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TO:	CHAIR AND MEMBERS PLANNING COMMITTEE MEETING ON August 24, 2009
FROM:	JAMES P. BARBER CITY SOLICITOR
SUBJECT:	RESIDENTIAL RENTAL LICENSING – LEGAL ISSUES

RECOMMENDATION

That, on the recommendation of the City Solicitor, this report **BE RECEIVED** for information. This report is to be considered with the report of the General Manager of Planning and Development.

It is recommended that this report and the report of the General Manager of Planning and Development be referred to the Planning Committee to be considered at a further public participation meeting.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

- Licensing of Residential Rental Units - Report to Board of Control - June 20, 2007
- Rental Residential Business Licensing Program - Report to Planning Committee - February 25, 2008
- Update - Rental Residential Business Licensing Program - Report to Planning Committee – May 26, 2008
- Enforcement Options to address Sub-standard Housing Conditions - Report to Planning Committee - December 8, 2008
- Rental Housing Conditions - Report to Planning Committee - February 9, 2009
- Hybrid Rental Residential Licensing / Targeted Area - Property Standards Enforcement Program - Public Meeting On March 24, 2009

BACKGROUND

At its meeting of March 30, 2009, City Council adopted the following resolution:

That the following actions be taken with respect to a hybrid city-wide rental residential licensing/targeted area property standards enforcement program:

- (a) the attached revised by-law (Appendix "A") to provide for the licensing and regulation of residential rental units in the City of London for buildings containing less than 7 residential units **BE REFERRED** to the Civic Administration to:
 - (i) review and report back on the comments received at the Public Participation Meeting held on March 24, 2009 with respect to this matter;
 - (ii) report back with an implementation plan for the by-law;
- (b) the Municipal Council **BE ADVISED** that a targeted area property standards enforcement program focusing on addressing substandard housing conditions in areas of the City with a high propensity for deficient housing conditions will be implemented in June 2009; and

(c) the Civic Administration **BE REQUESTED** to provide a status report on the outcome of the targeted area property standards enforcement program noted in (b), above, to evaluate how effective this program is in addressing substandard housing conditions in areas of the City with a high propensity for deficient housing conditions;

During the course of the public meetings with respect to the question of licensing and regulating the renting of rental units, numerous legal issues were raised. As well, the City Solicitor's office has received additional material and has met with the legal representatives of the London Property Management Association to further identify the legal issues which they believe are relevant. Pursuant to the direction of the City Council at its meeting of March 30, 2009, this report addresses the legal issues raised by participants at the public meeting and identified in the 9th report of the Planning Committee.

1. Have other municipalities implemented Rental Licensing Programs?

A variety of Canadian municipalities have implemented rental licensing programs in the recent past licensing all rental units in the municipality. A sample of those municipalities includes municipalities in British Columbia, the cities of Calgary and Edmonton in Alberta and Oshawa, Ontario. Some municipalities do not licence all rental units. For example, Oshawa has implemented a rental licensing program limited to an area in the municipality. Many cities in the U.S. have instituted rental licensing programs licensing all rental units in the municipality subject to exceptions (although U.S. cities play a larger role with respect to rental activity). Some U.S. cities classify rental units based upon the number of code violations.

The proposed by-law applies to rental units in a building containing 7 or more rental units. Other by-laws and ordinances regulate based upon the number of rental units in a building or have adopted exemptions based on the number of rental units. No other municipality has regulated on the basis of renting 6 or fewer rental units per building or has created an exemption for buildings with 7 or more rental units in the building as is proposed in the draft London by-law. The closest comparable approaches are Calgary which licenses all apartment building operators based on whether the building is 3 storeys or more and Oshawa which licenses on an area basis.

2. Is a Registry of rental units a viable alternative?

Although this approach has been adopted in some U.S. jurisdictions, the Ontario *Municipal Act, 2001* was amended to repeal the provisions of the Act which explicitly provided for a business registry.

3. Is the regulation of Rental Housing permitted by the *Municipal Act, 2001* as a business?

The powers of a municipality in relation to licensing were considerably enhanced by amendments to sections 8, 9, 10 and 151 of the *Municipal Act, 2001* which appear to permit a system of licensing which goes beyond business licensing and relates to any matter under sections 9 and 10 of the Act. Relevant provisions of the aforementioned sections are as follows:

Scope of powers

8. (1) The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues. 2006, c. 32, Sched. A, s. 8.

Ambiguity

(2) In the event of ambiguity in whether or not a municipality has the authority under this or any other Act to pass a by-law or to take any other action, the ambiguity shall be resolved so as to include, rather than exclude, powers the municipality had on the day before this Act came into force. 2006, c. 32, Sched. A, s. 8.

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Scope of by-law making power

(3) Without limiting the generality of subsections (1) and (2), a by-law under sections 10 and 11 respecting a matter may,

- (a) regulate or prohibit respecting the matter;
- (b) require persons to do things respecting the matter;
- (c) provide for a system of licences respecting the matter. 2006, c. 32, Sched. A, s. 8.

Scope of by-laws generally

(4) Without limiting the generality of subsections (1), (2) and (3) and except as otherwise provided, a by-law under this Act may be general or specific in its application and may differentiate in any way and on any basis a municipality considers appropriate. 2006, c. 32, Sched. A, s. 8.

Exception

(5) Subsection (4) does not apply with respect to a by-law made under Parts VII, VIII, IX, X, XI and XIII. 2006, c. 32, Sched. A, s. 8.

Powers of a natural person

9. A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act. 2006, c. 32, Sched. A, s. 8.

Broad authority, single-tier municipalities

10. (1) A single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public. 2006, c. 32, Sched. A, s. 8.

By-laws

(2) A single-tier municipality may pass by-laws respecting the following matters:

1. Governance structure of the municipality and its local boards.
2. Accountability and transparency of the municipality and its operations and of its local boards and their operations.
3. Financial management of the municipality and its local boards.
4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.
5. Economic, social and environmental well-being of the municipality.
6. Health, safety and well-being of persons.
7. Services and things that the municipality is authorized to provide under subsection (1).
8. Protection of persons and property, including consumer protection.
9. Animals.
10. Structures, including fences and signs.
11. Business licensing. 2006, c. 32, Sched. A, s. 8.

One power not affecting another

(3) The power to pass a by-law respecting a matter set out in a paragraph of subsection (2) is not limited or restricted by the power to pass a by-law respecting a matter set out in another paragraph of subsection (2). 2006, c. 32, Sched. A, s. 8.

Powers re licences

151. (1) Without limiting sections 9, 10 and 11, a municipality may provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and
- (g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply

with any part of a system of licences established by the municipality. 2006, c. 32, Sched. A, s. 82.

Power to suspend a licence

(2) Without limiting sections 9, 10 and 11, for the purpose of clause (1) (b), if a municipality is satisfied that the continuation of a business poses an immediate danger to the health or safety of any person or to any property, the municipality may, for the time and on such conditions as it considers appropriate, without a hearing, suspend a licence subject to the following:

1. Before suspending the licence, the municipality shall provide the licensee with the reasons for the suspension, either orally or in writing, and an opportunity to respond to them.
2. The suspension shall not exceed 14 days. 2006, c. 32, Sched. A, s. 82.

