

# 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

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