



Proposed Options to Increase As-of-Right Zoning Permissions for Municipal Shelters

Date: May 24, 2018

To: Planning and Growth Management Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

SUMMARY

The demand for affordable housing in the city is considerable, and the need for shelter services has been increasing since 2012. On any given night in 2017, over 6,000 people used the City's shelter system. In response to this rise in need, Council directed the Shelter, Support and Housing Administration Division to expand the shelter system by 1,000 new permanent beds within three years. Because municipal shelters must respond to rapidly changing and emergency situations in a timely manner, the ability to secure spaces quickly and efficiently is critical when looking for new shelter sites.

Zoning By-law 569-2013 permits municipal shelters as-of-right in most zones, subject to two conditions: a 250-metre separation distance from another shelter and a requirement to be located either on a major street or on an intersecting street if the lot is within 80 metres of the major street. Those properties that are not subject to Zoning By-law 569-2013, due to various transitional reasons, are subject to the Municipal Shelter By-law 138-2003, which also has similar locational conditions.

This report details the existing zoning regime applying to municipal shelters in the city, outlines potential issues with the current regulations and provides options for amending the Zoning By-law to increase the as-of-right zoning permissions for municipal shelters. These options would form the basis for city-wide public consultations to be held later this year. A report summarizing the consultation process and including a draft by-law amendment would be brought forward in early 2019.

This report was prepared in consultation with the Shelter, Support and Housing Administration Division (SSHA).

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. The Planning and Growth Management Committee direct the Chief Planner & Executive Director, City Planning to conduct city-wide public consultations on the proposed options to increase the as-of-right zoning permissions for municipal shelters.
2. The Planning and Growth Management Committee request the Chief Planner & Executive Director, City Planning to prepare a Final Recommendation Report with a Zoning By-law Amendment for shelters in early 2019.

FINANCIAL IMPACT

There are no financial impacts resulting from the adoption of this report.

DECISION HISTORY

At its meeting on December 5 to 8, 2017, City Council directed the Acting Chief Planner and Executive Director, City Planning to report to the May 1, 2018 Planning and Growth Management Committee meeting with Zoning By-law amendment options that increase the as-of-right permissions for municipal shelters. At the same meeting, City Council also authorized the Deputy City Manager Cluster A, in consultation with the Chief Planner and Executive Director, City Planning and other divisions, to approve specific sites for emergency shelters provided they meet certain criteria, including that they comply with zoning.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.CD24.7>

COMMENTS

Background

In August 2009, City Council adopted Housing Opportunities Toronto, An Affordable Housing Action Plan, 2010-2020, and in December 2013 adopted the 2017-2019 Housing Stability Service Plan. One of the key themes in both of these plans is helping homeless and vulnerable people find and keep homes. The Housing Stability Service Plan includes work focusing on preventative approaches aimed at improving the housing stability of Torontonians such as: 1) the Hostels to Homes pilot program to assist long-term shelter users to move into permanent housing with supports; 2) developing a new shelter service model; 3) the George Street Revitalization Project to redevelop Seaton House, the City's largest shelter, into a facility which includes an emergency shelter, long-term care home, transitional living, affordable housing, and a community services hub; and 4) the Home for Good supportive housing program providing a range of supports, such as housing assistance to people in the private rental

market, and harm reduction for high-needs clients who have experienced long-term homelessness.

The SSHA Division is the lead for housing and homelessness services in Toronto, and also leads much of the work stemming from the Affordable Housing Action Plan. City Planning has been involved in many interdivisional initiatives, often jointly with SSHA, related to the development of policy and program responses to affordable housing in the city. Some on-going City Planning projects include the multi-tenant house review, and a policy for the protection of dwelling rooms.

While providing people experiencing homelessness with stable, long-term housing is the City's preferred approach, municipal shelters are an important short-term response to homelessness. Shelters provide emergency and transitional accommodation to both individuals and families, and the shelter system serves groups such as seniors, people with disabilities, individuals with mental health issues, refugees, and people who identify as LGBTQ2S.