Same

(3) Despite subsection (2) and without limiting sections 9, 10 and 11, for the purpose of clause (1) (b), the municipality may, on such conditions as it considers appropriate, without a hearing, suspend a licence authorizing a business to operate on a highway or other property of the municipality or its local boards for a period not exceeding 28 days for the following reasons:

1. The holding of a special event.
2. The construction, maintenance or repair of the property.
3. The installation, maintenance or repair of a public utility or service.
4. Pedestrian, vehicular or public safety or public health. 2006, c. 32, Sched. A, s. 82.

Exercise of power

(4) The exercise of a power under clause (1) (b), (d), (e) or (g) is in the discretion of the municipality, and the municipality shall exercise its discretion,

- (a) upon such grounds as are set out by by-law; or
- (b) in the case of a power under clause (1) (b), (d) or (e), upon the grounds that the conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity. 2006, c. 32, Sched. A, s. 82.

Application re system of licences

(5) Subsections (1) to (4) apply with necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9, 10 and 11 as if it were a system of licences with respect to a business. 2006, c. 32, Sched. A, s. 82.

Proviso

(6) Nothing in this section authorizes an upper-tier or a lower-tier municipality to pass a business licensing by-law with respect to a business if the other municipality has exclusive authority to pass a business licensing by-law with respect to the business under paragraph 11 of subsection 11 (3). 2006, c. 32, Sched. A, s. 82.

Same

(7) Subsection (6) does not prevent a municipality from providing for a system of licences for a business under any other by-law, other than a business licensing by-law. 2006, c. 32, Sched. A, s. 82.

There is now ample legislative authority by virtue of section 8 and 151(5) as amended for the municipality to regulate or prohibit, to require persons to do things or to provide for a system of licences for any matter under section 10. Rental housing would appear to fall under those subsections in section 10(2) which provide for by-laws relating to the economic, social, and environmental well-being of the municipality, the health, safety and well-being of persons, protection of persons and property including consumer protection and business licensing.

Residential rental units are licensed pursuant to business licensing powers in other Canadian jurisdictions. "Business" is defined broadly in the *Municipal Act, 2001* to mean "any business wholly or partly carried on within a municipality even if the business is being carried on from a location outside the municipality". The ordinary dictionary meaning of "business" includes "trade, commercial transactions or engagements; a commercial enterprise as a going concern". Although the courts in Ontario have not considered whether the rental of rental units constitutes a business with the meaning of section 150 of the *Municipal Act, 2001*, the courts have considered the word "business" in the context of regulatory statutes and have given it a broad construction requiring evidence concerning the activities of the person alleged to be in business.

Several Ontario municipalities have reviewed the question of whether the business of renting rental units may be licensed and have concluded in public reports that municipalities may license the business of renting rental units under the provisions of the *Municipal Act, 2001* authorizing the licensing of such businesses for all rental units in the municipality or limiting the by-law to certain rental units based upon dwelling type or geographic area. Oshawa has enacted a by-law which differentiates between rental units based upon a geographic area. British Columbia and Alberta municipalities license the business of renting rental units as a business under their licensing legislation.

As previously reported, Ontario Regulation O. Reg. 243/02 was repealed as of January 1, 2007. The regulation contained a prohibition on licensing, regulating or governing the rental of a residential unit. The repeal of the regulation implies that municipalities can use their broad powers to engage in such licensing.

4. Does the licensing of businesses authorize a by-law which requires a licence for each rental unit or rental building?

There may be a challenge to the by-law on the basis that section 151 does not enable the municipality to require a separate licence for each rental unit. While the by-laws in municipalities in British Columbia and Alberta appear to require a separate licence for each rental unit it appears that what is licensed in Ontario is the activity and not the rental units.

The by-law could be amended to make it clearer that a licence is required for each rental property similar to the business licensing by-law which requires a licence for each location.

5. Is the licensing of the rental of residential housing permitted under other legislation?

No other Ontario statutes provide for licensing of providing residential rental units other than the *Municipal Act, 2001* and the *City of Toronto Act, 2006*.

6. Can the proposed by-law be city-wide in its application?

Section 150(1) of the *Municipal Act, 2001* provides that "business" means any business wholly or partly carried on with a municipality". Section 153 provides that "[d]espite sections 9, 10, 11 and 151, a municipality shall not, except as otherwise provided, refuse to grant a licence for a business under this Act by reason only of the location of the business". It does not appear that the *Municipal Act, 2001* prevents a municipality from limiting the application of a licensing by-law to businesses which operate in part of a municipality as long as the municipality does not refuse to grant a license by reason only of the location of the business.

Most jurisdictions regulate rental housing on the basis of a by-law or ordinance which applies to all rental units in the entire municipality. The Oshawa by-law applies to a specific geographic area of the city.

7. Is the proposed by-law contrary to law in that it does not apply to the activity of renting 7 or more rental units in a building?

There have been challenges to by-laws on the basis of discrimination since the *Municipal Act, 2001* was enacted on the basis that they do not apply equally to all businesses engaged in the activity that is the subject of the enactment. Municipalities are authorized to define businesses for the purposes of licensing them and to establish classes of businesses pursuant to the statutory authority under ss. 8(4) and s.150 of the *Municipal Act, 2001*. Based upon the tests which have been applied, a municipality can or may discriminate in the passage of its by-laws, but there must be a rational basis for it, supported by a due diligence review of the various options open to it. The court must determine whether a by-law should be invalidated if it is applicable only to some businesses within a general class of business and not applicable to all businesses within that class. There have been instances where the Courts have found by-laws discriminatory where less than the whole of a class has been affected although section 8(4) may

have eliminated the ability of the courts to quash by-laws on the basis of discrimination which does not involve *Charter* or human rights elements.

The proposed by-law defines the activity to be licensed on the basis of whether rental units are being rented in buildings with 6 or fewer units. The issue for a court if this by-law is challenged on the basis of being discriminatory will be whether the activity to be licensed represents a class under the statutory authority in section 151 for which there is a rational basis supported by a due diligence review of all of the options available to the municipality.

In other words, bylaws cannot treat persons differentially where fulfilment of the overall statutory objectives does not require unequal treatment. It was held in a Manitoba case that a lodging house by-law which was limited to "a building having a maximum height of three stories" which "has been converted to contain more than two rental units" was unlawful because there was nothing in the *City of Winnipeg Act* that authorizes the City to require one class of rooming house owners to obtain a licence while exempting rooming house owners whose buildings were more than three stories or contained fewer than two rental units. Ontario by-laws licensing and regulating lodging houses and rental units may differentiate on the basis set out in section 8(4).

8. Can the proposed by-law regulate on the basis of storeys or buildings instead of rental units?

A variety of municipalities have enacted licensing regulations based upon the character of the building in which the regulated activity is carried out. Calgary licenses all apartment buildings and differentiates on the basis of the number of storeys in the building. San Francisco licences all rental units but differentiates its licence fee on the basis of the number of rental units in the building.

The test as to whether such a proposed by-law is permissible is set out in the previous section. Is the proposed by-law supported by section 151? Is there a rational basis supported by a due diligence review for regulation based on the number of storeys or the character of the building?

