

Potential Impacts of Changing Limited Group Homes

Recommendation:

That the October 5/6, 2015, Sustainable Development report CR_2314, be received for information.

Report Summary

This report provides information about the potential impacts of changing Limited Group Home from a permitted use to a discretionary use in Zoning Bylaw 12800 as well as history of the issue and community impacts.

Previous Council/Committee Action

At the March 17, 2015, City Council meeting, the following motion was passed:

That Administration provide a report to Executive Committee on the potential impacts of changing limited group homes from permitted uses to discretionary uses in the Zoning Bylaw, as well as history of the issue and community impacts.

Report

Social service providers and governments have moved away from institutionalized housing for persons requiring care. When social housing is integrated into neighbourhoods in smaller, more home-like facilities, rather than large institutions, a better quality of life, equality, and enhanced communities can be provided.

The City of Edmonton has Group Home and Limited Group Home as specific use classes in Zoning Bylaw 12800 (see Attachment 1). These forms of housing are an important option for some people requiring care, as this enables them to live in the community of their choice with the necessary supports. Currently, Limited Group Home is a permitted use within most residential zones.

History of Limited Group Homes in Edmonton

Prior to the early 1970s, supportive housing in Edmonton was provided mostly in large institutional facilities. In the 1980s, health and social service providers began moving towards community-based delivery of services to improve client accessibility and independence. This community-based model has continued to grow. Persons requiring care experience improved quality of life in more home-like, residential settings.

The City of Edmonton's Land Use Bylaw 5996 first reflected this de-institutionalization with the inclusion of the Group Home use class, which was discretionary. In 1983, Land Use Bylaw 5996 was amended to include the Limited Group Home use class. Limited

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Group Home was a permitted use and was defined as having six or fewer residents in care. This was undertaken in response to a request for the amendment by the Social Justice Commission of the Archdiocese of Alberta in 1982, which represented 18 local social service agencies. The Commission reasoned that the single category of Group Home assumed a higher level of impact which was not characteristic of smaller group homes.

In the early 1990s, the Province of Alberta implemented changes in its provision of health care. Several large, long-term care facilities were closed, resulting in an increase in new applications for group homes and limited group homes in Edmonton. Some citizens expressed concern to members of Council and, in 1994, these concerns prompted an inquiry by Council about licensing and regulation. In its response to the inquiry, Administration recommended that Council not increase regulation of limited group homes, and on that occasion, Council agreed and did not implement changes.

In 2001, Zoning Bylaw 12800 was approved which carried forward the definition of Limited Group Home from Land Use Bylaw 5996.

In 2007, a resident of a limited group home in Edmonton died in a fire. The resulting public fatality inquiry in 2009 recommended that the City and the Province improve coordination for inspections, enforcement and licensing. These recommendations led to changes to Zoning Bylaw 12800 in 2012.

Zoning Bylaw 12800 Amendments: Thresholds & Residential Compliance Team

In November 2012, Council approved amendments to definitions, regulations, and use classes of Special Residential Facilities in Zoning Bylaw 12800. The amendments included clarification of the definition and regulation of Special Residential Facilities including Limited Group Home, Group Home, Lodging House, and Fraternity and Sorority Housing.

Zoning Bylaw 12800 defines a Limited Group Home as having a minimum of four residents and a maximum of six residents. If there are three or fewer residents, it is considered a Household and no development permit is required. This is based on the definition of Household in Section 50 (ii).

To address concerns about the concentration of special residential facilities in neighbourhoods, the amendments introduced a threshold of a maximum of three special residential facilities per 1,000 persons in a neighbourhood. A second threshold is a maximum of two special residential facilities per block. A third threshold is a maximum of 12 residents per opposing block face in zones where special residential facilities are a discretionary use, and 30 residents per opposing blockface where special residential facilities are a permitted use. The reason for the thresholds is to evenly distribute residential facilities and to ensure such facilities are available in all neighbourhoods.

