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File: Z-8607
Planner: T. Macbeth

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: CITY OF LONDON ZONING AMENDMENT FOR PRIVATE HOME DAY CARES PUBLIC PARTICIPATION MEETING ON JULY 18, 2016

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, with respect to the application of the City of London relating to private home day cares; the proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on July 26, 2016, to amend Zoning By-law No. Z.-1 in conformity with the Official Plan, to change the Section 2 definition of "Private Home Day Care" to increase the number of persons permitted in temporary care in provincially licensed home day cares facilities located outside of the flood plain from five (5) to six (6) persons; and, to change Section 4.10 "Home Occupations" to reflect the increase in number of persons permitted to receive services and instructions in accordance with the increased number of persons permitted in licensed home day cares, as amended.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

None.

PURPOSE AND EFFECT OF RECOMMENDED ACTION

The purpose and effect of this zoning by-law amendment is allow up to six (6) persons to be permitted under temporary care at provincially licensed private home day cares in areas outside of the flood plain. Under Zoning By-law Z.-1, private home day cares are identified as a form of "home occupation". The current definition in Section 2 and the current Home Occupation regulations in section 4.10 both permit up to five (5) persons in private home day cares. This amendment application is to align with the recent change to the Ontario Ministry of Education's *Child Care and Early Years Act, 2014*, which increased the number of persons permitted in provincially licensed home day cares from 5 to 6.

RATIONALE

The proposed Zoning By-law amendment is in conformity with provincial acts and policies, including the Ontario *Child Care and Early Years Act, 2014*, as well as the *Provincial Policy Statement, 2014* and its sections 1.1.1, wherein provisions are made for healthy, livable and safe communities, and 3.1, wherein hazardous lands (including flood plains) are not to permit institutional uses such as day care uses and schools. Additionally, the proposed amendment is in conformity with the *Official Plan* and with the *London Plan*, including policies for home occupations as secondary permitted uses that are integral to, and compatible with, residential and agricultural areas.

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The proposed amendment also conforms to the 2016 Mayor’s Advisory Panel on Poverty report entitled “London for All: A Roadmap to End Poverty”, and its Recommendation 6.1, which is to “increase the number of licensed childcare spaces” available in the city of London within the next 12 months.

BACKGROUND

Date Application Accepted: April 11, 2016	Agent: City of London
REQUESTED ACTION: Amend Zoning By-law Z.-1 Section 2 definition of “Private Home Day Care” and amend Section 4.10 Home Occupations, in accordance with provisions of the Ontario <i>Child Care and Early Years Act, 2014</i> , which increased the number of persons within a licensed home day care from five (5) to six (6).	

SIGNIFICANT DEPARTMENT/AGENCY COMMENTS

Upper Thames River Conservation Authority (UTRCA)

The UTRCA identified Provincial Policy Statement, 2014, policy 3.1.5.a), which stipulates that development shall not be permitted to locate in hazardous lands and hazardous sites where the use is an Institutional use including [...] pre-schools, school nurseries, day cares and schools. The UTRCA advised the City to ensure that the definition of the “private home day care” use is consistent with the intent of PPS (2014) section 3.1 (Natural Hazards).

PUBLIC LIAISON:	Notice of Application was published in the <i>Public Notices and Bidding Opportunities</i> section of <i>The Londoner</i> on April 21, 2016.	Zero (0) public replies were received
Nature of Liaison:		
<p>Zoning By-law Z.-1, “Private Home Day Cares” – Possible Amendment to “Section 2 – Definitions” section of Zoning By-law Z.-1 to amend the definition of “Private Home Day Care” to reflect provisions of the Ontario <i>Child Care and Early Years Act, 2014</i> to increase the number of children in a licensed home day care facility from five to six. Possible amendment to “Section 4.10 – Home Occupations” of the General Provisions section of Zoning By-law Z.-1 may also be necessary to reflect changes to the “Private Home Day Care” definition, as amended. File: Z-8607. Planner: T. Macbeth (206 Dundas).</p>		
Responses: No public responses received.		

