

**Regulatory Strategy for Multi-Residential Apartment Buildings (MRABs)**

<b>Date:</b>	October 27, 2008
<b>To:</b>	Executive Committee
<b>From:</b>	Executive Director, Municipal Licensing and Standards
<b>Wards:</b>	All
<b>Ref. No.:</b>	P:\2008\Cluster B\MLS\MRAB Report Final Version October 27.doc

**SUMMARY**

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The purpose of this report is to outline Municipal Licensing and Standards' Multi-residential Apartment Building (MRAB) audit and enforcement programme to be launched on December 1, 2008. This program, supported by a team of 12 officers and a co-ordinator with oversight by a District Manager, is intended to focus current enforcement efforts and provide immediate action on 176 of the City's most in-need buildings. Four buildings will be identified in each Ward for the initial year of the programme. Two buildings shall be selected by City staff and two additional buildings shall be selected in consultation with the local Councillor.

The report also provides an overview of other potential regulatory options for Multi-residential Apartment Buildings (MRABs) and provides a general assessment of their viability and potential impact. To this end the report provides:

- an overview of factors driving the trends in the housing sector and what they may mean in the context of establishing a regulatory strategy for MRABs;
- an overview of the regulatory options explored by staff, followed by a summary of the feedback from the public consultations;
- a summary analysis of the regulatory options and their potential implications; and
- an outline of the anticipated impact on City Divisions.

Staff recommend that the Executive Committee direct the Executive Director of Municipal Licensing and Standards to report after one full year of implementation of the MRAB audit and enforcement programme on the programme's success and on any other recommendations to enhance the programme or to introduce a fee to fund an expanded regulatory strategy.

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## RECOMMENDATIONS

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**The Executive Director of Municipal Licensing and Standards recommends that the Executive Committee:**

1. Direct the Executive Director of Municipal Licensing and Standards to report back to the Executive Committee after one year of full implementation of the MRAB audit and enforcement programme on:
  - (a) the success of the audit and enforcement programme;
  - (b) whether the programme should be continued and, if so, make any recommendations to do so or to enhance it, as required;
  - (c) the appropriateness of the establishment of a fee to fund future audits and enforcement and how such a fee would be implemented; and
  - (d) any other relevant recommendations pertaining to an MRAB regulatory strategy;  
and

2. Direct staff to ensure that in its preparation of the report to the Executive Committee, landlords, tenants and any other interested parties are consulted on the development and implementation of any regulatory strategies.

## **IMPLEMENTATION POINTS**

Municipal Licensing and Standards shall be redeploying staff to establish a team of one Manager, one Co-ordinator, twelve Officers and one Support Assistant to conduct, on a dedicated basis, audits of the City's MRABs.

In the initial one-year phase, four priority buildings will be identified per Ward, based on a combination of public and Councillor complaints, historical information, and staff experience. This shall equate to approximately 176 buildings across the City that shall be subject to extensive audits of their structures, life and other mechanical systems, and property grounds.

A mobile administration centre shall also be established during one point in time at each of the audit sites to take in and process dwelling unit complaints from building residents. The goal of District staff is to respond to these complaints within five business days, 90% of the time.

## **FINANCIAL IMPACT**

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There are no financial implications as a result of the adoption of the recommendations of this report. The MRAB audit programme shall be staffed with current resources, redeployed from other programmes. To the extent possible, service-level impacts shall be largely constrained to lower priority programmes.

Additionally, the Division is currently working with Human Resource Services to fill a substantial number of vacant positions in the Division, which will partially offset pressures placed on other divisional services through the implementation of the audit and enforcement programme.

## **EXECUTIVE SUMMARY**

This report provides details of the MRAB audit and enforcement programme to be launched on December 1, 2008, which will provide immediate action on the City's greatest at-need rental buildings. MRABs include all purpose-built rental accommodation of six or more dwelling units. Four buildings will be identified in each Ward (for a total of 176) for the initial year of the programme. Two buildings shall be selected by staff, based on public complaints and staff knowledge, and two additional buildings shall be selected in consultation with the local Councillor. The programme will be implemented by redeploying the current enforcement complement and making more active use of the City's available tools, including its ability to charge re-inspection fees and to bill landlords for work undertaken by the City. In addition, the Division's mobile administration centre will also be deployed at all building audit sites to receive and process individual complaints about specific dwelling units.

The report includes recommendations from staff to report back to the Executive Committee, after one full year of implementation of the MRAB audit and enforcement programme, on the programme's success and on any other recommendations to enhance the programme or to introduce a fee to fund an expanded regulatory strategy. The report shall be prepared in consultation with relevant internal divisions as well as landlords, tenants and all other interested parties.

In making its current recommendations, staff analysed the regulatory options and their potential impact on City divisions, agencies, boards and commissions (ABCs), the rental housing stock, and tenants (see Appendix A, Tables A.1 and A.2 for a summary of the options, along with their pros, cons and constraints). It also considered feedback from the initial stakeholder and public consultations.

This report was prepared with the ongoing consultation of the Affordable Housing Office, Toronto Building, City Planning, Toronto Fire Services, Shelter, Support, Housing and Administration, Social Services, Solid Waste Management Services, Economic Development, Culture and Tourism, Toronto Public Health, and the Toronto Police Service. In addition, Legal Services, Policy, Planning, Finance and Administration, and Corporate Finance were also consulted at key points in the development of the report.

The impact of any of the MRAB regulatory strategies explored in this report will vary greatly depending not only on the option or options eventually selected by City Council, but also on the scope and timing of their application. The costs of any additional staff or other resources to expand the audit and enforcement programme, however, will be provided in the follow-up report from the Executive Director of Municipal Licensing and Standards.

Through its consultations with both external and internal stakeholders, 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.

In the past two decades a number of factors have come together to decrease the quality of rental housing stock, and particularly the affordable housing stock. In the social housing sector, the downloading by other levels of government of an already aging social housing stock without adequate capital funding became a problem that, more often than not, was deferred to the future. At the same time, in the market sector, rents have continued to increase (although more recently at a pace just above that of inflation) but have not resulted in substantial investment in new or existing rental stock. Two likely reasons for this lack of investment are the jump to home ownership by many who could not previously afford it, increasingly leaving the less affluent to the rental market, and the consistently falling real incomes of this latter group of households. The consequent need to keep rents relatively low has made this a less attractive market in which to invest. To a

great extent, the issue of unaffordable, low quality housing is a symptom of the more general economic disenfranchisement of a portion of the population.

In the market rental sector, eligible capital expenditures for which a corresponding rent increase would exceed the guideline under the *Residential Tenancies Act, 2006* can be passed on to tenants on application to the Landlord and Tenant Board. In the social housing sector, capital expenditures cannot be passed on to tenants due to the housing agreements in place with rental providers. These costs, however, will have to be covered by the providers themselves or their funders; in many cases that would be the City. Thus, if rigorously enforced, a regulatory strategy for MRABs could push rents up substantially in the affordable housing market sector and increase the financial pressures in the social housing sector. This in turn could lead to the displacement of some of the more vulnerable members of society to less desirable alternatives, such as illegal rooming houses or City shelters. For this reason, staff recommend that any push to more rigorously enforce the City's property standards be accompanied with a plan to support the revitalisation, ongoing maintenance, and expansion of affordable housing through investment and partnership by all levels of government as well as the private sector. Many of these initiatives are already included in the City's Affordable Housing Framework.

