



City of
Peterborough

TO: Members of the Planning Committee

FROM: Ken Hetherington, Manager, Planning Division

MEETING DATE: July 26, 2010

SUBJECT: Report PLPD10-048
Rental Residential Housing Licensing
Information Report

PURPOSE

A report to provide an update on recent issues and Court decisions regarding Rental Residential Housing licensing.

RECOMMENDATIONS

That Council approve the recommendations outlined in Report PLPD10-048, dated July 26, 2010, of the Manager, Planning Division, as follows:

- a) That Report PLPD10-048 be received for information purposes.
- b) That staff explore further the licensing of rental residential housing and report to Council on the implications of establishing such a by-law, including the experiences of other municipalities with such a by-law.

BUDGET AND FINANCIAL IMPLICATIONS

No budget or financial implications would result from the decision to approve the above recommendation.

BACKGROUND

At the May 10, 2010, Planning Committee meeting, staff were directed to “prepare a report on student housing issues, and the licensing of landlords who rent rooms (including rooming and boarding houses)”. The request originated as a result of a recent Supreme Court of Canada decision which determined that the use of zoning based on how occupants of rental dwellings relate to each other is permissible.

Presently, the Cities of Oshawa and London are the only two Ontario municipalities that have licensing by-laws for rental residential properties of which staff are aware. The Cities of Hamilton, Waterloo, Kingston and Guelph are exploring licensing options but have not implemented a by-law as of yet.

In the Province of Ontario land use is regulated by the Planning Act through the enactment of Zoning By-laws. The development of land for commercial, institutional, industrial, residential and other land uses is guided and controlled by Zoning By-laws. Other types of municipal by-laws complement zoning by-laws more specifically by regulating the condition of land and activities related to land such as, property standards by-laws, noise by-laws and parking by-laws.

Licensing By-laws

Municipal licensing by-laws are also significant tools for regulating business activities including activities on land. The process of applying for, obtaining and holding a license for a fixed term requires a licensee to demonstrate compliance on a continuing basis. Historically, however, a regulation under previous versions of Ontario’s *Municipal Act* prevented municipalities from enacting licensing by-laws that regulated residential rental accommodation. This prohibition was removed by the enactment of Bill 130, the *Municipal Statute Law Amendment Act, 2006*, which amended the *Municipal Act, 2001* as of January 1, 2007.

Bill 130 significantly amended the *Municipal Act, 2001* by conferring broad powers on municipalities to pass by-laws respecting things that municipalities consider “necessary or desirable for the public”. Consistent with those changes was the removal of the prohibition against licensing residential rental accommodation. Oshawa viewed this as an opportunity to enact a Rental Housing Licensing framework to address long standing city-wide rental housing issues and more immediately the conflicts within neighbourhoods in the vicinity of Oshawa’s University of Ontario Institute of Technology and Durham College.

The purpose of licensing would be to protect the health and safety of residents of rental units and endeavour to minimize impacts on property standards and surrounding residential neighbourhoods through initial and renewal inspection requirements.

Licensing for rental housing would require owners of rental units to meet specific conditions for providing and maintaining safe residential housing. The *Municipal Act, 2001* permits the City to require a licensee to pay a licence fee and to permit inspections prior to obtaining or reviewing the licence. The *Municipal Act, 2001* also allows the City to impose conditions as a requirement of obtaining, continuing to hold or renewing a licence.

A licensing system for all lodging and rental houses can help ensure that tenants have safe housing that meets Fire and Building Code requirements by proactively monitoring housing conditions through annual inspections. Annual inspections also mean that landlords can be provided with records of any conditions on their properties which contravene City by-laws (i.e. property standards, building code), leading to enhanced maintenance of rental properties.

Requiring licensing for detached houses will not remedy all concerns associated with this form of housing. Behavioural and nuisance issues will need to continue to be enforced through existing by-laws.

Licensing Conditions

Under the Municipal Act, 2001, the City may impose conditions as a requirement to obtain, renew or continue to hold a license. These conditions may include charging a fee for the license, compliance with other municipal by-laws or regulations, requiring compliance with applicable provincial or federal legislation, and requiring inspections of the rental property.

