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Z-8779

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING &amp; ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>GEORGE KOTSIFAS MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES, AND CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>APPLICATION BY: CITY OF LONDON TO AMEND THE ZONING BY-LAW FOR GROUP HOME TYPE 1 USES WITH REGARDS TO DISTANCE SEPARATION REGULATIONS OF THE BY-LAW PUBLIC PARTICIPATION MEETING ON JULY 31, 2017</b>

<b>RECOMMENDATION</b>
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1. That, on the recommendation of the Manager, Development Planning, the following actions be taken with respect to the Zoning By-law for Group Home Type 1 uses and the use of separation distance regulations within the by-law to regulate the location of Group Home Type 1 uses, the proposed by-law, attached hereto as APPENDIX "A" **BE INTRODUCED** at Municipal Council meeting of August 22, 2017 to amend the Zoning By-law No Z-1 in conformity with the Official Plan **TO** Amend Section 4.8 Group Homes, General Provisions of Zoning By-law No.Z-1 by removing regulations related to a 250 metre (820 feet) separation distance for Group Home Type 1 uses.
  
2. That, on the recommendation of the Manager, Development Planning, Civic Administration **BE DIRECTED** to initiate a review of Group Home Policies and Regulations and seek further public input in refining regulations and definitions for Group Homes and Supervised Care Facilities in the City, as well as any other necessary definition and policy changes. These changes would implement action and requests from community agencies supporting peoples with developmental disabilities as well as implement direction in the Council adopted London Plan.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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**2002 Report - Z-6088** – City of London Group Home Definitions and Regulations  
 Staff initiated Zoning and process review that established the current definitions and regulations for Group Homes.

<b>PURPOSE AND EFFECT OF RECOMMENDED ACTION</b>
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The purpose and effect of the recommended action is to amend specific regulations of the Zoning By-law that relate to provisions requiring a 250 metre (820 feet) separation distance for locating Group Home Type 1 uses in the City. This specific recommendation is being brought forward as a matter under the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms* to remove zoning regulations that have the potential to expose the City to legal action for imposing zoning regulation that may infringe on the rights of Londoners to equal treatment with respect to the occupancy of accommodation based on a disability.

Municipal Staff are also seeking direction to initiate a Zoning By-law Review to seek further public input in refining regulations and definitions for Group Homes and Supervised Care Facilities in the City, as well as any other necessary definition and policy changes. These changes would implement action and requests from community agencies supporting peoples with developmental disabilities as well as implement direction in the Council adopted London Plan.

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**RATIONALE**

Group Home Type 1 uses provide accommodation, primarily to persons with developmental disabilities so that they can live inclusive and viable lives within all of London’s neighbourhoods. Existing regulations that place separation distance requirements for Group Home Type 1 uses have created adverse effects to the establishment and operation of these uses.

In considering the recent experiences and actions of several Ontario Municipalities in relation to group home uses and zoning regulations imposing separation distance for these uses, Council should consider amendments to the City’s approach for regulating these uses. There is no standard or land use planning evidence that supports a need for a 250 metre (820 feet) separation distance between Group Home Type 1 uses. Removing separation distance requirements for group home type 1 uses should not create any negative impacts or nuisances. Group homes are required to be located in a dwelling unit that is no different than any other house in a neighbourhood. Most residents of a Group Home Type 1 use do not drive so parking and traffic should not be an issue. Form and density are also not likely to generate any impacts as occupancy is still controlled and must occur within a single detached, semi, duplex or triplex dwelling.

1. The recommended amendment and direction for further review and amendments are consistent with, and will serve to implement, the policies of the Provincial Policy Statement, 2014 (2014 PPS), which emphasizes the need to plan communities in a manner that supports persons with disabilities (PPS1.1.1(f)), 1.4.3).
2. The recommended amendment and direction for further review and amendments are consistent with the policies of the Official Plan by encouraging the inclusion of group homes in all residential designations. Recognizing the distinction between the two types of Group Homes permitted in the Zoning By-law, the intent of the Official Plan is maintained by retaining regulations that prevent the concentration of Group Home Type 2 uses. Amendments relating to separation distance provisions within the Official Plan will be considered as part of the ongoing review of Group Homes and Supervised Residences policies and regulations in the City of London.
3. The recommended amendment and direction for further review and amendments are consistent with, and will serve to implement, the policies of the London Plan
4. The recommended amendment and direction for further review and amendments will protect the City of London from potential challenges brought forward through The Ontario *Human Rights Code*, which provides for rights and opportunities for all people without discrimination on a number of grounds, including disability.
5. The recommended amendment and direction for further review and amendments will protect the City of London from potential challenges brought forward through Section 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees equal treatment before and under the law and equal benefit of the law without discrimination based on various grounds, including mental and physical disabilities. All laws must be consistent with the Charter to be held in force and effect.
6. The recommended amendments and direction for further review and amendments are consistent with the general intent of Zoning By-law No. Z-1, which provides regulations for all forms of Group Homes, Supervised Residences and land uses. Zoning By-law regulations and Official Plan policies relating to separation distances shall be maintained for Group Home Type 2 uses, pending any future review by Civic Administration.

