



OAKVILLE

REPORT

PLANNING AND DEVELOPMENT COUNCIL

MEETING DATE: NOVEMBER 6, 2017

FROM: Municipal Enforcement Services

DATE: October 16, 2017

SUBJECT: Residential Rental Housing Licensing By-law

LOCATION: Town wide

WARD: Town wide

Page 1

RECOMMENDATION:

1. That the draft by-law, attached as Appendix A to the October 16, 2017 report from the Municipal Enforcement Services department, to licence and regulate Residential Rental Housing, be received;
2. That new licensing fees listed in Appendix B to the October 16, 2017 report from the Municipal Enforcement Services department, be received;
3. That staff be directed to hold a Statutory Public Meeting under the *Planning Act* to bring forward the draft zoning by-law amendments included in Appendix C to the October 16, 2017 report from the Municipal Enforcement Services department to amend the lodging house definition, at a future Planning and Development Council meeting; and
4. That staff be directed to provide Council with a final version of the Residential Rental Housing Licensing by-law in the first quarter of 2018.

KEY FACTS:

The following are key points for consideration with respect to this report:

- A 2016 staff report discussing lodging house options recommended that Council approve an outreach program to respond to low-rise rental concerns in Oakville.
- As a result, Council directed staff to explore the outreach program and also draft a low-rise Residential Rental Housing Licensing by-law (hereinafter referred to as the RRHL by-law) and provide a full cost recovery financial implementation plan.
- Public consultation was held.
- An environmental scan of Ontario municipalities with RRHL by-laws was conducted.

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

- Staff held discussions with interested individuals and groups.
- An analysis of the Oakville residential rental housing market was conducted.
- A detailed costing and fee development process was undertaken.
- A RRHL by-law has been prepared for Council's consideration .
- A draft zoning by-law amendment to assist in the implementation of the "Class D" lodging house framework as part of the RRHL by-law has been prepared for Council's reference and consideration at a future statutory Public Meeting under the *Planning Act*.

BACKGROUND:

At its meeting of November 7, 2016, Council passed the following resolution:

- That staff draft a low-rise residential rental by-law for Council consideration; and,
- That the draft by-law includes a financial plan for the cost of such a program, as well as a plan for cost recovery.

Staff have conducted a consultation process that included:

- Communications about the proposed by-law
 - Oakville.ca
 - Oakville Beaver
 - Final tax bill
 - Oakville Milton Real Estate Board (OMREB)
 - Chamber of Commerce
 - Residents associations
 - Children's festival
 - Sheridan College orientation day event
- Open comment forum through Oakville.ca
- Residential Rental Housing Licensing public open house
- Consultation with interested individuals/groups

RRHL Public Open House

On May 16, 2017, staff held an RRHL public open house at Town Hall. The open house was advertised through several mediums:

- Oakville.ca
- Twitter
- Email notice
 - OMREB
 - Including follow-up meeting
 - Residents associations
 - Council
 - Chamber of Commerce
- News release

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

- Oakville Beaver (May 4 & 11)
- Tax brochure insert-mailed with final tax billing
- Sheridan College orientation day

Approximately 59 people, who provided feedback on licensing regulations, safety, licence classes and general suggestions, attended the open house. Comments have been summarized and categorized in Appendix D; all comments can be viewed on Oakville.ca.

It was noted that many attendees had questions regarding issues affecting specific properties. Overall, areas of discussion included property owner powers including *Residential Tenancies Act* impacts, police checks, taxes, inspections, insurance, housing, complaints, floor plans, *Building Code* and economy. Many of these topics are discussed in more detail throughout this report.

Environmental Scan

Staff have analyzed information gathered from other Ontario municipalities that have RRHL by-laws – Oshawa, London, North Bay, and Waterloo (Appendix E). Locally, no other municipality has implemented such a by-law.

A review of information gathered indicates that there is a wide range in application, renewal and inspection fees. Factors that may affect fees include the local cost of providing services (i.e. salaries, benefits), who is providing the service and degree to which the program is cost recovery. Fees developed for the proposed Oakville RRHL are based on full cost recovery (placing costs to manage businesses on businesses – removing tax impact) and are detailed later in this report.

It was also identified that each municipality surveyed has, to a greater or lesser degree, subdivided the rental spectrum. Some municipalities like Waterloo have created multiple classes, while others like London have created fewer categories.

When reviewing application requirements, it was identified that all municipalities surveyed require similar documents (i.e. Electrical Safety Authority inspection, maintenance plan, insurance, floor plan). This information, along with the overriding goal to provide health and safety, nuisance control and consumer protection, was considered when developing Oakville's proposed by-law.

Lodging House Enforcement – Current Issue

The town began licensing lodging houses in 2006. At that time, lodging houses were the only category of housing on the residential rental spectrum that the *Municipal Act* permitted municipalities to licence. When looking at the spectrum of residential rental properties, lodging houses are very specific – individual rooms within a house or building rented to people who do not operate as a single housekeeping unit.

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

Enforcement becomes a significant issue when the larger spectrum of residential rental options is considered. The distinguishing factor between a lodging house and other rental options becomes how a rental property is operated (i.e. is it operated as a single housekeeping unit).

In order to distinguish a lodging house from any other type of residential rental property, an officer must have detailed evidence of the internal workings of the household – which are exceptionally difficult to obtain. There is no entry permission, therefore owners and tenants can refuse an officer entry – denying access to the inner workings of the home. In most cases, without entry there is no way to collect enough evidence to issue charges. Officers do have the ability to apply to the courts for a search warrant, but without evidence from inside the dwelling, there is little possibility a warrant would be issued.

