



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	December 3, 2019
SUBJECT/REPORT NO:	Temporary Use By-law to amend certain regulations in Section 19 – Residential Conversion in City of Hamilton Zoning By-law No. 6593 (PED19176(a)) (Wards 1, 8, and Part of 14)
WARD(S) AFFECTED:	Wards 1, 8, and Part of 14
PREPARED BY:	Timothy Lee (905) 546-2424 Ext. 1249
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION(S)

That Report PED19176(a) (City Initiative CI-19-D – Amendments to Section 19 – Residential Conversion for Wards 1, 8, and part of 14) to establish a Temporary Use By-law, by amending specific provisions of Section 19 – Residential Conversion regulations in City of Hamilton Zoning By-law No. 6593 with respect to lot area, unit size and parking (Ward 1 east of Highway 403 only), to provide for alternative zoning by-law standards on a temporary basis for three years to facilitate the creation of an accessory dwelling in single detached and two family dwellings, as part of the on-going Low Density Rental Housing Licensing Pilot Project and Zoning By-law Reform project, applicable to Wards 1, 8, and portions of 14, be **APPROVED** on the following basis:

- (a) That the draft By-law, attached as Appendix “A” to Report PED19176(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (b) That the proposed modifications in zoning is consistent with the Provincial Policy Statement (2014), conforms to A Place to Grow (2019) and complies with the Urban Hamilton Official Plan;

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- (c) That, in the event that updated Secondary suite regulations in Zoning By-law No. 05-200, applicable to the pilot project area, are not in force and effect, then staff report back on the effectiveness of the temporary use by-law in July, 2022, being 30 months after adoption of the By-law and recommendations on whether to further extend the by-law, or make the changes permanent or cease the pilot project.

EXECUTIVE SUMMARY

This Report is a follow up report to the original staff report that was brought forward to the September 17, 2019 Planning Committee and considered at the October 1, 2019 Planning Committee [(See Appendix “B” of PED19176(a))]. A summary of comments raised by delegates and Committee members during the Public Meeting and is presented below. The issues/questions are:

- Should the former Ward 8 (now portions of Ward 14) be added to the draft Temporary Use By-law? (See Section 1 – *Page 4*)
- Rather than a Temporary Use by-law, should the changes to the Section 19 Zoning By-law regulations be permanent instead of temporary to provide certainty for homeowners? (Section 2 – *Page 5*)
- How is parking affected when each dwelling unit has several habitable rooms (e.g. bedrooms)? (Section 3 – *Page 5*)
- Should there be a minimum size or bedroom requirement for the accessory dwelling? Will excessively small units affect the liveability of the units? (Section 4 – *Page 6*)
- Should there be a limit to how large the accessory dwelling unit should be constructed to avoid the creation of large accessory dwelling units with multiple number of rooms combined with the principle unit containing multiple bedrooms? (Section 5 – *Page 7*)
- Should more than one accessory dwelling unit be permitted (e.g. two accessory dwelling units) within existing buildings since some existing properties have been converted illegally to have more than one accessory dwelling unit? (Section 6 – *Page 8*)

Responses to each question is found under the Analysis and Recommendations section of Report PED19176(a).

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Based on a review and assessment of the feedback received, staff are not recommending any changes to the original proposed Temporary Use By-law presented with the exception of expanding the limits of the pilot project to now include a portion of Ward 14 that reflect the former Ward 8 boundary into the draft By-law (See Schedule “A” of Appendix “A” to Report PED19176).

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Subsection 39 of the *Planning Act* allows a municipality to pass Temporary Use By-law for a 3-year period. An extension of up to another 3 years may be approved. There are no *Planning Act* restrictions on the number of times a Temporary Use By-law is granted an extension.

Subsection 34(19.1) of the *Planning Act* restricts appeals of any by-law passed under Section 34 relating to second dwelling units provided the Official Plans contain policies on secondary dwelling units. Both the UHOP and City of Hamilton Official Plan contain such policies. A Temporary Use by-law is passed under Subsection 34 and therefore no appeals of the by-law are permitted under the Planning Act.

