

CNCL-25-48

City-initiated Amendments to Zoning By-law 60-94

To Members of City Council,

I am a Master of Urban Planning at Toronto Metropolitan University, and I have concerns with proposed amendment 2 to Zoning By-law 60-64. I am concerned with how these amendments could impact the human rights of individuals within our city and the weaponization of planning against marginalized individuals. I am also concerned with the economic, cultural, and health impacts these amendments may have.

Please note that I am in no way intending to attack members of staff for their work on this as they are just doing what is asked of them.

Recommendations

Committee of the Whole

That City Council move into Committee of the Whole to consider Report ED concerning the City-initiated Amendments to Zoning By-law 60-94.

Referral

- 1) That amendment 2, except amendment 2(c) be referred to staff to:
 - a. Provide additional information on the planning rationale for including social service establishments in section 5.17 and increasing the separation distance.
 - b. Consider removing tattoo parlours from section 5.17 of the zoning by-law.
 - c. Consider removing pawn shop from section 5.17 of the zoning by-law.

Amendments

- 1) That amendment 2 be amended to exclude “social service establishment” by striking (a), (b)(ii), and (d).
- 2) That amendment 2(b)(iv) be amended to maintain the separation distance by striking “800m” and replacing it with “400m”.
- 3) That amendment 2 be amended by striking from 2(a) “Tattoo Parlour, Pawn Shop,” and by adding to 2(b) (iv) Deleting the text “tattoo parlour, pawn shop,”.

Proposal

This section highlights the effect of my proposed amendments.

Proposed Section 5.17

5.17 Payday Loan Establishment, Vapour Product Shop, and Adult Use Store.

5.17.1 Notwithstanding any provision of this By-law to the contrary, no payday loan establishment, vapour product shop, or adult use store situated on a lot shall:

- (a) Be located closer than 400m to another lot occupied by the same use, as measured along a line connecting the two closest points of the respective lots; and,
- (b) Be located on the same lot already lawfully occupied by the same use.

Changes to Section 5.17 from Staff Proposal

5.17 Payday Loan Establishment, ~~Tattoo Parlour, Pawn Shop~~, Vapour Product Shop, ~~Social Service Establishment~~, and Adult Use Store.

5.17.1 Notwithstanding any provision of this By-law to the contrary, no payday loan establishment, ~~tattoo parlour, pawn shop~~, vapour product shop, ~~social service establishment~~ or adult use store situated on a lot shall:

- (a) Be located closer than ~~400m~~~~800m~~ to another lot occupied by the same use, as measured along a line connecting the two closest points of the respective lots; and,
- (b) Be located on the same lot already lawfully occupied by the same use.

~~5.17.3 For the purposes of Subsection 5.17, the term “social service establishment” shall have the meaning defined in Article 16.4.3 of this By law.~~

Comments

Lack of Committee Process

These amendments have been rushed through City Council, not following the normal process. I don't fully understand the rationale, as even with the closure of Hudson Bay, the report signals the City's intention to rezone the Oshawa Centre Mall property.

Some of the impacts of not following the normal process:

- Public meeting being held at 9:00 am on a Thursday rather than a Monday at 6:30 pm.
- Delegations being limited to 5 minutes rather than 10 minutes at committee.
- Members of Council having limited question and speaking time.

Moving into committee of the whole would allow delegates to have 10 minutes of speaking time (I think) and more time for Members of Council to ask questions.

Inclusion of social service establishments and human rights

The inclusion of social service establishments potentially could be against the *Ontario Human Rights Code* (the *Code*), which land-use planning decisions are subject to. While

social service establishments currently have restrictions in the downtown core, expanding this city-wide is less justifiable and places undue limits.

Previous cases involving land-use planning and human rights have identified that when by-laws bring restrictions for *Code*-protected groups, the following “tests” are applied:

- Is the purpose of the by-law rationally connected to municipal objectives?
- Is the by-law reasonably necessary to accomplish the purpose?
- Was the by-law adopted in good faith to accomplish its purpose?
- Is it possible to accommodate the affected group without undue hardship?

