



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 30, 2019
SUBJECT/REPORT NO:	Residential Care Facilities and Group Homes (Urban Area) - Human Rights and the Zoning By-law Discussion Paper (CI 19-B) (PED19091) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Joanne Hickey Evans (905) 546-2424 Ext.1282
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Report PED19091 (City Initiative CI-19-B), including the Discussion Paper titled Residential Care Facilities and Group Homes - Human Rights and the Zoning By-Laws within the Urban Area - March 2019, attached as Appendix “A” to Report PED19091 be received;
- (b) That staff be directed to undertake public engagement on the proposed Zoning By-law regulation options, in conjunction with other housing issues, as part of the development of the new residential zones;
- (c) That staff report back to the Planning Committee summarizing public input and identifying the preferred zoning definition and regulations for residential care facilities and group homes to be incorporated into the new residential zones in Zoning By-law No. 05-200.

EXECUTIVE SUMMARY

The purpose of this Discussion Paper, attached as Appendix “A” to Report PED19091 is to review the Zoning By-law regulations (e.g. radial separation distance, capacity) and definition of residential care facilities (RCF) and group homes within the urban area. Although this review was directed by City Council in response to a specific OMB hearing

Subject: Residential Care Facilities and Group Homes (Urban Area) - Human Rights and the Zoning By-law Discussion Paper (CI 19-B) (PED19091) (City Wide) - Page 2 of 12

(Lynwood Charlton) and the Ontario Human Rights Commission (OHRC) concerns respecting Zoning By-law regulations for RCFs, the review will be used as input into the new residential zones for Zoning By-law No. 05-200.

This Report does not address other housing forms such as retirement homes, emergency shelters, correctional facilities, and long term care homes, nor will it address affordable housing issues. The use of the word RCF in this report also encompasses the term 'group home'.

Preliminary recommendations

Based on the review of the OHRC concerns, Zoning By-laws of other municipalities and the former City of Hamilton, a series of recommended changes to Zoning By-law No. 05-200 to create harmonized regulations for the urban area are proposed. Preliminary recommendations include:

Zoning By-law	Preliminary Recommendation
Definition	
<p>Highlight-delete text <i>Italics</i> – add text</p>	<p><u>amend the definition as follows in Zoning Bylaw No. No. 05-200:</u></p> <p>Residential Care Facility Shall mean a group living arrangement, within a fully detached residential building occupied wholly by a minimum of four supervised residents and a maximum number of supervised residents as permitted by the zone, exclusive of staff, residing on the premises because of social, emotional, mental or physical handicaps or personal distress and which residential setting is developed for the well-being of its residents through the provision of supports/services of self-help, guidance, professional care and supervision not available within the resident's own family, or in an independent living situation or if:</p> <ul style="list-style-type: none"> a) The resident was referred to the facility by a hospital, court or government agency; or b) The facility is licensed, funded, approved by a contract or agreement with the Federal, Provincial or Municipal Governments. <p>A residential care facility shall include a children's residence and group home but shall not include an</p>

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Subject: Residential Care Facilities and Group Homes (Urban Area) - Human Rights and the Zoning By-law Discussion Paper (CI 19-B) (PED19091) (City Wide) - Page 3 of 12

Zoning By-law	Preliminary Recommendation
	emergency shelter, lodging house, corrections residence or correctional facility.
Capacity by Zone	
	<u>regulate both minimum and maximum capacity by zone as follows:</u>
	Low Density Zones (single/semi-detached dwellings) Minimum capacity: 4 residents Maximum capacity: 6 residents
	Medium Density (including the Community Institutional (I2) Zone) Minimum capacity: 4 residents Maximum capacity: 24 residents
	High Density Zone (including the Mixed Use High Density Zone) Minimum capacity: 15 residents Maximum capacity: none
Radial Separation Distance and Moratorium Area	
	<u>Delete requirement for both</u>
Counselling Services	
	Permit counselling services (i.e. social service establishment) in conjunction with a RCF in a Major Institutional (I3), Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and the Mixed Use Medium Density (C5) Zones.

Alternatives for Consideration – See Page 11

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

Residential care facilities (RCFs) and group homes are a congregate form of housing that initially developed in the 1970s in response to the Provincial government's "deinstitutionalization". It provided accommodation for persons who were previously living in institutions, to live in a home where they would receive on-site support and supervision. RCFs are located in neighbourhoods where services and facilities (parks, transit, etc.) are available. Through the decades, the housing models have been shifting away from the congregate living to a more independent living arrangement that includes on-site supports (e.g. common dining room / cafeteria, nurse, etc.) based on the needs of the residents.