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**BACKGROUND**

<b>Date Application Accepted:</b> May 15, 2017	<b>Agent:</b> The Corporation of the City of London
<p><b>REQUESTED ACTION</b> City -Wide – Amend Section 4.8 (Group Homes) and Section 2 (Definitions) of Zoning By-law No.Z.-1.- The purpose and effect of this zoning by-law amendment will be to remove from the Zoning By-law the regulation which currently requires a 250 metre (820 feet) minimum separation distance in all directions for Group Home Type 1 uses. Through this application review, staff may also consider changes to the definitions of Group Home Type 1, Supervised Residence and Group Home type 2 uses as well as any other necessary definition changes. These changes would implement action and requests from community agencies supporting peoples with developmental disabilities as well as implement direction in the Council adopted London Plan</p>	

**SIGNIFICANT DEPARTMENT/AGENCY COMMENTS**

No significant departmental comments have been received.

<b>PUBLIC LIAISON:</b>	On May 25, 2017, Notice of Application was published in the <i>Public Notices and Bidding Opportunities</i> section of <i>The Londoner</i> . On July 20, 2017 Notice of Public Meeting before PEC was published in the <i>Public Notices and Bidding Opportunities</i> section of <i>The Londoner</i> .	2 replies were received
<p><b>Nature of Liaison:</b> City -Wide – Amend Section 4.8 (Group Homes) and Section 2 (Definitions) of Zoning By-law No.Z.-1.- The purpose and effect of this zoning by-law amendment will be to remove from the Zoning By-law the regulation which currently requires a 250 metre (820 feet) minimum separation distance in all directions for Group Home Type 1 uses. Through this application review, staff may also consider changes to the definitions of Group Home Type 1, Supervised Residence and Group Home type 2 uses as well as any other necessary definition changes. These changes would implement action and requests from community agencies supporting peoples with developmental disabilities as well as implement direction in the Council adopted London Plan</p>		
<p><b>Responses:</b></p> <ul style="list-style-type: none"> <li>• One response was received in support of the amendment.</li> <li>• One response was received seeking clarification, noting concern with respect to the proposed amendment to remove separation distance requirements and with the nature and timing of the review of Zoning regulations and proposed definition changes affecting group homes.</li> </ul>		

**ANALYSIS**

**GROUP HOME TYPE 1 DEFINITIONS IN THE ZONING BY-LAW**

The City of London Zoning By-law provides two distinct forms of Group Homes which are defined below as follows:

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**"GROUP HOME TYPE 1"** means a residence licensed, supervised, approved, or funded under federal or provincial statute for the accommodation of three to eight persons, excluding staff, living under responsible supervision in a single housekeeping unit and who, by reason of their intellectual, mental health, social, or physical condition or legal status, require a group living arrangement for their well-being. A Group Home Type 1 may include youth on probation under provincial or federal statute, but does not include an Emergency Care Establishment or a Group Home Type 2, as defined by this By-law.

**"GROUP HOME TYPE 2"** means a residence for the accommodation of up to eight persons, excluding staff, that is maintained and operated primarily for: persons who have been placed on probation or released on parole under provincial or federal statute; or youth who have been charged under provincial or federal statute and who have been placed in detention or custody. A Group Home Type 2 may include a Group Home Type 1, a Supervised Residence, and an Emergency Care Establishment for children or youth.

Staff are of the opinion that future changes to the definitions provided above are warranted and will be considered through a future planning review. Some considerations during the review may include deleting phrases like "by reason of their intellectual, mental health, social, or physical condition or legal status" from the definition or removing youth on probation as a Group Home Type 1 option.

