Public Open Space and Buffer Area'. The

relevant policies permit open space uses and other public uses of land that preserve natural features and secure an open space character of the area. Since temporary outdoor uses will generally maintain the intent of these policies, the proposed amendments conform to the Parkway Belt West Plan.

### **Proposed Regulations**

The regulations recommended for outdoor retail sales and display and outdoor recreational and entertainment establishments in the proposed temporary use by-law are as follows:

- Permission for outdoor recreational and entertainment establishments in 'C2' (Neighbourhood Commercial), 'C3' (General Commercial), 'C4' (Mainstreet Commercial), 'E1' (Employment in Nodes), 'E2' (Employment), 'OS1' (Open Space – Community Park), 'OS2' (Open Space – City Park), 'PB1-6' (Parkway Belt), 'H-CC1' and 'CC1' (Downtown Core – Core Commercial), 'H-CC2' and 'CC2' (Downtown Core – Mixed Use), 'H-CC3' and 'CC3' (Downtown Core – Mixed Use Transition Area), 'H-CC4' and 'CC4' (Downtown Core – Mixed Use), 'H-CCO' and 'CCO' (Downtown Core - Office) and 'H-CCOS' and 'CCOS' (Downtown Core – Open Space) zones
- Permission for outdoor retail sales and display in 'C1', 'C2', 'C3', 'C4', 'OS1', 'OS2', 'PB1-6', 'H-CC1', 'CC1', 'H-CC2', 'CC2', 'H-CC3', 'CC3', 'H-CC4', 'CC4', 'H-CCO', 'CCO', 'H-CCOS' and 'CCOS' zones
- Outdoor retail sales and display shall be accessory to a retail store, with the exception of 'OS1', 'OS2', 'H-CCOS', 'CCOS' and 'PB1-6' zones
- A minimum of 50% of required parking spaces must be available for use (including temporary outdoor patios)
- Minimum 100% of required accessible parking spaces must be available for use
- Minimum of 1.0 m (3.3 ft.) distance from accessible parking spaces
- Minimum of 4.5 m (15 ft.) setback from Residential zones
- Pedestrian walkways shall not be obstructed
- The existing time limitations on temporary tents and/or stage shall not apply for outdoor retail sales and display and outdoor recreational and entertainment establishments
- Waive the requirement for a Certificate of Occupancy
- The temporary use by-law shall expire on December 31, 2021

### **Temporary Tents and Other Similar Structures**

Temporary tents are already permitted in the zoning by-law for a broad range of zones, including Commercial, Downtown Core, Employment and Open Space zones. Currently, they are limited to 14 consecutive days, and 28 days within one calendar year. Staff recommend that during the duration of the temporary use by-law, those provisions not apply for temporary outdoor uses. In addition, temporary tents that are located more than 3.0 m (9.8 ft.) from a building and cumulatively occupy less than 65.0 m<sup>2</sup> (700 ft<sup>2</sup>) do not require a building permit. Staff have prepared design reference notes that will guide businesses regarding design and setbacks.

Other outdoor structures such as a temporary stage or temporary structure to hold a movie theatre screen may require a building permit. Council may consider waiving those fees.

**Public vs. Private Lands**

The utilization of city-owned property for any of the proposed temporary outdoor uses will require the approval of the City. The sidewalk portion of a municipal right-of-way will only be permitted to have outdoor retail sales and display, shall be accessory to an adjacent retail store, and will require the property owner to obtain an encroachment permit from the City, similar to the permit process that was used for temporary outdoor patios. A permit will only be granted if the municipal sidewalk has an adequate width so as not to impede pedestrian movement. In addition, no portion of the road, including lay-by parking, will be permitted for outdoor retail sales and display. Further, through the encroachment permit, property owners will be required to agree to the removal of their temporary outdoor retail sales and display during snow removal and salting operations. For arenas, community centres and libraries, a park permit or license agreement will be required, and retail sales and display will be permitted without being accessory to a retail store.

On private property, no agreement will be required with the City, which is similar to the approach used for temporary outdoor patios. Outdoor retail sales and display must be accessory to a retail store on the same lot and should be placed so as not to restrict pedestrian movements while enabling physical distancing requirements. These details will be included in the design reference notes.