There were two major Hamilton Zoning By-law reviews of these facilities; in the 1980s and in early 2000. In 2016, staff were directed by City Council to review the radial separation distance (RSD) requirements in response to Ontario Human Rights Commission (OHRC) concerns. This direction provided the opportunity for staff to also review the Zoning By-law regulations of all former municipal Zoning By-laws with the goal of establishing harmonized regulations for the City's residential areas. The Downtown (2005 and 2018) and the Rural areas (2015) as well as the Institutional (2007) and the Commercial Mixed Use Zones (2017) have regulations that apply on a city-wide basis.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

1.0 Provincial Policy

1.1 Provincial Policy Statement 2014 (PPS)

Section 1 – Building Strong Healthy Communities – requires a municipality to include policies in their Official Plan to address affordable housing (Policy 1.4.3.a) and the provision of housing for special needs groups (Policy 1.4.3.b.1.). Healthy, liveable and safe communities are sustained by accommodating an appropriate range and mix of residential, institutional, recreation, park and open space, and other uses to meet long-term needs.

Section 4 – Implementation and Interpretation - states the PPS shall be implemented in a manner that is consistent with the Ontario *Human Rights Code* and the Canadian *Charter of Rights and Freedoms* (Policy 4.6).

The proposed Zoning By-law changes are consistent with the PPS in that it allows for a specific housing form within areas of the City that permit residential uses.

1.2 Growth Plan for the Greater Golden Horseshoe

1.2.1 2017 Growth Plan

The Growth Plan does not specifically address special needs housing. However it contains similar policies to the PPS that requires a municipality, through the completion of a Housing Strategy, to identify affordable housing for current and future populations. Policy 2.2.6.1 a) i) requires that municipalities plan to achieve certain density targets for both inside and outside the built boundary. To achieve these targets, municipalities must identify a diverse range and mix of housing options and densities, including second units and affordable housing to meet projected needs of current and future residents.

1.2.2 Amendment No. 1 to the Growth Plan

In January, 2019, the Province introduced Amendment No. 1 which proposes to remove the need to complete a Housing Strategy. However, the requirement to identify and plan for a diverse range and mix of housing remains. At the time of writing this Report, Amendment No. 1 had not received final approval.

2.0 Urban Hamilton Official Plan

The Housing Policies of the Urban Official Plan ensure that housing is available for all residents with a wide variety of needs. In order to do so, there must be a sufficient supply of housing with a range of housing types, forms, tenures, densities, affordability levels and housing with support services. Sections 3.2.1 - Urban Housing Goals and 3.2.4 – General Policies for Housing – provide direction for a range of housing to meet the needs of the population, including housing with supports. Housing with Supports includes residential care facilities.

Small scale residential care facilities are permitted in the Neighbourhoods, Institutional, and Commercial Mixed Uses designations in accordance with the Zoning By-law (Policy C.3.2.2.c).

3.0 Zoning By-laws

With the introduction of Zoning By-law No. No. 05-200 zones, there are harmonized regulations for lands that are:

- Located in the Downtown and the rural areas; and,
- Zoned Institutional and Commercial Mixed Use.

Within the urban residential areas, there are six Zoning By-laws that apply: five of which allow these facilities in certain areas. Ancaster's Zoning By-law does not permit the use. Each of the former Zoning By-laws defines and regulates residential care facilities differently. There are various approaches, such as:

- Various definitions are used to describe the same use: residential care facility (No. 05-200, Hamilton, Stoney Creek) and group home (Dundas, Flamborough, Glanbrook and Stoney Creek);
- Some municipalities include the minimum capacity within the definition (No. 05-200, Dundas, Hamilton, and Stoney Creek) and other municipalities include both a minimum and maximum capacity within the definitions (Flamborough and Glanbrook); and,
- Some municipalities have a set of regulations for residential care facilities (capacity, radial separation distance, parking) in the general provisions of the by-law (Flamborough and Stoney Creek), while other municipalities include the regulations in each zone where a residential care facility is permitted (No. 05-200, Dundas, Glanbrook, and Hamilton).