**GENERAL PROVISION WITHIN THE ZONING BY-LAW**

Chapter 4 of the City of London Zoning By-law provides regulations that are required for various land uses, buildings and structures. Section 4.8 of the By-law provides regulations for Group Homes and are copied below as follows:

**4.8 GROUP HOMES**

*Notwithstanding any other provision of this By-law to the contrary, a Group Home Type 1 is permitted to occupy the whole of an individual dwelling unit, other than dwelling units located within areas designated as Agriculture in the Official Plan, including a single detached dwelling, a semi-detached dwelling, a duplex dwelling, and a triplex dwelling provided the total number of residents within the building structure does not exceed eight, and there is no Group Home or Emergency Care Establishment within 250.0 metres (820 ft.) of the proposed facility in any one direction. The dwelling must have 20.0 square metres (216 sq. ft.) of gross floor area per person residing within the unit. Notwithstanding the 250.0 metres (820 ft.) regulation for a Group Home Type 1, where more than one unit in a duplex dwelling, semi-detached dwelling or triplex dwelling is occupied by a Group Home Type 1 the separation distance of 250 metres (820 ft.) is measured in any one direction from the property line containing the entire structure.*

*Group Home Type 2 and Supervised Residences are permitted only within the zones where specified as a permitted use. In order to prevent concentrations of Group Home Type 2 uses within specific areas, and notwithstanding their being listed as a permitted use, a minimum separation between such facilities shall be 450.0 metres (1,476 ft.) measured in any one direction.*

The provisions related to group homes provide distinction between the two types of group homes. Both contain measures related to separation distances and concentration of uses with the difference primarily related to the intensity and sensitivity between the two group home types. Group Home type 1 uses are geared primarily to persons with disabilities and are directed to be located within a neighbourhood setting, providing integration with the community and surroundings for its occupants. To this end, this form of group home is permitted within single detached dwelling, a semi-detached dwelling, a duplex dwelling, and a triplex dwelling which directs this use to low density residential areas and neighbourhood place types within the City.

Group Home Type 2 uses are only permitted within specific zones that list the use as a permitted use and are not permitted as of right city-wide within specific building types like a group home type 1 use is. The Zones that permit group home type 2 uses are typically higher order, more intensive land use areas of the City.

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**LEGAL CHALLENGES FOR THE CITY RELATING TO GROUP HOMES**

The City Solicitors office has received notice of potential challenges through The Ontario *Human Rights Code* and The *Canadian Charter of Rights and Freedoms* for what has been described as discriminatory provisions in the City’s Zoning By-law, which are allegedly designed to defeat community inclusion for persons with development disabilities. The concerns relate specifically to Group Home Type 1 uses, definition and zoning regulations that set minimum distance separation requirements for group home type 1 uses. There have been similar and successful challenges to Zoning restriction of other Ontario Municipalities in the past (Toronto, Sarnia, Kitchener and Smith Falls) that have resulted in these municipalities removing similar separation provisions for group homes that meet the same criteria as a Group Home Type 1 as defined in the City’s Zoning By-law. These challenges have generally accepted that there is no land use planning justification to include separation distances for group homes as defined as Group Home Type 1 use in the City’s Zoning By-law. In addition, the City must ensure that its regulations in planning (Zoning By-laws) provide for rights and opportunities for all people without discrimination on a number of grounds, including disability. Furthermore, the City must ensure the equal treatment and equal benefit of its law without discrimination based on various grounds, including mental and physical disabilities.

The recommended amendment and direction for further review and amendments will protect the City of London from potential challenges brought forward against its current practice for regulating group homes.

**PROVINCIAL POLICY STATEMENT (2014)**

The Provincial Policy Statement, 2014 (2014 PPS) emphasizes the need to plan communities in a manner that supports persons with disabilities. In this regard the 2014 PPS includes the following direction:

Policy 1.1 of the 2014 PPS outlines direction for managing and directing Land Use to achieve efficient and resilient development and Land Use patterns. Section 1.1.1 lists policies that demonstrate how healthy, liveable and safe communities shall be sustained. Policy 1.1.1 (f) is listed as follows:

- 1.1.1 – *Healthy, liveable and safe communities are sustained by:*
  - 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;*

Policy 1.4 of the 2014 PPS provides Housing Policies. Section 1.4.3 lists criteria for the provision of housing mixes as follows:

*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:*

- 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;*

The 2014 PPS defines Special Needs as follows:

Special needs: *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. 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.*

The recommended amendment and direction for further review and amendments are consistent with, and will serve to implement, the policies of the Provincial Policy Statement, 2014 (2014

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PPS), which emphasizes the need to plan communities in a manner that supports persons with disabilities (PPS1.1.1(f), 1.4.3).