In addition, when speaking with owners and tenants, an officer must first caution them that evidence gathered may lead to charges. Tenants and landlords generally refuse to answer after a caution has been issued – eliminating another tool to gather evidence.

Single Housekeeping Units

Recent case law has identified some of the key characteristics of a dwelling unit to help define “single housekeeping unit”. In order to prove single housekeeping unit, an officer must gather detailed evidence on the majority of characteristics identified by the courts. Characteristics include

- All of the tenants in a house knowing each other well in advance of signing their lease
- All of the tenants deciding together who gets which room with no influence from the owner or their representative
- No keyed locks on any of the bedroom doors
- The tenants pay the rent as a group
- The tenants pay all of the utilities in their name separate from the rent
- That neither the owner nor any of their relatives live in the house
- The tenants have access to the entire house
- The tenants provide all of the furniture for the entire house
- The tenants are responsible for the cleaning of the house
- That there have not been any renovations to increase the number of bedrooms in the house

Observations of individual leases, locked doors and changing tenants are often considered evidence that a home is being rented illegally. This information may assist with an investigation but does not on its own provide enough evidence for charges. Generally, evidence from at least one of the tenants within the unit is required for charges to be successfully prosecuted. Typically, by the time charges

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

are scheduled for trial, tenants have vacated the premises and are not willing/available to give evidence. Although a summons can be issued to the tenants, there is little recourse in the event that they do not appear. Due to evidence required to successfully prosecute a charge, most rental units cannot be enforced under current lodging house regulations.

Residential Rental Landscape in Oakville

Because of difficulties encountered when attempting to enforce lodging house regulations, the province, at the request of municipalities, amended the *Municipal Act* in 2007. The amendment expanded licensing powers and permitted municipalities to license residential rental businesses – encompassing single housekeeping units. Municipalities such as Oshawa, North Bay, London and Waterloo have since enacted RRHL by-laws. By-laws in London and Waterloo have been the subject of court challenge and in both cases, the by-laws and their licensing requirements were upheld.

A strong commonality amongst municipalities that have enacted RRHL by-laws appears to be ensuring the safety of a large transient rental population. In the case of all four municipalities that have enacted RRHL by-laws, large learning institutions significantly affect the rental landscape. Appendix F provides a comparative overview of the four municipalities that have enacted RRHL by-laws.

Oakville RRHL Impacts

In an attempt to contextualize the Oakville issue, staff have overlaid the approximate 7000 possible rental locations identified between April 2016 and March 2017 (Appendix G), with by-law calls over the same period. This data helps to identify the magnitude of by-law concerns generated by low-rise rental properties. Table 1 below, shows findings, which suggest that rental properties, making up approximately 12% of households, are responsible for approximately 15% of by-law calls. Proportionally, these numbers are not excessive.

From: Municipal Enforcement Services
 Date: October 16, 2017
 Subject: Residential Rental Housing Licensing By-law

Table 1 - RRHL Service Requests as a Percentage

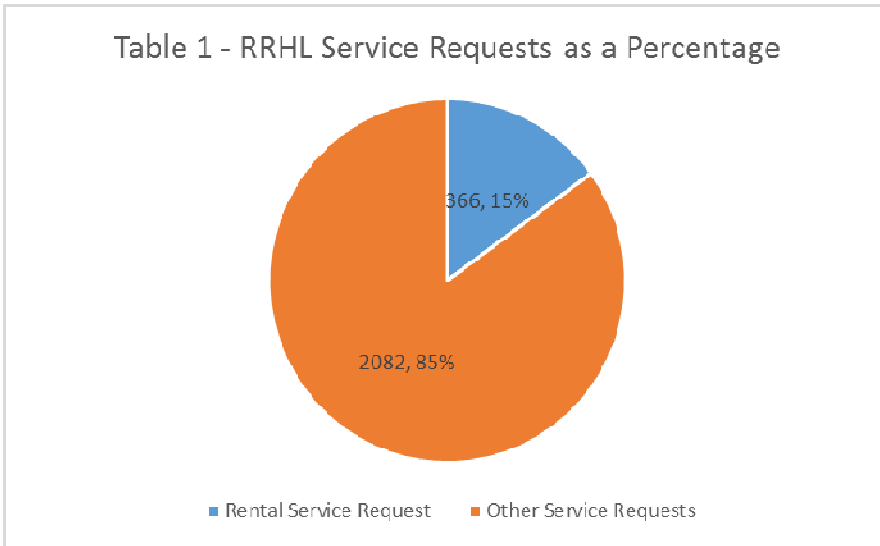
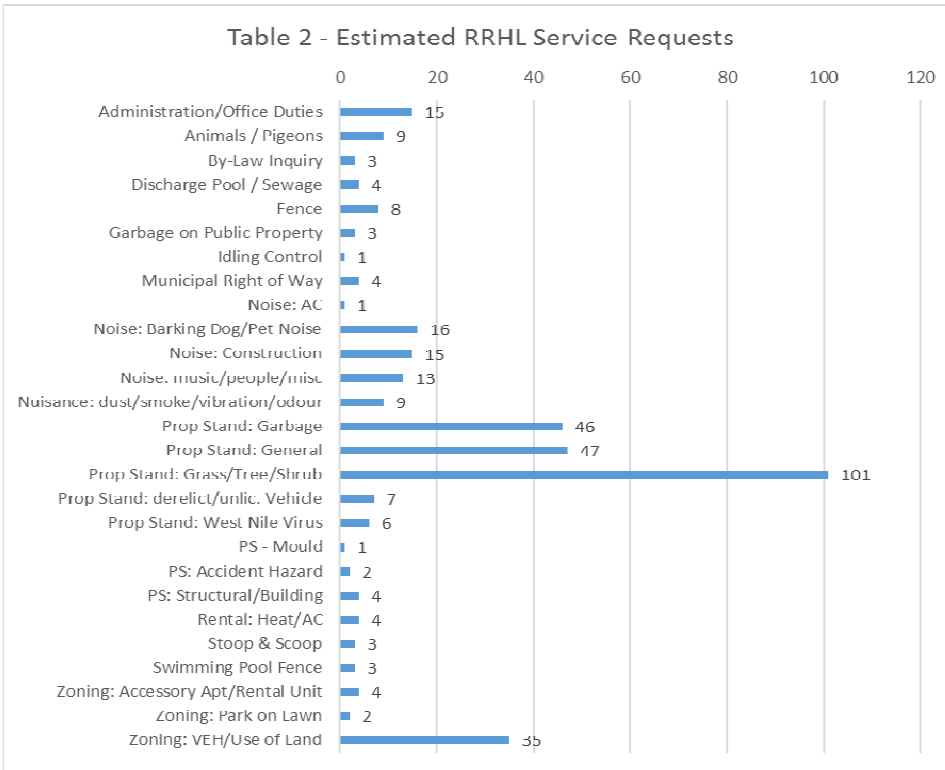


