

## **COMMUNICATION 132062**

Received From: Niki Dwyer, MCIP RPP Director of Development Services  
Addressed To: Committee of the Whole  
Date: April 27, 2021  
Topic: Sea-Can Policy Options

### **BACKGROUND**

In early 2020, Council was presented with a draft policy for the regulation of shipping containers (“Sea-Cans”) as part of the Housekeeping Amendment to the Development Permit By-law. Following public feedback on the draft policy, the amendment was revised to remove references to regulations for shipping containers. Council previously provided direction to staff to contact property owners and tenants with shipping containers on their properties and advise them of the need to execute a “temporary use” permission through a Class 1a Development Permit. Property owners were notified and to-date one Class 1a permit has been issued; at least 1 other has removed the containers from their property.

The purpose of this report is to present options for Council’s consideration regarding the regulation and enforcement of shipping containers in Town.

### **COMMENT**

Over the past 10 years, municipalities have seen an increase in the number of shipping containers used for on-site storage and conversion to usable buildings. While there is a growing movement of habitable shipping containers in the province, locally their use has been predominantly limited to accessory storage for commercial and industrial properties.

Containers placed on a property for an extended period of time constitute a “building” under the Ontario Building Code (OBC) and require a building permit. The Ontario Fire Code also has limited regulations pertaining to what can be stored within the container. Neither the OBC nor Fire Code regulate how many containers may be on a site, how far apart they have to be, where on the site they can be located or what they look like. It is also important to note that shipping containers are not assessed for property tax purposes.

As a result, municipalities are finding it is important to employ a local policy in order to regulate the additional considerations associated with the use of shipping containers.

There are two (2) options that Council can employ to regulate shipping containers: Development Permit By-laws under Section 67 of the Planning Act or a general municipal by-law under Section 8 of the Municipal Act. An example of a comparable general municipal by-law is the Town’s Sign By-law. The merits of both approaches have been summarized below:

**Table 1 – Approach considerations:**

	<b>Development Permit</b>	<b>Municipal By-law</b>
Right of Entry Powers	Existing	Optional
Enforcement	Prosecution	Short Order Ticketing
Scope of Policy	Limited to General Provisions	Unlimited
Application Requirement <sup>1</sup>	Class IA Permit	License or Permit Optional
Appealable upon Approval	Yes - LPAT	No
Considered “applicable law” per OBC	Yes	No
Public consultation pre-adoption	Required	Optional
Administered by	Planning	Protective Services

LPAT – Local Planning Appeal Tribunal

The Planning Department and Protective Services Department have convened to weigh pros and cons of each of the above approaches and are equally committed to delivering the appropriate policy as directed by Council.

Of note, there is a general sense that the quickest and most cost-effective approach to administering the policy is to proceed with a municipal by-law. While the Development Permit By-law would have the benefit of being deemed “applicable law” and thus a requirement for compliance prior to the issuance of the permit, the adoption of an amendment to the policy would trigger appeal rights to the Local Planning Appeal Tribunal (LPAT). While we cannot say with certainty if an appeal would be filed, the public feedback received in early 2020 would be indicative that an appeal is likely. This process would add significant time and cost to the implementation of the regulation.

Additionally, there is a fundamental difference to the enforcement approaches to Planning Act and Municipal Act by-laws. Non-compliance with the Development Permit By-law is enforced through prosecution at the Superior Court of Justice, and there is no structure for Orders to Comply or more local resolution. This approach places a significant strain on staff resources and involves high costs for legal fees, of which only a portion can be recoverable if the court elects to award costs.

In contrast, a local municipal by-law may be subject to “short order ticketing” for immediate non-compliance, orders to comply or failing a resolution through mediation, by by-law staff and prosecution through the Court system.

#### Similarities in Policy Approach:

In either case there are certain criteria that can be established in either policy. Staff would recommend the following minimum criteria to be used in a draft policy:

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<sup>1</sup> Note – applications in either approach are optional but staff would encourage their use in order to seek compliance.

- 1) That a definition of shipping containers be established;
- 2) That shipping containers only be permitted on Commercial and Industrial properties;
- 3) That shipping containers are only permitted where an existing use exists;
- 4) That screening criteria be articulated in the policy;
- 5) That a maximum number of containers be established;
- 6) That a tenure and term of use be established in the by-law;
- 7) That permitting requirements be proposed.

Given the cost to enforce and implement challenges resulting from the adoption of the policy through the Development Permit By-law, it is staff's recommendation that Council proceed with the adoption of a municipal by-law under the Municipal Act specific to the implementation of shipping container regulations.

**STAFF RECOMMENDATION**

THAT Committee direct staff to develop a by-law under Section 8 of the Municipal Act respecting the regulation of shipping containers within the Town of Carleton Place.