**OFFICIAL PLAN AND THE LONDON PLAN**

Section 3.6.1 of the **Official Plan (1989 Plan)** provides general provisions for Group Homes as found below:

Definition:

*For the purposes of this Plan, group homes are defined as a single housekeeping unit in which three to eight residents, excluding staff or receiving family, live as a family, for a period exceeding one week for the majority of residents, and under responsible supervision consistent with the requirements of its residents. Group homes shall be licensed or approved under provincial statute and shall not include correctional residences.*

Separation Distance:

*In order to prevent concentration of group homes, zoning regulations will require a minimum separation distance between group homes.*

The provisions relate to both Group Home types. The Zoning By-law provides specific distinction between each type of group home. Both contain measures related to separation distances and concentration of uses with the difference primarily related to the intensity and sensitivity between the two group home types. Group Home Type 1 are geared primarily to persons with disabilities and are directed to be located within a neighbourhood setting, providing integration with the community and surroundings for its occupants. Group Homes Type 2 uses are only permitted within specific zones that list the use as a permitted use.

The recommended amendment and direction for further review and amendments are consistent with the policies of the Official Plan by encouraging the inclusion of group homes in all residential designations. Recognizing the distinction between the two types of Group Homes permitted in the Zoning By-law, the intent of the Official Plan is maintained by retaining regulations that prevent the concentration of Group Home Type 2 uses. Amendments relating to separation distances provisions within the Official Plan will be considered as part of the ongoing review of Group Home and Supervised Residences policies and regulations in the City of London.

The **London Plan** permits Group Homes in all neighborhood place types. There is no criteria for separation distances for group homes contained in the Council Adopted London Plan. The definition provided for group homes in the glossary of terms of the London Plan is as follows:

*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. A group home may include youth on probation under federal or provincial statute.*

Using separation distances as a zoning tool to mitigate against the impacts or nuisances of certain types of land uses can be appropriate. The City's current by-law provides such measures, for example in agricultural areas to address concerns over odor and for methadone clinics to ensure minimum separation from sensitive land uses (schools). The origins of separation distances for group homes are difficult to establish. It does not appear that the Province has separation distance requirements for group homes. There does not appear to be any standard or guideline for establishing separation distances for group homes. Removing separation distance requirements for Group Home Type 1 uses should not create any negative impacts or nuisances. Group homes are required to be located in a dwelling unit that is no different than any other house in a neighbourhood. Most residents of a Group Home Type 1 use do not drive, so parking and traffic should not be an issue. Form and density are also not likely to generate any impacts as occupancy is still controlled and must occur within a single detached, semi, duplex or triplex dwelling.

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**GROUP HOME CLEARANCE PROCESS AND CLAIMS OF ADVERSE EFFECTS**

The administrative process to provide clearance to group home providers to satisfy the separation distance requirements of the Zoning By-law can be cumbersome and time-consuming. The current process can take anywhere from one to three-weeks for clearance to be provided. Even with clearance provided, Civic Administration cannot determine with absolute certainty that the separation distance criteria has been achieved. The clearance process involves the full participation and timely and accurate responses from all known group home service providers. The process involves the submission of a request from a service provider seeking clearance from the separation distance criteria for a new location. Building Controls staff generates a map of the location with a 250 metre buffer radius around the property and circulates the map to all known service provider groups in the City for verification that they are not operating another group home within the radius area. Clearance is provided upon receipt of responses from the circulated groups.

Prior to this current process, staff utilized a database and map of known group homes to verify the separation distance criteria for group homes. This process was dependant on service providers and ministries that provide funding, licensing and support to group homes to update and notify the City of any location changes and closures. Unfortunately, the database and map became unreliable as homes that closed or relocated or even new locations were not updated into the system.

Service providers for group homes have regularly claimed ongoing discrimination as a result of the separation distance criteria when establishing a new location. When searching and bidding on new locations, service providers are forced to submit offers for a purchase that are subject to zoning clearances which places time delays in acceptance of purchase offers. This often results in properties being sold to other bidders that are free to make bids with no conditions attached. The regulatory obstacle creates a barrier which makes housing providers bids less attractive

Service providers have also claimed that in suitable locations where clustering of sites can be achieved to provide financial savings and assist with resources, they are banned or faced with planning approvals that place hardship on their operations and stability.