This is like the standard for *Charter* review – “reasonably demonstrable in a free and democratic society”.

While I am not qualified as a legal expert, I think some serious questions should be asked about the inclusion of social service establishments as part of this by-law.

- What is the planning purpose behind the inclusion of social service establishments?
- Is it reasonably necessary to apply separation distances to social service establishments across the entire city?
- What problem is this trying to solve?
- Was the *Code* considered while drafting these proposed amendments?
- Was the City’s legal team consulted regarding the *Code* and this amendment?

I think the inclusion of social service establishments is trying to solve a problem that doesn’t exist and is not connected to land-use planning.

I will also note that Oshawa has some history with human rights and planning with an interim control by-law banning methadone clinics in 2002. The Ontario Municipal Board (Ontario Land Tribunal as of 2021) ruled that ‘in effect, what the City has done is ban a specific type of medical clinic not based on the function of the clinic but on those who will use the clinic and what their medical condition is. The Board finds that this is not a valid planning rationale.’ The ruling was subsequently upheld by Ontario’s Divisional Court [*Oshawa (City) v. Loralgia Management Ltd.*, 2004 (ON SCDC)].

The inclusion of vapour product stores and adult-use stores has a land-use planning connection, these stores often have their windows covered which is not an attractive street front.

“People Zoning”

“Section 35(2) of the *Planning Act* says municipalities may not pass zoning bylaws that distinguish between people who are related and people who are unrelated in respect of the occupancy or use of a building.”

Land-use planning is about the use of land, not the people using it. This has been long established. It seems the purpose of including social service establishments is primarily because of the people who use that service, rather than the use itself.

An excessive separation distance

In my previous correspondence, I used the example of City Hall to highlight how the separation distance is excessive.

800m from the property line of City Hall along Athol St is Drew St (one street before Ritson Rd) and 400m along Athol St is approximately to the property line of the Tribute Communities Centre.

Doubling the separation distance from 400m to 800m seems excessive and the stated goals of the amendment would be satisfied with the existing 400m distance and allow for competition between businesses. Even with my proposed amendments to have the separation distance only apply to vapour product shops, adult-use stores, and payday loan establishments, I think 400m is much more suitable than 800m.

The odd inclusion of tattoo parlours

I find it odd that tattoo parlours are included in this section of the zoning by-law and assume that it is a holdover from the 1990s when tattoos were less accepted. Today, tattoos are forms of artistic expression and have greater societal acceptance.

As an example, Downtown Bowmanville has 8 tattoo parlours, 5 are located directly on King St. In no way do I feel that these businesses reduce the quality of the pedestrian environment, public safety, or the ability of the existing businesses to remain viable. These businesses have attractive storefronts and contribute to downtown activity. An open business is better than an empty storefront and we should be encouraging tattoo artists to open businesses in downtown Oshawa rather than in suburban strip malls.

I don't think that tattoo parlours should be included in the same category as an "adult use store". I think tattoo parlours should be removed from this section of the zoning by-law, recognizing the artistic quality and greater societal acceptance of tattoos as a form of art and allowing the tattoo artists to contribute to the vibrancy of Oshawa.

The interesting inclusion of pawn shops

I also find it odd that pawn shops are included and don't fully understand the rationale behind this. I don't think this is productive for business and is just adding additional red tape.

Agreement with other amendments

I agree that vapour product shops should have separation distances. I believe that they are not allowed to showcase products in window displays which does not contribute to an active streetscape.

I also agree with the housekeeping amendment 2(d) to specify that only elementary, secondary, and private schools are included and not post-secondary schools.

On amendment 1, I agree with the proposal to allow for the maximum building height (by Transport Canada) with appropriate setbacks from neighbouring low-rise buildings, reducing parking requirements (which should be implemented more broadly), and allowing more density at the Oshawa Centre Mall property. This is important given the closure of Hudson Bay and the changing nature of retail. It also supports mixed-use communities.

