

PLANNING AND DEVELOPMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

**SUBJECT: FRAMEWORK FOR ESTABLISHING TEMPORARY USE PERMITS AND
PROCESSES**

RECOMMENDATION:

1. THAT Council authorize staff to bring forward a report to propose amendments to the Burnaby Zoning Bylaw, 1965, that permits the use of Temporary Use Permits, and the Burnaby Planning and Building Fees Bylaw, 2017, to include a new application fee for the Temporary Use Permit applications, and to establish the Burnaby Development Procedures Bylaw to define a procedure for the review and issuance of the Temporary Use Permits.

REPORT

The Planning and Development Committee, at its meeting held on 2021 July 12, received and adopted the *attached* report proposing a framework to establish the use of Temporary Use Permits, and define a procedure for the review and issuance of Temporary Use Permits.

Respectfully submitted,

Councillor P. Calendino
Chair

Councillor S. Dhaliwal
Vice Chair

Copied to: Acting City Manager Director Corporate Services Director Engineering Director Planning & Building Director Public Safety & Community Services Chief Building Inspector City Solicitor
--

TO: CHAIR AND MEMBERS
PLANNING AND DEVELOPMENT COMMITTEE

DATE: 2021 July 7

FROM: DIRECTOR PLANNING AND BUILDING

FILE: 42000 20
Reference: Bylaw Amendments

SUBJECT: FRAMEWORK FOR ESTABLISHING TEMPORARY USE PERMITS AND PROCESSES

PURPOSE: To propose a framework to establish the use of Temporary Use Permits, and define a procedure for the review and issuance of Temporary Use Permits.

RECOMMENDATION:

1. **THAT** Committee request Council to authorize staff to bring forward a report to propose amendments to the *Burnaby Zoning Bylaw, 1965*, that permits the use of Temporary Use Permits, and the *Burnaby Planning and Building Fees Bylaw, 2017*, to include a new application fee for the Temporary Use Permit applications, and to establish the *Burnaby Development Procedures Bylaw* to define a procedure for the review and issuance of the Temporary Use Permits.

REPORT**1.0 INTRODUCTION**

Sections 492 and 493 of the *Local Government Act (LGA)* allow a local government to issue a temporary use permit (TUP) to conditionally approve the use of a property not otherwise permitted by the Zoning Bylaw, on a temporary basis, without amending the property's zoning district. The proposed location must be suitable for the temporary use, and the proposed use must also be compatible with the adjacent neighbourhood and uses.

In many municipalities in British Columbia, TUPs help to meet the city's economic and employment growth objectives by allowing a range of temporary residential, commercial, industrial, institutional, office, agricultural, and public uses.

TUPs are a planning tool to economically and socially benefit communities by repurposing existing developments, including vacant or underutilized buildings and other spaces, and adapting them to fulfil a new purpose outside of their zoning district, on an interim basis. This tool provides an opportunity for the efficient use of properties that have been vacant or underutilized, and to

increase their utility, while providing businesses and industries with needed spaces. A general review of TUP applications suggests that TUPs can benefit communities in the following ways:

- allowing flexibility to adaptively reuse existing vacant or underutilized spaces;
- promoting sustainability by repurposing existing buildings and other spaces;
- providing an incentive and economic benefit to property owners to lease out or occupy their underutilized properties, improving the property's presence and attracting new potential tenants;
- reducing the associated security costs and protecting vacant properties from vandalism by repurposing vacant or underutilized properties;
- adding life to adjacent streets and the neighbourhood, and contributing to an attractive and safe environment by repurposing vacant and underutilized properties;
- reducing vacancy rates of the buildings and other spaces by allowing uses that are not permitted by the Zoning Bylaw, but are compatible with adjacent uses and neighbourhood;
- revitalizing the economic activity in the area, creating employment, and making existing underutilized spaces available to the community, businesses and industries;
- encouraging entrepreneurship by enabling the use of underutilized spaces for small scale, start-up businesses looking for low-cost spaces to establish and grow; and
- guiding the future use of a site by temporarily allowing new uses and emerging activities, while assessing their impacts on adjacent properties and land uses.

Unlike other municipalities, TUPs are not currently permitted in Burnaby. A TUP allows uses that are not permitted by the *Burnaby Zoning Bylaw*, on an interim basis, subject to terms and conditions. The approval process for TUPs is shorter than a rezoning process. The TUP process requires Council approval. This process provides flexibility particularly at the time of economic uncertainty, and helps with social, cultural and economic growth. This report provides general information and the statutory approval process related to TUPs. It also proposes a framework to establish and review TUPs in Burnaby.

2.0 POLICY CONTEXT

Establishing TUPs in Burnaby aligns with the following Council-adopted policies: *Corporate Strategic Plan (2017)*, *Official Community Plan (1998)*, *Economic Development Strategy (2007)*, and *Social Sustainability Strategy (2011)*.

3.0 TEMPORARY USE PERMIT

3.1 Legislation Governing Temporary Use Permits

The *LGA* provides legislative requirements for processing and issuing TUPs. The *LGA* also sets public notice and hearing requirements related to the issuance of TUPs, allows local governments to designate TUP areas, determine permit conditions related to undertakings and security deposits, and to renew TUPs. A local government may allow any land use in any zoning district to be conditionally permitted as a temporary use.