A number of different regulatory regimes exist in municipalities across North America. Not surprisingly, the more ambitious programmes have also been the most resource-intensive ones. Most municipalities surveyed have also recognised the precarious link that exists between regulatory mechanisms and affordable housing programmes. In some cases, municipalities, such as Milwaukee, have studied licensing options and opted not to go ahead because of both the direct and indirect associated costs. In other cases, municipalities such as Los Angeles, have weaved an intricate multi-layered system that regulates landlords and supports vulnerable tenants. Both the programmes in Los Angeles and New York, for which officials have claimed significant success, include both escalated enforcement mechanisms and a number of comprehensive financial supports and incentives for landlords to invest in and maintain their properties.

While it is important that housing meet the established standards of health, safety and maintenance standards, there is also wide consensus that any regulatory strategy needs to be part of a comprehensive housing strategy that promotes a sustainable stock of affordable, well-maintained housing. These two sides of the equation need to be in balance. In the long run, focusing solely on the regulatory means to address property standards issues in rental housing is likely to disrupt this balance and create undesirable pressures for the sector.

## **DECISION HISTORY**

At its October 1999 meeting, City Council adopted a report from the Planning and Transportation Committee recommending that multi-unit residential buildings be licensed using a class system. The regime was to include a pro-active inspection programme for all common areas of the buildings:

<http://www.toronto.ca/legdocs/1999/agendas/council/cc/cc991026/plt5rpt/cl002.htm>

Such a system of licensing, however, was not permitted under the existing legislation. The issue was before Council again at its January 2004 meeting, in which it adopted the report from the Planning and Transportation Committee, as amended, recommending a framework strategy to ensure that privately-owned, multi-residential buildings are maintained in accordance with the provisions of the Toronto Municipal Code:

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040127/plt1rpt/cl004.pdf>

Enabling legislation, in the form of the *City of Toronto Act, 2006*, (COTA) came into force on January 1, 2007, allowing the City to regulate multi-residential buildings. As a result, an information report outlining a process for identifying potential regulatory approaches was received by the Licensing and Standards Committee at its March 2007 meeting:

<http://www.toronto.ca/legdocs/mmis/2007/ls/bgrd/backgroundfile-2368.pdf>

This report, before the Executive Committee, is the culmination of the aforementioned process and provides an overview and summary analysis of the various MRAB regulatory strategies. It also seeks to obtain direction from the Committee as to which options should be pursued.

## **ISSUE BACKGROUND**

According to a [May 2007 study from Statistics Canada](#), nearly 7 in every 10 Canadian households now own their own home, as opposed to 6 in every 10 just twenty years ago. The majority of those who switched from renting to owning have tended to have higher incomes than those who did not. In Toronto, where housing prices are relatively more expensive, approximately half of all households rent. Therefore, two trends are apparent:

- Canada's, and in particular Toronto's, pool of renters is now populated proportionally more by low-income households than previously. In fact, the fastest-growing segment of the residential rental market has been households in the bottom 20% of the income distribution; and,
- Few purpose-built rental units have been constructed or refurbished in recent years in favour of condominium units or single homes. The result has been a significant drop in the number of rental units and a disproportionate aging of the existing rental stock.

Coupled with a recent stagnation of the median income in Toronto as a whole and more importantly a general widening of the gap between the income growth of the top 10% and the bottom 10% of households, more Torontonians find themselves in core housing need. According to CMHC, a household is said to be in core housing need when the dwelling requires major repairs, the dwelling does not have enough bedrooms for its occupants, or 30% or more of pre-tax household income is required to pay for the median rent of the same type of dwelling. Much of this need is due to affordability. According to the 2006

Census on Income and Shelter Costs, in 2005, 46.6% of renters in Toronto, many of them low-income households, experienced affordability problems (i.e., when 30% or more of pre-tax income is spent on housing). This represents an increase of 5% since 2000 in households experiencing affordability issues.

These combined pressures have increased the vulnerability of many residents of the City, by limiting their housing options and leaving them exposed to increasingly deteriorating conditions in their buildings.

At the same time, the lack of investment in the rental stock has now placed many rental providers in precarious financial straits, as structures and systems wear and maintenance costs rise and become increasingly burdensome. Despite a number of studies in the past two decades from the Ministry of Municipal Affairs and Housing, the Canada Mortgage and Housing Corporation (CMHC) and the City of Toronto noting the aging rental stock and lack of consistent proactive maintenance, and despite some changes in industry practices (such as the establishment of real estate trusts that has introduced new management expertise and repair capital into the market), many rental apartment buildings still suffer from a combination of aging infrastructure, flat or declining income, and growing needs for repairs or replacement of major building systems.

It is in this context that staff have been asked to explore the implementation of a regulatory strategy to ensure that all MRABs are maintained in accordance with the provisions of the Toronto Municipal Code. MRABs, for the purposes of this initiative, have been defined as purpose-built, non-condominium registered, rental accommodation of six or more dwelling units.

## **COMMENTS**

The following section provides the policy context of this report's analysis and recommendations, followed by an overview of the housing stock in the City, including its affordability (and how it is determined), its condition (and what has led to it), and the factors that represent serious challenges to its revitalisation. Some conclusions as to the impact that these issues may have on the implementation of a potential regulatory strategy are also drawn. A brief overview of regulatory strategies in other municipalities is then provided along with a brief analysis of the applicability of the strategies in the Toronto context. This is followed by a summary of the strategy options and the feedback elicited at the public consultations. Finally, there is an analysis of the regulatory strategy options and an overview of their likely impact on City divisions.

### **Policy Context**

Housing policy is a fundamental component of municipal social, economic, and environmental policy. It is intricately tied to other policies on infrastructure as well as to policies on healthcare, education, and labour, among others. For this reason, housing policy needs to be developed with ample consideration for the symbiotic relationship between it and these other major policies. It is therefore important to understand the broader social, economic, and environmental objectives of both the Province and the City to be able to better gauge whether current policies are sufficiently cohesive.

The “[Provincial Policy Statement, 2005](#)” (PPS), requires municipalities to ensure that there is an appropriate range of housing types and densities to accommodate current and future residents, including an adequate amount of housing which is affordable to low and moderate income households. Both the PPS and the Growth Plan for the Greater Golden Horseshoe, 2006 call for affordable housing targets to be implemented. The Growth Plan goes further by requiring that a housing strategy be developed, including policies for official plans, to meet the needs of all residents, including the need for affordable housing – both occupant-owned and rental.

The City’s [Official Plan](#), another key policy document, acknowledges that to be a successful City, there must be housing choices for all people in their communities and at all stages of their lives and that no person need pay more than he or she can afford for shelter. The Plan further states that residents must be able to access and maintain adequate affordable and appropriate housing. It requires that existing rental housing subject to demolition or conversion be retained or replaced. Clearly, these are cornerstones for any housing policy and therefore it is not surprising that the City’s Affordable Housing Framework, 2008-2018 is also infused with these themes. Most recently, Mayor’s Tower Renewal is placing emphasis on the revitalisation of approximately 1,000 of the City’s high-rise concrete residential buildings. This initiative stresses the importance of synergistic links between City programmes and projects such as the “[Agenda for Prosperity](#)”, “[City of Toronto Climate Change, Clean Air and Sustainable Energy Action Plan](#)”, and the work being carried out by the Neighbourhood Action Teams in Toronto’s 13 priority neighbourhoods.

On the legislative front, COTA now provides the City with additional authority to regulate and prohibit the conversion and demolition of residential rental properties. These enhanced powers have been implemented through [Chapter 667 of the Municipal Code](#), which was approved by Council at its meeting on July 16 and 17, 2007.

