

CITY OF HAMILTON

PUBLIC HEALTH SERVICES
Health Protection Division

TO: Mayor and Members Board of Health	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: March 29, 2011	
SUBJECT/REPORT NO: Ontario Retirement Homes Act, 2010 and Proposed Draft Regulations under the Ontario Retirement Homes Act, 2010 (BOH11008) (City Wide)	
SUBMITTED BY: Elizabeth Richardson, MD, MHSc, FRCPC Medical Officer of Health Public Health Services Department	PREPARED BY: Michelle Baird 905-546-2424 ext.3529
SIGNATURE:	

RECOMMENDATION

That staff be directed to submit Appendix A to Report BOH11008, containing Submissions on the Proposed Regulation to the Retirement Homes Project, to the Ontario Seniors' Secretariat.

EXECUTIVE SUMMARY

Pursuant to the Retirement Homes Act, 2010, the Province is proposing an initial draft regulation. The proposed regulation was released on February 22, 2011 and is being made available for public comment for 45 days, until April 8, 2011. Further regulations will be proposed in the future. This report outlines the overall intent of the Retirement Homes Act, 2010 as well as the proposed regulation and recommends a response to the Province as set out in Appendix A to report BOH11008

Alternatives for Consideration – See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial/Staffing/Legal:

There are no financial/staffing/legal implications with approval of the recommendation contained in Report BOH11008. Financial/staffing/legal implications as a result of the implementation of the Retirement Homes Act, 2010 and proposed regulation will be presented in a future report to the Board of Health or other committee as appropriate.

HISTORICAL BACKGROUND

In the City of Hamilton, care homes, including retirement homes, are licensed as Residential Care Facilities under Schedule 20 of Licensing Bylaw 07-170. Criteria to operate Residential Care Facilities are set by Schedule 20 and its accompanying Guidelines. The Guidelines are developed and enforced by the Medical Officer of Health. On April 14th, 2010, Schedule 20 and the Guidelines were updated and approved for implementation by Council.

A number of municipalities within Ontario have by-laws governing care homes. However, Hamilton's Schedule 20 and Guidelines are unique in regulating structural issues, staffing criteria and care services offered within Residential Care Facilities; all to ensure that the care needs of Residential Care Facility residents are being met.

In 2010 the Retirement Homes Act, 2010 was enacted. The Act defines a retirement home as having a minimum of six or more unrelated residents, primarily 65 years of age or older, who purchase accommodation and care. The Act is intended to:

- Create a regulatory authority with the power to license homes and conduct inspections, investigations and enforcement, including issuing financial penalties or revoking licences if necessary.
- Establish mandatory care and safety standards, and requirements for emergency plans, infection prevention and control programs, assessment of care needs and care planning, police background checks and training for staff.
- Establish residents' rights, including the right to know the true cost of care and accommodation and the right to live in an environment that promotes zero tolerance of abuse or neglect.

During the latter half of 2010 the Ontario Senior's Secretariat consulted with stakeholders on the development of draft regulations. City of Hamilton staff were

consulted during this period. On February 22, 2011 a draft initial regulation was proposed. The draft regulation can be obtained at:

http://www.seniors.gov.on.ca/en/retirement_homes/draftregulations.php

The proposed regulation includes:

- Definition of a retirement home - minimum of six residents per home and exemptions for premises governed by other provincial legislation.
- Resident rights and protections - abuse-prevention measures and requirements regarding residents' financial matters.
- Care and safety standards - resident care plans, food safety, falls prevention, requirements for emergency and evacuation plans, mandatory staff and volunteer training.
- Licensing, inspection and enforcement - requirements for retirement home licenses, complaints procedures, and information to be kept on a public register of retirement homes.

In Hamilton there are currently 92 residential care facilities regulated by Schedule 20 and the Guidelines. Of these 92 homes it is anticipated that approximately 35 facilities will be eligible for licensing under the Retirement Homes Act, 2010. The remaining facilities do not meet the definition of a retirement home under the Act and proposed regulation.

