



**SUBJECT: City-initiated amendments to Official Plan, 2020 and Zoning By-law 2020**

**TO: Community Planning, Regulation & Mobility Cttee.**

**FROM: Community Planning Department**

Report Number: PL-53-23

Wards Affected: All

Date to Committee: September 12, 2023

Date to Council: September 26, 2023

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**Recommendation:**

Approve Official Plan Amendment No. 1 to the City of Burlington Official Plan, 2020, as provided in Appendix A of community planning department report PL-53-23; and

Deem that Section 17(21) of the Planning Act has been met; and

Instruct the City Clerk to prepare the necessary by-law adopting Official Plan Amendment No. 1, as contained in Appendix A of community planning department report PL-53-23; and

Approve the proposed amendments to Zoning By-law 2020 as provided in Appendix B of community planning department report PL-53-23; and

Enact By-law 2020.460 as contained in Appendix B of community planning department report PL-53-23; and

Deem that the amending zoning by-law will conform to the Official Plan for the City of Burlington once Official Plan Amendment No. 1 is adopted; and

State that the amending zoning by-law will not come into force and effect until Official Plan Amendment No. 1 is adopted.

## **PURPOSE:**

The purpose of this report is to recommend approval of City initiated amendments to the Burlington Official Plan, 2020 and Zoning By-law 2020, attached as Appendix A and B to this report. These amendments will ensure the Burlington Official Plan, 2020 and Zoning By-law 2020 comply with changes made to Section 16(3) and Section 35.1 of the *Planning Act* regarding additional residential units through the *More Homes Built Faster Act, 2022* (Bill 23) and the *Helping Homebuyers, Protecting Tenants Act, 2023* (Bill 97). The proposed amendments align with the objectives of the City's Strategic Plan, Housing Pledge and Housing Strategy by providing opportunities to increase housing supply and housing options in Burlington.

## **Vision to Focus Alignment:**

This report aligns with the following focus areas of the *2018-2022 Burlington's Plan: From Vision to Focus*:

- Increase economic prosperity and community responsive city growth
- Deliver customer centric services with a focus on efficiency and technology transformation

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## **Executive Summary:**

The report recommends approval of an Official Plan Amendment and Zoning By-law Amendment regarding additional residential units. Through the *More Homes Built Faster Act, 2022* (Bill 23) and the *Helping Homebuyers, Protecting Tenants Act, 2023* (Bill 97), the Province of Ontario amended the *Planning Act* to expand permissions for additional residential units (ARUs). The changes to the *Planning Act* permit up to two additional residential units per property and apply provincewide to all residential lands within settlement areas on full water and sewage services. The proposed Official Plan and Zoning By-law amendments include:

- Broadening the permissions for additional residential units in the Official Plan and Zoning By-law in compliance with the changes to the *Planning Act*; and
  - Updating definitions in the Official Plan and Zoning By-law to align with the *Planning Act* and ensure consistency between the Official Plan and Zoning By-law, including replacing the term "Accessory Dwelling Unit" with "Additional Residential Unit" in the Zoning By-law.
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## **Background and Discussion:**

### **Additional Residential Units**

An additional residential unit (ARU), also known as an accessory dwelling unit, secondary suite, granny flat, coach house, etc., is a self-contained dwelling unit located within, and/or on the same property as a detached dwelling, semi-detached dwelling, or row house (row houses are referred to as townhouses and street townhouses in the Burlington Official Plan, 2020 and Zoning By-law 2020).

### **Bill 108, More Homes, More Choice Act, 2019**

In 2020, Burlington's Official Plan was approved, with modifications by Halton Region. At that time, the City's Official Plan policies were in compliance with the *Planning Act*, including the additional residential unit related sections as amended in 2019 by Bill 108, *More Homes, More Choice Act, 2019*. Bill 108, among other things, expanded requirements and removed barriers for municipalities to permit additional residential units. This included limiting appeal rights for additional residential units through Section 17 (24.1) of the *Planning Act*. The Ontario Land Tribunal (OLT) confirmed in January 2023 that among other subsections, subsection 8.7.2 "Additional Residential Units" of the Burlington Official Plan, 2020 is in full effect due to the provisions of the *Planning Act* which limit appeal rights.

