



**Subject: Interim Control By-law - Residential Dwellings (Density and Units) - City Wide**

**Reference:**

Date to Council: July 13, 2020  
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Planning & Building Services  
Report Date: 7/8/2020  
Clerk's File #: ACL2020

**To:** Mayor and Members of City Council

**Recommendation:**

That Council **PASS** By-law \_\_\_\_-2020 being an Interim Control By-law to prohibit all Group Homes, Lodging Houses, Shelters, and any dwelling with five or more dwelling units within the City of Windsor, save and except:

- a) those lands located within the Manufacturing District 1. (MD1.) and Manufacturing Districts 2. (MD2.) in Zoning By-law 8600 and within any Industrial Zone (M1) including Defined Area M1-11 and Defined Area M1-15 in Zoning By-law 85-18 (which are currently subject to Interim Control By-law 78-2019);
- b) those lands identified on Schedule 'P' to Zoning By-law 8600 (which were previously subject to Interim Control By-laws 126-2015, 127-2015, and 142-2015);
- c) those exceptions listed in Sections 2 and 3 of the Interim Control By-law; and
- d) those lands excluded in Section 5 of the Interim Control By-law,

to allow Council to review, and if deemed appropriate, implement the findings of the study; and,

That Council **MAY REVIEW**, on a case-by-case basis, any requested amendment to the Interim Control By-law where there is a determination that the requested amendment will not conflict with the general purpose and intent of the Interim Control By-law; and,

That the City Clerk **BE AUTHORIZED** to provide the required notice of the passage of this by-law; and,

That Council **AUTHORIZE** the City Planner to issue a Terms of Reference or a Request for Proposal with an upset limit of \$100,000 (funded \$45,000 from Sandwich South Secondary Plans project 7071166 and \$55,000 from Comprehensive Zoning By-Law project 7092002) to study and review the Official Plan and Zoning By-laws 85-18 and 8600 with respect to land use policies and provisions related to higher density dwellings such as, but not limited to, Group Home, Lodging House, Residential Care Facility, Shelter, and any dwelling with five or more dwelling units within the City of Windsor.

### **Executive Summary:**

N/A

### **Background:**

Section 38(1) of the *Planning Act* permits a municipality to pass an interim control by-law (ICBL) that prohibits the use of land, buildings or structures for such purposes as set out in the by-law. This in effect “freezes” development (that is described by the by-law) on the lands for a period not to exceed one year. An ICBL is an important planning tool that allows the municipality to rethink its current land use policies by suspending development that may end up conflicting with any new policy that may be developed. However, to enact an ICBL, Council must direct that a review or study be undertaken with respect to the existing land use policies in question.

Windsor’s Official Plan provides for the use of an ICBL, specifically it states that:

*Council may pass Interim Control By-laws in accordance with the Planning Act to control and restrict the use of land, buildings or structures within the municipality or defined area, where council has directed that a review or study be undertaken in respect of land use planning policies in the municipality or defined area.*

There is no statutory requirement to provide any notice or hearing prior to the passing of an ICBL, thus enabling the municipality to act quickly to freeze development. However, after passing the ICBL, Section 38(3) requires that the City give notice of passing of the ICBL in the manner and to the persons and public bodies and containing the information prescribed, within 30 days of the passing. Section 9 of the Ontario Regulation 545/06 describes how notice of passing of an ICBL shall be given.

Under Section 38(4), only the Minister of Municipal Affairs and Housing has the authority to appeal the passing of an ICBL passed under Section 38(1).

Section 38(2) allows the council of a municipality to pass a by-law to amend the ICBL to extend the period of time during which it will be effect, provided the total period of time does not exceed two years from the date of the passing of the ICBL. Any person or public body given notice of any extension to the ICBL, within 60 days of the passing of the extension, may appeal the passing of the extension to the Local Planning Appeal Tribunal.

Section 38(7) prohibits an ICBL from being passed for the same land for a period of three years from the date the former ICBL ceased to be in effect.

## **Discussion:**

Zoning By-law 85-18 applies to the former Sandwich South lands transferred from the Town of Tecumseh and County of Essex to the City of Windsor. Zoning By-law 8600 applies to all the lands that formed the City of Windsor prior to the transfer.