Thus, an MRAB regulatory strategy, in this greater context, is not an external system imposed from above but rather one of a number of tools that can be used to achieve the City’s higher-level policy objectives. An MRAB regulatory strategy needs to be a complementary component of housing strategy, which in turn must be a complementary component of a greater social and economic vision. If the proposed MRAB regulatory strategy does not clearly help to support the objectives of the City’s housing strategy and policies then the regulatory strategy needs to be re-examined.

A properly conceived housing policy will address the expectations of all of its stakeholders. Tax payers expect value for money. In other words, they expect the benefits of a given housing policy to more than offset any monetary and social, as well as opportunity costs. Tenants, perhaps the most direct stakeholders of housing policy, expect policies that promote affordable well maintained housing, both in the social housing and in the market rental sectors. Municipal elected officials expect effective and efficient policies that address the challenges of all their constituents. They want housing policies that are responsive and well-targeted to the areas of greatest need, and make optimal use of ever-diminishing resources. Senior levels of government, especially the Province,



expect accountability from municipalities and its housing agents, especially if they are to re-negotiate social housing agreements. Housing providers expect government policies that are transparent and provide enough flexibility to manage their buildings effectively. They also expect a supportive framework that will promote sector sustainability.

The way in which these expectations are prioritised and addressed is the crux of housing policy and can only be rationally undertaken when there are concrete housing objectives in place that are guided by a clear social and economic vision of the City. Although it is certainly not within the scope of this report to address these broader policies, it is critical for decision makers to consider these issues and be aware of the major driving factors behind the current housing situation. In this respect, the recent report from the Deputy City Manager, "[Housing Opportunities Toronto – Affordable Housing Framework 2008 – 2018](#)", is particularly instructive. With this in mind, a regulatory strategy for MRABs has the potential to be an effective tool to improve people's lives, but only if it is formulated holistically. Otherwise, it also has the potential to be a considerable obstacle in achieving the City's affordable housing preservation objectives.

### **Overview of the Housing Stock**

Of the approximately one million dwellings in Toronto, about 470,000 are market rental units. Of these, nearly 400,000 are purpose-built rental units, including nearly 100,000 that are found in government-administered housing.

Over 80% of the existing rental stock is over 40 years old. In addition, many of these buildings have not been maintained adequately. The result is rental housing, especially affordable housing, that is often in sub-standard condition.

The City's own stock, managed by the Toronto Community Housing Corporation (TCHC), chronically under funded, is particularly evocative of this problem and, in fact, has a disproportionate number of property standards Orders outstanding against its properties. Investment is badly needed to upgrade the stock.

A major issue confronting the effort to preserve affordable housing is affordability itself. Over the past twenty years or so, personal incomes in the lowest 20% have actually decreased in real terms while rents have kept up with inflation. This has made rental housing less affordable to many low-income people.

Although home ownership has increased across the nation, renting in Toronto is far more common with an increasing tendency to see recent immigrants and low-income people making up a greater percentage of renters.

An MRAB regulatory strategy needs to be but one piece of a greater strategy housing preservation strategy. A number of City initiatives, including Housing Opportunities Toronto and Mayor's Tower Renewal, are steps in this direction. Sustainable funding sources, including long-term arrangements with other levels of government, are another key feature of such a strategy.

Appendix B provides a more detailed description and analysis of the housing stock in the City of Toronto.

### **Regulatory Strategies in Other Municipalities**

A number of different regulatory regimes exist in municipalities across North America. These are described in greater detail in Appendix C. Not surprisingly, the more ambitious programmes have also been the most resource-intensive ones. Most municipalities have also recognised the precarious link that exists between regulatory mechanisms and affordable housing programmes. In some cases, municipalities, such as Milwaukee, have studied licensing options and opted not to go ahead because of both the direct and indirect associated costs. In other cases, municipalities such as Los Angeles, have weaved an intricate multi-layered system that provides not only regulation to the market, but also support to its more vulnerable tenants. Both the programmes in Los Angeles and New York, for which officials have claimed significant success, include not only escalated enforcement mechanisms but also comprehensive financial supports and incentives for landlords to invest in and maintain their properties. The approaches taken by the five cities reviewed are summarised in Table 1.

It is important to note that jurisdictions outside of Ontario, and especially those outside of Canada, often operate under a legislative framework that is quite different than the one under which the City of Toronto and other Ontario municipalities must operate. Authority and scope of power to regulate housing tends to differ to the extent that regulating strategies from one of these other jurisdictions may not be applicable, or even feasible, in the Toronto context.

Table 1: Summary of Regulatory Approaches in Other Municipalities.

City	Regulatory Programme	Enforcement	Fees	Funding
Los Angeles	Units are inspected once every five years. If repairs are not completed, may be referred to Rental Escrow Account Program ("REAP").	Under REAP, rents may be reduced by up to 50% in addition to \$50 administrative fee, per unit, per month. No rent increases are allowed while under the program.	\$35.52 per unit annually (\$2.96 per month); inspection fee of \$169.00 and administrative fee of \$35.50 for any inspection after initial reinspection.	Revenue from fees is approximately \$27.5 million and covers all costs (including 209 dedicated staff, of which 153 are inspectors).
New York	Selected buildings are fully audited.	Refusal to comply with work orders can result in legal action, fines and even jail time. Any emergency repairs carried out by the City can be billed to the owner.	None.	Funded from tax base.
Milwaukee	Proactive inspections in neighbourhoods deemed in need. All MRABs of three or more units re inspected annually. All others are inspected upon change in ownership. Free landlord training is provided.	Refusal to comply may result in the withholding of rent to carry out the repairs.	\$35.00 for initial registration. \$50.00 for first reinspection; \$75.00 for second; \$150.00 for third; \$300.00 thereafter.	Regime is funded from property tax base and reinspection fees. Landlord training is also funded from property tax base.
Vancouver	All rental units, including single-family dwellings, are licensed and proactively inspected.	Non-compliance may result in the suspension or revocation of a licence. Unlicensed rental properties may not be rented.	\$55.00 per unit + \$50.00 for a new licence; \$55.00 per unit for renewal.	Licensing fees cover administrative costs and most enforcement costs.
Regina	Rental properties inspected on complaint.	Non-compliance may result in charges and fines.	None.	Funded from tax base.

## MRAB Audit and Enforcement Programme

The City's property standards bylaw depends on the *Building Code Act, 1992* (BCA) for its authority. As such, there are some statutory limits as to how property standards may be enforced. The BCA does not explicitly provide for licensing or permitting of multi-residential buildings nor does it provide for the full recovery of costs relating to its enforcement. Despite this, the bylaw provides the City with the regulatory tools to issue Orders to undertake maintenance and repairs required under the bylaw, and to lay charges against individuals or corporations that do not comply with such Orders. The bylaw also provides for an appeals and adjudication body known as a Property Standards Committee. Under specific circumstances, the City also has the authority to undertake the repairs required and for the costs incurred to be added to the property owner's tax bill. In this sense the property standards bylaw can be a powerful tool to attain compliance with the City's standards.

On December 1, 2008, Municipal Licensing and Standards will be launching a programme to improve the condition of the City's most in-need buildings. A dedicated team of 12 officers, headed by a co-ordinator and overseen by a District Manager will be conducting building audits across the City. Staff, in consultation with local Councillors, shall initially identify four buildings per Ward (176 buildings City-wide) to undergo a

complete audit of the building's common areas, life and mechanical systems, and grounds, within a twelve-month period.

The MRAB audit team will be staffed by redeploying existing resources. This will mean a reprioritising of other divisional programmes which may affect the response time on the enforcement of other matters. The impact, however, will be mitigated by filling a substantial number of vacant positions in the Division. The programme will also provide baseline performance measures, allowing staff to provide better information respecting costs and impact when developing or enhancing any future programmes.