9. Do the proposed by-law fees represent an unlawful tax?

The former s. 150(9) of the *Municipal Act, 2001* dealing with licence fees has been repealed and licence fees are now established under the provisions respecting fees and charges. The Court of Appeal has recently considered the issue of whether a fee based on the former provisions was authorized under the *Municipal Act, 2001* and noted that the current authority, the *Municipal Act, 2001*, is a significantly amended statute and is no longer premised on the recovery of costs.

The proposed by-law contains a license fee for each rental unit which has been enacted pursuant to section 391 of the *Municipal Act, 2001* as amended. It was contended at the public meeting that the proposed fee constitutes a tax and by implication falls outside the enabling authority contained in section 391. The City has no legislative authority to impose a tax as part of a licensing program so the question is whether the licence fee is authorized by section 391 or not.

The proposed by-law appears to require a licence for each rental unit and imposes a licence fee for each rental unit. This approach could be the subject of a legal challenge as it has been in many U.S. jurisdictions where the imposition of a licence fee for each rental unit has been upheld as being rationally related to ensuring compliance with minimum housing standards.

There is nothing in section 391 which prevents the municipality from imposing a variable fee applied to each licence based upon the number of rental units covered by the licence. It has been held in the U.S. that if there is a rational basis for requiring residential landlords to pay the costs of regulation and that if the license fee at issue here is roughly proportional to the City's regulatory costs, it is valid and is not a tax.

Ontario case law supports that the difference between "taxation" and "charge" is that the latter is money collected to defray the cost of specific services rather than to raise revenue for general purposes. Generally, charges are not taxes if they can be supported as regulatory charges

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imposed under a regulatory power. Charges can be supported as regulatory charges if they are taken in payment for a specific governmental service and if they bear a reasonable relation to the cost of providing the service such as the issuance of a licence. Charges as such are not taxes because their purpose is to defray expenses not to raise revenue. Another element of a fee or charge not inherent in a tax is that of choice. With the former the citizen may choose to purchase the service or commodity or benefit or he may choose not to in which case he need not pay the fee or charge. A tax is an obligatory or mandatory imposition requiring payment, without choice. Further it is imposed for purposes of raising money for general revenues. The payer receives no special benefit or service not enjoyed by all other citizens in the community.

10. Are Inspections of rental units warranted and are the proposed by-law fees excessive?

The regulatory costs associated with any licensing scheme depend on the nature of the regulatory scheme. For example, Toronto considered a licensing scheme for multi-unit apartments on the basis that "the licensing of apartment buildings provides the means of protecting the rental housing stock through a pro-active inspection program funded by licensing revenues in a similar manner to licensing of rooming houses in order to protect the health and safety of tenants and address the concerns of neighbouring residents. An argument can be made that there is a need to extend some form of pro-active licensing to similarly protect tenants in multi-unit residential buildings". Toronto elected not to proceed with licensing of multi-unit buildings based on a pro-active inspection program owing to a variety of factors.

A 2004 Toronto report referenced a 1999 report projecting Toronto's costs for licensing rental units at "between \$0.40 to \$0.70 per unit, per month based on the provision of a management plan" although costs of such a scheme per unit in Vancouver and Los Angeles were noted at \$45 and \$12 per annum respectively. For licensing operators/building matters the 2004 report noted that "[t]he City of Edmonton charges \$3 per unit (\$100 minimum fee) for operator licences while Calgary charges \$100 to operators of buildings with three storeys or less and those operating buildings higher than three storeys pay \$200". These fees reflect the range of fees in other jurisdictions.

The Civic Administration was directed to come forward with a comprehensive implementation plan following the public meeting based upon the regulatory scheme contained in the proposed by-law which limited the scope of regulation to businesses renting 6 or less rental units in a rental building based upon a pro-active inspection program. The nature of the pro-active inspection program was left to the civic administration to address having regard to the comments received at the public meetings to date having regard to the proposed licensing fee contained in the by-law. The nature of the inspection program appears to be one of the most controversial elements of the proposed licensing by-law.

The nature of inspection programs has varied widely in other jurisdictions. The U.S. Supreme Court has commented concerning the variation in such inspection programs as follows:

"The inspection programs at issue here are aimed at securing city-wide compliance with minimum physical standards for private property. The primary governmental interest at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety. Because fires and epidemics may ravage large urban areas, because unsightly conditions adversely affect the economic values of neighboring structures, numerous courts have upheld the police power of municipalities to impose and enforce such minimum standards even upon existing structures. In determining whether a particular inspection is reasonable -- and thus in determining whether there is probable cause to issue a warrant for that inspection -- the need for the inspection must be weighed in terms of these reasonable goals of code enforcement.

There is unanimous agreement among those most familiar with this field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures. It is here that the probable cause debate is focused, for the agency's decision to conduct an area

inspection is unavoidably based on its appraisal of conditions in the area as a whole, not on its knowledge of conditions in each particular building.

... "probable cause" to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling."

Based upon the standards enunciated by the U.S. Supreme Court, municipalities have implemented inspection programs which have been upheld by the U.S. courts involving annual inspections within 60 days of the issuance of a licence, inspections every two years; inspections every three years; phased-in inspection programs over a period of time not extending beyond five years; inspection upon the finding of a violation or each time a unit is vacated. The inspection cycle has been considered to have a relationship to the reasonableness of the licence fee in these jurisdictions.

There is a paucity of similar jurisprudence in Canada to act as a guide to the development of a by-law despite the prevalence of rental unit by-laws.

11. Should a Notice of inspection be given to landlords and tenants?

There is nothing in the proposed by-law or the *Municipal Act* that addresses the requirements surrounding inspections of dwelling units. In the absence of an inspection scheme, the City's inspection by-law and *Municipal Act* apply. Under s. 437 of *Municipal Act*, to inspect a dwelling unit an Inspector/Enforcement Officer must identify themselves and identify the authority for the inspection; inform the occupant that the right of entry may be refused; and if entry is refused may only enter with Order or Warrant under s. 438 or s. 439. If inspection is refused, a municipality must apply to a judge/justice of the peace as provided in the *Municipal Act* and Inspection By-law. The relevant provisions of the aforementioned sections are as follows:

Restriction re dwellings

437. Despite any provision of this Act, a person exercising a power of entry on behalf of a municipality under this Act shall not enter or remain in any room or place actually being used as a dwelling unless,

- (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of an order issued under section 438, a warrant issued under section 439 or a warrant under section 386.3;
- (b) an order issued under section 438 is obtained;
- (c) a warrant issued under section 439 is obtained;
- (d) a warrant issued under section 386.3 is obtained;
- (e) the delay necessary to obtain an order under section 438, to obtain a warrant under section 439 or to obtain the consent of the occupier would result in an immediate danger to the health or safety of any person; or
- (f) the municipality has given notice of its intention to enter to the occupier of the land as required under subsection 435 (2) and the entry is authorized under section 79, 80 or 446. 2006, c. 32, Sched. A, s. 184.

Inspection pursuant to order

438. (1) A municipality has the power to pass by-laws providing that the municipality may, in the circumstances set out in the by-laws, undertake inspections pursuant to orders under this section. 2006, c. 32, Sched. A, s. 184.

