

**RESIDENTIAL CARE
FACILITIES, GROUP HOMES
HUMAN RIGHTS AND THE ZONING
BY-LAWS WITHIN THE URBAN AREA

DISCUSSION PAPER**



Hamilton

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EXECUTIVE SUMMARY

The purpose of this Discussion Paper is to review the Zoning By-law regulations (e.g. radial separation distance, capacity) and definition of residential care facilities (RCF) within the urban area. Although this review was directed by City Council in response to a specific OMB hearing (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, and emergency shelters, or affordable housing issues, etc.

What is a residential care facility?

A residential care facility (RCF) is a facility which accommodates residents in bedrooms with shared dining and common areas and there is 24 hour on-site support. The minimum capacity can range from 3 or 4 residents to a maximum of 50, depending on the location of the facility and the Zoning By-law in which it is located. This Discussion Paper will also review how counselling services are provided for those facilities which include a counselling use within their building.

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 | |
| Highlight - delete text <i>Italics</i> – add text | <p><u>amend the definition as follows:</u></p> <p>Residential Care Facility Shall mean a group living arrangement, within a fully detached residential building occupied wholly by a</p> |

| Zoning By-law | Preliminary Recommendation |
|------------------|---|
| | <p>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 <i>the provision of supports/services</i> 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 emergency shelter, lodging house, corrections residence or correctional facility.</p> |
| Capacity by Zone | |
| | <p><u>regulate both minimum and maximum capacity by zone as follows:</u></p> |
| | <p>Low Density Zones (single/semi-detached dwellings)</p> <p>Minimum capacity: 4 residents Maximum capacity: 6 residents</p> |
| | <p>Medium Density (including the Community Institutional (I2) Zone)</p> <p>Minimum capacity: 4 residents Maximum capacity: 24 residents</p> |
| | <p>High Density Zone (including the Commercial Mixed Use High Density Zone)</p> |

| Zoning By-law | Preliminary Recommendation |
|---|--|
| | Minimum capacity: 15 residents Maximum capacity: none |
| Radial Separation Distance and Moratorium Area | |
| | <u>Delete 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. |

Consultation on these proposed changes will be undertaken as part of the residential zones public engagement events/processes.

1.0 Introduction

The availability of housing to accommodate the needs of all citizens, regardless of economic, social or physical circumstances, has been a focus of all levels of governments for decades. Municipalities have a role to play to ensure the housing continuum is available throughout the City. Land use planning policy and regulations provide the locational criteria and permissions for different housing forms (e.g. single detached to multiple dwellings) and housing models (e.g. residential care facility, lodging house, emergency shelter, etc.).

In recent years, the Ontario Human Rights Commission (OHRC) has become more aware and involved in reviewing zoning regulations for group homes and residential care facilities (RCFs). In particular, the OHRC is concerned with the definition of these uses and zoning requirements for radial separation distance (RSD) between these uses. Planning decisions and recommendations must consider the impact of the form and function of the land use and not the individuals which occupy the building/structure. The OHRC has provided correspondence to the City of Hamilton on three occasions, since 2012, to explain that a planning decision cannot marginalize or target a protected group under the *Ontario Human Rights Code (the Code)*. Their interest in this issue was piqued by a rezoning application for a residential care facility in 2011.

As a result of this correspondence from OHRC, the ongoing work to harmonize the former municipal Zoning By-laws and the Ontario Municipal Board decision related to the Lynwood Charlton residential care facility in downtown Hamilton, Planning staff were directed to undertake a review of policy and best practices for residential care facilities and provide some options for changes to the Zoning By-laws.

In addition, staff is preparing new Zoning By-law regulations and definitions for the urban residential areas for inclusion in Zoning By-law No. 05-200.

2. Purpose and Structure of the Report

Over the past several decades, housing forms/models to accommodate vulnerable people have expanded and evolved. There are different models that exist today commonly referred to as *housing with supports*. The more common models include:

- residential care facilities that accommodate residents in bedrooms with shared dining and common areas; there is 24 hour on site support; and,
- apartment units with individual kitchens and bathrooms and may have on-site dining facilities. Residents are provided support, on an as needed basis, either through home visits or off site supports.

The purpose of this Report is to address Zoning By-law regulations for and the definition of residential care facilities; in particular, radial separation distances, range of uses within an RCF and facility capacities. It does not review other uses such as emergency shelters, and corrections residences since these regulations/uses have not been raised as an issue.

The structure of the report 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.

This Discussion Paper does not address any financial matters for RCFs (e.g. subsidies), municipal licensing requirements or other housing issues (e.g. accessory apartments). These matters, if and when they are reviewed, would be a separate process.

3.0 Background

3.1 Official Plans/Zoning By-laws in Hamilton

Official Plans and Zoning By-laws have a role in regulating the location and size of RCF's in Hamilton.

The Urban Hamilton and Rural Hamilton Official Plans permit a small scale RCF to locate within many designations subject to the Zoning By-law.

Each of the former municipalities had their own Zoning By-laws which define and regulate RCFs. Zoning By-law No. 05-200 is the new Zoning By-law that implements the Official Plans and will apply to all lands within the City of Hamilton. At the time of writing this Discussion Paper, the definition and regulations for RCFs which are included in 05-200 apply to: Hamilton Downtown, the rural area, lands along the Light Rapid Transit (LRT) Corridor, Commercial Mixed Use areas and Institutional zones. Planning staff are preparing new zones for the residential areas (2020).

Section 6 and associated Appendices of this Paper describes the current planning policies and Zoning By-law regulations.

3.2 Council Direction - Lynwood Charlton Centre Ontario Municipal Board (OMB) Decision

The Lynwood Charlton Centre applied for a rezoning to Zoning By-law No. No. 6593 (File No: ZAR-11-034) to allow the Centre to move and consolidate a RCF with their day treatment centre for young girls (8 beds) at 121 Augusta Street, a building the organization owned. Initially, staff recommended and City Council approved a denial of the application on the basis that it did not meet the radial separation distance and would result in an over-concentration of RCFs in the neighbourhood. Staff were directed to work with the Lynwood Charlton Centre to find an alternate, appropriate location for the use. The criteria established by Lynwood Charlton Centre for finding a suitable location revealed that the intent of the use was beyond what is contemplated by the definition of a RCF in Hamilton Zoning By-law No. 6593. Zoning By-law No. 6593 defines a Residential Care Facility as:

"Residential Care Facility" means 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 district, exclusive of staff, residing on the premises because of social, emotional, mental or physical handicaps, or problems or personal distress that is developed for the well-being of its residents through the provision of self-help, guidance, professional care, and supervision not available in the resident's own family, or in an independent living situation or if:

- (i) *The resident was referred to the facility by hospital, court, or government agency; or,*
- (ii) *The facility is licensed, funded, approved, or has a contract or agreement with the federal, provincial, or municipal governments.*

A residential care facility is not considered as an emergency shelter, lodging house, corrections residence, corrections facility, or retirement home."

Staff Report PED12002(a) indicated that the proposal did not meet the criteria that a RCF be "within a fully detached residential building". When combining the residential component of the proposal with social services, provided for both the residents and the community, the proposal should be evaluated as a comprehensive institutional facility and not a RCF. Therefore, the denial was not based on the radial separation distance requirement but the appropriateness of a comprehensive institutional facility within a residential neighbourhood.

Council's decision was appealed by the applicant to the OMB. The OHRC requested status at the OMB to support the Lynwood Charlton Centre, citing the decision was in contravention of *the Code* by targeting a group protected by the Code. The OMB ruled that the Zoning By-law Amendment be approved.

Legal services presented a Report (LS13031) to the September 4, 2013 Planning Committee on the results of the OMB hearing. Following discussion on the matter, Planning Committee approved the following recommendation:

- (b) That staff be directed to report to the Planning Committee with a comprehensive review of residential care facilities in the context of the Provincial Policy, as it relates to special needs, and the Human Rights code. (Item 12.3)

The full OMB decision has been included as Appendix A.

4.0 Ontario Human Rights Code/Commission And The Charter Of Rights And Freedoms

The *Ontario Human Rights Code* (*Code*) is a Provincial law that gives everybody equal rights and opportunities without discrimination in specific social areas such as jobs, housing, services, facilities, and contracts or agreements.

The *Code's* goal is to prevent discrimination and harassment because of race, sex, disability, and age, to name a few of the 17 grounds. All other Ontario laws must agree with the *Code*.

The OHRC is one part of Ontario's system for human rights, alongside the Human Rights Tribunal of Ontario (HRTTO) and the Human Rights Legal Support Centre (HRLSC). They are guided by the *Code* in all their work.

The OHRC plays an important role in preventing discrimination and promoting and advancing human rights in Ontario. The OHRC:

- Develops public policy on human rights;
- Actively promotes a culture of human rights in the province;
- Conducts public inquiries;
- Intervenes in proceedings at the Human Rights Tribunal of Ontario (HRTTO);
- Initiates its own applications (formerly called 'complaints');
- Engages in proactive measures to prevent discrimination using public education, policy development, research and analysis; and,
- Brings people and communities together to help resolve issues of "tension and conflict".

In addition, the OHRC has the power to monitor and report on anything related to the state of human rights in the Province of Ontario. This authority includes reviewing legislation and policies for consistency with the intent of the *Code*.

The OHRC is focusing on overcoming discriminatory barriers to housing for vulnerable people who are protected under the grounds of the *Code*. The Commission is concerned with planning decisions that are based on people, instead of on land use and other legitimate planning principles. Municipalities must consider the needs of everyone when enacting a by-law and show sufficient planning analysis has been undertaken to demonstrate that the by-law was established in good faith, was reasonable, and that real and substantial efforts were made to accommodate the needs or persons who were adversely affected.

In addition to the *Code*, the Canadian Charter of Rights and Freedoms addresses discrimination:

Section 15(1) of the Charter:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

4.1 Ontario Human Rights Commission and Other Municipalities

Between 2011 and 2014, the Dream Team, a group of individuals fighting for equality in mental health, lodged complaints with the OHRC over zoning definitions and separation distance regulations in Toronto, Smith's Falls, Sarnia and Kitchener's Zoning By-laws. The intent was to choose four municipalities throughout Ontario to demonstrate the discrimination issue across the Province. Since the complaints were lodged, each of these municipalities have taken steps to review and amend their Zoning By-law requirements to eliminate any form of discrimination and "people zoning" as it relates to RCFs and group homes. In addition, other municipalities (e.g. Markham) have taken steps to amend their zoning to remove descriptive wording and separation requirements in light of these complaints. More information regarding the changes is included in Section 9.0.

4.2 Ontario Human Rights Commission and the City of Hamilton

Barbara Hall, former Chief Commissioner, OHRC, had sent correspondence to the Mayor and Council with respect to the impact of municipal By-laws on groups protected under the *Code*. Two of the letters refer to issues respecting student housing and lodging homes in Oshawa.

The third letter, dated January 24, 2012 notes concern regarding human rights implications of the re-zoning application by the Lynwood Charlton Centre. The letter stems from the Hamilton staff's original recommendation to deny the Lynwood Charlton application based on the separation distance noting that it is creating barriers for people with mental health issues. Hamilton was urged to consider the human rights impacts of the application.

In a letter dated February 2015 (Appendix "B"), OHRC identifies that some municipalities have removed the radial separation distances from their Zoning By-law and encourages other municipalities to do the same.

5.0 History of Land Use Planning

Summarized below is the historical context of this matter. Appendix "C" contains a more detailed description.

5.1 Provincial Directions

In the 1970s, the Province developed an alternative approach for housing and care of people requiring support which could not be provided by a family member. Historically, people who required daily care lived in institutions. The Province believed they would lead more productive lives when they were integrated into neighbourhood setting/housing with appropriate amount of supervision and support. RCFs and group homes were located within communities to provide a residential living environment for small groups of people coupled with supervision, professional counselling, and other support services to help residents meet their educational, employment, and social goals.

5.2 Area Municipal Directions

5.2.1 Hamilton

In 1981, in response to new housing models, the City of Hamilton introduced By-Law No. 81-27, which defined and established zoning regulations for RCFs, short-term care facilities (emergency shelters), and lodging houses. The by-law introduced minimum and maximum capacities of residential care facilities by specific zoning district and a 180 metre distance separation between properties containing a RCF and short term care facility. A RCF accommodated 4 or more residents; any facility that had 3 or less residents was considered as a single detached dwelling which allowed 3 lodgers.

A summary of the current Zoning By-law regulations are described in Appendix "F".

5.2.2 Other Area municipalities

Throughout the 1980s and 1990s, Dundas, Flamborough, Glanbrook and Stoney Creek also defined RCFs but used different terms (i.e. group homes) and established their own separation requirements in their former Zoning By-laws (still in force and effect). Appendix "F" contains a comparison of these regulations .

5.2.3 2000 Review of Residential Care Facilities, Short Term Care Facilities, Long Term Care Facilities and Correctional Facilities (Zoning By-Law No. 6593)

In 2000/2001, Staff reviewed the Zoning By-law regulations in Zoning By-law No. No. 6593 for residential care facilities, short term care facilities, long term care facilities and correctional facilities for the former City of Hamilton. The purpose of the study was:

- To review the social and land use planning history;
- To review the current land use planning policy framework for the City of Hamilton and area municipalities;
- To identify key issues and concerns;
- To identify a number of options to address these concerns; and,
- To identify the Preliminary Recommendations and strategies.

In June 2000, staff presented options to consider changes to the Zoning By-law No. No. 6593 respecting residential care facilities, long term care facilities and correctional facilities. The Committee directed staff to undertake a public participation program to gain input on the proposed recommendations.

Staff met with a number of different groups – service providers, neighbourhood groups, government agencies and the Business Improvement Areas (BIAs) to gauge their reaction and concerns with the proposed recommendations. Following these discussions, a second report was prepared with recommendations on changes to the Zoning By-law No. No. 6593. It was also further expanded to include hostels.

The May 2001 Discussion Paper titled "Residential Care Facilities, Long Term Care Facilities, Correctional Facilities and Hostels Discussion Paper No. 2 (Final Recommendations)" provided information and direction to update the current by-law standards from the 1981 by-law in a manner that balances the provision of a variety of housing types and size, the support for community integration of these facilities, and the impact of these facilities on the community. The Hearings Sub-Committee and City Council supported the following changes to Zoning By-law No. No. 6593:

- Redefine short term care facilities and hostels to emergency shelters and add new definitions for retirement homes, correctional facilities;
- add RCFs to the "B" (Suburban Agriculture and Residential, etc.) District;
- increase the radial separation distance between all facilities from 180m to 300m; and,
- add two moratorium areas (within the area bounded by Queen Street, Hunter Street, James Street and Main Street and Wellington Street East, King Street East, Sherman Avenue South, and the railway tracks). This moratorium recognized areas of high concentrations of RCFs and emergency shelters.

Other municipal zoning by-laws remained as is since these changes were underway prior to amalgamation.

6.0 Provincial and Municipal Housing Strategies

6.1 10-Year Housing and Homelessness Action Plan

Hamilton's 10-Year Housing and Homelessness Action Plan (HHAP), adopted December 2013, guides decision making on how the Hamilton community addresses affordable housing and homelessness issues. Housing with supports, which includes residential care facilities, is one of five outcome areas of the HHAP, indicating that it is a key component of meeting the housing needs of Hamilton's citizens. More specifically, Strategy 3.1 of the HHAP is to expand options for housing with supports. The five-year review of the HHAP is underway with Council approval of the revised plan expected in the fall of 2019.

6.2 Long Term Affordable Housing Strategy Update

On March 14, 2016 the Province released an update of Ontario's Long-Term Affordable Housing Strategy. The updated Strategy is a comprehensive and ambitious plan that recognizes the interconnectedness of the Strategy with other provincial goals and plans such as ending homelessness, poverty reduction, improving mental health and improving addiction services. It has the potential to transform Ontario's housing¹ system, including residential care facilities.

Ontario's housing system includes supportive housing, one aspect of which is residential care facilities. Supportive housing is also referred to as housing with supports. It helps Ontarians with complex needs: seniors, people with physical and/or mental health issues, substance abuse issues, survivors of domestic violence, at-risk youth, and others. It encompasses all housing-related non-financial supports, such as 24 hour on-site supervision, to minimal medical supports provided in the home, encompassing both social services and health services. Residential care facilities are only one of a number of models through which housing supports are provided.

Many Hamilton residents have high supportive housing needs that are not being met in the current system. The support needs for tenants of social

¹ Affordable housing in this context is a broad term that encompasses the whole of the housing continuum from emergency shelters through to affordable home ownership.

housing as well as the need for low end of market housing have increased substantially in the last 20 years. An increase in the need for supports as the population continues to age is expected. To meet their needs, an overhaul of the system and additional investment is needed.

As part of the Long Term Affordable Housing Strategy Update, the Province has committed to transforming the housing with supports system, developing a Supportive Housing Policy Framework to guide provincial and local program improvements, as well as a Best Practice Guide. The goal is an evidence-based, best practice supportive housing system with a focus on supporting independence and recovery. This work has already begun, starting with modernization of the Homes for Special Care Program. Other components are expected to take place within the next two years. Additionally, the Province has committed to new capital funding that will support the construction of up to 1,500 new supportive housing units.