To: *Planning and Development Committee*
From: *Director Planning and Building*
Re: *Framework for Establishing Temporary Use Permits and Processes*
2021 July 7..... Page 3

Under Section 493 of the *LGA*, a local government, on application by an owner of land, may issue a TUP by Council resolution, to do one or more of the following:

- allow a use not permitted by the Zoning Bylaw;
- specify conditions under which the temporary use may be carried out; and
- allow and regulate the construction of buildings or structures in respect of the use for which the permit is issued.

The use described and permitted by TUPs may continue for three (3) years or less as specified in the permit. The owner of the land may apply to renew the permit only once. The permit may be renewed subject to Council resolution for a maximum of an additional three (3) years, provided that it meets all terms and conditions imposed by the local government.

Public Notice and Hearing Requirements

Section 494 of the *LGA* requires that a local government proposing to pass a resolution to issue a TUP must give a public notice containing the following information:

- in general terms, the purpose of the proposed permit;
- the land or lands that are subject of the proposed permit;
- the place, times and dates when copies of the proposed permit may be inspected;
- the place, time and date when the resolution will be considered; and
- a sketch that shows the area that is the subject of the proposed permit, including the name of adjoining roads, if applicable.

The required public notice must be published in a newspaper at least three (3) days and not more than 14 days before the adoption of the resolution to issue a TUP. In addition, the notice must be mailed or otherwise delivered at least ten (10) days before the adoption of the resolution, to the owners or any tenants in occupation of all parcels, any part of which is the subject of the permit, or is within a distance specified by a bylaw, from the parcel which is the subject of the permit.

Permit Conditions – Undertakings and Security

According to Sections 496 and 497 of the *LGA*, a local government as a condition of issuing a TUP, may require the owner of land, which is the subject of the permit, to provide an undertaking to:

- (a) demolish/remove the buildings and other structures, and
- (b) restore the land to a condition, and by a date specified in the permit.

The required undertakings must be attached to, and form part of the permit. If the owner of the land fails to comply with the undertakings, the local government may enter on the land and carry out the demolition, removal or restoration at the expense of the owner.

In addition, as a condition of issuing a TUP, a local government may require the provision of security deposits to guarantee the performance of the terms and conditions of the permit. A TUP may not be issued, or may be revoked at any time, if conditions of issuing the permit are not adequately met.

3.2 Proposed Framework to Establish Temporary Use Permits in Burnaby

Despite abundant opportunities to establish and grow businesses in Burnaby, finding a suitable location for some small-scale, and start-up businesses and services can be challenging and costly. This can potentially result in the loss of opportunities to accommodate or maintain these businesses. Owners of properties or employment spaces may also face challenges accommodating uses permitted by the *Burnaby Zoning Bylaw* due to factors of the site, such as a less desirable location, poor access or lack of access to transit, shortage of parking or loading spaces, lack of amenities, dated construction, etc. This results in vacancy of those spaces, losses of revenue, less desire to maintain the buildings, and other safety and security implications.

Extending uses beyond what is permitted in the zoning district in which a property is located increases the opportunities to use the existing buildings/spaces, and helps to maintain uses that may otherwise leave the City. Currently, in Burnaby, the only process to allow non-permitted uses is to rezone the property. However, rezoning is not always a feasible option for those looking to establish a small-scale or start-up business, or to accommodate an interim use, due to the cost, length, and uncertainty of this process. Furthermore, rezoning of a site for a truly temporary use is not possible as the change in zoning is permanent, unless the property is rezoned again.

Alternatively, TUPs can provide flexibility to accommodate uses that are not permitted by the *Burnaby Zoning Bylaw* on an interim basis. The temporary use would be subject to terms and conditions. The approval process would be shorter and would still involve Council approval. Unlike a rezoning amendment bylaw that requires three (3) readings and a public hearing prior to final adoption, a TUP may be issued by Council resolution.

A detailed review of the proposed temporary uses would be conducted prior to issuance of TUPs to ensure the proposed uses are compatible with adjacent uses with regard to design, operation, and intensity of use, and that the proposed use would not impose significant impacts on local traffic and City services. Consideration of public input on the proposed temporary use is also required prior to issuance of TUPs. Considering that a TUP allows a temporary use on a property without amending its zoning district, the property may continue to accommodate all uses permitted in such zoning district.

