A Review of the Effectiveness and Implications of Municipal Licensing of Residential Apartments

Using evidence of best-practices to determine the impact of apartment licensing on good quality affordable housing, responsible tenancy and apartment ownership, and good neighbourhoods.

September 2013

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Federation of Rental-housing Providers of Ontario

STRATEGY CORP

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A Research Report for the Federation of Rental-Housing Providers of Ontario (FRPO)

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Executive Summary

Some Ontario municipalities have identified an apparent need for a licensing system to manage aspects of the municipal rental housing sector and to generate additional municipal revenues. However, a growing collection of evidence suggests that apartment licensing is in fact not the best solution, instead creating its own set of problems. In this report, we examine the arguments that are often put forward by the proponents of licensing, including licensing's alleged ability to:

- Provide a revenue source to the municipality;
- Manage off-campus student housing, poor landlords and problem tenancies;
- Manage new rental units in existing neighbourhoods;
- Enforce general municipal and provincial property-related regulations;
- Perform better than adjudication at the Landlord and Tenant Board; and
- Aid municipalities in managing and sustaining the rental housing marketplace.

Evidence in the field suggests that apartment licensing is not the best solution to any of the major issues that it is meant to resolve. Cities such as Toronto, Ottawa, Regina, Milwaukee, and others have carefully examined the experience in a number of jurisdictions and then decided against licensing. Their research and findings are illustrative and generally support the conclusions of this Report.

Municipal licensing is sometimes seen as a comprehensive solution for a wide range of rental housing problems. This can make licensing seem attractive for administrative and political convenience, but this perceived comprehensiveness does not equate to its effectiveness.

Apartment licensing is not an efficient source of new 'net' municipal revenues. It creates unintended negative effects on the local economy, especially on the rental housing marketplace, both for owners of major apartment buildings, as well as for those individual property owners or investors who create up to a half-dozen rental housing units in an existing community.

More importantly, apartment licensing does not necessarily offer added protection to tenants and prospective tenants. In fact, it tends to add to the eligible costs that can be charged by landlords and to reduce the options for tenants in the rental housing market. Examining apartment licensing, however, has been demonstrated in various jurisdictions that there are better ways to address the impact of student housing and other 'supplementary units' on communities.

Within the existing range of municipal and provincial powers, there is an extensive set of tools for addressing the problems in the rental housing sector, although effective implementation has required ‘new learning’ in some cases. A number of progressive municipalities are taking new and creative approaches to monitoring, inspection and enforcement by targeting problem areas and issues in the rental housing field. The evidence demonstrates that the existing regulatory regime can work well and at a more reasonable cost to taxpayers, especially if implemented effectively and in collaboration with apartment owners, tenants, neighbours and post-secondary institutions, and with support from local elected representatives.

1. Introduction

Economic and Fiscal Context for the Apartment Licensing Discussion

On January 1, 2007, as part of its response to municipal concerns about the municipal fiscal position, the Ontario Government gave municipalities across Ontario the authority to impose a range of new levies on residents and businesses. The levies allowed for municipal taxes on car registrations and residential home sales, and a variety of new licensing fees. These new 'revenue tools' were designed to offset the increasing burden of property taxes on businesses and residents, including the tax burden borne by tenants through their monthly rental payments. In fact, one 'revenue tool' directly affected those tenants: the new ability of municipal governments to impose a fee-based licensing regime on the owners of residential apartment units.

In practice, many of these "revenue tools" proved to be of limited fiscal value and a number proved to be both controversial and without much prospect of community acceptance. In some instances, the fees and regulatory regimes that they imposed would have had the effect of discouraging investment or raising costs to businesses. Despite the prospect of new revenues, municipal councils were eager to see increased economic activity in communities hard-hit by the 2008 economic 'crash' and its aftermath. Municipalities understand that private investment decisions respond to incentives and disincentives, especially when investors have other options. In the case of rental housing investments, whether by individual home-owners with one or two rental units, or by commercial rental housing corporations, added cost and regulation in one municipality has predictable effects on investment decisions and on allowable business-related costs imposed on tenants.

An important consideration by many municipal councils was the rising cost of housing, especially for those most affected by the recession and the 'jobless recovery'. Municipal councils wanted to see investment in new housing construction and residential redevelopment, as well as in regenerating existing housing stock. High on the list of many municipal councils was maintaining and refurbishing the inventory of social housing projects for which they were now financially responsible. Both apartment owners and municipalities were facing the same economic realities, but municipal councils wanted to invest in their aging social housing portfolio and to encourage similar investments by those serving tenants within the larger, private-sector rental housing portfolio.

More recently, some municipal councils have looked beyond simply refurbishing social housing to identify ways in which social housing assets could be leveraged to offer greater diversity, choice and economic sustainability through redevelopment. Recognizing the need to evolve with the economy and the market it serves, the private-sector has been looking at

similar opportunities, as it has done historically, to try to meet the rental housing needs of the full-range income groups and the diverse needs of tenants.

The Regulatory Context

In the turbulent, unregulated *laissez-faire* economy of 19th century Ontario, the ability to regulate and license markets and commercial activity was one of the first pieces of legislative authority granted to municipal governments. The law governing tenants and landlords is much older, but over time, municipal councils have been drawn into that legal arena on various levels, from broad planning and zoning policy, to councillors being asked to resolve individual and neighbourhood complaints relating to residential tenants or landlords. Indeed, municipalities currently find themselves not only as market 'referees', but indirectly and directly playing the role of 'landlord' and apartment owner for their social housing portfolio.

Despite this history of commercial licensing and municipal landlord-tenant involvement, Ontario's economy and its regulatory environment have dramatically evolved since the 1970s. For their part, the Governments of Canada and Ontario and their agencies developed a tight network of regulations that overcame the patchwork of municipal regulation that matured in the last century (for example, with every city having its own distinct building code and separate regime of trades licensing). A universal Ontario building code and fire code, and standardized rules on everything from electrical and plumbing installations to workplace safety and technical qualifications now ensure broad-based predictability, evidence-based standards, and economies of scale for business and consumers whose daily lives are not constrained by municipal boundaries. Ontario landlord-tenant legislation is well established and generally more consistent in its application, particularly with a recent bolstering of tenants' rights.