Amendments to the Municipal Act, 2001, under Bill 130 permit a municipality to charge a fee to issue a license. A license fee may be based on the costs of the municipality to administer and enforce a licensing program.

Cities of Oshawa and London

There are two options for consideration in regard to where a licensing by-law could be applied. One option would limit the application of the by-law to a specific geographic area or neighbourhood(s) in the City which could be viewed as singling out a certain population group. The second approach would be the application of the by-law on a city-wide basis.

In researching the experiences of the other municipalities, the City of Oshawa has applied its By-law only to a specific geographic area of the City, while the City of London has approved a city-wide approach. London's approach is more encompassing as it considers it necessary and desirable for the public to regulate the renting of residential premises for the purpose of protecting the health and safety of the residents of such premises by ensuring certain regulations are met, that the required plumbing, heating and water are provide, for ensuring such premises do not create a nuisance to surrounding properties and to protect the residential amenity, character and stability of residential areas. The London By-law came into effect March 2010.

The question arises as to whether there should be a limitation on the number bedrooms in a rental dwelling. Both the Oshawa and London By-laws limit the number bedrooms in a rental unit to a maximum of four as a condition of the license.

A cap on the number of bedrooms in rental properties could assist in limiting the over intense use (too many bedrooms) of low-density dwellings and could reduce the likelihood of converting family dwellings to rental units. A limitation on the number bedrooms in a rental property could also alleviate other issues such as parking demand on the property. However, a consequence of limiting bedrooms in rental housing is the impact on larger households and their ability find rental accommodation suitable for large families.

City of Oshawa, Superior Court Case

In 2008, the City of Oshawa became the first Ontario Municipality to pass a Licensing By-law to regulate the business activity of providing Rental Residential Housing. As a starting point, the by-law only addressed specific neighbourhoods in north Oshawa, within close proximity to the University of Ontario Institute of Technology and Durham College. Oshawa's new by-law requires the owners/landlords of rental residential dwellings to apply for an annual license, comply with various standards, comply with other applicable law and have their rental residential dwellings regularly inspected.

The City of Oshawa's Zoning By-law makes a clear distinction between a "Lodging Unit" and a "Dwelling Unit":

"Lodging House" means a building or a part of a building, containing three to ten lodging units, which does not appear to function as a dwelling unit, although one may be included with the lodging units. It includes, without limitation, a rooming house and a boarding house, a fraternity or sorority house. It does not include a hotel, a crisis care residence, a hospital, a group home, a correctional group home, a bed and breakfast establishment nor a nursing home. A lodging house may involve shared cooking or washroom facilities. Meals may or may not be provided to residents. Common areas, such as living rooms, may or may not be provide.

“Lodging Unit” means one or more rooms within a lodging house used or designed to be used for sleeping accommodations. Lodging units may contain cooking or washroom facilities, but not both.

“Dwelling Unit” means a unit consisting of one or more rooms, which unit contains toilet and cooking facilities and which is designed for use as a single house keeping establishment.

A key feature of the licensing by-law is that the rental dwelling must first comply with the zoning of the property, property standards regulations, parking regulations, the Ontario Fire Code, and the Ontario Building Code before an application will be approved. In addition, the owner must also obtain clearance from the Electrical Safety Authority. A unique feature of the Licensing schedule for rental housing is that a rental dwelling has a restriction on the maximum number of bedrooms that may be rented in dwellings and shared accommodations at four. (A minor amendment was introduced by council to permit six bedrooms on certain streets for two to three years. This was intended to address houses that already had more than four bedrooms rented, and to provide time to bring the properties into compliance with the new standards while at the same time ensuring minimum safety standards are complied with.)

The bedroom limit of four was based on the typical original built form of the homes in the subject licensing area.

Other elements of the by-law include:

- Restricting the bedroom space on the main floor of a house to 40% of the gross floor area.
- Restricting the bedroom space in the basement to 40% of the gross floor area.
- Providing a Property Maintenance Plan as part of the application. This plan shall demonstrate how the property is being maintained. For example, grass cutting, snow clearing, debris removal, garden maintenance.
- Providing a parking plan as part of the application. This plan will demonstrate where parking spaces are located on the property and ensuring that they comply with the zoning by-law.