Table 2 below, identifies the types of calls driven by RRHL properties. The most significant issues seem to be property standards related – long-grass, derelict vehicles and garbage.

Table 2 - Estimated RRHL Service Requests



From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

Current Processes to Address Negative Impacts of Rental Properties

A RRHL by-law will add protections for tenants and provide options to address negative impacts of rental units. That said, there are existing by-laws to address many of these issues.

- *Lot Maintenance* – in June of 2017, Council approved the town's first lot maintenance by-law. The by-law reduced compliance timelines associated with nuisance property issues such as long grass, garbage and derelict vehicles. Compliance times for these issues were reduced from a minimum 21 days, to an average of 7 days. Officers are now able to address many issues common to rental units more quickly and with penalties ranging from administrative charges to administrative penalties and finally *Provincial Offences Act* processes.
- *Property Standards* – an updated property standards by-law was also approved in June of 2017. The updated by-law continues to provide an avenue for enforcement of issues related to trees, general mechanical, heating and structural issues that rental properties may face. The property standards by-law is empowered by the *Building Code Act*, which sets a minimum 21-day compliance period, as well providing an appeal process.
- *Noise* – the town's existing noise by-law covers issues such as noise from construction, pets and people. The noise by-law identifies sound level limits and provides penalties should those limits be exceeded. If evidence is obtained proving an exceedance, including evidence from a witness willing to testify, *Provincial Offences Act* charges can be issued.
- *Parking* – existing parking by-laws limit or prohibit the times and locations that owners, visitors or tenant's vehicles can park on the street, private property, town property or on grass. Vehicles found in violation of existing regulations can be issued parking tickets, which if not paid result in licence plate denial. Enforcement of most parking violations is conducted proactively, although officers are available to respond to complaints made through ServiceOakville 24/7.

Why Licence Low-Rise Rental Properties

The *Building Code Act*, 1992, governs the construction, renovation, change of use, and demolition of buildings. Construction requirements are based on the size and occupancy of the building. In the case of a residential building, the number of dwelling units is one of the factors that determine its construction requirements.

When a building is constructed as a house, it is assumed that the care and control of the building is under the authority of a *single housekeeping unit*. However, in a multi-

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

dwelling building (e.g. a dwelling with a secondary apartment), occupants of a dwelling unit have no control of what happens in the adjacent unit. The building code recognizes this and as a result, there are additional safety construction requirements for multi-dwelling buildings. For example, in a multi-dwelling building, the construction of fire separations, exits, exit signs, emergency lighting and potentially fire alarms and sprinklers now become mandatory construction requirements. These safety requirements are not required in a house.

If a house changes into a multi-dwelling building and rental accommodation, the safety of the occupants may be compromised. Occupants of the building will not necessarily share equal responsibility for the care and control of the building. The building's original design would not have incorporated safety features typically found in multi-dwelling buildings. As a result, a RRHL by-law, and the requirement to obtain a building permit (where applicable) will provide additional measures of safety for the occupants.

Affordable Housing Consideration

Providing affordable housing, both affordable ownership and affordable rental, is an objective for the Province, Halton Region and the town. As part of developing a proposed RRHL by-law, the issue of housing affordability and the impact a licensing by-law may have on affordability, was discussed. A concern remains that implementing a RRHL may decrease affordability; property owners may pass the cost of licensing fees and associated process costs onto tenants.

Related to affordability is a concern that a RRHL may potentially encumber the availability of new rental accommodation in the private market, whereby potential homeowners may opt not to rent out their homes or an accessory apartment due to a perceived onerous licensing process.

The Ontario Human Rights Commission publication titled "In the zone: Housing, human rights and municipal planning" provides guidance to municipalities for planning and licensing housing. The document notes that while municipalities have been given the authority to license, regulate and govern businesses operating within their municipality, including renting residential units and operating lodging houses, it also notes that the Provincial Ministries are also encouraging municipalities to create more affordable housing. Given this, and in light of recent affordable housing legislation such as the *Strong Communities through Affordable Housing Act*, the guidance document notes that "licensing by-laws that reduce or restrict affordable housing may not be in line with the provincial vision."

