

Clause embodied in Report No. 13 of the Community Services Committee, as adopted by the Council of the City of Toronto at its meeting held on December 4, 5 and 6, 2001.

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Retirement Home Standards of Care

(City Council on December 4, 5 and 6, 2001, adopted this Clause, without amendment.)

The Community Services Committee recommends the adoption of the following report (October 31, 2001) from the Acting Commissioner of Community and Neighbourhood Services:

Purpose:

This report will describe what should be included in regulations on retirement home standards of care, including the limitations of existing City by-laws in this regard and any other implications.

Financial Implications and Impact Statement:

There are no current financial implications.

Recommendations:

It is recommended that:

- (1) the City of Toronto reiterate that:
 - (a) the provincial government develop mandatory Province-wide standards of care;
 - (b) such standards be enforced by a body at arm's length from both government and the retirement home industry, consisting of representatives from the industry and appointments to represent consumers, advocates and government;
 - (c) the provincial government assume the full costs of the development and enforcement of resident standards of care;
- (2) the City of Toronto strongly urge the provincial government to base provincial standards of care on an enhanced version of the Lodging Houses by-law of the former City of Etobicoke as outlined in this report; and
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In September 2001, the Community Services Committee was provided with an update on the Province's actions in response to the City's stated position on the regulation of retirement homes. The report recommended that the City of Toronto reiterate to the provincial government its position that the regulation of retirement homes is a provincial responsibility and continue to urge the provincial government to take leadership in developing and implementing standards of care in retirement homes.

Council deferred consideration of the above report with a request that the Acting Commissioner of Community and Neighbourhood Services report to the Community Services Committee on what should be included in regulations for retirement home standards of care, such report to include the limitations of existing City by-laws in this regard and any other limitations.

Comments:

In response to concern about the poor treatment of residents in retirement homes, Council adopted, in February 2000, recommendations that strongly urged the provincial government to develop mandatory standards of care for retirement homes and that the standards be enforced by a body at arm's length from both government and the retirement homes industry.

The Province has not moved forward regarding the implementation of regulations governing standards of care. It responded to Toronto's pressure by spending \$1.1 million to fund a two-year industry self-regulation initiative implemented by the Ontario Residential Care Association (ORCA). The initiative includes a 1-800 Province-wide hotline, enhancements to the ORCA website and staff to deal with complaints.

Provincial standards of care for retirement homes remain necessary because:

- (1) Ontario is the only Province or state that relies solely on municipalities to regulate in this area;
- (2) the Province has jurisdiction for health and social services. Increasingly, retirement homes provide health care;
- (3) residents of retirement homes should receive the same level of protection regardless of where they live in the Province;
- (4) a municipal patchwork of regulation means that those retirement home operators who are unscrupulous can vacate a high-standards jurisdiction for one with low standards, leaving vulnerable people homeless;
- (5) the development of purely local standards of care will be very costly for Toronto with a limited local property tax base;

- (6) municipal enforcement is limited to ensuring that the fire, buildings and public health legislation is met by operators and does not cover the standards of care that are critical to resident quality of life; and
- (7) the City consultation on retirement homes found widespread support for provincial standards of care.

Toronto Public Health inspectors monitor retirement homes and enforce the mandatory provincial legislation and regulations regarding food preparation, sanitation and safety as well as the pre-existing local by-laws in the former cities of Toronto and Etobicoke. As a result of procedures established when the original concerns regarding standards of care were raised, where necessary, inspections involve the Fire and Buildings Departments and Toronto Public Health.

There are currently two by-laws in place allowing and regulating the approximately 120 retirement homes and 80 lodging and boarding homes in Toronto. The Personal Care Rooming Homes by-law of the former City of Toronto outlines a set of standards pertaining to rooming houses or other buildings where people reside and where the owner provides meals and services related to health and/or personal needs. The Lodging Houses by-law of former Etobicoke contains standards of care that are applied to Type B rooming houses—dwellings where the proprietor supplies accommodation, food and personal care for more than two persons. In both instances, proprietors must obtain a municipal licence to operate the facilities.

Staff recommend that the City's advice to the provincial government on the content of standards of care regulation be based on an enhancement of the provisions in the former Etobicoke by-law for the Type B rooming house (attached). Briefly, the standards in this section of the by-law cover resident consent to take up occupancy in the facility, notice to vacate, protocols regarding resident records, access to medical care, the provision of amenities such as a dining room and sitting room and a place to store belongings. Adequate assistance and supervision is to be provided to all residents with activities of daily living which include washing, eating, dressing, grooming, and toileting and ambulation, as necessary. The type, quality and quantity of food is regulated and menus must be posted weekly. Program provision is regulated in the section that the operator shall provide and document activity programming in the facilities; the operator shall assist residents to gain access to appropriate community programs. A lodging house with ten or more residents must have a residents' council, which may include relatives.