Order

(2) A provincial judge or justice of the peace may issue an order authorizing the municipality to enter on land for the purpose of carrying out an inspection for a purpose described in subsection 436 (1) and to exercise powers described in clauses 436 (2) (a) to (d) as specified in the order if he or she is satisfied by evidence under oath,

- (a) that the circumstances of the inspection are provided for in a by-law under subsection (1);
- (b) that the inspection is reasonably necessary; and
- (c) that one of the following conditions exists:
 - (i) where there is no by-law under section 436 which provides for inspections in such circumstances, the municipality has made a reasonable attempt to obtain the occupier's consent for the inspection,

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(ii) where there is a by-law under section 436 which provides for inspections in such circumstances, the municipality has been prevented or is likely to be prevented from doing anything set out in subsection 436 (1) or (2). 2006, c. 32, Sched. A, s. 184.

Expiry of order

(3) An order under this section shall state the date on which it expires, which date shall not be later than 30 days after the day the order is issued. 2006, c. 32, Sched. A, s. 184.

Time for execution

(4) An order under this section may be executed only between 6 a.m. and 9 p.m. unless the order provides otherwise. 2006, c. 32, Sched. A, s. 184.

Notice

(5) In the case of an order authorizing an inspection of a room or place actually being used as a dwelling, the occupier must be given notice concerning when the inspection will be carried out. 2006, c. 32, Sched. A, s. 184.

Application without notice

(6) An order under this section may be issued on application without notice. 2006, c. 32, Sched. A, s. 184.

Interpretation

(7) A by-law may be passed under subsection (1) and orders may be issued under subsection (2) whether or not there is a by-law under section 436. 2006, c. 32, Sched. A, s. 184.

Application of provisions

(8) Subsections 436 (3) to (6) apply with necessary modifications to this section. 2006, c. 32, Sched. A, s. 184.

Search warrant

439. (1) A provincial judge or justice of the peace may issue a warrant authorizing a person named in the warrant to enter and search a building, receptacle or place for the evidence specified in the warrant if he or she is satisfied by information on oath that there is reasonable ground to believe that,

- (a) an offence under this Act or a by-law passed under this Act has been committed; and
- (b) the entry into and search of the building, receptacle or place will afford evidence relevant to the commission of the offence. 2006, c. 32, Sched. A, s. 184.

Seizure

(2) In a search warrant, the provincial judge or justice of the peace may authorize the person named in the warrant to seize evidence specified in the warrant that there is reasonable ground to believe will afford evidence relevant to the commission of the offence. 2006, c. 32, Sched. A, s. 184.

Same

(3) A person who seizes something under a search warrant shall,

- (a) give a receipt for the thing seized to the person from whom it was seized; and
- (b) bring the thing seized before the provincial judge or justice of the peace issuing the warrant or another provincial judge or justice to be dealt with according to law. 2006, c. 32, Sched. A, s. 184.

Time for execution

(4) A search warrant may be executed only between 6 a.m. and 9 p.m. unless it provides otherwise. 2006, c. 32, Sched. A, s. 184.

Application

(5) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of any thing seized under this section. 2006, c. 32, Sched. A, s. 184.

The extensive U.S. jurisprudence addresses the legality and constitutionality of the inspection schemes set out in the licensing by-law which form the basis for the fees contained in the by-law.

12. Can the Proposed by-law fees be passed on by landlords to tenants?

Rental increases are regulated under the *Residential Tenancies Act*. Generally, increases are restricted to one per year and only in accordance with the guideline. The guideline increase for 2009 is 1.8%. A landlord must apply to the Board for an increase above the guideline. It remains to be seen how this will apply. Rental increases are a matter as between the landlord and the tenant. The City would not be a party to these proceedings.

13. Can Landlords reduce the amount they spend on buildings by the amount of licence and inspection fees?

Some persons contended at the public meetings that landlords would be forced to reduce the amount spent on buildings by the amount of licence and inspection fees.

It does not appear that this approach has been taken by landlords in other jurisdictions. If landlords in London adopted this approach, the rent review legislation in place would likely afford a remedy under section 20 and 21 of the *Residential Tenancies Act*.

It should be noted that although a landlord's association in Kingston did not recommend that a licensing program be instituted, the landlord's association made constructive recommendations about the pros and cons of a licensing program if one were instituted based on the existence of a University program involving contracts between individual landlords and the University who would be exempt from any licensing by-law.

14. Does the proposed by-law address matters addressed by other by-laws, statutes and regulations such as property standards, noise, fire code, building code matters?

Section 5.2 of the proposed by-law contains references to various regulatory statutes and by-laws which must be adhered to in order for a licensee to obtain and retain a licence. Such provisions are common in municipal licensing by-laws in every jurisdiction and have been held not to afford grounds to invalidate a licensing by-law.

Section 447.8 of the *Municipal Act, 2001* is a new provision which provides that a by-law of a municipality or of a local board of a municipality made under this or any other Act may, adopt by reference, in whole or in part, with such changes as the council or board considers appropriate, any code, standard, procedure or regulation as it stands at a specific date, as it stands at the time of adoption or as amended from time to time; and require compliance with any code, standard, procedure or regulation so adopted. This provision has not yet been considered by the Ontario courts.

The *Municipal Act, 2001* which provides for conflicts between by-laws and statutes contemplates invalidation of a by-law only where there is "impossibility of dual compliance".

15. Is licensing required for targeted inspections of rental units?

The onus on a municipal inspector when conducting an inspection has been described by a British Columbia court as follows:

In terms of the definition, the strongest argument available to the City is that the by-law relates to "inspecting" the persons required to be licensed. Inspection by governmental officials, civilian or police, is however generally undertaken for the purpose of ensuring due observance of regulatory measures embodied in statutes or enactments representing the exercise of delegated legislative powers. If "inspecting" is a means of investigating compliance with laws or regulations, one might have expected the City to be able to identify the particular enactment(s) with which conformance is sought. While Mr. Bland denied that what is involved is a "fishing expedition", or that it relates to criminal investigations, he was unable to identify any City by-law or other regulatory measure to which the information demanded by s. 24(6)(b) might relate. I do not accept the proposition that "inspecting" or any of the other terms employed in the undoubtedly broad definition "regulating" confers upon Council unrestricted authority to make by-laws requiring any licensed business to supply any information the City chooses to demand at any time. In this context, inspection must be directed toward ensuring compliance with some lawfully established requirement or standard.

In U.S. jurisdictions where warrantless inspections have been challenged based on the standard established by the U.S. Supreme Court, municipalities have attempted to demonstrate (1) a general decline in the physical condition of residential rental units; (2) a greater incidence of problems with the maintenance and upkeep of residential properties which are not owner occupied as compared to those that are owner occupied; (3) a greater number of disturbances at residential rental units than all other properties combined; and (4) violations of the various codes are generally less severe at owner-occupied units as compared to residential units.

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It is recommended that the Council consider whether there is evidence of a decline in the condition of buildings, problems with maintenance and upkeep, a greater number of disturbances and more severe violations of applicable codes in buildings with 6 or less rental units as distinct from all rental units in determining the appropriate scope of an inspection program.