Two buildings shall be selected on the basis of complaints from the public, building history and officer knowledge. Two additional buildings shall be identified in consultation with the Ward Councillor. To the extent possible, the final sample of buildings shall reflect the mix of social housing and for-profit buildings found in both local communities and the City as a whole. The aim of the programme is to substantially bring these buildings into compliance with the City's established standards.

Building audits incorporate a thorough inspection of buildings relative to Property Standards, Littering and Dumping, Zoning, Fence and any other applicable bylaw or chapter of the Municipal Code. Building audits will initially include the inspection of:

- structural components;
- mechanical systems;
- electrical systems;
- lighting/illumination;
- elevators;
- emergency power;
- roofs;
- service and utility rooms;
- parking facilities and garages;
- security;
- garbage management; and
- building amenities.

Dwelling units shall not be included in the formal audit of the buildings. However, during the course of the audit, Municipal Licensing and Standards shall establish a mobile administrative centre through which residents will be able to file any complaints pertaining to their unit that have been brought to the attention of the landlord and have not been addressed. These complaints shall be processed through the corresponding District Office. Although largely dependant on the volume, Municipal Licensing and Standards aims to respond to these complaints within five business days, 90% of the time. Residents will be notified of the audit and the process for filing any complaints 7-10 days prior to the commencement of the inspections. Information posters, in the City's main languages, shall be placed in conspicuous areas of the building, along with information materials on how to submit complaints.

Municipal Licensing and Standards shall also begin to more actively use provisions in [Municipal Code Chapter 441, Fees and Charges \(Appendix C, Schedule 15\)](#) to recover costs associated with enforcement on recalcitrant offenders. A charge of \$60 per hour or part thereof shall be imposed on any inspection following the inspection to ascertain compliance with an Order. This fee will apply to all properties, but could have a considerable impact on buildings that do not readily comply. Revenue generated by the fee could also be used to partly offset the costs associated with increased enforcement activity.

In the event that health and safety issues, such as no hot water or no heat, are not dealt with expeditiously by landlords, the Executive Director of Municipal Licensing and Standards shall be prepared to invoke the City's powers to undertake repairs where appropriate and to recover the costs by charging them back to the landlord. Unpaid costs can be added to the municipal taxes of the property.

Finally, staff recognize that transparency and accountability of the programme are key issues to both the public and elected officials. For this reason, and although all Orders issued are searchable on the City's current property standards web site, a dedicated MRAB audit site will also be established to make it easier to track the progress of the new programme.

The challenge in making the current system work more effectively lies in a number of areas. Firstly, because the current bylaw includes standards that pertain equally to health and safety as to nuisance and aesthetics, a system prioritising deficiencies would be required. The building audit is a focused enforcement tool intended to achieve effective, consistent and efficient enforcement. Secondly, staff, by and large, respond to property standards issues on a complaint-basis. Pro-active inspections, however, will allow issues to be addressed before they become bigger problems. Pre-empting maintenance issues before they become complaints will reduce the level of reactive enforcement and will allow for even more pro-active inspections to take place.

### **Analysis of Strategy Options**

In consultation with external landlord and tenant groups, staff identified potential approaches for an MRAB regulatory strategy. These approaches have been sorted into four main groups and are described in detail in Appendix D.

Staff have concluded that the best regulatory option is one that utilises current enforcement tools and can be implemented immediately. Many of the options proposed would likely require legislative amendments that could take years to obtain from the province and which could nevertheless embark the City on an uncertain initiative.

For this reason staff are proposing that it implement the MRAB audit and enforcement programme over the coming year and report back to the Executive Committee on its success. Depending on the desired scope and time frame to run through a cycle of inspections, the Executive Committee may at that time decide to expand the programme and include a funding formula. Staff will provide specific options for the Committee to consider.

## **Public Feedback**

Consultations took place with tenant and landlord groups as well as with the general public across the City. A detailed analysis of the responses to the consultations is provided in Appendix E.

Generally speaking, there was support for some type of audit programme, the systematic inspection of units and the establishment of an escrow account system. The first option, however, appeared to garner the most support from both tenant and landlords. This is consistent with the desire by landlords not to introduce a complicated programme with additional requirements and the desire by tenants to have a systematic programme in place that will have an immediate and substantive effect on living conditions in poorly maintained buildings.

Stakeholder and public feedback are essential to both the transparency and integrity of the strategy development process. Municipal Licensing and Standards is committed to continue to work with all relevant groups as well as to consult with the general public with respect to the best way to move forward on an MRAB regulatory strategy.

## **Divisional Impact Statements**

This report was prepared in consultation with a number of other operational City Divisions. An MRAB regulatory strategy would have an impact to a greater or lesser degree on all of them. These internal stakeholders were:

- Affordable Housing Office;
- Toronto Building;
- City Planning;
- Toronto Fire Services;
- Shelter, Support & Housing Administration;
- Social Services;
- Solid Waste Management Services; and
- Economic Development, Culture and Tourism.

In addition, Toronto Public Health and the Toronto Police Service also participated in the internal consultations. Finally, Legal Services, Policy, Planning, Finance and Administration, and Corporate Finance were also consulted at key points in the development of the report.

Generally, there will be a minimal operational and resource impact on other City Divisions from the implementation of the MRAB audit and enforcement programme being launched on December 1, 2008. Municipal Licensing and Standards will undertake all inspections and address all complaints within its jurisdiction.

There is, however, the potential for a significant resource impact on Shelter Support & Housing Administration (SS&HA), as selected City-administered social housing providers may be required to undertake repairs for which SS&HA is obligated to fund.

Detailed comments for each of the Divisions is provided in Appendix F.

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## **SIGNATURE**

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## Appendix A Summary of Regulatory Options

Table A.1: Primary options – pros, cons and constraints

Option	Pros	Cons	Constraints
Pro-active building audit program funded through the tax base	<ul style="list-style-type: none"> <li>• Systematic, proactive and comprehensive</li> <li>• Establishes inventory of stock and its condition</li> </ul>	<ul style="list-style-type: none"> <li>• Resource-intensive; will put pressure on divisional priorities</li> <li>• Depending on the scope, may require a phase-in</li> <li>• Additional Orders generated will likely have a substantial impact on social housing budgets</li> <li>• In private sector, higher costs will in the long run translate into higher rents</li> </ul>	
Registry and building audit programme with possibility of third-party auditors and with costs fully recovered through an annual fee	<ul style="list-style-type: none"> <li>• Systematic, proactive and comprehensive</li> <li>• Establishes inventory</li> <li>• Ensures that standards are adhered to.</li> <li>• Offers flexibility in how the established standards are met.</li> <li>• Clear authority to have a registry and charge fee exists.</li> </ul>	<ul style="list-style-type: none"> <li>• Will require considerable staffing resources to implement, administer and ensure compliance effectively.</li> <li>• Administration of audit programme, including that of approved auditors and certification standards, may be complex.</li> </ul>	
Licensing of buildings, funded by a licensing fee	<ul style="list-style-type: none"> <li>• Is a direct form of oversight that ties standards to licensing requirements</li> <li>• Threat of revocation may be strong incentive for compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Inspections and investigation of complaints likely to be very resource-intensive</li> <li>• Needs to be tied to some form of inspection regime for buildings</li> <li>• Revocation of licence is not practical and could create numerous other serious issues</li> </ul>	<ul style="list-style-type: none"> <li>• A legislative amendment may be required depending on the type of licence.</li> </ul>