The operator of a Type B Lodging House must be over 18 years old, be a high school graduate or equivalent and have a minimum of three years experience operating a facility of the type she or he proposes to operate. Full-time employees must be at least 18 years old, be a high school graduate or equivalent, have a minimum of one year's experience in a similar work and be able to communicate in the language predominant in the facility. Employers must provide written job descriptions for staff. Part-time staff must be at least 16 years old, be supervised at all times and must not be involved in care-giving activities.

Staff must not supervise more than one facility. The operator or an employee over 18 who has a current CPR and first aid certificate must be on duty at all times. The staff:resident ratio will not exceed 1:6 calculated over three eight-hour shifts per day.

Each of the 11 licensed Type B Lodging Houses in Etobicoke, receive a joint inspection by Fire, Building and Health Inspectors together with a Public Health Nurse once a year for the licence renewal process. A Health Inspector inspects each establishment two times per year for food safety inspection. A Public Health Nurse visits six times per year to check on the personal care standards outlined by the by-law.

The standards in the Etobicoke by-law should be enhanced by the Province to include standards to address frequency of housekeeping such as cleaning and emptying trash, transferring of residents (e.g., from bed to chair, chair to standing), increased security for narcotics, repair of equipment and structure and appropriate purchase of equipment and supplies.

Enhanced standards regarding resident rights should include a formal process to address complaints, the requirement to post minutes of the meetings of a Residents' Council and provision of or access to spiritual and religious care and services. Standards regarding security and confidentiality of resident and staff records should be strengthened.

Quality in retirement homes should be further strengthened by standards that would ensure that retirement homes have a formal process for assessing each residents' needs for care on an ongoing basis and that an annual medical exam be included in the access to medical services by residents. Staff qualifications and training are the foundation for quality of care. Standards to address this area could include staff orientation, ongoing staff guidance and direction in areas such as WHIMS, ongoing attention to staff learning needs, infection control and ethics of caregiving, guidelines for continuous quality improvement and resident-focused initiatives and risk management activities.

There are no practical limitations to implementation of provincial standards of care for retirement homes, provided that they are accompanied by a provincial definition. The arm's length provincial council recommended by the City would ensure the enforcement of such standards.

One of the primary limitations to the implementation of local standards of care is the current municipal regulatory patchwork both within and outside the City of Toronto. The City lacks a common definition and consistent zoning by-laws for retirement homes and other kinds of congregate living. As previously stated, by-laws that allow and, in both cases, license retirement homes exist in only two former municipalities and comprehensive standards of care in one. It would likely be most effective to do this within the context of the overall zoning work for the new official Plan.

A final consideration is that of cost of enforcement of standards of care. In the event that the arm's-length provincial council opted for municipal enforcement, municipalities would have to ensure that resources are available from the Province to cover enforcement costs. Purely local development, implementation and enforcement of standards of care is expensive in a City with as many retirement and lodging homes as Toronto. The cost of implementing the standards in the existing, unenhanced Etobicoke by-law on a City-wide basis has been estimated at approximately \$3 million just to cover the costs of the fire, health and buildings inspections. While some enforcement costs could be covered through licensing fees, governments must take care not to charge fees high enough that operators will shut down and move to lower-cost jurisdictions.

Conclusion:

This report proposes standards of care for provincial legislation and regulation in retirement homes and recommends that the City strongly urge the Ontario government to adopt and implement such legislation.

Contact:

Julie Mathien
Policy Development Officer
Social Development and Administration Division
Community and Neighbourhood Services
Tel: 416-392-8334/Fax: 416-392-8492
jmathien@city.toronto.on.ca

List of Attachments:

Lodging Houses By-Law

(A copy of the Lodging Houses By-law, referred to in the foregoing report, was forwarded to all Members of Council with the agenda of the Community Services Committee for its meeting on November 15, 2001, and a copy thereof is on file in the office of the City Clerk, City Hall.)

The Community Services Committee submits the following report (October 12, 2001) from the City Solicitor:

Purpose:

To respond to the request of City Council to resubmit to the Community Services Committee the report on the enforcement of property maintenance standards on landlords.

Financial Implications and Impact Statement:

There are no financial implications resulting from this report.

Recommendation:

It is recommended that this report be received for information.

Background:

City Council, at its meeting of July 24, 25 and 26, 2001 while considering Report No. 7, Clause No. 1, Provincial Legislation for 'Rent Roll Back' requested the City Solicitor to resubmit to the Community Services Committee the report on the enforcement of property maintenance standards on landlords.

