



REPORT TO: Finance and Corporate Services Committee

DATE OF MEETING: November 28, 2011

SUBMITTED BY: Jeff Willmer, Deputy CAO, Community Services Department, 519-741-2325

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WARD(S) INVOLVED: All

DATE OF REPORT: November 21, 2011

REPORT NO.: CSD-11-156

SUBJECT: RESIDENTIAL RENTAL LICENSING BY-LAW

RECOMMENDATION:

That, in the event Council wishes further investigation of a residential rental licensing program, staff be directed to provide Council with an overview of potential guiding principles for such a licensing program as well as an overview of the various elements of the review process; and further,

That staff advise Council of the implications on staff resources, within the 2012 Business Planning cycle, resulting from a process to review a residential rental licensing program for the City of Kitchener.

BACKGROUND:

At the June 13, 2011, meeting of Council, staff were directed to prepare a background report on the subject of requiring a licensing scheme for residential rental properties by discussing the experiences of other municipalities in Ontario and the implications for the City of Kitchener. This report is in response to Council's direction.

The report was originally requested for the Community and Infrastructure Services Committee meeting of September 26, 2011. However, it was deemed to be appropriate to delay presenting the report to Committee until a later date, for reasons that will be discussed in this report.

REPORT:

Current Situation:

The discussion relating to a potential review of a residential rental licensing by-law for the City of Kitchener originated out of concerns expressed about rental accommodations in the Lower Doon area, which are essentially marketed to students of Conestoga College. The concerns primarily center around single detached housing that is being rented to groups of individuals, in some cases 8 or more to a dwelling.

Although the City does have regulations within the Zoning By-law relating to regulating households, it must be acknowledged that there are certain legislative constraints on these regulations. This includes a Planning Act provision that by-laws cannot distinguish between individuals or families living together. In other words, people living together do not have to be related by blood or marriage to be deemed to be a household. In addition, municipalities cannot regulate which dwellings can be rentals or not, nor can a municipality identify an area of land whereby rentals would be prohibited or permitted.

There are certain zoning regulations that apply in the area of Lower Doon that are somewhat different than most areas of the City. These include a prohibition on duplexing unless such duplex was in place prior to 2001 and a restriction of lodging houses in the majority of zones.

It must be acknowledged that there are certain challenges with the enforceability of the regulations that currently apply to rental units. Rights of entry differ from one piece of legislation to the next. At times, enforcement staff experiences challenges in gaining entry to a dwelling to perform an inspection. Additionally, due to the wording and judicial interpretations of certain legislation, it is sometimes difficult to gather sufficient evidence to prove in a court setting that a rental unit is being used as a lodging house or duplex rather than as a single household.

It should also be pointed out that these difficulties are not unique to Kitchener, and are being experienced across municipalities in Ontario.

In the spring of 2010, a fire occurred in a single detached dwelling in Lower Doon. Fortunately, there were no injuries, however this incident escalated the concerns around how houses are being used and how they have been renovated to accommodate rental uses. Subsequently, the City's Fire Department initiated a fire safety compliance program in Lower Doon, aimed at the safety of houses being used as rental accommodations. Many landlords have chosen to participate in the program, upgrading their properties with respect to fire safety based on a guideline provided by the Fire Department. However, participation in the program is voluntary and the legal considerations and enforcement difficulties already discussed can make fire safety improvement of other rental properties challenging.

Notwithstanding the comments above, it must be understood that such a potential rental licensing mechanism can have applicability across the City as it relates to ensuring safe and healthy rental accommodations, particularly with respect to situations where a building is being used as a rental when it was not originally built for such a purpose (ie. rental conversions in low-rise type buildings).

Legislation:

In January 2007, several amendments to the Municipal Act came into effect. Of relevance to the subject of this report was the elimination of regulations that prohibited a municipality from licensing, regulating or governing the rental of residential dwelling units. Municipalities can now regulate rental accommodations through a licensing mechanism in the same manner as they do other forms of businesses. The current state of the legislation appears to permit a municipality to develop a by-law that distinguishes between geographic areas of the municipality and/or by class and type of building. However, care must be taken when considering such distinctions, as will be discussed later in this report.

Existing By-laws:

Since 2007, there have been only several such licensing by-laws enacted. Below is an overview of certain by-laws of note.