In this environment, many municipal governments have reduced their costly and diminished role in commercial regulation and other previously licensed matters – from barbers to bicycles. Municipalities across Ontario now license fewer trades and commercial activities, thereby reducing the red-tape and costs associated with doing business in their communities. In developing their de-regulation agenda, many municipalities also discovered that the original case for regulation may have had more to do with reducing unwelcome local commercial competition than any protection to the public.

To add incentive to this 'disentangling' of responsibilities, municipalities found that despite the Province's offer of 'revenue tools', few licensed commercial activities could support a level of fees sufficient to recover the municipal costs incurred to administer them effectively. In many cases, they found that the cost-benefit equation for licensing worked well only where the municipality administered Provincial or Federal regulations, such as the Ontario Building Code, or enforced provincial offences under the Provincial Offences Act, or as part

of a broader development control and inspection process under the *Planning Act* and the *Development Charges Act*. Only where the underlying reason for the licensing has little to do with the revenue from fees – such as adult-entertainment licensing or taxi licensing – have municipal councils seen a continuation or expansion of licensing to serve a public purpose, regardless of municipal cost-recovery.

The Housing and Community Context

Despite the broader trends away from licensing, in the field of residential tenancy, licensing may be seen as a potential solution to one of a range of challenges facing a municipal councillor.

In some communities, apartment buildings form a concentrated and significant part of a neighbourhood's population. These large and medium-sized residential apartment buildings and complexes produce a predictable 'menu' of community and tenant complaints – some directed at landlords, others directed at other tenants, and some directed by other, neighbouring community members at both tenants and landlords. Condominium buildings with extensive absentee-investor ownership seem destined to follow a similar pattern.

In other neighbourhoods, smaller-scale residential apartments and rented 'flats' in single-family homes generate a different range of concerns. Often, concerns relate to overburdening the parking arrangements or generating noise and traffic. In some cases, the tenants represent a concentration of a particular type of clientele, like post-secondary students, or those regularly dependent on community health or social support services, or tenants who are in some form of transitional housing – and these specialized clienteles may generate specific types of neighbourhood concerns, ranging from adequacy of public transit and disability accommodation, to fire safety and police-calls.

In some cases, individual municipal councillors may hope that municipal licensing will be a way to address shortcomings they perceive in the existing municipal and governmental regulatory network, or as a vehicle to raise the local standard above the universal Provincial standard. From an administrative perspective, licensing may be seen by some as a mechanism to create a 'funnel' or 'gateway' to engage other, more diffuse or less aggressively enforced regulatory activities (both local and beyond). Financially, some see licensing requirements as a 'net' to capture development charges, zoning levies, and building permit fees that might otherwise go uncollected.

Some who oppose rental housing of a particular type or in a particular location may view licensing as a potential tool to stop it altogether. In Ontario, however, the municipal licensing power is understood to be a tool for regulating a legitimate business activity – not for banning it outright. Past efforts to use licensing as a substitute for land-use planning tools or to preclude, rather than regulate, legitimate commercial activity have generally been unsuccessful when challenged.

Finally, we all recognize that a healthy rental housing market is an important community resource and economic asset. But since the time of Dickens, landlords know that they must earn respect and understanding from an often disengaged and sceptical public, as well as directly from their tenants.

To other players within the civic domain, apartment licensing might seem like a way to more fully deploy existing municipal inspectors and clerical staff (or to add to their numbers or their job-security), or to interpose municipal regulation in order to gain leverage to press community or tenant complaints being fielded by municipal council members. To some less-reflective analysts, apartment licensing fees may even seem to be a source of money for municipal coffers from a commercial sector which appears to have few choices and few supporters.

What problems are we trying to solve?

While apartment licensing is a single prescription, the symptoms apartment licensing attempts to address are quite varied. Evidence-based analysis suggests that a single solution that addresses a range of complex and often unrelated problems may not be the best solution for any one of them, as well as creating unintended consequences. As H.L. Mencken famously said to New Yorkers in 1917: *"There is always a well-known solution to every human problem — neat, plausible, and wrong."*

Which apartments are we discussing – big buildings, small-scale units, or everyone?

The "*what problem are we trying to solve*?" question is particularly notable in the discussion of apartment licensing and in looking at the experience of municipalities throughout the Province and beyond. In a number of cases, municipal councils have recognized that licensing is a 'big gun for small prey' and have attempted to narrow its focus.

A number of municipalities have seen the issue of apartment regulation as an issue of managing complaints related to large, multi-unit apartment buildings and apartment-complex communities. The City of Toronto, for example, focused its attention on buildings with more than six residential units. Other cities, such as those concerned with the neighbourhood impact of off-campus student housing, were not concerned about multi-unit apartment buildings: their focus was on a policy examination of single rental units, boarding houses, and small-scale ("walk-up") apartment blocks, such as six-plexes and four-plexes.

Not surprisingly, the type of licensing that aims at apartment complexes (and the issues that such buildings generate) may not be appropriate for in-home supplementary rental units, and vice versa. However, like anyone in business, apartment owners understand the

significance of ‘precedent’ and policy ‘creep’ in any discussion of new regulation and new fees. Assurances that the target is elsewhere may not be sustained over time and in the hands of successor decision-makers – or where rising costs can be recovered from a wider group. Responsible municipalities recognize that it is important to ensure that any encroachment on the rights and opportunities enjoyed by property owners are fully justified.

> ***It is important to ensure that any encroachment on the property rights and business opportunities enjoyed by apartment owners are fully justified by evidence, restrained in their reach, and sustainable for landlords, tenants and taxpayers.***

What’s the case for apartment licensing?

On examination, there are a number of different arguments put forward for municipal apartment licensing, reflecting the ambiguity of the case for a comprehensive licensing regime. Looking at the evidence from a variety of communities across Ontario, there are a number of reasons (not all mutually exclusive), why municipal councils have considered apartment licensing. Among those reasons, seven appear to be the most prominent.

