



Joint Submission on Rental Housing for the City of Hamilton

June 18, 2013

The REALTORS® Association of Hamilton-Burlington and the Hamilton and District Apartment Association began meeting in February to collaborate on potential solutions to the rental housing issues facing Hamilton. These meetings arose from a motion by the City of Hamilton's Planning Committee:

MOTION: (Ferguson/Partridge)

That the Hamilton Real Estate Board and the Hamilton Apartment Association be requested to provide a solution to illegal apartments and, in particular, student residences in an effort to respect neighbourhood concerns and tenants' safety and that staff be directed to provide necessary statistics to both associations.

CARRIED

After discussing the complexity of issues over the last several months, the Task Force has established a framework which would effectively address 'illegal apartments'. Concerns surrounding the 'student residences' are addressed separately later in this report.

In order to preserve much needed existing rental stock in our community and halt the shut-down of unregistered apartments at will while addressing issues of safety, we initially recommended that the City of Hamilton consider adopting the concept of a **PERMITTED USE CERTIFICATE for insufficiently zoned housing units**. After meeting with staff, this approach was rejected due to anticipated legal contradictions within the zoning by-laws. However, during our second meeting with staff, City staff brought to our attention that the City already had a provision for accessory units "as a right" throughout most of the zones in the City of Hamilton. Following that meeting, City staff directed us to Section 19 of Hamilton's current zoning by-law. We noted that in Section 19, the conversion of these units under Section 19 does **not require a re-zoning** application; all that is required is a **building permit**. After carefully examining Section 19, it became clear that the provisions contained in Section

19 closely resembled our initial concept of a Permitted Use Certificate. Credit must be given to the authors of Section 19 for their vision of how to address the need for housing in a logical and cost effective manner. It is unfortunate that the intent and purpose of this Section seem to have been lost to City staff, REALTORS®, landlords and the public over the years.

Section 19 of the Zoning By-law says, in part:

SECTION NINETEEN - RESIDENTIAL CONVERSION REQUIREMENTS (92-281)

19. (1) "AA", "B", "B-1", "B-2", "C", "D" and "R-2" Districts

Notwithstanding anything contained in this By-Law, any single family detached dwelling in an "AA" (Agricultural), "B" (Suburban Agriculture and Residential, etc.), "B-1" (Suburban Agriculture and Residential, etc.), "B-2" (Suburban Residential), "C" (Urban Protected Residential, etc.) and "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) and "R-2" (Urban Protected Residential - One and Two Family Dwellings) Districts may be converted to contain not more than two dwelling units, provided all the following requirements are complied with:

- (i) each dwelling unit has a floor area of at least 65 square metres (699.65 square feet), contained within the unit and having a minimum clear height of 2.1m (6.9 ft.), but excluding the area of the cellar, if any, and of any porch, verandah or other such space which cannot lawfully be used as living quarters;*
- (ii) The applicable zoning district regulations for a single family detached dwelling shall apply, except the minimum lot area shall be 270m²;*
- (iii) except as permitted in clause (iv), the external appearance and character of the dwelling shall be preserved;*
- (iv) there shall be no outside stairway other than an exterior exit;*
- (v) parking spaces, access driveways and manoeuvring space shall be provided in accordance with Section 18A, except that parking for only one of the dwelling units may be provided in accordance with the following special provisions:*

Location

(1) it may be located in a required front yard provided that the area for parking, manoeuvring and access driveway shall not occupy more than 50% of the gross area of the front yard; (93-063)

(2) not less than 50% of the gross area of the front yard shall be used for a landscaped area, excluding concrete, asphalt, gravel, pavers or other similar materials;

(3) manoeuvring for the parking space may be permitted off-site; and,

(4) where a side yard abuts a street line, not less than 50% of the gross area of the side yard be used for a landscaped area excluding concrete, asphalt, gravel, pavers or other similar materials. (94-145)

Similar requirements for other zoned areas are outlined in Section 2, as well as "H" zoning:

(2) "DE", "DE-2", "DE-3", "E", "E-1", "E-2" and "E-3" Districts

Notwithstanding anything contained in this By-Law, any dwelling in a "DE" (Low Density Multiple Dwellings), "DE-2" (Multiple Dwellings), "DE-3" (Multiple Dwellings), "E" (Multiple Dwellings, Lodges, Clubs, etc.), "E-1" (Multiple Dwellings, Lodges, Clubs, etc.), "E-2" (Multiple Dwellings) and "E-3" (High Density Multiple Dwellings) Districts may be converted to provide two dwelling units or more, provided all the following requirements are complied with:

....

