

# INFORMATION REPORT

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> June 18, 2013	
<b>SUBJECT/REPORT NO:</b> Rental Housing Supplementary Findings of December 11, 2012 Special Planning Committee Meeting (PED10049(l)) (City Wide) (Outstanding Business List Item)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Joe Xamin (905) 546-2424 Ext. 6656
<b>SIGNATURE:</b>	

## Council Direction:

At the December 11, 2012 Special Planning Committee meeting, staff presented Report PED10049(j) which recommended a Rental Housing Licensing Model for the purpose of forming a basis for public consultation. Over 30 delegates appeared and spoke in favour or against the proposed by-law. Correspondence was also received from 26 individuals. Staff was directed to report back with answers to several questions raised.

## Information:

The responses to questions raised on December 11, 2012 have been grouped into common themes as follows:

- Staff was requested to highlight the difference between the City's existing by-laws and the proposed Rental Housing Licensing By-law.**

With respect to enforcement related to rental housing, the City currently enforces the following by-laws primarily on a reactive (complaint) basis:

- Property Standards By-law 10-221;

- Yard Maintenance By-law 10-118;
- Zoning (seven different by-laws);
- Residential Heat By-law (04-091); and,
- Vital Services (09-190).

These by-laws, while usually effective in addressing complaints, do nothing to improve living conditions or property aesthetics or identify illegal uses where no complaints are received.

In addition to reactive enforcement, City Council approved a temporary proactive enforcement pilot ("*Project Compliance*") to assist in assessing the need for rental housing licensing. As reported to the Planning Committee, this pilot is significantly contributing to the City's goals towards a safe and healthy Community by proactively uncovering and addressing deficiencies in rental housing. "*Project Compliance*" expires no later than the end of 2013.

In comparison, a Rental Housing Licensing By-law would be a more effective tool to address rental housing deficiencies requiring: zoning verifications to ensure that the uses are legal; systematic inspection of properties over time, primarily the interiors of rental properties to ensure minimum standards are met. It also would assist in the collation of data and records regarding location and density of rentals across the City.

**2. There were questions concerning the number of "*habitable rooms*"<sup>1</sup> allowed under the proposed by-law and the possible impact on availability of rental accommodations.**

The proposed Rental Housing Licensing By-law does not limit the number of bedrooms or the number of habitable rooms. The existing City of Hamilton Zoning By-law No. 6593 regulates the total number of rooms as it allows for a minimum of eight habitable rooms. There is no maximum number of habitable rooms in a dwelling provided that the dwelling can accommodate sufficient parking and meet other zoning requirements such as lot size. The required parking for a single family dwelling is based on the number of habitable rooms. Two parking spaces are required for up to eight habitable rooms plus 0.5 of a space for each habitable room past eight. For example, if there were nine habitable rooms, three parking spaces would be required.

**3. There were questions as to how the proposed Licensing By-law would regulate the substantially different issues, concerns and deficiencies related to rental housing across the City.**

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<sup>1</sup> "Habitable Room" means any room of a residential building or an institutional building, used or capable of being used by one or more persons for living, eating or sleeping, or as a kitchen serving a dwelling unit; but does not include a bathroom, water closet compartment, laundry, serving or storage pantry, corridor or other space not for use frequently or during extended periods.

(a) Illegal Uses:

Issues related to illegal use vary between the Wards based upon how the home is used. It is not a violation to rent out a home; however, how the property is used or modified can lead to a potential violation. There are numerous properties that exist across the City which are recognized as legal non-conforming. However, there have been many cases where new owners purchase properties and create additional illegal units in order to maximize the return on their investment. Once again, without proper permissions the density of rental housing is being increased in some neighborhoods as well as potentially unsafe housing conditions. In these cases, the residential use is changed and is neither permitted nor recognized as legal non-conforming under the City's Zoning By-laws. In the absence of a Rental Housing By-law or regulations, this will likely continue. (It should be noted that accessory units are allowed in Hamilton, Stoney Creek and Dundas with specific requirements per their respective Zoning By-laws.)

(b) Living Arrangements:

The issue in some Wards pertains to living arrangements within a rental property. The Zoning By-laws do not regulate how many people may live in a dwelling provided they live as a "*family*"<sup>2</sup>; nor is there any differentiation between students and non-students provided that they are living as a "*family*" and sharing the same kitchen facilities. If this is not the case, then the dwelling could be operating as a lodging home and as such should be licensed under Schedule 9 of the City's Licensing By-law.