In April 2017, Council approved a new approach to shelter siting and community engagement, and then in December 2017, Council approved a new Emergency Shelter Development Process (ESDP) and site approval model to complement this approach. The goal of the new process is to effectively engage Council, service users and the community, while strengthening the City's ability to successfully and quickly secure properties in Toronto's competitive and fast-moving marketplace.

Municipal shelters are expected to meet the minimum service standards set out in the Toronto Shelter Standards, which were approved by Council in 2015. The standards provide expectations and guidelines related to matters such as health and safety, basic needs and services, as well as establishing the minimum requirements for sleeping area and personal space requirements. These standards help to inform the criteria that are used when looking for new shelter sites.

In January 2018, City Council reaffirmed its direction that the shelter occupancy rate be reduced to 90%, to ensure all those seeking shelter can access it. At the February 2018 budget meeting, City Council authorized the opening of 1,000 new permanent shelter beds by the end of 2020. This is in addition to identifying properties for 24-hour respite sites for the 400 George Street Revitalization transition plan beds, and for existing shelter programs that need to relocate.

Representatives from SSHA and Real Estate Services (RES) work together to locate new shelter sites. Zoning and functional criteria govern the suitability of a new shelter site. In addition to checking compliance with applicable zoning by-laws, the key functional criteria applied by SSHA and RES for locating new shelter sites are:

- Located across the geography of the city
- Available preferably for purchase or, if not, for a minimum lease of 10 years
- Minimum of 20,000 square feet (approximately 1860 square metres), which includes programming space for clients, staff and community members
- Close to public transit

- If an existing building, must be the main floor, or have an elevator or room to add an elevator to meet accessibility requirements
- Price must meet fair market value assessment

In order to determine compliance with zoning by-laws, SSHA staff have been seeking advice from City Planning and Toronto Building with respect to specific properties that they consider to be potential candidate sites for new municipal shelters.

Through this review process, staff assessed 311 potential sites between April 1, 2017 and May 2, 2018. Failure to meet the functional criteria such as minimum size, or preferred location, resulted in 39 sites being ruled out. An additional 61 of these sites did not comply with the locational requirements in zoning: 27 sites did not meet the locational requirement of being located on or within 80 metres of a major street, seven did not comply with the requirement that they be no closer than 250 metres from another shelter, 21 sites were located within Employment Industrial zones, and six were ruled out for zoning reasons which were not specified. Finally, 171 sites were excluded from the search for other reasons, such as the owner of the site not being interested in a shelter use, the site being leased or sold to someone else, environmental concerns, and existing commercial or residential tenants that would have to be displaced. Since May 2, staff have been assessing the potential of the remaining 40 sites on this list, and will be looking at other sites on an ongoing basis.

The Committee of Adjustment process is always an option to seek zoning compliance through a minor variance application, but it also means added time, cost and an uncertain outcome. These issues reinforce the need to consider options to increase the as-of-right zoning permissions for shelters, as directed by City Council. This will ensure that the City can respond to the urgent demand for new shelters in a timely manner.

Planning Policy Framework Relating to Shelters

Provincial Policy

Section 2 of the Planning Act identifies the provision of a full range of housing, and the orderly development of safe and healthy communities as a matter of provincial interest.

The Provincial Policy Statement, 2014 (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS directs that planning authorities must provide an appropriate range of housing types and affordability to meet projected requirements of current and future residents. This includes housing forms which are required to meet the social, health and well-being requirements of all residents.

The Growth Plan for the Greater Golden Horseshoe, 2017 provides a framework for managing growth in the Greater Golden Horseshoe. Policy 2.2.1.4 speaks to applying the policies of the Plan to support the achievement of *complete communities* that:

- Feature a diverse mix of land uses, including residential and employment uses, and convenient access to local stores, services, and public service facilities;

- Improve social equity and overall quality of life, including human health, for people of all ages, abilities, and incomes; and
- Provide a diverse range and mix of housing options, including second units and affordable housing, to accommodate people at all stages of life, and to accommodate the needs of all household sizes and incomes.

