

# Staff Report



Development Services Department

www.kitchener.ca

**REPORT TO:** Planning and Strategic Initiatives Committee

**DATE OF MEETING:** December 4, 2023

**SUBMITTED BY:** Rosa Bustamante, Director of Planning, 519-741-2200 ext. 7319

**PREPARED BY:** Garrett Stevenson, Manager of Development Review, 519-741-2200 ext. 7070

**WARD(S) INVOLVED:** All

**DATE OF REPORT:** November 14, 2023

**REPORT NO.:** DSD-2023-503

**SUBJECT:** Annual Zoning By-law Update  
Zoning By-law Amendment ZBA23/036/K/GS  
City-wide Amendments to Zoning By-laws 85-1 and 2019-051

---

## RECOMMENDATION:

That City-initiated amendment ZBA23/036/K/GS (Annual Zoning By-law Update) to Zoning By-law 85-1, be approved in the form shown in the 'Proposed By-law' attached to Report DSD-2023-503 as Appendix "A", and further,

That City-initiated amendment ZBA23/036/K/GS (Annual Zoning By-law Update) to Zoning By-law 2019-051, be approved in the form shown in the 'Proposed By-law' attached to Report DSD-2023-503 as Appendix "B".

## REPORT HIGHLIGHTS:

- The purpose of this report is to provide a planning recommendation on minor and technical changes to Zoning By-law 85-1 and 2019-051 as part of an annual review and update.
- There are no financial implications with this report.
- Community engagement included publishing notice of the statutory public meeting in the Record newspaper on November 17, 2023.
- This report supports the delivery of core services.

## BACKGROUND:

Amendments to Zoning By-laws 85-1 and 2019-051 are proposed in order to improve administration and provide clarification in certain areas of the By-laws. A number of minor changes have been identified through the daily use of the By-laws by various City staff which form the basis for the update at this time. These changes are minor and technical do not impact the overall intent of the Zoning By-laws or any specific zone.

## **REPORT:**

The City's Zoning By-laws are a regulatory tool that implements the objectives and policies of the Official Plan. The Zoning By-laws contains provisions that regulate the use, size, height, density and location of buildings on lands within the city along with other matters such as parking. The proposed amendments will enable staff, the community, and development industry to more consistently use and interpret regulations in the Zoning By-laws.

### **Planning Act, R.S.O. 1990, c. P.13 25**

Section 34(1) of the Planning Act provides authority for Council of the City of Kitchener to pass a Zoning By-law. Section 34(10) permits the Council of the City of Kitchener to amend an approved zoning by-law.

### **Region of Waterloo Official Plan**

Regional Official Plan policy 10.E.7 requires Area Municipalities, including the City of Kitchener, to bring our zoning bylaws into conformity with the policies of the Regional Official Plan. The amendments proposed to Zoning By-laws 85-1 and 2019-051 are minor and technical and not meant to be a full conformity exercise. Full implementation of the Regional Official Plan will occur through future Official Plan amendments (part of the Official Plan review) and related zoning by-law amendments.

### **City of Kitchener Official Plan**

In accordance with Policy 17.E.12.1, the City's Zoning By-laws will be used to regulate the use of land and the location and use of buildings and structures in accordance with the provisions of the Planning Act in order to ensure the orderly development of the city and contribute to and maintain community character. City Council will consider all applications to amend the Zoning By-law and will provide notice of such applications and public meetings in accordance with the provisions and regulations of the Planning Act and alternative notice procedures contained in Section 17.E.3 of this Plan. Policy 17.E.3.5 requires that notification of a public meeting for the adoption of a Zoning By-law Amendments, as required by the Planning Act, will be given to the public, and prescribed persons and public bodies at least 10 days prior to the date of the meeting and the notice will be given in accordance with the applicable requirements of the Planning Act. Notice was provided on November 17, 2023, 16 days (11 business days) in advance of the statutory public meeting.

### **City of Kitchener Zoning By-laws**

The last time an annual amendment to the Zoning By-law was approved by Council was in 2018. Since that time, changes have been made to both zoning by-laws to permit accessory dwelling units, to implement Provincial legislation, to implement City-initiated planning studies, and to approve Zoning By-law 2019-051 (CRoZBy) in phases.

### **Zoning By-law 85-1 – Proposed Amendments**

Zoning By-law 85-1 will be amended with the following changes. The new text is shown in bold text.

#### Section 2.1.4 Failure to Comply

To ensure consistency with the Municipal Act, as amended from time to time, it is recommended that any actions as necessary to effect compliance with the Zoning By-law reference the Municipal Act, rather than provide specific language in the Zoning By-law. Section 2.1.4 is replaced in its entirety with the following:

#### **2.1.4 Failure to Comply**

**Where a person fails to comply with the provisions of sections 5.13, 5.6A2, 6.1, 6.3, 6.4, 6.5 and 40.2.5, 41.2.5, 42.2.5, 43.2.2, 44.3.5, 45.3.5, 46.3 and 47.2.2 of this by-law, the City may take such actions as necessary to effect compliance with those provisions at the person's expense, in accordance with section 446 of the Municipal Act.**

#### Section 4 – Definition of Artisan's Establishment

Change the definition to align with Zoning By-law 2019-051 and add additional language as bolded below:

Artisan's Establishment – means the use of a premises for the making, study, or instruction of a performing or visual art; or the workplace of an artisan such as a painter, sculptor, photographer, dressmaker, **houseware/craft maker (including candles, soap, textiles, or similar household items)** or tailor. Artisan's establishment shall not include an adult sex film theatre.