Table A.1 (continued)

Option	Pros	Cons	Constraints
Certification of dwelling units, funded by a certification fee	<ul style="list-style-type: none"> <li>• Direct form of oversight</li> <li>• Threat of revocation may be strong incentive for compliance</li> <li>• Required certification (prior to rental) can help ensure units meet standards</li> </ul>	<ul style="list-style-type: none"> <li>• Inspections likely to be very resource-intensive</li> <li>• Needs to be tied to some form of inspection regime for units</li> <li>• Impact of licence revocation would have to be managed</li> <li>• Inspections are logistically difficult to perform (especially with respect to timing)</li> <li>• In the case where an inspection is required prior to letting, units may have to sit vacant until approved</li> </ul>	<ul style="list-style-type: none"> <li>• In the case where there are occupants in the dwelling unit, inspectors do not have legislative authority to enter without the consent of the occupant, a warrant, or the invocation of emergency powers under the Building Code Act.</li> <li>• A legislative amendment may be required.</li> </ul>
Licensing of rental providers	<ul style="list-style-type: none"> <li>• Allows City to keep better track of providers across properties</li> <li>• Self-regulatory scheme could off-load some of the associated work load</li> <li>• Threat of revocation may be strong incentive for landlords to comply</li> </ul>	<ul style="list-style-type: none"> <li>• Needs to be tied in to some system for monitoring buildings and/or units</li> <li>• Oversight of self-regulatory system may be cumbersome and bureaucratic</li> <li>• Revocation of licence is not practical and could create numerous other serious issues</li> </ul>	<ul style="list-style-type: none"> <li>• A legislative amendment may be required.</li> </ul>

Table A.2: Secondary options – pros, cons and constraints

Option	Pros	Cons	Constraints
Rating system for buildings and/or units	<ul style="list-style-type: none"> <li>• Acts as a consumer information system</li> <li>• Works as an incentive to bring property into compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Fair rating system likely to be complex due to all the factors that need to be taken into consideration</li> <li>• Does not necessarily compel landlord to make repairs unless system is tied to compliance program</li> </ul>	
Escrow account or reserve fund	<ul style="list-style-type: none"> <li>• Applies direct and immediate pressure to obtain compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Resource intensive: Will likely require considerable administration</li> </ul>	<ul style="list-style-type: none"> <li>• A legislative amendment may be required.</li> </ul>
Landlord training	<ul style="list-style-type: none"> <li>• Keeps landlords up to date and aware of their rights and obligations</li> </ul>	<ul style="list-style-type: none"> <li>• Unless tied to a requirement, those who need the training the most may be the ones who opt not to attend</li> <li>• Does not necessarily compel landlord to make repairs unless system is tied to compliance program</li> </ul>	

## Appendix B The Housing Stock and its Affordability in Toronto

The following provides an overview of the housing stock in the City of Toronto, including an analysis of its deteriorating affordability as well as its link to the growing wage gap between the top and low income-earning households. Finally, it also examines the general impact that a municipal regulatory strategy may have on the housing stock.

### Composition of the Current Stock

There are an estimated 397,000 primary (i.e., purpose-built) rental units in the City of Toronto. Table B1 (on the following page) provides a breakdown of these figures by major housing type. Appendix B provides a more detailed breakdown of the table.

The total number of dwellings in Toronto is 1,040,597, according to the 2006 census. Of these approximately 470,000 are market rental units and 100,000 are government-administered social housing.

Under the terms of the SHRA and operating agreements, City administered social housing providers must maintain their projects in a satisfactory state of repair. SS&HA has developed a formal process to assess and enforce compliance with building maintenance standards. Many non-profit social housing providers have tenants on their Boards of Directors (including the Toronto Community Housing Corporation (TCHC), as required by City Council). Tenants therefore share in the responsibility for overall planning decisions, unlike in traditional market rental buildings.

Furthermore, equity co-operatives are owned and managed by the people that live there so that they cannot be considered tenants and their buildings cannot be considered MRABs. How to deal with these varied groups in the administration of a regulatory system has to be evaluated vis-à-vis the objectives, scope and practical application of the strategy selected.

### Physical Condition of the Stock

In 1998, a report titled “Condition Survey of High-Rise Rental Stock in the City of Toronto” revealed an ageing rental stock in need of repair. The average cost of these repairs on a per unit basis was \$7,474 for all work required over ten years (approximately \$9,100 in 2007 dollars). Not surprisingly, the average cost of required repairs for older buildings was significantly higher than for newer ones, with one in four pre-1960 buildings requiring work over ten years in excess of \$17,000 on a per unit basis (approximately \$20,700 in 2007 dollars).

Table B1: Toronto Rental Market Stock – Number of Dwelling Units.

	Units
<b>Primary Rental Market</b>	
<b>Private for profit apartment buildings (6 or more units only)</b>	
Apartment buildings <sup>1</sup>	296,012
	<b>296,012</b>
<b>City administered housing</b>	
Toronto Community Housing Corporation <sup>2</sup>	58,194
Non-profit Housing Corporations <sup>2</sup>	20,740
Co-op Housing Corporations <sup>2</sup>	7,448
Rent supplement - Private Landlord <sup>2</sup>	2,660
City-developed Affordable Housing - Private Sector <sup>2</sup>	357
Limited dividend <sup>2</sup>	535
City-developed non-profit projects <sup>2</sup>	832
	<b>90,766</b>
<b>Provincially and federally administered housing</b>	
Federal-co ops <sup>3</sup>	8,034
Provincial Supportive <sup>3</sup>	2,095
	<b>10,129</b>
<b>Total for Primary Rental Market</b>	<b>396,907</b>

**Notes:**

<sup>1</sup> Figure obtained from the Canadian Mortgage and Housing Corporation Rental Market Statistics, Spring 2008; includes only buildings six or more units. There are 2,907 buildings with three to five units, representing 10,571 units.

<sup>2</sup> Figure provided by Shelter, Support & Housing Administration, 2006.

<sup>3</sup> Figures obtained from the 2003 Housing and Homelessness Report Card.

Although a follow-up study has not been conducted, it is unlikely, given market conditions and sector pressures, that all of these investments have taken place. This means that required maintenance costs have likely escalated beyond the rate of inflation. By the close of 2008, less than 5% of the rental stock in the City of Toronto will be newer than 25 years, and nearly two thirds will be more than half a century old. By 2018, at current rates of new rental development, nearly 85% of the total rental stock will be over half a century old and more than one in four structures will be over a century old. Without proper investment, repair and maintenance costs will continue to climb. The City's own housing stock, suffering from under-investment, is particularly vulnerable. Nearly 10% of TCHC stock is more than 50 years old, with three in four buildings between 26 and 50 years old. Overall, TCHC buildings represent about 15% of total MRABs (and about 14% of all MRAB units), and account for 26% of all property standards Notices of Violation and Orders, and for 23% of total deficiencies.

TCHC has completed building condition assessments for most of its stock. Its interim 2008 operating plan calls for \$139 million on asset repair and replacement. Due to inflation and a continued decline in asset condition, TCHC estimates that deferred maintenance due to inherited capital repairs is between \$300 and \$350 million.

TCHC is using \$31.9 million from a recent provincial allocation to accelerate their program of planned unit refurbishment. This program is providing complete unit refurbishment and other related building repairs and replacements. They are also using \$2.8 million to refurbish 138 units that were being held vacant awaiting major capital repairs.

Using the proceeds of the Toronto Hydro Telecom Inc. sale, the City has established a new \$75 million TCHC State of Good Repair Reserve Fund. TCHC will be able to draw on this reserve to fund planned repairs and replacements.