**Duration**

As required by the *Planning Act*, the temporary use by-law will not come into effect until the expiry of the mandatory 20 day appeal period, and if there are any appeals, the resolution of such appeals before the Local Planning Appeal Tribunal (LPAT). As a majority of the requests for temporary outdoor uses are anticipated for the spring, summer and fall of 2021, it is recommended that the temporary use by-law expire on December 31, 2021.

**Who Will Benefit**

This initiative will benefit smaller retail stores that cannot rely solely upon online sales during the pandemic to generate revenue. Shopping malls, community centres and libraries with parking lot capacity can offer outdoor events such as drive-in movie theatres. Providing these opportunities will support our local businesses while encouraging people to participate in activities outdoors. Should the pandemic continue into the spring and summer of 2021, it is anticipated that interest in these outdoor uses will increase during the warmer months of the year.

**STAND-ALONE BY-LAW TO EXEMPT APPLICATION OF CERTAIN BY-LAWS**

It is recommended that Council approve a stand-alone by-law which would exempt temporary outdoor retail sales and display and temporary outdoor recreational and entertainment establishments from the application of certain City of Mississauga by-laws until December 31, 2021. This by-law would ensure that these activities are not prohibited or subject to fees that would ordinarily apply under other City by-laws. Such by-laws include the Prohibit Sale of Goods on Highways By-law (0127-1995), the Encroachment By-law (0057-2004), the Business Licensing By-law (0001-2006), the Noise Control By-law (0360-1979) and the User Fees and Charges By-law (0156-2019). A separate amending by-law will be brought to Council

to amend the Building By-law (0202-2019) as there is a statutory notice requirement under the *Building Code Act*.

## Financial Impact

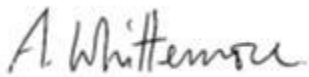
The financial impact of the temporary use by-law and permissions for outdoor retail sales and display and outdoor recreational and entertainment establishments will depend on whether Council chooses to waive fees associated with building permits, certificates of occupancy and/or associated fees for encroachment permits. There could also be some additional enforcement costs, should any unforeseen issues arise. Sweeping and debris removal of the occupied areas within the right-of-way by Works Operations after removal of the outdoor business activities may incur additional costs. Lastly, for temporary outdoor uses at public facilities such as arenas, community centres and libraries, additional staffing may be required to provide access to washroom facilities.

## Conclusion

In summary, the proposed regulations for the temporary use by-law are consistent with good planning. The regulations enable some businesses and/or charitable ventures to operate outdoors in a safe and responsible manner while avoiding the cost and delays associated with minor variance approvals. Messaging regarding Provincial regulations and other public health directives will be communicated to the public and the business community. These actions will contribute to the City of Mississauga's overall plan for recovery from the COVID-19 pandemic, and should be approved.

## Attachments

Appendix 1: Direction Report



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Andrew Whitemore, M.U.R.P., Commissioner of Planning & Building

Prepared by: Jordan Lee, Planner

# City of Mississauga

# Corporate Report



Date: November 2, 2020

To: Chair and Members of General Committee

From: Andrew Whittemore, M.U.R.P., Commissioner of Planning & Building

Originator's file:  
CD.21-SPE

Meeting date:  
November 18, 2020

## Subject

**COVID-19 Recovery – Support for Outdoor Business Activities**

## Recommendation

1. That Council authorize City staff to prepare a temporary use by-law effective to December 31, 2021, to permit outdoor markets and outdoor recreational and entertainment establishments in accordance with the regulations in the staff report dated November 2, 2020, from the Commissioner of Planning and Building.
2. That Council direct staff, upon the issuance of notice for the statutory public meeting to consider the temporary use by-law, to suspend the enforcement of those zoning by-law provisions which currently do not permit outdoor markets and outdoor recreational and entertainment establishments on private and public lands and that the suspension continue until the temporary use by-law comes into force or until the duration stipulated for the temporary use by-law expires, as may be the case.
3. Notwithstanding planning protocol, that an information/recommendation report from the Commissioner of Planning and Building be scheduled for a Council meeting to be held on December 9, 2020, to conduct a public meeting to meet the statutory requirements under the provisions of the *Planning Act*.

## Report Highlights

- Due to the COVID-19 pandemic, the City has received multiple requests for outdoor uses which are not permitted in the zoning by-law, resulting in by-law violations, opening delays and additional costs to businesses for minor variance applications.
- To support Mississauga's businesses and/or charitable ventures, the City can temporarily permit outdoor markets and outdoor recreational and entertainment establishments in appropriate zones.
- Municipal by-laws such as the City's Noise Control By-law and Property Standards By-law will still be in effect for businesses operating outdoors, in the event that there are nuisance or noise complaints.