#### Amend Section 5.5 Accessory Buildings

The Building Code has been amended and a permit is no longer required for buildings up to 15 square metres in size. Section 5.5 is amended to replace previous size of 9.9 square metres to 15.0 square metres in sections 5.5.2.a), 5.5.2.c), and 5.5.2.d).

#### Amend Section 5.6.1 Steps and Access Ramps

Below grade steps are required to have a setback of 0.5m to the side property line to ensure that a swale can be provided in the interior side yard for basement steps to accommodate drainage. Amend regulation 5.61.b) as bolded below:

- b) steps and access ramps that do not exceed 0.6 metres above grade, at grade, or below grade, may be located within a side yard provided they are setback 0.5 metres from the closest property line.**

#### Section 5.13 – Home Business Parking Regulation

Permit tandem parking in cases where there is one non-resident employee and no customers, by amending section 5.13.i) j) as bolded below.

- j) If the home business does not have a non-resident employee, or if the home business has one non-resident employee and is conducted in such a manner as to not attract customers, then the required parking space for the home business, non-resident employee, and/or dwelling unit may be arranged in tandem.**

#### Add Section 5.34 - Reduction In Regulations Resulting From Parkland Dedication

For sites under development that provide land to the City of Kitchener as part of the required parkland dedication, a new section is proposed to ensure the post-dedication parcel remains in compliance with the Zoning By-law. The following section is proposed.

5.34 Reduction In Regulations Resulting From Parkland

1. **If the dedication of land, to the City of Kitchener, for the purpose of parkland dedication results in non-compliance with regulations existing on the date of the transfer of ownership, for lot area, floor space ratio, lot width or yards, a building or use shall be deemed to comply with such regulations only in the circumstances where a building or use is proposed to be developed in strict accordance with an approved site plan, which required the conveyance of land for parkland dedication; provided that no greater benefit shall be obtained than that which could be obtained based on the zoning in effect on the date of such land dedication.**
2. **If the dedication of land to satisfy parkland dedication requirements results in non-compliance with regulations not listed in 5.34.1 and existing on the date of the land transfer, the non-compliance with those regulations shall be deemed to comply where the building or use legally existed on the date of the land transfer.**

### **Zoning By-law 2019-051 – Proposed Amendments**

Zoning By-law 2019-051 will be amended with the following changes. The new text is shown in bold text.

#### Add Section 1.11 Failure to Comply

To ensure consistency with the Municipal Act, as amended from time to time, it is recommended that any actions as necessary to effect compliance with the Zoning By-law reference the Municipal Act, rather than provide specific language in the Zoning By-law. Section 1.11 is added as following:

#### **1.11 Failure to Comply**

**Where a person fails to comply with the provisions of sections 4.7, 4.14.9, and 4.15.8 of this by-law, the City may take such actions as necessary to effect compliance with those provisions at the person's expense, in accordance with section 446 of the Municipal Act.**

#### Section 3 – Definition of Artisan's Establishment

Change the definition as bolded below:

Artisan's Establishment – means the use of a premises for the making, study, or instruction of a performing or visual art; or the workplace of an artisan such as a painter, sculptor, photographer, dressmaker, **houseware/craft maker (including candles, soap, textiles, or similar household items)** or tailor. Artisan's establishment shall not include an adult sex film theatre.

#### Amend Section 4.1 Accessory Buildings

The Building Code has been amended and a permit is no longer required for buildings up to 15 square metres in size. Section 4.1 is amended to replace previous size of 10 square metres to 15.0 square metres in section 4.1.b).

#### Amend Section 4.14.10 Steps and Access Ramps

Below grade steps are required to have a setback of 0.5m to the side property line to ensure that a swale can be provided in the interior side yard for basement steps to accommodate drainage. Amend regulation 4.14.10.a) as bolded below:

- a) Steps and access ramps that do not exceed 0.6 metres above ground level, **at grade, or below grade**, may be located within any yard side yard **provided they are setback 0.5 metres form the closest property line**.

#### Add Section 4.20 - Reduction In Regulations Resulting From Parkland Dedication

For sites under development that provide land to the City of Kitchener as part of the required parkland dedication, a new section is proposed to ensure the post-dedication parcel remains in compliance with the Zoning By-law. The following section is proposed.

