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VIA EMAIL: lisa.kelsey@hamilton.ca

Planning Committee
City of Hamilton
71 Main Street West
Hamilton, Ontario
L8P 4Y5

Dear Chair and Members of the Planning Committee:

Re: Rental Housing “Pilot Program” (Licensing By-law) PED21097(a); HDAA Comments

We are the lawyers for the Hamilton District Apartment Association (“HDAA”). The HDAA is a non-profit organization that was formed in 1960 to address rental housing provider and property manager issues with the City of Hamilton and to provide education and encourage professionalism best practices for its members. HDAA members manage in excess of 30,000 rental units throughout the area. This submission is made in response to the Staff Report made for your Committee’s review and approval on September 21, 2021.

As your Committee is aware, HDAA supported the previous staff recommendation to postpone the proposed Pilot Project to Q1, 2023; however, that recommendation was rejected. Given that circumstance, HDAA has reviewed the current implementation recommendations and has serious concerns about the implementation proposal. HDAA is seeking that implementation of the Pilot Project be reconsidered by this Committee and Council because the current implementation proposal will not only adversely affect HDAA members but it will adversely affect tenants by triggering substantial rent increases to tenants; by triggering a loss of affordable rental housing for tenants; and, by encouraging “bad” landlords to take their operations “under the radar screen”, thereby avoiding compliance with Property Standards and the provisions of the *Residential Tenancies’ Act* (RTA). In addition, it is submitted that the costs of the program will ultimately result in added costs to taxpayers, both in the context of social services for evicted tenants and in a serious miscalculation of estimated program costs.

Adverse Effect on HDAA Members

We believe this Committee is aware that HDAA Members’ rental housing operations are currently governed by the maintenance and repair/housing standards provisions of the RTA;

Hamilton's Property Standards By-law; and, Building, Fire, Electrical Codes, among other regulatory constraints. The proposal to impose this additional, costly regulatory and administrative burden will by default add to the cost of Members' housing operations. It is respectfully submitted that existing legislation and regulation is in place to address the full scope of housing and maintenance issues and the placing of the proposed additional financial and administrative burdens on HDAA members is both unnecessary and punitive.

Adverse Impact to Tenants: Substantial Rent Increases

We have reviewed the Schedule of License Fees set out at page 5 of the Staff Report and we note that the total municipal charges (taking into account total licensing fee and the mandatory ESA inspection) will average in excess of \$1000.00 per property. When the City of Waterloo introduced a licensing by-law similar to this, we cautioned tenant advocacy groups (who ignored the caution) and the City (which ignored the caution) that the impact of the municipal charges, including ESA charges mandated by the by-law, would trigger substantial and punitive rent increases to tenants as a result of a cost pass through authorized by the provisions of the RTA. The by-law passed and applications were made under the RTA by landlords to pass the costs on to the tenants. The Landlord and Tenant Board granted an average increase of 6% above the annual rent increase Guideline (see LTB decision attached).

The imposition of Hamilton's fee schedule on properties of 4 units or less will result in annual rent increase costs to tenants averaging \$250 per unit (for a 4 unit property) to \$1000 for a single unit property (\$500 per unit for a duplex, and so on). Many tenants of such cost increases will be unable to afford them and will be forced to move out: Hamilton will effectively be forcing an economic eviction of tenants, which is a harsh outcome considering the by-law is supposed to be helping tenants. This particular issue is not mentioned in the previous staff report or in any of the delegate submissions we have reviewed for the August meeting of this Committee, nor does it appear to have been considered by Council when deciding to move forward with the Pilot Program; consequently we submit it would be appropriate and prudent for this Committee to recommend a reconsideration of staff's previous recommendation to postpone the Pilot Program. Regardless, even if it moves forward, there should then be a careful consideration of quantum of fees and charges to reduce their punitive impact on tenants, keeping in mind Council does not have legislative authority to deprive landlords of the right to file a rent increase application under the RTA. Any reduction of licensing fees will, however, mean a financial subsidy from other City programs.

In the past we have heard the sentiment expressed by municipal politicians and tenant advocates that such fees should not be passed on to tenants but should be absorbed as a "cost of doing business"; however, we note that the same parties regularly pass on their own disbursements and costs incurred when on City or advocacy business and it should not be expected that landlords would be held to a different standard of behaviour.

Adverse Impact to Tenants: Loss of Affordable Rental Housing

By further increasing the administrative and financial costs of operating small rental properties, the City by-law further exacerbates the financial risks for such operators and this, in turn, drives such operators to get out of the business. For all of 2021 there has been a "rent freeze" in place

as imposed by the Province and due to COVID-related defaults in payment of rent and a substantial backlog of processing of rent arrears applications under the RTA, many small landlords face serious financial distress and are not willing or able to operate properties at a loss.

