

PLANNING AND DEVELOPMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

**SUBJECT: PROPOSED ZONING BYLAW AMENDMENTS - TEMPORARY USE
PERMIT**

RECOMMENDATION:

1. THAT Council authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw 1965, to designate areas where temporary uses may be allowed, and specify general conditions regarding the issuance of temporary use permits, as outlined in Section 3.0 of the report, for advancement to a future Public Hearing.

REPORT

The Planning and Development Committee, at its meeting held on 2021 September 28, received and adopted the attached report proposing amendments to the Burnaby Zoning Bylaw to define the requirements of temporary use permits.

Respectfully submitted,

Councillor P. Calendino
Chair

Councillor S. Dhaliwal
Vice Chair

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| Copied to: Chief Administrative Officer Director Corporate Services Director Engineering Director Planning and Building Director Public Safety and Community Services Chief Building Inspector City Solicitor |
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TO: CHAIR AND MEMBERS
PLANNING AND DEVELOPMENT
COMMITTEE

DATE: 2021 September 23

FROM: DIRECTOR PLANNING AND BUILDING

FILE: 42000 20
Reference: Bylaw Amendments

SUBJECT: PROPOSED ZONING BYLAW AMENDMENTS – TEMPORARY USE PERMIT

PURPOSE: To propose amendments to the Burnaby Zoning Bylaw to define the requirements of temporary use permits.

RECOMMENDATION:

1. **THAT** Council authorize the preparation of a bylaw amending the *Burnaby Zoning Bylaw, 1965*, to designate areas where temporary uses may be allowed, and specify general conditions regarding the issuance of temporary use permits, as outlined in *Section 3.0* of this report, for advancement to a future Public Hearing.

REPORT

1.0 BACKGROUND INFORMATION

On 2021 August 30, Council adopted a report proposing a framework to establish temporary use permits (TUP) in Burnaby. Council also authorized staff to prepare a bylaw amending the *Zoning Bylaw* to define the requirements of TUPs in line with the proposed framework.

The *Local Government Act (LGA)*, permits Council to pass a resolution to issue a TUP, on application by an owner of land, in order to:

- 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.

However, TUPs can only be issued for land in an area that has been previously designated as an area where temporary uses may be allowed. TUPs are a planning tool which allow local governments to authorize, on temporary basis, a use that is not otherwise permitted by the Zoning

Bylaw, without a need to rezone the property. This tool would economically and socially benefit the community and help the City to meet its economic and employment growth objectives.

This report brings forward amendments to the *Zoning Bylaw* to designate areas where temporary uses may be allowed, and to establish general conditions applicable to the issuance of 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 ZONING BYLAW AMENDMENTS TO ESTABLISH TEMPORARY USE PERMITS

Under Section 492 of the *LGA*, the *Zoning Bylaw* may designate areas in which uses that otherwise are not permitted by the *Zoning Bylaw* may be permitted conditionally, on an interim basis, and subject to Council approval. The *Zoning Bylaw* may also specify general conditions, including the provision of undertakings and security deposits, for the issuance of TUPs in TUP designated areas.

Generally, uses that are permitted in a zoning district are compatible and have minimal impacts on other adjacent and surrounding land uses. Should a specific land use have negative impacts, the *Zoning Bylaw* can impose requirements on those land uses such as landscaping, separation, or enclosure within a building, to minimize any conflict or disturbance on neighbouring properties and land uses. It is necessary to ensure that the temporary uses permitted by TUPs would be compatible within the neighbourhood, and not interfere with the conduct of adjacent businesses and the use of adjacent properties. As such, the following factors in regulating TUPs were considered:

- ability to minimize any negative impacts on the natural environment, City services, traffic, safety, security and operation of surrounding land uses; and
- consistency with the City's objectives, policies and plans.

Based on these considerations, the following Zoning Bylaw requirements are recommended:

TUP Designated Areas

Non-residential land uses generally provide commercial, cultural, educational, institutional and recreational services, and employment opportunities needed by residents and businesses of the community. However, some non-residential uses, especially industrial, entertainment, and some commercial uses and services may have negative impacts on residential uses, such as traffic, parking, noise, odour, vibration, and conflicting intensity of activities.

To minimize the potential negative impacts of future temporary uses, and to maintain privacy, security, and enjoyment of the residents in their neighbourhoods, it is recommended that temporary

To: *Chairs and Members Planning and Development Committee*
From: *Director Planning and Building*
Re: *Proposed Zoning Bylaw Amendments – Temporary Use Permit*
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uses be only permitted in C Commercial, M Industrial, B Business Centre, P Public and Institutional, and A Agricultural Districts, all their sub-districts, and the associated CD Districts, subject to Council approval. If Council adopts this recommendation, R Residential and RM Multiple Family Residential Districts would not be considered as TUP designated areas.

