

# City of Mississauga

# Corporate Report



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

## 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

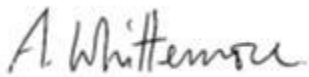
The financial impact of the temporary use by-law and permissions for outdoor retail sales and display and outdoor recreational and entertainment establishments will depend on whether Council chooses to waive fees associated with building permits, certificates of occupancy and/or associated fees for encroachment 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