New Revenues

1. A municipality needs new revenues to offset the burden of increasing property taxation on residential taxpayers and businesses. It is anticipated that licensing will generate new municipal revenues, and may prove effective in capturing ‘missed’ development charges, building permit fees and planning levies associated with creating new (or ‘discovered’) apartments in existing residences. Discovering ‘new’ units would also allow new units to be reported to the Municipal Property Assessment Corporation (MPAC), adding taxable assessment to the municipal and school board tax rolls.

Off-campus student housing

2. In some cities, the impact of student housing on the neighbourhoods surrounding post-secondary institutions requires special attention. Off-campus student housing generates complaints that run the gamut from noise, parking infractions and police-calls, to concerns about the uncontrolled creation of informal or even sanctioned supplementary residential units, or the conversion of single-family homes into rooming houses and multiplex residences without adequate approvals or safety inspections.

Poor landlords and problem tenancies

3. The pattern of complaints from residents in some major apartment buildings seems to argue for more municipal standards, or at least more vigourous enforcement of existing and potentially new municipal regulations. Some municipalities feel they are unable to address the few 'bad actors' among major apartment landlords and tenants. Many small-scale units and older apartment buildings seem to have physical shortcomings that landlords are unable or unwilling to address to the satisfaction of neither tenants nor those to whom tenants bring their concerns (e.g., municipal authorities). Despite property-standards by-laws and a network of construction-related codes, enforcement often appears ineffective.

   Landlords and civic authorities also seem to have problems dealing effectively with dangerous, disruptive or extreme-nuisance tenancies (including fire-safety problems associated with hoarding; the spread of pest infestations, like bed-bugs; chronic noise complaints; exotic and problem pets; prohibited or illegal activities; etc.).

New rental units in existing neighbourhoods

4. In some parts of a municipality, there may be an extensive and / or rapid increase in the volume of supplementary apartment units in single-family homes and in-filling with new duplex and multiplex units (e.g.,"quads" and six-plexes). Other neighbourhoods are seeing non-residential buildings re-purposed for residential use, either legally or informally. All of these patterns have an impact on adjacent single-family neighbourhoods, some of which were not designed to support this intensity of residential use.

Ineffective local enforcement

5. While there are many municipal and provincial regulations and policies in the housing and property-standards field, too often they seem to be ignored in practice or inadequately enforced. Civic inspection and enforcement seems to be on a 'complaints' basis and enforcement appears to be largely ineffective against persistent or repeat offenders. (It is also claimed that the *Residential Tenancies Act, 2006* restrictions on access to units by landlords and others make civic inspections uncertain, episodic and time-consuming). Some suggest that inspection staff could be deployed more effectively, or even supplemented, to 'police' these problems and to enforce regulatory standards, but many municipalities claim they have insufficient staff or are cutting back on staffing

levels.

Enforcement by the Landlord Tenant Board – too costly for tenants?

6. The *Residential Tenancies Act* and the Landlord Tenant Board (LTB) processes are seen by some as expensive and inaccessible to tenants as a remedy.

Existing rental housing marketplace not working for tenants

7. Finally, despite low interest rates, some municipalities are concerned that they are not seeing enough ‘new supply’ of rental housing – especially affordable rental housing – in their communities, thereby justifying increased regulatory ‘protection’ to existing rental stock. Many city governments are also worried about the negative ‘Vital Signs’ impacts of segregating low-income households in those areas where the limited supply of older, less-expensive rental housing is often concentrated.

2. Analysis: What does the evidence say?

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1. New revenues?

Does apartment licensing really represent a significant new net revenue source? Is it "profitable" for the municipality?

In weighing a decision on any new tax or revenue-producing scheme, such as licensing, responsible public decision-makers try to meet certain basic tests.

First, the revenues should justify the expenditure incurred to collect them. If the cost of implementation and administration consumes a substantial portion of the realized or projected gross revenues, other measures should be considered. In some instances, it is possible to reduce costs by shifting a substantial part of the burden of administering the tax regime from the taxing authority to the taxpayer, as in the case of individual and corporate income tax filing. In other cases, the general cost of enforcement can be avoided by being applied selectively. This occurs where there is little cost to establish the regime, but substantial fine-revenues for specific non-compliance or repeat offences, such as parking by-laws or traffic offences.

Unlike other 'taxes', however, licensing is usually comprehensive by its nature and therefore requires individual processing by licensing and inspection staff and an equivalent fee from each applicant to cover the overhead cost of administration and enforcement. As a result, licensing cannot usually achieve these tax-efficiency goals, unless it is targeted on activities that are narrowly focused and commercially profitable. Licensing becomes more profitable if there is an annual renewal fee, for which little processing or assurance is required. Such annual fees are difficult to justify if most of the 'value' in licensing is created at the point of the initial application. Most fees for residential purposes – development charges, building permits, zoning applications – are paid once, for the initial approval.

Second, a licensing regime should avoid side-effects that increase costs elsewhere, or create negative incentives or unwanted disincentives. Taxes and fees that are economically damaging ultimately undermine the fiscal basis of government activities. They can also defeat other policy goals, like producing affordable housing, attracting new economic activity, or supporting low-income families.

Third, a licensing regime should place the financial burden on those that it targets. If a tax, a licensing fee or a compliance cost can readily be passed along to another party, it creates unintended costs for members of society who, in many cases, are not in the best position to absorb them. Some types of licensing permit the costs imposed on the licensee to be passed along to a wide customer base, so the individual impact is not great (like taxi passengers). However, in the case of apartment licensing, an annual per-unit fee is predictably passed along directly, in the form of increased rents to individual tenants.

Fourth, broad-based licensing should not be an indirect surrogate for direct action on matters or parties that require specific monitoring and enforcement. ***Unless the consequences are grave, a public authority should not impose burdens on the many to 'capture' the few.*** Licensing has the effect of requiring a more comprehensive approach than might otherwise have been required; its inherently higher costs and lower net-revenues will generally result from that comprehensive approach.

The analysis (or subsequent experience) of municipalities appears to suggest that with all-in costs, apartment licensing is a break-even proposition at best, and then often only if applied with recurring high fees and light or very selective enforcement.[i] Additionally, some municipalities (which adopted licensing) have conducted cost-benefit analyses that have completely ruled out the option of using existing tools and have chosen simply to analyze different methods of implementing a new municipal licensing program. This obviously avoids a more productive discussion and public debate of the best solution, including alternatives to licensing.

