

# Temporary uses

A look into uses of a non-permanent nature, temporary approvals, and the associated municipal decision making framework.

Municipalities acknowledge that the notion of use exists on a continuum of time, with some uses that will remain indefinitely and others that come and (usually) go. Permanent uses like houses and businesses exist alongside passing uses like vendors and work camps. In the pursuit of orderly development, most municipalities will choose to develop a comprehensive planning approach directing how temporary uses are to be managed. Embodying such an approach helps facilitate land use compatibility amongst the permanent and temporal elements of the built environment while recognizing that temporary use is a natural part of the cycle of municipal development.





# Introduction

In land use planning, most of the focus is on the permanent fabric (built form) of community created through the development permit process. But there is a segment of planning that allows for uses that come and go in varying short periods of time. These are generally referred to as temporary uses. This periodical will explore the nuance of temporary use in planning practice and provide ideas for municipal approaches to addressing these uses through the Land Use Bylaw (LUB), or in some cases another mechanism for approval.

Temporary use typically encompasses things like garage sales, special events, food vendors, and pop-up uses, and often plays an important role in urban revitalization. The difficulty in discerning what temporary uses are is expressed in the questions: Is this a land use or is it something else? What is the context in which the use is being proposed and is the context such that there is insulation from traditional impacts associated with permanent uses? Defining context: where and what is it?; time frame: how long?; size and intensity: how much?; impact: who is affected? These are all important considerations when evaluating whether a temporary use is appropriate, and devising the framework that is best suited to regulate it.

Conversely, temporary approvals for permanent uses are authorized in some land use bylaws (LUB) and can be a helpful tool for a Development Authority in navigating its role. Whether it's a provisional approval for a desired permanent use, or a temporary approval for a naturally interim use, a spectrum of options exist for municipalities to manage the matter.

## What is temporary?

Conventional (i.e. permanent) land uses are issued development permits, normally for an indefinite duration, and remain operative as long as the authorized development remains in effect. Temporary uses can be defined as "a use established for a fixed period of time with the intent that such use will terminate automatically upon expiration of the fixed time period unless permission to conduct the use is renewed."

Temporary use in planning is also thought of as a means to placemaking and community vibrancy. Neighbourhood planners will encourage temporary use to create energy in a neighbourhood like a downtown. Public interaction with pop-up vendors can create spin-off social and economic benefits from a pedestrian-oriented culture of congestion. Similarly, a neighbourhood block party can reinforce neighbour relations and help with a sense of pride in property.

Despite these associated benefits to the community, the pop-up phenomenon can at times be somewhat of a double-edged sword. For instance, the City of Brooks has faced opposition to the temporary use of a



*Okanagan fresh fruit, Lethbridge.*



*Ruben's Veggies, Lethbridge.*

*Underutilized land in commercial parking lots can be a popular venue for the sale of fruits and vegetables. While fruit is usually sold out of a truck that occupies the site no longer than June–September, vegetable sales are often housed within small buildings that facilitate an extended operating season. For instance, Ruben's Veggies remains open 9 months of the year.*

*Enhancing access to fresh produce, these temporary uses are valuable amenities for residential areas in the vicinity. It is nonetheless important that they are sited with regard for the circulation and parking configurations that were approved for the conventional commercial development occurring on the parcel.*

pop-up car dealer who utilizes an underused vacant property for seasonal sales. The 'brick and mortar' car dealer businesses in Brooks saw this as unfair competition. Whereas they have invested in the community and sell the same product, the temporary vendor benefits from the consumer base without a corresponding investment in the community. In a competitive industry, temporary car sales may not be a good fit for the local economy, but is that a valid consideration for an approval authority?

By nature, temporary uses arise quickly but often extend past their expected tenure. This owes to the human activity that moulds, activates and attaches meaning to a space—an effect that can turn an interim land use into a permanent one through the intervention of community groups.