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The amendments were accompanied by the launch of the Residential Compliance Team. The Residential Compliance Team is a multidisciplinary team created to ensure existing and proposed special residential facilities comply with all provincial and municipal housing regulations. The Residential Compliance Team conducts complaint-based, coordinated land use inspections, in conjunction with other City departments and provincial agencies.

Results of the 2012 amendments to Zoning Bylaw 12800 include an increase in permits issued for limited group homes, improved regulation of secondary suites and the restriction of additional residential facilities in neighbourhoods that had reached the thresholds. Thresholds have been reached in the following neighbourhoods: Boyle Street, Calder, Delton, Eastwood, Gainer Industrial, Kinokamau Plains Area, Mactaggart, McCauley, Prince Charles, R.V. Kinnaird, Rural South East, and West Jasper Place. Therefore, no further residential facilities are being supported by the development authority in these areas. Attachment 2 is a map indicating the concentration of special residential facilities by neighbourhood in Edmonton, measured as a percent of the current threshold for each neighbourhood.

Human Rights Issues

Consideration of human rights issues in municipal and land use planning was rare in the past but is becoming more common. Courts and governments in other Canadian jurisdictions have upheld human rights and freedom from discrimination as a required consideration in land use planning in issues such as housing for disabled persons, accessible housing, the location of social and group housing, and restrictions on availability of social housing. When governments have been found to be creating restrictions, they are often also found to be impacting peoples' dignity, treatment and ability to participate as equal members in a community. These restrictions have frequently been interpreted as violating human rights protections and sufficient for a municipal bylaw to be struck down by courts.

In 2010, an advocacy group challenged the City of Toronto's definition of Group Home and a required separation distance of 250 metres between limited group homes at the Ontario Human Rights Tribunal. The challenge ultimately prompted the City of Toronto to hire a human rights and planning expert who made the following recommendations:

- Delete part of the definition of Group Home that defined residents "by reason of their emotional, mental, social or physical condition or legal state"
- Remove required separation distance
- Review the entire City-wide Zoning Bylaw for compliance with provincial human rights legislation and the *Charter of Rights and Freedoms*

The report recommendations further clarified that for a municipality to maintain zoning restrictions that create barriers to housing or services, there must be a planning

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justification that surpasses the protected human rights. The City of Toronto found no such justification and in 2014 removed the minimum separation distance and other zoning restrictions. Other Ontario municipalities including Smiths Falls and Kitchener quickly followed Toronto and removed similar restrictions from their land use bylaws.

In Alberta, several municipalities have already examined, or are currently examining, their land use bylaws to determine if changes are required to bring regulation of residential facilities in their land use bylaws into compliance with human rights legislation. These municipalities include Peace River, Calgary, and St. Albert. City of Edmonton Administration at this time has not conducted a review of Zoning Bylaw 12800 to ensure compliance with human rights legislation.

Potential Impacts of Changing Limited Group Home to a Discretionary Use

Limited group homes have been a part of Edmonton's residential communities since 1983 and for their residents they provide a quality of care and service that would likely not be available elsewhere. Regulating limited group homes in a way that creates barriers to their creation or operation would impair quality of life for current and potential residents.

Making Limited Group Home a discretionary use would likely result in an increase in appeals to the Subdivision and Development Appeal Board. A survey of 2014 appeals of approved development permits for limited group homes with variances, indicates that four approvals were appealed. In each case the Board upheld the approval of the limited group home as it was approved by the development officer.

Additional barriers to establishing limited group homes may ultimately restrict choice of housing and location for residents. To amend Zoning Bylaw 12800 in a way that results in further restrictions of choice for residents of limited group homes may open the City to human rights and legal challenges.

Public opposition to new limited group homes is often based on concerns that such facilities increase traffic, disrupt communities, or affect property values. In reality, limited group homes are, by definition, small-scale residential developments with minimal impact. Concerns about negative impacts often subside soon after operation begins because limited group homes operate in a manner that is similar to other residential homes.