## Background

In an effort to protect public health and safety during the COVID-19 pandemic, the Province announced a shutdown of all non-essential services across Ontario on March 17, 2020. The Provincial Government moved the Region of Peel into Stage 3 of the "Reopening Ontario" framework on July 31, 2020 but then moved Peel back into a modified Stage 2 on October 10, 2020. As a result, the capacity limits for some businesses have been substantially reduced and some other businesses have been required to close. To address these issues, some businesses have expressed a desire to operate outdoors, which would allow greater ability to physically distance. Examples include outdoor drive-in movie theatres and live entertainment, outdoor bingo halls and outdoor sport viewing events. Some of the events may also be for charitable purposes.

## Comments

The City's Zoning By-law (0225-2007) states that all uses shall be located wholly within a building, structure or part thereof in all commercial zones unless specifically permitted by exception zone provision. In addition, the definitions of certain uses specifically state that they are to be located within a building. For example, the definitions of recreational establishment and entertainment establishment are as follows:

**Recreational Establishment** – means a building, structure or part thereof, designed and equipped to be used for athletic and leisure activities and may include such facilities as a fitness centre, racquet club, billiard hall, bowling alley, arena, curling rink, indoor facility used for golf, baseball or soccer, indoor playground.

**Entertainment Establishment** – means a building, structure or part thereof, designed and equipped to be used for the provision of entertainment or amusement without the necessity of active participation by the user and may include a movie theatre, playhouse, dinner theatre, stadium or auditorium.

Outdoor markets are permitted to be outdoors, but they are only permitted in some of the Downtown Core zones.

As a result, most of these types of outdoor uses require approval of a minor variance application at the Committee of Adjustment. This adds significant delays to the start of operations due to statutory requirements such as notification and appeal periods under the *Planning Act* and impacts the ability of the industry to respond to changing conditions in a timely manner.

### Temporary Zoning Regulations

To expedite the approval of certain outdoor business activities, staff are considering the following zoning regulations be permitted on a time limited basis through a temporary use by-law:

1. Recreational and entertainment establishments shall be permitted outdoors in 'C2' (Neighbourhood Commercial), 'C3' (General Commercial), 'C4' (Mainstreet Commercial),



'E1' (Employment in Nodes), 'E2' (Employment), 'OS1' (Open Space – Community Park), 'OS2' (Open Space – City Park), 'PB1-6' (Parkway Belt), 'CC2' (Downtown Core – Mixed Use), 'CC3' (Downtown Core – Mixed Use Transition Area), 'CC4' (Downtown Core – Mixed Use), 'CCO' (Downtown Core - Office) and 'CCOS' (Downtown Core – Open Space) zones;

2. Outdoor markets shall be permitted in 'C2', 'C3', 'C4', 'OS1', 'OS2' and 'PB1-6' zones;
3. A maximum of 50% of required parking spaces may be occupied by outdoor markets and outdoor recreational and entertainment establishments; and
4. Outdoor markets and outdoor recreational and entertainment establishments shall not occupy and be located a minimum of 1.0 m (3.3 ft.) from an accessible parking space.

#### Permitted Uses and Zones

Based on the types of requests that the City has received for outdoor uses, it appears that most of them would be generally defined as either a recreational establishment or entertainment establishment under the City's Zoning By-law.

Recreational and entertainment establishments are currently permitted in the 'C2', 'C3', 'C4', 'E1', 'E2' and 'E3' (Industrial) zones. They are also permitted as accessory uses in the Downtown Core zones, 'CC2', 'CC3', 'CC4' and 'CCO'. It is proposed that outdoor recreational and entertainment establishments be permitted for the above noted zones, with the exception of 'E3' zones, due to the industrial nature of that zone.

Outdoor markets are currently permitted in the 'CC1', 'CC2', 'CCO' and 'CCOS'. It is proposed that they also be permitted in the commercial zones, 'C2', 'C3' and 'C4' that already permit retail stores.

Other properties that are under consideration for the all of the proposed uses are City-owned lands with a public library, arena or community centre. The majority of these properties are zoned 'OS1', 'OS2' or 'CCOS'. The zoning would be permissive, but the City still has the right to evaluate appropriate requests and require a park permit or license agreement, depending on the duration and the nature of the proposed use.