Currently, Section 19 of the Municipal Zoning By-Law has not been effective in bringing illegally zoned rental units into compliance. We do believe, however, that with the modification of this section using our suggestions below, Section 19 would be a catalyst for more effective compliance and preservation of rental stock. **A revised Section 19 would apply not only to single family homes with accessory suites, but also to multi-family properties with additional apartments which may currently be in zoning contravention.** We submit and incorporate all of these ideas to you, presented under our new initiative entitled:

The Sustainable Safe Housing Compliance Program

MISSION STATEMENT

- *To facilitate, with exceptional service, clear direction and effective resources, the promotion of new and the preservation of existing accessory housing as allowed “as a right” under Section 19;*
- *To provide property owners with a simplified, one-stop solution to the entire process, constantly seeking ways to keep costs down and participation high, and to eliminate any in-house obstacles.*
- *To help the customer;*
- *To measure and nurture success by the number of housing units added to the City's inventory.*

The Keys to Success:

In order for this program to gain traction with property owners and other stakeholders, four key elements are essential for widespread buy-in.

- 1) Staff embracing the “re-think” as outlined in the Mission Statement
- 2) A streamlined process for acquiring a Building Permit
- 3) Amendments to Section 19 to better reflect current housing conditions
- 4) Public awareness through education and easily-accessed information

1. Staff embracing the “re-think” as outlined in the Mission Statement

If the City is to *facilitate, with exceptional service, clear direction and effective resources* the process for rental unit owners to bring their properties into compliance with the City’s by-laws, there must be a buy-in from City staff to provide that exceptional service and clear direction. It is our experience that information provided about zoning requirements and processes is inconsistent and often contradictory – it all depends who you talk to. What is required is that City staff be trained specifically on the requirements of Section 19 of the by-laws so they could speak knowledgeably to rental unit owners about what is required to bring their properties into compliance with the by-laws and Section 19.

2. A streamlined process for acquiring a Building Permit

There needs to be a process that allows property owners to submit the necessary requirements without incurring major expense. We all agree that safety is the primary concern, and this can be achieved by creating a “Tool Kit” for property owners with simple “step by step” instructions in order for the subject property to be in compliance. We are attaching as [Schedule A](#) a brochure entitled *Second Suites: An Information Guide for Homeowners* from the City of Toronto. This brochure explains for homeowners the process for obtaining permission for secondary suites and we recommend it as a template for the City of Hamilton.

We also note the example of the City of Toronto’s one-stop shop for secondary suites and the City of Hamilton’s one-stop shop for business, and recommend a similar one-stop experience (on a smaller scale) for secondary suites. This one-stop shop would streamline the process of obtaining a building permit and make it more attractive for rental unit owners to come to the City to legalize their units.

It is worth noting that the City should realize revenue from building permits as a result of this streamlined process which encourages rental housing owners to come forward. This is in contrast to the expense which would be incurred in setting up and enforcing a licensing program which is unlikely to encourage anyone to come forward.

Additionally, part of the Building Permit process is the final building inspection, which would allow access to the premises.

3. Amendments to Section 19 of the zoning by-law:

The requirements contained in Section 19, while not overly onerous, will nonetheless exclude many good housing units because of requirements inconsistent with specifications widely recognized and used for new construction and also inconsistent with the requirements of the Ontario Building Code. To ask for higher standards for secondary units than are required for new construction only serves to take otherwise good rental units out of circulation. Therefore, we recommend the following amendments:

- 1) Change the floor area to comply with the Ontario Building Code Section 9.5, Designs of Areas and spaces (attached as [Schedule B, Section 9.5 Design of Areas and Spaces](#) of the 2006 Ontario Building Code). You will note that minimum floor areas required for “dwelling units” are 145 square feet for studios; 223 square feet for one-bedroom units, 298 square feet for two-bedroom units and 373 square feet for three-bedroom units, assuming that the living room/dining/kitchen is one open area. These areas are exclusive of bathroom facilities, which can be approximated at about 50 square feet (a bathroom must contain a water closet, a lavatory and a bath or shower stall).
- 2) Change the definition of “basement” (wherever it appears in Hamilton by-laws) to a definition similar to the City of Toronto’s: "BASEMENT - A storey of a dwelling which is below ground level, and includes a cellar."
- 3) Change minimum clear height from 6 feet 9 inches to 6 feet 2 inches with variances for bulkheads.
- 4) Remove the minimum lot size or change to a minimum 120m².
- 5) Study the parking provisions and amend requirements to allow maximum compliance.