## Policy context

In most municipalities, the context of temporary use sometimes lacks an overall strategy or an understanding of options for regulation. The following list of possible temporary uses captures the breadth of this subject matter:

- Seasonal sales: Christmas Trees, garden center
- Garage sales
- Special events: car shows, concerts, weddings, parades
- Farmers' markets
- Home Occupations
- Temporary camp/staging site
- Sidewalk busking, sales, or dining
- Land Use bylaw defined temporary use:  
(signage, meteorological towers for wind turbine analysis)
- Mobile food trucks and carts
- Road side sales: fruit and vegetable
- Pop-up Retail sales: may be internal to an existing business
- Peddler: Flag sales, crafts, artisan works
- TV and movie filming
- Parks and passive recreational uses

Within the list above, time frames may be implied, and are a large component in an approach to regulation. Ultimately, in order to facilitate regulatory oversight, these fixed periods of time must be quantified.

Reasonableness should be exercised when specifying these fixed time frames. Municipalities would be well served to define periods of short-term use as 24 hours or a weekend, medium-term as seasonal (May-September), and long-term as a year or more. The 24-hour or weekend category, like garage sales, is often of such a short duration that a development permit exemption in a LUB is appropriate as there is insufficient time to process a development permit. With the seasonal category, there is time to process a permit, so the decision to regulate through the LUB often falls on the other qualifying questions. For the long-term category, a development permit will more likely be required based on the semi-permanent nature of the use.



image source: [bbc.com](https://www.bbc.com)

*Tempelhofer Feld in Berlin exemplifies how the persistence and evolution of temporary use can transform an underutilized urban space into a destination. Occupying the site of a former military airport, today this internationally renowned public space supports numerous pop-up cultural activities and community-led initiatives including kiting, skating, gardening and barbecuing.*

Development permit requirements and exemptions should be read together with local business licence rules to give an overall understanding of the process and fees applicable to temporary uses.

## Temporary approvals for conventional land uses

Where provided for in a LUB, a Development Authority may limit the duration of a development permit. Temporary permits should be limited to scenarios where a permitted use is requesting a variance or for discretionary uses. Permitted uses that conform with the LUB should not be subject to a duration clause unless the application itself discloses that the timeline of the use is limited. The power of the Development Authority to refuse a discretionary use on its merits alone implies the right to limit the duration of an approval.

A time-limited permit often results where a Development Authority is of the opinion that a proposed use is suitable, but nonetheless should be monitored over a certain time period owing to circumstances specific to the proposal. It's important that the Development Authority does not rely on a temporary approval in lieu of answering the question it is obligated to positively confirm—being that the use is substantially suitable having regard for sound planning principles. It is not appropriate for a Development Authority to effectively defer this question to a later date. Where the test for suitability is met, a temporary permit can be viewed as a trial approval, whereby at the end of the timeline the applicant is expected to reapply and demonstrate that any remaining uncertainty can be dismissed through evidence of land use compatibility and accurate execution of the original permit. Still, temporary permits should be used judiciously and only where conditions attached to a conventional development permit would not be sufficient to ensure the approval is in the public interest.

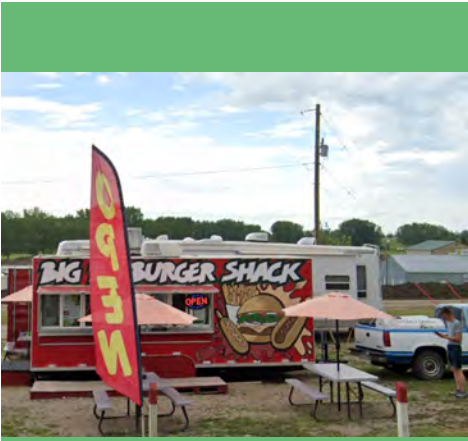
## Land use considerations and impacts

Most municipalities will be familiar with land use approvals for Home Occupations. Differing intensity of use can garner that no permit is required for a home office, but where a hairdresser, contractor, or landscape company will generate traffic and have parking needs a permit is more likely necessary. Decision makers must understand that the use of a temporary approval creates a level of uncertainty for the business owner, which can affect a willingness to carry forward. Clear reasoning to the applicant as to why a temporary approval was utilized needs to be conveyed along with a very clear timeframe.