Since 2004, Council has approved the withdrawal of \$30.7 million from the City's social housing reserves to cover the cost of repairing eleven social housing projects. This included \$5 million in 2005 for TCHC to fund an accelerated program in response to the escalation of gun violence across the City of Toronto. At its July 2005 meeting, Council approved a report entitled "[Building Condition Assessment and Analysis of Capital Reserve Funds in the Downloaded Non-Profit and Co-operative Social Housing Portfolio, not including Toronto Community Housing Corporation \(TCHC\)](#)." Among other items, the study in the report indicated that to ensure adequate funding for capital repairs and replacements over the next thirty years the City would need to increase its annual contribution to providers' capital reserve funds to \$47 million from the current level of \$13 million.

The consideration of an MRAB regulatory strategy serves to highlight the capital repair issues in the social housing stock. Additional pressures to bring the housing stock up to standard means that the City may also be forced to provide additional funding to housing providers. Council has previously resolved that the City of Toronto "strongly request urgent financial support from the provincial government for major capital repairs to the provincially-downloaded social housing stock." A number of potential borrowing options and revenue tools have been put forward by the Social Housing Services Corporation (see their August 2007 report, "[In a Fix: The Good Repair of Toronto's Social Housing](#)"). Most require commitments and changes to legislation from other levels of government. Failure to strike a new deal for social housing will deplete the City's reserves, leaving little choice but to access the additional funding needed from the tax base.

Private landlords also face a number of challenges with respect to both the investment required to repair their buildings and the ongoing funds needed to maintain them. Private landlords tend to largely fund capital repairs from annual operating cash-flow, retained earnings, shareholder equity, or by taking on additional debt. Although rent increases may be used to partially cover capital costs, they are not the main funding source. It is important to better understand the economics of the rental sector, including those associated with major repairs and investment.

### Affordability of Housing

Traditionally, the concept of affordability has been based on a ratio of housing costs to total household income. The CMHC considers households paying 30% or more of their

pre-tax income for housing to have affordability problems; those paying 50% or more are considered to be at risk of homelessness. People who rent are more likely to experience affordability problems.

In Toronto, 46.6% of tenant households pay more than 30% of their pre-tax income for housing. According to the CMHC, basic shelter costs consist of rent or regular mortgage payments, condo fees, utilities (i.e., water, heat and electricity), and property taxes. In October 2007, the average rent in private rental apartments structures of three units or more for Toronto was \$742 for a studio, \$902 for a one-bedroom, \$1,072 for a two-bedroom and \$1,275 for a three-bedroom.

Rental accommodation increased by an annual average of between 2.0% and 2.6%, depending on the type of unit, in the ten-year period between 1998-2007. These rates are in line with those for the increase of the CPI for the Toronto Census Metropolitan Area over the same period. Table B2 summarises the data for rent and the CPI.

Table B2: Rents in Toronto by unit type and CPI for the period 1998-2007.

	Rent ( \$ )		Increase	( % )	% p.a.
	1998	2007			
Bachelor Unit	588	742	154	26.2	2.6
1-Bedroom Unit	727	902	175	24.1	2.4
2-Bedroom Unit	882	1072	190	21.5	2.2
3-Bedroom Unit	1069	1275	206	19.3	2.0
CPI	90.4	110.5	20.1	22.2	2.3

*\*CPI figures from Statistics Canada. Rent figures provided by SS&HA.*

More recently, rents in Toronto, between 2006 and 2007 were between 0.1% and 1.6% lower for bachelor, two-bedroom and three-bedroom units, and 0.6% higher for one-bedroom units. Inflation in the Toronto area over this same period was 1.9%.

Even though rents have generally increased at relatively reasonable rates over the past ten years, the median pre-tax income for families in the City of Toronto has not managed to keep up with the rate of inflation. In the 15-year period between 1990 and 2005, real median household income fell 10%. From 2000 to 2005 alone, real median household income fell to \$52,833, a decline of 4.7%. Thus, renters in Toronto have experienced worsening affordability, making them increasingly sensitive to rent fluctuations.

### Residential Rents

Lower interest rates, more attractive financing options and relatively strong economic conditions have encouraged more households to buy homes in recent years. Statistic Canada’s May 2007 study, “[Changes and Challenges for Residential Real Estate Lessors](#)”, found that even though prices for homes have risen more rapidly than rents, households have consistently opted more and more for home ownership. Although

nationally only about three in ten households rented in 2005, in Toronto this figure was five in ten. Households that turned from renting to owning in recent years have tended to have higher incomes than those that did not. Therefore, the pool of renters is now populated proportionally more by low-income households than it used to be. The fastest-growing segment of the residential rental market has been households in the bottom 20% of the income distribution. In Toronto, these households make less than \$20,778 for a single person and \$38,610 for a family of four. Total spending on rents by these households has been rising far more quickly than for all other households. This same group, however, is also accounting for an increasing proportion of total rents. Landlords are, therefore, increasingly relying on the lowest income households to rent their units.

The profile of those renting is also changing notably, and is of particular relevance to Toronto, where nearly one out of every two people are foreign-born and where a disproportionate number of new immigrants decide to settle. According to Statistics Canada, in Toronto, between 1981 and 2001, the proportion of immigrant families that owned their homes declined from 65% to 61%, while the proportion for Canadian-born families rose to 64%. Recent immigrants are less likely than before to own their own homes; they increasingly make up the rental market. If these trends continue, the greater number of new arrivals will bring a greater need for affordable rental housing and reduced options for low-income renters. Yet, the construction of new rental housing, relative to this growing need in the City, has all but dried up, accelerating the average age of the stock and increasing the number and severity of issues with its physical condition.

#### Impact of a Regulatory Strategy

A number of ideas for a regulatory strategy have been presented by staff and used as a basis for discussion at stakeholder and public consultations. Those ideas involving the enhancement or establishment and enforcement of a regulatory strategy imply additional costs to the City, the City's landlords, and potentially the City's tenants. The City can recover its costs through the establishment of a fee or tax subject to COTA. Under paragraph 1 of subsection 126(1) of the *Residential Tenancies Act, 2006* (RTA), however, private landlords are able to apply to the Landlord and Tenant Board for an order permitting an above-guideline rent increase due to an extraordinary increase in their costs due to municipal taxes and charges. Thus, if significant enough, these additional regulatory costs could in fact be passed on to tenants in the form of rent increases.

Under the terms of either the *Social Housing Reform Act, 2000* funding formula or the Operating Agreement between TCHC and the City, social housing providers receive operating funding. Approximately 77% of their units are rent-geared-to-income. If social housing providers are charged additional costs by the City, in most cases, they cannot recoup these costs as additional rents. Their inability to raise rents would therefore result in increased budget pressures.

As housing ages, ongoing scheduled repairs and maintenance are critical in ensuring the good condition of the stock. The greater the constraints on rents, however, the more limited are the funds available to carry out required work. For-profit housing providers

will only continue to operate and invest if they are able to do so profitably. Non-profit housing providers, on the other hand, will only be able to continue to provide services if the funds (which come largely from government, through either direct subsidies to providers or indirectly through transfers to low-income individuals) are available.

Depending on the magnitude of any rent increases, as a result of an MRAB regulatory strategy, the most vulnerable households will either be faced with increasingly austere economic decisions or be outright de-housed. Displacement would likely result in people making greater use of illegal rooming houses or second suites; thus feeding the underground housing market. Many of those not displaced would likely be faced with heightened economic challenges, such as being faced with the decision to either buy food and other essentials or pay rent.