Please note these recommendations are in line with provisions in the Ontario Building Code and that higher requirements would be in contravention of the Human Rights Code (see [Schedule C, Report on the inquiry into rental housing licensing in the City of Waterloo](#) and [Schedule D, Room for everyone: Human rights and rental housing licensing](#), attached).

4. Public Awareness:

It was surprising to members of this task force - working professional REALTORS® and experienced landlords - that Section 19 contains such clear and effective provisions to allow accessory units without a Re-Zoning Application or a Committee of Adjustments Hearing; in fact, all that is required is the **building permit**. If we didn't know this, then the general public surely does not and our experience is that City staff may also be unaware of it. RAHB and HDAA are willing to educate our members about how rental unit owners can obtain a building permit for their accessory units if the City undertakes to educate staff and the public as to the process involved.

ILLEGAL UNITS SUMMARY

We state again that we cannot endorse or support a rental licensing program. We believe licensing would not serve the City, landlords or tenants:

1. Licensing will not assist the City in their desire to gain access to rental units, as the current Residential Tenancies Act and human rights legislation take precedence in this area.
2. It is costly to landlords and therefore to tenants, as the cost of licensing would surely be passed down to tenants.
3. Licensing would serve to take otherwise good rental units out of circulation – this is not a situation that would help the shortage of affordable rental accommodation in this city.
4. Licensing would be costly and difficult to enforce for very little actual, positive gain.
5. Adopting the SUSTAINABLE SAFE HOUSING COMPLIANCE PROGRAM and enforcing (with discretion) current bylaws would encourage landlords to bring their now-illegal units into compliance, the City would have a more accurate account of how many rental units exist and where they are located and much-needed affordable rental units would be saved and developed.

We understand that safety, maintenance and property standards are a concern for the City and for the community. We would like to point out that safety, maintenance & property standards already exist and are enforceable through the Residential Tenancies Act, local by-laws and provincial Fire Code.

Residential Tenancy Law started in 1975 and undergoes revision on a regular basis. The most current legislation is the **Residential Tenancies Act (RTA)**, 2006, which was last amended in 2012. If a provision of this act conflicts with a provision of another Act (i.e: local by-law) other than Human Rights Code, the provision of this Act applies and takes precedence. Post-secondary institutions such as McMaster and Mohawk College which provide housing to students are exempt from the Act.

This comprehensive Ontario provincial legislation currently is made up of 28 Sections and is almost 300 pages in length. The Act governs all residential rental activity in the province and outlines the responsibilities and conduct of parties, notices, rules and remedies available to effectively address problems.

Sections of the RTA are focused on Safety, Property Standards & Maintenance: Section 3 (Landlord's Responsibilities) states:

A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards. 2006, c. 17, s. 20 (1).

Section 14 (Maintenance Standards):

This section is dedicated to Maintenance Standards, and upon consumer complaint, will order an inspection of the property through municipal by-law and property standards. If violations or sub-standard conditions are found, a work order is given to the Landlord to comply.

Tenants currently have avenues available to address safety or maintenance issues either by calling By-law Enforcement (in cases of sub-standard conditions or unresponsive maintenance requests), and mechanisms within the RTA, brought forward through the Landlord Tenant Board such as rent abatements, orders prohibiting rental increases or orders to comply.

In addition to these enforceable provisions within the local by-laws and Residential Tenancies Act, Property owners must also be in compliance with The Provincial Fire Code, which in most cases requires annual safety and alarm testing. Failure to comply with this Code can result in significant fines and exposes the operator to immense liability.

The Proposal: Student Housing and General Tenancies

It is unfair to suggest all problems that stem from 'Student Housing' are the sole fault of landlords, REALTORS® or property managers. If there is blame to be cast toward current conditions of student housing, then there must be equal ownership or blame taken by students toward these conditions. Our concepts pertaining to student housing are outlined in the following four major points, with the desire to work with McMaster University Off-Campus Housing and affiliate organizations, the MSU and Town and Gown Association.