Burnaby regulatory framework has evolved over the years and created unique circumstances compared to other municipalities. TUPs could be used to address these unique circumstances in a more efficient way. Some examples of the application and benefits of TUPs would include:

- facilitating the establishment of emerging new businesses and uses which are yet to be defined in the *Burnaby Zoning Bylaw*;

- facilitating the establishment of uses that offer compelling community benefits on vacant and underutilized properties, such as farmers markets, community gardens, urban farms, art galleries, etc.;
- providing temporary public spaces and other place making amenities on vacant and underutilized properties, for special events, concerts, festivals, fundraising or other civic activities;
- allowing an interim use of sites that are transitioning through a rezoning process and pending redevelopment;
- providing more opportunities for the use of heritage sites/buildings;
- allowing additional temporary uses, on properties that are zoned CD Comprehensive Development Districts, without further amendments to the CD Plans;
- supporting the economic development opportunities related to agricultural operations that are not permitted by the *Burnaby Zoning Bylaw*, such as sale or processing of products, agri-tourism, etc.;
- facilitating the establishment of associated services and facilities related to tourism and filming industries;
- permitting emerging industrial uses with similar intensity of use in industrial districts where they are not permitted by the *Zoning Bylaw*; and
- facilitating the establishment of a temporary parking and outdoor storage in the vicinity of civil and infrastructure projects, i.e. road construction, water and sewer upgrades, etc. for the storage of materials and equipment, and parking of vehicles of the employees.

Proposed Temporary Use Permit Areas

While more details related to TUPs will be provided in a future report, the proposed framework related to TUPs is as follows:

- the designated TUP areas would be limited to C Commercial, M Industrial, B Business, P Public and Institutional, and A Agricultural Districts, all their sub-districts, and the CD Districts which are based on the above noted Districts.
- in the designated TUP areas, the following land uses may not be permitted as a temporary use:
 - liquor licence establishments, liquor stores, licensee retail stores, government cannabis stores, and cannabis production facilities;
- in the designated TUP areas, a temporary use may not be permitted on a property, or a portion of a property that is used for the following uses:
 - purpose-built rental housing (in the C1, C2, C3, C8, C9, P11, P11e, P11r, and P11e/r Districts, and the CD District based on the above noted Districts);
 - multiple family dwellings, and multiple family flex units (in the C8, C9, P11, and P11e Districts);
- TUPs are not permitted on lands designated within the Agricultural Land Reserve; and
- the temporary uses on properties designated “industrial” would be limited to only uses that are permitted in the M Districts, excluding business and professional offices, recreational uses, and cafes or restaurants.

To: Planning and Development Committee
From: Director Planning and Building
Re: Framework for Establishing Temporary Use Permits and Processes
2021 July 7..... Page 6

To issue a TUP in the designated TUP areas, the proposed temporary use should be compatible with adjacent properties and land uses with regard to design, operation, and intensity of use. A temporary use should not impose significant impacts on City services, traffic, the natural environment, and should maintain visual integrity of the area. In addition, it should meet “conditions of use” and all other requirements of the *Burnaby Zoning Bylaw* related to such use, including but not limited to density, setbacks, building height, screening and landscaping, and off-street parking and loading spaces.

As part of the TUP review process, applications would be circulated to other departments and external agencies, whose interests may be affected by the proposal, for review and comment. Meeting the requirements in accordance with the City’s policies and regulations, including the *Burnaby Official Community Plan*, would be required as conditions of issuing TUPs. The provision of a letter of undertaking and security deposits to ensure that the use will be terminated by the date specified in the permit, and the building/structure or the land will be restored to its original condition, may be required as conditions of issuing the permit.

Proposed Procedures for TUPs

Should the establishment of TUPs in Burnaby be supported by Committee and Council, staff would bring forward a further report to propose a Development Procedures Bylaw for TUPs. This bylaw would establish a framework for the review of TUP applications, and define a procedure under which an owner of land may apply for the issuance of a TUP in line with the *LGA* provisions, to ensure fairness, consistency and accountability in the review of the applications. This bylaw would include the requirements related to TUP applications, the application referral process, the process of review and issuance of the permit, public notifications including notification delivery distance, notification signs, duration that a sign should be posted on a site, reconsideration provisions, and other related information.

It is further requested that Committee recommend Council to authorize staff to bring forward a bylaw amending the “*Burnaby Planning and Building Fees Bylaw*” to include new application fees for TUP applications (initial permit and renewal) in order to cover the cost of review of the TUP applications, if Committee and Council consider the establishment of TUPs in Burnaby.

4.0 CONCLUSION

This report provides an overview of TUPs as a discretionary tool that is broadly used in other municipalities in British Columbia to help with the city’s business and economic growth by allowing temporary office, commercial, industrial, institutional, agricultural, and public uses where they are suitable, without the need to rezone the properties. This report also provides information related to the statutory approval requirements to issue TUPs, as regulated by the *LGA*, and the proposed framework for TUPs, if Committee and Council consider the establishment of TUPs in Burnaby.

To: Planning and Development Committee
From: Director Planning and Building
Re: Framework for Establishing Temporary Use Permits and Processes
2021 July 7..... Page 7

It is recommended that Committee request Council to authorize staff to bring forward a report to propose amendments to the *Burnaby Zoning Bylaw, 1965*, to regulate the establishment of temporary uses, and the *Burnaby Planning and Building Fees Bylaw, 2017*, to include a new application fee for TUP applications, and to establish the *Burnaby Development Procedures Bylaw* to define a procedure for the review and issuance of TUPs.



E.W. Kozak, Director
PLANNING AND BUILDING

PS:sa

Copied to:	Acting City Manager	Director Corporate Services
	Director Engineering	Chief Building Inspector
	Director Public Safety and Community Services	City Clerk
	City Solicitor	