As long as there are substantive repair costs involved, it is likely that both tenants and taxpayers as a whole will have to be prepared to fund the natural consequences of an MRAB regulatory strategy.

## Conclusion

Low-income households increasingly make up the rental sector of the housing rental market. These households also tend to be immigrant families who are also increasingly less able to afford housing; not so much because of the unreasonableness of the rents as because of the failure of their wages to match general increases in the cost of living.

A strategy to regulate multi-residential apartment buildings in Toronto needs to take into account the external forces that drive the different types of housing stock, their affordability, and their physical condition. Some of these factors, such as household income depend, at least partly, on provincial and federal policy as well as on evolving demographics and market forces. A strategy that imposes additional costs on landlords will likely result in some or all of these costs being passed on to tenants in private multi-residential buildings and result in considerably greater budgetary pressures for rental providers, especially for social housing providers. In the end, the impact of any major cost increases would likely be felt the greatest by the City's most economically vulnerable households.

In the absence of other sources of funding, a strategy that results in additional capital expenditures for landlords will be funded either through higher rents, higher property taxes, or a combination of both. It is with this in mind, and with what the impact might be on the City's low-income and subsidised housing stock in particular, that the decision of how to proceed with an MRAB regulatory strategy must be made.

A regulatory strategy without some counterbalancing measures is likely to create more problems than it solves. Constructive partnerships with other levels of government as well as innovative programs to revitalise and involve people in their communities, especially those identified as at-risk, will also help to generally improve the quality of existing stock. Finally, there is a need to continue to advocate for the removal of provincially-downloaded social housing costs from the municipal tax base. Only a



concerted strategic effort by all levels of government, with the participation of all relevant stakeholders, can ensure the implementation of a blueprint for affordable and quality housing that is sustainable in the long run. Although this blueprint is the purview of the City's Affordable Housing Framework, and not of this report, an MRAB regulatory strategy needs to support and not hinder, its implementation.

## Appendix C Regulatory Approaches in Other Municipalities

### Los Angeles

#### Systematic Code Enforcement Program (SCEP)

The City of Los Angeles, California, in 1998, instituted the Systematic Code Enforcement Program (SCEP), an apartment inspection program to deal with maintenance deficiencies in nearly 800,000 rental units in approximately 25,000 private buildings across the City. SCEP is utilized by Los Angeles to enforce the State of California's mandatory minimum habitability code on a regularly scheduled basis. The program, which is administered by the Los Angeles Housing Department (LAHD), includes all rental properties containing two or more units. The program mandates an inspection of each individual rental unit once every five years and SCEP has a complement of 209 City staff, including 153 inspectors.

Since the establishment of SCEP, more than 90 percent of the City's multi-family housing stock has been inspected and more than one and half million property deficiency violations have been corrected. As of January, 2006 LAHD had completed the first five-year inspection cycle, inspecting a total of 772,406 rental units. This resulted in an estimated \$1.6 billion re-investment by owners in the City's existing housing stock.

Under this program building owners pay an annual fee of \$35.52 per rental unit to LAHD. These fees can be recovered from the tenants at a rate of \$2.96 per month. These fees finance the inspections and re-inspection of the rental units. Subsequent inspections are subject to a re-inspection fee of \$169.00 plus a \$35.50 processing fee. LAHD forwards notice of an inspection to the building owner 30 days prior to the scheduled date of the inspection and a notice is posted in the common areas of the building 5-7 days before the inspection to inform the tenants of the date and time of inspection.

Upon inspection if a property does not meet City and State Codes regarding issues of maintenance, use or habitability, the property owner is cited with a "Notice to Comply". After the issuance of the notice the property owner is given 30 days in which to perform the required repairs to the property unless there are dangerous conditions, in which case the time frame is adjusted accordingly.

If the required repairs are not completed within the requested time a City or County agency or any tenant may refer any building that contains an uninhabitable unit, or common area deficiency, to the LAHD for inclusion in the Rental Escrow Account Program.

#### Rental Escrow Account Program

The Rental Escrow Account Program (REAP) is a program whereby building owners who remain in violation of City and State Codes may have the rents paid to the landlord reduced up to a maximum of 50% with the remainder of the rent being collected by LAHD and placed in an escrow account. The percentage of the rent reduction, up to the maximum of 50%, is dependant on the number of State Civil Code, Los Angeles Municipal Code or Fire Safety/Life Hazard violations relative to the subject building.

Buildings may be referred to the LAHD for inclusion in the REAP if the any of the following conditions exist:

- The building or unit is the subject of one or more orders;
- Cases of non-compliance with an order during the allowed period, including any extensions; or
- The Code violations affect the health and safety of the occupants.

After the referral for inclusion in REAP by a City or County agency or tenant, and within 10 days of making the decision, LAHD notifies building owners of the building's inclusion in the REAP program. Building owners then have the right to request an appeal of the decision before a hearing of the General Manager of LAHD up to 15 days after receipt of notice. If no request to appeal is made, the LAHD decision is final and the written determination is served on the tenants within 5 days.

If a building owner launches an appeal to their inclusion in REAP and the General Manager of LAHD decides that the building will be included in REAP the landlord can further appeal to the City of Los Angeles' Appeal Board. Once a building has been included in the REAP program LAHD deducts from the rent, paid by the tenants into the escrow account, a \$50.00 administrative fee for each unit in the building on a monthly basis. This administrative fee is not refundable to the building owner.

A landlord, tenant, enforcement agency or creditor may apply to the General Manager of LAHD for a release of funds in the escrow account for payment of essential services or repairs to the building, but to a building owner only if they can provide proof of financial hardship. The General Manager of LAHD will convene a hearing regarding the requested release of funds within 21 days of the application.

Termination of REAP is considered upon notification by the landlord, tenant or enforcement agency that all orders have been complied with and all violations corrected. LAHD then conducts an investigation and reports its findings to the landlord and the affected tenants. Los Angeles City Council may also release a landlord from REAP under certain circumstances. No rent increases are allowed for buildings or particular units in a building until one-year after its removal from REAP.

## New York

### New York City's Targeted Cyclical Enforcement Policy (T-CEP)

In the summer of 2005 New York City's Department of Housing Preservation and Development (HPD) began an initiative with New York City Council and local community groups to identify some of the most distressed buildings in each council district. The initiative, called the Targeted Cyclical Enforcement Policy (T-CEP), has HPD working with all council members to conduct comprehensive roof-to-cellar inspections of the targeted buildings. Landlords who refuse to repair their buildings as a result of these inspections face legal action, fines and even jail time. Maintaining and preserving the existing housing stock is a key part of Mayor Bloomberg's New Housing Marketplace Plan to fund the construction and rehabilitation of 165,000 rental units over ten years.

In the first three years of the programme, HPD inspected 685 buildings across the city. In these buildings, HPD issued over 45,000 violations of New York City's Housing Maintenance Code. About 8% of buildings are referred to HPD's Housing Litigation Division. In about 10% of cases, the building owners have signed a Voluntary Repair Agreement with a specific list of repairs and a timetable for the repairs to be made.

The T-CEP initiative provides for the comprehensive inspection of up to 400 housing units in 30 buildings in each of the City's 51 council districts. HPD inspects the residences, working with council members and community groups to ensure access to as many apartments and other areas of the building as possible. After writing up a Building Violation Summary, HPD refers issues that are not violations of the Housing Maintenance Code, but are considered problematic, to the appropriate government agency. An HPD team then meets, taking into account input from Council Members and community groups, to discuss appropriate action. These actions can range from Voluntary Repair Agreements with building owners, to suggesting appropriate HPD housing education classes, to commencing litigation. HPD continues to follow up with the building owners until sufficient progress is made, or until the case is referred for litigation if the building owners do not co-operate.