1) Create a Noise Response Team

The largest single issue which property managers, neighbours or communities have to contend with is noise. Whether it is disputes between apartment dwellers, house to house, or house to apartment, greater support is needed to keep the peace. In this regard - and as already suggested by some members of city council - we would all benefit from the creation of an effective Noise Response Team. This initiative would directly target problem occupants (not owners/managers), and have a graduated/escalating fee schedule for any recurrences. It is our understanding that the City has already taken steps in this regard.

2) Develop What the Neighbourhood Demands

Neighbourhoods around McMaster and Mohawk should be designated to allow purpose-built student rentals, and should allow for higher density developments. If neighbourhoods already include a high percentage of student/ renters, better quality mixed-use commercial development should be allowed and encouraged with this demographic in mind, rather than attempting to revert these neighbourhoods back to their original use.

3) Implement an Off-Campus Student Code of Conduct

McMaster University should be encouraged to follow Mohawk College's lead in establishing an off-campus student code of conduct. Mohawk's program – a collaboration between Hamilton Police Services, the College, and By-Law Enforcement – has been, according to property owners, effective in mitigating unruly behaviour and has wide reaching consequences for students which do not adhere to their rules. If this post-secondary institution can implement such measures, there would seem to be no reason McMaster can't do the same. (see [Schedule E](#), *Mohawk College student behaviour policy* and [Schedule F](#), *Housing Mediation Service helps landlords, student settle disputes*).

4) Create an Ombudsman's Office/Mini-Tribunal

Ombudsman - Very similar to many agencies, banks, and a service the University already employs, an

impartial mediator/neutral body would assist in dispute resolution between parties. In this case it would assist in disputes between students and community, landlords and students, landlords and homeowners (outside of attempted prosecution or court).

Mini-Tribunal - Through the same department, in cases of cautionary/questionable Sustainable Safe Housing Conversion Program applications (where applicants' or property addresses which may have a history of by-law or other infractions), a mini-tribunal could be established by stakeholders to review and decide on the merits of such applications. The tribunal's scope would be limited to adjudicating more difficult cases only, meetings could be held once-a-month, decided by electronic means, and voted upon.

REPORT SUMMARY

We believe our proposal provides a solution for safety and concerns to be addressed, while offering rental property owners the opportunity to bring forward otherwise 'illegal' rental units without fear of prosecution. We also believe our solution will provide a safe and responsible way to preserve the majority of much-needed housing units that are currently threatened by the City's own efforts to improve affordable housing.

In preparing this report, RAHB and HDAA have been influenced by, and are in compliance with, the Government of Ontario's recent legislation changes to the **Planning Act** entitled **The Strong Communities through Affordable Housing Act, 2011**.

Quoting the Ontario Government:

The Strong Communities through Affordable Housing Act, 2011 amended various sections of the Planning Act to facilitate the creation of second units by:

- Requiring municipalities to establish official plan policies and zoning by-law provisions allowing second units in detached, semi-detached and row houses, as well as in ancillary structures*
- Removing the ability to appeal the establishment of these official plan policies and zoning by-law provisions except where such official plan policies are included in five-year updates of municipal official plans*
- Providing authority for the Minister of Municipal Affairs and Housing to make regulations authorizing the use of, and prescribing standards for, second units.*

While the Act introduced a regulation-making ability for the Minister of Municipal Affairs and Housing to prescribe minimum standards for second units, a regulation has not been issued under this authority. As such, municipalities are responsible for determining what standards or zoning provisions should apply to second units in relation to matters such as minimum unit size or parking requirements. Standards should support the creation of second units.

We believe our solution will meet the objectives of this legislation while addressing Hamilton's unique problem of having many unregistered housing units. **The Sustainable Safe Housing Compliance Program** uses already-existing elements of Section 19 and, with only minor changes, effects a positive

outcome for the City, for owners of rental housing units and for those in need of affordable rental housing.

Project Compliance/Proactive by-law enforcement

The manner in which Project Compliance has been operated has been far too aggressive. The spirit of improving the housing stock is valid; however the scope must be narrowed or refined to make better use of the City's resources and address only serious safety issues. We would recommend that the proactive enforcement program be suspended until further review, and revert back to a complaint driven process until the scope of the program becomes more clearly defined. Issues such as property standards, lawn parking or other basic matters may still continue to be enforced.

Conclusion

We appreciate this opportunity to offer our solution and alternative to rental housing licensing. We have received valuable assistance from City staff and we look forward to a continuing and mutually beneficial relationship with the City.

Respectfully submitted

REALTORS® Association of Hamilton Burlington and the Hamilton and District Apartment Association