The notification and appeal process that goes along with regulating any discretionary use has an administrative cost to implement as the resulting appeals will utilize staff resources and lengthen waiting times for approvals.

As an alternative to making Limited Group Home a discretionary use, it has been suggested that proactively notifying the neighbourhood about a proposed limited group home can be helpful in alleviating public concern. For example, in their Community Housing Project, Alberta Health Services (with Alberta Human Services) provided a

letter of introduction and a list of frequently asked questions to nearby property owners. As a result of Alberta Health Services providing these documents, community concerns about new limited group homes were significantly reduced and new limited group homes were more readily accepted into communities. In one instance, neighbours withdrew their pending Subdivision and Development Appeal Board appeal of a limited group home after Alberta Health Services shared these informative documents with the neighbours.

Conclusion

Limited Group Home is currently a permitted use because it has a similar impact on neighbouring residential property as any other low density residential use in the neighbourhood in which it operates.

Making Limited Group Home a discretionary use would require an amendment to Zoning Bylaw 12800. The amendment would include directives on what the development officer shall consider in approving the discretionary use. Regulating limited group homes in a more restrictive way could result in legal challenges for violation of human rights legislation.

Policy

The Way We Live, Edmonton's People Plan

- Goal One: Edmonton is a vibrant, connected, engaged and welcoming city
- Goal Three: Edmonton is a caring, inclusive, affordable community

The Way We Grow, Municipal Development Plan, Bylaw 15100

- Section 4.4, Housing Choices
- Section 4.5, Affordable Housing
- Section 6.5, Education, Health and Government
- Section 8.1, Regional Co-operation and Partnership

Policy Number: C538, Diversity and Inclusion Policy

Public Consultation

Edmonton Federation of Community Leagues

A meeting was conducted with nine community leagues and the Edmonton Federation of Community Leagues to discuss the history of limited group homes in Edmonton and the potential impacts of making Limited Group Home a discretionary use. While a minority of community league representatives expressed interest in this change in regulation, the discussion resulted in a consensus for Administration to explore alternatives to making Limited Group Home a discretionary use.

Health and Social Service Providers and Residential Facility Regulators

A meeting was conducted with ten representatives to discuss the history of limited group homes in Edmonton and the potential impacts of making Limited Group Home a discretionary use. The discussion determined there is no support for making Limited Group Home a discretionary use, and a strong preference was expressed for leaving Limited Group Home as a permitted use.

Perspectives of Those Living in Limited Group Homes

A meeting was conducted with eight current or one-time residents of limited group homes. This meeting was arranged by the Self Advocacy Federation, a non-profit agency dedicated to “personal development, public education and advocacy” for persons with developmental disabilities. The conversation during this meeting focused on the residents’ personal opinions about their current living arrangements and their preferences for certain types of housing and care. These individuals each expressed a strong preference for their housing and care needs to be provided in facilities similar to limited group homes. Specific benefits they identified in living in limited group homes include increased independence, acceptance within their community, better work and volunteer options, reduced stress (caused by overcrowding and rigid rules), control over food and meals, and even the ability to own a pet.

Legal Implications

Making Limited Group Home a discretionary use would require drafting of amendments to Zoning Bylaw 12800. Proposed amendments would have to be advertised and considered by Council in a public hearing. Administration would be required to draft additional development regulations for the discretionary use. Additional public consultation would have to be undertaken on proposed amendments.

In addition to the specific legal implications of an amendment to Zoning Bylaw 12800, Council is advised to consider potential human rights challenges.

Attachments

1. Limited Group Homes - Current Regulations and Zones
2. Concentration of Special Residential Facilities by Neighbourhood

Others Reviewing this Report

- R. Smyth, Acting General Manager, Community Services
- K. Rozmahel, General Manager, Corporate Services
- T. Burge, Acting Chief Financial Officer and Treasurer