Lodging homes are permitted uses only in certain zones in the City. Where lodging homes are not permitted, an owner could apply for change of use; however, the cost of applying for a change and the fear that it will not be approved more often than not results in landlords continuing to operate illegally. This situation is most problematic in Wards 1 and 8 where landlords tend to rent out rooms as opposed to single-housekeeping units.

**4. Concerns were expressed about the potential negative impacts on tenants and loss of housing units if a Rental Housing By-law is created.**

(a) Loss of units:

The potential loss of rental units that are not in compliance with zoning is the single biggest concern raised. Estimating the exact number is difficult, but it is anticipated that if landlords are required to return to the last legal use (e.g. from a fourplex to a duplex) up to 30% of rental units could be lost, as noted in Report PED10049(j). The other

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<sup>2</sup> "Family" shall mean a person or a group of two or more persons occupying premises and living as a single housekeeping unit, whether or not related to each other by blood or marriage, and shall include bona fide domestic servants employed as such on the premises, but not any lodger; as distinguished from a person or group of persons occupying a room or suite in a hotel, hostel or lodging house.

potential loss is where landlords may choose to de-convert the properties to avoid licensing.

Increased enforcement activity either through complaints or proactive efforts in recent years has resulted in the loss of illegal units. There are Court decisions respecting illegal use charges ordering de-conversion of a property in order to resolve a zoning violation and this has led to the eviction of tenants and the loss of units.

While the potential loss of housing is a concern, relying on the reactive approach to enforcement is not the most effective approach for dealing with substandard housing and illegal uses. Potential options to mitigate the potential loss of housing were reported in Report PED10049(j) (Rental Housing Licensing Model).

(b) Passing the added expense of license fees and other costs onto tenants:

As noted in Report PED10049(k), rents for continuing tenants can only be increased in accordance with annual cost of living adjustments. Other costs such as for licences or capital improvements must be approved by the Landlord Tenant Board as per the Residential Tenancies Act. These costs can be added only when a unit is vacant such that when the landlord and new tenant agree to the rent amount.

(c) What happens to tenants if a landlord is found operating without a licence or has their licence revoked or denied:

In cases where a rental unit is found operating without a licence or is licensed but found not to be in compliance with the by-law, it is up to the landlord to obtain compliance. Any effort towards compliance by a landlord would be taken into consideration before and during enforcement action. For example, a charge might not be laid or extended time to comply could be provided where a landlord is actively working to obtain compliance. There are community supports for tenants who may be facing eviction.

**5. There were concerns that the occupancy standards such as size and height requirements for rooms and or other spaces being converted into bedrooms will not be allowed with certain properties.**

The occupancy standards, as set out in the proposed Self-Certification Checklist, are not new. Such standards exist in the Ontario Building Code and the Ontario Fire Code and some are repeated in the City of Hamilton's Property Standards By-law. Any rooms in any dwelling that do not meet these minimum requirements cannot be used as bedrooms. Basement bedrooms must meet the requirements for height, floor area and windows. Bedrooms must have a window to provide a second means of egress. A room with no window cannot be used as a bedroom, whether in a rental unit or not.

**6. There was concern regarding the proposed by-law's relationship to Provincial Legislation; specifically the *Human Rights Code*; the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*; and the *Residential Tenancies Act (RTA)*.**

The City of London's Rental Housing By-law (upon which the recommended by-law for Hamilton is modelled) was recently challenged in Court, and upheld. This decision was not appealed and is the law in Ontario.

(a) Human Rights Code:

After noting that London's By-law was endorsed by the Human Rights Commission, the Court concluded "...*there is no evidence to support a finding that the Licensing By-law contravenes the Code. It applies throughout the City. It does not target any particular person or group of people or whether or not the housing is affordable. Rather, it targets specific types of dwellings. The Licensing By-law does not conflict with the Code*".<sup>3</sup>

As the recommended Hamilton By-law is the same as London's with respect to applying throughout the City and not targeting any person or group of people, it can be concluded that it complies with the Human Rights Code. Further, the Human Rights Commission issued a report on North Bay's By-law early in May. It expressed concerns only about provisions of that by-law which are not included in the recommended by-law. Staff have been updating the Human Rights Commission throughout this process.

(b) Municipal Freedom of Information and Protection of Privacy Act: (MFIPPA)

London's By-law requires property owners to post contact information at building entrances and to provide proof of insurance. The Information and Privacy Commissioner's Office (IPCO) intervened and was represented at the hearing. The requirement that contact information be posted at entrances was raised. The IPCO submitted that the Court should either decline to rule, because the matter was under the jurisdiction of the IPCO, or adopt the IPCO finding that such contact information was not personal information and could be posted. The Court refused to accept either submission but found that such contact information was not personal information.

Based on the London case law, the by-law proposed for Hamilton would not conflict with MFIPPA.