It is difficult to assess the impacts the proposed licensing by-law would have on affordability and availability of private rental accommodations. However, the Region of Halton's State of Housing Report (2016) provides some information on the current trends of purpose-built rental townhouses and apartments that helps contextualize

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

the current conditions of the rental market and the impacts a licensing by-law may have.

The State of Housing Report notes that Halton Region has the lowest rental vacancy rate and the highest monthly rents when compared to other Regional Municipalities in the GTA for purpose built rental townhouses and apartments.

The report states that vacancy rates are an important measure to assess the health of the rental market. According to Canada Mortgage Housing Corporation (CMHC), a vacancy rate of at least three per cent is considered necessary for adequate competition and housing options. Since 2012, Halton Region has had a vacancy rate less than three percent and it continues to decrease. In 2016, the vacancy rate for Halton Region was 1.3%, with Oakville having a vacancy rate of 1.7%.

The report also states that average monthly rent is another means to measure the health of the rental market. The average monthly rent of private townhouses and apartments increased to \$1,290 (average cost of all units, including bachelor) in 2016. The average townhouse and apartment rent has been steadily increasing over the past five years. While rents are still considered within the “affordable threshold” for Halton Region, they continue on an upward trend. The report does not provide rental rates for condominium rental units or any other rental accommodation that is not purpose-built.

Within the private resale market, the report states that in 2016 the average resale home price continued to increase at a greater rate than the average income within Halton Region to a point where the number of affordable housing options are limited. This has resulted in an increase in the range of required affordable housing units.

Given the limited supply of purpose built rental properties, the upward trend of average monthly rents and the large price increases in the private resale market, it can be expected that the average cost of private market rentals (e.g. rented house, condominium rental, or accessory apartment rental) will also increase. These trends coupled with the implementation of a RRHL, may lead to conditions where homeowners transfer additional costs to tenants and ultimately decrease the affordability of rental accommodations across the town.

Furthermore, if the RRHL deters homeowners from renting out their homes or accessory apartments due to the additional cost or perceived onerous process, less supply in private market rentals may lead also to increased rents due to less competition and less housing choice.

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

Zoning By-law Considerations

The Livable Oakville Plan policies with regard to housing encourage an appropriate mix of housing types, including a mix of housing tenure, throughout the town. This policy provides direction for the implementing zoning by-law.

Section 34 of the Planning Act sets out the powers of municipalities to pass zoning by-laws. Zoning by-laws can regulate matters including the use of land (e.g. residential, commercial, industrial), and associated standards (e.g. the location, size, and setbacks of buildings, parking requirements) to ensure appropriate development.

The *Planning Act* states that municipalities may not pass zoning by-laws that distinguish between people who are related or unrelated in respect of the occupancy or use of a building. For example, a zoning by-law cannot require that a family rather than roommates must occupy a house. Often times, zoning by-laws distinguish families or a group of people living together as a 'single housekeeping unit' who share the responsibilities of maintaining a whole home living together.

In this context, a zoning by-law cannot regulate whether the dwelling is rented or owner occupied, nor would it be appropriate given the Livable Oakville Plan encourages an appropriate mix of housing tenures throughout the town. As such, zoning regulations to regulate rental accommodations versus ownership should not be introduced into the zoning by-law. The existing Zoning By-law 2014-014 defines a 'lodging house' to mean "a building or structure or any part thereof in which persons are harboured, received or lodged for rent or hire with or without meals." Lodging houses are a distinct use where persons may live together under one roof, but do not share the responsibilities of maintaining a dwelling together as a 'single housekeeping unit'. Currently, the zoning by-law caps the number of lodging units within a lodging house to three units. However, as part of the development of the RRHL, zoning changes have been identified in order to provide for a complete licensing framework including the proposed "Class D" licences for lodging houses.

Zoning amendments are needed to accurately implement the *Fire Code* and *Building Code*. A "boarding house", "lodging house" or rooming house" for the purposes of Part 9 of the *Fire Code* contains five or more lodging units. Similarly, a "boarding, lodging or rooming house" for the purposes of the *Building Code* contains more than four lodging units. As such, a zoning by-law amendment would be required to implement this change. A draft zoning by-law amendment for Zoning By-law 2014-014 is provided in Appendix C to this staff report. This change must be carried out under the authority of the *Planning Act*, including a public meeting at Planning and Development Council with the appropriate public notice.

At this time, a more detailed review of the zoning for lodging houses in North Oakville Zoning By-law 2009-189 is required before amendments in regard to lodging houses are contemplated. Currently, there is no definition of lodging house

From: Municipal Enforcement Services
 Date: October 16, 2017
 Subject: Residential Rental Housing Licensing By-law

in the North Oakville Zoning By-law and a new framework must be devised. A more fulsome review of the Zoning By-law would be required.

What Does the Residential Tenancies Act Regulate

The stated purposes of the *Residential Tenancies Act* (RTA) are:

“to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.”

As described, the RTA deals with the relationship between landlord and tenant regarding rent increases and unlawful evictions as well as balancing the rights and responsibilities of landlords and tenants. The RTA also states that landlords are responsible to maintain a state of good repair for the rental (inside and out) but remedies rely on a tenant’s ability to navigate through the rental tribunal system.

An RRHL by-law does not delve into rent increases or eviction processes. In fact, an RRHL anticipates compliance with RTA requirements for both landlords and tenants.

