



City of
Peterborough

TO: **Members of the Planning Committee**

FROM: **Malcolm Hunt, Director of Planning and Development Services**
Patricia Lester, City Solicitor and Director of Legal Services

MEETING DATE: **February 6, 2012**

SUBJECT: **Report PLPD12-004**
A Review of Lodging Houses

PURPOSE

An information report to recommend an approach to regulating lodging houses.

RECOMMENDATIONS

That Council approve the recommendations outlined in Report PLPD12-004 dated February 6, 2012, of the Director of Planning and Development Services and the City Solicitor and Director of Legal Services, as follows:

- a) That Chapter 691 in the Municipal Code (the City's Noise By-law), be amended to prohibit property owners and the inhabitants of a property, from emitting, causing or permitting noise likely to disturb;
- b) That Staff be directed to actively undertake to enforce the City's Zoning By-law with regards to non-licensed lodging houses; and
- c) That the City's Business Licensing By-law 05-197, be amended to provide for additional licensing provisions for lodging houses, including the provision of commercial insurance for each lodging house and expand the general inspection powers of the Fire Chief, the Chief Medical Officer of Health and the Police Chief, to include the Chief Building Official and allow for annual inspections.

BUDGET AND FINANCIAL IMPLICATIONS

There is no direct budget or financial implications to the report, however increasing enforcement of the City's Zoning By-law will require the reallocation of existing staff resources in the Building Division.

BACKGROUND

Necessity of Report

At its meeting held August 9, 2010, when dealing with Report PLPD10-048, Council resolved

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.

The Report offered preliminary information on the efforts of other municipalities on dealing with lodging houses and the results of court decisions on the matter of enforcement.

Following Council's direction, staff from Planning, Building and Legal Services reviewed existing zoning regulations, licensing provisions and enforcement mechanisms, relating to residential rental units. In addition, Staff from the Fire, Clerk's, Peterborough Lakefield Community Police Service (the "Police") and Health Unit were also consulted.

In response to complaints by neighbours regarding problematic rental properties in various neighbourhoods, meetings were held on August 19, 2010 and May 26, 2011. Residents expressed concerns relating to fire and health safety, property standards and Building Code enforcement, zoning compliance and police services. A summary of the issues raised at these meetings is attached as Appendix "A" to this report. In addition, the Police have held meetings in September 2011 and most recently in January 2012 with specific neighbourhood residents.

The residential rental units that were reviewed specifically include boarding houses, lodging houses, rooming houses and the rental of single unit dwellings, two-unit dwellings and residential dwellings with accessory apartments. For the sake of convenience, the term "Lodging House" will be used to refer to a "boarding house" or a "rooming house".

The review has included consideration of the existing zoning by-law and regulations and of what other municipalities are doing to address the issues in their communities.

The definition of a "Boarding House" under the City's zoning by-law is:

BOARDER includes a roomer or a lodger.

BOARDING HOUSE means a dwelling in which the proprietor, or his authorized agent, resides and provides furnished lodgings, with or without meals, for profit, to three (3) or more persons.

The applicable definitions found in the Zoning By-law will be reviewed by Planning Staff in future, to ensure consistency with both the Fire and Building Codes. The Codes stipulate that boarding, lodging or rooming houses meet certain height and floor areas, bathroom and kitchen facilities and are provided for more than four (4) persons in return for remuneration or the provision of services or both.

Peterborough's Issues

The residential rental issues in Peterborough are distinct from the situation faced by larger municipalities, such as Oshawa where there is a significant concentration of lodging houses in a specific neighbourhood, resulting in the planned function of that neighbourhood being eroded.

The situation in Peterborough is one in which the occupants of distinct and relatively well-separated lodging houses are having a disproportionately negative impact on their neighbours and the neighbourhood. It is the behaviour of certain lodging house occupants that is the source of the issues raised by the public.

The City is not well-situated to change the problematic behaviour of individuals through zoning or licensing, it is therefore recommended that the City take an incremental approach to addressing the problems created by certain occupants of certain lodging houses by:

- a) amending the City's Noise By-law to prohibit not only the person emitting or causing the noise but also the landlord of the property, from emitting, causing or permitting noise likely to disturb the inhabitants of the City;
- b) enforcing the City's Zoning By-law with regards to non-licensed lodging houses; and
- c) amending the City's Business Licensing By-law to provide for additional licensing provisions for lodging houses, including the provision of commercial insurance for each lodging house and expanding the general inspection powers of the Fire Chief, the Chief Medical Officer of Health and the Police Chief, to include the Chief Building Official and allow for annual inspections. The proposed amendments to the by-law are included in Appendix "B".