Uses Not Permitted Under Temporary Use Permit

Under the *Zoning Bylaw*, there are a number of land uses that are permitted subject to rezoning to a CD Comprehensive Development District, or the sub-districts where the uses are permitted. These uses include, but are not limited to, liquor licence establishments, liquor stores, licensee retail stores, government cannabis stores, and cannabis production facilities. The rezoning requirement is to ensure that these proposed uses meet the City's locational and operational criteria for such uses, and adequate measures are considered to minimize the potential impacts on surrounding land uses.

Considering the sensitivity of these land uses and the potential conflict between these uses and the surrounding neighbourhood, it is recommended that these uses continue to be permitted through a rezoning process only, which ensures the opportunity for public input through a mandatory public hearing.

Prohibition of Temporary Uses in Purpose-Built Rental Housing

On 2018 December 03, Council adopted a Zoning Bylaw amendment to define "purpose-built rental housing" as a distinct land use in the RM, P11 SFU Neighbourhood, and a number of C Districts. The purpose of this amendment was to support the construction of new and replacement rental units in line with the City's Rental Use Zoning Policy.

Purpose-built rental housing is permitted in the C1, C2, C3, C8, C9, P11r, and P11e/r Districts, in addition to the RMr Districts, the C sub-districts, and the associated CD Districts. The C and P Districts are proposed as TUP designated areas where the establishment of temporary uses would be permitted subject to Council approval. To maintain the supply of rental housing consistent with the City's Rental Use Zoning Policy and housing objectives, it is recommended that temporary uses not be permitted in purpose built rental housing in the C and P11 Districts.

Prohibition of Temporary Uses in Multiple Family Dwellings in the C8, C9, and P11 Districts

Under the *Zoning Bylaw*, multiple family dwellings are permitted in the C8, C9, P11, and P11e Districts and multi-family flex-units are permitted in the P11e District. Considering that the intent of the TUP in Burnaby is to allow temporary uses on properties, or a portion of the properties, that are zoned for non-residential uses, it is recommended that the temporary uses be prohibited in multiple family dwellings and multi-family flex-units in the C8, C9, and P11 District, their sub-districts, and the associated CD Districts.

Prohibition of Temporary Uses on Agricultural Land Reserve

The Agricultural Land Reserve (ALR) is a provincial land use district where agriculture and agricultural activities are supported and protected. The use of land within the ALR is regulated by the *Agricultural Land Reserve Use Regulation*. Under the *Agricultural Land Commission Act*, any use of the ALR that is not permitted by the Regulation is subject to approval from the Agricultural Land Commission.

Protection and enhancement of agricultural uses within the ALR is the objective of the City's Official Community Plan (OCP) and the Provincial Regulation. Accordingly, to protect the availability of agricultural lands for the production of food and other agricultural goods and services, it is recommended that ALR be excluded from the TUP designated areas. Burnaby has some lands in the A Districts which are not included in the Agricultural Land Reserve for which TUPs could be considered.

Temporary Uses on Properties Designated "Industrial" and "Petro Chemical"

The Metro Vancouver region is experiencing a critical shortage of industrial land. Protecting industrial lands and restricting non-industrial activities on these lands are essential to address the shortage issue. It is also to reserve industrial lands for industrial uses to support Burnaby's economy. In Burnaby, lands that are intended for industrial uses are generally designated "Industrial" or "Petro Chemical" in the OCP and other community plans. These lands are intended for light and heavy industrial activities, including distribution, warehousing, repair, construction yards, infrastructure, outdoor storage, wholesale, manufacturing, trade, e-commerce, emerging technology-driven forms of industry and appropriately-related and scaled accessory uses. Under the *Zoning Bylaw*, a number of non-industrial uses are also permitted as an outright permitted use, such as business and professional offices in the M5 and M8a Districts, or subject to rezoning, such as cafés and restaurants, and a number of recreational uses.

TUPs may permit the temporary use of industrial lands for non-industrial activities. It is necessary to align the use of TUPs with regional and city goals of supporting the retention of industrial lands. As such, it is recommended that temporary uses on lands that are designated "Industrial" or "Petro Chemical" in the OCP or other community plans be limited to the uses that are permitted in the M Districts.