On amendment 3, I agree with the exemption for essential public services and utilities.

Overall

- The inclusion of social service establishments to have city-wide separation distances may not be aligned with the *Ontario Human Rights Code*.
- The purpose behind adding city-wide separation distances for social service establishments seems to be primarily about the people who use the property (people zoning) instead of land-use problems (such as noise, nuisance, and pollution).
- The weaponization of the City's zoning by-law against marginalized communities who use social service establishments does not represent good planning.
- There may be unintended consequences for those who are included in the definition of social service establishments.
- The separation distance of 800m is excessive and does not promote business competition.
- The inclusion of tattoo parlours will prevent small businesses from being able to open and is representative of a 1990s mentality that tattoos are taboo. There is much greater societal acceptance of tattoos today and tattoo parlours often have vibrant, activist storefronts.
- The inclusion of pawn shops will also impact small businesses and add additional red tape without much rationale.

Thank you for your consideration,

Noah Edwards

Ward 4, Oshawa

Appendix A: Comparison Table

Within Schedule “I”

Schedule “I” covers the central business district of Oshawa.

	Current	Staff Proposed	My Proposal
By-Law Text	16.4.2 No tattoo parlour, pawn shop, vapour product shop, social service establishment or adult use store situated on a lot within the hatched area shown on Schedule “I” to this By-law shall be located closer than 400m to another lot occupied by the same use, as measured along a line connecting the two closest points of the respective lots.	5.17.1 Notwithstanding any provision of this By-law to the contrary, no payday loan establishment, tattoo parlour, pawn shop, vapour product shop, social service establishment or adult use store situated on a lot shall: (a) Be located closer than 800m to another lot occupied by the same use, as measured along a line connecting the two closest points of the respective lots; and, (b) Be located on the same lot already lawfully occupied by the same use.	5.17.1 Notwithstanding any provision of this By-law to the contrary, no payday loan establishment, vapour product shop, or adult use store situated on a lot shall: (a) Be located closer than 400m to another lot occupied by the same use, as measured along a line connecting the two closest points of the respective lots; and, (b) Be located on the same lot already lawfully occupied by the same use.
Covered Uses	tattoo parlour, pawn shop, vapour product shop, social service establishment or adult-use store	payday loan establishment, tattoo parlour, pawn shop, vapour product shop, social service establishment or adult use store	payday loan establishment, vapour product shop, or adult use store
Location Restrictions	400m separation distance	800m separation distance; prohibited on the same lot	400m separation distance; prohibited on the same lot

Outside of Schedule “I”

	Current	Staff Proposed	My Proposal
By-Law Text	<p>5.17.1 No payday loan establishment, tattoo parlor, pawn shop, vapour product shop or adult use store situated on a lot outside of the hatched area shown on Schedule “I” to this By-law shall:</p> <p>(a) Be located closer than 150m to another lot outside of the hatched area shown on Schedule “I” to this By-law occupied by the same use, as measured along a line connecting the two closest points of the respective lots; and,</p> <p>(b) Be located closer than 400m to another lot within the hatched area shown on Schedule “I” to this By-law occupied by the same use, as measured along a line connecting the two closest points of the respective lots.</p>	<p>5.17.1 Notwithstanding any provision of this By-law to the contrary, no payday loan establishment, tattoo parlour, pawn shop, vapour product shop, social service establishment or adult use store situated on a lot shall:</p> <p>(a) Be located closer than 800m to another lot occupied by the same use, as measured along a line connecting the two closest points of the respective lots; and,</p> <p>(b) Be located on the same lot already lawfully occupied by the same use.</p>	<p>5.17.1 Notwithstanding any provision of this By-law to the contrary, no payday loan establishment, vapour product shop, or adult use store situated on a lot shall:</p> <p>(a) Be located closer than 400m to another lot occupied by the same use, as measured along a line connecting the two closest points of the respective lots; and,</p> <p>(b) Be located on the same lot already lawfully occupied by the same use.</p>
Covered Uses	<p>payday loan establishment, tattoo parlor, pawn shop, vapour product shop or adult use store</p>	<p>Addition of social service establishment</p>	<p>payday loan establishment, vapour product shop, or adult use store</p>
Location Restrictions	<p>150m separation distance between uses that are both outside of Schedule “I”</p>	<p>800m separation distance; prohibited on the same lot</p>	<p>400m separation distance; prohibited on the same lot</p>