#### Parking

The number of required parking spaces is normally regulated by the amount of gross floor area attributed to each use in a building. Permitting outdoor markets and outdoor recreational and entertainment establishments will not accurately reflect the parking demands on a property. In most instances, those outdoor uses will be located in the parking lot, occupying many of the required parking spaces. In particular, this may be problematic for multi-tenant buildings or plazas. However, due to the pandemic, parking demands are generally lower, mitigating some of those impacts.

To accommodate the outdoor uses, while maintaining an appropriate amount of parking for other businesses, it is recommended that a maximum of 50% of the required parking spaces

may be occupied by outdoor markets and outdoor recreational and entertainment establishment uses. In addition, the uses should not be permitted to occupy or be located within 1.0 m (3.3 ft.) of an accessible parking space.

Similar parking regulations have been applied to temporary patios. While there have been some complaints from patrons and other business owners, they have generally been addressed by the property owners or management companies.

#### Duration

The proposed amendments to the zoning by-law are being contemplated to address the unique situation of Mississauga's businesses during the pandemic. As a result, it is recommended that they remain temporary through the use of a temporary use by-law. As a majority of the requests will be for operation during the spring, summer and fall months, it is recommended that an expiry date of December 31, 2021 be considered.

Staff are also considering a permanent strategy to permitting "outdoor special events" to reduce the need for applications to the Committee of Adjustment, and associated delays. However, those amendments will require further analysis, given the broad nature of potential requests and impacts. Permitting outdoor markets and outdoor recreational and entertainment establishments is an interim strategy until a fulsome study can be conducted.

#### **Other Legislative Considerations**

Other municipal by-laws such as the Noise Control By-law and Property Standards By-law will still be in effect for businesses operating outdoors. Therefore, if there are any impacts or nuisance complaints, the City will still have the ability to address the situation. Council may consider providing noise exemptions (with or without fees waived).

Until such time as the temporary use by-law is in force and effect, Council is requested to approve a recommendation directing staff to suspend the enforcement of the zoning by-law, governing outdoor markets and outdoor recreational and entertainment establishments. This will assist the business community to move forward with these uses as permitted by Provincial Regulations, taking into consideration the extraordinary circumstances of the pandemic. This is a similar approach that was taken for outdoor patios.

#### **Other Municipalities**

Staff contacted other municipalities in the Greater Toronto and Hamilton Area (GTHA) to find out how other municipalities have dealt with similar issues. Most of the municipalities that responded have followed a similar model as Mississauga regarding outdoor patios. There are two noteworthy municipalities which have special event policies or regulations that pre-date the pandemic.

The City of Burlington amended their zoning by-law in 2013 to allow temporary, one-time special charity events in all zones. The events are limited to private properties, a 24 hour duration and no more than two events can take place on a property during a 12 month period.

The Town of Whitby has a special events policy that was approved in April 2019. Every event is subject to an application and approval process. Zoning regulations and standards are not applied to temporary events but if they are longer-term, they would apply.

No municipalities have responded to the pandemic through amendments to their zoning by-law to permit outdoor uses such as the ones currently contemplated. Some respondents indicated that they will be following what occurs in Mississauga and may explore similar approaches in their municipality.

### **The Planning Process**

The City has to meet its statutory public meeting notification requirements under the *Planning Act* to implement this proposed zoning change. Notice will be given of the intent to approve the temporary use by-law on November 19, 2020, advising that the statutory Public Meeting will be held at a Council meeting on December 9, 2020.

### **Financial Impact**

The financial impact of the temporary use by-law and permissions for outdoor markets and outdoor recreational and entertainment establishments will depend on whether Council chooses to waive fees. Aside from that, there could be additional enforcement costs, should any issues arise.

### **Conclusion**

A temporary use by-law is proposed to permit outdoor markets and outdoor recreational and entertainment establishments on certain public and private properties. These temporary actions represent good planning, and also ensure that certain businesses and charitable ventures can operate outdoors in a safe and responsible manner in response to the physical distancing requirements of the Provincial Emergency Order. These actions will contribute to the City of Mississauga's overall plan for recovery from the COVID-19 pandemic, and should be approved.

### **Attachments**

N/A



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Andrew Whitemore, M.U.R.P., Commissioner of Planning & Building

Prepared by: Jordan Lee, Planner