A Public Meeting was previously scheduled on the September 17, 2019 Planning Committee affecting Wards 1 and 8 only but the matter was deferred to the October 1, 2019 Planning Committee to deliberate on the proposed Temporary Use By-law.

A Notice of Public Meeting was posted in the Hamilton Spectator on November 15, 2019 for only the Hamilton portion of Ward 14 that reflects the former Ward 8 boundary. A Public Meeting is being held at the December 3, 2019 Planning Committee to ensure residents in Ward 14 affected by the revised Temporary Use By-law have an opportunity to provide feedback on the proposed By-law.

HISTORICAL BACKGROUND

Introduction of the Draft Temporary Use By-law in the October 1, 2019 Planning Committee

A Public Meeting was scheduled on September 17, 2019 but was deferred to the October 1, 2019 Planning.

Report PED19176 provided rationale for the proposed amendments to specific regulations in Section 19 – Residential Conversion in Hamilton Zoning By-law No. 6593. The draft By-law originally covered only Wards 1 and 8 to align with the Rental Housing Licensing Pilot Project study area. The draft By-law has since been revised to include Ward 14 but only to the extent of former City of Hamilton.

A summary of the comments received at the Planning Committee and the responses are contained in the Analysis and Rationale for Recommendations Section of this Report.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed Temporary Use By-law will serve as a bridge between the existing in-effect regulations and future Second Dwelling Unit regulations to be added to Hamilton Zoning By-law No. 05-200. The proposed Temporary Use By-law is consistent with the Provincial Policy Statement 2014 and conforms to the Growth Plan for the Greater Golden Horseshoe (A Place to Grow, 2019). The draft By-law also conforms to the Urban Hamilton Official Plan (UHOP) and the former City of Hamilton Official Plan as it provides additional housing opportunities.

For more information on Policy Implications and Legislative Requirements of the proposed Temporary Use By-law, please refer to PED19176 (Appendix “B” to Report PED19176(a)).

RELEVANT CONSULTATION

The following Sections and Departments were consulted:

Licensing and By-law Services, Planning and Economic Development Department

Investment In Affordable Housing Section, Healthy and Safe Communities Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

A response to comments and feedback from the October 1, 2019 Planning Committee is presented below. Report PED19176 is attached as Appendix “B” to PED19176(a))

and it provides more information on the nature of the proposed Temporary Use By-law, and rationale for each proposed amendment.

In summary, the only revisions made to the Temporary Use By-law are to add the former Hamilton portion of Ward 14.

1.0 Adding the Hamilton Portion of Ward 14 to the Temporary Use By-law

Issue:

The former Ward 8 boundary (stretching from the Ancaster/Hamilton border to Garth Street, and from the Niagara Escarpment to the Glanbrook/Hamilton border) should be added to the Pilot Project. The original intention was to ensure the entire rental housing market area catering to Mohawk College students was captured in the Pilot Project.

Response:

The proposed Temporary Use By-law has been revised and now includes portions of Ward 14 from the Ancaster/Hamilton former municipal border to Garth Street, and from the Niagara Escarpment to the southerly Ward boundary (See Schedule “A” of Appendix “A” in Report 19176(a)) which was the original intent of the Licensing By-law Pilot Project area.

However, as the original draft Temporary Use By-law only included lands in Wards 1 and 8, a Notice of Public Meeting and Statutory Public Meeting, as required by the *Planning Act*, for the former Hamilton portions of Ward 14 is necessary. Notice was given in the Hamilton Spectator on Friday, November 15, 2019.

2.0 Making the By-law Permanent and not Temporary

Issue:

A concern was raised that the proposed By-law is temporary and was not a permanent amendment to the regulations. The temporary nature of the By-law may cause some uncertainty whether the By-law would be extended, or what happens to properties that have met the regulations under the pilot project but the Zoning By-law 05-200 regulations are different. Homeowners and investors may question the need to become compliant to zoning and Pilot Project due to the uncertainty.