	400m separation distance between uses where the other is located within Schedule "1"		
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Appendix B: Extracts Regarding Human Rights and Planning

I have included some extracts from the Ontario Human Rights Commission about human rights and municipal planning.

From: [Good planning leads to healthy, inclusive communities | Ontario Human Rights Commission](#)

Planning Act

The *Planning Act* provides a framework for municipalities to make land use decisions to fit local needs and circumstances. It also recognizes human rights as part of the planning process. In making these decisions, municipalities must make sure they do not violate the *Human Rights Code*.

Did you know?

A 2010 OMB decision [*Advocacy Centre for Tenants Ontario v. Kitchener (City)* (2010), O.M.B.D. Case No. PL050611] identified that when bylaws result in restrictions for groups protected by the *Code*, a municipality may need to show that they are rationally connected to municipal objectives, they were established in good faith, and that it would be impossible to accommodate the group affected without undue hardship.

Zone for land use, not for people

Section 34 of the *Planning Act* sets out the powers of municipalities to pass zoning bylaws to regulate matters including the use of land (e.g. residential, commercial, industrial), and standards associated with land uses such as location, size, setback and parking requirements.

Section 35(2) of the *Planning Act* says municipalities may not pass zoning bylaws that distinguish between people who are related and people who are unrelated in respect of the occupancy or use of a building. For example, a zoning bylaw cannot stipulate that a family rather than roommates must occupy a house.

About minimum separation distances

Many municipalities want to use minimum separation distances as a way to manage overconcentration of some types of housing within one neighbourhood. While there may be merit in the goal of spreading housing types and services across a municipality, higher real estate costs and other factors may make this difficult.

When other factors act as barriers, minimum separation distances further limit housing options and can have a negative impact on the people who rely on these options. Instead, look at the broader issues and consider incentives and ways to encourage and facilitate

affordable housing in the other parts of the municipality. This is a positive approach, instead of the punitive one that minimum separation distances often suggest.

Did you know?

The courts have stated that zoning powers do not include the power to zone by referring to the user of the land or to define the use by referring to a personal characteristic. For example, the Manitoba Court of Appeal ruled that a zoning bylaw breached s.15 of the *Charter of Rights and Freedoms* because it restricted the location of group homes for older persons, people with disabilities, persons recovering from addictions and discharged penal inmates to a limited number of zones, and required minimum separation distances (*Alcoholism Foundation of Manitoba v. Winnipeg (City)*, [1990] M.J. No 212 (C.A.): the Supreme Court of Canada denied leave to appeal).

From: [Appendix A: Poverty, social condition and the Human Rights Code | Ontario Human Rights Commission](#)

Because of the close connection between low social and economic status and membership in a *Code*-protected group, measures that subject people who have low social and economic status to differential treatment will frequently raise human rights concerns. Government, housing planners, policy-makers and housing providers should make sure that their policies and practices do not have an adverse impact on people identified by *Code* grounds.

From: [Overcoming opposition to affordable housing | Ontario Human Rights Commission](#)

Elected officials have human rights obligations

Discriminatory comments can also happen outside of community meetings (for example, in municipal council meetings involving planning, zoning or funding approvals). Elected representatives are not exempt from the *Code* – they have a legal duty to not discriminate, and they are elected to represent all of their constituents.