Two other regulatory changes were made to complement the effectiveness of the new Licensing By-law. They are by-laws to implement Administrative Monetary Penalties (“AMPs”) and to create the appointed role of a Hearings Officer to consider appeals related to licensing and administrative penalties. Currently, the City of Peterborough does not have the administrative infrastructure to collect AMP’s or to hear AMP appeals.

Enforcement of the Licensing By-law includes:

- Suspension of a License;
- Revocation of a License;
- Administrative Penalties; and
- Legal proceedings and fines.

Since Canadian planning legislation was revised to prohibit zoning based on relationship, municipalities, developers and courts have sought to find the dividing line between zoning by-laws targeting “use” and those targeting “users”. A decision of the Ontario Superior Court of Justice, affirmed by the Court of Appeal for Ontario, and from which leave was recently refused by the Supreme Court of Canada, explains that zoning by-laws based on how occupants relate to each other in their use of a building is a permissible use of the zoning power.

The Neighbourhoods of Windfields Limited Partnership and the City of Oshawa brought an Application in the Superior Court of Justice against 43 homeowners in the Neighbourhoods of Windfields Farm subdivision. These homeowners controlled a total of 33 Windfields subdivision properties, some as individual owners and others as part of syndicates.

The Neighbourhoods and the City alleged that these homeowners were operating their properties as lodging houses, contrary to the City zoning by-law, which only permitted single detached dwellings in the lowest density residential zones.

The Neighbourhoods and the City claimed that these houses were each being rented to between four and nine college/university students and others on short-term leases, creating land-use conflict in the Windfields subdivision.

The Ontario Superior Court of Justice found 28 of the 30 properties remaining in the Application (three landlords representing three properties settled prior to the hearing) to be in violation of the by-law.

Key to the decision was the court’s interpretation of the term “single housekeeping establishment” the central feature of a single detached dwelling, as defined in the by-law. The court found that a “single housekeeping establishment” in the context of a zoning by-law generally means a typical single-family arrangement or similar basic social unit, and is fundamentally inconsistent with commercial properties being rented to groups of individuals bound together only by their common need for economical short-term accommodation.

The Court of Appeal for Ontario affirmed the Superior Court's decision in all respects, stating that Ontario's Planning Act did not prohibit the Superior Court from considering as a relevant factor how the renters related amongst themselves when determining whether they constituted a "single housekeeping establishment". The Supreme Court of Canada refused an application for leave to appeal these decisions, as well as a motion to intervene in the leave application by the Ontario Human Rights Commission.

The Windfields decision distinguished prior case law that, in the context of lodging house licensing, interpreted the term "single housekeeping establishment" to refer to collective decision-making and the internal functioning of a property. As a zoning matter, "single housekeeping establishment" refers to the way land is used in relation to the surrounding community.

Staffing Implications

A program to license rental properties would have staffing implications on the Clerks office to administer the program, and to enforce the by-law and on the Planning and Development Services/Building to review applications for conformity with the zoning by-law and to carry out Building code inspections.

Should Council support a proposed by-law, there will be operational and financial implications to the Corporation for additional staff to administer and monitor existing licenses; conduct annual inspections, address enforcement, administrative penalties and any appeals where a license is refused, suspended or revoked.

As noted above, a Licensing Appeal Committee or other similar body would need to be established and delegated the responsibility of handling matters related to appeals of the licensing program. Another option would be to hire a Hearings Officer.

Legal Services has been consulted in the discussion of issues and has reviewed this report.

Should Council support a Licensing program, Legal Services would be involved in the preparation of the By-law. There would be potential legal implications should a property owner or any member of the public object to the By-law.

Should a By-law be approved, there may be additional legal implications with respect to any appeals where a license is refused, suspended or revoked.

Staff recommend that further consultation with other municipalities take place before any licensing by-law for rental housing is approved.

Submitted by,

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