In contrast to the RTA, RRHL regulations focus more on property/tenant safety, use, size, neighborhood impacts and compliance with other applicable regulations – which may include the RTA. Through RRHL regulations, municipalities can identify immediate safety concerns and remedies, while creating a licensing system that is more enforceable and effective at dealing with neighbourhood concerns.

It has been suggested that RRHL regulations are contained within the RTA. A review of the two sets of regulations suggests that both strive for tenant protection but are diverse in achieving their goals (see table 3 below). In addition, RRHL regulations extend beyond tenant protection, focusing on the reduction of broader neighbourhood impacts resulting from residential rental units.

Table 3 - RRHL v. RTA Issue Resolution Matrix		
	RRHL	RTA
	Issue – no heat (could be after-hours or during business hours)	Issue – no heat (could be after-hours or during business hours)
1.	Emergency contact information posted as a licence requirement – contact information for licensee and town provided as part of licence	If a tenant has a maintenance problem, the first thing they should do is ask the property owner - in writing - to fix the problem.
2.	Call emergency contact <ul style="list-style-type: none"> • Required by by-law to attend 	If, after being informed about the problem, the landlord does not fix it

From: Municipal Enforcement Services
 Date: October 16, 2017
 Subject: Residential Rental Housing Licensing By-law

	<p>and repair the deficiency</p>	<p>within a reasonable time, the tenant can:</p> <ul style="list-style-type: none"> • report the problem to their local government or the Rental Housing Enforcement Unit • file an application with the LTB • do both of these things <p>The tenant can contact their local municipal government to see if their community has a maintenance, property or housing standards bylaw.</p> <ul style="list-style-type: none"> • inspect the property for any bylaw violations • issue a notice of violation or a municipal work order that requires the landlord to make repairs by a deadline. <p>If the landlord does not do the repairs, the local municipal government can:</p> <ul style="list-style-type: none"> • take the landlord to court for not following the bylaw • do the work and add the cost to the landlord's property taxes • do both of these things
<p>3.</p>	<p>If emergency contact does not respond contact municipal enforcement services by calling <i>ServiceOakville (24/7)</i></p>	
<p>4.</p>	<p>Provide details of concern, including photographs if possible</p>	
<p>5.</p>	<p>Officer is assigned to the call – will contact complainant to arrange an inspection</p>	
<p>6.</p>	<p>If Inspection confirms deficiency immediate steps taken to remedy immediately</p> <ol style="list-style-type: none"> a. Attempt to contact owner/emergency contact and have resolve immediately b. If owner/emergency contact unavailable/unwilling to attend - emergency steps taken to resolve issue including 	

From: Municipal Enforcement Services
 Date: October 16, 2017
 Subject: Residential Rental Housing Licensing By-law

	emergency order and emergency repairs at owner's cost	
7.	Once deficiency repaired and emergency resolved – owner subject to demerit points and/or charges related to non-compliances	<p>If the tenant tells the landlord about a problem and the landlord doesn't fix it, doesn't fix it properly or doesn't fix it quickly enough, a tenant can file a Tenant Application about Maintenance (Form T6) with the LTB.</p> <p>When the application is filed, a hearing will be scheduled. Both the tenant and the landlord have a right to attend the hearing to explain their side of the story.</p>
8.	Process can have impacts on the ability of owner to renew/obtain a licence if pattern of non-compliance shown	

Impacts of RRHL on Other Municipalities

A concern raised during public consultations was possible rent increases, over the provincial cap, due to added licensing costs. Staff have gathered data from the CMHC showing rent increases before and after RRHL by-laws were enacted tables 4 and 5 below.

Municipality		Average Rent Prior year	<u>Year By-Law Enacted</u>	Average rent +1 year	Average rent +2 years	Average rent +3 years	Average rent +4 years	Average rent +5 years
London	Year	2009	2010	2011	2012	2013	2014	2015
	Total Avg	821	803	815	852	857	875	890
North Bay	Year	2011	2012	2013	2014	2015	2016	2017
	Total Avg	751	797	819	838	866	870	N/A
Oshawa	Year	2007	2008	2009	2010	2011	2012	2013
	Total Avg	860	876	882	893	922	930	976
Waterloo	Year	2011	2012	2013	2014	2015	2016	2017
	Total Avg	831	854	981	964	1021	1125	N/A
Oakville	Year	2011	2012	2013	2014	2015	2016	2017
	Total Avg	1133	1207	1224	1269	1301	1372	N/A

<u>Year</u>	<u>Provincial rental increase</u>	<u>London</u>	<u>North Bay</u>	<u>Oshawa</u>	<u>Waterloo</u>	<u>Oakville</u>
2007	2.6%					
2008	1.4%			1.3%		
2009	1.8%			1.3%		
2010	2.1%	1.1%		1.5%		
2011	.7%	.8%		1.5%		
2012	3.1%	2.3%	2.7%	1.9%	3.7%	4.1%
2013	2.5%	1.8%	3.5%	4.4%	3.8%	2.7%
2014	.8%	1.1%	2.32%		1.9%	2.6%
2015	1.6%	2.3%	2%		2.0%	3.5%
2016	2%		2.5%		2.9%	3.5%

*data from CMHC Rental Market Survey based on increase/decrease as a percentage change between prior year to current year as impacted by composition of rental market and rent level movement

**shaded=increases higher than provincial guidelines

The data used to create these tables is not exclusive to low-rise rental properties and therefore can only be used to help identify possible RRHL impacts.

When comparing those municipalities that have enacted RRHL by-laws to Oakville, the trend suggests that rents in Oakville exceed the provincial cap and exceed it by a greater percentage more often than RRHL municipalities. When looking specifically at municipalities that have enacted RRHL by-laws, the trends are inconsistent.