The Supportive Housing Policy Framework will better co-ordinate the current inconsistent supportive housing programs across sectors and ministries. The development of the framework will engage key stakeholders, and prioritize youth, Indigenous peoples, chronic homelessness, and homelessness as a result of transitions from provincially-funded institutions and service systems (i.e. jails and hospitals).

The Province has stated that the changes to the supportive housing system will be transformational, as are many other changes committed to in the Long Term Affordable Housing Strategy. Since the Province has begun to aggressively implement housing system changes, including modernization of the Homes for Special Care Program, it is expected that it will shortly initiate other supportive housing system changes. The Housing Services Division is closely monitoring the provincial work and will implement the provincial changes.

6.3 Residential Care Facilities and the Domiciliary Hostel Program in Hamilton

Many of Hamilton's residential care facilities participate in the Domiciliary Hostel Program. They provide congregate living, sometimes with private rooms, and sometimes with shared rooms. The Program in Hamilton subsidizes the cost of accommodation, meals, supervision and assistance

with activities of daily living for an average of 765 residents who live in 54 residential care facilities. Residents contribute to the cost of the service according to their ability to pay and the City subsidizes the balance of the cost with the help of provincial funding.

The housing with supports system, including residential care facilities, is facing challenges to meet people's needs. Many residential care facilities have historically operated under a congregate living and custodial care model, but there is increasing evidence that a more client-centred and empowering model can increase client independence and self-reliance.

One recent example of this approach is Indwell's new Strathearne Suites project. Strathearne Suites provides new permanent supported housing and is also a community hub. It is a collaboration with and receives support from St. Joseph's Healthcare and the Hamilton Niagara Haldimand Brant Local Health Integration Network. Tenants live independently in small studio apartments and can access on-site supports as needed. Supports include a nurse, a counsellor, and food and housing support workers, as well as 24-hour on-call support and a nightly meal. Apartments are small but include bathroom facilities as well as basic kitchens. There is also a community lounge and community kitchen available to tenants.

While there will always be a need for the congregate living model of the traditional residential care facility, new facilities tend to follow a model similar to Strathearne Suites with complete independent apartment units and varying levels of supports provided to tenants as needed, sometimes on-site and sometimes provided by outside agencies. Housing with supports options are needed at varying scales. The new housing supports models are more fluid and variable than the traditional residential care facility. More options for housing with supports are being conceived and developed.

Given the aging population and the consequent increasing need for housing with supports, the move towards aging in place, provincial government policy changes such as deinstitutionalization, and community responses to the increasing need, it is important that the planning system facilitate the provision of housing with supports.

The RCF subsidy program will be undergoing a review.

7.0 Current Land Use Planning Policies

7.1 Provincial Policies

7.1.1 Provincial Policy Statement (2014)

Section 1 of the PPS, 2014 – Building Strong Healthy Communities – states that 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.

More specifically, Planning authorities shall provide for an appropriate range and mix of housing types and densities to meet the social, health and well-being requirements of current and future residents , including special needs (Policy 1.4.3 b) 1.). The PPS also requires municipalities to establish minimum targets for the provision of housing for low and moderate incomes households (Policy 1.4.3 a).

When the Provincial Policy Statement (PPS) was revised in April 2014, a new policy was included in the "Implementation and Interpretation" Section.

Policy 4.6 states: "This Provincial Policy Statement shall be implemented in a manner that is consistent with the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*." This statement was added to the PPS as part of the review and update in 2014. The statement helps to solidify the Province's commitment to the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms* in planning matters.

Further detail on Provincial Policy is contained in Appendix "C".

7.1.2 Growth Plan for the Greater Golden Horseshoe (Growth Plan)

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, though the completion of a Housing Strategy, to identify affordable housing for current and future populations.

Policy 2.6.6.1 a) i) supports the achievement of the minimum intensification and density targets in this Plan, as well as other policies of this Plan by: identifying a diverse range and mix of housing options and densities, including second units and affordable housing to meet projected need of current and future residents.

Amendment No. 1 to the Growth Plan

On 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.

7.2 Municipal Planning Policy

Official Plan policies are attached as Appendix "D".

7.2.1 Urban Hamilton Official Plan

The Housing Policies of the Urban Hamilton 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: means public, private or non-profit owned housing with some form of support component, beyond economic support, intended for people who need support services to live independently in the community, where providers receive funding for support services.

The tenure may be long term. Housing with supports includes special needs housing as defined by the Provincial Policy Statement (2005).

In addition, 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).

7.3 Hamilton Zoning By-law Definitions and Regulations

There are seven Zoning By-laws in Hamilton and six of which allow these facilities in certain areas. Ancaster's Zoning By-law does not permit the use. Detailed zoning requirements and definitions from the existing Zoning By-laws are contained in Appendix "F".

7.3.1 Zoning By-law No. 05-200

Zoning By-law No. 05-200 has been developed over a 13 year period. At each stage of the Zoning By-law (except industrial) residential care facilities have been incorporated into the zones.

The definition, radial separation distance and the capacities for the urban area were based on the completion of the "Residential Care Facilities, Long Term Care Facilities and Correctional Facilities Discussion Paper" in 2000 and 2001 (see Section 5.2.3). This paper and the subsequent changes to Hamilton Zoning By-law No. 6593 were focused on the urban area only.

The following chart identifies the zones in Zoning By-law No. 05-200 which permit a RCF and the associated capacities.

| Zone | Capacity |
|---|----------|
| <i>Downtown Zones</i> | |
| Downtown Mixed Use (D3) Zone | 20 |
| Downtown Local Commercial Use (D4) Zone | 20 |
| Downtown Residential (D5) Zone | 6 |
| Downtown Multiple Residential (D6) Zone | 6 |
| <i>Institutional Zones</i> | |
| Neighbourhood Institutional (I1) Zone | 15 |
| Community Institutional (I2) Zone | 50 |
| Major Institutional (I3) Zone | 50 |

| Zone | Capacity |
|--|----------|
| <i>Commercial and Mixed Use Zones</i> | |
| Residential Character Commercial (C1) Zone | 6 |
| Mixed Use High Density (C4) Zone | 50 |
| Mixed Use Medium Density (C5) Zone | 50 |
| <i>Transit Oriented Corridor Zones</i> | |
| <i>Transit Oriented Corridor – Mixed Use Medium Density (TOC1)</i> | 20 |
| <i>Transit Oriented Corridor – Multiple Residential (TOC3)</i> | 20 |
| <i>Rural Zones</i> | |
| Agricultural (A1) Zone | 10 |
| Rural (A2) Zone | 10 |
| Settlement Residential (S1) zone | 6 |

7.3.2 Ancaster, Dundas, Flamborough, Glanbrook, Hamilton and Stoney Creek Zoning By-laws

Each Zoning By-law defines and regulates residential care facilities differently. Appendix "F" provides a comparison of the definitions and regulations.

There are various approaches:

- Various definitions are used to describe the same use: residential care facility (05-200, Hamilton, and Stoney Creek) and group home (Dundas, Flamborough, Glanbrook and Stoney Creek);
- Some municipalities include the minimum capacity within the definition (05-200, Dundas, Hamilton, Stoney Creek, etc.) 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) whereas other municipalities include the regulations in each zone where a residential care facility is permitted (05-200, Dundas, Glanbrook and Hamilton).

The Table below identifies, by former municipal Zoning By-law, where the use is permitted and the associated regulations.

| <i>Municipality</i> | <i>Definition</i> | <i>Capacity (# of residents)</i> | <i>Radial separation distance between RCF and other uses</i> | <i>Zones permitted</i> | <i>Other restrictions</i> |
|---------------------|---------------------------|---|--|---|---|
| Dundas | Group Home | No minimum; maximum 6 | 275 m | Low Density Residential (R4) Zone Residential/ Commercial Conversion (R.C.C.) Zone | Only in a fully detached building |
| Flamborough | Group Home | Minimum 3 Maximum 10 Included in the definition | 350 m | Any zone except industrial | Floor area per resident In a single detached dwelling only |
| Glanbrook | Group Home | Minimum 3 Maximum 6 | 1.6 km | Residential Multiple "RM1" Zone | Only in a fully detached building |
| Hamilton | Residential Care Facility | Minimum 4 Maximum 6-50 depending on the zone | 300 m | In all residential and commercial districts | Only in a wholly detached dwelling |

| <i>Municipality</i> | <i>Definition</i> | <i>Capacity (# of residents)</i> | <i>Radial separation distance between RCF and other uses</i> | <i>Zones permitted</i> | <i>Other restrictions</i> |
|---------------------|---|----------------------------------|--|---|--|
| Stoney Creek | Residential Care Facility Group home | No minimum; maximum 6 | 800 m | Single Residential "R1 to R4" Zones – Residential Zones "R-5" and "R-6" Multiple Residential "RM-1" Zone | Only in a fully detached building Any residential zones that allows a single detached, semi-detached, duplex or triplex, that residential building could be converted to a residential care facility or group home. |

In addition, Zoning By-law Nos. 05-200 and 6593 contain two moratorium areas that prohibit additional RCFs and emergency shelters from locating within these areas. They are:

- 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.

8.0 Other Municipal Requirements

8.1 City of Hamilton Licensing Requirements

In the City of Hamilton, licenses are issued for facilities regulated under Schedule 20, including Residential Care Facilities, by the Licensing Section of the Planning and Economic Development Department. Schedule 20 states that a "residential care facility means a residential complex that is occupied or intended to be occupied by four or more persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy, and the term "facility" has a corresponding meaning; .

Schedule 20 includes provisions to:

- require a premises plan to be submitted to the Issuer of Licences;
- clarify enforcement jurisdiction of Public Health/Municipal Law Enforcement;
- provide for a re-inspection fee to encourage compliance;
- provide for a more accessible/formalized complaint process;
- provide for an enhanced physicians assessment;
- require operators to provide locks on bedrooms;
- prohibit secure/locked units to contain tenants who tend to wander;
- require a unit-dose medication dispensing system; and,
- require operators to provide secure storage for each tenant.

Not all RCFs are licenced by the City. Some facilities, for children for example, are regulated by the Province.

Staff have identified that the differences in definition between the applicable Zoning By-laws and Schedule 20 is problematic, mainly because there are multiple definitions. To align the documents, staff will be proposing a future amendment to Schedule 20 to implement the same definition for a Residential Care Facility as established by Zoning By-law No. 05-200.

At the present time, there are 82 City licences; the majority of the facilities are larger than 11 residents. There are 4 pending licences – only one facility is less than 11 residents.

8.2 Ontario Building Code

All facilities are required to meet the Ontario Building Code (OBC) requirements. For smaller facilities in single detached homes, various sections of the OBC would apply.

8.3 Parkland Dedication

RCFs are assessed based on 5% of their land value. Depending on the size of the facility, it is considered as a residential use (e.g. single detached dwelling) or an institutional use. Regardless, the Parkland Dedication would be the same amount as the primary use.

In the last 5 years, the City has processed four parkland dedication applications for three new facilities and one expansion.

8.4 Development Charges (DC) By-law

Under the 2014 DC By-law, depending on the size of the RCF, it would be considered as residential facility or an institutional use.

9.0 REVIEW OF OTHER MUNICIPAL ZONING BY-LAW REGULATIONS AND DEFINITIONS

There are many different definitions and regulations used across municipalities throughout Ontario to describe a *residential care facility*. It is a municipal preference as to what term is used and the regulations are based on the history and experiences of each of the municipalities.

Appendix "G" contains the various definitions and regulations of surveyed municipalities. Appendix "G1" has a more detailed description of the municipalities that were pursued by OHRC.

9.1 Review of Other Municipalities Pursued by OHRC

Between 2011 and 2014, the Dream Team, a group of individuals fighting for equality in mental health, lodged complaints with the OHRC over zoning definitions and separation distance regulations in Toronto, Smith's Falls, Sarnia and Kitchener's Zoning By-laws. The intent was to choose four municipalities throughout Ontario to demonstrate the discriminatory wording and practices across the Province to fight this issue in a ground-breaking case at the Human Rights Tribunal of Ontario. The Dream Team asked the Tribunal to strike down long-standing By-laws that limit the location of

housing for people with disabilities in Toronto, Smith's Falls, Kitchener and Sarnia. The City of Sarnia has responded by removing certain parts of their by-law. The other cities decided to fight the Dream Team at the Tribunal.

In 2014, Toronto and Smiths Falls removed minimum separation distance (MSD) and other zoning restrictions for group homes, as part of human rights settlements with the Dream Team. This change follows similar moves by Sarnia in 2011 and Kitchener in 2012. In each case, there was no planning justification for MSDs.

9.2 Review of Other Similar municipalities

As a result of the OHRC complaints, several municipalities recognized their human rights obligations by preventing or removing zoning, licensing and other barriers to housing and services that are needed by *Code*-identified groups, while other municipalities continue to maintain their separation requirements.

As part of this discussion paper, Staff contacted several other municipalities to gain a better understanding of how they are handling separation distances. A comparison of the municipalities is included in Appendix "F".

A summary of these Zoning By-laws is highlighted below:

9.2.1 City of St Catharines

In December 2013, the City of St. Catharines adopted a new Comprehensive Zoning By-law. The new By-law removed the minimum separation requirement which was previously in place since they determined it was discriminatory based on Ontario Human Rights. The new Zoning By-law also redefined group homes as "Special Needs Housing" which is now permitted in all dwelling types in all zones that permit a residential use.

9.2.2 City of Burlington

The City of Burlington continues to maintain a separation distance of 400m for group homes of 6 or more residents. It was noted by City of Burlington staff that most of the facilities in Burlington have less than 6 residents and therefore they do not need special zoning or regulatory steps.

9.2.3 Town of Milton

The Town of Milton maintains a 500m minimum separation distance for group homes that was implemented in 2002. There are also locational and number of occupant requirements associated with group homes. There is no plan to amend these zoning requirements at this time.

9.2.4 City of Windsor

In September 2016, Windsor removed the minimum distance separation via a housekeeping amendment. There was no discussion on the matter of group homes at the public meeting or at Council. The definitions remain the same.

9.3 Summary

In summary, 6 of the 8 municipalities have determined that minimum separation distances are not appropriate for group homes or residential care facilities with less than 10 residents. Even municipalities that have not received a complaint have taken steps to remove discriminatory language from their zoning by-law. Generally, it appears that facilities with more than 10 residents would be considered an institutional use and permitted within the appropriate institutional zone. In some other municipalities the radial separation distance has remained.

10.0 ANALYSIS OF ISSUES

As noted in previous sections of the Discussion Paper, there is a long planning history related to residential care facilities. Over the past several years, circumstances have arisen that make it necessary for the regulations to be reviewed. The circumstances include the Lynwood Charlton OMB decision and the challenges from the OHRC, the shift away from congregate living to small apartment units with on-site supports and the inconsistent Zoning By-law regulations for RCFs in the former Zoning By-laws.

There are a number of Zoning By-law regulations that have been reviewed. They include:

- The definition of RCF;

- Capacity of RCFs by Zone category;
- Radial separation distance; and,
- External counselling services within an RCF.

Appendices "H" to "H3" include a series of different options for the Zoning By-law requirements. The report contains the preferred approach and the analysis for that choice.

Any changes as a result of this Review will also be incorporated into the existing zones within Zoning By-law No. 05-200.

10.1. Definition

The existing zoning definitions vary between the former municipalities. Most definitions are similar in scope but use different nomenclature (e.g. group homes or RCFs.) Some definitions are more prescriptive (e.g. includes the number of residents permitted, the health concern that may require them to live in an RCF) than others.

The intent of the definition should describe the living arrangement, identify the need for on-site supervision, recognition of funding arrangements and establish a minimum number of residents that would be considered as an RCF.

The definition should also establish the use has to be within a wholly detached building; no other use can be incorporated within or attached to the building (i.e. multiple dwellings, townhouses, semi-detached dwellings, families, etc.).

Three options were considered:

- Option 1: Apply the existing definition in Zoning By-law No. 05-200 to all new residential zones.
- Option 2: Amend the definition in Zoning By-law No. 05-200 to remove references to why someone resides in a facility.
- Option 3: Amend the definition to remove references to the number of residents and to why someone is living in a facility.

The rationale of each option is contained in Appendix "H".

Preliminary Recommendation

The preliminary recommendation is Option 3 which is to amend the definition to remove references to the number of residents, why people live in the facility and to generalize the provision of supports and services.

The proposed definition is:

"Residential Care Facility shall mean a group living arrangement, within a fully detached residential building occupied wholly by supervised residents, exclusive of staff, residing on the premises and which residential setting is developed for the well-being of its residents through the provision of supports/services 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 not include an emergency shelter, lodging house, corrections residence or correctional facility.

This proposed definition removes the regulations within the definition and places them within the zone as well as remove any reference to the disability or characteristics of a person living in a facility. It would address the Human Rights issue allowing people to choose where they live without being identified as needing care."

10.2 Location and Capacity of RCFs

RCF regulations have evolved over a period of 40 years. Five of the six former municipalities have regulations for this use as well as identifying which zones permit the use. (refer to Section 5.3)

Currently Zoning By-law No. 05-200 permits RCFs, with varying maximum capacities per zone. RCFs are permitted in 3 Downtown Zones, 2 Commercial and Mixed Use Zones, 2 Transit Oriented Corridor, 4 Rural Zones and all Institutional Zones. The urban zones have a radial separation distance of 300m and there is no separation distance in the rural zones. These zones apply on a city wide basis. For example, in Ancaster or Stoney Creek, any site that is zoned I1, I2 or I3 permits a residential care facility with a certain capacity and radial separation distance of 300 m.