Response:

The proposed By-law is a response by the rental housing industry to provide relief to certain regulations in conjunction with the Licensing Pilot Project, as opposed to a staff-initiated Zoning By-law. Further the proposed Temporary Use By-law is intended to serve as a bridge between providing relief to existing regulations in an in-effect Zoning By-law, and future regulations for Second Dwelling Units in Hamilton Zoning By-law No. 05-200.

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In the event the Zoning regulations in the Temporary Use By-law are not carried forward into Zoning By-law No. 05-200, a Special Exception could be created for each property that received a Building Permit during the Pilot Project to create and/or legalize an accessory unit. However, if the same regulations as the Temporary Use By-law are implemented in Zoning By-law 05-200 or if the new Zoning By-law 05-200 regulations are less restrictive than the Temporary Use By-law provisions, then a Special Exception will not be required.

However, as per Recommendation (c) to this Report, should the new Residential Zones in Hamilton Zoning By-law No. 05-200 not be in effect upon the expiration date of the Temporary Use By-law, there is the option to extend the period by another three years.

3.0 Parking Requirements for Dwellings containing numerous Bedrooms

Issue:

Under the scenario where an addition or renovation to the basement results in numerous bedrooms being constructed, should the number of required parking space be more than two spaces (one for each dwelling unit)? What happens when there are many bedrooms (e.g. more than 5 or 6)?

Response:

Required parking is identified Section 18A(1) of Hamilton Zoning By-law No. 6593. Currently, a single detached dwelling with 8 habitable rooms or less requires two parking spaces which can be parked in tandem.

A single detached dwelling becomes a converted single detached dwelling when an accessory dwelling is constructed. Two parking spaces are required for a converted dwelling. However, vehicles cannot be parked in tandem and must be parked side by side. Two parking spaces are required regardless of how many bedrooms are in each dwelling unit.

No amendments are proposed for parking requirements in Wards 8 and 14 (See Schedule “B” in Appendix “A” of Report PED19176(a)) recognizing the need for parking spaces for the main dwelling and the accessory dwelling.

4.0 Minimum Floor Area Size Requirements for an Accessory Dwelling Unit

Issue:

Would the accessory dwelling units be too small despite minimum unit size requirements under the Ontario Building Code (OBC)?

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Response:

The proposed Temporary Use By-law removes the minimum 65 square metres floor area requirement for both the principal dwelling and accessory dwelling. Removing the minimum requirement is a response by homeowners and affordable housing groups that a minimum floor area is a barrier to creating/legalizing accessory units.

A scan of neighbouring municipal Zoning By-laws reveals that only the Cities of London and Windsor have a minimum floor area requirement (25 and 40 square metres respectively). Other municipalities do not include minimum floor area requirements and instead rely on the OBC for minimum floor size requirements. It is noted that all of these By-laws pre-date Bill 108 and as such these provisions will be required to be reviewed as part of the mandatory Official Plan and Zoning By-law review required by the *Planning Act*.

Minimum Area Requirements	Municipalities
No Minimum Requirement	Guelph, Kitchener, Kingston, Mississauga, Oshawa, Ottawa, Waterloo
Minimum 25 square metres per dwelling unit	London
Minimum 40 square metres per dwelling unit	Windsor

The Building Code sets out minimum room sizes in dwelling units and is dependent on whether the rooms are separated by walls or open concept. For a combined living, dining, kitchen, and in a bachelor unit, the minimum size is 13.5 square metres (145 square feet), not including the bathroom. Regardless of the unit size, in accordance with the Zoning By-law provisions, only one additional dwelling unit can be legally added.

Based on the foregoing, minimum floor area requirements are not contemplated in the draft Temporary Use By-law and no changes to the Temporary Use by-law are proposed.