- London and Oshawa have met or are below the cap a greater percentage of the time
- Waterloo has been above the cap, each year measured
- North Bay, Oshawa and Waterloo have had years that exceed the cap by a significant amount

While this data helps to contextualize rental costs, it is not possible to determine if over and above costs are driven by RRHL by-laws or other market influences.

COMMENT/OPTIONS:

RRHL recommendations and rationale

Using information gathered during the consultation and review phase, staff have prepared RRHL regulations – outlined in the proposed by-law attached as Appendix A. In addition, a draft zoning by-law amendment has been included as Appendix C. The goals of the proposed licensing regulations include

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

1. Protect the health and safety and human rights of persons residing in rental units
2. Ensure that certain essentials are provided in rental units such as plumbing, heating and water
3. Protect residential amenity, character and stability of neighbourhoods

RRHL Licensing Framework

The regulatory framework contemplated for RRHL has taken into consideration best practices from other municipal RRHL by-laws and the Ontario Human Rights Commissions (OHRC) document entitled Room for everyone: Human Rights and Rental Housing Licensing (<http://www.ohrc.on.ca/en/room-everyone-human-rights-and-rental-housing-licensing>).

OHRC Considerations

The OHRC has provided municipalities best practice guidance when considering a RRHL by-law. The guidance directs municipalities to ensure that RRHL by-laws:

- Are to achieve a rational planning purpose;
- Are developed in good faith that the municipality needed to adopt the by-law to achieve that purpose; and,
- Are implemented in a way that was reasonably necessary to accomplish the municipalities' purpose or goal

The guidance includes thirteen considerations when drafting a RRHL by-law.

1. Consider the *Ontario Human Rights Code* before drafting the by-law and refer to the code in the by-law
2. Consult with Code-protected groups
3. Make sure the meetings about the by-law do not discriminate
4. Roll out the by-law in a consistent, non-discriminatory way
5. Work to secure existing rental stock
6. Avoid arbitrary bedroom caps
7. Avoid gross floor area requirements that exceed the *Building Code*
8. Eliminate per-person floor area requirements
9. Eliminate minimum separation distances
10. Enforce the by-law against the property owner, not the tenants
11. Protect tenants in cases of rental shut down
12. Monitor the impacts on Code groups
13. Make sure licensing fees are fair

Key By-law Components

The proposed RRHL by-law will be applied town wide to all low-rise residential buildings. Exemptions are contained for sublets, apartment buildings, group homes, hotels, inns or other short-term accommodations, student residences and any

program requiring a custodial declaration issued by the Department of Citizenship and Immigration Canada.

The licensing program includes several classes, capturing the entire low-rise rental spectrum. The classes are differentiated as follows:

1. Class A – Whole Home Rental
Significant Characteristics
 - Maximum five rental bedrooms
 - No more than 40% of floor are comprised of bedrooms
 - One kitchen
 - Operating as single housekeeping unit
2. Class B – Owner Occupied Rental
Significant Characteristics
 - Owner must live in home
 - Maximum four rental bedrooms
 - No more than 50% of floor area comprised of bedrooms
 - Operating as single housekeeping unit
3. Class C – Non Owner Occupied Rental
Significant Characteristics
 - Owner does not live in the home
 - Maximum four rental bedrooms
 - No more than 40% of floor area comprised of bedrooms
 - Can have multiple single housekeeping units (i.e. accessory apartment), if zoning compliance is achieved
 - Each unit must operate as a single housekeeping unit
4. Class D – Lodging House
Significant Characteristics
 - Operating as a boarding, lodging, rooming house – Part 9 *Fire Code*
 - Comply with Part 9 of the *Fire Code* (Ontario Regulation 213/07 as amended)
 - Operating as boarding, lodging, rooming house – *Building Code*
 - Comply with boarding, lodging, rooming house requirements of the *Building Code*
 - Operate as a lodging house for the purposes of the zoning by-law
 - Building not to exceed six hundred (600) square meters and no more than three storeys
 - Tenants shall not have exclusive rights to kitchens or bathrooms

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

- No more than two bathrooms, one kitchen and no less than five bedrooms
- Each bedroom shall have a door that is capable of being locked
- There shall be written leases with only one tenant per lease
- No bedroom shall have a working water distribution system installed

Specifics for each class can be found in the draft by-law attached as Appendix A. The requirements of the by-law would be subject to a variance process described later in this report in order to provide additional flexibility for renters in Oakville.

Application Requirements – For All Classes

The following list details application requirements for all classes of licence. Licence renewals may have reduced requirements, such as electrical safety inspections, which will only be required once every five years.

Owner Information – provided to ensure the applicant is legally able to make application and to develop communication options should they be needed for the administration and/or enforcement of the by-law

Corporate Information – provided when a corporation owns a rental property to ensure the applicant is legally able to make application and to develop communication options should they be needed for the administration and/or enforcement of the by-law

Floor Plans – provided to assist in determining the existing/proposed building use and to avoid any ambiguities in application of the appropriate codes and by-laws. Floor plans for the entire building are required. Plans can be drawn/created by applicants but must be legible, include all room measurements and room identifiers. Once submitted, appropriate by-law monitoring/enforcement is possible

Transfer/Deed – provided to ensure applicants own the home and can enter into a rental agreement

Tenant Information – provided to allow for effective enforcement of the by-law and to ensure compliance with class regulations