Lodging houses fill an important niche in the range of available housing options. Many occupants of lodging houses spend a disproportionately high percentage of their monthly income on shelter and, if lodging houses did not exist, the only alternatives for the occupants would be to obtain short-term residence in a shelter, with family members, "couch surfing" or living on the street. Therefore the consequences of

shutting down problematic Lodging Houses may in itself increase the number of local homeless.

Peterborough is not alone in trying to address the impact that lodging houses and shared rental accommodation dwellings have on neighbours and on neighbourhoods. A series of significant court cases from different municipalities have affected the scope of what a municipality can accomplish under its licensing and zoning powers. In general, these court decisions have not been helpful for municipalities and/or have arisen from fact situations that are not present in Peterborough.

Proposed Amendments to the City's Noise By-law

The Police, who were present at the public meetings, respond to complaints about unacceptable human behaviour as their resources permit. Where the behaviour is of a criminal nature the City's jurisdiction under a by-law is no longer applicable and charges may be brought by the Police under the Criminal Code.

The current version of the City's Noise By-law does not require a landlord to take responsibility for the noise emanating from his or her property. In order to provide the Police with an additional tool to address complaints related to noise, staff recommends that the Noise By-law be amended to include the following offence:

No Owner shall emit, cause or permit the emission from the Owner's Property of noise likely to disturb the inhabitants of the City of Peterborough.

The amendment would make it an offence for a landlord (whether living at the subject property or not) to "emit, cause or permit the emission of noise likely to disturb", thereby making landlords in addition to their tenants more accountable. In order to establish a defence a landlord would need to establish a history of active involvement with his/her tenants aimed at preventing the noise, citing a term of the lease agreement that the tenant shall not permit noise would be insufficient evidence. The intent of this amendment is to have landlords more engaged in preventing noise likely to disturb and to create an incentive for landlords to be more selective about who they choose as tenants.

Enforcement of the City's Zoning By-law

Through consultation with various staff and the Police, a number of properties have been identified as "operating as" Lodging Houses. In order to do so and be licensed as such, they must comply with the City's Zoning By-law.

The Building Division staff is prepared to investigate whether certain identified dwellings are functioning as Lodging Houses and if so, the owners will be requested to cease and desist their Lodging House operations.

If there is no compliance then the Building Division would proceed with prosecutions under the Zoning By-law of alleged lodging houses located in areas not zoned to permit such a dwelling. The power of entry is granted by the *Planning Act* and in the event of non-consent from the property owner to enter, a warrant can be obtained.

Amendments to the City's Business Licensing By-law

Lodging Houses are businesses that may be regulated under a by-law created in accordance with the *Municipal Act, 2001*. The Superior Court, in the 2011 London decision found that landlords leasing rental units in their own home or in a large apartment building, are both operating a business and could be licensed.

At present, there are 11 licensed Lodging Houses in the City.

Although the City Clerk's Office in 2012 will be reviewing the City's Business Licensing By-law, staff recommend that the following amendments regarding the licensing of Lodging Houses be made immediately:

- a) that the City Clerk be provided with proof of commercial insurance for each Lodging House;
- b) expand the general inspection powers of the Fire Chief, the Chief Medical Officer of Health or Chief of Police or their designates, to include the Chief Building Official and allow for annual inspections for proof of compliance with the Building Code, Fire Code and related health and public safety legislation, and
- c) provide that annual inspections be conducted jointly, subject to any scheduling restrictions.

Additionally, some Lodging House owners may be required to make capital investments in their properties. Any failures to meet the minimum legislative standards would result in either remedial action by the property owner or the commencement of an appropriate prosecution; and/or the revocation or the refusal to issue a Lodging House license.

Why Licensing Only Lodging Houses Is of Limited Benefit

There are licensed Lodging Houses in the City to which the police make a disproportionate number of service calls. The mere existence of a Lodging House licence is no guarantee that the behaviour of its residents will meet an acceptable standard. Nevertheless, the proposed amendments to the Noise By-law and to the Business Licensing By-law are intended to create incentives for landlords to be more selective about whom they choose as tenants.

As stated earlier, if lodging houses are shut down by the City through enforcement of the zoning or licensing by-laws the only alternatives for some of the occupants would

be to obtain temporary shelter or live on the street, thereby resulting in an increase to the homeless population.