Complete communities "support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including an appropriate mix of jobs, local stores, and services, a full range of housing, transportation options and *public service facilities*." Policy 2.2.6 directs upper and single-tier municipalities, to develop a housing strategy which includes providing a range of housing options and which aligns with provincial housing and homelessness plans.

Toronto Official Plan

Toronto's Official Plan requires that a full range of housing, in terms of form, tenure and affordability be provided across the city and within neighbourhoods. It also requires that a diverse range of housing be maintained to meet the current and future needs of residents. The full housing spectrum includes emergency and transitional housing for homeless people and at risk groups.

The Official Plan considers shelters to be a form of housing, and therefore a residential use. The Official Plan permits all forms of residential uses, including municipal shelters, on lands that are designated *Mixed Use Areas*, *Regeneration Areas*, *Apartment Neighbourhoods* and *Neighbourhoods*. Lands designated as *Employment Areas* are to be used only for business and economic activity, which does not include any form of residential uses, including shelters.

Zoning Regulations for Municipal Shelters

Municipal Shelters in Toronto are regulated by the Municipal Shelter By-law 138-2003 and the city-wide Zoning By-law 569-2013.

Municipal Shelter By-law 138-2003

In 1999, as a result of the Mayor's Homelessness Action Task Force, City Council stated its intention to permit emergency shelters in all parts of the city, which resulted in much debate as to how this could and should be implemented. City Planning staff brought forward a Zoning By-law amendment in September 2001 which provided for broad permissions to allow shelters in all parts of the city. When the by-law was considered by Council in April 2002, it was sent back for further review and consultation. The outcome of an extensive consultation process was that in February 2003, options for revised and more restrictive zoning were brought forward to Council for consideration. The proposed revisions stemmed from recommendations from both Council and Community Councils, as well as comments heard throughout the consultation process. Staff reported on the potential options available, and Council decided which regulations became part of the final Zoning By-law amendment.

The Municipal Shelter By-law approved by Council in February 2003, and subsequently amended and approved by the Ontario Municipal Board (OMB) in March 2004, contains two key regulations which serve to restrict where a shelter may be located:

1. a minimum separation distance of 250 metres from another municipal shelter; and
2. a requirement to be located either on an arterial road or on a flanking street that intersects the arterial road if the lot is within 80 metres of that arterial road.

The minimum 250-metre separation distance between shelters was recommended by four of the five community councils and City Council, and raised throughout the consultation process. The 250 metres was thought to be consistent with the 245-metre separation distance used in the former City of Toronto for group homes and crisis care facilities. One other community council recommended a separation distance of 500 metres. At the time, City Planning staff advised Council that there was no planning rationale for a minimum separation distance. Ultimately, Council approved the 250-metre requirement.

With respect to the arterial road restriction, the inclusion of this regulation helped to address community concerns about the placement of shelters within residential neighbourhoods by requiring shelters to locate on the periphery of these areas. The application of this regulation was based on the arterial roads in the City Roads Classification System.

The municipal shelter by-law approved by Council was appealed to the OMB by a number of parties, including residential ratepayers groups, poverty and homelessness advocacy groups, and those with site-specific interests. After a lengthy hearing, which included arguments that the by-law offended the provisions of the *Canadian Charter of Rights and Freedoms*, in its Decision of March 15, 2004 and attached to its Order of April 30, 2004, the OMB approved the municipal shelter by-law with amendments.

The OMB modified the provision regarding the arterial road location, so that a municipal shelter does not have to be right on a major or minor arterial road. It could now be located on a flanking street within 80 metres from the corner of the arterial road. It was felt that this was consistent with the desire to locate shelters within arterial corridors, and not just arterial roads. The OMB also upheld the 250-metre separation distance, finding that there was land use planning rationale to (a) encourage distribution of shelters across the City and (b) to avoid concentrations of shelters.

