




Hamilton

INFORMATION REPORT

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: December 11, 2012	
SUBJECT/REPORT NO: Rental Housing Supplementary Report (PED10049(k)) (City Wide)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Joe Xamin (905) 546-2424 Ext. 6656
SIGNATURE: 	

Council Direction:

On September 18, 2012 staff presented Report PED10049(h) (Regulation of Rental Housing) to the Planning Committee and following public delegations staff were requested to report back on the following:

- “d) That staff report back to the Special Public meeting of the Planning Committee with a comprehensive report on proactive enforcement:
- (i) Rentals/Singles;
 - (ii) Any limitations within the Landlord Tenancy Act as to whether or not a landlord can apply licensing and inspection fees to a tenant's rent;
 - (iii) Does the tribunal have authority to enforce non-compliant landlords to live in non-compliant units;
 - (iv) Report on the City of Waterloo's successes and issues;
 - (v) Reconsider our Residential Care Facilities By-law with Rental Licensing By-law;
 - (vi) Feasibility of utilizing a longer compliance order;
 - (vii) Review fire codes pursuant to current technology;
 - (viii) Constitutional use of the Rental Licensing By-laws as means to gain access without search warrant through justice of the peace.”

This Report contains the response to the items listed in Item (d) and is a Supplementary Report to Report PED10049(j) which proposes a rental housing licensing model.

Information:

Planning Committee, on September 18, 2012, directed staff to report back on the following:

(i) Rental/Singles

The following is an overview of the results of the proactive enforcement of the City's Property Standards By-law (10-221) and Yard Maintenance By-law (10-118) from July 2010 to October 2012 for the pilot area of the City (Wards 1 through to 8).

With respect to Property Standards, a total of 956 properties were proactively inspected of which 58% (551) were rental properties and the remaining 42% (405) were non-rentals. Municipal Law Enforcement (MLE) tracks the number of deficiencies (i.e. problems identified through the various sections/sub-sections of the Property Standards By-law such as ventilation or roofing) per property standard order. A total of 3,629 property standard deficiencies were identified of which 2,349 (65%) were associated with the 551 rental properties and 1,280 (35%) were identified with the 402 non-rental properties. The table below provides a breakdown of the most frequently found deficiencies for rental and non-rental properties.

Deficiencies as Per the Property Standards By-law	Number Deficiencies per Rental Property	% of Def. per Rental Property	Number Deficiencies per Non-Rental Property	% of Deficiencies per Non-Rental Property	Total Combined Deficiencies
Doors/Windows	528	86%	86	14%	614
Exterior of Buildings/Structures/Fences/Retaining Walls	430	55%	348	45%	778
Floors/Ceiling/Walls	235	92%	20	8%	255
Roof	160	50%	160	50%	320
Stairways, Landings, Balconies, Porches	148	42%	208	58%	356
Storm Sewers	106	57%	80	43%	186
Lighting	92	74%	32	26%	124
Guards, Hand Rails/Partial or Short Walls	88	58%	63	42%	151
Pests	79	94%	5	6%	84
Exterior Walls/Roofs	78	45%	95	55%	173
Electrical Services	70	78%	20	22%	90
Plumbing Systems/Fixtures	64	97%	2	3%	66

A total of 2,119 Yard Maintenance (10-118) orders were issued to property owners, of which 52% (1,093) were issued to rental properties and 48% (1,026) were issued to non-rental properties. The most frequent violation found equally between rental and non-rental properties was garbage and debris, and the second most frequent was long grass and weeds. A breakdown of the orders issued by year over the last three years is provided as follows:

Proactive By-law Enforcement Overview

The data outlined in the charts that follow ranges from “Project Compliance’s” commencement in July 2010 to October 2012. The first table provides a breakdown of the number orders issued against properties. A total of 3,075 orders have been issued in the noted time frame.

Orders Issued	Rental	Non-Rental	Total
Property Standard Orders Issued	551	405	956
Yard Maintenance Orders Issued	1,093	1,026	2,119
Total	1,644	1,431	3,075

(i) Proactive Property Standard Enforcement

The following table provides breakdown of deficiencies as per the Property Standards By-law for rental and non-rental properties. Between July 2010 and October 2012 at total of 956 properties were issued property standard orders of which 551 (58%) were rental properties and 405 (42%) were non-rental properties.