Over the next several years the residential zoning will be put in place for the entire urban area; RCFs will be permitted throughout and capacity of the facilities will be depending on low, medium and high density areas.

Eight options were considered:

- Option 1: Minimum and Maximum Capacity (By-law format)
 - Option 1a: Establish the minimum and maximum capacities within the definition.
 - Option 1b: Establish the minimum capacity in the definition and the maximum capacities within the individual Zones.
 - Option 1c: Minimum and maximum capacities included within the individual Zones.
- Option 2 – Capacity Included within each zone
 - Option 2a: Allow the use in low density (e.g. single detached, semi-detached) zones with a minimum capacity of 4 and a maximum of 6 residents.
 - Option 2b: Allow residential care facilities in medium density (up to 8 storey multiple dwellings) zones (including the Community Institutional (I2) and Mixed Use Medium Density (C5) zones) with a minimum capacity of residents 4 and a maximum of 24 residents.
 - Option 2c-1: Allow residential care facilities in high density zones with a minimum capacity of 4 residents and a maximum of 50 residents.
 - Option 2c-2: Allow residential care facilities in high density zones with a capacity of minimum 15 residents and a maximum of 50 residents.
 - Option 2c-3: Allow residential care facilities in high density zones with a capacity of 15 residents and no maximum capacity.

The rationale for each option is contained in Appendix "H1".

Preliminary Recommendations

The preliminary recommendations are Options 1c, 2a, 2b and 2c-3.

Minimum and Maximum Capacity

Option 1c: Minimum and Maximum Capacities Included within the Individual Zones. Similar to other Zones, the capacities which are regulations are contained within the Zone for clarity.

Low Density areas

Option 2a: Limit the minimum capacity to 4 and the maximum capacity to 6 residents. Uses within low density zones usually include single detached, semi-detached, duplex, triplexes and some forms of townhouse dwellings. Since this use is to be contained within an entire building, the most likely scenario is the use would locate within a single detached dwelling or a duplex and triplex which could wholly be converted to a RCF. Six people could reasonably live in a single detached dwelling and has been the standard for the majority of zones that permit this use.

Medium Density Areas (including the Community Institutional (I2) Zone)

Option 2b: Limit the minimum capacity to 4 and the maximum capacity to 24 residents. Similar to the discussion above, the most likely scenario is the use would be in a multiple dwelling since it would be wholly contained within a building. In circumstances where a larger number of residents are intended a multi-storey (apartment) building would be required. It should be noted the building form for the facility would be determined on the basis of the regulations for a particular zone (i.e. maximum heights, minimum setbacks, parking, etc.). Medium density areas are generally found on the periphery of neighbourhoods, closer to public transit, shopping areas and other amenities.

It should be noted that a majority of the I2 Zones are located within the interior of neighbourhoods where there is a greater interface with low density residential uses. The Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and the Mixed Use Medium Density (C5) Zones are located along major transit routes and arterial roads and therefore should retain their capacity for 50 residents.

High Density Areas (including the Commercial Mixed Use High Density (C4) Zone)

Option 2c-3: Allow a minimum capacity of 15 and no cap on the maximum number of residents. These areas (including the Mixed Use High Density (C4) Zone) would permit multiple dwellings with higher density buildings (generally greater than 8 storeys and 100 units). As such the minimum number of residents is likely to be more than 4 residents. The built form and other regulations (e.g. parking) would apply to the building.

10.3. Radial Separation distance/Moratorium Areas

Radial separation distances of varying distances (e.g. 275 m to 1,600 m), which restrict the location of new residential care facilities throughout the City of Hamilton, have been in place in the City and former municipalities for several decades. In addition, both Zoning By-law Nos. 05-200 and No. 6593 (Hamilton) have a moratorium on the location of new facilities (and emergency shelters) within two areas; one area is bounded by Wellington Street South, King Street East, Sherman Avenue South and the railway tracks; the other area is bounded by Queen Street, Hunter Street, James Street and Main Street. This moratorium was established in 2001 to recognize the large concentration of these facilities within this geographic area.

Over the last 10 years, there have been changes in Zoning By-law No. 05-200, human rights concerns and the shift in accommodation type for certain segments of the vulnerable population which could have an impact on the applicability of the radial separation distance and the moratorium areas.

Four options were considered:

- Option 1: Eliminate the Radial Separation Distance.
- Option 2: Retain the 300 metre radial separation distance for Zoning By-law No. 05-200 and apply this distance separation to future residential zones in the urban area.
- Option 3: Delete the Moratorium Areas (see above).
- Option 4: Retain the Moratorium Areas.

The rationale for each option is contained in Appendix "H2".

Preliminary Recommendations

The Preliminary recommendations are Options 1 and 3 to remove the Radial Separation Distance and delete the moratorium areas. There are a number of reasons for this option. Firstly, the rate of new facilities has slowed down considerably because small apartment units are preferred over the congregate living model. Secondly, as a result of changes to Zoning By-law No. 05-200, retirement homes (which were previously defined as RCFs) do not have a radial separation distance, nor do any facilities in the rural area. A large number of the municipally licenced facilities are retirement homes which are no longer subject to a radial separation

An RCF would not be separated by a specific distance; however, locations within various areas would be based on resident capacity in conjunction with the appropriate residential density and built form.

This moratorium was established in 2001 to recognize the large concentration of these facilities within this geographic area. If the distance separation is eliminated, then this moratorium should also be eliminated since it has the same effect as the radial separation distance which is to restrict the location of facilities.

10.4. Counselling services

Since the 2001 study, the operation of some RCFs has changed. Some facilities are providing services above and beyond that which was normally associated with RCFs. An RCF is intended to be a form of dwelling unit, with some support services for the residents. In the past, the service or support would be offered exclusively for the residents of that dwelling and it was not the intent that professional support workers would provide services to the greater community.

Some organizations are proposing to broaden the services to allow for a greater range in services both for residents and community members. 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. Further, certain agencies operate multiple RCFs and provide counselling for its residents. For financial or other operational reasons, they would prefer to consolidate counselling services in one location. 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 a social service establishment.

Most of these RCFs are located within residential areas and commercial uses such as offices are not permitted. However, the Institutional Zones in Zoning By-law No. 05-200 recognize the difference in intensity and land use between common institutional type uses. The Major Institutional (I3) Zone allows for the most land intensive type uses, including Universities, Colleges, Long Term Care Facilities and RCFs with greater than 50 residents. The I3 Zone implements the Institutional Designation of the UHOP for areas that are greater than 4 ha. The Community Institutional (I2) Zone recognized the significance of institutional uses that serve a community but require significant land area, accessibility and are most appropriate on the boundary of communities. Places of Worship, High Schools, and residential care facilities with a maximum proposed 20 residents would be permitted. Both the I3 Zone and I2 Zone are intended to serve the greater community with institutional services. In addition, social services establishments (e.g. counselling services for non-profit) are also permitted within these zones as separate uses.

Similarly the Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and the Mixed Use Medium Density (C5) Zones permit RCF's of up to 50 residents and a social service establishment as separate uses.

Three options were considered:

- Option 1: allow RCFs to operate a social service establishment in conjunction with a residential care facility in a Community Institutional (I2), Major Institutional (I3), Transit Oriented Corridor-Mixed Use Medium (TOC1) and the Mixed Use Medium Density (C5) Zones.
- Option 2: same as Option 1 but do not permit the social service establishment in a Community Institutional (I2) Zone.
- Option 3: No changes to the by-law

The rationale for each option is contained in Appendix "H3".

Preliminary Recommendation

The preliminary recommendation is Option 2 to allow these facilities to operate a social service establishment in conjunction with a residential care facility Major Institutional (I3), Transit Oriented Corridor-Mixed Use Medium (TOC1) and the Mixed Use Medium Density (C5) Zones. A social service establishment is permitted in those zones and they are generally located on or in close proximity to arterial roads and public transit.

10.5 Planning Summary

Since the review in 2001, a number of factors have changed that warrant a review of the residential care facility regulations and definitions within the City's Zoning By-laws. Changes include the challenges to the Ontario Human Rights tribunal of other municipal Zoning By-law residential care facility regulations, the changing funding and housing arrangements for vulnerable groups and the continual challenges to meet a variety of housing needs.

Residential care facilities have evolved into a use that can integrate well into established neighbourhoods and contribute positively to the community. There are many facilities dispersed throughout both the rural and urban areas. The facilities tend to locate based on the needs of their clientele, availability of services, housing affordability, type and size.

The Table below summarizes the preliminary recommendations to establish a consistent zoning framework for the urban area, address the OHRC concerns and the provide locations for a combined RCF with counselling services.

| Zoning By-law | Preliminary Recommendation |
|--|---|
| Definition | |
| <p>Highlight-delete text</p> <p><i>Italics</i> – add text</p> | <p><u>amend the definition as follows:</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</p> |

| Zoning By-law | Preliminary Recommendation |
|------------------|--|
| | <p>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 <i>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</i> 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 emergency shelter, lodging house, corrections residence or correctional facility.</p> |
| Capacity by Zone | |
| | <u>regulate both minimum and maximum capacity by zone as follows:</u> |
| | <p>Low Density Zones (single/semi-detached dwellings)</p> <p>Minimum capacity: 4 residents Maximum capacity: 6 residents</p> |
| | <p>Medium Density (including the Community Institutional (I2) Zone)</p> <p>Minimum capacity: 4 residents Maximum capacity: 24 residents</p> |
| | <p>High Density Zone (including the Mixed Use High Density Zone)</p> <p>Minimum capacity: 15 residents Maximum capacity: none</p> |

| Zoning By-law | Preliminary Recommendation |
|--|--|
| Radial Separation Distance and Moratorium Area | |
| | <u>Delete both</u> |
| Counselling Services | |
| | Permit counselling services (i.e. social service establishment) in conjunction within a RCF in a Major Institutional (I3), Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and the Mixed Use Medium Density (C5) Zones. |

11.0 Next steps

RCFs are one form of housing accommodation required in a community. The Zoning By-laws within the City have varying requirements depending on what Zoning By-law is applied. As part of the development of new residential zones, there will be a consistent set of regulations for the entire City.

The proposed approach is to seek public input for any proposed changes. The form of consultation would include:

- Targeted meetings with service providers;
- Public information centres for the general public. RCFs would be coupled with other housing matters such as accessory apartments and lodging homes; and,
- On-line web access.

Appendix "A"

ISSUE DATE:

August 23, 2013



PL120529

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Lynwood Charlton Centre has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 121 Augusta Street from "L-mr-2/S-1345" to permit the development of a residential care facility
OMB File No. PL120529

APPEARANCES:

Parties

Lynwood Charlton Centre

City of Hamilton

Ontario Human Rights
Commission

Counsel

S. Snider

M. Minkowski

R. Dhir and
R. Arbabian (Student-at-law)

DECISION DELIVERED BY R.G.M. MAKUCH AND ORDER OF THE BOARD

[1] Prior to the hearing, the parties filed a number of motions to be heard at the commencement of the hearing as follows:

- 1) Lynwood Charlton Centre ("LCC") motion for an Order to phase the hearing into two phases with Phase I dealing with Issues 1, 2, 3, 4, 6, and 7, referred to as the typical planning issues and Phase II dealing with Issue 5 referred to as the "OHRC" Issues;
- 2) Ontario Human Rights Commission ("OHRC") motion for an Order excluding the proposed evidence of Warren Sorensen; and
- 3) City of Hamilton ("City") motion for:

- a) an Order striking the Witness Statement in whole or in part of Ian Skelton and excluding the proposed evidence of this person and;
- b) an Order striking portions of the Witness Statement of John Gladki and excluding such proposed evidence of this person.

[2] The Board heard the LCC motion first because if successful, there would be no need to hear the other motions until Phase II if, and when, it takes place.

LYNWOOD CHARLTON CENTRE MOTION

[3] The issues list contains seven issues and Counsel for LCC argues that issues 1 to 4 and issue 6 raise matters of a land use planning nature such as PPS and OP conformity that are typically reviewed in a hearing before this Board hearing. Issue 5 however, specifically raises whether refusing the application would be discriminatory and contrary to the Ontario Human Rights Code.

[4] Mr. Snider argues that in total six expert witnesses are proposed to be called by the parties and that of the six, three expressly offer no opinion with respect to the OHRC issue. None of the non-expert witnesses offer any opinion with respect to the OHRC issues. Two of the six experts confine their opinion evidence to only the OHRC issue, Dr. Ian Skelton and Warren Sorensen.

[5] Only the OHRC planner John Gladki provides opinions with respect to both the typical planning issues and the OHRC issue. None of the LCC witnesses address the OHRC issue.

[6] Mr. Snider argues that the eight days scheduled over a two week period around the Easter holidays means that there is little likelihood that the hearing would be completed within the eight days allotted.

[7] He further argues that Issue 5 framed as follows:

Would the denial of re-zoning application amount to discrimination contrary to OHRC?

becomes moot if the appeal is allowed and there is no need to consider the issue of discrimination under the OHRC.

[8] If the Board has doubts after Phase I as to whether the appeal should be granted based on the typical planning issues, then the hearing would proceed to Phase II and the motions by the City and OHRC would be heard at that time.

[9] Mr. Snider argues that Issue 5 only engages if the Board is inclined to dismiss the appeal and deny the rezoning on the basis of typical planning grounds. As such issue 5 is a sufficiently discreet one to be addressed in a separate phase of the hearing.

[10] While the OHRC believes that the discrimination issue (Issue 5) is a proper issue for the Board to consider, it nevertheless supports the Lynwood motion as it does not want to inconvenience the parties and the hearing of this matter.

[11] The City opposes the Lynwood motion on the grounds that it will increase the costs for the City and be prejudicial to it.

[12] The Board does not agree with the City's position and finds that the arguments by counsel for LCC are logical and ought to be adopted by the Board. It is evident that it is unlikely that the hearing will be completed within the eight days allotted and that phasing the hearing is the proper way to proceed.

[13] The Board will therefore allow the LCC motion and orders that the hearing be phased as proposed. The motions by the City and OHRC will be heard at the commencement of Phase II.

INTRODUCTION

[14] Lynwood Hall Child and Family Centre and Charlton Hall Child and Family Centre were both publicly funded, non-profit charitable organizations and accredited children's mental health centres, which operated as separate organizations providing children's mental health services to the Hamilton community for many years. They merged to become Lynwood Charlton Centre ("LCC") in October 2011 and continue to offer the programs previously offered by the separate entities, which includes a spectrum of services to children, youth, families and the community including residential programs for children, young male and young female teens; day treatment programs

serving both the residential programs and children unable to function effectively in the school system due to behavioural/learning difficulties; and a variety of community-based programs. LCC is licensed by the Ministry for Children and Youth Services under the *Child and Family Services Act*.

[15] Charlton Hall Child and Family Centre operated a residential facility for adolescent girls with mental health challenges at 52-56 Charlton Avenue West in the Durand Neighbourhood in what is generally described as Hamilton's City "core". The facility is known as "Charlton Hall". LCC now operates Charlton Hall and it is home to eight girls who require the specialized care and treatment of the staff of LCC.

[16] While Charlton Hall is operated by LCC, the property and residence are owned by the City of Hamilton. Over the years, Charlton Hall has fallen into disrepair. It is no longer considered a suitable physical environment for the girls who live there for many reasons. A City-initiated facility condition assessment report determined that approximately \$1.5 million of substantial repairs are required. The City and LCC are not prepared to make that investment and as a consequence, the City is considering declaring the property surplus so that it can be sold. The services currently offered at Charlton Hall will eventually have to be moved elsewhere.

[17] LCC recently purchased the subject property, which has a long history of industrial use at 121 Augusta Street approximately eight blocks to the east of Charlton Hall. It is located within the Corktown neighbourhood, also a neighbourhood within the City's core.

[18] More recently, the site has been used for a variety of office uses including a supervised access centre, which provides integrated treatment and educational service for approximately 16 students between the ages of 13 and 17 years. The services are specifically designed for youth whose histories of serious psychiatric and/or emotional challenges have significantly interfered with their ability to function within main stream educational settings.

[19] LCC wishes to relocate the residential use currently housed at Charlton Hall to the second floor of the building at 121 Augusta Street believing it to be far superior to the existing Charlton Hall in providing a safe, home-like, and accessible living space for the girls.

[20] In order to do so, it needs the subject property to be re-zoned from L-mr 2/S-1345 which is described as "Planned Development – Multiple Residential District Modified". It is a rather convoluted "holding" by-law that essentially permits existing uses until a rezoning is approved. The zone contemplates that the rezoning will be one of the City's "E" zones which permit multiple dwellings. However, via a site specific Official Plan amendment (in 1995) and a corresponding site specific zoning by-law amendment (in 1997), the lands were re-designated and rezoned to also permit "general offices, only within the existing building". This paved the way for a variety of office uses noted above including the current COMPASS Day Program operated by LCC.

[21] LCC made application for a re-zoning to permit a residential care facility but was refused by City Council, which relied on a report from its Planning Department recommending refusal of the application on the grounds that the proposed re-zoning would further aggravate the existing over-intensification of residential care facilities within the Central City resulting in this appeal. The re-zoning was required as a result of a restriction in Zoning By-law No. 6593, which limits the location of "residential care facilities" to within a radius of 300 meters of each other. The Planning Department report to Council notes that the subject property is located within 160 metres of another existing Residential Care Facility.