16. Can the proposed by-law apply only to rental properties and not owner occupied substandard housing?

In the United States, challenges have been mounted to municipal ordinances regulating rental units on the basis of equal protection analysis based on the U.S. Constitution. It has been alleged in those cases that the same regulatory standards should be applied to owner occupied and rental housing. Based on the decisions of the U.S. Supreme Court, the courts in the U.S. have generally held that there is a rational basis to regulate rental housing differently than owner occupied housing.

Equal protection analysis has been considered by the Canadian courts in relation to whether a right conferred by the Canadian Charter of Rights and Freedoms has been violated. It is difficult to see what provision of the *Charter* a distinction between owner occupied units and rental units would violate.

Where rental housing licensing ordinances in the U.S. have been challenged as arbitrarily and unreasonably discriminating between the owners of residential rental property, the owners of commercial rental property, and the owners of residential property not used for rental, such challenges have been dismissed on the basis that the licensing of rental units is rationally related to achieving the goals of licensing enunciated in the enabling statute. Licensing is a reasonable way of using limited enforcement resources and concentrating them where they are likely to be needed. Property owners who rent their property and those who occupy their property are not similarly situated. Residential rental properties require greater health and safety regulation than other types of property.

Although Canadian courts have not considered this issue, they have established the principle that by-laws must not discriminate unless the enabling authority authorizes such discrimination. Section 8(4) of the *Municipal Act, 2001* enacted in 2006 appears to authorize the "specific" application of a by-law and "differentiation" as follows:

Scope of by-laws generally

(4) Without limiting the generality of subsections (1), (2) and (3) and except as otherwise provided, a by-law under this Act may be general or specific in its application and may differentiate in any way and on any basis a municipality considers appropriate. 2006, c. 32, Sched. A, s. 8.

Exception

(5) Subsection (4) does not apply with respect to a by-law made under Parts VII, VIII, IX, X, XI and XIII. 2006, c. 32, Sched. A, s. 8.

The Supreme Court of Canada has held that the power to pass municipal by-laws does not entail that of enacting discriminatory provisions unless in effect the enabling legislation authorizes such discriminatory treatment. In a recent case, discrimination between owners and renters over water rates in a Manitoba municipal by-law was held to be illegal. The Courts did not consider any analogous provision to section 8(4) of the *Municipal Act, 2001* in either case.

17. Does the existence of Provincial legislation prevent such a proposed by-law on the basis of paramountcy?

There are a variety of provincial statutes which regulate the occupancy and condition of rental units including the *Residential Tenancies Act*, the *Fire Marshall's Act*, and the *Building Code Act*. The Fire Code and Building Code are referenced in the Licensing by-law. Compliance with these provisions can be addressed in the by-law by virtue of section 447.8.

As indicated earlier, the existence of regulations in other statutes or regulations will only result in the invalidation of the by-law if there is the impossibility of dual compliance based on section 14 of the *Municipal Act, 2001*.

The Court of Appeal has held that any argument that the repeal of the *Rental Housing Protection Act* and the enactment of the *Tenant Protection Act* reflected a legislative intention to eliminate regulatory authority at the municipal level is flatly contradicted by the legislative history.

18. Can a phase-in period be contained in a proposed by-law?

The municipality's powers under the *Municipal Act, 2001* appear broad enough to allow for phasing. In some U.S. cities, provision has been made to phase-in either initial licensing or renewals under the by-law over a number of years or by inspection areas so that inspections can be carried out in a timely fashion.

19. Can the proposed by-law apply only to bad or absentee landlords?

The enabling authority in the *Municipal Act, 2001* limits the review of conduct of a proposed licensee to the question of revocation or renewal of a license to such grounds as are specified in the by-law or whether the conduct of any person affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or honesty or integrity. The by-law may provide for conditions as a requirement of holding or renewing a licence.

In some U.S. cities, the ordinance has established conditions for licensing and renewal based on the prior conduct of landlords such as requiring that the property owner designate and retain a local legal agent, requiring an increased frequency of inspections for a specified period, requiring a contact person to be designated and available to respond to complaints of code violations by tenants within 24 hours, or any other condition which is necessary to ensure compliance with the performance standards or other applicable law.

20. Can the proposed by-law require tenants to relocate where housing is substandard?

The Ontario Court of Appeal held that only the Rental Housing Tribunal acting under the Residential Tenancies Act can make an order requiring the tenants to vacate premises which are being occupied without the required municipal licence.

21. Should the proposed by-law regulate tenant conduct?

It would not appear that section 151 of the *Municipal Act, 2001* goes so far as to enable the municipality to regulate the conduct of tenants. Whether the combination of section 8(3) and section 151(5) would enable tenant licensing remains to be seen.

22. Is there evidence of unsafe or deficient rental housing in London?

This is a factual issue which has been addressed in the previous reports submitted to the Planning Committee and the submissions at the public meetings. The Ontario Fire Marshall has reported on the inadequacy of compliance with fire protection standards in the report of October 18, 2004 and recommended the expansion of licensing requirements to accessory apartments and facilities that require compliance with retrofit provisions.

23. Does the proposed by-law represent an attempt to prevent students from renting accommodation?

There is no provision in the by-law which addresses the character of the occupants who may occupy rental units. To the extent that the by-law provides higher standards for rental occupancy, it would appear to benefit any existing or prospective renter.

24. Will the proposed by-law create a monopoly?

There is no evidence that the by-law would affect the number of landlords in the market place.

25. Can there be a requirement that an agent be identified by a landlord?

As indicated in the response to question 18, the *Municipal Act, 2001* provides for the imposition of both general and special conditions. In other jurisdictions, conditions have been imposed requiring the identification of a local agent.

26. Is the proposed by-law contrary to the Charter of Rights and Freedoms?

There have been numerous challenges to legislation relating to rental housing in other jurisdictions. Courts have generally upheld tenant protection legislation on the basis that the legislative provisions both were within the legislative competence of the legislature and did not infringe any Charter rights.

There have been charter challenges in Canada in relation to tenant protection legislation alleging that inspections under the legislation constituted searches contrary to section 7, that such legislation breached the rights of landlord to life, liberty and security of the person such as an alleged right to be free from regulation that reduces investment income or that landlords of residential premises were part of disadvantaged group for whom s. 15(1) of the *Charter* affords protection. The Canadian courts have generally held that residential landlords are not a distinct and insular minority traditionally discriminated against in society.

27. Is there a less intrusive way to regulate rental housing than the proposed by-law?

If it were successfully alleged that some provision of the by-law were contrary to the Charter of Rights and Freedoms such that the municipality was required to show that the provision constituted a reasonable limit within the meaning of the Charter, the municipality would have to demonstrate that it considered whether there was a less intrusive way to regulate rental housing than the proposed by-law. If there is no Charter violation, it is not clear that an administrative law challenge can be based on the availability of a less intrusive means to accomplish the regulatory purpose.

As described in response to question 1 above, it is clear that there are less intrusive ways which have been considered by this municipality and other municipalities to address rental housing standards. The question for the Council is whether the less intrusive means will address the issues which exist in relation to rental housing and whether the circumstances in London require the enactment of this by-law at this time.

28. Can the proposed by-law be challenged on the basis of unreasonableness?

Section 272 of the *Municipal Act, 2001* provides that a by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law. 2001, c. 25, s. 272.

