



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Request for Direction of OMB Appeals of Official Plan Amendment 231 and Ice Arena Permissions

Date: February 5, 2018

To: Planning and Growth Management Committee

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City or one of its agencies or corporations and contains advice subject to Solicitor client privilege.

SUMMARY

City Council adopted Official Plan Amendment No. 231 (OPA 231) regarding *Employment Areas* in December 2013. OPA 231 is currently under appeal before the Ontario Municipal Board (OMB). The OMB has scheduled July 9 to 13, 2017 to hear the remaining appeals regarding contested uses in *Employment Areas*. This report requests direction from City Council for the OMB hearing respecting the permission for ice arenas within *Employment Areas*.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. If the confidential instructions in Confidential Attachment 1 are adopted, City Council authorize the public release of:
 - a. the recommendations contained in Confidential Attachment 1, with the remainder of Confidential Attachment 1 to remain confidential, as it contains advice subject to solicitor-client privilege; and
 - b. Confidential Attachment 2.

FINANCIAL IMPACT

There is no financial impact arising from the above recommendations.

DECISION HISTORY

At its meeting on December 16, 17 and 18, 2013, City Council adopted OPA 231 with respect to the economic health policies and the policies, designations and mapping for *Employment Areas* following the Five-Year Official Plan and Municipal Comprehensive Reviews regarding employment lands. On July 2014, the Minister approved the majority of OPA 231 with some modifications. The City's and Minister's decisions can be accessed at these links respectively:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>

<http://www1.toronto.ca/City%20of%20Toronto/City%20Planning/SIPA/Files/pdf/O/ministers%20decision%20on%20opa%20231.pdf>

A total of 178 appeals were received to the Minister's decision to approve OPA 231. Among the city-wide and site-specific appeals, two city-wide appeals by the Canadian Propane Association (Appeal No. 65) and Mondelez (Appeal No. 128) relate to a range of issues, including permissions for ice arenas in *General Employment Areas*.

COMMENTS

The OMB held the first Pre-hearing Conference (PHC) on OPA 231 in 2015 and directed appellants who filed city-wide appeals to scope their appeals to identify those parts of OPA 231 they were contesting. Upon reviewing appellant scoping letters, the City was able to propose a phased approach that was agreed to by the Board and appellants, including dealing with all policy matters under appeal and seeking to resolve the two new employment designations during early phases of the hearing process.

To date the Board has held a total of 9 PHCs, 3 motion hearings, 11 days of mediation and 3 hearing days. The Board has also scheduled the following hearing dates in 2018; a PHC on February 13th, and 27 hearing days reserved between March and July.

The OMB has issued two Orders partially approving OPA 231. An Order in December 2016 brought into force the *Core Employment Areas* and *General Employment Areas* designations, except for sites subject to appeals. Permissions regarding the following uses in *Employment Areas* remain contested: ice arenas, recreation and entertainment, cultural, parks, hotels and fitness centres. Nine days of OMB led mediation was held in 2016 to consider these contested uses.

The hearing on permitting places of worship in *Employment Areas* concluded in February 2017. In December 2017, the hearing on permitting daycares and educational facilities in *Employment Areas* also concluded. An OMB decision on these matters is pending. July 9 to 13, 2018 has been set for a hearing on the remaining contested permissions.

Ice arena permissions in Employment Areas

Under the in-force Official Plan, ice arenas are currently permitted on major streets within *Employment Areas*. Existing, legally established ice arenas in other Employment Area locations are grandfathered and permitted by the former (pre-OPA 231) *Employment Areas* designation.

OPA 231 retains the ice arena permission on employment lands, but limits them to lands designated as *General Employment Areas*, which generally are located on major streets where they can serve the broader public without drawing people into the *Core Employment Areas*. Appellants to OPA 231 have appealed the permission of ice arenas within *General Employment Areas* and the permission remains subject to appeal and is not in force.

Ice arenas require large lots in order to locate large ice surfaces, dressing rooms, spectator stands, a storage area for ice cleaning equipment, outdoor storage of waste ice and snow, and a sizeable parking lot since most patrons drive to arenas with hockey equipment rather than use public transit. Three private arenas and the City's Commander Park Arena are currently located in the *Core Employment Areas* and were established between 20 and 48 years ago. OPA 231 would not permit these four ice arenas were they proposed today. Where legally established, these arenas are permitted through the zoning by-law.

Five private ice arenas are located in the *General Employment Areas* and permitted by this designation; however the use is currently subject to appeals. No City arenas are located within the *General Employment Areas*. These five arenas were established 16, 23, 32, 44 and 45 years ago respectively.

OPA 231 Appeals - Permissions for ice arenas and for recreation and entertainment uses

The Canadian Propane Association and Mondelez Canada Inc. each have a city-wide appeal of OPA 231 regarding various issues, including concern that ice arenas are sensitive uses that should not be permitted in *General Employment Areas*. The premise of these two industrialist appeals is that permitting ice arenas in *General Employment Areas* is analogous to permitting recreation and entertainment uses in *Employment Areas*, uses that OPA 231 excludes from *Employment Areas* because they are considered sensitive uses.

There are no other OPA 231 appeals with respect to the ice arena permissions in *General Employment Areas*, nor are there any appeals regarding the absence of this land use permission in *Core Employment Areas*.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff and Confidential Advice
Subject to Solicitor-Client Privilege

Confidential Attachment 2 - Confidential Information