RELEVANT CONSULTATION

The following Divisions and Departments were consulted:

- Housing Division, Healthy and Safe Communities Department.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As noted in the Historical and Policy Implementation and Legislative Requirements Sections of this Report, the current Zoning By-law regulations for RCFs and group homes in the City's urban area:

- Are different in each of the seven Zoning By-laws which creates inequitable distribution of these facilities in the urban area;
- Need to be updated given the shift away from congregate living into more individual units with the provision of on-site supports;
- Must address the OHRC concern about the use of a radial separation distance for housing forms for special needs groups; and,
- Should review the provision of counselling within RCFs.

1.0 Context and Preliminary Recommendations for Changes to the Zoning By-law No. 05-200

A RCF is as form of congregate living that initially developed in the 1970s in response to the Provincial government's direction to house more people in the community provided they had supports and supervision. The capacity of these facilities ranges from three or four up to larger facilities of 50 or more depending on the Zoning By-law.

Many municipalities developed zoning by-law regulations to define what the use was, the number of people that could live in the facility and established a minimum distance between facilities (known as radial separation distance). The way in which these regulations were developed was based on local conditions (urban or rural areas), demand for these facilities, land use impacts and the format of the zoning by-law.

The Discussion Paper titled Residential Care Facilities and Group Homes - Human Rights and the Zoning By-Laws within the Urban Area - March 2019, attached as Appendix "A" to Report PED19091, includes:

- The history of the Council Direction;
- The role and history of OHRC as it relates to RCFs;
- The evolution of planning policy and Zoning By-law regulations in Hamilton for RCFs/group homes;
- Current planning policies and regulations in Hamilton;
- Provincial and Municipal Housing Strategies and Requirements;
- Review of other municipal Zoning By-law regulations; and,
- Options for changes to the Zoning By-law regulations.

1.1 Preliminary recommendations for Proposed Zoning By-law Changes

The Discussion Paper includes different approaches to address the various Zoning By-law regulations that exist, including the:

- Definition of the uses;
- Capacity (minimum and maximum number of residents) of a facility in different geographic (e.g. low, medium, high density residential, institutional) areas;
- Radial separation distance (the distance between one facility and another); and,
- Co-location of counselling services within RCFs.

The Paper also includes preliminary recommendations for new Zoning By-law definition and regulations.

1.1.1 Definition

The definition is proposed to be slightly modified in Zoning By-law No. 05-200 to remove the reference to the minimum number of residents and the reason why a person lives in such a facility. These proposed changes address a concern by the OHRC to other municipalities about discrimination as well as make the definition more consistent with other Zoning By-law definitions. The proposed definition is [strikeouts are deletions; italics are additions]:

Residential Care Facility Shall mean a group living arrangement, within a fully detached residential building occupied wholly by ~~a minimum of four supervised residents and a maximum number of supervised residents as permitted by the zone,~~ exclusive of staff, residing on the premises ~~because of social, emotional, mental or physical handicaps or personal distress~~ and which residential setting is developed for the well-being of its residents through *the provision of supports/services* ~~of self-help, guidance, professional care and supervision not available within the resident's own family, or in an independent living situation~~ or if:

- a) The resident was referred to the facility by a hospital, court or government agency; or
- b) The facility is licensed, funded, approved by a contract or agreement with the Federal, Provincial or Municipal Governments.

A residential care facility ~~shall include a children's residence and group home but~~ shall not include an emergency shelter, lodging house, corrections residence or correctional facility. [cross-out is deletion, italics is addition].

1.1.2 Capacity of the RCF by Zone

The Zoning By-law regulates the capacity of each facility by establishing the minimum and maximum number of residents. The format of Zoning By-law No. 05-200 includes regulations within each individual zone. Although the residential zones have not been developed, zone categories generally are split into low, medium and high density.

One of the key requirements of a RCF is that it must be located in a fully detached residential building. As such, the use would not be permitted in townhouses, duplexes, and multiple dwellings unless it was wholly used for RCF purposes.

Based on the built form within each zone and the comparison of the various zones within the urban area, the following capacities are suggested. Facilities with three residents or less are not considered as RCFs:

Subject: Residential Care Facilities and Group Homes (Urban Area) - Human Rights and the Zoning By-law Discussion Paper (CI 19-B) (PED19091) (City Wide) - Page 9 of 12

- Low Density Residential Zones (single/semi-detached dwellings)
 - Minimum capacity: 4 residents
 - Maximum capacity: 6 residents
- Medium Density Residential Zones (multiple dwellings of maximum 8 storeys)
 - Minimum capacity: 4 residents
 - Maximum capacity: 24 residents

Modifications to a maximum capacity of 24 residents in the Community Institutional (I2) Zone, the Transit Oriented Corridor (TOC1) Zone and the Mixed Use Medium Density (C5) Zone are also proposed. The type of development in these zones is similar to medium density.