[22] Zoning By-law 6593 defines "Residential Care Facility" ("RCF") as follows:

Residential Care Facility means 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 district, exclusive of staff, residing on the premises because of social, emotional, mental or physical handicaps, or problems or personal distress and that is developed for the well-being of its residents through the provision of self-help, guidance, professional care, and supervision not available in the resident's own family, or in an independent living situation or if:

The resident was referred to the facility by hospital, court, or government agency; or,

- i. The facility is licensed, funded, approved, or has a contract or agreement with the federal, provincial, or municipal governments.
- ii. A residential care facility is not considered as an emergency shelter, lodging house, corrections facility, or retirement home.

[23] It is noted that By-law 6593 had been amended by By-law 01-143 to increase the minimum separation distance from 180 metres to 300 metres and that the by-law was

also amended by By-law 07-107 to remove the minimum separation distance requirement for retirement homes.

LYNWOOD CHARLTON CENTRE POSITION (LCC)

[24] LCC asserts that some four months following the filing of the hearing appeal and a full eight months after the initial planning report relied on by Council to deny the application, the Planning Department forwarded a further Staff Report to Council, which purported to oppose the application on completely different grounds unrelated to the issue of residential care facilities within the Central City. The Planning Department was now asserting that:

The proposal, as intended, would entrench an undesirable institutional use in an area of Hamilton intended for residential development and as such, the proposal does not conform to the Hamilton Official Plan and Urban Hamilton Official Plan, and does not represent good planning.

[25] This new position was endorsed by City Council on September 26, 2012.

[26] Mr. Snider on behalf of LCC argues that this subsequent resolution is clearly not a "decision" within the meaning of Section 2.1 of the *Planning Act*, and is not "supporting information and material" that Council considered in making its decision although the City adduced evidence at the hearing to support this new position.

[27] LCC maintains that City Council's decision to refuse this application was based on the negative reaction from the community. Council received letters and petitions alleging that allowing such a use to occur on the subject site would result in increased mischief/damage/graffiti around the community and the destruction of efforts to beautify the local parks and surroundings. There is no evidence before this Board to support any of the concerns expressed to City Council. The only evidence before the Board is that Charlton Hall is an excellent neighbor and there is no history of conflict, damage or disruption connected with the use. It is noted that a number of residents had registered as Participants for this hearing but did not file witness statements or appear at the hearing to express their concerns.

[28] There are already two other residential care facilities within 300 metres of 121 Augusta Street: a small 4-6 bed facility for severely challenged children on Forest

Avenue (also operated by LCC), and a small six bed facility for adults on Catharine Street South. There is no evidence of any community impact arising from those facilities within the Corktown Neighbourhood. Mr. Hardy, who was retained by the City to carry out a social impact assessment respecting this proposal, carried out a survey of individuals in the area including respondents on Catharine Street South and none of the respondents even mentioned the residential care facilities, let alone concerns with those facilities. Ms. Munn one of the current residents at Charlton Hall, who testified, indicated that despite living in the Corktown Neighbourhood for many years, she was unaware that there was a residential care facility on Forest Avenue. LCC alleges that these facilities are essentially "invisible" within the Corktown Neighbourhood.

[29] LCC relies on the evidence of Ed Fothergill, a qualified professional planner with extensive experience in the City of Hamilton. Mr. Fothergill completed the Planning Justification Report that was presented to Council. Among other things, Mr. Fothergill concluded that the intent of the Radial Separation Distance ("RSD") to disperse residential care facilities throughout the City would be furthered by the subject application. He noted that while the proposal did not meet the 300 metre RSD for 121 Augusta Street, Charlton Hall would be relocated from a "moratorium area" to a community with a lower density of residential care facilities. As a result, the number of residential care facilities within Hamilton's downtown area would not increase and this existing facility would be relocated from a moratorium area with an alleged over-intensification of RCFs to the Corktown Neighbourhood which is outside of any moratorium area.

[30] Mr. Fothergill described the RSD restriction as a "blunt planning instrument" for the following reasons:

- (i) It does not distinguish between the size and function of a facility;
- (ii) The distance separation does not vary for different sizes or functions of facilities;
- (iii) The distance separation is not directly related to perceived or measurable impacts on the community; and
- (iv) The by-law provisions do not distinguish between the number of persons being accommodated in one building versus the number of people being located in more than one building within 300 metres of one another.

[31] He further noted that the "E" zone regulations which apply to 121 Augusta Street would permit up to 20 beds within a single RCF. The proposal before the Board would restrict the number of beds for 121 Augusta Street to eight. As a result, there would be approximately 20 beds within the 300 metre radius if the application were approved: eight at 121 Augusta Street, six at 106 Catharine Street South and four to six at 135 Forest Avenue.

[32] Mr. Fothergill examined five criteria: the public interest, appropriateness of location, neighbourhood fit (both in terms of function and in form) potential impacts, and distance separation considerations and concluded that the proposal represented good planning. His planning opinion remained steadfast throughout the planning process and his opinion was not shaken under cross examination.

ONTARIO HUMAN RIGHTS COMMISSION POSITION (OHRC)

[33] The OHRC in Phase I of this hearing supports the position taken by the Appellant LCC. It takes the position that Hamilton City Council's refusal in this case is inconsistent with and in fact contrary to the policies set out in the Provincial Policy Statement 2005 ("PPS"), specifically Paragraph 1.1.1(f) of the PPS, which states as follows:

"Healthy, liveable and safe communities are sustained by:

f) Improving accessibility for persons with disabilities and the elderly by removing and/or preventing land use barriers which restrict their full participation in society;"

[34] Furthermore, section 1.4.3 of the PPS also directs municipalities to permit and facilitate "all forms of housing to meet the social, health and well-being requirements of current and future residents, including special needs requirements." The legislation places a positive obligation on municipalities to facilitate housing for people with special needs.

[35] The PPS defines "special needs housing" as any housing including dedicated facilities, in whole or in part, that is used by people who have specific needs beyond economic needs including but not limited to needs such as mobility requirements or support functions required for daily living. Examples of special needs housing may

include, but are not limited to, housing for persons with disabilities such as physical, sensory or mental health disabilities and the housing for the elderly. Whether or not the proposed facility at 121 Augusta meets the definition of "residential care facility", it is nonetheless "special needs housing" and the responsibilities of the municipality under the PPS to facilitate such housing are engaged.

[36] The City's after-the-fact attempt to characterize LCC's proposal as an "institutional use in an area of Hamilton intended for residential development" is premised on the fact that LCC's proposal does not meet the technical definition of a "residential care facility" in Hamilton Zoning By-law 6593. This definition requires that the residential care facility be located within a "fully detached residential building occupied wholly by staff and residents". Since the proposed location at 121 Augusta is not "fully detached" and will not be "wholly occupied by staff and residents", the City seeks to characterize it as an institutional use.

[37] LCC's proposal involves moving the eight residents from 52-56 Charlton to the second floor of 121 Augusta. The use proposed for the second floor would be a residential use within a mixed-use building. The ground floor use within the building would remain unchanged. The physical form of the building would also remain unchanged. The only change would be the addition of a residential component to the second floor.

[38] Edward John's evidence was that LCC's proposal amounted to an institutional use because:

The proposed use will provide social services to the broader community, provide overnight accommodation and employ a number of professional staff. As a consequence, it has been determined that impacts of the proposed use extend far beyond the typical considerations given to the assessment of a site for a residential care facility; particularly as governed through a By-law and definition that, in order to facilitate their successful neighbourhood integration, actively mitigates impacts in terms of scale, intensity of use, built form and location [Emphasis added].

[39] Counsel argues that Mr. John's assertions evoke images of a large hospital-like setting bulging with professional staff engaged in the treatment of people with disabilities who are required to stay there overnight. Ms. Deirdre Finlay testified that the stereotypical suggestion that LCC's proposal would re-institutionalize the residents

"shows the profound lack of understanding of the merits of the two facilities, of the experience, skills and intent of the staff at LCC".

[40] It also fails to appreciate that LCC is a home for its residents. The best illustration of how LCC provides "a place to live" for its residents came from Clara Munn, a 17 year old who currently resides in Charlton Hall. Ms. Munn testified that she lives with social anxiety and requires support at times to "ride the bus" or "[be] at the mall". She stated that a typical day for her comprised of breakfast with the residents and the staff, attending school (if she had any anxiety she would call the staff at Charlton Hall), coming home from school and having dinner and talking about her day with residents and staff, doing chores and participating in activities such as skating, "pamper night", board games or movies.

[41] The assistance of staff with certain aspects of daily living for persons with mental disabilities does not detract from the use of the property as residential. In *Aurora (Town) v. Anglican Houses [1990] O.J. No. 451*, the Ontario High Court of Justice (now Superior Court of Justice) held that a group home for up to eight adults with mental health disabilities where residents lived voluntarily and participated in housekeeping, meal preparation and decision-making was "clearly residential" and could not be categorized as an institutional use. The Court further held that the staff in the home enhanced the use of the property as a residence by assisting the residents to integrate into home life and the neighbourhood; and did not detract from the residential quality of the neighbourhood.

[42] Similarly, in *City of Barrie v. Brown Camps Residential and Day Schools*, the Ontario Court of Appeal held that the defendant's home for emotionally disturbed children, which included trained child care workers who would supervise the children, clean the house and do the laundry, was being "used for the care and upbringing of these children in the same manner as if they were being used by parents with special expertise to deal with their children who had similar emotional problems".

[43] The City's denial of LCC's proposal runs contrary to the PPS, the Hamilton Official Plan and the new Urban Hamilton Official Plan, which actively encourage planning authorities to improve accessibility for persons with disabilities by removing and/or preventing land use barriers, and permitting the proposed use.

[44] As noted above, section 1.1.1(f) of the PPS requires municipalities to improve accessibility for persons with disabilities by removing and/or preventing land use barriers, which restrict their full participation in society. Section 1.4.3 of the PPS places a positive obligation on municipalities to permit and facilitate housing for people with special needs.

[45] The Hamilton Official Plan supports positive actions to develop a variety of housing styles, types and densities including encouraging "non-profit and co-operative housing organizations" to provide a range of socially- assisted dwelling units for a variety of client types in all areas of the City. The new Urban Official Plan states that one of the Urban Housing Goals for Hamilton is to "increase Hamilton's stock of housing for those whose needs are inadequately met by existing housing forms or tenure, affordability or support options".

[46] It argues that the LCC application is ultimately an attempt to remove land use barriers to improve accessibility to appropriate and necessary housing for persons with disabilities. These land use barriers are embedded in Hamilton Zoning By-law 6583 whether through minimum separation distance requirements or through an after-the-fact application of a technical definition of residential care facilities.

[47] The City's denial of LCC's proposal by the application of minimum separation distance requirements is contrary to the requirements in sections 1.1.1(f) of the PPS. The application of minimum separation distance requirements creates land use barriers to housing for people with disabilities and limits the available housing options as evidenced by the unsuccessful joint City and LCC search for an alternative location to 121 Augusta St. The City's denial of LCC's proposal is also contrary to the City's obligation to permit and facilitate "all forms of housing to meet the social, health and well-being requirements of current and future residents, including special needs requirements". Finally, the City's denial is inconsistent with the Hamilton Official Plan and new Urban Hamilton Official Plan, which promote housing for persons with special needs.

[48] The City's denial of LCC's application to permit a residence with eight beds providing mental health services and supports in a supervised setting for adolescent females at 121 Augusta St. does not represent good planning because it is contrary to

the considerations in the PPS, Hamilton Official Plan and new Urban Hamilton Official Plan, which City Council must consider in reviewing and assessing applications for a zoning amendment such as this one.

CITY OF HAMILTON POSITION

[49] The City takes the position that the issue before the Board in this appeal is whether the subject property 121 Augusta Street (formerly used for industrial purposes) should be rezoned to permit the subject property to be used as an institutional facility. The property was the subject of an official plan amendment and re-zoning in 1997 to permit office uses with the introduction of Special Policy 69 to the Official Plan which reads as follows:

In addition to the permitted uses set out in Subsection A.2.1 – Residential Uses, for those lands shown on Schedule "B-1" as SPECIAL POLICY AREA 69, and located at 121 August Street, general office uses only within the existing building will be permitted.

[50] The City takes the position that the intent of this amendment was to permit office uses as an interim or temporary use, as indicated by the express qualification that the uses would be allowed "...only within the existing building...."

[51] The City relies on the planning report, which accompanied the official plan amendment and rezoning application in 1995 evidenced the intent that the office use was to be short term only:

The subject lands are designated "Medium Density Apartments" in the approved Corktown Neighbourhood Plan. The proposal does not comply with the approved plan. The long term intent is for this area to be developed for medium density apartments and as such a redesignation is not recommended as the proposed general office use is considered to be an interim use.

[52] The City also takes the position that the subject building is not appropriate for the proposed use in that there is no substantial on-site green space, and that the streetscape of the subject property is that of a converted, repurposed former industrial building. The implementation of the rezoning proposal for the subject property will include renovations to the interior of the building, some improvements to the exterior features, but no site alterations.

[53] The Property is designated "Residential" in the (former) City of Hamilton Official Plan (the "OP"), and it is designated "Medium Density Apartments" in the Corktown Neighbourhood Plan. The OP includes a number of key policies including incorporation of the policies adopted in the various Neighbourhood Plans, which form an integral part of the Hamilton policy framework which must be respected when evaluating a development application. Mr. Minkowski relies on previous Board decisions, which have expressly recognized and relied upon Neighbourhood Plans in the City of Hamilton in adjudicating upon the merits of development applications. He argues that the new Urban Hamilton Official Plan (still under appeal before the OMB) carries the same, consistent policy approach to neighbourhood plans.

[54] The subject property is designated for medium density apartments under the Corktown Neighbourhood Plan. It states that an increase in the residential population in the central area brings a higher level of services to the downtown and that this benefits the Region, the City and Corktown. The City argues that allowing the subject property to be used as proposed will not contribute to the stated goals of increasing the population of Corktown. It must be noted that the Corktown Neighbourhood Plan is not a statutory plan, which has undergone the public scrutiny process under the *Planning Act* and is not an official plan for *Planning Act* purposes.

[55] All three expert planning witnesses (Fothergill, Gladki and John) expressed the opinion that the designation of the Property for medium density apartment under the Neighbourhood Plan is consistent with the PPS, conforms to the Growth Plan, conforms to the Hamilton Official Plan and represents good planning.

[56] The City takes the position that allowing this re-zoning to occur will displace the planned function for the property because LCC will be making a substantial investment in it and intends to operate it for an indefinite period of time. This will result in a permanent change to an institutional use.

[57] In addition, it argues that there was no dispute that the Property is located within a 500 metres radius (approximately 380 m) from a Major Transit Station Area within the meaning and intent of the Growth Plan. Major Transit Station Areas are identified by the Growth Plan as locations for intensification. The Neighbourhood Plan is consistent with the intent of the Growth Plan and was recently reviewed and confirmed as part of

the City's conformity exercise in preparing the new Urban Hamilton Official Plan (currently under appeal before the Board).

[58] In support of its position that the proposed use constitutes an institutional use, the City argues that the nature of the activities currently occurring at Charlton Hall and which are proposed to be transferred to the subject property have all the hallmarks of an institutional use based on the evidence before the Board. It is argued that an "RCF" does not function as a residence in the conventional or typical sense. It is rather a particular type of social service or mental health service treatment activity which is housed within a detached dwelling in furtherance of public policy objectives to place these services within a residential setting, integrated in residential neighbourhoods. It is to be noted that the title for this use is not "residential", but qualified as "residential care facility".

[59] The City further argues that the proposal does not meet three key elements or conditions of the definition for an RCF:

- a) The proposal will not be located within a detached dwelling.
- b) The Property will not be wholly occupied solely by the eight adolescent girls receiving treatment.
- c) There will be non-resident clients who will be attending at the Property on a daily basis to receive mental health services from professional staff.

[60] Edward John, the City's land use planner opined that there was a specific legislative intent which underscored why the definition of RCF includes a specific requirement that the use be located within a detached residential building, and why the use of the facility was intended to be restricted only to occupants. The intent of this provision was to de-institutionalize these facilities and to make these more "family like settings" so they could integrate into the community more easily and that failure to meet these requirements extended far beyond a mere technicality but cuts to the very heart of the legislative intent of an RCF and how planning in Hamilton has intended to implement provincial social policy in regards to this type of use.

FINDINGS

[61] The Board has carefully considered all of the evidence as well as the submissions of counsel and finds that the appeal should be allowed for the reasons that follow.

[62] The Board is satisfied that the proposed development is consistent with the Provincial Policy Statement 2005 and conforms to the Growth Plan for the Greater Golden Horseshoe as well as the City's Official Plan. The proposal is housing for "special needs" within the meaning of the PPS. Policy 1.4.3 (b) requires planning authorities to permit and facilitate housing for special needs, a powerful direction reflecting an important provincial policy interest. Paragraph 1.1.1(f) of the PPS, which states as follows:

"Healthy, live able and safe communities are sustained by:

f) Improving accessibility for persons with disabilities and the elderly by removing and/or preventing land use barriers which restrict their full participation in society;"

[63] The Board is also satisfied that there are no demonstrated impacts from this proposed development. The proposed use will be compatible with the existing uses in the neighbourhood and will not result in any social impacts. The evidence was quite clear and un-contradicted that both Charlton Hall and the existing COMPASS Day Programs at 121 Augusta Street have operated in their current locations without complaint or significant community impact.