Zoning By-laws 85-18 and 8600 have numerous residential zones or zoning districts that permit a higher density of housing including group homes, lodging houses, residential care facilities, shelters, and multiple dwellings. Each zone or zoning district permits a range of uses and regulates matters such as building setbacks, building height and landscaped open space yard, in addition to applicable general provisions, parking related provisions.

Gaps and conflicts have been identified as part of past housekeeping amendments and as part of the day-to-day operation and interpretation of the Zoning By-laws. Issues such as overlapping, or gaps in, definitions of dwellings, the restrictiveness of existing zoning districts permitting only a single use – predominantly single unit dwellings – or a limited range of housing types, and parking requirements have been long standing.

Growth in the student population, especially, international students, at the University of Windsor and St. Clair College, has increased demand for housing city-wide in general, but those areas near campus developments have been experiencing intensification pressures for many years. Developers and landlords see an opportunity to replace old housing stock with safe, modern housing stock that meets or exceeds current building code requirements, ranging from semi-detached dwellings, to fourplex dwellings, to apartment buildings with 100 or more units.

There has been ongoing intensification and redevelopment pressures around the campuses of the University of Windsor, St. Clair College, the hospitals, and the downtown, and in the adaptive reuse of former school sites. Typical zoning around those campuses is limited to low density low profile uses such as a single unit dwelling, requiring developers to apply to amend the zoning by-law to allow a higher-density use. Often, these applications come in waves or groups, and neighbourhoods can feel overwhelmed. There may be some value in allowing a broader range of uses in specific geographic areas or along specific corridors.

The Official Plan seeks to develop safe, caring and diverse neighbourhoods that provide opportunities for a broad range of housing types, promote compact neighbourhoods, promote residential development, infill, and intensification initiatives, in a manner that is compatible with the surrounding area in terms of scale, massing, height, siting, orientation, setbacks, parking and amenity areas, that is capable of being provided with full municipal physical services, and that facilitates a gradual transition from Low Profile development to Medium/High profile development and vice versa, where appropriate.

The main purposes of the study are to:

- 1) Review those definitions that relate to dwellings and dwelling units, or are residential in nature;

- 2) Review zones, zoning districts, and provisions to determine an appropriate range of permitted residential uses and provisions, including merging zones and zoning districts and to ensure that the zones, zoning districts, and provisions are consistent with the Provincial Policy Statement, 2020 (PPS), especially, but not limited to, Policy 4.4 that requires the implementation of the PPS in a “*manner that is consistent with Ontario Human Rights Code*” - accommodation/housing is a protected social area in the Ontario Human Rights Code - and are consistent with the policy direction of the Official Plan;
- 3) Ensure compatibility with existing development, while allowing or encouraging certain areas to evolve to a higher-density and/or higher profile residential development.

It is acknowledged that this is not just a regulatory problem, and that the study should not be limited to review of the existing Zoning By-laws - e.g. the creation of design guidelines that speak to compatibility issues in existing neighbourhoods or areas.

Therefore, Administration is recommending an Interim Control by-law that prohibits certain residential uses that are problematic from a definition and operational point-of-view, or that are problematic from a density perspective. This will allow Administration to draft and issue a Request for Proposal (RFP) for one or more consultants to assist with the review of existing policies and regulations, study the extent of the problem, obtain feedback from the public through appropriate means such as open houses, propose potential solutions, and provide revised policies and provisions that aim to balance the needs of residents, tenants, property owners, developers, and landlords.

The proposed ICBL does not apply to those lands currently subject to Interim Control By-law 78-2019 regarding Transport Terminals, those lands that were subject to Interim Control By-laws 126-2015, 127-2015, and 142-2015 which dealt with off-street parking, building facades, and other traditional commercial mainstreet matters, and those lands further identified in Section 5 of the ICBL.

Sections 2 & 3 of the ICBL list exceptions for land where a Zoning By-law amendment came into force on or after January 1, 2017, which recognizes the lag between rezoning approval and development, for the continued use of existing buildings, the use of a Lodging House where both a Lodging House AND Residential Care Facility are allowed, the creation of dwelling units in a Combined Use Building, the creation of Additional Dwelling Units per Section 5.99.80 of Zoning By-law 8600, and the repair of a building where an order is issued pursuant to Property Standards By-law 9-2019.

Exemptions or exceptions are permitted on a case-by-case basis and require approval by Council.