29. Did the repeal of O. Reg. 243/02 enable municipalities to license and regulate rental housing?

The repeal of a regulation to eliminate a prohibition on licensing, regulating or governing the rental of a residential unit implies that licensing, regulating or prohibiting the rental of a rental units must be authorized under the applicable enabling statute, namely, the *Municipal Act, 2001*.

30. Did the repeal of sections 150(9) and (10) enable the municipality to charge fees that exceed the costs directly related to administration and enforcement?

Although the Court of Appeal appears to have noted the elimination of these sections in a recent case, the ability to charge fees that exceed the municipality's costs appears to be restricted by section 391 of the *Municipal Act, 2001*.

31. Is the proposed by-law being considered in bad faith or passed for an improper motive or without the requisite degree of openness, fairness and impartiality?

There has been frequent litigation involving lengthy proceedings in Ontario questioning the motives of municipal councils when they attempt to address housing alleging bad faith, improper motives, and abuse of power. The municipality bears an onus in establishing a rational relationship between the nature and scope of the proposed regulation and the regulatory problem which has been addressed in the reports and public meetings to date relating to this matter.

Questions of openness, fairness and impartiality are determined by courts having regard to the evidence before them.

32. Is the proposed by-law vague or ambiguous?

A by-law may be quashed for vagueness or ambiguity when it is so vague or ambiguous that the ordinary person cannot know what is being prohibited, and it leaves those responsible for implementing the by-law free to apply the rule in a purely subjective manner. The Courts have emphasized that a by-law may occasion some difficulty of interpretation which is not to be confused with vagueness and uncertainty to the point of invalidity.

Applications to quash rental unit ordinances in other jurisdictions for vagueness have been dismissed. It is not apparent that the terms used in the proposed by-law are different than those upheld in other jurisdictions.

33. Is there a potential for legal fees, court costs or damages associated with challenges to the proposed by-law?

The successful party in Ontario litigation to quash a municipal by-law may claim for partial or substantial indemnity costs related to the litigation. The quantum of costs awarded should reflect a fair and reasonable amount having regard to the nature and complexity of the proceedings, the conduct of the parties, the complexity of the matter, the relative success achieved and reasonable expectations of the parties. Substantial indemnity costs are exceptional and will be awarded only whether there is some aspect of the unsuccessful party's conduct that deserves a further costs sanction.

Only where a municipality is found to have abused its authority is it liable for damages if a by-law is quashed, the measure of damages being equal to the pure economic loss suffered by the injured party. If a licensing by-law providing for licensing fees is quashed, the licensing fees which have been collected will likely have to be refunded.

34. Does the by-law provide adequate due process for processing appeals against licensing decisions?

Similar provisions in London's licensing by-law have been considered on various occasions by the courts and have been held to provide an adequate mechanism for processing appeals. The courts have on occasion quashed actions taken by the City Council or Board of Control but not based on the inadequacy of the by-law provisions respecting appeals.

The absence of adequate due process for appealing decisions made under the by-law respecting eligibility have been held to constitute the basis for quashing a licensing by-law regulating rental housing in some U.S. cases.

35. Is there a potential for civil liability for negligent inspections if inspections are carried out by the municipality under the by-law?

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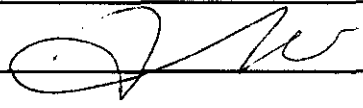
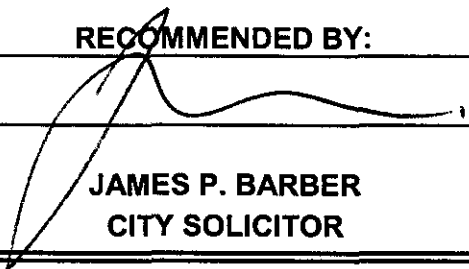
The inspection of rental units creates potential civil liability if inspections are carried out negligently. While the writer has not been able to locate any Canadian cases from jurisdictions where there is rental licensing dealing with liability for inspections, there are myriad cases in Canada based upon building or property standards inspections.

It is likely that municipalities who make a policy decision to inspect rental units under a residential rental licensing by-law will owe a duty of care to all who it is reasonable to conclude might be injured by the negligent exercise of their inspection powers based upon the standard of care established by the Supreme Court of Canada. To avoid liability the city must show that its inspectors exercised the standard of care that would be expected of an ordinary, reasonable and prudent inspector in the same circumstances.

The risk of being sued is increased owing to joint and several liability whereby if several defendants are found to have contributed to damages suffered by a plaintiff, each party is responsible to pay for the loss subject to contribution among the defendants based upon the apportionment of liability among them. This risk can be limited by making a policy decision not to do inspections. The risk can be managed by making a policy decision to limit the inspection to certain safety issues (i.e. smoke alarms, Co² alarms etc.), by shifting the responsibility for inspections to the applicant/licensee or by insuring with respect to the risk.

CONCLUSION

The City Solicitor's office has prepared an amended version of the draft by-law which was considered at the last meeting based upon the comments received at the public meetings, the advice contained in this report and the advice contained in the report of the General Manager of Planning and Development. The proposed amendments are highlighted in the draft by-law.

PREPARED BY:	RECOMMENDED BY:
	
JENNIFER SMOUT SOLICITOR II	JAMES P. BARBER CITY SOLICITOR

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Bill No.
2008

By-law No.

A By-law to provide for the licensing and regulation of Residential Rental Units in the City of London.

WHEREAS subsection 5(3) of the *Municipal Act*, S.O. 2001, c.25 provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 11 Business Licensing;

AND WHEREAS subsection 151(1) of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10 of the Act, a municipality may: provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and,
- (g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licences established by the municipality;

AND WHEREAS subsection 151(5) of the *Municipal Act, 2001* provides that subsection 151(1) applies necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9, 10 and 11 as if it were a system of licences with respect to a business;

AND WHEREAS the Council for the City of London 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 persons residing in residential rental premises by ensuring that the certain regulations are met, that the required essentials such as plumbing, heating and water are provided, for ensuring that the residential rental premises do not create a nuisance to the surrounding properties and neighbourhood and to protect the residential amenity, character and stability of residential areas;

AND WHEREAS section 23.2 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS subsection 391(1) of the *Municipal Act, 2001* provides that a municipality may impose fees and charges on persons,

- (a) for services or activities provided or done by or on behalf of it;
- (b) for costs payable by it for services or activities provided or done by or on

- (c) behalf of any other municipality or any local board; and,
for the use of its property including property under its control;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity, and any person who contravenes such an order is guilty of an offence;

AND WHEREAS it is deemed expedient to pass this by-law;

NOW THEREFORE The Council of The Corporation of the City of London hereby enacts as follows:

1.0 DEFINITIONS

1.1 For the purpose of this By-law:

“Apartment Building” means a building or existing non-residential building that is divided horizontally and/or vertically into five or more separate Dwelling Units but does not include a **Converted Dwelling**.

“Applicant” means a person applying for a licence under this By-law;

“Building” means any structure consisting of a roof supported by walls or columns which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment and includes a carport;

“City” means The Corporation of the City of London;

“City Treasurer” means the Treasurer of The Corporation of the City of London or a person delegated by him or her for the purposes of this By-law.