Another example of location and timeframe is that of the food truck (or mobile food cart). Here the distinguishing factor is a question of location. Is the food truck utilizing a public street to sell their product or are they

*Business licences (for the communities that have them) are often utilized as the starting point of municipal requirements, but business licences alone don't ask the questions that planning staff would want to understand before the use is established. Where the municipal planning process is not engaged, information gaps are more likely to exist. For instance, planners tend to be knowledgeable about the provincial and federal statutes that will apply in the context of a specific use.*

*Uses involving the handling of food illustrate how rules prescribed from higher levels of government can come into play. The Government of Alberta provides fact sheets on low-risk foods which states, "Alberta's Food Regulation sets the rules for the safe handling of food that is available to the public. As of June 1, 2020, the Food Regulation allows Albertans to make low-risk foods in their home kitchen for sale to the public, subject to certain restrictions and safe food handling. Low-risk home-prepared foods can be sold from home (including online or mail-order sales) and special events, as well as from farmers' markets, where they were sold previously. Special events are temporary events, such as craft fairs and festivals, and have their own set of rules in the regulation."*



*Big D's Burger Shack, Nanton.*

*Development permit exemptions are found in most LUBs.*

*For temporary uses, it may be necessary to address the frequency of the use in order to preclude repeat overuse (i.e. no permit is required for a seasonal sales/garage sales event not exceeding 48 hrs on a site and not more than twice in a calendar year).*

*Municipal authority for specifying the duration of a development permit is derived from Section 640(2)(c)(v) of the Municipal Government Act (MGA).*

*For temporary permits, a municipality may also wish to provide for the ability to require security to ensure that the use is removed on time and to the satisfaction of the municipality.*

*The Town of Claresholm's system requires a yearly review of home occupations to ensure the original intent is working for the neighbourhood and that the use is being carried out in accordance with the approval. Whereas other communities allow the home occupation permit to run with the tenancy of the landowner, Claresholm treats it more like a temporary use.*

locating on private land? Whereas the first location might be governed exclusively via a traffic policy in conjunction with a business licence and is not necessarily a land use bylaw concern, the second location creates a more nuanced scenario that may require the benefit of a development permit, depending on the duration of stay. Even where the private land is vacant, the food truck will be occupying a parking space that is intended to be allocated to a brick and mortar business.

In the case of "Big D's Burger Shack" in the Town of Nanton, the use began as a temporary use on a parcel of land owned by the vendor. The applicant had outlined that the truck would be mainly fixed at the location, but during certain periods would become mobile and attend special events. The applicant also indicated that the intent was not to use municipal services for water and sewer. After the temporary permit expired, the vendor found that enough business was attainable without moving and transitioned to a permanent use without water and sewer hook ups (which according to the water and sewer bylaw had to be approved by Council). With minimal improvement on site, a parcel of land can often be quickly transitioned to a brick and mortar development, so in a sense the business is temporary, but the approval is permanent as long as food is being provided on site. Municipal servicing authorization is thus an important consideration for municipalities in determining permanency. Land use bylaws and local water and sewer bylaws should be reviewed to understand servicing requirements, and temporary use policy should be clear on whether the requirement for servicing triggers the need for a permanent development permit.

The 'special event' category presents another nuance of temporary use. A municipality may develop a separate policy that empowers Council or the CAO to issue approvals (with or without conditions) for special events. Special events can vary from triathlon races to weddings, concerts, outdoor church events, or 'Big Tent' sales. Within a special event policy, the need for signage, temporary road closures, temporary structures, and other requirements to mitigate impacts can all be prescribed through the policy, thereby precluding the need for a development permit. In contrast, full time special event locations, which specialize in weddings and provide lodging, catering and other amenities are more likely to require development permits.