ANALYSIS

The proposed amendment is to allow six (6) persons to receive temporary care in licensed private home day cares. The City of London does not grant business licenses for private home day cares as a home occupation; instead, licensing of home day care establishments is granted through the Province of Ontario. To allow an increase from five (5) to six (6) persons in temporary care requires an amendment to both the Section 2 definition and home occupation section 4.10.6 of the Zoning By-law Z.-1. The zoning by-law currently identifies a maximum of five (5) persons permitted.

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The proposed amendment must demonstrate that it is in conformity with policies of the *Provincial Policy Statement, 2014* and the Official Plan of the City of London, as well as in keeping with the intent of Zoning By-law Z.-1. The proposed amendment is also in conformity with the Council-adopted *London Plan*.

Provincial Act and Provincial Policy Statement

The proposed amendment to Zoning By-law Z.-1 is in conformity with the recent changes to the Ontario Ministry of Education’s *Child Care and Early Years Act, 2014*, which increased the number of persons permitted in licensed home day cares from 5 to 6. In addition to this act, the proposed amendment is in conformity with the *Provincial Policy Statement, 2014*, including policies for healthy communities, economic opportunities, and natural hazards.

The proposed change promotes small home-based business opportunities and economic opportunities in areas where home occupations are permitted, including a range of urban residential and agriculture zones. As such, the proposed amendment promotes small business opportunities in both urban and rural areas of London. The *Provincial Policy Statement, 2014*, explicitly permits the use of rural lands for home occupations and home industries (s. 1.1.5.2) and promotes a range of economic opportunities on rural lands (s. 1.1.5.3). The increase to six persons permitted within licensed home day cares is one such small-scale business opportunity that is in conformity with the PPS.

Also, further to the agency letter from the Upper Thames River Conservation Authority (UTRCA) dated May 12, 2016, the proposed amendment requires conformity with PPS Section 3.1 – Natural Hazards. Section 3.1 notes that development and land uses are to be directed away from natural or human-made hazards to ensure there is no unacceptable risk to public health, safety, or property damage. Section 3.1.5.a) further stipulates that certain land uses, including institutional uses like pre-schools, day cares, and retirement homes are not permitted within hazardous lands (including flood plains). While Section 3.1.5 is generally targeted towards larger institutional uses, or the equivalent of a “day care centre” rather than a “private home day care” per the zoning by-law, the PPS definition of “*Institutional use*” for the purposes of interpreting Section 3.1.5 is as follows:

“[*Institutional use* for the purposes of interpreting Section 3.1.5 means] land uses where there is the threat to the safe evacuation of vulnerable populations such as older persons, persons with disabilities, and those who are sick or young, during an emergency as a result of flooding, failure of floodproofing measures or protection works or erosion.”

Day cares, including private home day cares, function as an “institutional use” that services vulnerable populations, including young children or seniors or persons with disabilities. As such, to ensure the risks to public health and safety are minimized, PPS Section 3.1.5 is addressed through the proposed zoning by-law amendment. The proposed increase in persons permitted within private home day cares is recommended to be directed away from flood plains and the potential natural hazards associated.

Official Plan of the City of London

The use, intensity, and form associated with this amendment to the Zoning By-law are in conformity with the Official Plan for the City of London, 1989.

The land use is as a secondary use for the home occupation of ‘private home day care’. Land uses will not change through this zoning by-law amendment; the amendment will permit this use in the existing range of Official Plan designations and zones which already permit private home day care as a type of home occupation, generally Residential and Agricultural/Rural Settlement designations and the zones R1, R2, R3, R4, R5, AG, OC1 and OC2. The use of land as a “private home day care” is permitted as an ancillary use that is considered integral to, and compatible with neighbourhoods and agricultural dwellings (Official Plan sections 3.2 and 9.2.5)

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As a home occupation the use must demonstrate that it is:

clearly ancillary to the residential use of the property, is carried on entirely within the dwelling unit by a resident of the dwelling unit, and does not generate any noise, odour, traffic or visual impacts that may have an adverse effect on adjacent properties or dwelling units (OP policy 3.6.3)

The land use as a private home day care satisfies Official Plan policy 3.6.