### **Risk Analysis:**

The proposed Interim Control By-law will prohibit the creation of select dwelling types in the City of Windsor until the study is completed. The Planning Act does provide City Council the authority to grant exceptions to the by-law while the study is being completed. There is a moderate risk that a property owner could face a delay to create new dwellings or intensify an existing dwelling or lot while the study is being completed.

**Financial Matters:**

The scope of the proposed Land Use Study is beyond the capacity of the Planning Division and will require the hiring of one or more consultants to conduct the study, including feedback from stakeholders and the public. The cost for this initiative is estimated to have an upset limit of \$100,000. It is proposed that the study be funded \$45,000 from Sandwich South Secondary Plans capital project 7071166 and \$55,000 from the Comprehensive Zoning By-Law capital project 7092002. Both projects currently have adequate available uncommitted balances to contribute as suggested.

**Consultations:**

This report was prepared in consultation with the Legal Department and with Don Nantais, Financial Planning Administrator. The findings and recommendations of the of the Land Use Study will be prepared in consultation with residents, property owners, developers, tenants and landlords, as well as the general public - all as part of a public consultation process, including Development and Heritage Standing Committee.

**Conclusion:**

Administration is recommending that the Interim Control By-law be passed. This will allow Administration with the assistance of one or more consultants to study the problem, propose possible solutions and revise policies and provisions that balance the needs of existing residents, property owners, developers, tenants and landlords.

**Planning Act Matters:**

Thom Hunt, MCIP, RPP  
City Planner

I am not a registered Planner and have reviewed as a Corporate Team Leader

*SAH JM / OC*

**Approvals:**

Name	Title
Thom Hunt	City Planner
Wira Vendrasco	Deputy City Solicitor
Shelby Askin Hager	City Solicitor
Joe Mancina on behalf of Onorio Colucci	Chief Administrative Officer

**Notifications:**

Name	Address	Email
None		

**Appendices:**

None

## BY-LAW NUMBER ###-YYYY

### A BY-LAW TO IMPOSE INTERIM CONTROL ON CERTAIN RESIDENTIAL USES WITHIN THE CITY OF WINDSOR C 141/2020

Passed the xxxxx day of MONTH, YYYY.

**WHEREAS** Section 38 of the Planning Act, R.S.O. 1990, Chapter p. 13, provides that the Council of a local municipality had by resolution, directed that a study be undertaken in respect of land use planning policies in the municipality of in a defined area thereof, the Council of the municipality may pass a by-law to be in effect for a period of time specified in the by-law, which period shall not exceed one year from the date of the passing thereof, prohibiting the use of lands, buildings, or structures within the municipality or within the defined area or areas thereof, for such purposes as may be set out in the by-law;

**AND WHEREAS** the Council of The Corporation of the City of Windsor has by resolution directed that a study and review of Zoning By-laws 85-18 and 8600 be undertaken in respect of land use planning policies related to higher density dwellings such as, but not limited to, Group Homes, Shelters, Lodging Houses, Residential Care Facilities and dwellings with five or more dwelling units within the City of Windsor;

**AND WHEREAS** the Council of The Corporation of the City of Windsor deems it expedient and in the public interest to prohibit the use on all lands, buildings, and structures for a Group Home, Shelter, Lodging House, and a Dwelling with five or more dwelling units, other than those excepted by the Interim Control By-law, in order to allow the municipality to review and, if deemed appropriate, implement the findings of the said study.

**THEREFORE** the Council of the Corporation of the City of Windsor enacts as follows:

1. In this By-law,

**ACCESSORY BUILDING** means a completely detached building used for an accessory use of the lot, for one dwelling unit where permitted by Section 5.99.80 in Zoning By-law 8600, or for any combination thereof.

**ACCESSORY USE** means a use which is customarily incidental, subordinate, and exclusively devoted to the main use and is carried on with such main use on the same lot.

**BUILDING** means a structure, consisting of a wall, roof and floor, or any one or more of them, or a structural system serving the function thereof, including all the works, fixtures and service systems appurtenant thereto, but does not include the following: access area, collector aisle, driveway, parking aisle or parking space not in a parking garage; fence; patio; sign as defined by the Windsor Sign By-law.

**COMBINED USE BUILDING** means a building having, as main uses, at least one dwelling unit and at least one non-residential use.

**DENSITY** means a ratio expressed as the number of dwelling units per hectare and indicates the number of dwelling units that may be erected or maintained per hectare on a lot.