The recent experience of the City of London ON is illustrative. Since 2010, the City has spent an average of $400,000 per year in administrative staff costs, for total of $1.2 million over past three years. The fees collected from the licensing program were just less than $80,000, resulting in part from phasing needed to overcome community opposition and from widespread non-compliance. Of the estimated 12,500 London rental housing units requiring a license under the bylaw, fewer than 2,000 were registered. Evidently, many have gone "underground", based on the City staff's evaluation. To respond to this mismatch between original projected licensing revenues and actual fee-paying compliance, City staff sought a 13.9% increase in the by-law enforcement budget in 2013, as well as an increase in landlord licensing fees.[ii] A similar pattern emerged in the City of Waterloo. Low compliance and fixed-costs for expanded inspection staffing seem to lead to steady pressure on councillors to increase the fees and to widen their application, in order to reduce the budgetary burden of the new licensing regime.

There is some potential for licensing to generate additional indirect municipal revenues by triggering other levies and fees, to comply with existing ordinances (both new and

retroactive). Licensing processes, including inspections, can lead to capturing 'missed' development charges, building permit fees and planning levies associated with creating new apartments in existing residences or in small-scale properties, where re-zoning is required. Discovering 'new' units would also allow them to be reported to MPAC, adding taxable assessment to the municipal and school board tax rolls, if in fact a licensing system increases the reporting of new units. These financial risks to small-scale apartment owners may account for the municipal staff reports indicating that apartment licensing has 'evasion' rates of at least 35% and perhaps close to 50%.

However, there are significant public policy questions associated with confronting existing and prospective small-scale apartment owners with significant costs. Rather than producing more revenue, an equally likely outcome might be widespread discontinuation or abandonment of small-scale apartment units, and an incentive to condominium conversion, with a resulting loss of rental accommodation and increased costs to tenants. Given the non-fiscal objectives of apartment licensing, including protecting tenants and the supply of affordable rental accommodation, the 'treatment' may well be worse than the 'ailment'.

2. Off-campus student housing

The impact of student housing on the neighbourhoods surrounding post-secondary institutions often requires special attention. Complaints run the gamut from noise, parking and police-calls, to concerns about the creation of informal supplementary residential units, or the conversion of single-family homes into rooming houses and multiplex residences without adequate approvals or safety inspections.

However, targeting specific populations or specific types of housing with licensing has legal and policy risks. In the cities of North Bay and Oshawa, targeting students through a rental-unit licensing regime was seen as a potentially discriminatory practice by the Ontario Human Rights Commission. In response, those municipalities are developing licensing by-laws that are confined to the neighbourhoods surrounding their post-secondary institutions, which may or may not obviate the fairly obvious criticism that they are still directed at students and at student housing. Student representatives have been active with the Human Rights Commission, challenging such 'targeting' of students.[iii]/ However, to avoid these criticisms and legal risks, the alternative may be to propose wider options that will catch in the net of licensing many communities or types of rental housing that do not need to see this regime imposed on them.

Many cities have developed a more sophisticated and multi-faceted approach to neighbourhoods affected by student-accommodation pressures. Success has been achieved through so-called 'town-and-gown' community committees, involving

neighbourhood leaders, landlords, municipal representatives and university / college officials and students. These directly affected groups can more readily identify specific problems. With the support of the municipality, they try to ensure that ordinance-enforcement and other resources available to the community are brought to bear – to avoid problems and to deal with issues promptly when they occur (including problem properties).

In practice, vigourous enforcement and intensive municipal staff involvement prove to be both less costly and more effective in a defined community, than would comprehensive, geographically extensive, bureaucratic measures like licensing. Custom-tailored results, supported by direct community engagement, inevitably work better than a generic apartment-licensing regime, even if applied to selected geographic areas within the municipality.

3. Poor landlords and problem tenants

Although some would argue for higher physical standards in major apartment buildings, generally the problems are those associated with aging infrastructure and an apparent inability or unwillingness to enforce existing municipal and provincial regulations, particularly against the relatively small fraction of major apartment owners who seem to draw the majority of the complaints. Authorities claim to be unable to address effectively the problems caused by the few 'bad actors' among major apartment landlords and tenants. Landlords and civic authorities also seem to have problems dealing with dangerous, disruptive or extreme-nuisance tenancies (fire-safety problems associated with hoarding; spread of pest infestations (bed-bugs); chronic noise complaints; exotic and problem pets; prohibited and illegal activities; etc.), all of which are governed by existing legislation.

On balance, and with the benefit of pilot-projects ('enforcement blitzes') in several municipalities, these issues appear to have more to do with access and successful, targeted enforcement (against conditions that reflect real risk to tenants and properties), rather than merely inventorying recommended refurbishments to costly, aging infrastructure and similar pro-forma violations. Non-directed, pro-forma licensing and code inspections run the risk of focusing on deficiencies and non-compliance of the sort that many responsible homeowners would innocently find in our own homes. Frequently, broad-scale enforcement devotes too much attention to the easily enforced elements of the regulatory regime, rather than to the difficult, time-consuming and often frustrating pursuit of the more serious cases.

Trade associations can do much to promote standards for their members and to support public authorities in cost-sensitive efforts to ensure compliance with important regulations and ordinances, provided an opportunity to comply or appeal is in place. Voluntary certification programs have been successful in some cities, allowing tenants to discriminate

in favour of landlords who meet industry standards and advertise their apartments accordingly. In any healthy marketplace, an informed consumer can be a powerful incentive to improve the product offering. If tenants can demand good-quality accommodation for a rent reflective of its cost, responsible apartment owners will respond to that business imperative, rather than leaving units unrented or embracing problematic tenancies.

Industry-sponsored training programs for landlords, along with industry-managed member-compliance / voluntary certification regimes have proved useful. They help to ensure that the reputation of the industry – always a self-interested concern for landlords – is protected from poor performance by the few, who not surprisingly are frequently not members of responsible and reputable rental property owners' organizations.