Through the proposed zoning by-law amendment, the “intensity” of use as a home day care will increase by 1 person in temporary care. Care may be provided for children, seniors and/or persons with disabilities. The increase is from 5 to 6 persons in temporary care. This increase is only for provincially licensed private home day cares. Unlicensed establishments will remain at a 5 person maximum. This increase in intensity of use is not considered by Staff to have additional adverse impacts on surrounding properties or change the primary character of the use as a private residential unit. The increase in intensity meets the intent of Official Plan policy 3.6.3. It is the opinion of Staff that with the increase in intensity, this secondary, home occupation use remains compatible with, and integral to, the OP designations and zones that permit them in residential neighbourhoods and rural areas. The increase in intensity by one person will also be directed outside of the flood plain, in accordance with the Flood Plain policies of the Official Plan (s. 15.6), and the intention to minimize risks to public health and safety.

The “form” of the dwellings and buildings within which private home day cares will be permitted will not change as a result of this zoning by-law amendment application. The form and character will be based on the generally residential forms of the zones wherein private home day cares are permitted. Also, in conformity with Official Plan policy 3.6.3, private home day cares will be operated within the private, residential dwelling unit without any additional adverse impact to form or character of residential units relative to the existing condition of up to five persons in day care.

The London Plan

As noted above, the proposed amendment permits private home day cares in the existing range of Official Plan designations where private home day cares are already permitted as a form of home occupation. The equivalent to Official Plan “designations” is “Place Types” in the *London Plan*. The existing Official Plan designations where the private home day care use is permitted are Residential, Agriculture, and Rural Settlement designations; in the *London Plan*, comparable Place Types where private home day cares are permitted are ‘Neighbourhood’, ‘Farmland’, and ‘Rural Neighbourhood’. The proposed amendment is in conformity with the Council-adopted *London Plan* (June 2016).

Furthermore, by directing the increase in persons in temporary care to licensed private home day cares in areas outside the flood plain, the proposed zoning by-law amendment is also in conformity with the ‘Natural and Human-Made Hazards’ chapter of the *London Plan*. Adherence to this chapter of the *London Plan* ensures that the Provincial Policy Statement regarding Natural Hazards (s. 3.1) is addressed and that the risks posed to the health and safety of vulnerable populations through floods and natural hazards are minimized.

No changes to the Place Types of the *London Plan* are required to facilitate the proposed Zoning By-law Amendment.

Zoning By-law Z.-1

The current definition of private home day care found in Section 2 of Zoning By-law Z.-1 is as follows (with emphasis added):

"PRIVATE HOME DAY CARE" means the temporary care and custody for reward or

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compensation of **not more than five persons** in a private residence other than the home of a parent or guardian of any such person for a continuous period not exceeding 24 hours. Care may be provided for children, seniors and/or persons with disabilities. (Z.-1-122119)

The current home occupation regulation in Section 4.10.6 of Zoning By-law Z.-1 limits the number of persons receiving services as follows (with emphasis added):

4.10 HOME OCCUPATION For home occupations the character of the dwelling as a private residence shall not change and a nuisance such as noise, fumes, dust, odour, traffic or parking shall not be created which would interfere with the enjoyment of the residential amenities of the neighbourhood. Home occupations are permitted in any dwelling unit within a single detached dwelling, semi-detached dwelling, duplex dwelling, converted dwelling, triplex dwelling, fourplex dwelling, townhouse dwelling and accessory farm dwellings subject to the following provisions: (Z.-1-94293) (Z.-1-051390)

[...]

6) **No more than five persons** shall be present in the dwelling unit at any time to receive treatment, services or instructions.

RECOMMENDATIONS AND CONCLUSION

As noted above, there will be no change to the land ‘uses’ permitted within the applicable zones of Zoning By-law Z.-1. The change in ‘intensity’ of use will be a change in number of persons in temporary care from five (5) to six (6) children, seniors and/or persons with disabilities. The increase will be limited to provincially licensed private home day cares and will only be permitted within zones where private home day cares are permitted as a home occupation secondary use. To prevent any further risk to public health or safety, noting that day cares serve vulnerable populations of the young, elderly, and/or persons with disabilities, the additional one (1) person in temporary care will only be permitted outside of flood plains.