### **Bill 23, More Homes, Built Faster Act, 2022**

In 2022, through the *More Homes Built Faster Act* (Bill 23), further amendments to the *Planning Act* were made to broaden and strengthen the additional residential unit framework by moving to an "as-of-right" permission approach which supersedes local official plans and zoning provincially. The updated additional residential unit framework, which came into force on November 28, 2022, applies to any parcel of urban residential land<sup>i</sup> in settlement areas with full water and sewage services where residential units are permitted. In addition to the principal dwelling unit within a detached, semi-detached, or row house, up to two additional residential units are permitted per property as either:

- two additional residential units in a detached, semi-detached, or row house; or
- one additional residential unit in a detached, semi-detached, or row house and one additional residential unit in an accessory building or structure.

These changes also prohibit municipalities from:

- imposing development charges or requiring parkland dedication or cash-in-lieu in connection with any additional residential units; and

- applying minimum unit sizes and requiring more than one parking space in connection with these units.

### **Bill 97, *Helping Homebuyers, Protecting Tenants Act, 2023***

On June 8<sup>th</sup>, 2023, through the *Helping Homebuyers, Protecting Tenants Act* (Bill 97), the *Planning Act* was further amended to clarify that the limit of requiring one parking space per unit established through Bill 23 only applies to additional residential units (i.e., a second or third unit). Municipalities are permitted to require more than one parking space for a principal dwelling unit.

### **Burlington Housing Strategy**

The [City's Housing Strategy](#) was approved by Council in June 2022. The Housing Strategy provides a roadmap for addressing local housing needs and increasing housing options that meet the needs of current and future residents at all stages of life and at all income levels. The Housing Strategy identifies 12 Actions to move toward the vision for housing in Burlington and a set of action-oriented housing objectives (Themes).

Through the Housing Strategy Study technical work, the [Housing Needs and Opportunities Report](#) found that “Rental housing supply is not meeting the needs of existing and future residents” and that 200 rental units will need to be added to the City’s supply on an annual basis to meet resident needs.

The proposed Official Plan Amendment and Zoning By-Law Amendment attached to this report align with Objective 1 of the Housing Strategy: “*Support a Healthy Rental Housing Stock: Protect existing rental buildings and support the creation of new rental units*” and will move toward achieving Action 11 of the Housing Strategy: “*Encourage Additional Residential Units (ARUs) and consider a registry and monitoring program to evaluate the success of the framework and to make sure the ARUs meet health and safety standards*”. Further, the Housing Strategy identified that “*Implementing zoning regulations for Additional Residential Units in advance of the New Zoning By-law Review project could be investigated as a quick win.*”

### **Policy Framework**

The proposed Official Plan Amendment and Zoning By-law Amendment are subject to the policies of the *Planning Act*, Provincial Policy Statement (2020), A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) and the Region of Halton Official Plan. A policy analysis has been provided throughout the following sections of this report to demonstrate that the proposed amendments are in keeping with the applicable framework.

### **Provincial Policy Statement (PPS), 2020**

The Provincial Policy Statement (PPS) provides broad policy direction on land use planning and development matters of provincial interest. All planning decisions must be consistent with the PPS.

The PPS promotes the achievement of healthy, livable, and safe communities through various means. This includes by promoting efficient development and land use patterns; accommodating an appropriate and market-based mix of land uses; preparing for the regional and local impacts of a changing climate; and promoting the integration of land use planning, growth management, transit-supportive development, intensification, and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs.

The PPS, 2020 recognizes and acknowledges a municipality's official plan "is the most important vehicle for implementation of this Provincial Policy Statement.

Comprehensive, integrated and long-term planning is best achieved through official plans."

Related to promoting an appropriate range and mix of housing, including affordable housing, sections 1.1 and 1.4 of the PPS, 2020 include policies relevant to the Burlington Official Plan, 2020's additional residential unit policies as outlined below:

- Accommodating an appropriate affordable and market-based range and mix of housing types, including additional residential units;
- Providing for an appropriate range and mix of housing options and densities required to meet projected requirements of current and future residents; and
- Permitting and facilitating all types of residential intensification including additional residential units.

Planning staff have considered the policies of the PPS with regard to the proposed Official Plan and Zoning By-law amendments and are of the opinion that they are consistent with the PPS.

### **A Place to Grow: Growth Plan for the Greater Golden Horseshoe (Growth Plan), 2020**

The Growth Plan provides a framework for managing growth and achieving complete communities in the Greater Golden Horseshoe with access to transit networks, protected employment zones and an increase in the amount and variety of housing available.

Section 1.2.1 of the Growth Plan, 2020, sets out guiding principles, among them:

*"Support a range and mix of housing options, including additional residential units and affordable housing, to serve all sizes, incomes and ages of households."*

Further, Section 2.2.6 of the Growth Plan, 2020, directs upper-tier municipalities in consultation with lower-tier municipalities to support housing choice by identifying a diverse range and mix of housing options and densities, including additional residential units and affordable housing to meet the projected needs of current and future residents.