Deficiencies as Per the Property Standards By-law	Number Deficiencies per Rental Property	% of Def. per Rental Property	Number Deficiencies per Non-Rental Property	% of Def. per Non-Rental Property	Total Combined Deficiencies
	551 Rental Properties		405 Non-Rental Properties		
Bath/Shower Rooms/Toilet Rooms	17	100%	0	0%	17
Doors/Windows	528	86%	86	14%	614
Electrical Service	70	78%	20	22%	90
Elevators	2	100%	0	0%	2
Exterior of Buildings/Structures/Fences, Retaining Walls	430	55%	348	45%	778
Exterior Walls/Roof*	78	45%	95	55%	173
Fence/Barriers/Retaining Walls	26	59%	18	41%	44
Floors, Ceilings and Walls	235	92%	20	8%	255
Foundations/Basement	34	69%	15	31%	49
Garages	2	67%	1	33%	3
General Standards By-law 5(2)	15	75%	5	25%	20
Guards, Hand Rails/partial or short walls.	88	58%	63	42%	151
Heating Systems	19	90%	2	10%	21
Kitchens	26	96%	1	4%	27
Lighting	92	74%	32	26%	124

**SUBJECT: Rental Housing Supplementary Report (PED10049(k)) (City Wide) -
Page 4 of 7**

Deficiencies as Per the Property Standards By-law	Number Deficiencies per Rental Property	% of Def. per Rental Property	Number Deficiencies per Non-Rental Property	% of Def. per Non-Rental Property	Total Combined Deficiencies
	551 Rental Properties		405 Non-Rental Properties		
Pest	79	94%	5	6%	84
Plumbing System/Fixtures	64	97%	2	3%	66
Roof	160	50%	160	50%	320
Sewage*	25	42%	35	58%	60
Stairways, Landings, Balconies and Porches	148	42%	208	58%	356
Storm Water	106	57%	80	43%	186
Structural Components	15	54%	13	46%	28
Structures	11	46%	13	54%	24
Treads and Risers	38	61%	24	39%	62
Vacant Buildings*	5	71%	2	29%	7
Ventilation	20	65%	11	35%	31
Walkways/Parking Lots	16	43%	21	57%	37
Total Number of Deficiencies	2,349	65%	1,280	35%	3,629

* the following items are from the previous Property Standards By-law 03-117 which was repealed and replaced by the current Property Standards By-law 10-221 in October 2010.

(ii) Proactive Yard Maintenance Enforcement

From July 2010 to October 2012 a total of 2,119 Yard Maintenance Orders have been issued to properties in the pilot area. Of this total, 52% (1,093) were issued against rental properties while the remaining 48% (1,026) were issued against non-rental properties. The table below provides a breakdown of the orders issued based on type of violation. The most frequent is garbage and debris and long grass and weeds.

Yard Maintenance Issues	# Rental Property Orders Issued	% of Complaints	# Non-Rental Property Orders Issued	% of Complaints	Total Combined Orders
Dumping	2	67%	1	33%	3
Garbage/Debris	651	51%	623	49%	1,274
Graffiti	52	47%	58	53%	110
Inoperable Vehicles	23	40%	35	60%	58
Long Grass/Weeds	185	55%	149	45%	334
Long Grass/Weeds and Debris	177	53%	156	47%	333
Snow	3	43%	4	57%	7
Total Orders Issued	1,093	52%	1,026	48%	2,119

(ii) Any limitations within the Landlord Tenancy Act as to whether or not a landlord can apply licensing and inspection fees to a tenant's rent

A license fee could legally be added to rent when the landlord and a new tenant decide how much the rent will be. Or, in the case of an existing tenant, it may be possible for a license fee to be added to rent in accordance with Section 28 of Ontario Regulation 516/06 under the Residential Tenancies Act, 2006, but this would require the landlord to apply to the Landlord and Tenant Board and satisfy the Board that the license fee is a municipal charge and that the license fee exceeds rent increase guideline plus 50% of the rent increase guideline (for 2012, that the license fee exceeds 4.65% of the rent for the year.) Otherwise, adding a license fee to rent would not be lawful. To date, there are no reported decisions of the Landlord and Tenant Board supporting such an application.