[64] The City's argument that the proposed development will frustrate the planned function of the subject property is simply not tenable based on the evidence before the Board. The City argues that the planned function for this property is "residential" more particularly in the form of "Medium Density Apartments". The City's argument ignores that the current office use is part of the planned function of the property as it is permitted under the zoning by-law and conforms to both the existing Official Plan and the new Urban Official Plan, which is still under appeal. The office uses are not intended to be temporary or for the "short term" as there is no temporal limitation in either the in force official plan or the new Urban Hamilton Official Plan. The only limitation is that the office uses are to be confined to the existing building and the evidence showed that this could

go on for a long period of time given the nature of the building. The COMPASS Day Programs can continue to be offered by LCC on the main floor of the building in conformity with the City's Official Plan.

[65] The proposal is to add housing for those with special needs on the second floor of the building, a use permitted under all residential zones. The Board agrees with counsel for LCC's argument that even if a complete description of the planned function for this site was "Residential" and "Medium Density Apartments", this would not prevent the establishment of either a RCF or an institutional use on the subject property. RCF's are permitted in all residential designations within the City whether uptown, downtown or midtown. Institutional uses less than 0.4 hectares in site area are also permitted in all residential designations in the City.

[66] The City's argument simply does not stand up when one considers the existing Charlton Hall which is under the same policy regime as the subject property except for the office component. If one is to accept the City's argument, one would have to agree that the existing use at the current Charlton Hall operates to frustrate the planned function of that site.

[67] With respect to the City's argument that the proposed use is an institutional use, the Board does not accept this argument as sufficient to deny this appeal. Institutional uses are permitted in residential designations provided the size of the site does not exceed 0.4 hectares.

[68] The City spent a significant amount of time arguing that the project does not meet aspects of the definition of an RCF in the City's zoning by-law. This has always been understood by both the Applicant and the City. However, whether characterized as a new RCF in a mixed use building or a "comprehensive institutional facility", the use is permitted and appropriate.

[69] The City points to the attributes of Charlton Hall proposed to be transferred to the subject site as "hallmarks" of an institutional use. The Board fails to understand how this argument can support the City's position that the proposed use on the subject site will be an institutional use. Charlton Hall is a residential care facility which complies fully with the definition of an RCF in the City's zoning by-law. The City's own definition of an RCF includes dimensions that, to some, are "hallmarks of an institutional use". An

RCF is a "group living arrangement" with "supervised residents" who reside on the premises "because of social, emotional, mental or physical handicaps or problems or personal distress" and is developed for the "well-being of its residents through the provision of self-help, guidance, professional care and supervision..."

[70] There will be no change in the character of Charlton Hall when it is relocated to the second floor of 121 Augusta Street. It will be no more or no less "institutional" than it currently is at 52-56 Charlton Avenue West. However, the evidence was clear that the new environment would be superior for the care of the eight adolescent girls. The attributes of Charlton Hall as these exist in its current location, will continue to exist in its new location. The non-residential component of LCC's proposal has nothing to do with the relocation of that facility. Instead, it is tied to the COMPASS Day Programs.

[71] With respect to the City's argument that the proposal would not satisfy that part of the definition of a RCF requiring that such a facility be located "within a fully detached residential building occupied wholly by...", this is not fatal to the appeal. The Board finds, based on the evidence before it, that it was evident from the outset that LCC proposed a site specific zoning amendment which would permit such a facility in a mixed-use building on the subject site. There is no need under the circumstances to amend the definition of RCF in the main by-law. It is sufficient to permit it specifically on the subject property in the amending by-law. Allowing this use in a mixed-use building is appropriate and will not have the effect of "institutionalizing" the residents.

[72] The Board notes that the property at 124 Walnut Street immediately adjacent to the subject lands was approved to permit a RCF in 1992 to accommodate 70 seniors and other uses. The Official Plan and Neighbourhood Plan designations for this site are precisely the same as exist for the subject lands less the permissions for office uses. City Council in 2007 amended the relevant by-law to remove retirement homes from the separation distance requirements that otherwise apply to RFC's.

[73] It is also noted that the zoning by-law enacted by Council permitting RFC's in their current form also established two "Moratorium Areas" within the downtown core in which no additional RFC's may be permitted or expanded. Charlton Hall is located within one of the moratorium areas and the subject property is not within a moratorium area. Allowing this proposal to proceed would mean that a RFC would move from a

moratorium area to a non-moratorium area although the new facility would be located within 300 metres of two other RFC's, the four to six bed facility operated by LCC for severely challenged children at 135 Forest Avenue and the six bed adult RCF at 106 Catherine Street South. There is no evidence before the Board that these facilities have caused any impacts on the neighbourhood or that there would be any interaction between the three.

[74] There is a disagreement between Counsel for the Appellant and Counsel for the City respecting the form of the amending by-law. The City takes the position that in the event the Board allows the appeal, the property should be re-zoned to an institutional use to reflect the actual use of the property. Although the Appellant does not agree or accept that the proposed use is an institutional one, it is prepared to accept the City's proposed amending by-law but is concerned about the lack of recognition for the current permitted use of offices within the existing building because in effect, if the Board were to accept the City's version, this general office use within the existing building would be lost. Mr. Snider argues that there was absolutely no evidence to suggest that the general office use was problematic or caused any significant land use impacts and that accepting the City's version of the amending by-law would amount to a down zoning of the subject property without planning justification. Furthermore, the parties agree that the COMPASS day use programs are permitted as general office uses and were recognized as such in the City's new Urban Official Plan.

[75] Mr. Minkowski on the other hand argues that the office use would not be lost if the City version of the amending by-law was adopted. The definition of "social services establishment" in Zoning By-law 05-200 incorporates the office use. It reads as follows:

Shall mean a building in which non-profit services intended to promote and improve the independence, economic self-sufficiency, social and health development of citizens are provided and shall include but not be limited to clerical, administrative, consulting, counselling, office and recreational functions for a non-profit agency but shall not include facilities in which overnight accommodation is provided.

[76] Mr. Minkowski maintains that it would be redundant and confusing to maintain the separate office use reference in the zoning by-law when the office uses currently permitted would continue to be so under the term "social services establishment" and that therefore there is no need to refer back to the uses permitted under the site specific "L-mr" Zone.

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PL120529

[77] The Board agrees with Mr. Snider in that accepting the City's version would effectively result in a downzoning of the property without proper justification provided during the course of the hearing.

DISPOSITION

[78] Accordingly, the appeal is allowed and Zoning By-law 6593 of the City of Hamilton is hereby amended in accordance with Attachment 1 hereto.

ORDER

[79] It is so Ordered.

"R.G.M. Makuch"

R.G.M. MAKUCH
MEMBER

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ATTACHMENT 1

Authority:

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

**To Amend Zoning By-law No. 05-200
Respecting Lands Located at 121 Augusta Street, Hamilton**

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, S.O. 1999, Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

AND WHEREAS it is desirable to enact a new Zoning By-law to comprehensively deal with zoning throughout the City;

AND WHEREAS the first stage of the new Zoning By-law, being By-law 05-200, came into force on May 25, 2005;

AND WHEREAS the Ontario Municipal Board, in adopting Item _____ recommended that Zoning By-law No. 05-200, be amended as hereinafter provided;

NOW THEREFORE the City of Hamilton enacts as follows:

1. That Map No. 995 of Schedule "A" to Zoning By-law No 05-200, is amended, by Incorporating additional Community Institutional (I2) Zone boundaries, in the form of a Site-Specific Community Institutional (I2, #, H#) Holding Zone for the lands, the extent and boundaries of which are shown on Schedule "A" annexed hereto and forming part of this By-law.

2. That Schedule "C" - Special Exemptions, of By-law No. 05-200, be amended by adding an additional special exception as follows:

" _____ Within the lands zoned Community Institutional (I2-____) Zone, identified on Map 995 of Schedule "A" and described as 121 Augusta Street, shown

on Schedule "A" of this By-law, **in addition to the special provisions of the Special Provision L-mr-2/S-1345**, the following special provisions shall **also** apply:

i) To permit a social services establishment together with overnight accommodation, subject to the following provisions:

(a) Maximum number of residents that can be accommodated - 8

(b) Minimum number of parking spaces - 15

3. That Schedule "D" - Holding Provisions, of By-law No. 05-200, be amended by adding additional Holding provisions as follows:

(H#) Notwithstanding Section 2 of this By-law, within lands zoned Community Institutional (I2-#) Zone, on Map 995 of Schedule "A" Zoning Maps, and described as 121 Augusta Street, a holding provision shall prohibit all uses other than those uses existing at the time of this by-law (being ____ 2013) until such time as:

(i) The owner/applicant has submitted a signed Record of Site Condition (RSC) to the City of Hamilton, and the Ministry of the Environment (MOE). The RSC must be to the satisfaction of the City of Hamilton, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton's current RSC administration fee.

Council may remove the 'H' symbol, and thereby give effect to the Site-Specific Community Institutional (I2-#) Zone provisions by enactment of an amending by-law once the conditions are fulfilled.

4. That this By-law No. ____ shall come into force and effect and be deemed to come into force in accordance with Subsection 34(21) of the Planning Act, either upon the date of passage of this By-law or as otherwise provided by the said subsection.

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PASSED and ENACTED this day of , 2013.

Mayor

Clerk

ZAR-11-034

[05-200 By-law Schedule must be attached]

"R.G.M. Makuch"
R.G.M. MAKUCH
MEMBER

Appendix "B"

**Ontario Human
Rights Commission**

Office of the Chief Commissioner

180 Dundas Street West, 9th Floor
Toronto ON M7A 2R9
Tel.: (416) 314-4537
Fax.: (416) 314-7752**Commission ontarienne
des droits de la personne**

Cabinet de la commissaire en chef

180, rue Dundas ouest, 9^e étage
Toronto ON M7A 2R9
Tél. : (416) 314-4537
Téléf. : (416) 314-7752

 VIA Email

February 26, 2015

Dear Colleagues,

**Re: Applying a human rights lens in zoning, licensing and
municipal decision-making**

As new and returning mayors, councillors and elected officials, you play a central role in ensuring that municipal processes and decisions respect the human rights of all community members. The Ontario Human Rights Commission (OHRC) has worked for several years with governments, experts and community partners to increase human rights compliance in housing, land use and licensing. I'm writing to share some positive developments in these areas, and to point out some OHRC resources that can help you make your community more inclusive.

In 2014, Toronto and Smiths Falls removed minimum separation distance (MSD) and other zoning restrictions for group homes, as part of human rights settlements with the Dream Team, a mental health consumer-survivor group. This follows similar moves by Sarnia in 2011 and Kitchener in 2012. In each case, there was no planning justification for MSDs. In fact, Toronto's own external planning expert recommended they be removed because they contravened the *Human Rights Code*.

Over the past few years, several other municipalities have recognized their human rights obligations by preventing or removing zoning, licensing and other barriers to housing and services (such as methadone clinics) that are needed by *Code*-identified groups.

The Ministry of Municipal Affairs and Housing has also reinforced the requirement to meet *Human Rights Code* obligations in municipal work by adding human rights language to two key resources:

- Section 3 of the *Municipal Councillor's Guide 2014* [www.mah.gov.on.ca/AssetFactory.aspx?did=4965] now refers to *Code* protections
- Section 4.6 of the 2014 Provincial Policy Statement under the *Planning Act* [www.mah.gov.on.ca/Page10679.aspx] now states that the PPS shall be implemented in a way that is consistent with the *Code* and the *Charter of Rights and Freedoms*.

Also in 2014, several Ontario planning schools and organizations added human rights content to courses and ongoing professional education. We continue to work with them to ensure that new graduates and practicing planners incorporate human rights principles in their work.

The OHRC provides several tools to help elected officials, staff and advocates improve human rights in housing, planning, licensing and other municipal decisions.


- Our municipal guides, *In the zone: Housing, human rights and municipal planning* [www.ohrc.on.ca/en/zone-housing-human-rights-and-municipal-planning]; and *Room for everyone: human rights and rental housing licensing* [www.ohrc.on.ca/en/room-everyone-human-rights-and-rental-housing-licensing] identify human rights risks and best practices in zoning and licensing.
- Our *Neighbourhood housing tip sheet* [www.ohrc.on.ca/en/neighbourhood-housing-tip-sheet-fact-sheet] offers suggestions for responding to community concerns about affordable supportive and rental housing, including discriminatory opposition that is based on stereotypes, assumptions and misinformation about people or the impact on the neighbourhood.
- Municipalities can also spread the message about human rights in housing by sharing our landlord and tenant brochures, fact sheet on fair rental housing ads, and *Policy on human rights and rental housing* with community members and organizations.

These publications are available in both English and French on our website at www.ohrc.on.ca/en/social_areas/housing. To order printed copies, email us at communications@ohrc.on.ca.

Municipalities are the level of government that is closest to the daily lives of people across Ontario. The decisions you make can have an immediate impact on the human rights of your residents. I challenge you to look at your planning, bylaws and decision-making processes, and to apply a human rights lens to help your neighbourhoods and communities be supportive, welcoming places for everyone to call home.

If you would like more information on human rights, municipal decision-making and housing, please contact Jacquelin Pegg at 416-326-9863 or via email at jacquelin.pegg@ohrc.on.ca.

Yours truly,



Barbara Hall, B.A., LL.B., Ph.D. (hon.)
Chief Commissioner

Appendix "C"

Land Use Planning History for Residential Care Facilities (Hamilton)

1.0 1970's Provincial Policy Direction

The availability of appropriate accommodation for all residents is important for a community's social well-being. In the 1970's, the Province of Ontario developed an alternative approach to the care of people requiring support. While historically, these people lived in institutional settings, the Province believed that they would lead more productive lives when integrated into neighbourhoods with appropriate amount of supervision and support. Residential Care Facilities (RCFs) and group homes were located within communities to provide a residential living environment for small groups of people to fill this need by providing housing options for those who require support beyond what their families can provide. These facilities are designed to provide supervision, professional counselling, and other support services to help residents meet their educational, employment, and social goals.

2.0 Zoning By-law Regulations

1.1 1980's – City of Hamilton Zoning By-law Regulations

In 1981, the former City of Hamilton introduced By-Law No. 81-27, which defined and established zoning regulations for RCFs, short-term care facilities, and lodging houses.

The by-law introduced capacities for residential care facilities by specific zoning district and included the following distance separation regulations:

- (5) Except as provided in subsection 6, every residential care facility shall be situated on a lot having a minimum radial separation distance of 180.0 metres from the lot line to the lot line of any other lot occupied or as may be occupied by a residential care facility or a short-term care facility.

(6) Where the radial separation distance from the lot line of an existing residential care facility is less than 180.0 metres to the lot line of any other lot occupied by a residential care facility or short-term care facility, the existing residential care facility may be expanded or redeveloped to accommodate not more than the permitted number of residents."

In Hamilton, many RCFs have historically located in the downtown area. These dense urban neighbourhoods are ideal locations for RCFs due to relatively inexpensive land values and convenient access to community services, transit, among other benefits. The dispersion of RCFs throughout the City, as a whole, is desirable so that the residents in these facilities can live in a residential atmosphere with a mix of housing types rather than an institutionalized environment. In addition, residents may have a choice as to what part of the City they could live in. To address the issue of over-concentration of RCFs in certain areas, the City incorporated radial separation distances in the Zoning By-law that require RCFs to be separated from each other. This distance separation does not affect existing facilities, but ensures any new RCFs will be dispersed throughout the City.

1.1.1 History of Radial Separation Distance

A separation distance requirement is a tool for controlling the number and locational restrictions of certain uses. A Radial Separation Distance (RSD) has been used to separate disruptive uses, to avoid conflict/adverse impacts to both the community and the operation. For example, separation distances could enforce appropriate buffering between industrial uses and more sensitive uses, such as residential.

In the case of RSD and residential care facilities, the former municipalities implemented radial separation distances following the de-institutionalization direction from the Province in the 1980's and 1990's. The RSD was intended to reduce an overconcentration of facilities in certain areas of the City.

Historically, the former City of Hamilton (Wards 1 to 8 and 14) had / have the highest percentage of residential care facilities, but it has been proportional to its share of population of the City (former Region of

Hamilton-Wentworth) as a whole. However, there has always been a disproportionate share of the distribution in the lower City, in particular, Wards 2 and 3. In the late 1970's, the percentage share in the former City of Hamilton was 73% and by the late 1990's it was still 67%. The intent of the radial separation by-law was to encourage the dispersion of new facilities throughout the City, which is what led to the review in 2001.

1.1.2 OHRC Concern

The OHRC has taken the position that RSD does not achieve decentralization, but rather decreases housing options and targets code protected groups. Licencing and locational requirements should only be based on ensuring decent, safe housing and not preventing or limiting housing options for people. The City can evaluate the zoning of a residential care facility / group home in light of the *Code* to determine if there is any undue hardship on the City and its residents.