5.0 Is there a limit to how large an Accessory Dwelling can be? Can you limit the size by bedroom count?

Issue:

The number of bedrooms that can be accommodated in a dwelling unit was identified as a concern in that dwellings with multiple bedrooms above and beyond what is traditionally provided (i.e. 3 or 4 bedrooms in a detached dwelling) and correspondingly could the number of bedrooms in an accessory dwelling be limited.

Response:

Section 19 – Residential Conversion in Hamilton Zoning By-law No. 6593 does not include a regulation limiting the maximum floor area of an accessory dwelling.

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A scan of municipal Zoning By-laws reveals the maximum gross floor area generally ranges from 40% to 50% which was intended to ensure that the second dwelling unit is subservient to the principal dwelling. By limiting the floor area then the number of bedrooms would be limited. None of the municipal Zoning By-laws use the number of bedrooms as a measurement of how big an accessory dwelling unit may be.

Municipality	Maximum Percentage Floor Area
Guelph	45% of the total Floor Area of the Building and shall not exceed a maximum of 80 square metres in Floor Area, whichever is lesser.
Kitchener	(Not mentioned)
Kingston	40% of the gross floor area of the principal dwelling unit or 90.0 square metres, whichever is lesser;
London	40% of the combined total gross floor area of the primary dwelling unit and the secondary dwelling unit.
Mississauga	50% of the Gross Floor Area of the dwelling within which it is located.
Oshawa	(Not mentioned)
Ottawa	40% of the gross floor of its principal dwelling unit. If located in a basement, it may occupy the whole of the basement.
Waterloo	40% of the Building Floor Area of the building.
Windsor	40% of the total Gross Floor Area or 100 square metres, whichever is lesser.

Staff are not recommending any restriction on the maximum gross floor area or the number of rooms of an accessory dwelling unit in the proposed Temporary Use By-law given that accessory units are only permitted where an existing dwelling and the OBC requirements relating to room size and access are met. Furthermore, a maximum ratio may limit design options to meet OBC requirements.

6.0 Increase the Maximum Number of Accessory Dwellings on a Lot

Issue:

The number of accessory dwelling units permitted on a residential lot based on Bill 108 requirements should be increased to two units plus the principle dwelling unit.

Response:

Bill 108 received Royal Assent in June 2019 and implements regulations released such that all municipalities in Ontario will be required to permit up to two accessory dwelling units on a lot containing a single detached, semi-detached, or street townhouse dwelling. The purpose of the draft Temporary Use By-law, is to amend specific provisions in Section 19 – Residential Conversions, and not amend the number of permitted accessory dwelling units on a lot.

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As the existing residential conversion regulations have been in effect since the early 1990s, the regulations are the first step in implementing Bill 108 Ontario Regulation 299/19 which direct municipalities to permit one accessory unit in a dwelling and an additional accessory unit in a free standing accessory structure. Staff are completing research on Second Dwelling Units within the entire urban area as part of the new Residential Zones project in Hamilton Zoning By-law No. 05-200. Public consultation of the project will commence in early-2020. Based on the foregoing, increasing the number of permitted accessory dwelling units for single detached and two-family dwellings will be addressed in the future new Residential Zones project stage.

ALTERNATIVES FOR CONSIDERATION

- Option 1 – Defer the adoption of the temporary Use By-law until such time as the City wide review has been completed. Staff would address second dwelling units as part of the residential zones in Zoning By-law No. 05-200. Existing zone regulations under Section 19: Residential Conversion would continue to exist.
- Option 2 – Change the length of the proposed Temporary Use By-law to less than 36 months.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

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

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A” - Draft Zoning By-law – Proposed Temporary Use By-law, to amend certain Section 19 – Residential Conversion regulations in Hamilton Zoning By-law No. 6593.
- Appendix “B” - Staff Report - Accessory Dwelling Units (Pilot Project) Temporary Use By-law for City of Hamilton Zoning By-law No. 6593 (PED19176)