## Implementation

Relatively predictable, innocuous developments that are well understood are typically considered for exemption from the requirement to obtain a development permit. However, the proponents of temporary development permits often don't have an interest in land, and therefore look to establish quick, affordable agreements with private landowners, or to utilize public lands. Careful consideration should be given to what type of temporary development gets a free pass from the requirement to obtain a development permit. Where a permit is required, clear conditions establishing the timeline for which the permit is operative should be attached, along with expectations for follow-up permitting (if applicable) and requirements

for the provision of security to ensure timely cessation of the use to the satisfaction of the municipality. The benefits of subjecting a temporary use to the development permit process must be balanced against the benefits of reducing red tape for interim land uses that contribute to the fabric of the community. Committing to expedited timelines for pop-up uses within a day or so preceding the request can be an effective way of doing so.

Temporary uses on public property which are mobile like food vendors or weekend farmers' markets are often kept out of the development permitting realm and are accepted through a business licence management policy, whereas farmers' markets on private property have generally been processed as a temporary use through the LUB. The difference may be found in the general understanding that on public property a policy adoption process garnered public input for appropriate locations (perhaps through a municipal development process or a separate Council policy development process). Alternatively, the private property scenario is not debated until it comes forward. The discussion forum is thus best found within the LUB processes. On the other hand, bringing temporary uses into the LUB introduces an appeal mechanism, which has the effect of elongating timelines for uses that are typically very time sensitive. This is where a Council will have to determine if a policy-based approach would suffice.

Lastly, the quantification of impact may create a point of contention in Council deliberations as to the need for a development permit versus just a business licence. Where the public shows opposition or questions the location of a proposed temporary use, planning staff should be prepared to provide development options for Council. These may include separation buffers from residential parcels, limitations on duration and size, or in the case of large events on public property consideration for adding liability insurance, security deposits and contractual agreements that outline the right to revoke the approval. Although business competition is not a valid consideration for a Development Authority, it is open to a Council to establish business licence fees that may have the effect of levelling the playing field.

## Concluding remarks

Although not all temporary uses occur within a given municipality, the policy discussion regarding them should not be overlooked. Because of their minimal impact and short duration, many temporary uses do not rise to the requirement of regulation through the LUB. Planners would rather see business licence policy developed that guides the public on the 'How To' without overwhelming the applicant's desire to operate a simple, self-contained business or to activate a derelict space. The variety of different activities that can manifest under the umbrella of temporary use implies that context is everything. Temporary use sets the stage for municipal decision makers to implement unique solutions that work within an individual municipality.

*An example of policy-based approvals can be found in the Sidewalk Patio policy for the City of Lethbridge. The following background statement from the policy states the intent and perhaps the imperfection of the initial attempt.*

*In order to "encourage the development of an atmosphere of dynamism and vitality in the downtown" the Downtown Area Redevelopment Plan (1988, Bylaw 4183, Sec4.2.2(i)) states that "The City will encourage park and street activities such as vendors, street festivals, sidewalk cafes and outdoor sidewalk merchandise displays." For 16 years the City received no enquiries from private business owners about the possibility of creating sidewalk cafes or patios. Then, upon a request in 2004, City departments found they had no processes to regulate how such a patio should be developed or operated or insured. Moreover, the cross-departmental concerns complicated what would appear to be a very simple development. This policy and attendant procedure was created to reconcile those interests and enable a "one-stop" application process for downtown businesses qualified to operate a sidewalk patio. Subsequent revisions to the policy were aimed at making the application process easier for applicants."*

*For more information on this topic contact [admin@orrsc.com](mailto:admin@orrsc.com) or visit our website at [orrsc.com](http://orrsc.com).*

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