Civic Administration has also received submissions that claim that when planning approvals (minor variance / zoning) are sought to address separation distance criteria that their group experience difficulty due to profiling that they feel that the zoning by-law fosters.

<b>CONCLUSION</b>
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Group Home Type 1 uses provide accommodation, primarily to persons with developmental disabilities so that they can live inclusive and viable lives within all of London’s neighbourhoods. Existing regulations that place separation distance requirement for Group Homes Type 1 have created adverse effects to the establishment and operation of these uses.

In considering the recent experiences and actions of several Ontario Municipalities in relation to group home uses and zoning regulations imposing separation distance for these uses, Council should consider amendments to the City’s approach for regulating these uses. There is no standard or land use planning evidence that supports a need for a 250 metre (820 feet) separation distance between Group Home Type 1 uses. Removing separation distance requirements for group home type 1 uses should not create any negative impacts or nuisances. Group homes are required to be located in a dwelling unit that is no different than any other house in a neighbourhood. Most residents of a Group Home Type 1 use do not drive so parking and traffic should not be an issue. Form and density are also not likely to generate any impacts as occupancy is still controlled and must occur within a single detached, semi, duplex or triplex dwelling.

Municipal Staff are also seeking direction to initiate a Zoning By-law Review to seek further

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public input in refining regulations and definitions for Group Homes and Supervised Care Facilities in the City, as well as any other necessary definition and policy changes. These changes would implement action and requests from community agencies supporting peoples with developmental disabilities as well as implement direction in the Council adopted London Plan.

<b>PREPARED &amp; RECOMMENDED BY:</b>	
<b>LOU POMPILII, MPA, RPP, MANAGER, DEVELOPMENT PLANNING</b>	
<b>REVIEWED BY:</b>	<b>SUBMITTED BY:</b>
<b>PAUL YEOMAN, RPP, PLE DIRECTOR, DEVELOPMENT SERVICES &amp; DEVELOPMENT FINANCE</b>	<b>GEORGE KOTSIFAS, P.ENG., MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>

July 20, 2017

LP/lp

Z:\Dev Serv\Subd\2017\Z-8779 /City of London Amend Zoning BY-law Z-8779 (Group ) LP PEC 2017-07-31



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**Responses to Public Liaison Letter and Publication in “The Londoner”**

<u>Telephone</u>	<u>Written</u>
Michelle Palmer (Community Living London)	Chris Butler (email)

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**Appendix "A"**

Bill No. (number to be inserted by Clerk's Office)  
2017

By-law No. Z.-1-17 \_\_\_\_\_

A by-law to amend By-law No. Z.-1 Section 4.8 (Group Homes) to change the text and regulations.

WHEREAS The Corporation of the City of London intends to amend regulations in By-law No. Z.-1 pertaining to separation distance requirement for group home type 1 uses within residential areas within the City of London

AND WHEREAS this rezoning conforms to the Official Plan;

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

Amend Section 4.8 Group Homes of the General Provisions, by deleting replacing Section 4.8 as follows:

**4.8 GROUP HOMES**

Notwithstanding any other provision of this By-law to the contrary, a Group Home Type 1 is permitted to occupy the whole of an individual dwelling unit, other than dwelling units located within areas designated as Agriculture in the Official Plan, including a single detached dwelling, a semi-detached dwelling, a duplex dwelling, and a triplex dwelling provided the total number of residents within the building structure does not exceed eight, The dwelling must have 20.0 square metres (216 sq. ft.) of gross floor area per person residing within the unit.

Group Homes Type 2 and Supervised Residences are permitted only within the zones where specified as a permitted use. In order to prevent concentrations of Group Home Type 2 uses within specific areas, and notwithstanding their being listed as a permitted use, a minimum separation between such facilities shall be 450.0 metres (1,476 ft.) measured in any one direction.

1. The inclusion in this By-law of imperial measure along with metric measure is for the purpose of convenience only and the metric measure governs in case of any discrepancy between the two measures.
2. 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.

PASSED in Open Council on August 22, 2017.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading - August 22, 2017  
Second Reading - August 22, 2017  
Third Reading - August 22, 2017