City-wide Rental Accommodation Licensing Systems

The *Municipal Act, 2001*, was amended in 2007 to provide municipalities with the authority to adopt a licensing program regulating rental properties, including, for example requiring building, fire and electrical inspections to ensure the safety of the occupants. Retroactivity or “grandfathering” is not permitted under a licensing by-law as it is under zoning, in compliance with the *Planning Act*.

Staff have reviewed the licensing provisions from a number of municipalities:

- a) Waterloo - The City of Waterloo will introduce a draft City-wide rental accommodation licensing by-law in April 2012.
- b) London - The City of London’s City-wide rental accommodation licensing by-law was unsuccessfully challenged in Superior Court but has been appealed to the Court of Appeal and the City of London expects to receive a decision in 2013. The Court concluded that a person offering rental accommodation was operating a business and that the City could regulate that business and require the business operator to provide certain information to the City in order to obtain a business licence.
- c) Oshawa - The City of Oshawa’s Lodging House Licensing by-law is restricted to a relatively small geographic area adjacent to the University of Ontario Institute of Technology. While Oshawa’s Licensing By-law has been upheld all the way to the Supreme Court of Canada, staff is not recommending it as an appropriate model for the City of Peterborough to follow, because Oshawa’s by-law was introduced to deal with a significant concentration of Lodging Houses within a small geographic area.

All of Waterloo, London and Oshawa have a dedicated by-law enforcement division. In London, licenses are issued by a License Manager and any decision of the License Manager may be appealed to a Hearings Committee. Oshawa has a system of administrative penalties, a hearings officer and the attendant infrastructure associated with running hearings. All issues respecting the proper administration of their respective licensing by-laws are subject to judicial review.

Before Council considers whether staff be directed to further investigate the creation of a City-wide rental accommodation licensing system, it is suggested that the outcome from the London Court of Appeal decision be known as well as whether Waterloo’s by-law is referred to a court in 2012.

A comprehensive review and public consultation would be required prior to initiating a City-wide licensing system for all types of rental accommodation. The consultation

process would itself require resources and staff time. A City-wide licensing system would require significant additional resources and the costs associated with those resources, if the licensing system is to be effective.

SUMMARY

The intent of the amendments to the City's Business Licensing and Noise By-laws is to create incentives for certain landlords to improve the condition of the dwellings they operate as Lodging Houses and become more selective about whom they choose as tenants. The recommended amendments will not change the behaviour of certain Lodging House occupants.

Submitted by,

Patricia Lester
City Solicitor & Director of Legal Services

Malcolm Hunt
Director, Planning & Development
Services

Contact Name:
Alan Barber
Associate City Solicitor
Phone: 705.742.7777 Ext. 1897
Fax: 705.742.3947
E-Mail: abarber@peterborough.ca

Contact Name:
Ken Hetherington
Manager, Planning
Phone: 705.742.7777 Ext. 1781
Fax: 705.742.5218
Email: khetherington@peterborough.ca

Attachments:

Appendix A - Summary of Public Meetings

Appendix B - Proposed Amendments to the City's Business Licensing By-law

APPENDIX A

SUMMARY OF PUBLIC MEETINGS

On two occasions, August 19, 2010 and May 26, 2011, meetings were held with property owners residing in close proximity to several problematic rental properties, to hear issues and concerns regarding rooming houses and the rental of dwelling units.

The meetings were attended by: City Staff from Planning, Building, Fire, the Solicitor's Office and the Police; City Councillors Dean Pappas, Len Vass, Leslie Parnell, Bill Juby; and no less than 25 to 30 people, primarily concerned neighbours and some landlords.

Concerns raised by the public may be summarized as follows:

Fire Safety:

- Disconnected and unmaintained fire alarms; and
- Unmaintained or non existent fire exits from additional units.

Health & Safety:

- Sanitation and maintenance of clean facilities; and
- Improperly disposed syringes.

By-law & Building Code Enforcement:

- Modification of buildings without permits creating additional units;
- Non-compliance with zoning by-laws and regulations;
- Property maintenance - minimum property standards by-law;
- Inadequate heat & ventilation; and
- Number of units and compliance with motor vehicle parking space requirements.

Planning:

- Compliance with zoning;
- Increased intensity of residential uses where a single detached or semidetached buildings on small 9 metre wide lots are involved;
- Devaluation of properties from concentration of commercial rental units; and
- Inadequate motor vehicle parking spaces to support the use.