Considering that permitted uses in the M Districts also include business and professional offices (in the M5 and M8a Districts), cafés and restaurants, and a number of recreational uses subject to rezoning, it is further recommended that these non-industrial uses be restricted under the TUPs. The recreational uses that are currently permitted in the M Districts subject to rezoning to a CD District or M sub-districts include indoor athletic recreational uses, indoor go-cart tracks, and indoor pistol and rifle ranges. If Council adopts this recommendation, these non-industrial uses will continue to be considered on lands that are designated "Industrial" or "Petro Chemical" subject to rezoning.

The above mentioned non-industrial uses may be considered on lands that are designated “Business Centres” through the TUP review process provided that they are compatible with adjacent land uses and meet all other requirements of the Zoning Bylaw.

Other General Conditions Applicable to TUPs

TUP applications should be assessed on their own merits. The proposed temporary uses should be analyzed in relation to other adjacent land uses and to the surrounding area to ensure they are compatible with the local land use context. In general, the following considerations should be used to review a proposed temporary use:

- compatibility with surrounding land uses with regard to intensity of use, operation, and visual and design considerations;
- impacts on the natural environment and surrounding areas;
- impacts to noise, traffic, safety and security of the surrounding area;
- consistency with the OCP, community plans, and other relevant Council policies; and
- impacts on the future use and development of the property and surrounding areas, in accordance with the OCP and other community plans.

As part of the TUP review process, the proposal would be reviewed by the City’s appropriate departments and external agencies to ensure the proposal meets all requirements, and adequate mitigation measures have been proposed. The review process would also consider the determination of the terms and conditions of the permit related to the use of land, eventual removal of the use, building, and structures, or restoration of land, after the expiration of the permit. In addition, security deposits may be required to ensure the satisfaction of terms and conditions of the permit. Following the completion of the application review, Council may:

- accept the application in whole or in part, impose any conditions it considers appropriate, and approve the issuance of the permit which will be valid for a maximum of three (3) years;
- defer the issuance of the permit, pending resolution of any raised issue; or
- refuse the application.

It should be noted that prior to Council consideration of the application, the public must be notified. According to the *LGA*, the applicant may apply to renew the application only once, for a maximum of three years. A future report concerning “Development Procedures Bylaw for TUPs” will be submitted to Council for consideration and approval. This report will provide details of the TUP review and approval process, public notification requirements, and other related requirements.

Exemption of TUPs from the Preliminary Plan Approval Process

According to Section 7.3(1) of the *Zoning Bylaw*, with some exceptions, a Preliminary Plan Approval (PPA) is required for any change of use, or the construction, addition, or alteration of

any building or structure. The PPA is a process for the review of a proposal for compliance with the applicable requirements of the *Zoning Bylaw*.

As part of the TUP review process, the application would be circulated to the City's appropriate departments to ensure the compliance with all City policies, bylaws, and requirements. This would include a comprehensive review of the proposed temporary use for compliance with the requirements of the *Zoning Bylaw* for the zoning district in which it will be located.

To expedite the TUP review and approval process, and prevent the redundant review of the application, it is recommended that the developments permitted under TUPs be exempted from the PPA requirements of the *Zoning Bylaw*. If Council adopts this recommendation, a separate PPA would not be required for the use of land, buildings, or structures, or the construction, extension, or alteration of buildings or structures permitted under TUPs. The TUPs would still require the application of a Building Permit or a Business Licence, where it is applicable.

Other Related Zoning Bylaw Amendment

Section 6.7 of the *Zoning Bylaw* regulates the construction or erection of temporary buildings. Under Section 3.0, "temporary building" is defined as a building or structure placed on a lot for a limited period of time, but does not include a mobile home in a mobile home park or a recreational vehicle. Temporary buildings are only permitted for the following purposes and time periods:

- a construction office and storage, on a lot undergoing development for the duration of such construction;
- the temporary relocation of the commercial, industrial, or institutional use where the building is undergoing the structural alterations or improvements, not exceeding 30 days after the issuance of an Occupancy Permit for the building;
- a residential sales centre on a lot undergoing development for multiple family dwellings, not exceeding 30 days after the initial sales of all the units is completed;
- the production of a television show or similar productions, for the lesser of the duration of the production and two (2) years after the erection of the temporary building; and
- a classroom in a public school, not exceeding 10 years after the erection of the temporary building.

Except in a number of circumstances where a PPA is not required, temporary buildings under Section 6.7 are generally permitted through a PPA review process, and subject to approval of the Director of Planning and Building.

TUPs may allow and regulate the construction of buildings or structures to accommodate the use for which the permit is issued. Depending on the nature of the temporary use, intent of the proposal, future use and development potential of the property, and the community plan's vision for the property and the surrounding area, a building or structure permitted under a TUP may be required to be removed prior to expiration of the permit. Removal of a building or structure may be required as a condition of permit and subject to Council approval.