It is the opinion of staff that the proposed Official Plan and Zoning By-law amendments attached to this report conform with the Growth Plan, supporting the shared objective of increasing housing options and affordability in the City of Burlington.

### **Halton Region Official Plan (ROP)**

The Halton Region Official Plan (ROP) outlines a long-term vision for Halton's physical form and community character. To achieve that vision, the ROP identifies an Urban Area and a Regional Urban Structure that are intended to manage growth in a manner that fosters complete communities, enhance mobility across Halton, address climate change, and improve housing affordability, sustainability, and economic prosperity. All planning decisions in Halton Region, which includes the City of Burlington, must conform to the ROP. The ROP contains policies that permit additional residential units which were introduced as a part of Regional Official Plan Amendment (ROPA) 49.

ROPA 49 is the second amendment to be advanced as part of the Regional Official Plan Review. It was adopted by Regional Council on June 15, 2022, and approved by the Minister of Municipal Affairs and Housing with modifications on November 4, 2022. It is the second amendment to be advanced as part of the Regional Official Plan Review under Section 26 of the *Planning Act*. The amendment is primarily intended to implement the results of the Region's Integrated Growth Management Strategy (IGMS), which considered how to accommodate growth in Halton to the 2051 planning horizon as part of the municipal comprehensive review process. The amendment also includes changes that support planning for growth in Halton and achieving conformity with the Provincial Growth Plan for the Greater Golden Horseshoe and the *Planning Act*.

ROPA 49 included the introduction of policies 86(10) and 86(10.1) which requires local official plans and zoning by-laws to permit additional residential units in new and existing residential development, provided that health, safety and other reasonable standards or criteria are met. These policies also ensure that the standards or criteria identified in the local official plan or zoning by-law shall not preclude or prohibit the establishment of additional residential units, as provided for in Provincial legislation, policy or plans. Staff are of the opinion that the proposed amendments attached as Appendix A and Appendix B conform with the ROP.

### **City of Burlington Official Plan, 2020 Amendment**

City staff have prepared proposed Official Plan Amendment No. 1 (see Appendix A) in order to comply with recent changes that have been made to the *Planning Act* through

Bill 23, *More Homes, Built Faster Act, 2022*. The intent of the proposed Official Plan Amendment is to ensure compliance with Section 16(3) of the *Planning Act* and to support the proposed Zoning By-Law amendment attached to this report.

The proposed Official Plan Amendment proposes changes to the following policies of the Burlington Official Plan, 2020:

- Amendments to Subsection 8.7.2, Additional Residential Units
- Amendments to Chapter 13, Definitions, “Additional Residential Units”
- Addition to Chapter 13, Definitions, “Parcel of Urban Residential Land”

Section 17 (24.1) of the *Planning Act* limits appeal rights for additional residential unit policies and as such, the proposed amendments attached as Appendix A and B to this report are afforded limited appeal rights under the *Planning Act*.

### **Zoning By-law Amendment**

Zoning By-law 2020 currently permits only one additional residential unit (referred to as an “Accessory Dwelling Unit”) in detached and semi-detached dwellings in a limited number of zones. These zones include the R1, R2, R3, DRM, and DRL zones, as well as some Exceptions to Zone Designations. The Zoning By-law does not permit additional residential units in several other zones where detached dwellings, semi-detached dwellings, street townhouses, and/or townhouses are permitted. In addition, the Zoning By-law does not permit additional residential units in accessory buildings. Since the aforementioned new additional residential unit framework in the *Planning Act* supersedes local zoning, staff have been relying on the ‘Compliance with Other Regulations (Part 1, Section 1.1)’ section of Zoning By-law 2020 to permit additional residential units in accordance with the *Planning Act* provisions.

The proposed amendments to the Zoning By-law (Appendix B) will ensure alignment with the *Planning Act* regulations and the Official Plan policies, as proposed to be amended, by permitting up to two additional residential units in addition to the principal dwelling (totalling three residential units per property) on all residential lands in the settlement area on full water and sewer services. Additional residential units will be subject to the existing performance standards found in the Zoning By-law for the principal building or accessory building (i.e., setbacks, lot coverage, heights, etc.). The existing parking requirement of one space per additional residential unit, plus the parking requirement for the principal dwelling unit of two spaces will also continue to apply (i.e., four parking spaces would be required for three units on a property). It should be noted that it will not be feasible for all properties to accommodate two additional residential units in compliance with these parking standards and other performance standards. For example, it is expected that additional residential units will be less common on lots with semi-detached dwellings, street townhouses, and

townhouses due to smaller lot and building sizes compared to detached dwellings. Appendix C illustrates several examples of how additional residential units could be accommodated in the city in compliance with the existing performance standards.