In combination, the two locational requirements included in the Zoning By-law passed by Council, and then amended and approved by the OMB, reduced the number of sites in the city that were available for locating a new shelter.

Zoning By-law 569-2013

The intent of the municipal shelter by-law was carried forward through the City's Zoning By-law project resulting in Zoning By-law 569-2013, which includes similar permissions and locational conditions. Zoning By-law 569-2013 defines a municipal shelter as:

"**premises** in which short-term emergency accommodation and associated support services are provided and supervised, and is operated by or for the City of Toronto, or an agency of the City of Toronto."

A municipal shelter, as defined, is listed as a conditionally permitted use in the all of the respective zones in the Residential Zone Category (R, RD, RS, RT, RM), the Residential Apartment Zone Category (RA, RAC), and the Institutional Zone Category (I, IH, IE, IS, IPW). It is also a permitted use in the Commercial Local (CL), Commercial Residential (CR), Commercial Residential Employment (CRE), Employment Industrial Office (EO) and Open Space Recreation zones (OR). Like any other use in the by-law, the permissions for a municipal shelter may be affected by a site-specific exception. Section 150.22 of Zoning By-law 569-2013 provides the conditions, which are locational criteria, for the use to be permitted in the above zones. It says:

"A municipal shelter must:

(A) be a minimum distance of 250 metres from a lot with a crisis care shelter or municipal shelter, measured in a straight line from nearest lot line to nearest lot line; and

(B) be on a lot that has a front lot line or side lot line abutting:

- (i) a major street on the Policy Areas Overlay Map; or
- (ii) a street which intersects a major street on the Policy Areas Overlay Map, and the lot is located in whole or in part, within a distance of 80 metres from that intersection."

Zoning By-law 569-2013 is more restrictive than the municipal shelter by-law because the newer by-law no longer allows municipal shelters to be located in every zone. For example, they are no longer permitted in most industrial zones. This change in use permissions is consistent with the Official Plan policies for lands designated as *Employment Areas*.

Lands designated *Employment Areas* in the Official Plan that are not currently part of Zoning By-law 569-2013 remain governed by Municipal Shelter By-law 138-2003. Zoning By-law 569-2013 does not yet implement new Official Plan policies regarding *Employment Areas* that have recently been approved by the OMB subsequent to the adoption of the Zoning By-law in 2013. These new policies apply to certain Employment Industrial zones and confirm the intent of these areas being reserved for business and economic activity, which would preclude shelters from being able to locate there. Work to implement the new *Employment Areas* policies in the Zoning By-law will begin in the near future.

The locational criteria in Zoning By-law 569-2013 are similar though not identical to the provisions in the Municipal Shelter By-law. For example, when dealing with sites covered by 569-2013, the list of arterial roads in the Roads Classification System does not need to be examined, because the Major Streets referenced in Section 150.22 are shown on an overlay map, which is easily accessible through the City's interactive zoning map available online. The Municipal Shelter By-law also stipulates that the 250-metre separation distance is not only from another municipal shelter, but also from any

lot with an "emergency shelter, hostel or crisis care facility." Those would be uses per the definitions existing in the former municipalities' comprehensive zoning by-laws at the time, as amended by the Municipal Shelter By-law. None of those terms exist in Zoning By-law 569-2013, with the exception of crisis care facility, which is a defined term.

Proposed Zoning Options and Consultation

In bringing forward locational conditions similar to those found in the Municipal Shelter by-law from 2003, Zoning By-law 569-2013 continues to limit the number of sites in the city which are available for this much needed use. Responding to Council's December 2017 direction, City Planning staff have developed options to increase the as-of-right zoning permissions for municipal shelters. These options relate to amending the location criteria as follows:

Options for Regulation One: 250-metre Separation Distance from another Municipal Shelter

1. Delete the separation distance requirement all together.
2. Reduce the separation distance requirement to something smaller.
3. Apply the separation distance requirement to shelters of a certain size only (i.e. shelters with more than "x" number of beds or more than "x" square metres of gross floor area).