“Converted Dwelling” means an existing dwelling constructed as a single, semi-detached, duplex or triplex dwelling on an existing lot prior to July 1, 1993 in which the number of Dwelling Units has been increased without significant alteration to the exterior of the building except for non-leasable floor such as fire escapes, stairwells and entrances to a maximum of 10 percent (10%) of the dwelling or 30.0 square metres, whichever is the lesser.

“Council” means the Municipal Council of The Corporation of the City of London;

“Director of Building Controls” means the Chief Building Official as appointed by Council pursuant to the *Building Code Act*;

“Dwelling Unit” means a single room or a series of rooms of complementary use which is located in a building, in which food preparation, eating, living, sleeping and sanitary facilities are provided for the exclusive use of the occupants thereof, which has a private entrance directly from outside the building or from a common hallway inside the building, in which all occupants have access to all of the habitable areas and facilities of the unit, and which is occupied and used or capable of being occupied and used as a single and independent housekeeping establishment.

“Fire Chief” means the Chief of London Fire Services of the City or a person delegated by him or her for the purposes of this By-law;

“Hearings Committee” means a person or body that has been delegated the power or duty to hold a hearing or provide an opportunity to be heard for the purpose of this By-law;

“Licensee” means any person licensed under this By-law;

“Licence Manager” means the Director of Building Controls;

“Lot” means a parcel of land which is;

- (i) shown on a registered plan of subdivision; or

- (ii) described in a single Transfer/Deed of Land of legal effect registered in the Land Registry Office or the Land Titles Office for the Land Registry Division of Middlesex.

“Manager of By-law Enforcement” means the Manager of By-law Enforcement of the City or a person delegated by him for the purposes of this By-law;

“Medical Officer of Health” means the Medical Officer of Health for the Middlesex-London District Health Unit or a person delegated by him for the purposes of this By-law;

“Municipality” means the land within the geographic limit of the City of London;

“Owner” includes:

- (i) each owner of a Rental Unit;
- (ii) each person who permits occupancy of a Rental Unit; and,
- (iii) the heirs, assigns, personal representatives and successors in title of a person referred to in clauses (i) and (ii).

“Rental Property” includes each Building containing a Rental Unit and the Lot on which the Rental Unit is situate.

“Rental Unit” means a Building or part of a Building:

- (i) consisting of one or more rooms;
- (ii) containing toilet and cooking facilities;
- (iii) designed for use as a single housekeeping establishment; and
- (iv) used or intended for use as a rented residential premises.

“Stacked Townhouse” means a building designed to contain three or more Dwelling Units attached side by side, two units high, with each Dwelling Unit having a private entrance to grade level and a private open space area of any upper unit may utilize a portion of the roof of any lower unit.

“Townhouse” means a building divided vertically into three or more attached Dwelling Units by common walls extending from the base of the foundation to the roof line, each Dwelling Unit having a separate entrance at grade, and so located on a lot that individual units may not have legal frontage on a public street.

“Tenant” includes a person who pays rent in return for the right to occupy a Rental Unit and includes the person’s heirs, assigns (including subtenants) and personal representatives.

2.0 PROHIBITIONS

2.1 No person shall operate a Rental Unit without holding a current valid licence for such premises issued under the provisions of this By-law.

2.2 No person shall hold himself, herself or itself out to be licensed under this By-law if they are not.

2.3 No person shall contravene or fail to comply with a term or condition of his, her or its licence imposed under this By-law.

2.4 No person shall operate a Rental Unit while their licence issued under this By-law is under suspension.

3.0 APPLICATION OF BY-LAW

3.1 This By-law shall not apply to:

- (a) a Rental Unit in an Apartment Building, a Stacked Townhouse or a Townhouse;
- (b) a Rental Unit that meets all of the following conditions:
 - (i) the Rental Unit constitutes the principle residence of the registered owner;
 - (ii) the Rental Unit is temporarily rented by the registered owner for a period of time no greater than 12 consecutive months in any 24 month period;

- (iii) the Rental Unit was occupied by the registered owner immediately prior to its rental;
- (iv) the registered owner of the Rental Unit is temporarily living outside of the Municipality; and,
- (v) the registered owner intends to reoccupy the Rental Unit upon termination of the temporary rental.

4.0 ADMINISTRATION

4.1 The administration of this By-law is assigned to the Licence Manager who shall generally perform all of the administrative functions conferred upon him or her by this By-law and without limitation may:

- (a) receive and process all applications for all licenses and renewals of licences under this By-law;
- (b) issue licenses in accordance with the provisions of this By-law;
- (c) impose terms and conditions on licences in accordance with this By-law; and,
- (d) refuse to issue or renew a licence or revoke or suspend a licence in accordance with this By-law.

5.0 APPLICATIONS FOR A LICENCE AND RENEWAL OF LICENCE

5.1 Every application for a licence and renewal licence shall be made to the Licence Manager on the forms provided by the Licence Manager. Without limitation, every application for a licence or a renewal shall include the following information:

- (a) the name, municipal address and telephone number of each Owner;
- (b) if the Owner is a partnership, the name, address and telephone number of each partner;
- (c) if the Owner is a corporation, the address of its head office, the name, address and telephone number of each director and officer;
- (d) the municipal address and legal description of the Rental Unit;
- (e) a sworn statement by the Owner certifying the accuracy, truthfulness and completeness of the application;
- (f) if the Owner is a partnership, a sworn statement by each partner certifying the accuracy, truthfulness and completeness of the application; and,
- (g) if the Owner is a corporation, a sworn statement by an officer of the corporation duly authorized for that purpose certifying the accuracy, truthfulness and completeness of the application.

5.2 Every person applying for a licence or a renewal of a licence shall provide in full at the time the application is submitted all of the information requested on the application form as well as:

- (a) payment of the prescribed fee as set out in Schedule "A" of this By-law;
- (b) a copy of the Transfer/Deed and parcel abstract dated no later than fifteen (15) days prior to the date of the application evidencing the Owner's ownership of the Rental Unit;
- (c) if the Applicant or Licensee is a corporation, a copy of the incorporating documentation, a copy of the last initial notice or notice of change which has been filed with the provincial or federal government and a Certificate of Status issued by the Ministry of Government and Consumer Services dated no later than fifteen (15) days prior to the date of the application;
- (d) if the Applicant or Licensee is a partnership, details of each partner's interest in the partnership; and,
- (e) any other documentation or information as may be required in any other Part of this By-law and by the Licence Manager.

5.3 The Licence Manager may require affidavits in support of an application for or a renewal of a licence.

5.4 Every application may be subject to investigations by and comments or recommendations from the municipal or provincial department or agencies as the Licence Manager deems necessary including but not limited to:

- (a) the Director of Building Controls;

- (b) the Manager of By-law Enforcement;
- (c) the Fire Chief; and,
- (d) the Medical Officer of Health.

6.0 ISSUANCE OF LICENCES

6.1 Every licence issued under this By-law shall be in the form and manner as provided by the Licence Manager and without limitation shall include on its face the following information;

- (a) the licence number;
- (b) the name, address and telephone number of each Licensee;
- (c) the date the licence was issued and the date it expires; and,
- (d) the municipal address of the Rental Unit.