Facilities that do not fall under the Act would include care homes for adults with care needs where the majority of tenants are under the age of 65 years. This could include adults with mental illness or addictions. It would also include care homes where a domiciliary hostel agreement is in place.

POLICY IMPLICATIONS

Currently no policy is affected by implementation of the recommendation contained in report BOH11008.

RELEVANT CONSULTATION

City Manager's Office, Legal Services

City of Hamilton Planning and Economic Development Department, Parking and Bylaw Services

Vincent Ormond, Manager, Licensing and Permits was consulted and provided suggested wording and content for report BOH11008 as well as Appendix A to this report. The consultation occurred on March 3, 2011. Licensing staff are supportive of the content included within the report. It was suggested that due to possible impacts realized when retirement homes are licensed under the Act rather than our bylaw a follow-up report may be brought to General Issues Committee rather than Board of Health.

**City of Hamilton Community Services, Social Housing and Homelessness
Division**

Shari Webb, Supervisor - Residential Care Facilities and Hostels Unit was consulted on March 3, 2011. She advised that the content in report BOH11008 was accurate with respect to facilities with a domiciliary hostel agreement. There is no impact for Community Services as a result of private, non-subsidized retirement homes in Hamilton.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The province of Ontario has enacted the Retirement Homes Act, 2010 and has begun proposing regulations under it, starting with a general regulation. Currently retirement homes within the City of Hamilton are licensed as Residential Care Facilities by Schedule 20 and its accompanying Guidelines. Staff from Public Health Services, Planning and Economic Development and Community Services (when the home offers subsidized beds) ensure the facilities operate in compliance with Schedule 20 and the Guidelines as well as a domiciliary hostel subsidy agreement where appropriate. This process is unique within the province of Ontario.

It is essential that these retirement homes continue to operate in a manner that meets the care needs of tenants. Staff have reviewed the content of the proposed regulation and compared it to Schedule 20 and the Guidelines. Staff's recommended response is intended to ensure that the protections offered to the residents of retirement homes under the provincial legislation meets or exceeds those offered by Schedule 20 and the Guidelines. Hamilton has many years of experience regulating care homes and this experience can be used to offer constructive feedback to the Province regarding whether the proposed regulation achieves the intended goal of protecting tenants.

Staff's recommended response is also intended to ensure that the Act and proposed regulation cover all content currently in Schedule 20 and the Guidelines so that there will be no need to licence retirement homes under both the Act and Schedule 20.

ALTERNATIVES FOR CONSIDERATION

Not applicable.

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability,
3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development,
6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ Council and SMT are recognized for their leadership and integrity

Intergovernmental Relationships

- ◆ Influence federal and provincial policy development to benefit Hamilton
- ◆ Maintain effective relationships with other public agencies

Social Development

- ◆ Everyone has a home they can afford that is well maintained and safe
- ◆ Residents in need have access to adequate support services
- ◆ People participate in all aspects of community life without barriers or stigma

APPENDICES / SCHEDULES

Appendix "A" to Report BOH11008 - **Submissions Regarding Proposed Initial Regulation made under the Retirement Homes Act, 2010**

Comments Regarding Proposed Initial Regulation made under the Retirement Homes Act, 2010

The Ontario Seniors' Secretariat is to be commended for introducing legislation aimed at protecting seniors living in retirement homes. The City of Hamilton has had a by-law in place for a number of years aiming to protect seniors and other adults living in residential care facilities, including retirement homes, within the City of Hamilton. As a result, Hamilton is in a unique position to offer comment to the province of Ontario and the Seniors' Secretariat with respect to the proposed initial regulation. It is our hope that the following feedback will be considered during finalization of the regulation made under the Ontario Retirement Homes Act, 2010.