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From: Director Planning and Building
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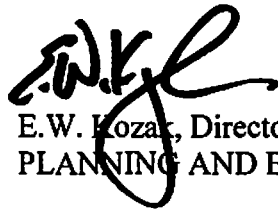
To clarify the difference between the temporary buildings that are permitted under Section 6.7 and the ones permitted under TUPs, it is recommended that the definition of “temporary building” in Section 3.0 be amended as follows:

“Temporary building” means a building or structure placed on a lot for a limited period of time and in accordance with Section 6.7 of this bylaw. A temporary building does not include a mobile home which is located in a mobile home park or a recreational vehicle.

The recommended Zoning Bylaw amendments related to TUPs that are discussed in *Section 3.0* of this report are *attached* in *Appendix A*.

4.0 CONCLUSION

The above Zoning Bylaw amendments are proposed in order to authorize the City to issue TUPs, by designating areas where an application for a temporary use may be considered, and establishing the general conditions applicable to TUP applications. It is recommended that Council approve the above proposed amendments, as outlined in *Section 3.0* of this report, and direct that the Zoning Bylaw text amendments be advanced to a future Public Hearing.



E.W. Kozak, Director
PLANNING AND BUILDING

PS:sa

Attachment

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|------------|---|-----------------------------|
| Copied to: | Chief Administrative Officer | Director Corporate Services |
| | Director Engineering | Chief Building Inspector |
| | Director Public Safety and Community Services | City Clerk |
| | City Solicitor | |

Recommended Bylaw Amendments Related to Temporary Use Permits

The following amendments are recommended to designate areas where temporary uses may be allowed, and specify general conditions regarding the issuance of temporary use permits:

1. **THAT** the definitions of “building, temporary” in Section 3.0 of the Zoning Bylaw be repealed and replaced with wording the same or similar to the following:

“BUILDING, TEMPORARY” means a building or structure placed on a lot for a limited period of time in accordance with Section 6.7 of this Bylaw. A temporary building does not include a mobile home which is located in a mobile home park or a recreational vehicle.

2. **THAT** Section 6.28 be added to the Zoning Bylaw with wording the same or similar to the following:

6.28 Temporary Use Permits

In C, M, B, P, and A Districts, all of their sub-districts, and the CD Comprehensive Development Districts, or portion thereof, based on the above noted Districts, a temporary use may be permitted, by Council resolution, subject to the following conditions:

- (1) It shall not be permitted in a purpose-built rental housing;
- (2) In the C8, C9, and P11 Districts, all of their sub-districts, and the CD Comprehensive Development Districts, or portion thereof, based on the above noted Districts, it shall not be permitted in a multiple family dwelling, or a multi-family flex unit;
- (3) It shall not include liquor licence establishments, liquor stores, licensee retail stores, government cannabis stores, and cannabis production facilities;
- (4) It shall not be permitted on a property that is designated Agricultural Land Reserve;
- (5) It shall be limited to the uses permitted in the M Districts, excluding business and professional offices, cafes or restaurants, indoor athletic recreational uses, indoor go-cart tracks, and indoor pistol and rifle ranges, on a property that is designated Industrial or Petro Chemical;
- (6) It should be compatible with surrounding land uses with regard to intensity of use, operation, and visual and design considerations;
- (7) It shall not impose significant impacts on the natural environment and surrounding areas, including noise, traffic, safety and security, and other considerations;
- (8) It should be consistent with the Official Community Plan, other applicable community plans, and other relevant Council policies;
- (9) It shall not negatively impact the future use and development of the property and surrounding areas as proposed in the Official Community Plan, or other applicable community plans;

Appendix A

- (10) It should be permitted for a maximum of three (3) years, with one time renewal of an additional maximum three (3) years, subject to Council approval;
 - (11) It may be permitted subject to conditions related to the use of land, removal of the use, building, and structure, or restoration of land, following the termination of the temporary use;
 - (12) It may be permitted subject to the provision of undertakings to demolish or remove the building or other structure, and to restore the land to the specified conditions, following the termination of the temporary use;
 - (13) It may be permitted subject to the provision of security to ensure the satisfaction of terms and conditions of permit.
3. **THAT** Section 7.3(1)(h) be added to the Zoning Bylaw with wording the same or similar to the following:
- (h) The use of land, building, or structure, or the construction, extension, or alteration of a building or structure permitted by a temporary use permit under Section 6.28 of this Bylaw.