Regarding the change in intensity by one (1) person under care, Staff considers the private home day cares to remain compatible with, and integral to, the neighbourhoods and agriculture zones where they are permitted.

The zoning amendment is consistent with PPS policy, the City’s Official Plan, and new provisions of the Ontario *Child Care and Early Years Act, 2014*. This zoning amendment also aligns with the 2016 Mayor’s Advisory Panel on Poverty report entitled “London for All: A Roadmap to End Poverty”, and specifically Recommendation 6.1, which is to “increase the number of licensed childcare spaces” available within the city of London within the next 12 months.

Recommendations

As such, the following is recommended as the amended Section 2 definition of “Private Home Day Care” in Zoning By-law Z.-1, noting that the bold, underlined text is the amended wording:

"PRIVATE HOME DAY CARE" means the temporary care and custody for reward or compensation of not more than **six persons in a provincially licensed home day care outside a flood plain, or not more than five persons within a flood plain or in an unlicensed home day care** in a private residence other than the home of a parent or guardian of any such person for a continuous period not exceeding 24 hours. Care may be provided for children, seniors and/or persons with disabilities.

Additionally, Zoning By-law section 4.10.6 requires an associated amendment so that 6 persons may be present in the dwelling unit operating as a licensed home day care so they may receive

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treatment, services or instructions at the same time. The amendment recommended for section 4.10.6 is as follows, noting the bold, underlined text is the recommended addition:

4.10 HOME OCCUPATION For home occupations the character of the dwelling as a private residence shall not change and a nuisance such as noise, fumes, dust, odour, traffic or parking shall not be created which would interfere with the enjoyment of the residential amenities of the neighbourhood. Home occupations are permitted in any dwelling unit within a single detached dwelling, semi-detached dwelling, duplex dwelling, converted dwelling, triplex dwelling, fourplex dwelling, townhouse dwelling and accessory farm dwellings subject to the following provisions: (Z.-1-94293) (Z.-1-051390)

[...]

6) No more than five persons shall be present in the dwelling unit at any time, **or six persons in a provincially licensed Private Home Day Care located outside of the flood plain**, to receive treatment, services or instructions.

PREPARED BY:	SUBMITTED BY:
TRAVIS MACBETH, MCIP, RPP LONG RANGE PLANNING AND RESEARCH	GREGG BARRETT, AICP MANAGER, LONG RANGE PLANNING AND RESEARCH
RECOMMENDED BY:	
JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

June 21, 2016
 TM/tm
 "Attch."

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 Planner: T. Macbeth

Response to Liaison Letter and Publication in “The Londoner”



May 12, 2016

City of London - Planning Division
 206 Dundas Street
 London, Ontario N6A 4L9

Attention: Travis Macbeth (sent via e-mail)

Dear Mr. Macbeth:

**Re: Z-8607 City Wide-Amendment to the Zoning By-Law –
 To Amend the Definition of “Private Home Day Care”**

The Upper Thames River Conservation Authority (UTRCA) has reviewed this application with regard for the policies in the *Environmental Planning Policy Manual for the Upper Thames River Conservation Authority (June 2006)*. These policies include regulations made pursuant to Section 28 of the *Conservation Authorities Act*, and are consistent with the natural hazard and natural heritage policies contained in the *Provincial Policy Statement (2014)*.

In the description of the POSSIBLE AMENDMENT, it is indicated that “Section 2 - Definitions” of the Zoning By-Law is proposed to be amended to be consistent with the provisions of the Ontario Child Care and Early Years Act, 2014 to increase the number of persons under temporary care in a licensed home day care facility from five to six persons. It is further noted that Section 4.10 – Home Occupations may also require amendment. The current definition in London’s Zoning By-Law for “Private Home Day Care” means *the temporary care and custody for reward or compensation of not more than five persons in a private residence other than the home of a parent or guardian of any such person for a continuous period not exceeding 24 hours. Care may be provided for children, seniors and/or persons with disabilities.*

We remind the City that Section 3.1.5 of the PPS (2014) stipulates that:

Development shall not be permitted to locate in hazardous lands and hazardous sites where the use is:

- a) An institutional use including hospitals, long-term care homes, retirement homes, pre-schools, school nurseries, day cares and schools;*

Hazardous lands include lands that are prone to flooding (i.e. Coves SPA, West London Potential SPA) and erosion. The PPS defines “Institutional Use” as –

means land uses where there is a threat to the safe evacuation of vulnerable populations such as older persons, person with disabilities and those who are sick or young, during an emergency as a result of flooding, failure of floodproofing measures or protection works or erosion.