Police Calls:

- Cost to tax payers requiring frequent police attention to such properties;
- Behavioural issues and nuisance concerns i.e. parties all week and noise from tenants of these units;
- Unwanted persons in the neighbourhood and on the property;
- Drug complaints;
- Open consumption of alcohol;
- Vandalism;
- Compromised security, petty theft and break ins affecting neighbouring properties; and
- Fear -intimidation of neighbours by land lords and tenants compromising the use and enjoyment of properties by neighbours.

APPENDIX B

PROPOSED AMENDMENTS TO CITY'S BUSINESS LICENSING BY-LAW

Lodger – means a Tenant, a roomer or a boarder being a person who pays Rent in return for the right to occupy a Rental Unit.

Lodging House means a Dwelling within which lodging is provided for Rent or lease to three or more persons, and includes a Boarding House and a Rooming House. A Boarding House, Rooming House or Lodging House does not include a nursing home, hotel, motel, hostel, group home, bed and breakfast establishment, emergency care establishment, or a residence of an educational institution.

2.10 Inspection – premises – all reasonable times

Every licensed premises, including a mobile canteen, may be inspected at all reasonable times by:

- a. The Chief of Police, or designate;
- b. The Medical Officer of Health, or designate;
- c. The Fire Chief, or designate; and/or
- d. The Chief Building Official, or designate.

2.11 Inspection – Premises – refusal prohibited

No licensee, or any employee of a licensee, shall prevent any authorized official, the Chief of Police, the Medical Officer of Health, the Fire Chief, the Chief Building Official or their designate(s) from conducting an inspection of the business.

2.12 General Offence – fine for contravention

Unless otherwise specifically provided for in this by-law, any person who contravenes this by-law is guilty of an offence and, upon conviction, is liable to a fine or penalty as provided for in the ***Provincial Offences Act***, as amended.

2.13 Posting Licences – Fixed Place of Business

Where a licensee carries on a business or trade from a fixed place of business, the licensee shall post the licence obtained under this by-law in a conspicuous place at such fixed place of business.

2.14 Posting Licences – Other Places of Business

Where the licensee travels from place to place to carry on a business or trade, the licensee shall carry the license when engaged in the business or trade, and every person so licensed shall, when requested by any authorized by-law enforcement official, produce the license for inspection.

2.15 Expired or Revoked Licence

No person shall post or produce for inspection a license which has expired, or which has been revoked.

ARTICLE 6

LODGING HOUSE

6.1 Requirements for Written Application

Every application for a licence shall be in writing addressed to the Clerk and shall set forth the following:

- a. the name, address and telephone number of the Applicant;
- b. if the Applicant is a partnership, the names, addresses and telephone numbers of persons associated with the partnership;
- c. if the Applicant is a corporation, the head office of the corporation and the names, addresses and telephone numbers of all directors of the corporation;
- d. the name and telephone number of the resident manager, if applicable;
- e. the location of the lodging house and written confirmation from the City's Building Division that the zoning for the property upon which the lodging house is located permits a lodging house;
- f. the number of residents to be harboured, received or lodged for hiring or compensation;
- g. the number of sleeping rooms available for residents;
- h. the number of bath tubs or showers, washbasins, water closets, sinks and laundry tubs in the building;
- i. a site plan, completed to the satisfaction of the City, showing the dimensions of all the buildings on the lot, the parking area and landscaping;
- j. a floor plan of the entire building showing the use and dimensions of all rooms;
- k. such other information as may, from time to time, be required by the City Clerk or the Chief Building Official;
- l. written confirmation from the City's Building Division that the property meets the minimum requirements of the Building Code, the Electrical Code and the City's Property Standards by-law;
- m. written confirmation from the City's Fire Service that the property meets the minimum requirements of the Fire Code; and
- n. a certificate of insurance that satisfies the City Clerk that the property being used as a lodging house is insured as a commercial property.

o. proof, satisfactory to the Fire Chief, or designate, that the furnace, if it is a fuel burning appliance, has been inspected annually.

6.2 Licence to be posted

The licence shall be posted in a conspicuous place in the entrance hallway or office of the premises.

6.3 Content of licence

The lodging house licence shall contain at least the following information:

- a. the name(s), address(es) and phone number(s) of the licensee; and
- b. the maximum number of lodgers that may be harboured, received, kept or lodged.

6.4 Rooms to be permanently numbered

Each room providing sleeping accommodation for residents shall have a number or letter permanently attached to or painted on the entrance door to the room.

6.5 Smoke alarm – minimum requirements

In addition to the requirements of the Ontario Fire Code, each room providing sleeping accommodations for residents shall have one smoke alarm installed on or near the ceiling thereof which meets the requirements of the Ontario Building Code.