At the time that the municipal shelter by-law was being considered by Council in 2002 and 2003, staff advised that there was no planning rationale for including a separation distance requirement.

As part of its rationale for allowing the 250-metre separation distance in its 2004 decision, the Ontario Municipal Board felt "that the purpose of this requirement was to encourage distribution of shelters throughout the city and to avoid concentration of shelters in any one location." It was also felt at the time that a distribution of shelters was needed in order to ensure that community services were not overburdened in any one given area.

In 2012, the Dream Team, an advocacy organization representing people with mental health issues, brought an application to the Human Rights Tribunal of Ontario arguing that minimum separation distances discriminate against persons with disabilities contrary to the *Ontario Human Rights Code*. The Ontario Human Rights Commission (OHRC) intervened in the application in support of the applicants. City Council adopted staff recommendations to remove the 250-metre minimum separation distance requirement for group homes in response to a report by an independent land use planning expert that found it was not supportable. The amendment to the city-wide Zoning By-law removing minimum separation distances from group home use regulations was enacted in June 2014.

While similar in some respects, group homes are not the same as municipal shelters. The OHRC has since expanded its recommendations on this front to include, for example, rental house licensing and other uses. The OHRC recommends that municipalities consider the Ontario Human Rights Code before drafting zoning by-laws;

eliminate minimum separation distances; and monitor for the impacts that zoning by-laws may have that could be seen as discrimination.

SSHA staff have indicated that while there is a need to be able to locate shelters throughout the city to ensure that people who become homeless can find shelter in their home communities so that they can continue to access supports from friends and family, attend their same school or get to their workplace, and access their professional supports, this objective does not necessarily benefit from the 250-metre separation distance requirement. Furthermore, the issue of shelter distribution and concentration is one that SSHA would consider as part of the process when siting a new shelter. There may also be valid reasons to have shelters located close together, such as synergies or hub connection possibilities.

For these various reasons, the need to distribute shelters through a separation distance requirement should be revisited.

In terms of reducing the separation distance requirement to something smaller, this can be considered, but it will likely be difficult to determine a planning rationale for similar reasons as described above. Another suggestion that has been made is to apply a separation distance only to shelters of a certain size.

Options for Regulation Two: Location on or within 80 metres of a Major Street

1. Delete this requirement all together.
2. Increase the distance from a major street within which a shelter can locate.
3. Apply the requirement to shelters of a certain size only (i.e. shelters with more than "x" number of beds or more than "x" square metres of gross floor area).

When the OMB amended the major street locational requirement to include the 80 metre distance, this was intended to provide good access to services and public transit which generally are found on the major streets. The OMB also decided this helped in distributing the shelters across the city. Opponents to this requirement felt it also served to keep shelters out of residential neighbourhoods.

Many of the potential shelter locations that did not comply with this requirement were just outside of the 80 metres. For reasons similar to the requirement for a separation distance between shelters, the need to be located within close proximity to a major street should be examined. With respect to concerns regarding shelters locating within residential neighbourhoods, a shelter would still need to comply with the zoning requirements for that zone such as density and height.

Combination of both Options One and Two

A combination of options one and two should also be considered in order to optimize the locations where municipal shelters could be permitted as-of-right.

It is recommended that City Planning undertake city-wide public consultation on these proposed options to increase the zoning permissions for municipal shelters, and report back to Council with recommended Zoning By-law amendments in early 2019.

Conclusion

While the original municipal shelter by-law intended to provide more areas across the city where shelters could locate, the locational criteria it imposed has resulted in limitations in finding new shelter sites. The need for shelter space is growing, and options to increase the as-of-right zoning permissions for shelters should be considered in order to provide more opportunities for locating shelters across the city.

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