The 'right-of-access' and other legal issues

Staff reports considering apartment licensing in several municipalities note the challenges associated with gaining entry to rental units for the purpose of ensuring compliance with existing regulations. Licensing was periodically suggested by municipal staff, such as in Guelph, as a deft, pre-condition mechanism that would help to get around the existing restrictions in statute law and common law. [iv]/

Since many municipalities have seen inability to gain access as a significant barrier to effective enforcement, licensing is often seen as a mechanism to compel access as a precondition for offering an apartment for rent. In Hamilton's case, however, staff have pioneered the use of search warrants to ensure their ability to act on complaints or evidence of illegal conversions. Once a rarely used aspect of existing legislation, search warrants have been incorporated into Hamilton's regular enforcement program, as a periodically employed 'last resort'. Even when search warrants are not used, the fact that they are secured on a regular basis has likely encouraged compliance with access requests, and thus enhanced the capacity of enforcement authorities to inspect premises suspected of being non-compliant.

Regardless of this 'process' question, the right-of-access issue may be one that requires review by the Province and municipal authorities, as well as by representatives of landlords and tenants. Among others, the experience of Toronto Community Housing's devastating St. Jamestown fire (arising from a "hoarder" situation) suggests that more needs to be done to allow reasonable access for investigation and enforcement purposes. While no-one wants to have intrusions into their home, multi-unit residential dwelling residents share a common responsibility to ensure that their buildings and their units do not present a risk to the health or safety of their neighbours. If the real problem is not having reasonable access to apartments for legitimate purposes, requesting legislation to permit more reasonable

access by designated public authorities – rather than an elaborate “work-around” using licensing legislation as a pretext – is the more appropriate course.

The underlying assumption is that access would be a precondition to licensing, where inspection is demanded or required. It is important to note that the prevailing law governing access is not altered under a licensing regime. It is only the need to have a license to continue to operate that leads to suggestions that voluntary compliance – at least by landlords, if not by tenants – would be easier to secure.

Another legal issue that was not specifically addressed by public reports of municipalities, but bears considering, is whether licensing apartments has the effect of exposing municipal corporations to damage actions and other litigation. As the St. Jamestown fire experience also demonstrates, claims can be substantial and litigants will seek “deep pockets”, like municipalities, with predictable consequences for municipal insurance premiums. Using building code case law as an example, it is unclear whether an alleged failure to adequately enforce a licensing regime, once one is put in place, would result in municipalities being added to the list of defendants in actions related to liability for negligence or property losses.

4. Rental units in existing neighbourhoods

In some municipalities, there is a local or city-wide pattern of creating supplementary apartment units in single-family homes and in-filling with new duplex and multiplex buildings. Other neighbourhoods are seeing non-residential buildings re-purposed for residential use, either legally or informally. All of these patterns have an impact on adjacent single-family neighbourhoods that were often not designed to support this intensity of residential use.

Municipal experience in this area may, in part, be a problem innocently created by municipal processes themselves. Where municipal zoning provides for an “as-of-right” additional residential unit in virtually any residential property, irrespective of zoning, a percentage of property owners will inevitably create those units. Even without the implicit encouragement of permissive zoning, if they are in areas of high apartment demand, such as close to services, or near post-secondary institutions or major employers, the proportion of home-owners adding units will rise accordingly. The incentive to ‘convert’ single-family homes to duplexes or four-plexes (“quads”) will be similarly strong.

The key for municipalities is to ensure that building permits are secured for each of these projects. Of course, large-scale apartment developments run as commercial enterprises will routinely secure the requisite permits. The problem area is in creating small-scale apartments.

If applying for a building permit is perceived as imposing unwarranted costs or triggering intrusive, protracted, expensive processes, the property-owner may well be tempted ignore the requirements, particularly if most of the work is interior to the house / building and unobtrusive. That dynamic is unlikely to change where the requirement is a license, rather than a building permit or a rezoning application.

The solution is to ensure an easy, quick, low-cost permitting process where these modest projects are allowed – but where the permits are not sought, to ensure a vigourous and coordinated enforcement of the building, fire and electrical codes, by monitoring complaints and problem areas and by working with the contractors and neighbourhoods. Rather than imposing further regulatory requirements and costs, such as apartment licensing, municipal decision-makers need to ensure that the administrative cost to the homeowner or small-time apartment property owner is commensurate with the economic opportunity of offering affordable rental accommodation.

5. Ineffective local enforcement

While there are many municipal and provincial regulations and policies in the housing and property standards field, some may feel that they are ignored in practice or inadequately enforced. Much civic inspection and enforcement is on a 'complaints' basis and enforcement often appears to be largely ineffective against persistent or repeat offenders. (Restrictions in the *Residential Tenancies Act, 2006* on access to units by landlords and others appear to make civic inspections uncertain, episodic and time-consuming). Despite this, the City of Toronto's detailed analysis of licensing regimes points-out the problems inherent in enforcing an apartment licensing by-law, which appear equally daunting. [v]

Some municipalities that have considered apartment licensing began with intensive, targeted enforcement of existing rules and regulations, to see if the issue was more one of implementation rather than a need for additional legislation. The experience of those municipalities appears to be that vigourous, priority-based inspection and prosecution is quite effective in dealing with the situations that generate most complaints. The limitation appears to be related to the ability of the municipality and related authorities to marshal the enforcement process, notably through right-of-access to individual units to identify deficiencies and to develop the case for prosecution. It is also affected by the volume of non-compliance that has accumulated over time and dealing responsibly and sensitively with the cost and relocation issues generated by enforcement, for landlords but especially for tenants.

In the past, an inability to secure access to individual apartments and / or a scofflaw approach by some property owners and tenants had the effect of frustrating otherwise

adequate regulatory regimes. In some major cities, widespread evasion of planning approvals for individual apartment units has produced thousands of “informal” apartment units, and made amnesties more likely than zoning convictions. It appears unlikely that additional licensing would affect these behaviours. Evidence is clear that licensing does little to increase compliance, given the small percentage of converted units that appear to secure licenses in those municipalities where licensing has been adopted. Another reason is that a licensing regime does not provide any substantive additional enforcement tools for non-compliance. Successful and conspicuous prosecution sends a clearer and more results-based message to the market than does the prospect of licensing. In practice, the threat of shutting-down apartment accommodation or evicting innocent tenants for a landlord’s licensing violations or non-compliance proves difficult to carry through and attracts predictable media attention.