We are concerned that the Act and regulation made under the Act will apply only to facilities housing a majority of residents who are 65 or older. There are numerous facilities housing adults that will not fall under this legislation or any other provincial legislation. For example, in Hamilton, approximately 65 residential care facilities will not be covered by the Act. These homes house adults who require some assistance with daily care and could include adults with mental illness or addictions. This will result in preventing other adults, including those residing in domiciliary hostels, from realizing the protections offered to seniors under this Act. Although this is not an issue in the City of Hamilton, as care homes in Hamilton are regulated by a local by-law, it is a concern elsewhere in the province.

Overall the proposed regulation is welcomed and offers significant protection to seniors residing in retirement homes in the province. In most respects the proposed regulation is substantially similar to the current by-law. In some areas the protections offered by the proposed regulation exceed the requirements in our current bylaw. Specifically, we feel the following areas of the proposed regulation exceed current standards in Hamilton and these are a positive addition to retirement home legislation:

- Section 15: Policy of zero tolerance of violence and abuse including emotional abuse
- Section 20: Food preparation-requirement of all facilities to have a certified food handler
- Section 28: Requirement for an infection prevention and control program
- Section 30: Standards for administration of drugs and other substances
- Section 57: Trust for resident's money

Despite the majority of content within the proposed regulation (and Act) being in line with the current by-law there are some noticeable gaps. These gaps are not just gaps in comparison to our local bylaw but these are gaps we realize based on our lengthy experience working with care home locally including the following:

- Facilities where the majority of residents are not over the age of 65 and no other provincial legislation applies are not subject to the Act, potentially leaving vulnerable individuals without the protection afforded to seniors 65 years of age or older.
- Domiciliary hostels are not covered by the Act.
- The definition of a retirement home under the Act includes a residence housing 6 or more tenants. This could create a gap where a facility houses less than 6 tenants. Locally our bylaw covers any home with 4 or more residents while the Nursing Home Act, in comparison covers a facility with 2 or more residents.
- The proposed regulation gives no consideration to structural components of the home such as room size, floor space per bed, storage space for residents, lighting requirements and other environmental factors.
- The proposed regulation does not stipulate a maximum number of tenants per room. In fact, the regulation fails to make any mention of the number of tenants per room or the allotted room space per tenant.
- The regulation does not state that facilities are required to operate in compliance with other Acts or regulations as appropriate. For example, although section 20 speaks to the requirements with respect to food preparation there is no mention of compliance with the Food Premises Regulation 562 under the Health Protection and Promotion Act.
- The proposed regulation fails to stipulate requirements for maximum water temperature in order to prevent scalds from occurring.
- Residents residing in retirement homes should feel a sense of security within their home. The proposed regulation does not include requirements for lockable doors on resident rooms or access to secure personal storage space for tenants. In addition, there is no requirement for private access to telephones for residents in the event a phone is not available in each resident room.

The proposed regulation covers some areas that have been traditionally overseen and enforceable by Public Health Inspectors under the Authority of the Health Protection and Promotion Act. These areas include pest control, food safety and infection prevention and control. The introduction of

inspectors under the Authority delegated by this Act to monitor such areas could result in duplication of activities by the Authority and the local Board of Health.

In order to allow local medical officers of health the opportunity to implement inspection protocols and programs within retirement homes in their respective municipalities it is recommended that there be a requirement within the Act or regulation requiring retirement homes to notify the local medical officer of health of the intent to be registered with the Authority in order to operate as a retirement home. An option could be to require the Authority to report to the medical officers of health on all retirement homes per health unit in the province. It is essential that a communication process be included in the regulation in order to avoid any gaps between local authorities and the provincial Retirement Home Authority. The application of local public health unit programs in retirement homes will provide further protection to residents residing in retirement home in the areas of pest control, sanitation, food safety and infection prevention and control.

Overall the proposed initial regulation under the Retirement Homes Act, 2010 is comprehensive and will provide protection for those under the Act. We are hopeful that consideration will be given to further broadening the applicability of the Act to other facilities – those with a majority of residents who are under 65 in age and domiciliary hostels - providing the same services. We are also optimistic that consideration will be given to enhancing the proposed regulation in order to address the gaps identified above.