6.2 Every licence that is issued for the first time, and every renewal thereof, is subject to the following conditions of obtaining, continuing to hold and renewing a licence all of which shall be performed and observed by the Applicant or the Licensee:

- (a) the Applicant or Licensee shall pay the prescribed licence fee as set out in Schedule "A" to this By-law;
- (b) the Applicant or Licensee shall pay all fees and fines owed by the Applicant or Licensee to the City;
- (c) the Applicant or Licensee shall allow, at any reasonable time and when permitted by law, the City to inspect the Rental Unit and the Rental Property;
- (d) the Applicant or Licensee shall ensure that the Rental Unit and the Rental Property are not constructed or equipped so as to hinder the enforcement of this By-law;
- (e) the conduct of the Applicant or Licensee shall not afford reasonable cause to believe that the Applicant or Licensee will not carry on or engage in the operation of the Rental Unit in accordance with the law or with honesty and integrity;
- (f) the Rental Unit and Rental Property shall be in accordance with the requirements of the *Building Code Act* and the Regulations thereunder, the *Fire Protection and Prevention Act, 1997* and the Regulations thereunder, and the City's Property Standards By-law CP-16;
- (g) where the Rental Unit or Rental Property is altered and a building permit is required to carry out the alterations, the Rental Unit and Rental Property, as altered, shall be in accordance with the *Building Code Act* and the Regulations thereunder, the *Fire Protection and Prevention Act, 1997* and the Regulations thereunder, and the City's Property Standards By-law CP-16;
- (h) the use of the Rental Unit and Rental Property permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use;
- (i) the Applicant or Licensee shall not directly or indirectly require or cause a Tenant to refuse to consent to lawful entry and inspection of a Rental Unit or Rental Property for the purpose of determining compliance with this By-law;
- (j) if the Applicant or Licensee is a partnership or a corporation, any change in the composition of the partnership or of the officers and/or directors of the corporation shall be reported to the Licence Manager within ten (10) days;
- (k) the Applicant or the Licensee shall have a written tenancy agreement with each Tenant;
- (l) the Licensee shall ensure that a legible copy of the license issued under this By-law is posted and maintained in a prominent and visible position inside the Rental Unit near the front entrance.

6.3 A licence issued under this By-law shall be valid only for the period of time for which it was issued.

6.4 The issuance of a licence or renewal thereof under this By-law is not intended and shall not be construed as permission or consent by the City for the Licensee to contravene or fail to observe or comply with any law of Canada, Ontario or any by-law of the City.

6.5 Every licence, at all times, is owned by and is the property of the City and is valid only in respect of the person and for the Rental Unit on the Rental Property named therein. A separate licence shall be required for each Rental Property.

6.6 No licence issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, seized, distrained or otherwise dealt with.

6.7 The Licensee shall notify the Licence Manager of any change in ownership of the Rental Unit or Rental Property and shall surrender his, her or its licence to the Licence Manager within seventy-two (72) hours of the completion of such change.

6.8 All licence fees and inspection fees paid under this By-law are non-refundable.

7.0 POWERS OF THE LICENCE MANAGER

7.1 The power and authority to refuse to issue or renew a licence, to cancel, revoke or suspend a licence, to impose terms and conditions, including special conditions, on a licence, or to exempt any person from all or part of this By-law are delegated to the Licence Manager.

7.2 The Licence Manager may issue a licence or renew a licence where the requirements and conditions of this By-law have been met.

7.3 Notwithstanding any other provision of this By-law, the Licence Manager may impose terms and conditions on any licence at issuance, renewal or any time during the term of the licence, including special conditions, as are necessary in the opinion of the Licence Manager to give effect to this By-law.

7.4 Where the Licence Manager is of the opinion that:

- (a) an application for a licence or renewal of a licence should be refused;
- (b) a reinstatement should not be made;
- (c) a licence should be revoked;
- (d) a licence should be suspended, or,
- (e) a term or condition of a licence should be imposed;

the Licence Manager shall make that decision.

7.5 Where the Licence Manager has made a decision under subsection 7.4 the Licence Manager's written notice of that decision shall be given to the Applicant or the Licensee by regular mail to the last known address of that person and shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the address of the corporation's registered head office.

7.6 The written notice to be given under subsection 7.5 shall:

- (a) set out the grounds for the decision;
- (b) give reasonable particulars of the grounds;
- (c) be signed by the Licence Manager; and,
- (d) state that the Applicant or Licensee is entitled to a hearing by the Hearings Committee if the Applicant or Licensee delivers to the City Clerk, within ten (10) days after the notice in subsection 7.5 is served, and the appeal fee as set out in Schedule "A" of this By-law.

7.7 Where no appeal is registered within the required time period, the decision of the Licence Manager shall be final.

7.8 Despite subsection 7.6 where a licence is voluntarily surrendered by the Licensee for revocation, the Licence Manager may revoke the licence without notice to the Licensee.

8.0 HEARINGS BEFORE THE HEARINGS COMMITTEE

8.1 The power and authority to conduct hearings of appeals under this By-law are hereby delegated to the Hearings Committee.

8.2 The provisions of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, except sections 17, 17.1 and 19, applies to all hearings conducted by the Hearings Committee under this By-law.

8.3 When the Applicant or Licensee, who has been given written notice of the hearing, does not attend at the appointed time and place, the Hearings Committee may proceed with the hearing in his or her absence and the Applicant or Licensee shall not be entitled to any further notice of the proceeding.

8.4 At the conclusion of the hearing, the Hearings Committee may give its decision orally or in writing but in each case it shall provide its decision in writing, with reasons, within thirty (30) days of the hearing to the Applicant or Licensee and the Licence Manager.

8.5 The Hearings Committee may uphold or vary the decision of the Licence Manager or make any decision that the Licence Manager was entitled to make in the first instance.

8.6 The decision of the Hearings Committee is final.

9.0 ENFORCEMENT

9.1 This By-law may be enforced by a City municipal law enforcement officer or a London Police Service police officer.

9.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law, including carrying out an inspection.

10.0 PENALTY

10.1 Any person who contravenes any provision of this By-law is guilty of an offence.

10.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

10.3 A person convicted under this By-law is liable to a maximum fine of \$25,000.00 upon a first conviction and a maximum fine of \$50,000.00 for any subsequent conviction.

10.4 Despite section 10.3 where the person convicted is a corporation, the corporation is liable to a maximum fine of \$50,000.00 upon a first conviction and a maximum fine of \$100,000.00 for any subsequent conviction.

10.5 If this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and,
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

11.0 GENERAL

11.1 If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

11.2 If there is a conflict between a provision of this By-law and a provision of any other City by-law, then the more restrictive provision shall apply.

12.0 MISCELLANEOUS

12.1 This by-law may be referred to as the "Residential Rental Units Licensing By-law".

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12.2 This by-law shall come into force and effect on May 3, 2010.

PASSED in Open Council

, 2009

Anne Marie DeCicco-Best
Mayor

Linda Rowe
Acting City Clerk

First reading -
Second reading -
Third reading -

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**SCHEDULE "A"
FEES**

Licence Fee	\$ 25.00
Licence Renewal Fee	\$ 25.00
Appeal Fee	\$0.00