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UTRCA Comments
File No. 8607 – Private Home Day Care Definition

Is the “private home day care” use as defined and permitted in the City’s Zoning By-Law consistent with the intent of Section 3.1.5 of the PPS?

Thank you for the opportunity to comment on this application. If there are any questions, please contact the undersigned at extension 293.

Yours truly,
UPPER THAMES RIVER CONSERVATION AUTHORITY



Christine Creighton
Land Use Planner
CC/cc

c.c. UTRCA – Tracy Annett, Manager Environmental Planning & Mark Snowsell, Regulations Officer

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**Bibliography of Information and Materials
Z-8607**

Request for Approval:

City of London Zoning By-law Amendment Application Form, completed by City of London, April 11, 2016.

Reference Documents:

Ontario. Ministry of Municipal Affairs and Housing. *Planning Act, R.S.O. 1990, CHAPTER P.13*, as amended.

Ontario. Ministry of Municipal Affairs and Housing. *Provincial Policy Statement*, 2014.

Ontario. Ministry of Education. *Child Care and Early Years Act, 2014*.

City of London. *Official Plan*, June 19, 1989, as amended.

City of London. *London Plan*, Council adopted version, June 23, 2016.

City of London. *Zoning By-law No. Z.-1*, May 21, 1991, as amended.

City of London. *London for All: A Roadmap to End Poverty*. Final Report, March 2016.

Correspondence: (all located in City of London File No. Insert File No. unless otherwise stated)

City of London -

Turk, R., City of London Environmental and Engineering Services. Memo to T. Macbeth. May 30, 2016.

van Dyk, P., City of London Neighbourhood, Children and Fire Services. E-mail to T. Macbeth. April 13, 2016.

Departments and Agencies -

Bezzina, J., London Hydro. Memo to T. Macbeth. May 1, 2016.

Creighton C., UTRCA. Letter to T. Macbeth. May 12, 2016.

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Appendix "A"

Bill No. (number to be inserted by Clerk's Office)
2016

By-law No. Z.-1-16_____

A by-law to amend By-law No. Z.-1 to permit six persons in temporary care in provincially licensed 'Private Home Day Cares' located outside the flood plain.

WHEREAS the City of London has applied to amend Zoning By-law No. Z.-1 Section 2 Definitions for "Private Home Day Care" and section 4.10.6 "Home Occupation";

AND WHEREAS this rezoning conforms to the Official Plan;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

- 1) Section 2 "Definitions" to By-law No. Z.-1 for the definition of "Private Home Day Care" is deleted in its entirety and replaced with:

"PRIVATE HOME DAY CARE" means the temporary care and custody for reward or compensation of not more than six persons in a provincially licensed home day care outside a flood plain, or not more than five persons within a flood plain or in an unlicensed home day care in a private residence other than the home of a parent or guardian of any such person for a continuous period not exceeding 24 hours. Care may be provided for children, seniors and/or persons with disabilities.

- 2) Section 4.10 "Home Occupation" to By-law No. Z.-1, for subsection 4.10.6) is deleted in its entirety and replaced with:

6) No more than five persons shall be present in the dwelling unit at any time, or six persons in a provincially licensed Private Home Day Care located outside of the flood plain, to receive treatment, services or instructions.

This By-law shall come into force and be deemed to come into force in accordance with Section 34 of the *Planning Act, R.S.O. 1990, c. P13*, either upon the date of the passage of this by-law or as otherwise provided by the said section.

Agenda Item # Page #

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PASSED in Open Council on July 26, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading - July 26, 2016
Second Reading - July 26, 2016
Third Reading - July 26, 2016