London

London's by-law came into effect in 2010. The by-law applies city-wide to all rental buildings with 4 or less dwelling units. The annual license fee is \$25 and the process involves a form of self-regulation whereby the property owner is required to complete a checklist to certify that each rental unit is in compliance with the City's property standards by-law as well as proof of compliance with annual fire inspections. In addition, the owner must provide proof of insurance, as well as floor plans of the units and a maintenance and parking plan.

The nominal fee is related to the process whereby the onus is on the property owner to provide all forms of proof and certification as listed above.

In the spring of 2010, an area landlord's association made application to the Superior Court to have the new by-law quashed. Recently, this fall, the Court's decision on the application was released, with the net effect of the decision being that the challenge was dismissed thereby upholding the legality of London's by-law. The decision provides some good insight into the process associated with the review and development of such a by-law as a means to protect against such court challenges. At the time of submitting this report, staff have been informed that this decision is being appealed to the Ontario Court of Appeal by the landlord's association, however no other details were available.

As noted in the Background section of this report, staff decided to delay the presentation of this report from the original date of September 26th. The reasoning for the delay related to waiting as long as reasonably possible for the release of the London court decision in an effort to provide members of Council with as much information as possible.

Mississauga

In May 2010, Mississauga enacted their Rental Accommodation Licensing By-law that relates to the licensing of lodging houses across the entire City. The by-law defines a lodging house as a dwelling with a maximum of 4 lodging units in each lodging house. Such lodging houses are only allowed in detached houses, and basement apartments (ie. duplex) is not allowed.

Oshawa

Oshawa's by-law, the first in Ontario, was enacted in 2008. The by-law is geographic in nature and applies to an area of the City surrounding the Durham College campus, which is an area made up primarily of single detached homes in a series of relatively new sub-division developments. The by-law limits the number of bedrooms in each rental unit to 4, with an annual license fee of \$250. The by-law requires that each rental property comply with the City's Zoning and Property Standards By-laws as well as applicable Fire and Building Code regulations. The licensing process includes the requirement for insurance, floor plans, parking plans and maintenance plans to be submitted.

Waterloo

The most recent by-law was enacted in Waterloo earlier this year and takes effect in the spring of 2012. The by-law applies City-wide, to all low density rental buildings. There are several classes of licenses available, depending on the nature of the building. Of significant note in Waterloo's by-law development process was their attempt to restrict the number of bedrooms/bedroom area in each rental unit, including existing units. This would have had the effect of requiring existing rental unit owners to reduce the number of bedrooms they currently have. After much debate and consideration, Waterloo's Council decided to allow existing rental units, which were legally licensed as lodging houses under their previous by-law on the date the new by-law was enacted, to be grandfathered.

Waterloo's license fee schedule is based on complete cost recovery, with a variety of fees depending on the class of license required. They anticipate the hiring of 6 new staff positions (3 by-law enforcement officers, 1 licensing clerk, 1 fire prevention officer and 1 zoning officer) in time for the implementation of the by-law in early 2012.

Our staff have a very good networking relationship with our colleagues in Waterloo and will continue to dialogue with them and monitor the implementation of their program closely.

Purpose and Potential Benefits of a Licensing Program:

The main purpose of a program to license rental units is to protect the residents in rental accommodations, by making the units subject to those regulations, provincial and municipal, that relate to health, safety and welfare of residents. In addition, it can also minimize the negative impacts that the property may have on a surrounding neighbourhood by ensuring that the property complies with all applicable by-laws that speak to exterior maintenance.

A rental property is deemed to be a business enterprise that should be regulated to ensure public safety, neighbourhood stability and provide a level playing field for the rental business owners.

The potential benefits to tenants include the provision of safe rental housing, education with respect to all applicable regulations for rental housing and a mechanism to address situations where a rental unit is deemed to be substandard or not otherwise in compliance with the applicable regulations.

The potential benefits to landlords include documentation and assurances that their properties comply with all applicable regulations as well as providing for a fair and level playing field within the rental housing market.

The potential benefits to neighbourhoods include provisions aimed at the proper maintenance and care of rental properties.

In essence, licensing is an accountability tool, making the business owner accountable to provide safe rental units, as well as for property maintenance and, to a certain extent, perhaps certain behavioural issues that may arise as a result of the property being used for rental purposes.

Kitchener's Focus:

In the event that it is decided that staff initiate a review with an aim to a draft licensing mechanism, it is critical that we establish exactly what the focus and goal of such a process is. In essence, the fundamental purpose needs to focus on health, safety and proper maintenance.