As previously noted, many municipalities have seen inability to gain access as a significant barrier to effective enforcement, licensing is often seen as a mechanism to compel access as a precondition for offering an apartment for rent. In Hamilton’s case, however, staff have pioneered the use of search warrants to ensure their ability to act on complaints or evidence of illegal conversion. Although it was once a rarely used aspect of existing legislation, Hamilton has incorporated search warrants into its regular enforcement program, as a periodically used ‘last resort.’ Even when search warrants are not used, the recognized fact that they are indeed secured on a regular basis has likely encouraged voluntary compliance with access requests. This ‘induced’ voluntary compliance enhances the capacity of enforcement authorities to inspect premises suspected of being non-compliant with existing provincial and municipal health, safety and property-related codes and standards.

Another innovation in Hamilton is that persistent offenders among the otherwise generally compliant major apartment owners have been targeted for special ‘blitzes’. In these exercises, enforcement staff set-up a special enforcement program for an apartment building, circulating information and soliciting input from tenants and neighbours. A phased approach, perhaps beginning with fire-code compliance and moving on to other standards, ensures a comprehensive result and addresses the chronic sources of tenant complaints. This more coordinated but targeted approach also avoids the specific-complaint response by enforcement staff, which vulnerable tenants may avoid for fear of either eviction or compliance costs contributing to increases in rents.

The litigious and difficult implementation experience of the City of Oshawa’s apartment licensing by-law is an interesting case-study in using a comprehensive approach to achieve a specific result. As of August 2013, there were 358 properties with apartment licenses (“residential rental housing license” or RRHL). This contrasted with 75 RRHL inspections in the first quarter of 2013, although the 2010-2012 average was 56 per quarter. To achieve

this level of coverage, the City's cost to process an initial license application was $533 and the renewal cost was $393. Although the fee is a substantial $325 per license, the general taxpayer must obviously subsidize the program. Despite all this cost and effort, the licensing-related non-compliance appears low. The above-noted 56 first-quarter inspections yielded only set of infractions.

6. Enforcement by Landlord Tenant Board – too costly for tenants?

The Ontario Landlord Tenant Board (LTB) has jurisdiction to issue Orders that impose compliance obligations and fines or rent reductions on landlords that fail to meet the requirements of the *Residential Tenancies Act*.

Some have argued that the LTB is an ineffective forum for dealing with tenant complaints dealing with such matters as maintenance concerns, tenants rights, rent rebates, etc. The LTB is, it is argued, is too expensive, and therefore out of reach for tenants as a remedy. It is therefore necessary and desirable to use licensing, it is argued, to make up for this gap.

In fact, data from the LTB demonstrates that the LTB does in fact deal with a significant body of tenant-initiated cases relating to such matters.

The Chart below is reproduced from the Landlord and Tenant Board's Annual Report. It breaks down the over 6,000 tenant-filed applications by subject matter – over 1200 of which dealt with maintenance and 3,500 of which dealt with tenant rights. Clearly, with this volume of cases, the LTB is accessible for many tenants.

Tenant Initiated Application (2009-10)	
Description	**No. of Cases**
Determine whether the Act Applies	*33*
Sublet or Assignment	*43*
Combined Application	*1,114*
Vary Rent Reduction Amount	*2*
Rent Rebate (e.g., illegal rent)	*574*
Tenant Rights	*3,517*
Rent Reduction	*43*
Failed Rent Increase Above Guideline	*2*
Bad Faith Motive of Termination	*115*
Maintenance	*1,215*
Total	***6, 885***

Landlord and Tenant Board, *Annual Report 2009-2010, at p. 17.*

7. Existing rental housing market not working for tenants

Despite low interest rates, some municipalities are not seeing enough new supply of rental accommodation. The "Vital Signs" project in Toronto, Hamilton and other communities has raised the alarm over the effect of segregating low-income households in those areas where the limited supply of older rental housing tends to be concentrated.

One of the consequences of licensing residential rental units in single-family homes or in buildings with (say) fewer than six units is the resulting "business decision" taken by the property owner either to comply with new licensing requirements, or to discontinue the rental use.

Many owners of units in smaller properties or within single-family homes are not "absentee landlords". Traditionally, supplementary rental units outside "student housing" districts, have been used to earn rental income to offset the cost of purchasing a home and carrying a mortgage, a vehicle through which many working families gradually achieved their goal of home-ownership. Historically, supplementary rental units in single-family homes, or the purchase of small multi-unit residential buildings (e.g., duplexes, four-plexes, etc.) have also enabled new immigrants to accommodate extended kinfolk, while sharing the cost of housing and while the tenants saved for home ownership or a better rental unit. CMHC reports that in the decade ending in 2006, fully 90,000 tenants have purchased homes.

It is estimated that there are as many as 23,000 such individual "unregistered" rental units in a city like Hamilton. If licensing contributes to a loss of these units in the regional housing market (Hamilton City staff estimated a 30% "shrinkage"), the consequences are significant for the volume of rental units available to serve low-income individuals, couples and families, and university and college students, as well as for the rental rates demanded for the remaining units. If being "captured" by an apartment licensing by-law also entails consequential, retroactive planning approvals or development-related levies, there would be an even greater incentive to discontinue the apartment unit, or to join the unregulated "underground economy" in lower-cost rental units, as documented by the City of London's staff report on the topic [*referenced in Hamilton District Apartment Association's Report to Planning Committee of Hamilton City Council, December 11, 2012*].

If a licensing bylaw has the effect of reducing the number of rental units, the reduced supply will put pressure on rents to rise, especially for affordable units. If, as is the experience in other municipalities, most units go underground, then the outcome of penalizing law-abiding owners with fees and compliance costs is questionable. In all likelihood, the least problematic units will be the ones to come forward and get licenses.

The purpose of this review was not to identify a specific solution. However, given all considerations, the best answer to the issues facing both small and large rental-apartment properties appears to be a time-limited, concentrated 'blitz', using experienced, existing civic staff, ideally with the collaboration of industry associations and local communities, that focuses on addressing the 'bad actors'.