Appendix D presents the proposed amendments to Zoning By-law 2020 and staff's explanation for context.

### **Next Steps**

Staff will update the additional residential unit information in the City's Zoning Checklists for Low Density Residential Properties to reflect the amendments to the Zoning By-law. These checklists assist applicants with preparing complete drawings for zoning review.

As part of the New Zoning By-law (NZBL) Project, which is focused on comprehensively updating the City's Zoning By-law to implement the policies of the BOP, 2020, the project team will review zoning for the City's established neighbourhood areas and will explore further opportunities for gentle intensification. This will include consideration for permitting additional residential units beyond the current performance standards found in the City's current zoning by-law (e.g., two-storey accessory buildings such as detached garages, reduced parking requirements, etc.).

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### **Financial Matters:**

Not applicable.

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### **Climate Implications:**

On April 23, 2019, Burlington's City Council unanimously passed a motion to declare a climate emergency. Broadly, the City has set out frameworks to provide for innovative solutions and opportunities to address appropriate land use while making better use of existing land, infrastructure and services. In accordance with the Growth Plan for the Greater Golden Horseshoe (2019), planning in Burlington must have as a guiding principle the need to "integrate climate change considerations into planning and managing growth such as planning for more resilient communities and infrastructure – that are adaptive to the impacts of a changing climate – and moving towards environmentally sustainable communities by incorporating approaches to reduce greenhouse gas emissions." The proposed amendments create additional housing opportunities and allow for a more efficient use of underutilized sites through gentle intensification which supports the provision of a wider range of housing options and could help minimize impacts on the environment.

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## **Engagement Matters:**

In accordance with the policies of the City's Official Plan and the provisions of the *Planning Act* for Official Plan and Zoning By-law amendments, notice of the subject public meeting was provided by way of a newspaper notice in the Burlington Post thirty days prior to the public meeting. A letter outlining the proposed amendments was also sent to all relevant external agencies thirty days in advance of the public meeting.

Comments were received from CN Rail requesting that regulations be included in the Zoning By-law Amendment regarding safety berms and setbacks from railway rights of way for ARUs. Comments were also received from TransCanada Pipelines Limited (TCPL) requesting policies and regulations be included in the Official Plan Amendment and Zoning By-law Amendment regarding setbacks from TCPL's right of way. The subject amendments are scoped to those changes necessary to bring the Zoning By-law and Official Plan into compliance with the recent changes to the *Planning Act* through Bill 23 and Bill 97. As previously noted, ARUs will be permitted in accordance with the existing performance standards in the current Zoning By-law for the principal building or accessory building. These standards include setback requirements from a railway right of way and pipeline right of way. A comprehensive review of regulations for development in proximity to railways and pipelines will be completed as part of the City's New Zoning By-law Project which is underway. Further consultation with CN Rail and TCPL will continue throughout that project.

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## **Conclusion:**

The recommended City-initiated amendments to the Burlington Official Plan, 2020 and Zoning By-law 2020 will ensure compliance with recent changes to the *Planning Act*. These amendments will support the creation of additional residential units in ground-oriented building forms, increasing the supply of housing options in the city.

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Respectfully submitted,

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## Appendices:

- A. Official Plan Amendment No. 1
- B. Zoning By-law Amendment 2020.460 (520-03/23)
- C. Additional Residential Units Example Configurations
- D. Proposed Zoning By-law Amendments and Staff Explanation

## Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.

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<sup>i</sup> **Parcel of Urban Residential Land:** a parcel of land that is within an area of settlement on which residential use, other than ancillary residential use, is permitted by by-law and that is served by,

1. sewage works within the meaning of the *Ontario Water Resources Act* that are owned by,
  - i. a municipality,
  - ii. a municipal service board established under the *Municipal Act, 2001*,
  - iii. a city board established under the *City of Toronto Act, 2006*,
  - iv. a corporation established under sections 9, 10 and 11 of the *Municipal Act, 2001* in accordance with section 203 of that Act, or
  - v. a corporation established under sections 7 and 8 of the *City of Toronto Act, 2006* in accordance with sections 148 and 154 of that Act, and
2. a municipal drinking water system within the meaning of the *Safe Drinking Water Act, 2002*; (“parcelle de terrain urbain d’habitation”)