However, one thing that has become abundantly clear to staff as a result of the monitoring and research conducted thus far, is that the existing by-laws have fundamental differences and the concept of "one size fits all" does not apply in this type of situation. Thus, we would need to establish exactly what the City of Kitchener wishes to achieve and customize a process that provides the best opportunity to deliver on that goal.

As an example, a made in Kitchener by-law could focus on low-rise type buildings that have been converted from their original purpose to rental unit accommodations intending to accommodate multiple renters (ie. existing but not purpose built units).

Potential Areas of Concern:

There are several areas of concern of note, with respect to both the development and implementation of a rental housing licensing program. These include:

- The development process undertaken in other municipalities proved to be very contentious, with many varying viewpoints. A by-law development process must include an extensive public consultation element to ensure all view points are heard;
- It is important to manage the expectations of all stakeholders with regard to what the licensing process may achieve. It is possible that certain expectations will develop that may not be delivered upon. Such expectations may include the thought that the licensing by-law will eliminate certain behavioural issues experienced in neighbourhoods with relatively high amount of rental accommodations. There are existing by-laws in place to deal with certain types of behaviours (ie. noise, nuisance, parking, etc.) and although a licensing mechanism can assist with behavioural issues to a certain degree, it should not be considered as an acceptable alternative to enforcement of existing by-laws.

- The Ontario Human Rights Commission (OHRC) has taken a particular interest in the licensing of rental units in other municipalities and will almost certainly turn their attention to any municipality that ventures down the same path. Their concerns include the potential for by-laws to target certain sectors of the rental population and potential negative impacts on the supply and affordability of rental units. A public consultation process must include the OHRC.
- There is a high degree of probability that there will be opposition from the landlord community, including those not located in areas known for student housing, given the apparent perception that this is a student housing issue.

Next Steps:

The following comments should be considered in the event that Council wishes to proceed with the investigation of a rental licensing by-law for Kitchener. An initial step will include decision making on key elements of a potential licensing program. These include:

- The types/classes of buildings the licensing program applies to;
- The implications of a by-law that is geographic in nature;
- Should consideration be given to a limitation on the number of bedrooms or bedroom area within a rental unit;
- Will the licensing program apply to owner/occupied rental units, or focus on absentee landlord situations;
- A fee structure aimed at complete cost recovery.

In the event Council wishes further investigation towards a licensing program, staff suggest that a project management type approach be taken, including a form of project plan, to help ensure that the process itself is as thorough and complete as is reasonably possible.

An option, for next steps, would be for staff to give consideration to the above noted elements and report back to Council with a proposed set of guiding principles for the draft by-law to guide the review process. This report would also outline the potential resource impacts on the various divisions, in relation to the 2012 Business Planning cycle.

ALIGNMENT WITH CITY OF KITCHENER STRATEGIC PLAN:

This report relates to the Community Priority of Quality of Life, as contained in the City's Strategic Plan.

FINANCIAL IMPLICATIONS:

It should be noted that, given all the elements to consider as part of the process to develop a draft by-law for Council's consideration, including the public consultation piece, such a review



will be time consuming and will have an impact staff resources. It is difficult to assign a particular dollar value to this. However, there is likely to be some implications with regard to staff's capacity to do other tasks during the review process.

Further, although it is premature to clearly articulate what a new licensing program may look like, it must be noted that such a program cannot be effectively managed with existing resources. Therefore, a fee structure would have to be developed relating to the costs associated with administration and enforcement. These implications would be discussed further in any subsequent reports on this matter.

COMMUNITY ENGAGEMENT:

As this is a preliminary report for the purposes of background information only, there has been little in terms of public consultation to this point. Although there have been some communication with potential stakeholders, including the Kitchener/Conestoga College Town and Gown Committee, made up of members of the College students union and faculty, Waterloo Regional Police, the Lower Doon Neighbourhood Association and a Lower Doon landlord representative. There has also been a very brief communication with the Kitchener-Waterloo Association of Realtors as well as the Waterloo Region Apartment Manager's Association, based on their inquiries to staff.

In the event that Council directs staff to proceed with a review and development of a draft by-law, such review will include a community engagement strategy to include any potential stakeholders that can be identified.

ACKNOWLEDGED BY: Jeff Willmer, Deputy CAO, Community Services Department