1.2 Other municipalities within Hamilton

Throughout the 1980's and 1990's, Dundas, Flamborough, Glanbrook and Stoney Creek also defined RCF's but used different terms (i.e. group homes) and established their own separation requirements in their former Zoning By-laws (still in force and effect).

3.0 2000 Review of Residential Care Facilities, Short Term Care Facilities, Long Term Care Facilities and Correctional Facilities (Zoning By-Law No. 6593)

In 2000/2001, Staff reviewed the Zoning By-law regulations in Zoning By-law No. 6593 for residential care facilities, short term care facilities, long term care facilities and correctional facilities for the former City of Hamilton. The purpose of the study was:

- To review the social and land use planning history;

- To review the current land use planning policy framework for the City of Hamilton and area municipalities;
- To identify key issues and concerns;
- To identify a number of options to address these concerns; and,
- To identify the preferred options and strategies.

In June 2000, staff presented a series of options to consider changes to Zoning By-law No. 6593 respecting residential care facilities, long term care facilities and correctional facilities. The Committee directed staff to undertake a public participation program to gain input on the proposed recommendations.

Staff met with a number of different groups – service providers, neighbourhood groups, government agencies and the Business Improvement Areas (BIAs) to gauge their reaction and concerns with the proposed recommendations. Following these discussions, a second report was prepared with recommendations on changes to Zoning By-law No. 6593. It was also further expanded to include hostels.

The May 2001 Discussion Paper titled “Residential Care Facilities, Long Term Care Facilities, Correctional Facilities and Hostels Discussion Paper No. 2 (Final Recommendations)” provided information and direction to update the current by-law standards from the 1981 by-law in a manner that balances the provision of a variety of housing types and size, the support for community integration of these facilities, and the impact of these facilities on the community. The report made a number of recommendations related to zoning definitions and regulations, in particular with regards to permitted uses within the zones and to increase the separation distance from 180 m to 300 m radial separation distance. In addition to the recommended zoning changes, the report provided direction for non-land use planning matters such as a central registry, review of subsidy agreements and a bi-annual report on the effectiveness of changes to the zoning requirements.

On June 26, 2001, the Hearings Sub-Committee considered the “Residential Care Facilities, Long Term Care Facilities, Correctional Facilities and Hostels

Discussion Paper No. 2 (Final Recommendations)". The main recommendations were to:

- Redefine short term care facilities and hostels to emergency shelters and add new definitions for retirement homes, and correctional facilities;
- Add RCFs to the "B" (Suburban Agriculture and Residential, etc.) District; and,
- Increase the radial separation distance between all facilities from 180m to 300m.

These recommendations were approved by Council on June 26, 2001, and, with respect to item (b), By-law No. 01-143 was passed by Council on this date and Hamilton Zoning By-law No. 6593 was amended to reflect the above recommendations. The other municipal zoning by-laws remained as is since these changes were underway prior to amalgamation.

Appendix "D"

Provincial Policies

1.0 Provincial Policy Statement, 2014

"1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns

1.1.1 Healthy, liveable and safe communities are sustained by:

- b) accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;
- f) improving accessibility for persons with disabilities and older persons by identifying, preventing and removing land use barriers which restrict their full participation in society;

1.4 Housing

1.4.3 Planning authorities shall provide for an appropriate range and mix of housing types and densities to meet projected requirements of current and future residents of the *regional market area* by:

- a) establishing and implementing minimum targets for the provision of housing which is *affordable to low and moderate income households*. However, where planning is conducted by an upper-tier municipality, the upper-tier municipality in consultation with the lower-tier municipalities may identify a higher target(s) which shall represent the minimum target(s) for these lower-tier municipalities;
- b) permitting and facilitating:

1. all forms of housing required to meet the social, health and well-being requirements of current and future residents, including *special needs* requirements; and
- e) establishing development standards for *residential intensification, redevelopment* and new residential development which minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety."

Special Needs is defined as: "any housing, including dedicated facilities, in whole or in part, that is used by people who have specific needs beyond economic needs, including but not limited to, needs such as mobility requirements or support functions required for daily living. Examples of special needs housing may include, but are not limited to, housing for persons with disabilities such as physical, sensory or mental health disabilities, and housing for older persons.

4.0 Implementation and Interpretation

4.6 This Provincial Policy Statement shall be implemented in a manner that is consistent with the Ontario *Human Rights Code* and the Canadian *Charter of Rights and Freedoms*.

2.0 Growth Plan for the Greater Golden Horseshoe

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, though the completion of a Housing Strategy, to identify affordable housing for current and future populations.

Policy 2.2.6.1 a) i) requires that a municipality must plan to achieve certain density targets 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 need of current and future residents.

Amendment No. 1 to the Growth Plan

On 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 diverse range and mix of housing remains.

Appendix "E"

OFFICIAL PLAN POLICIES

1.0 Urban Hamilton Official Plan

B.3.2 Housing Policies

Housing is fundamental to the economic, social and physical well-being of Hamilton's residents and communities. Housing is a basic human need and is the central place from which people build their lives, nurture their families and themselves, and engage in their communities. Housing needs change and evolve as social, demographic, and economic conditions change. The long term sustainability of communities is based on building a diverse, flexible housing stock today to meet changing needs at both household and community levels. To ensure that housing is available for all residents with a wide variety of needs, there must be a sufficient supply of housing with a range of housing types, forms, tenures, densities, affordability levels, and housing with support services.

"B.3.2.1.6 Increase the mix and range of housing types, forms, tenures, densities, affordability levels, and housing with supports throughout the urban area of the City."

Housing targets for Ownership and Rental are found in Table B.3.2.1.

B.3.2.3 Affordable Housing Policies

"Many households in Hamilton cannot obtain housing that is *affordable* or appropriate to their needs. Households and individuals may be at risk of homelessness because of economic and/or personal circumstances where a level of support is required to live independently. Hamilton's aging and diversifying population has new and unique housing needs that cannot solely be met through current housing options. The City recognizes the importance of *affordable* housing and *housing with supports* in meeting the housing needs of

those without the resources to participate in the private housing market.

B.3.2.3.1 The City shall endeavour to provide a facilitative land use planning process for development applications for affordable housing and housing with supports.

B.3.2.4.3 Housing with supports, including residential care facilities, shall be permitted in the Institutional, Neighbourhoods, Commercial and Mixed Use designations, as shown on Schedule E-1 – Urban Land Use Designations, and shall be subject to zoning regulations where applicable.”

Downtown, Sub-Regional Service Nodes, Community Nodes and Neighbourhood designations all support and encourage housing with supports.

C.3.2 Urban Area General Provisions (Policies)

“C. 3.2.2. The following uses shall be permitted in the Neighbourhoods, Institutional, and Commercial Mixed Uses designations:

- c) A small scale residential care facility shall be as-of-right, provided it complies with all applicable policies and the Zoning By-law.”

2.0 Rural Hamilton Official Plan

The following policies in Chapter B – Communities specifically address the need for support services in the Rural Area:

"B.3.2 Housing Policies

Housing is fundamental to the economic, social and physical well-being of Hamilton's residents and communities. Housing is a basic human need and is the central place from which people build their lives, nurture their families and themselves, and engage in their communities. While the housing needs of the farm community and rural residents are important, rural land is primarily a working landscape for agriculture and non-renewable resources, with strong protections for our vital natural resources. Rural settlement areas are the focus of rural non-agricultural and non-resource uses to protect the rural land base for its primary resource purposes. Additionally, the rural area cannot be serviced by lake-based municipal water and sewer systems. Any municipal water systems existing on the date of adoption of this Plan were developed to address a water quality health emergency. The need for a certain land area to accommodate sustainable private servicing means that multi-dwelling housing forms cannot be permitted in the rural area, and densities must remain low. In accordance with Chapters D and F of this Plan, no additional non-farm housing is contemplated outside of rural settlement areas. Unfortunately, this means the opportunities for affordable housing in the rural area are limited.

3.2.1 Affordable Housing Policies

Many households in Hamilton cannot obtain housing that is *affordable* or appropriate to their needs. Households and individuals may be at risk of homelessness because of economic or personal circumstances where a level of support is required to live independently. The City recognizes the importance of *affordable* housing and *housing with supports* in meeting the housing needs of those without the resources to participate in the private housing market. There are also unique housing needs in the *rural area*, with special challenges in meeting those housing needs. The overlying planning principles are the protection and availability of the agricultural land base and natural

resources, and protection of natural heritage resources. Protection of the land base and the ability to farm that land or extract natural resources necessitates restricting future residential *development* to existing permissions and Rural Settlement Areas. Further, water and sewage servicing constraints, the need for a certain land area to accommodate safe water supply and sewage disposal limits housing forms. For these reasons the potential for additional housing in the rural area is limited.

- 3.2.1.1 The City shall endeavour to provide a facilitative land use planning process for development applications for *affordable housing and housing with supports.*"

In addition, small scale residential care facilities are permitted in the Agriculture, Specialty Crop, Rural and Rural Settlement Area designations in accordance with the Zoning By-law and provided the facility can meeting the sustainable servicing provisions. (Policy C. 3.1.2.c)

3.0 Glossary for OP's:

"Housing with Supports: means public, private or non-profit owned housing with some form of support component, beyond economic support, intended for people who need support services to live independently in the community, where providers receive funding for support services. The tenure may be long term. Housing with supports includes special needs housing as defined by the Provincial Policy Statement (2005)."

Appendix "F"

Zoning By-laws in Hamilton

1.0 Zoning By-law No. 05-200

In 2005, Zoning By-law No. 05-200 established the definitions as well as the regulations for the Downtown area. Since 2005, new zones have incorporated certain uses within various zones that apply on a city wide basis.

1.1 Definitions

“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 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.”

“Corrections Residence Shall mean a group living arrangement in a secure facility, for people who have been placed on probation, who have been released on parole, or who are admitted to the facility for correctional or rehabilitation purposes, and live together with the requirements of its residents and accepted standards for secure detention. A corrections residence is licensed, funded, approved or has a contract or agreement with the Province of Ontario or Federal Government, but shall not include a correctional facility, emergency shelter, or a residential care facility.”

There is only a corrections residence permitted in the City as a special exception.

1.2 Downtown Zones

In 2005, Zoning By-law No. 05-200 was passed which introduced, amongst other matters, definitions and six Downtown Zones. The definition and the regulations for Zoning By-law No. 05-200 were based on the 2001 amendments to the Zoning By-law No. 6593.

These zones allow residential care facilities of varying sizes:

| Zone | Capacity |
|---|-----------------|
| Downtown Mixed Use (D3) Zone | 20 |
| Downtown Local Commercial Use (D4) Zone | 20 |
| Downtown Residential (D5) Zone | 6 |
| Downtown Multiple Residential (D6) Zone | 6 |

A radial separation distance of 300 m between a residential care facility, a corrections residence, a correctional facility or an emergency shelter is included. It also maintains the moratorium on new facilities within the area bounded by Queen Street, James Street, Hunter Street and Main Street.

The Downtown Zones were amended in 2018 but no changes were made to RCFs.

1.3 Institutional Zones

On March 28, 2007, By-law No. 07-101 was passed by Council which introduced three new Institutional Zones to the City of Hamilton Zoning By-law No. No. 05-200. These zones allow residential care facilities of varying sizes as follows:

| Zone | Capacity |
|---------------------------------------|-----------------|
| Neighbourhood Institutional (I1) Zone | 15 |
| Community Institutional (I2) Zone | 50 |
| Major Institutional (I3) Zone | 50 |

Similar to the Downtown zones, this By-law included a radial separation distance of 300 metres for any new residential care facility or correctional residence throughout the City and the Institutional Zones established the capacity for any residential care facility within the new zones. No new additional work was done in regards to reviewing the separation distances.

Following the completion of the "Residential Care Facilities, Long Term Care Facilities and Correctional Facilities Discussion Paper" in 2000, and as a part of the Comprehensive Zoning By-law No. No. 05-200, the Institutional Zoning process began in 2005. Using the recommendations of the Discussion Paper, the foundation of the Institutional Zones was established.

1.4 Commercial/Mixed Use (CMU) Zones

In November 2017, City Council passed By-law No. 17-240 to include eight new commercial zones within Zoning By-law No. 05-200. There are three zones which allow RCFs; the following capacities apply:

| Zone | Capacity |
|--|-----------------|
| Residential Character Commercial (C1) Zone | 6 |
| Mixed Use High Density (C4) Zone | 50 |
| Mixed Use Medium Density (C5) Zone | 50 |

Radial separation distances were included because no decision had been made about the need for this separation in the urban area.

1.4 Rural Zoning

Residential care facilities are permitted use within the following Zones:

| Zone | Capacity |
|---|-----------------|
| Agricultural (A1) Zone Rural (A2) Zone | 10 |
| Settlement Residential (S1) Zone | 6 |

No radial separation distances were included since the location of these facilities, primarily outside the RSA's, were located on lots that were large such that a separation distance was not warranted.

2.0 Dundas Zoning By-law No. 3581-86

A RCF is referred to as a "Group Home" in this By-law and is only permitted in two zones - the Low Density Residential (R4) Zone and Residential and Commercial Conversion (R.C.C.) Zone with a maximum capacity of 6 residents. It is defined as:

"GROUP HOME" means any supervised, community based group living arrangement, located in a fully-detached building occupied wholly for such use, by a maximum number of supervised residents, exclusive of staff, with social, legal, emotional or mental problems, that is developed for the well-being of its occupants through self-help and/or professional care, guidance, and supervision unavailable in the occupant's own family or in an independent situation, provided that:

- i) the occupants of the Group Home are referred to the Group Home by a hospital, court or government agency; or
- ii) such facility is government funded either wholly or in part, other than funding provided solely for capital purposes; or
- iii) the facility is regulated or supervised under any general or special act (Municipal, Provincial or Federal)."

The radial separation distance is 275 metres and the maximum capacity is 6 persons.

3.0 Flamborough Zoning By-Law No. 90-145-Z

Similar to Dundas, a RCF is considered a "Group Home" in this By-law and is subject to the following regulations:

"Group Home" shall mean a household located within a *single detached dwelling* in which 3 to 10 residents, excluding staff or receiving

household, live under responsible supervision consistent with the requirements of its residents and relevant Provincial guidelines. "

Group Home Regulations

A group home shall be permitted in any zone except any industrial zone subject to the following applicable provisions for the urban area:

- (a) the group home is licensed or approved under Provincial Statute;
- (b) the group home is located within a single detached dwelling containing a minimum of 20 square metres of gross floor area per person residing within the said dwelling unit;
- (d) in the Urban Area, no group home shall be located within 350 metres of any other group home;
- (e) when any conflict regarding the required separation distances specified (d) occurs, the more restrictive of the two distances shall be used;
- (f) all group homes shall be listed on a Municipal Register.

4.0 Glanbrook Zoning By-Law No. 464

Similar to Dundas and Flamborough, a RCF is considered a "Group Home" in this By-law and is only permitted within a single detached dwelling in one zone - the Residential Multiple "RM1" Zone. The radial separation distance is 1.6 kilometres, the minimum capacity is 3 persons, the maximum capacity is 6 persons and must be licensed by the appropriate Provincial Ministry having jurisdiction and registered with the Township of Glanbrook in accordance with Section 240 of the Municipal Act, being Chapter M.45 of the Revised Statutes of Ontario, 1990, as amended from time to time. It is defined as follows:

"GROUP HOME" means a licensed single housekeeping unit in a single detached dwelling in which three (3) to six (6) persons,

excluding supervisory staff or the receiving family, live under responsible supervision consistent with both the particular needs of its residents and the relevant Provincial guidelines."

5.0 Hamilton Zoning By-Law No. 6593

This By-law defines a RCF as follows:

"Residential Care Facility" means 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 district, exclusive of staff, residing on the premises because of social, emotional, mental or physical handicaps or problems or personal distress and that is developed for the well being of its residents through the provision of self-help, guidance, professional care and supervision not available in the residents own family, or in an independent living situation or if:

- (i) the resident was referred to the facility by hospital, court or government agency; or
- (ii) the facility is licensed, funded, approved or has a contract or agreement with the federal, provincial or municipal governments.

A residential care facility is not considered as an emergency shelter, lodging house, corrections residence, correctional facility or retirement home. "

It is permitted in the "B", "B-1", "B-2", "C", "R-4", "D", "DE", "DE-2" and "DE-3" Districts with a maximum capacity of 6 persons, and the "E", "E-1", "E-2", "E-3", "G", "G-2", "H", "I", "CR-1", "CR-2" and "CR-3" Districts with a maximum capacity of 20 persons, subject to the following radial separation distance requirements:

"8. (5) Except as provided in Subsection 6, every residential care facility

shall be situated on a lot having a minimum radial separation distance of 300.0 metres from the lot line to the lot line of any other lot occupied or as may be occupied by a residential care facility, emergency shelter, corrections residence or correctional facility. (01-143 - Deleted by 06-188) (07-107)

- (6) Where the radial separation distance from the lot line of an existing residential care facility is less than 300.0 metres to the lot line of any other lot occupied by a residential care facility, emergency shelter, corrections residence or correctional facility may be expanded or redeveloped to accommodate not more than the permitted number of residents. (01-143 – Deleted by 06-188) (07-107)"

Finally, there are certain areas of the City where a RCF is prohibited:

- "4. (8) No additional residential care facilities, retirement homes, emergency shelters, corrections residence and correctional facilities or expansions of existing residential care facilities, retirement homes, emergency shelters, corrections residence or correctional facilities shall be permitted in the areas identified on Schedule "O" of Zoning By-Law No. 6593 – Moratorium Areas for Residential Care Facilities, Retirement Homes, Emergency Shelters, Corrections Residence and Correctional Facilities. (01-143) (02-043)
19. (4) Notwithstanding any other provisions of this By-Law, any building or portion thereof existing on the date of the passing of this By-Law, located within Area "A" shown on Schedule "I" of Section 18A, may be converted to a residential use except for a Residential Care Facility or Short-Term Care Facility, provided that the ground floor is maintained for commercial use. (96-034)" (See Schedules attached in Appendix "A")

In 2007, Zoning By-law No. 6593 was modified to remove the radial separation distances for retirement homes (By-law 07-107).