**DOUBLE DUPLEX DWELLING** means one dwelling divided into four dwelling units by vertically attaching two duplex dwellings with no direct internal connection between the dwelling units. A multiple dwelling,

semi-detached dwelling, stacked dwelling, or townhome dwelling is not a double duplex dwelling.

**DUPLEX DWELLING** means one dwelling divided horizontally into two dwelling units with no direct internal connection between the dwelling units. A single unit dwelling with two dwelling units is not a duplex dwelling.

**DWELLING** means a building or structure that is occupied for the purpose of human habitation. A correctional institution, hotel, motor home, recreational vehicle, tent, tent trailer, or travel trailer is not a dwelling.

**DWELLING UNIT** means a unit that consists of a self-contained set of rooms located in a building or structure, that is used or intended for use as residential premises, and that contains kitchen and bathroom facilities that are intended for the use of the unit only.

**FRATERNITY OR SORORITY HOUSE** means a dwelling used exclusively for the accommodation of students of a college or university who are also members of a chartered fraternity or sorority.

**GROUP HOME** means a dwelling that is:

1. For the accommodation of six to ten persons, exclusive of staff;
2. For persons living under supervision in a single housekeeping unit and who require a group living arrangement for their well-being; and
3. Licensed or funded by the federal, provincial, or municipal government.

A group home dwelling is a group home.

A correctional institution, fraternity or sorority house, hospital, hotel, lodging house, private home day care, religious residence, or residential care facility is not a group home.

**LODGING HOUSE** means a dwelling in which a minimum of four persons, not including staff, are provided with lodging for hire, with or without meals.

A boarding house, rooming house, or senior citizen housing is a lodging house

A correctional institution, fraternity or sorority house, group home, hospital, hotel, private home day care, religious residence, or residential care facility is not a lodging house.

**LOT** means a contiguous parcel of land under one ownership, the boundaries of which are on record in the Land Registry Office of the County of Essex (No. 12) in the Registry or Land Titles Division.

**MAIN BUILDING** means a building used for the main use of the lot and may also include in combination therewith an accessory use subject to any applicable provisions for an accessory use.

**MAIN USE** means the principal use or uses of a building, lot, premises, or structure.

**MOBILE HOME DWELLING** means one mobile home as defined by Section 46 of the Planning Act, R.S.O. 1990, c. P.13.

**MULTIPLE DWELLING** means one dwelling containing a minimum of three dwelling units. A double duplex dwelling, semi-detached dwelling, stacked dwelling, or townhome dwelling is not a multiple dwelling.

**PREMISES** means a lot, building, structure, or any combination thereof where a use is carried on.

**RELIGIOUS RESIDENCE** means a dwelling used for the accommodation, without profit or gain, of members of a religious community or religious association and may include as an accessory use a place of worship. A convent or monastery is a religious residence.

**RESIDENTIAL CARE FACILITY** means a dwelling that is:

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

A nursing home is a residential care facility.

A correctional institution, group home, hospital, hotel, lodging house, multiple dwelling or religious residence is not a residential care facility.

**SEMI-DETACHED DWELLING** means one dwelling divided vertically into two dwelling units by a common interior wall having a minimum area above grade of 10.0 sq. m., and may include, where permitted by Section 5.99.80 in Zoning By-law 8600, up to two additional dwelling units.

**SEMI-DETACHED DWELLING UNIT** means one dwelling unit in a semi-detached dwelling, and may include, if permitted by Section 5.99.80 in Zoning By-law 8600, one additional dwelling unit.

**SHELTER** means a lodging house used exclusively for the provision of temporary accommodation to individuals who need ancillary health care, counselling, and social support services.

**SINGLE UNIT DWELLING** means one dwelling having one dwelling unit or, where permitted by Section 5.99.80 in Zoning By-law 8600, one dwelling having two dwelling units. A single family dwelling is a single unit dwelling. A duplex dwelling, mobile home dwelling, semi-detached dwelling unit, or townhome dwelling unit, is not a single unit dwelling.

**STACKED DWELLING** means a dwelling consisting of a row of three or more dwelling units having one or more dwelling units located above them, with all dwelling units having individual exterior entrances. A double-duplex dwelling, semi-detached dwelling, or townhome dwelling is not a stacked dwelling.

**STRUCTURE** means anything, including any component part, that is erected, built, or constructed and affixed to or supported by the ground.

**STUDENT RESIDENCE** means a dwelling operated and maintained by a college or a university and may include a common area, cooking facility or dining facility.