- High Density Zone
 - Minimum capacity: 15 residents
 - Maximum capacity: none

Modification to delete the maximum capacity of 50 residents in the Mixed Use High Density (C4) Zone is also proposed. This zone allows multiple dwellings of a maximum of 12 storeys on large sites (there are only 4 sites in the City).

It should be noted the setbacks and height regulations will control the built form of any building.

1.1.3 Radial Separation Distance (RSD) and Moratorium Area

The proliferation of RCFs was more pronounced in the 1970s to the 1990s/early 2000s. As noted in the previous 2001 report on zoning and RCFs, the RCF model was beginning to change in favour of more independent living. This shift has continued.

In addition to the radial separation distance in each by-law, Hamilton Zoning By-law No. 6593 has two moratorium areas given the concentration of facilities. They are located between:

- Queen Street South, Hunter Street West, James Street South and Main Street West; and,
- Wellington Street South, Railway tracks, Sherman Avenue South and King Street East.

In 2007, an amendment to Zoning By-law No. 6593 to remove the radial separation distance for retirement homes was passed. The majority of the RCFs would be considered as Retirement Homes. The separation distance for RCFs was maintained.

Zoning By-law No. 05-200 does not include a RSD for retirement homes. When the rural zoning was passed in 2015, no RSD was included for retirement homes or RCFs in rural zones, including the Rural Settlement Area Zones.

The preliminary recommendation is to remove both the RSD and the moratorium areas. This approach will address the concerns of the OHRC respecting discrimination of special needs groups, as well as follow practices of several other municipalities to have removed the RSD. If the RSD is removed, then similarly the moratorium areas should also be removed since it represents a similar restriction.

1.1.1.4 Counselling Services

Since the 2001 study, the operation of some RCFs has changed. For financial and/or operational reasons, some facilities are providing counselling services not only for the residents of that dwelling but residents within some of their other facilities.

The Lynwood Charlton Centre emphasized the transition between traditional RCFs to multifunctional supportive living and institutional services that provide support for residents and community members including daily living skills and self-care skills. It should be noted not all residential care facilities provide counselling for its residents. Counselling services that cater to people other than those residents who live in the residential care facility is considered as a social service establishment. There is merit in considering this type of operation. Based on a review of where RCFs and social services establishments are permitted as separate uses, the preliminary recommendation would be to allow a combined RCF and social service establishment in the Major Institutional (I3), Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and Mixed Use Medium Density (C5) Zones.

2.0 Public Engagement

Residential care facilities / group homes is one of three major land use issues that merit the preparation of a separate Discussion Paper and public engagement approach. These issues are distinct from many Zoning By-law regulations (i.e. setbacks, height, etc.), and are complex and important community matters that warrant public input prior to completion of the new zones.

Staff are preparing separate Discussion Papers for:

- Secondary units (i.e. accessory apartments and housing adjacent to laneway) in low density residential areas (May 2019); and,
- Parking rates and design in residential areas (June 2019).

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For a more robust and comprehensive public engagement, staff are proposing to combine the public engagement on secondary units with residential care facilities. The engagement will be held throughout the City in the Spring or Fall 2019. A variety of techniques (i.e. open houses, web presence, etc.) will be used. Targeted stakeholder meetings for residential care facilities only will be held with service providers and other housing groups.

The proposed approach would be for Planning Committee and Council to make a decision on the general regulations for each topic after public consultation and in advance of the new residential zones regulations. Staff used this approach in the development of the Rural and Urban Hamilton Official Plans. It was successful in that it created focussed and topical discussion for the public and Council without being complicated by matters such as setbacks, height, etc.

ALTERNATIVES FOR CONSIDERATION

Option 1: Council could defer proceeding with community consultation until such time as the draft residential zones have been prepared. Under this scenario, public engagement would occur as part of the overall residential zones and not as a separate process.

Option 2: Council could direct staff not to make any changes to the existing Zoning By-law provisions as it relates to Residential Care Facilities. Under this scenario, there would not be a standardization of planning permissions which would be contrary to the general direction to harmonize planning permissions across the City of Hamilton.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

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APPENDICES AND SCHEDULES ATTACHED

Appendix "A" - Residential Care Facilities and Group Homes - Human Rights and the Zoning By-Laws within the Urban Area Discussion Paper - March 2019