Local Emergency Contact – A local contact (within 35 kilometers of Oakville Town Hall) will assist staff as well as other agencies such as police, utilities, fire to locate and solve problems more easily. In addition, a local contact can assist owners to ensure properties are properly managed/maintained and avoid penalties or demerit points

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

Liability Insurance – The landlord/owner will provide the town with certificate of liability insurance in the amount of not less than \$2,000,000 (two million dollars) per occurrence for property damage and bodily injury. This is consistent with other licensing classes and ensures health and consumer protection

Criminal Records Check – provided to ensure a licensee does not have a history of criminal activity, which may compromise tenant safety and consumer protection

Parking Plan – provided to demonstrate compliance with the town's zoning by-law and identify the location and dimensions of all vehicular parking spaces on the property

Property Maintenance Plan – provided to ensure property complies with the town's property standards by-law and lot maintenance by-law

- Identifies location of garbage and recycling
- Identifies who is responsible for property maintenance (tenant, owner or third party)

Electrical Safety Inspection – provided to ensure the property continues to comply with Electrical Safety Authority (ESA) regulations and that any modifications do not pose a safety concern

Heating Ventilation and Air Conditioning Inspection (HVAC) – provided to ensure the homes HVAC system is functioning, not obstructed and safe for use

Signed Statement – provided to confirm compliance with the following

- Maintenance and parking plan
- *Building Code Act*
- *Fire Protection and Prevention Act*
- *Electrical Act*
- Owner and/or applicant is aware of all federal, provincial, *Human Rights Code* and municipal regulations that may apply to the rental unit

Demerit Point System

A demerit point system has been included to address properties with ongoing/multiple violations. This will allow staff to assess demerit points against properties when a confirmed order and/or charges have been levied against the property. Should a property receive more than seven demerit points within a twenty-four-month period, escalating enforcement can occur, including licence suspension, conditions, and eventually revocation.

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

To reduce negative impacts on tenants should a suspension or revocation be required, the by-law also directs staff to consider impacts of the revocation or suspension on the tenant and take actions with that in mind.

Excerpt from by-law

The Licensing Commissioner, before revoking or suspending a licence pursuant to section 6 of this by-law, shall consider:

- a. The impact of any such licence revocation or suspension on tenants
- b. Imposing terms or conditions on any such licence revocation or suspension that would minimize the adverse impact on any tenants, including the possibility of providing a reasonable time period before the licence revocation or suspension takes place to permit tenants to find new housing or to seek relief in a court or before the Ontario Landlord and Tenant Board.

Lodging Houses

The proposed RRHL by-law has been created to ensure enforceability by capturing both single housekeeping units and lodging houses – Class A, B and C licences are single housekeeping units, Class D is not.

The zoning by-law will permit Class A, B and C units in most zones but restricts Class D licences to zones that can accommodate additional parking requirements.

Class D properties will be required to provide at least seven legal parking spaces.

- 2 parking space for the detached dwelling
- 1 parking space per lodging unit

Zones that will accommodate Class D licences include RL1-6, R11 and RUC. These zones are mainly single residential homes in south Oakville that may be able to provide additional parking. Appendix H maps areas that will permit Class D licences, although each property would need to be assessed for zoning compliance. Appendix I provides an overview of size requirements and possible parking orientations.

Variance Process

A variance process has been established to provide some flexibility for Oakville property owners and renters. The variance process allows an owner, whose property does not meet a licensing requirement, to apply for a variance in order to obtain a licence. By adding this as an option, staff are further addressing the OHRC's 13 guiding principles to be considered when developing a RRHL by-law.

The authority to issue a variance has been delegated to the Appeals Committee. An owner, through written request outlining the reasons for the appeal, can initiate the appeal process.

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

In order to apply for a variance the owner must first:

- a. Outline the particular provision or provisions for which a variance is sought
- b. Provide reasons for the variance request
- c. Provide a statutory declaration confirming that
 - a. There have been no renovations to increase the number of bedrooms in the rental unit
 - b. The rental unit shall not operate as a “boarding house”, “lodging house” or “rooming house” for the purposes of Part 9 of the Fire Code
 - c. The rental unit shall not operate as a “boarding house, lodging house or rooming house”, as defined in the Building Code
 - d. The applicant has provided notice of the variance being sought to all residents within 100 metres of the rental unit; and
- d. The fee as prescribed in the rates and fee schedule approved by Council as part of the annual budget approval process.

If an application is complete, including a statement indicating there have been no renovations to increase the number of bedrooms, the Appeals Committee can then hear the request. When hearing a request, the Appeals Committee must consider multiple things, including:

- a. whether there are any objections from the residents within 100 metres of the Rental Unit;
- b. whether the past conduct of the applicant affords the Appeals Committee reasonable grounds to believe that the applicant has not or will not carry on their Residential Rental Business in accordance with applicable law or with honesty and integrity;
- c. whether the Appeals Committee reasonably believes that the granting of a variance might be adverse to the public interest;
- d. the property on which the Rental Unit is situated is subject to an order, or orders, made pursuant to (or by):
 - i. the Town’s Property Standards By-Law;
 - ii. the *Building Code Act* any regulations made under it, including the *Building Code*;
 - iii. the *Fire Protection and Prevention Act* or any regulations made under it, including the *Fire Code*; or,
 - iv. the Medical Officer of Health;
- e. the Rental Unit itself, the Building in which the Rental Unit is situated or the property on which the Rental Unit is situated is not in compliance with a Zoning By-Law;
- f. the Rental Unit has at least 15 demerit points issued under this By-law; or,

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

- g. the person who is applying for the variance is indebted to the Town by way of fines, penalties, judgments or outstanding (past due) property taxes; and
- h. whether approval of the variance would be contrary to the general intent and purpose of this By-law.