There are two major ways (in addition to bankruptcy) for small landlords to get out of the business. One is to obtain vacant possession of a rental unit or units as permitted under the RTA for their own use or for use by members of their family so as to mitigate the losses incurred at a property and avoid the necessity for compliance with the financial and administrative burdens of licensing for the affected unit. This results in a partial reduction of their business and a reduction of rental housing supply. Another way to get out of the business is to sell the property and if they sell to a purchaser who wishes to reside in the property, and in the case of a duplex or triplex wishes to occupy the entire building, then the rental units are extinguished through the exercise of a right to possession under the RTA based on “purchasers’ own use”. The cost of single family homes has substantially increased in Hamilton and conversion of a triplex or even four-plex into a single family residential use is an attractive option to purchasing a large single family home but results in an additional loss of rental housing and much of such housing is “affordable” as that term is defined by the Province and most municipalities.

Based on the foregoing, it is submitted that insufficient consideration has been given by this Committee and Council to the real life implications of the imposition of administrative and financial burdens in the proposed Licensing By-law and that it would be imprudent to proceed at this time, keeping in mind that the maintenance and repair provisions of the RTA and Property Standards By-law, if enforced, continue to provide protections and remedies for tenants in sub-standard housing.

Adverse Impact to Tenants: “Underground Operations”

It would be naïve for anyone knowledgeable in the area of the rental housing to think that there are no “bad actor” landlord or tenants: there are and ACORN’s previous delegations assert that point consistently (albeit without evidence). It would also be naïve to think that upon proclamation of the licensing by-law there will be a queue of such landlords at City hall asking to pay fees and submit paperwork: rather, it is inevitable that such bad actors will knowingly adopt increased measures to avoid scrutiny by the City and will use whatever means they deem necessary to do so. This may involve threats to tenants, misrepresentations about what the outcome of any complaints will achieve or omissions to address maintenance and safety issues.

There is no question that some such “bad actors” will be discovered but it is submitted that those who are not will succeed in continuing to ignore their responsibilities under the provisions of the RTA and Property Standards: such behaviour is likely occurring now, but with the added liabilities of the proposed Pilot Project, it is likely even greater efforts to cover their tracks will be made. We submit that it would be imprudent to add “fuel to the fire” by imposing an additional layer of administrative and financial penalties in cases where bad actors are already operating in the rental housing community in Hamilton.

Added Financial Costs to the City

It is submitted that in all cases where it is determined that the Licensing Fees and municipal charges are insufficient to allow “full cost recovery” of the program (and a shortfall is inevitable given the failure to look at the full cost of the program, including costs to social services resulting from economic evictions) that the prospect of increasing license fees without corresponding rent increases to tenants is not a realistic option. In the City of London a similar licencing by-law was commenced with an expectation of some municipal subsidy (and lower license fees) but the end result was, and continues to be, millions of dollars of program shortfalls subsidized by taxpayers rather than landlords and tenants. Similar cost overruns have been experienced by other municipalities that have implemented licensing, except in Waterloo where tenants bear the costs through excessive licensing fees.

Realistically then, it is more likely than not that City taxpayers will be called upon to subsidize the cost of the Pilot Project from other programs. It is noted that while the Pilot Program is scheduled as a “two year” program, in reality its implementation and conclusion are likely to run for at least four years (initial time for education, registration and then commencement of the two year time frame, which is at least a year or two off after education etc.). By that time, cost overruns will inevitably be much greater than anticipated and tenants will simply not be able to afford the further imposition of rent increases and will be forced to move in the face of same. Again the more palatable option for the City will be to take money from City coffers rather than extract it from tenants via the cost pass throughs provided by the RTA.

In summary, it is submitted that the Committee and Council should revisit implementation of the Pilot Project, or defer implementation pending revisiting of same, but if this submission is rejected, then the schedule of License Fees should be revisited and substantially revised downward to avoid the harsh consequences for landlord and tenant stakeholders, the biggest burden of which will ultimately fall on tenants. One option in this case would be for the City to substantially reduce the burden by reducing all mandatory license and related fees and absorbing the costs of the program by using general or reserve City revenues or by cutting other municipal programs.

Thank you for the opportunity to bring our submissions to your attention. We can be available should there be questions from the Committee.

Yours very truly,

COHEN HIGHLEY LLP



signature electronically affixed

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Encl.

CC : Members of Hamilton Planning Committee