#### **4.20 REDUCTION IN REGULATIONS RESULTING FROM PARKLAND**

1. If the dedication of land, to the City of Kitchener, for the purpose of parkland dedication results in non-compliance with regulations existing on the date of the transfer of ownership, for *lot area, floor space ratio, lot width or yards, a building or use* shall be deemed to comply with such regulations only in the circumstances where a *building or use* is proposed to be developed in strict accordance with an approved site plan, which required the conveyance of land for parkland dedication; provided that no greater benefit shall be obtained than that which could be obtained based on the zoning in effect on the date of such land dedication.
2. If the dedication of land to satisfy parkland dedication requirements results in non-compliance with regulations not listed in 5.34.1 and existing on the date of the land transfer, the non-compliance with those regulations shall be deemed to comply where the *building or use* legally existed on the date of the land transfer.

#### Add Section 4.21 - Reduction In Regulations Resulting From Street Widening

For sites under development that provide land to the City of Kitchener for the purpose of a road widening, a new section is proposed to ensure the post-dedication parcel remains in compliance with the Zoning By-law. The following section is proposed.

#### **4.21 REDUCTIONS IN REGULATIONS RESULTING FROM STREET WIDENING**

- a. If the acquisition of land, by registration on title on or after the date of the passing of this by-law, to widen a *street* or to provide a *corner visibility triangle* results in non-compliance with regulations existing on the date of acquisition and respecting *lot area, floor space ratio, lot width or yards, a building or use* shall be deemed to comply with such regulations only in the circumstances which follows:
  - i. where the *building or use* existed at the date of the acquisition;
  - ii. where a *building or use* is proposed to be developed by the same owner who conveyed the land for *street widening or corner visibility triangle*; or

- iii. where a *building* or *use* is proposed to be developed in strict accordance with an approved site plan applied for by a previous owner, which required the conveyance of land for *street widening* or *corner visibility triangle*; and,
- iv. subsections i) through iii) shall only apply provided that:
  - i. where the *lot* is rezoned after the acquisition of land for *street widening* or *corner visibility triangle*, no greater benefit shall be obtained than that which could be obtained based on the zoning in effect on the date of such acquisition; and,
  - ii. the provisions of this section shall not apply in circumstances where the conveyance of land for *street widening* or *corner visibility triangle* is a requirement of a subdivision of land approval.
- b. If the acquisition of land to widen a *street* or to provide a *corner visibility triangle* results in non-compliance with regulations not listed in subsection a) and existing on the date of acquisition, the non-compliance with those regulations shall be deemed to comply where the *building* or *use* legally existed on the date of the acquisition.

Amend Additional Regulations for Minimum and Maximum Parking Requirements Table 5-5

Permit tandem parking in cases where there is one non-resident employee and no customers, by amending subsection (1) as bolded below.

- (1) 0 parking spaces are required for a home occupation use that is an office or indirect sales with no employees or clients to the premises, or for a home occupation within a single detached dwelling with an additional dwelling unit(s) attached or additional dwelling unit (detached), semi-detached dwelling with an additional dwelling unit(s) attached or additional dwelling unit (detached), street townhouse dwelling with an additional dwelling unit(s) attached or additional dwelling unit (detached), cluster townhouse dwelling, or multiple dwelling.

If the home business does not have a non-resident employee, **or if the home business has one non-resident employee and is conducted in such a manner as to not attract customers**, then the required parking spaces for the home business, **non-resident employee**, and/or dwelling unit may be arranged in tandem.

### Zoning By-law Conclusions

The above noted amendments to Zoning By-laws 85-1 and 2019-051 will result in more consistent application of the zoning regulations to ensure compliance with the Ontario Building Code and the City of Kitchener Development Manual. The proposed changes are minor and technical. Planning staff are recommending the above noted amendments at this time.

Additional changes to implement four units as-of-right City-wide are under review and will be presented to Council in Q1 2024. At that time, additional amendments to both by-laws may be proposed for Council to consider.

### STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

**FINANCIAL IMPLICATIONS:**

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

**COMMUNITY ENGAGEMENT:**

INFORM – This report has been posted to the City’s website with the agenda in advance of the council / committee meeting. Notice of the Statutory Public Meeting, held by the Planning and Strategic Initiatives Committee held on December 4, 2023 will be in The Record on November 17, 2023.

**PREVIOUS REPORTS/AUTHORITIES:**

- *Planning Act*
- *DSD-19-049: Non Residential Zones*
- *DSD 19-106: Deferred Items: Urban Growth Centre Bonusing/Zoning*
- *DSD 19-130: Deferred Items*
- *DSD-19-233: New Zoning By-law (Stage 2a) – Residential Base Zones*
- *DSD-19-272: New Zoning By-law (Stage 2a) – Deferred Item: RES-3 Lot Width*
- *DSD-2021-42: New Zoning By-law (Stage 2a) – Residential Base Zones*

**APPROVED BY:** Justin Readman – General Manager, Development Services

**ATTACHMENTS:**

- Attachment A – Zoning By-law Amendment, Zoning By-law 85-1
- Attachment B – Zoning By-law Amendment, Zoning By-law 2019-051
- Attachment C – Public Notice