Comments:

City Council, at its meeting of October 26 and 27, 1999, received the report of the City Solicitor entitled "Retirement and Lodging Homes". This report responded to a previous request of the Planning and Transportation Committee on the legal status of the former City of Toronto and City of Etobicoke Rooming House/Lodging House by-laws and the enforcement of these by-laws outside the boundary areas of these former area municipalities.

Conclusion:

As requested by Council, we are submitting this report to the Community Services Committee for their information.

Contact:

Jane Speakman, Solicitor
Legal Services Division
Tel: (416) 392-1563/Fax: (416) 397-5624
Email: jspeakma@city.toronto.on.ca

List of Attachments:

Report of City Solicitor dated September 21, 1999

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(Report dated September 21, addressed to the
Planning and Transportation Committee from the
City Solicitor)

Purpose:

To report on the legal status of the former City of Toronto and City of Etobicoke Rooming House/Lodging House by-laws and the enforcement of these by-laws outside the boundary areas of these former area municipalities.

Funding Sources, Financial Implications and Impact Statement:

None.

Recommendation:

That this report be received for information.

Council Reference/Background/History:

At its meeting held Monday September 13, 1999, the Planning and Transportation Committee requested the City Solicitor to report back to the Committee at its next meeting, October 4, 1999, on:

- (a) appropriate draft by-laws that would extend, to the newly amalgamated City of Toronto, the enforcement powers that presently exist in the former Cities of Toronto and Etobicoke with respect to the Personal Care Rooming House By-law and the Lodging House s By-law; and
- (b) the ability of the City of Toronto to extend, to the newly amalgamated City of Toronto, powers that were granted to a former municipality by way of special legislation, and the process for enacting such extensions.

Comments and/or Discussion and/or Justification:

The City of Toronto Act, 1997 provides that the amalgamated City of Toronto has every power and duty of an old municipality or old council under any public or private act (such as special legislation), in respect of the part of the urban area to which the power or duty applied before amalgamation. The Act also provides that a by-law of an old council that was in force prior to amalgamation is deemed to be a by-law of the amalgamated City of Toronto. However, any such by-law remains in force only with respect to the urban area to which it applied. Accordingly, special legislation obtained by the City of Toronto for the Rooming House by-law cannot be extended across the newly amalgamated City.

For many years the Municipal Act included a provision which authorized municipalities to pass by-laws for licensing, regulating and governing lodging houses and the keepers of lodging houses, and for revoking any such licence. This section of the Municipal Act was repealed in 1996. However, a new Part was added to the Municipal Act, also in 1996, giving municipalities general licensing powers. A local municipality may by by-law provide for the licensing and regulation of any business carried on in the municipality. The broad powers respecting licensing that were given to municipalities now stand in place of many of the more specific powers, such as the lodging home provisions, that were repealed.

In the former City of Toronto, Chapter 285 of the Municipal Code, Rooming Houses, was enacted pursuant to authority under the Municipal Act and pursuant to special legislation. This Chapter is divided into two sections. One deals with Personal-Care Rooming Houses and the other addresses licensing issues. This Chapter of the Municipal Code remains in effect and pursuant to the aforementioned provisions of the City of Toronto Act, continues to be enforceable but only within the boundaries of the former City of Toronto.

The former City of Etobicoke also regulated Rooming Houses. Chapter 166 of the Etobicoke Municipal Code, titled "Lodging Houses", was enacted pursuant to authority under the Municipal Act. Like the City of Toronto, the Lodging House provisions continue to be in force but only with respect to the boundaries of the former City of Etobicoke.

From a legal perspective, the development of a City-wide rooming house/lodging house by-law will be a complex task given the complicated jurisdictional issues. It is my understanding that a multi-disciplinary work group, comprised of staff from public health, fire, ambulance, housing, licensing and legal, will be established under the direction of the Commissioner of Community Services to examine rooming house/lodging house issues with a view to developing a framework for a draft by-law.

Conclusion:

The Municipal Code Chapters of both the former Cities of Toronto and Etobicoke respecting Rooming Houses and Lodging Houses continue to be in force. However, they are only enforceable within the boundaries of these former cities. The special legislation obtained by the former City of Toronto with respect to licensing rooming houses continues to apply, but only with respect to the former City of Toronto. Specific legislative authority in the Municipal Act respecting lodging houses has been replaced by broadly worded licensing provisions. A multi-disciplinary work group will be established to develop a framework for a rooming house/lodging house by-law for the amalgamated City of Toronto. Complex legal issues will have to be taken into consideration.

Contact Name:

Jane Speakman
Tel: 416-392-1563