(iii) Does the tribunal have authority to enforce non-compliant landlords to live in non-compliant units?

The Licensing Tribunal could not require a landlord to live in his/her residential rental premises. This would be considered a form of detention or imprisonment available only in a sentencing context when this type of restriction is authorized by statute and would be contrary to the Charter of Rights and Freedoms. The Licensing Tribunal also could not terminate a tenancy, as this can occur only in accordance with the Residential Tenancies Act, 2006 and its regulations. The Licensing Tribunal could, however, if determined to be in the public interest, add a condition that the landlord not enter into a new tenancy for a period time after an existing tenancy has terminated.

(iv) Report on the City of Waterloo's successes and issues

The City of Waterloo's Rental Housing By-law was passed in 2011 and came into force on April 1, 2012. In consulting their Director of Enforcement, staff was informed:

- that Waterloo has received well over 2,000 applications, which is more than double the number of license applications anticipated for 2012;
- that 81% of properties that have applied for licensing did not comply with Electrical Safety Authority (ESA) requirements;
- their licensing requirements have revealed deficiencies such as bedrooms in basements without proper egress and/or windows; garages converted into living space without building permits; illegal second units, and second units that have never been legally established; and,
- one benefit identified early in the process was the City's ability to notify a landlord of illegal activities at their properties. For example, upon notifying a landlord of a large party occurring at the property the landlord was able to attend and take control of the situation.

The Housing Centre, at the University of Waterloo indicates that they have not yet seen an impact on housing stock, nor do they expect to see any effect this year. They anticipate that there will be impact in the upcoming year as leases expire and landlords decide whether or not to continue to rent. The University will require that all landlords be licensed in order to advertise with the University, and it is felt that some landlords will continue to rent without a licence; that those renting rooms in their homes may discontinue; while some further away from the University may sell their properties to larger developers.

(v) Reconsider our Residential Care Facilities By-law with a Rental Licensing By-law

It is concluded that the current "Residential Care Facilities" Schedule of the Licensing By-Law contains adequate provisions to protect the public, and, therefore, there is no advantage to including them in a new rental housing licensing schedule.

(vi) Feasibility of utilizing a longer compliance order

In accordance with standard enforcement practices, landlords could be given sufficient time to comply in a number of ways such as:

- informally giving a landlord a deadline to comply before proceeding to the Licensing Tribunal and/or laying a charge; and,
- doing this formally through an "order" to do work under Sub-sections 26a.(6) and (7) of the Licensing By-law, where "work" would include any activity directed toward correcting a contravention. The time given would be dependent on the amount of work/effort needed to obtain compliance.

(vii) Review fire codes pursuant to current technology

The Ontario Fire Code O.Reg. 213/07 is still relevant and applicable to all buildings. Newly constructed buildings and buildings that have been renovated to comply with the Ontario Building Code would be exempted. Where components are installed in existing buildings that would fall under the Ontario Fire Code it would then be the responsibility of the owner to prove that the applicable section of the code would not be applicable.

(viii) Constitutional use of the Rental Licensing By-laws as means to gain access without search warrant through justice of the peace

The statutory rules that apply to a Municipal Law Enforcement Officer's (MLEO) right to enter a dwelling are no different under a licensing by-law than under other by-laws. The MLEO may only enter without a warrant or an order granted by a Justice of the Peace with the permission of the occupier (who may be the owner or the tenant) after the MLEO has identified him/herself and explained to the occupier that he/she may refuse entry. However, a licensing by-law, unlike other by-laws, should better ensure that a

landlord will help rather than hinder entry. In fact, evidence of a landlord hindering entry could lead, depending on the circumstances, to a charge and/or to the refusal, suspension or revocation of a licence. A landlord could assist staff entry by:

- informing all tenants in advance, including setting out in the tenancy agreement, that entry will be required for the purpose of an inspection under the licensing by-law and then giving 24 hours notice of the inspection to the tenant (s. 27 of the Residential Tenancies Act 2006); and/or,
- not encouraging a tenant to refuse permission to enter.

Under a rental dwelling licensing by-law, each rental dwelling unit is required to be licensed. An MLEO would be inspecting the property to validate the Self-Certification Checklist. If the landlord is not cooperative, the matter could be forwarded to the Licensing Tribunal.

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