Other Concerns and Observations

According to the CMHC, real rents in every municipality in Ontario over the past ten years have dropped, in part in response to a migration to home ownership. For a variety of reasons, it continues to be a good market for tenants. Corporations seem willing to invest in new rentals – 5,000 units in Ontario last year, and interest continues to build in this investment. However, the economics of new rental construction remains difficult, given that rents, overall, are declining.

It is interesting to note the experience of Hamilton enforcement staff with illegal units or non-compliant supplementary units in residential neighbourhoods. Although specific enforcement typically corrects the non-compliance that was the source of the complaint, the conspicuous presence and inspection activity of the enforcement authorities is said to have generated a collateral response of voluntary compliance and property upgrades in nearby rental properties with similar issues. Targeted inspection and enforcement can make economical use of existing staff teams, while generating a disproportionate volume of remedial action by small-scale apartment owners.

Hamilton's targeted inspection and a solutions-oriented approach by enforcement staff working with landlords have resulted in a significant drop-off in hearings under the City's property standards bylaw. In fact, although a Property Standards Committee is appointed by City Council to hear cases of landlord-tenant disputes over property standards violations there have been virtually no cases brought to the Committee in recent years, since the approach was adopted.

3. Conclusion: If apartment licensing is not the answer, what is?

Overall, the evidence appears to suggest that apartment licensing is not the best solution to any of the seven major ills it aims to resolve. The detailed analysis done by cities like Toronto, Ottawa, Regina, Milwaukee, and others, each of which concluded that apartment licensing should not be enacted, is illustrative.[vi]/

Apartment licensing is not an efficient source of 'net new' municipal revenues.

It creates unintended negative effects on the local economy, and especially on the rental housing marketplace, for owners of major apartment buildings, as well as for the individual property owner or investor creating up to a half-dozen rental housing units in an existing community.

Far from protecting tenants and prospective tenants, licensing tends to put pressure on rents and to reduce housing choices.

For the broader community, there are demonstrated, superior ways to address the impact of student housing and 'supplementary units' on neighbourhoods.

On balance, the existing skein of municipal and provincial regulations and authorities provide a full "toolbox" for addressing problems in the rental housing. Better results in using that "toolbox" lie in more efficient targeting of civic and industry resources and in better legal and expert support for effective, exemplary prosecution of those who give rise to the majority of the complaints.

Appendices

About the author:

Michael Fenn is a Senior Advisor at StrategyCorp with extensive experience in leadership positions at the municipal and provincial levels of government, including seven years as an Ontario Deputy Minister (including at the Ministry of Municipal Affairs and Housing) as well as eleven years as chief municipal administrator in Burlington and Hamilton-Wentworth Region. He wishes to acknowledge the advice and support of a number of contributors, as well as the staff of StrategyCorp, in the production of this review.

About the Federations of Rental-Housing Providers of Ontario

The **Federation of Rental-Housing Providers of Ontario** (FRPO) is the largest association in Ontario representing those who own, manage, build and finance residential rental properties. Our membership includes a diverse group of owners and managers, from those with one small building or a single rental unit, up to the largest property management firms and institutional owners and managers. The association also includes our colleagues and partners in industry, including service providers, suppliers, and industry consultants. With more than 2200 members in every area of Ontario, and with over 350,000 homes, we represent the full spectrum of the industry in Ontario.

See more at: http://www.frpo.org/

What are FRPO's objectives?

FRPO works to promote a balanced and healthy housing market with a vital rental-housing industry, choice for consumers, adequate government assistance for low-income households, and private sector solutions to rental-housing needs. Owners and investors recognize that belonging to FRPO is one of the smartest investments they can make for their business.

Our **mission** is to provide the highest quality services to our members through education, policy development and advocacy.

We do this through:

- Upholding public policies that support the availability of quality housing;
- Protecting the rights of private sector landlords and property managers while helping them profit from their investment in multi-residential real estate;

- Informative and educational training sessions on regulatory issues and industry best practices;
- Promoting industry best practices, fair conduct and professional standards of our members;
- Fostering better communication and information sharing among members; and
- Educating government, the media and general public on the critical role of the private sector in the supply of well-managed and maintained rental accommodation.

See more at: http://www.frpo.org/Objective#sthash.gj86D5cw.dpuf

Appendix 1

Analysis of Costs for London Municipal Licensing Program	
Total Costs 2012	$1,260,000.00 [Orest Katolyk, London Manager of Bylaw Enforcement, 2013]
Total Revenue 2010-Sept 13, 2012	$91,400.00
Net Loss to Tax Payers	$1,100,000.00 [cost per violation $84,000.00]
License Fees (2-3 bedroom, non-owner occupied)	$25.00 application/yearly renewal $0 appeal $95.00 inspection if required
Proposed License Fees ["Tenant Tax"]	$230.00 new applications $80.00 yearly renewal

**Sourced from London Property Management Association presentation to London (ON) City Council*

In the following endnotes, ***bold italics*** has been added to the original text by the author to highlight findings:

[i] City of Toronto Regulatory Strategy for Multi-Residential Apartment Buildings (MRAB), October 27, 2008:
"The revenue collected from landlords through the City of Vancouver's Rental Residence Licensing program covers all of the City's administration costs and most, if not all, of the enforcement costs related to the Rental Residence Licensing program." [pages 31-32]

London Property Management Association presentation to London (ON) City Council, June 2013 [slide 7]: *Initial operating cost of licensing exceeds $1 million, net of revenue.*

Joe Hoffer, LLB, Kitchener: 2012 Submission to Guelph City Council: *Net loss on apartment licensing in City of London (2010 to date) exceeds $1 million [slide 3]; net loss on apartment licensing in City of Waterloo for implementation year ~$375K [slide 4], in part due to widespread non-registration in both municipalities.*

[ii]/ From Hamilton and District Apartment Association (HDAA) Report: OBJECTIONS TO ANY LANDLORD LICENSING BY-LAW: Dec. 11, 2012.