6.0 Stoney Creek Zoning By-Law No. 3692-92

This By-law includes a definition of RCF:

"Residential Care Facility" Means a housekeeping unit within a detached building in which the maximum number of persons residing in the unit, exclusive of supervisory personnel, employees or their dependents, shall be as specified in the various zoning categories of this By-law. Such a unit shall be a facility that receives funding based on the number of persons residing in the unit, which funding may be from any source, and which funding is not for capital purposes. Such a unit shall be a facility that is supervised by on-site personnel. Such a unit shall not include the following:

- (a) A Community Resource Centre or a Correctional Institution as defined or designated under the Ministry of Correctional Services Act, R.S.O. 1990, c.M.22;
- (b) A place of open custody, a place of open temporary detention, a place of secure custody, a place of secure temporary detention or a place of temporary detention as defined under the Mental Health Act, R.S.O. 1990, c.M.7;
- (c) A Charitable Institution, a Hostel as defined under the Charitable Institutions Act, R.S.O. 1990, c.C.9;
- (d) A Nursing Home as defined under the Nursing Home Act, R.S.O. 1990, c.N.7;
- (e) A Home for the Aged as defined under the Homes for the Aged and Rest Homes Act, R.S.O. 1990, c.H.13;
- (f) A Domiciliary Hostel;
- (g) A Tent, Cabin or Recreational Vehicle;
- (h) A Hotel, Motel or Tourist Home;
- (i) A Foster Home;
- (j) A Group Home; or

(k) A Boarding House."

"Group Home - Means a housekeeping unit within a building, in which the maximum number of persons residing in the unit, exclusive of supervisory personnel, employees or their dependents, shall be as specified in the various zoning categories of this By-law and which unit shall be licenced pursuant to a Provincial Statute. Such a unit shall not include the following:

- (a) A Community Resource Centre or a Correctional Institution as defined or designated under the Ministry of Correctional Services Act, R.S.O. 1990, c.M.22;
- (b) A place of open custody, a place of open temporary detention, a place of secure custody, a place of secure temporary detention or a place of temporary detention as defined under the Mental Health Act, R.S.O. 1990, c.M.7.
- (c) A Charitable Institution or Hostel as defined under the Charitable Institutions Act, R.S.O. 1990, c.C.9;
- (d) A Nursing Home as defined under the Nursing Home Act, R.S.O. 1990, c.N.7;
- (e) A Home for the Aged as defined under the Homes for the Aged and Rest Homes Act, R.S.O. 1990, c.H.13;
- (f) A Residential Care facility;
- (g) A Domiciliary Hostel;
- (h) A Tent, Cabin, Trailer or a Mobile Home;
- (i) A Hotel, Motel or Tourist Home;
- (j) A Foster Home; or
- (k) A Boarding House.

These uses are permitted in any Residential Zones that permit a single detached dwelling, a duplex, a semi-detached dwelling or a triplex dwelling (8 zones permit these uses), subject to the following regulations:

"6.1.5 Residential Care Facilities, Group Homes Or Domiciliary Hostels

Where any residential zone permits a single detached dwelling, a duplex, a semi-detached dwelling or a triplex dwelling, such dwelling may be converted to a Group Home, a Residential Care Facility or a Domiciliary Hostel for a maximum of six (6) residents provided that:

- (a) The entire dwelling is so converted and wholly occupied by such use;
- (b) A lot containing such dwelling shall not be located within 800 metres of any other lot upon which is situated any other Group Home, Residential Care Facility or a Domiciliary Hostel;
- (c) Parking spaces shall be provided in accordance with the provisions of Section 4.10 with a maximum of two (2) parking spaces in the front yard; and
- (d) The dwelling complies with all regulations of the zone in which it is located."

Any single detached, duplex, semi-detached or triplex can be converted into a residential care facility or group home provided the entire building is converted to that single use.

Appendix "G"

1.0 Municipalities challenged on Human Rights

1.1 Toronto

"Group Home means premises used to provide supervised living accommodation, licensed or funded under Province of Ontario or Government of Canada legislation, for up to ten persons, exclusive of staff, living together in a single housekeeping unit because they require a supervised group living arrangement. [By-law: 0550-2014]

Residential Care Home means supervised living accommodation that may include associated support services, and:

- (A) is licensed or funded under Province of Ontario or Government of Canada legislation;
- (B) is for persons requiring semi-independent or supervised group living arrangements;
- (C) is for more than ten persons, exclusive of staff; and,
- (D) an apartment building used for the purpose of supportive housing or social housing is not a residential care home.

(1) Group Home or Residential Care Home - Use Restriction

A group home or a residential care home must occupy the entire building and may not be combined with any other use.

(2) Group Home - Type of Building in the Residential Zone Category

In the Residential Zone category, a group home may be in:

- (A) a building that was originally constructed as a detached house; and

- (B) a building that was originally constructed as a semi-detached house if:
- (i) the building is on a lot in the R zone; and
 - (ii) the group home occupies the entire building."

1.1.2 Smith Falls

"GROUP HOME, TYPE A: Means a single household unit in a dwelling, in which 3 to 10 residents (excluding staff or receiving family) live together under responsible supervision consistent with the requirements of its residents. The definition does not include residences for young offenders, adult offenders or boarding/rooming dwelling houses"

"Type A Group Homes shall be a permitted use in all zones in which a single detached dwelling is permitted as a principle use in accordance with the following provisions.

1. *Type A Group Homes* shall not be permitted in accessory single detached dwelling houses nor in accessory dwelling units.
2. *Type A Group Homes* may be permitted in single-detached dwellings and in both units of semi-detached and duplex dwellings, provided that both units are occupied by one group home operation and that the total number of residents (excluding staff or receiving family) in both units does not exceed ten."

1.1.3 Kitchener

"Correctional Group Home" means a residence licensed or funded under a federal or provincial statute for accommodation of three to ten persons, exclusive of staff, supervised by staff on a daily basis for

persons who have been placed on probation, released on parole or admitted for correctional purposes.

"Group Home" means a residence licensed or funded under a federal or provincial statute for the accommodation of three to ten persons, exclusive of staff, living under supervision in a single housekeeping unit and who, ~~by reason of their emotional, mental, social or physical condition or legal status,~~ require a group living arrangement for their well-being and shall not include a correctional group home." (Strikethrough indicates the removed wording)

"Residential Care Facility" means a building or part thereof occupied by three (3) or more persons, exclusive of staff, who are cared for on a temporary or permanent basis in a supervised group setting. This shall include, for example, a group home, correctional group home, crisis care facility, residence for socially disadvantaged persons or nursing home, but shall not include a lodging house, foster care home, hospital or a hospice with 10 patients or less."

1.1.4 Sarnia

The City continues to define Group Home and Residential Care Facility as follows:

"GROUP HOME" shall mean a dwelling unit operated as a single housekeeping unit accommodating, or having the facilities to accommodate, 5 to 10 residents (exclusive of staff) who, by reason of their emotional, mental, social, or physical condition require a group living arrangement under 24 hour responsible supervision consistent with the requirements of its residents, and the group home is either licensed or funded under Provincial or Federal statute. Any counseling or support services provided in the group home shall be limited to those required by the residents."

"RESIDENTIAL CARE FACILITY" means a family home, group care facility, or similar facility for **24** hour non-medical care of persons in need of personal services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual."

2.0 Other Municipalities

2.1 City of St. Catharines

In December 2013, the City of St. Catharines adopted a new Comprehensive Zoning By-law. The new By-law removed the minimum separation requirement which was previously in place. The new Zoning By-law also redefined group homes as "Special Needs Housing" which is now permitted in all dwelling types in all zones that permit a residential use.

The City noted that the changes were made because the application of an MDS, together with defining the use as Group Home, was believed to be discriminatory based on Ontario Human Rights.

"Special Needs Housing: means any housing, including dedicated facilities in whole or in part, that is used by people who have specific needs beyond economic needs including, but not limited to, needs such as mobility requirements or support functions required for daily living."

2.2 City of Burlington

The City of Burlington continues to maintain a separation distance of 400m for group homes of 6 or more residents. It was noted by City of Burlington staff that most of the facilities in Burlington have less than 6 residents and therefore they do not need special zoning or regulatory steps.

“Group Home: A single housekeeping unit supervised by staff on a daily basis which provides special care and treatment to persons for physical or mental deficiency, physical handicap or other such cause. A Group Home shall be funded, licensed, approved, or supervised by the Province of Ontario under a general or specific Act, for the accommodation of not less than 6 and not more than 8 residents, exclusive of staff. Where a Group Home is located outside the Urban Improvement Area boundary, the maximum number of residents permitted, exclusive of staff is 10. A Group Home may contain an office provided that the office is used only for the administration of the Group Home in which it is located.”

2.3 Town of Milton

The Town of Milton maintains a 500m minimum separation distance for group homes that was implemented in 2002. There are also locational and number of occupant requirements associated with group homes.

“GROUP HOME TYPE 1

Means a dwelling unit occupied by residents who live as a single housekeeping unit requiring specialized or group care, supervised on a daily basis, and which is licensed, approved or supervised, or funded by the Province of Ontario as:

- Home for Special Care, Homes for Special Care Act;
- Approved Home, Mental Hospitals Act;
- Children’s Residence, Child and Family Services Act;
- Approved Home, Developmental Services Act;
- A Facility, Developmental Services Act;
- Charitable Home for the Aged, Charitable Institutions Act; or,
- Home for the Aged, Homes for the Aged and Rest Homes Act.”

"GROUP HOME TYPE 2

Means a dwelling unit occupied by residents who live as a single housekeeping unit requiring specialized or group care, supervised on a daily basis, and which is licensed, approved or supervised, or funded by the Province of Ontario under any general or specialized Act and which shall be maintained and operated primarily for:

- Persons who require temporary care and transient or homeless persons; or
- Persons requiring treatment and rehabilitation for addiction to drugs or alcohol."

1.4 City of Windsor

When staff originally contacted the City of Windsor in early 2016, the City had a minimum separation distance requirement of 240 metres for group homes and residential care facilities. However, in light of the changes to the *Planning Act* and Provincial Policy Statement and the recent challenges made by the Human Rights Commission in other municipalities, the City of Windsor commenced a City initiated amendment to remove minimum distance separation requirements.

The minimum distance separation between Group homes was removed in September, 2016 via a housekeeping amendment. There was no discussion on the matter of group homes at the public meeting or at Council. The definitions remain the same.

The City's zoning definitions are below:

"Group Home" means a dwelling that is:

1. For the accommodation of six to ten persons, exclusive of staff;

2. For persons living under supervision in a single housekeeping unit and who require a group living arrangement for their well-being; and
3. Licensed or funded by the Federal, Provincial or Municipal government.

A lodging house or a residential care facility is not a group home.

"Residential Care Facility" means a dwelling that is:

1. For the accommodation of eleven or more persons, exclusive of staff;
2. For persons requiring supervised or assisted living arrangements; and
3. Licensed or funded by the Federal, Provincial or Municipal government.

A group home or a lodging house is not a residential care facility."

Appendix "G1"

Review of Municipal Approaches to OHRC-Dream Team Concerns on Residential Care Facilities

Below is a summary of the experience of the 4 municipalities targeted by the Dream Team.

1.0 City of Toronto

The City of Toronto investigated the human rights implications identified by a complaint lodged by the Dream Team prior to initiating amendments to its Zoning requirements. The complaint alleged that the separation distance requirement discriminates against persons with disabilities contrary to the Code. In response to the legal challenge, the City of Toronto retained a land use planning expert to study the appropriateness of Toronto's group home regulations. According to the City of Toronto's expert report¹, separation distances need to be appropriately rationalized based on the findings of a thorough study of the land use component of facilities, activities and functions associated with the specified land use and their impacts along with public consultation. Therefore, the municipality's zoning requirements should focus on the use and function of the building on the land and not on the persons using the building. Furthermore, the Supreme Court of Canada states that planning requirements must be based on legitimate goals, adopted in good faith, necessary to meet the goals, inclusive and accommodate differences to the point of undue hardship.

This review determined there was no planning rationale to justify the required minimum separation distance between group homes and recommended, among other things, that the separation distance requirement be removed.

In June, 2014 the City of Toronto amended its Zoning By-law to amend its definitions and to remove separation distances for group homes. The By-law

¹ Agrawal, Sandeep K., *Opinion of the provisions of Group Homes in the City-wide Zoning By-law of the City of Toronto*, attached to Report on Human Rights Challenges to Group Home Zoning regulations to the Planning and Growth Management Committee (Toronto) (February 28, 2013).

was approved without appeal. The Dream Team agreed to drop its human rights complaint against the City now that the amendments have been made.

2.0 Smiths Falls

Prior to the challenge by the Dream Team in 2010, Smiths Falls Zoning By-law restricted the total number of mentally handicapped residents to a maximum of 36 residents in all such Type A Group Homes in the community. In addition, a minimum distance separation of 300 metres between two Type A Group Homes was required.

After negotiations with the OHRC and the Dream Team, the Town agreed to amend their Zoning definition and requirements in October, 2014. Section 4.12, Group Homes, of By-law 6080-94, was amended to remove provisions for minimum separation distances. The definition does not contain any references (social, emotional or physically challenged) for group living arrangement.

3.0 City of Kitchener

The City of Kitchener put forward a recommendation to its Community and Infrastructure Services Committee to commence a City-Initiated Zone Change for the minimum distance separation regulation and definitions for group homes in June of 2012. The report outlined the mediation with the Dream Team and the Human Rights Legal Support Centre and the general agreement struck to initiate the process to amend the Zoning By-law. The June report was seeking direction from City Council to commence this process and undertake the necessary public consultation.

In summary, the following zoning by-law amendments were reviewed:

- add a definition of "correctional group home";
- replace section 5.17 (general provisions) with a similar minimum distance separation applying to correctional group homes only;
- permit group homes in the R-1 and M-1 zones; and,

- amend the definition of “group home” to eliminate references to protected groups.

Following the proper planning review and public consultation process, the City of Kitchener amended their Zoning By-law definition to remove any language deemed discriminatory in the definition. A definition of ‘correctional group home’ was added to the Zoning By-law to differentiate between the group homes. “Group homes” were added to the permitted uses of the R-1 and M-1 zones where residential uses were permitted but did not explicitly state residential care facilities. Group homes are no longer subject to a minimum separation distance. Correctional Group Homes are required to meet the 400m separation distance.

The amendments were approved by Council in September, 2012.

4.0 City of Sarnia

The City of Sarnia initiated a review of group homes in December 2009, prior to the complaint lodged by the Dream Team in February 2010. Based on information from the Sarnia staff report, the advocacy group felt that the regulations for group homes in Sarnia were discriminatory because they restrict the location of group homes to arterial and collector streets, group homes must be separated from other group homes by 200m (4km in Rural areas), and group homes are not permitted as-of-right in any area of the City.

Through a thorough review and investigation of the zoning requirements, it was determined that groups homes should be considered as residential uses and therefore should be treated as such. The rationale in the staff report indicates that the group home provider is the best person to determine the locational needs and that separation distances have no degree of certainty as the City does not maintain a record of group homes. For higher density, more intensive uses such as shelters, nursing homes and residential care facilities, it was recommended to keep the locational and separation requirements.

The City of Sarnia amended their Official Plan and Zoning By-law to remove the separation distance requirements for group homes. In addition, it was determined group homes were not required to be in a single detached dwelling and could be located in any dwelling unit where dwellings are permitted subject to the zone requirements. The findings also recommended that special parking requirements and locational requirements should not be applied to group homes as they function as residential uses.

For higher density and more intensive special residential uses that are more appropriately characterized as public service facilities such as shelters or nursing homes, it was recommended that the official plan policies which deal with locating on collector or arterial streets and minimum separation distances, be maintained.

The City amended its Zoning By-law in 2010 to remove the minimum separation distance; however, descriptive wording of persons requiring the facilities remains in the definition. In recent correspondence with the City, it was noted that the definition will be reviewed and potentially amended through the next comprehensive review of the Zoning By-law.

Appendix "H"

Options for Change - Definitions

The purpose of a definition is to describe a specific use and to permit it in certain areas of the City. Generally, a definition does not include regulations unless it is necessary to differentiate it from a similar use.

Option 1: Apply the existing definition in Zoning By-law No. No. 05-200 to all new residential zones.