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<sup>3</sup> London Property Association v. London (City), Ontario Superior Court of Justice, September 30, 2011 (for all excerpts in this Report).

(c) Residential Tenancies Act:

With respect to the London challenge, the Court asked if the Licensing By-law conflicts with and/or frustrates the purposes of the Residential Tenancies Act (RTA). The Court found that it did not, and found:

- *“The Licensing By-law regulates the rights of the landlord vis-à-vis the City”. (Not the rights of the landlord and tenant vis-à-vis one another, rights which are regulated by the RTA).*
- *“I disagree with the Applicant’s submission that the Licensing By-law creates a new ground for termination of a tenancy not found in the RTA. The penalty for failing to comply with a Licensing By-law is the potential of a fine or a finding of contempt”.*

**7. The proposed by-law requires proof of insurance. It was asked whether proof of insurance would be required in all multi-residential buildings.**

Proof of insurance is a requirement for some other licensing categories, and it is proposed that it be required for the rental properties regulated under the recommended by-law (i.e. buildings containing six or fewer dwelling units). Multi-residential buildings (i.e. seven or more dwelling units) would not require a licence under the proposed by-law, and therefore, proof of insurance would not be required.

**8. There were concerns regarding access to rental units for the purpose of conducting inspections.**

Under the proposed Rental Housing Licensing By-law, each unit would be required to be licensed, and Municipal Law Enforcement Officers (MLEOs) would need to conduct inspections to validate the Self-Certification Checklist.

As reported in Report PED10049(k), the statutory rules that apply to an MLEO’s right to enter a dwelling are no different under a Licensing By-law than under other by-laws. An MLEO may enter without a warrant or an order granted by a Justice of the Peace only with the permission of the occupier (i.e. owner or tenant), after the MLEO has identified him/herself and explained that the occupier may refuse entry. However, a Licensing By-law, unlike other by-laws, should motivate landlords to assist in gaining entry because an inability to inspect the premises could, depending on the circumstances, lead to a charge and/or to the refusal, suspension or revocation of a licence.

**9. A member of the Planning Committee suggested that the proposed by-law be submitted to the Information and Privacy Commission (IPCO) for their review.**

The proposed by-law can be submitted to the IPCO for review under s. 46(a) of the Municipal Freedom of Information and Protection of Privacy Act. However, the proposed by-law is modelled on London’s By-law and when the IPCO intervened in the Court

challenge, it did so only on the basis of jurisdiction over the privacy issues raised, not because it objected to the by-law.

**10. It was asked if an owner has a right to appeal the City's decision to deny or revoke a licence as it was not specifically outlined in the proposed by-law.**

The recommended by-law will be a Schedule in the Business Licensing By-law. In accordance with the general provisions of that By-law, when the Issuer of Licences refuses to issue or renew a business licence, an applicant is entitled to a hearing before the Licensing Tribunal.

**11. The education process for landlords and tenants was questioned.**

As with any new by-law, public education is critical. Based on the experience of other municipalities, staff has recommended a period of time between when the Rental Housing Licensing By-law is passed and when it comes into effect to allow for educational material and training programs to be developed and offered facilitating a more effective transition toward licensing. Staff's intent would be to educate both the license holder and tenants. Potential license holders would need to know about the specific requirements for obtaining a licence, as well as how to complete an application. For tenants, education would focus more on awareness of the by-law and their rights as it pertains to licensing requirements.

**12. Concern was expressed that additional habitable rooms could result in parking pads being created in rear yards.**

The parking requirements for single dwellings changed in 1997 with By-law No. 97-112. Prior to this by-law being enacted a single dwelling required one parking space regardless of the number of habitable rooms. After the by-law was enacted however, the required parking for a single dwelling was based on the number of habitable rooms; a single dwelling is required to provide two parking spaces for up to eight habitable rooms and an additional half of a parking space for each habitable room after the eighth room. Rear yards may be used to provide the additional parking requirements and that is a concern.

Currently, there are seven zoning by-laws which are not uniform on parking requirements. Generally, current provisions require a minimum 50% landscaping in the front yard and in the side yard on corner lots. These provisions are only applicable to dwellings with one, two and three units in residential districts. Rear yard parking is permitted for low density residential uses in some City zoning by-laws.

The Hamilton Zoning By-law No. 6593 does not specifically restrict the number of parking spaces in the rear yard nor does it contain minimum landscaping requirements in the rear yard. However, there are certain requirements that must be met if a parking area contains five or more spaces adjoining a residential district.

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The City may wish to consider some changes to the parking provisions as it undertakes its comprehensive Urban Zoning By-law development.

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