[iii]/ From **newsdurhamregion.com**, Feb. 12, 2008:

"Contentious student housing bylaw passes"

"The Student Association at Durham College and UOIT [University of Ontario Institute of Technology, in Oshawa] will be encouraging students to file complaints with the Ontario Human Rights Commission after city council voted Monday night to bring in a controversial bylaw regulating rental housing near campus…"

From City of Hamilton Staff Report, Sept. 18, 2012 [page 8]:

"…The City of Hamilton also needs to be careful that the by-law is not focused or directed at the type of person renting, which was one of the challenges faced by the City of Oshawa, drawing unfavourable comment from the Human Rights Commission as targeting students. In 2009, Hamilton was also cautioned by the Ontario Human Rights Commission when the Neighbourhood Residential Rental Housing Com munity Liaison Committee began to investigate the feasibility of licensing rental housing. The City of North Bay has placed a geographical limit on its rental housing licensing bylaw; staff is closely monitoring this situation to see what the response of the Human Rights Commission will be".

Report on the inquiry into rental housing licensing in the City of North Bay, May 9, 2013:

"…1. Summary

"The City of North Bay's rental housing licensing bylaw was enacted on January 1, 2012 and came into effect on May 1, 2012. Among other things, this bylaw imposed a bedroom cap, gross floor area requirements and a licensing fee on certain rental units.

"The Ontario Human Rights Commission (OHRC) was concerned that the bylaw might reduce the availability of low-cost rental housing and in turn disadvantage groups protected under the Ontario Human Rights Code (the Code) who rely on that housing. As a result, the OHRC initiated an inquiry to learn more.

"During the inquiry, North Bay residents reported a number of concerns to the OHRC, including:

· Students felt targeted by the bylaw and the process involved (including at a public meeting about the bylaw, and because it was rolled out into student areas first).

· The gross floor area requirement, bedroom cap and costs associated with licensing may reduce availability of housing for students, large families and other people protected by the Code.

· The City's bylaw exemption process may discriminate against people who are not living as

a "traditional family"..."

[iv] City of Guelph staff Report 13-32, July 15, 2013, page 4.

[v] City of Toronto Regulatory Strategy for Multi-Residential Apartment Buildings (MRAB), October 27, 2008:

"Being licensed and meeting the requirements of the licence would be a condition of being able to operate as a rental provider in the City of Toronto. Rental providers who did not comply with the terms of their licences would be brought up for review before the Licensing Tribunal, or some similar body set up for the purpose. This body would have the power to suspend a licence, place conditions on a licence or, ultimately, revoke it.

"A suspended licence, for example, would have to prevent a rental provider from renting any further units until all substantial outstanding matters were resolved. A revoked licence could be much more problematic, as it suggests that the landlord should no longer be allowed to operate the building. On the other hand, if it is not revocable then the point of a licence would seem highly questionable. And if it is, a clear process to manage the consequences of revocation would be necessary. A business licence would also raise a number of other questions. How would a revocation be applied to a provider that operates a number of properties? What would be done with the properties owned or managed by a rental provider whose licence had been revoked? Would the owner or operator be given an opportunity to divest the property? If this were the case, proper measures would have to be in place to ensure the tenants are protected. What if the offending licensee is not able, or refuses, to divest? What actions would the City be willing to undertake and at what cost? Finally, how would a licensing system be applied to City-administered social housing? With complex funding agreements for social housing providers, how might non-compliance affect multi-party funding relationships?
"The ***substantive enforcement issues make this option, in the view of staff, considerably problematic****…"*

[vi] City of Toronto Regulatory Strategy for Multi-Residential Apartment Buildings (MRAB), October 27, 2008:

"…Through its consultations with both external and internal stakeholders, [Toronto City] staff have concluded that ***any option that significantly raises capital or operating costs for rental providers, without taking into account offsetting revenue streams, could have a negative impact on the long-term availability of rental units throughout the City, and it will do so disproportionately on the stock of affordable housing…****" [page 4]*

"…In 2003 Milwaukee's Department of Management and Budget (DMB) and Department of Neighbourhood Services (DNS) undertook a study of rental unit licensing in ***fifteen American cities****. The analysis found that* ***rental unit licensing has very uncertain benefits and can create negative effects on housing markets and the availability of affordable housing. Those negative effects would be likely to occur if rental unit licensing was implemented.*** *Furthermore, the program would likely be met with substantial opposition in Milwaukee. It was concluded that* ***Milwaukee should not implement rental unit licensing because the policy would be expensive, meet strong political opposition, and cause more problems for Milwaukee's rental market than it would remedy****." [page 31]*

"In 2004, the [City of Regina SK] North Central Community Association (NCCA) undertook a study of regulating rental housing through a licensing regime. The NCCA identified the area of Regina North Central as the target area for possible further regulation to preserve and enhance the availability of affordable housing. Through public consultations the NCCA determined that the major concerns of residents were inadequate housing and a prevalence of crime in the area. Regina North Central's population was approximately 35% aboriginal and this number was on the rise. Also, Regina North Central had a disproportionate number of old rental units which were in need of repair.

"The Rental Registry Steering Committee, comprised of staff from the City of Regina along with other municipal and provincial agencies, was formed and began researching options for enhancing the regulation of rental properties in the area. These options were identified as:
1) Rental unit licensing (RUL) which focused on the condition of the individual properties being offered for rent;
2) Landlord licensing which focused on a landlord's conduct rather than the condition of the rental properties alone;
3) Rental registry and public disclosure;
4) A complaint system coupled with rent withholding;
5) Landlord training and certification; and
6) Public disclosure of code offenders.

"The [Regina SK] Rental Registry Steering Committee looked at a ***number of cities across North America that implemented some sort of rental unit licensing regime*** *to enhance the inspection of rental units in their jurisdictions…*
"In 2005, the Rental Registry Steering Committee published a report titled Research

Report on Rental Housing Regulations outlining their research and setting out options for enhanced inspection and enforcement regarding substandard housing. The City of Regina's City Manager ***recommended that a rental unit or landlord licensing regime not be implemented due to estimated start up costs*** *of $320,000 for new staff and equipment. Furthermore, Regina's City Manager reported that the costs recoverable for the first year of implementing the proposed licensing regime would be $162,000, based on an estimated annual license fee of $360 for the 450 sub-standard rental properties to be targeted. Consequently, the net cost for the first year of implementing the licensing regime would be $158,000.*

"To date the City of Regina has ***not implemented a rental unit or landlord licensing regime and continues to inspect and enforce against deficient properties through its property standards bylaw.****" [pages 32-33]*