The former municipal Zoning By-laws and Zoning By-law No. 05-200 use different nomenclature and descriptions to identify the same use. Residential care facility is the preferred definition in that it also correlates to the City's licencing by-law.

| Advantages | Disadvantages |
|--|--|
| It creates consistent terminology and understanding of the use throughout the City. | It does not address the Human Rights issue allowing people to choose where they live without being identified as needing care. |
| This definition has been in place for many years and does not result in interpretation issues as to the use. | |

Option 2: Amend the definition in Zoning By-law No. 05-200 to remove references to why someone resides in a facility.

The definition is modified by deleting (strikeouts) and adding new words (italics).

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.

| Advantages | Disadvantages |
|--|--|
| It creates a consistent terminology and understanding of the use. | It maintains the capacity in the definition opposed to the Zone. |
| It does not change the intent of the land use to allow for group living arrangements with supervision. | |
| Removes references to any disability or characteristics of the residents ('people zoning') and deals with the land use. This concern was raised by ORHC in other municipalities. | |

Proposed definition: **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 and which residential setting is developed for the well-being of its residents through *the provision of supports/services* 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 not include an emergency shelter, lodging house, corrections residence or correctional facility.

Option 3: Amend the definition to remove references to the number of residents, why people live in the facility and to generalize the provision of supports and services .

The definition is modified by deleting (strikeouts) and adding new words (italics).

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.

| Advantages | Disadvantages |
|---|--|
| It removes all regulations and places the regulations (i.e. capacity) within the zone itself. The maximum capacity per zone is established in each zone, where individual zones have a range. | City staff and the public have become accustomed to understanding the definition includes a minimum number of residents. |
| Definitions should not include regulations but only define the use. | |
| Removes references to any disability or characteristics of the residents ('people zoning') and deals with the land use. This concern was raised by OHRC in other municipalities. | |

Proposed definition: **Residential Care Facility** Shall mean a group living arrangement, within a fully detached residential building occupied wholly by supervised residents, exclusive of staff, residing on the premises and which residential setting is developed for the well-being of its residents through *the provision of supports/services* 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 not include an emergency shelter, lodging house, corrections residence or correctional facility.

Preliminary Recommendations

Based on the review of the various options, including the advantages and disadvantages, the preferred approach is:

| Proposed Regulations | Option(s) |
|--|-----------|
| <p>Residential Care Facility Shall mean a group living arrangement, within a fully detached residential building occupied wholly by supervised residents exclusive of staff, residing on the premises and which residential setting is developed for the well-being of its residents through <i>the provision of supports/services</i> 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 not include an emergency shelter, lodging house, corrections residence or correctional facility.</p> | <p>3</p> |

This proposed definition removes the regulations within the definition and places them within the zone as well as removes any reference to the disability or characteristics of a person living in a facility.

Appendix "H1"

Options for Change: Minimum and Maximum Capacities

There are three different approaches to regulate capacity (number of residents) within the Zoning By-law:

- The minimum and maximum capacities are included within the definition; or,
- The minimum capacity is contained within the definition and the maximum capacity in an individual zone; or,
- Minimum and maximum capacities are included in the Zone.

Assuming maximum capacities are included within individual zones, then options should be considered for regulating the size of a residential care facility based on the intensity of the residential zone.

1.0 Minimum and/or Maximum Capacity (By-law Format)

Option 1a: Establish the Minimum and Maximum Capacities within the Definition

| Advantages | Disadvantages |
|--|---|
| Without reading the Zoning By-law regulations, it would be easy to determine how small or large a facility can be. | It establishes a maximum number of residents by zone without considering the type of residential development in the surrounding area. |
| | It is an inconsistent approach and it is not a good Zoning By-law practice to establish regulations within a definition. |
| | This approach does not allow for a maximum to vary by zone. |

Option 1b: Establish the Minimum Capacity in the Definition and the Maximum Capacities within the Individual Zones

| Advantages | Disadvantages |
|---|---|
| It allows for the capacities to vary by zone. | The definition and zone regulations would have to be read to determine how small or large a facility can be. |
| Many of the current by-laws establish a minimum capacity in the definition. | Definitions describe the use and no regulations should be contained within it. For consistency in by-law format all regulations should be included in the zone or general provisions section. |
| | The format is inconsistent when the minimum is established in the definition and the maximum is within the zone. In reading the by-law it may be interpreted as a zone having no maximum. |

Option 1c: Minimum and Maximum Capacities Included within the Individual Zones

| Advantages | Disadvantages |
|--|---|
| Definitions describe the use and no regulations should be contained within it. For consistency in by-law format, all regulations should be included in the zone or general | The zone regulations would have to be read to determine how small or large a facility can be. |

| Advantages | Disadvantages |
|---|--|
| provisions section. | |
| It allows for the capacities to vary by zone. | Modifications to all zones will be required in Zoning By-law No. 05-200. |

2.0 Capacity Included within each Zone

As noted in Appendix "F1", Zoning By-law No. 05-200 and the other former municipal Zoning By-laws establish different regulations as well as the type of residential zones in which the use is permitted.

Option 2a – Allow the Use in Low Density Zones with a Capacity of Minimum 4 and a Maximum of 6 residents

Uses within low density zones usually include single detached, semi-detached, duplex, triplexes and some forms of townhouse dwellings. Since this use is to be contained within an entire building, the most likely scenario is the use would locate within a single detached dwelling or a duplex and triplex which could wholly be converted to a RCF.

| Advantages | Disadvantages |
|--|--|
| The Urban Hamilton Official Plan policies allow residential care facilities to locate in any neighbourhood (residential) designation, subject to the Zoning By-law requirements. | There may be some buildings that can physically accommodate more than 6 residents. |
| 6 people could reasonably live in a single detached dwelling. | |
| 6 residents has been the standard for the majority of zones that permit this use. | |

Option 2b – Allow Residential Care Facilities in Medium Density Zones (including the Community Institutional (I2) Zone) with a Minimum Capacity of 4 residents and a Maximum of 24 Residents

As noted above, this use must be wholly contained within a building. In circumstances where a larger number of residents are intended, a multi storey building would be required. The building form for the facility would be determined on the basis of the regulations for a particular zone (i.e. maximum heights, minimum setbacks, parking, etc.).

It should be noted that several (I2) zoned sites are located within the interior of neighbourhoods where there is a greater interface with low density residential uses. The Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and the Commercial and Mixed Use Medium Density (C5) Zones are located along major transit routes and arterial roads and therefore should retain their capacity for 50 residents.

| Advantages | Disadvantages |
|--|---|
| The Urban Hamilton Official Plan policies allow residential care facilities to locate in any neighbourhood (residential) designation, subject to the Zoning By-law requirements. | There may be some sites/buildings that can physically accommodate more than 20 or 50 residents. |
| It provides opportunities for different areas of the city to accommodate RCF's. | |
| A capacity of 24 aligns with the residential care facility by-law (Schedule 20). | |
| The built form in medium density areas includes multi-storey dwellings. A residential care facility of up to 24 residents could be | |

| Advantages | Disadvantages |
|--|---------------|
| <p>accommodated in a built form similar to the other residential development.</p> | |
| <p>The Community Institutional (I2) Zone has a current capacity of 50 residents. However, the majority of the sites are located within the interior of the neighbourhood. These sites can only be redeveloped for single and semi-detached dwellings. Therefore a lower built form may be more appropriate.</p> | |
| <p>Depending on the built form and densities within different medium density zones, a capacity of either 20 or 50 residents may be appropriate.</p> <p>The Transit Oriented Corridor (TOC1) and the Mixed Use Medium Density Zones allow for a residential care facility of 50 residents while the Transit Oriented Corridor (TOC3) Zone allows 20 residents. These capacities were based on the potential built form in the area.</p> | |

Option 2c-1 – Allow Residential Care Facilities in High Density Zones with a Minimum Capacity of 4 Residents and a Maximum of 50 Residents

| Advantages | Disadvantages |
|--|--|
| The Urban Hamilton Official Plan policies allow residential care facilities to locate in any neighbourhood (residential) designation, subject to the Zoning By-law requirements. | There may be some buildings that can physically accommodate more than 50 residents or less than 4 residents. |
| The built form in higher density areas includes multi-storey dwellings. A residential care facility of up to 50 residents could be accommodated in a built form similar to the permitted uses. | |
| High density buildings are generally located along arterials roads which are more accessible to public transit, shopping and other amenities. | |
| It provides opportunities for different areas of the city to accommodate RCFs. | |
| Establishing a higher minimum number of residents will allow for a built form that is similar to other residential developments in high density zones. | |

Option 2c-2 – Allow Residential Care Facilities in High Density Zones with a Capacity of Minimum 15 residents and a Maximum of 50 residents

| Advantages | Disadvantages |
|--|---|
| The Urban Hamilton Official Plan policies allow residential care facilities to locate in any neighbourhood (residential) designation, subject to the Zoning By-law requirements. | There may be some buildings that can physically accommodate more than 50 residents or less than 15 residents. |
| The built form and higher density areas includes multi-storey dwellings. Residential buildings will generally be greater than 8 storeys and 100 units. If the units were bedrooms that would equate to 100 persons. A residential care facility of up to 50 residents could be accommodated in a built form similar to the permitted uses. | A higher minimum capacity may be redundant as the built form requires multiple dwellings. |
| It provides opportunities for different areas of the city to accommodate RCF's. | |
| Establishing a higher minimum number of residents will allow for a built form that is similar to other residential developments in high density zones. | |

Option 2c-3 – Allow Residential Care Facilities in High Density Zones (including the Mixed Use High Density (C4) Zone) with a capacity of Minimum 15 residents and No Maximum Capacity

| Advantages | Disadvantages |
|---|--|
| The Urban Hamilton Official Plan policies allow residential care facilities to locate in any neighbourhood (residential) designation, subject to the Zoning By-law requirements. | Based on built form, there may be some buildings that can physically accommodate less than 15 residents. |
| The built form in higher density areas includes multi-storey dwellings. A residential care facility with no fixed capacity could be accommodated in a built form similar to the permitted uses. | A higher minimum capacity may not be necessary as the built form requires multiple dwellings. |
| High density buildings are generally located along arterial roads which generally are more accessible to public transit, shopping and other amenities. | |
| It provides opportunities for different areas of the city to accommodate RCFs. | |
| By establishing a higher minimum number of residents will allow for a built form that is similar to other residential developments in high density zones. | |
| It allows greater flexibility if the building can accommodate more than 50 residents without the need | |

| Advantages | Disadvantages |
|---|---------------|
| for a variance. | |
| The Mixed Use High Density (C4) Zone allows for up to 12 storeys so such a large building could accommodate more than 50 residents. | |

3.0 Preliminary Recommendations

Based on the review of the various options, including the advantages and disadvantages, the preferred approach is:

| Proposed Regulations | Option(s) |
|---|------------|
| Low Density Zones Minimum capacity 4 residents Maximum capacity 6 residents | 1c and 2a |
| Medium Density Zones Minimum capacity 4 residents Maximum capacity 24 residents, depending on the density and built form within the zone | 1c and 2b |
| High Density Zones Minimum capacity 15 residents Maximum capacity no maximum | 1c and 2c3 |

Appendix "H2"

Options for Change: Radial Separation Distance

The radial separation distance refers to the requirement in the Zoning By-law that requires certain housing types (i.e. residential care facilities) to be separated a distance (i.e. 300 m) from each other.

Option 1: Eliminate Radial Separation Distance

| Advantages | Disadvantages |
|---|---|
| It removes barriers for housing options. | It may create a strain on availability of community services because of concentration in one specific area. |
| It creates the opportunity for residents requiring supports to choose the community they prefer to live in. | It reduces the potential for dispersion of these facilities throughout the City. |
| It will provide for a consistent approach within Zoning By-law No. 05-200 since the rural zones have no separation distances. | It may create concerns regarding concentrations in neighbourhoods. |
| It follows a similar approach of other municipalities (i.e. Toronto, Smith Falls, Kitchener, Sarnia, St. Catharines, and Windsor) that have removed the radial separation distance. | Maintaining an accurate listing of residential care facilities is difficult since not all facilities require a municipal licence nor a building permit. |
| It addresses the concerns expressed by OHRC. | |
| Potential land use impacts, such as parking; size of a | |

| Advantages | Disadvantages |
|---|---------------|
| facility, are addressed in the Zoning By-law. | |
| The number of new RCFs is small because the housing with supports model is shifting to small independent apartments, with on-site supports (i.e. counselling, nurse, 24 on-call services) rather than congregate living. A recent example is Indwells' Stratherne suites. | |

Option 2: Retain the 300 metre Radial Separation Distance for Zoning By-law No. 05-200 and Apply this Distance Separation to Future Residential Zones in the Urban Area

Many of the former Zoning By-laws and Zoning By-law No. 05-200 have radial separation distance requirements ranging from 275 m to 1,600m. The 300 m radial separation distance has been established in 05-200, except for the rural area, where no radial separation distance applies.

| Advantages | Disadvantages |
|---|--|
| It eliminates the possibility of adding a new facility in areas of higher concentration (without a <i>Planning Act</i> change). | It will result in an inconsistent approach in Zoning By-law 05-200 since there are no separation distances for RCFs for the rural zones. |
| It requires the dispersion of any new facilities throughout the City. | It does not remove barriers for housing options nor does it address the concerns of the OHRC. |

| Advantages | Disadvantages |
|------------|---|
| | Accurate lists of residential care facilities are difficult to maintain since not all facilities require a municipal licence. |

Option 3: Delete the Moratorium Areas

The two moratorium areas are located:

- 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.

| Advantages | Disadvantages |
|--|---|
| It removes barriers for housing options. | It may create a strain on availability of community services because of concentration in one specific area. |
| It creates the opportunity for residents requiring supports to choose the community they prefer to live in. | It removes the potential for dispersion of these facilities throughout the City. |
| Potential land use impacts such parking, size of a facility, is addressed in the Zoning By-law. | It may create concerns regarding concentrations in neighbourhoods. |
| The number of new RCFs is small because the housing with supports model is shifting to small independent apartments, with on-site supports (i.e. | |

| Advantages | Disadvantages |
|--|---------------|
| counselling, nurse, 24 on-call services) rather than congregate living. A recent example is Indwells' Stratherne suites. | |
| It addresses the concerns expressed by OHRC. | |

Option 4: Retain the Moratorium Areas

| Advantages | Disadvantages |
|---|---|
| It requires the dispersion of these facilities throughout the City. | It may create a strain on availability of community services because of concentration in one specific area. |
| It eliminates the possibility of adding a new facility in areas of higher concentration (without a <i>Planning Act</i> change). | It does not remove barriers for housing options nor does it address the concern of the OHRC. |

Preliminary Recommendations

Based on the review of the various options, including the advantages and disadvantages, the Preliminary approach is:

| Proposed Regulations | Option(s) |
|---|-----------|
| Delete the radial separation distance from 05-200 | 1 |
| Delete Moratorium areas | 3 |

Appendix "H3"

Options for Change: Counselling Services

Certain agencies operate multiple RCF's and provide counselling for its residents. For financial or other operational reasons, they would prefer to consolidate the counselling in one location. RCF's are only permitted to provide counselling for their residents. It should be noted that not all residential care facilities provide counselling for its residents.

Counselling services that cater to people who live outside the residential care facility is considered as a social service establishment; a counselling service for residents within the building is considered as an accessory use.

Option 1: Allow RCF's to Operate a Social Service Establishment in conjunction with a Residential Care Facility in a Community Institutional (I2), Major Institutional (I3), Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and the Mixed Use Medium Density (C5) Zones.

| Advantages | Disadvantages |
|---|---|
| A Social Service Establishment is a permitted use in the (I2), (I3), (TOC 1) and (C5) zones as separate uses. | Clients within the facility may be uncomfortable with additional people coming to the facility. |
| Restricting the zones where this use can locate addresses the difference in the intensity of the land use. | |
| It allows agencies to have integrated services in appropriate locations for these services. | . |
| The (I2) and (I3) zones are generally located in close proximity to collector and arterial roads and public transit. However, there are many (I2) sites located within the interior of the neighbourhood. | |

| Advantages | Disadvantages |
|--|---------------|
| It provides direction to a provider/agency when they wish to develop an integrated model of service. | |

Option 2: Allow RCF's to Operate a Social Service Establishment in conjunction with a Residential Care Facility in a Major Institutional (I3), Transit Oriented Corridor-Mixed Use Medium Zone (TOC1) and the Mixed Use Medium Density (C5) Zones.

| Advantages | Disadvantages |
|--|---|
| A Social Service Establishment is a permitted use in the (I2), (I3), (TOC 1) and (C5) zones as separate uses. | Clients within the facility may be uncomfortable with additional people coming to the facility. |
| By restricting the zones in which this use can locate, it addresses the difference in the intensity of the land use. | The (I2) zone is proposed to have a lower maximum capacity than the (I3), (TOC1) and (C5) Zones since they are more likely to be located in the interior of neighbourhoods. |
| It allows agencies to have integrated services in appropriate locations for these services. | |
| The (I3) zone is generally located in close proximity to collector and arterial roads and public transit | |
| It provides direction to a provider/agency when they wish to develop an integrated model of service. | |

Option 3: No changes to the by-law

| Advantages | Disadvantages |
|--|--|
| The request for an integrated model is not common. | Applications to amend the zoning by-law will be required should a provider wish to have counselling services |
| | It does not provide direction to a provider/agency when they wish to develop an integrated model of service. |

Preliminary Recommendation

Based on the review of the various options, including the advantages and disadvantages, the preferred approach is Option 2.