The general intent and purpose of the by-law is outlined within the by-law and includes three statements

- a. Protect the health and safety and human rights of the persons residing in rental units
- b. Ensure that certain essentials are provided in residential rental units such as plumbing, heating and water
- c. Protect the residential amenity, character and stability of residential areas

Once all information and testimony has been considered and the Appeals Committee has made a decision, it is final and is not subject to review.

Why Licence the Entire Rental Spectrum

The proposed RRHL by-law has been created to capture the entire low-rise rental spectrum. Deviation from this philosophy will limit the effectiveness of the by-law by again requiring officers to determine “what” is happening behind closed doors. The gains in effectiveness can only be achieved when the entire rental spectrum is included in a licensing program.

CONSIDERATIONS:

(A) PUBLIC

Public consultation was held in May and June 2017. During this period, residents were consulted through

- Public Consultation Session (May 2017)
- Individual/group input session (May & June 2017)
- Comments through enforcementservices@oakville.ca throughout the period

Public notice of the by-law has been published in the Oakville Beaver, sent to residents who requested notification and posted on the town website in accordance with the public engagement policy guidelines.

Enacting a RRHL by-law will improve health and safety of tenants and residents and assist in maintaining community character and stability.

From: Municipal Enforcement Services
 Date: October 16, 2017
 Subject: Residential Rental Housing Licensing By-law

(B) FINANCIAL

An RRHL licensing fee review was conducted. The review was based on achieving full cost recovery for administrative (multiple departments) and enforcement costs of the program.

Residential Licensing Forecast						
5 Year Forecast - Expenditures*						
	2018	2019	2020	2021	2022	Total
Enforcement Hours Required	1,988	3,975	7,950	10,600	13,250	
Cumulative FTE's requested by Program	2	4	5	5	5	
	272,126	540,609	683,021	696,682	710,615	2,903,054
By-Law Enforcement	265,650	541,926	1,105,529	1,503,519	1,916,987	5,333,612
Costs Other Department	84,562	172,506	351,911	478,599	610,214	1,697,792
Costs Corporate OH	39,129					39,129
One Time Costs	\$ 661,467	\$ 1,255,040	\$ 2,140,462	\$ 2,678,801	\$ 3,237,817	\$ 9,973,587
5 Year Forecast - Licenses Fee by Type*						
	2018	2019	2020	2021	2022	
Class A - Whole Home	712	726	741	755	770	
Class B - Owner Occupied	356	363	370	378	385	
Class C - Non Owner Occupied	712	726	741	755	770	
Class D - Lodging Home	1,068	1,089	1,111	1,133	1,156	
*2% inflation rate per annum						
5 Year Cost Recovery Forecast						
	2018	2019	2020	2021	2022	Total
New License Revenue*	\$496,899	\$1,012,586	\$2,065,675	\$2,707,654	\$4,083,752	10,366,566
Renewal License Revenue		299,359	610,032	1,244,464	1,930,729	4,084,584
Revenue New License	661,467	1,255,040	2,140,462	2,678,801	3,237,817	9,973,587
Costs Renewal License		317,484	634,969	1,269,937	1,693,250	3,915,640
Costs Total Recovery (Loss)	\$ (164,568)	\$ (260,580)	\$ (99,724)	\$ 3,380	\$ 1,083,414	\$ 561,922
	750	1,500	3,000	4,000	5,000	

A number of assumptions have been made to create this funding model. The program is based on a five-year cycle, reaching full cost recovery in the fifth year with 5000 licences. Over the five-year cycle, fees have been established (Appendix B) that include an estimated 2% yearly inflation increase.

In addition, the following assumptions were made:

1. 75%/25% split in units between Whole Home and Owner Occupied
2. 3-bedroom units were used to create a base fee and then discounted or inflated per number of bedrooms (three bedrooms were used because Statistics Canada indicates they represent the highest volume in Oakville).
3. Costing for administration and enforcement for all town departments have been estimated based on existing licensing programs

To ensure the by-law can be enforced, the funding model includes an additional five by-law enforcement officers over 3 years (year 1 – 2 officers / year 2 – 2 officers / year 3 – 1 officer) to manage enforcement and

From: Municipal Enforcement Services
Date: October 16, 2017
Subject: Residential Rental Housing Licensing By-law

investigate complaints. In addition, funding has been included for ongoing administrative expenses associated with the application intake process.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Multiple departments including Fire, Planning, Building, Enforcement Services, Legal and Clerk's have been involved in the development of this by-law and will be involved in the licensing process based on the proposed licensing requirements.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- continuously improve our programs and services
- provide outstanding service to our residents and businesses
- be innovative in everything we do
- be fiscally sustainable

(E) COMMUNITY SUSTAINABILITY

By ensuring residential rental housing is safe for tenants and neighbours and that the character and stability of neighbourhoods is maintained, the social, economic and cultural pillars of sustainability are addressed.

APPENDICES:

- Appendix A – Residential Rental Housing Licensing By-law
- Appendix B – Fee Schedule
- Appendix C – Draft Zoning By-law Amendment
- Appendix D – Comments from Public Open House
- Appendix E – Environmental Scan
- Appendix F – Comparative Overview of RRHL municipalities
- Appendix G – Possible Oakville Rental Locations
- Appendix H – Zone Map – Class D Licences
- Appendix I – Class D – Parking Orientations

Prepared and Submitted by:
Jim Barry
Director, Municipal Enforcement