**TOWNHOME DWELLING** means one dwelling vertically divided into a row of three or more dwelling units attached by common interior walls, each wall having a minimum area above grade of 10.0 sq. m., and may include, where permitted by Section 5.99.80 in Zoning By-law 8600, additional dwelling units. A semi-detached dwelling is not a townhome dwelling.

**TOWNHOME DWELLING UNIT** means one dwelling unit in a townhome dwelling, and may include, if permitted by Section 5.99.80 in Zoning By-law 8600, one additional dwelling unit.

## **USE**

1. when used as a noun means the purpose for which a building, lot, premises, or structure is designed, maintained, or occupied.
  2. when used as a verb means anything done by any person or permitted, either directly or indirectly by any person, for the purpose of making use of a building, lot, premises, or structure.
2. Notwithstanding the permitted uses, prohibited uses, and provisions of Zoning By-law 8600 as amended, within any zoning district, specific zoning

exception, or overlay, no land, building, or structure shall be used as a Group Home, Lodging House, a Shelter, or a dwelling with five or more dwelling units, except:

- (1) For any lands where an amending by-law to Zoning By-law 8600 to permit a Group Home, Lodging House, Shelter, or any dwelling with five or more dwelling units came into force on or after January 1, 2017;
  - (2) The continued use of land, building, or structure lawfully existing on the day of passage of this By-law as a Group Home, Lodging House, Shelter, or Dwelling with five or more dwelling units, provided such use is permitted on that land, or in that building or structure, by By-law 8600;
  - (3) The use of land, building, or structure as a Lodging House where both a Lodging House and a Residential Care Facility are permitted uses in the zoning district, specific zoning exception, or overlay; however, a Shelter is prohibited;
  - (4) The creation or construction of dwelling units in a Combined Use Building where a Combined Use Building is a permitted use in the zoning district, specific zoning exception, or overlay;
  - (5) The creation or construction of a new additional dwelling unit, or the expansion of an existing additional dwelling unit, in compliance with Section 5.99.80 of Zoning By-law 8600; or
  - (6) The repair of a building or structure lawfully existing on the day of passing of this By-law to comply with an order issued pursuant to the Property Standards By-law No. 9-2019;
3. Notwithstanding the permitted uses, prohibited uses, and provisions of Zoning By-law 85-18 as amended, within any zone or defined area, no land, building, or structure shall be used as a Group Home, Lodging House, a Shelter, or a dwelling with five or more dwelling units, except:
- (1) The continued use of land, building, or structure lawfully existing on the day of passage of this By-law as a Group Home, Lodging House, Shelter, or Dwelling with five or more dwelling units, provided such use is permitted on that land, or in that building or structure, by By-law 85-18;
  - (2) The use of land, building, or structure as a Lodging House where both a Lodging House and a Residential Care Facility are permitted uses in the zone or defined area, however, a Shelter is prohibited;
  - (3) The repair of a building or structure lawfully existing on the day of passing of this By-law to comply with an order issued pursuant to the Property Standards By-law No. 9-2019;
4. That where any conflict exists between the provisions of this By-law and any other By-law of The Corporation of the City of Windsor, this By-law shall prevail.
5. The provisions of this by-law do not apply to the following lands:
- (1) Any lands located within the Manufacturing District 1. (MD1.) and Manufacturing Districts 2. (MD2.) in Zoning By-law 8600 and within any Industrial Zone (M1) including Defined Area M1-11 and Defined Area M1-15 in Zoning By-law 85-18 in the City of Windsor (which are currently subject to Interim Control By-law 78-2019).
  - (2) Any lands identified on Schedule 'P' to Zoning By-law 8600 (which were subject to Interim Control By-laws 126-2015, 127-2015, and 142-2015).
  - (3) **1200-1220 University Avenue West**  
Part Lot 73, Concession 1 (Roll No. 040-170-05400; north side of University Avenue West, west of Elm Avenue)

**(4) 3165, 3173, & 3177 to 3195 Sandwich Street**

Part Lots 3 & 4, Registered Plan 40 (Roll No. 050-140-11000, 050-140-10900, 050-140-10505; northeast corner of Sandwich Street and Mill Street)

This by-law shall come into force and take effect on the day of the final passing thereof.

DREW DILKENS, MAYOR

CITY CLERK

First Reading -  
Second Reading -  
Third Reading -