HPD employs over 400 housing inspectors for the administration of the T-CEP initiative. Of these 231 are bi-lingual, speaking a total of 30 languages, with 89 being fluent in Spanish. In 2005, HPD issued notices for 482,674 housing maintenance code violations. Over this same period, 494,865 violations were corrected. HPD has almost 40 attorneys in its Housing Litigation Division and in 2005 they initiated 12,662 cases and collected \$3,633,922 in judgments and settlements. In April 2006 HPD's Housing Litigation Division was responsible for obtaining a 12 day jail sentence for one of New York City's most notorious landlords.

According to the City, HPD's T-CEP initiative is having a measurable impact and the overall picture for New York City tenants is improving. New York City's Housing and Vacancy Survey (HVS) showed that in 2006 neighbourhood quality was the best in the

27 year period since the HVS began to measure and report on household opinions of neighbourhood quality. The proportion of renter households that rated the quality of their neighbourhood as “good” or “excellent” was 71.3 percent in 2005, a 2.2-percentage point improvement over 2002.

If landlords do not correct apartment maintenance problems, tenants can notify the City and bring cases against their landlords through New York City’s Housing Court. The tenant is not required to hire a lawyer to do so and can utilise the Housing Maintenance Code violations as evidence in Housing Court. When a landlord cannot or will not restore essential services, the City will make the emergency repairs and bill the building owner for the cost of the repairs. If payment for the repairs is not forthcoming from the building owner the City will place a lien on the property.

In April of 2007, New York City Council passed legislation to establish the HPD’s new housing safety program, the Alternative Enforcement Program (AEP). The aim of this program is to put more intense pressure on the owners of some of the City’s most distressed residential buildings to bring the buildings up to code. The program focuses on a small percentage of buildings that generate a disproportionate percentage of HPD’s current enforcement activity. Landlords will be put on notice that comprehensive repairs must be made. If they are not, HPD is authorised to undertake a comprehensive review of the building, to make the necessary repairs, and to bill the landlord for the work. After repairs are made, there is an ongoing monitoring program to ensure buildings do not fall back into disrepair and that the necessary ongoing maintenance is performed by the landlord. The program improves conditions for tenants of these buildings and avoids the need for HPD enforcement personnel to visit these buildings repeatedly to correct similar recurring problems. In its initial stage the HPD identified 200 buildings for consideration under the program.

In addition to the T-CEP initiative and the AEP, HPD also encourages the preservation of affordable housing in New York City through educational, outreach and loan programs for building owners and tenants.

## Milwaukee

### Milwaukee’s Study of Rental Unit Licensing Programs

Milwaukee’s Department of Neighbourhood Services (DNS) conducts proactive enforcement of building and zoning codes under its Targeted Investment Neighbourhood program. Under this initiative, city inspectors look for code violations in neighbourhoods deemed by the city to be in need of revitalisation. In this way, the City works with communities to improve the physical appearance of neighbourhoods.

Further to the Targeted Investment Neighbourhood program, in 1993, Milwaukee’s DNS created the Rental Recording program as a means for the city to track all rental units and landlords. This mandatory program charges landlords a one-time \$30.00 registration fee

and allows the city to maintain contact information for all rental units in the city. This program allows the city not only to keep track of individuals or businesses who rent out properties, but also provides a mechanism for the city to contact landlords in response to code violations.

DNS also conducts annual inspections on all residential properties with three or more units. These inspections examine only the exterior of the property and common areas inside the property to ensure fire code compliance and safety. Residential inspectors do not examine code compliance in other areas of the building.

Rental buildings with one or two units are not inspected under this program, but whenever a rental property meeting this criteria changes ownership, DNS conducts an inspection under its Point-of-Sale Exterior Inspection program. The purpose of this inspection is to ensure that the unit meets exterior maintenance code compliance. The program applies to all rental units in the city, as well as owner-occupied units in six designated redevelopment areas in the city.

DNS also conducts a Landlord Training program for city landlords. This free program trains landlords on how to manage their property properly, deal with tenants effectively, and minimise illegal activity on their properties. The program attempts to create better landlords and better neighbourhoods by educating landlords about tenant screening, the need for unit maintenance, and the legal rights of both landlords and tenants. For example, the program provides tips to landlords on how to more easily comply with code requirements.

The program that most directly addresses maintenance and quality of life issues for housing in Milwaukee is the complaint system run by DNS. Through the complaint system, residents of rental units can file complaints about their unit or neighbourhood. Alderpersons can also file complaints on behalf of their constituents. The complaints can range from safety and health risks, such as electrical problems or a lack of heat, to nuisance issues, such as graffiti. The complaints most related to the need to maintain rental housing are interior and exterior maintenance, electrical, plumbing, hot water, and heat.

Tenants may file a complaint with DNS if their housing unit has a problem that is not being addressed by their landlord. When a complaint is filed, a DNS staff member logs it into the tracking system. Then, using the landlord contact information gathered through the Rental Recording program system, the landlord is contacted about the problem. Often the landlord remedies the problem quickly, in which case no inspection is necessary. If the problem is not addressed a DNS inspector is sent to the property. If the complaint is valid, the inspector issues a work order to the landlord with a specified amount of time for completion, depending on the type of repair required.

After the allowable time, DNS conducts a re-inspection to see if the work order has been fulfilled. If the work order is ignored, another re-inspection is conducted at a later date. The landlord is not charged for the initial inspection but is charged for re-inspections.

While the charge for the first re-inspection is minimal, the fees escalate so as to provide an incentive to the landlord to make the repair. The first re-inspection costs \$50.00, the second \$75.00, the third \$150.00, and the fourth and any subsequent re-inspections cost \$300.00 each. In the rare case that the landlord continues to ignore the problem, the city has the legal authority to collect rent from the tenant and conduct the repairs itself in a process known as rent withholding.

In 2002 more than 13,500 complaints were filed with DNS regarding rental units in Milwaukee. These complaints related to the unit itself and neighbourhood and nuisance problems such as graffiti and abandoned vehicles, although most of the complaints involved housing quality issues. Nearly 100 percent of complaints filed in 2002 were resolved by DNS, indicating that the required repairs were made. Many of those complaints were about maintenance issues, with over 2,500 regarding the exterior and over 3,000 relating to the interior. A single complaint could be classified in multiple categories, so these totals are not mutually exclusive. It was found that many of the complaints that were filed related to rental units in poorer neighbourhoods in Milwaukee.

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.

## Vancouver

### Rental Residence Licensing

The City of Vancouver has licensed multiple-unit building owners for over 30 years, and approximately 13 years ago brought in a requirement to license rental one-family dwellings as well. Vancouver requires that anyone owning a residential property with the intent of renting or leasing it, have a business licence. This includes all one-family dwellings, duplexes, dwelling units within a multiple dwelling, rooming houses, and secondary suites. The rationale for the licensing program is to generate additional licence revenue for the inspection of rental properties and to enhance related enforcement activities.

The City of Vancouver utilises the licensing regime as an enforcement tool to suspend, revoke or place conditions on licensees if they are not managing the building in an acceptable manner. The threat of a license suspension usually results in compliance, but the City generally suspends or refers six to eight rental residential licences to Vancouver

City Council each year. Suspending or revoking a licence then prohibits the property owner from renting the unit or units.

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.

## Regina

### Proposals for Regulating Rental Properties

In 2004, the 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 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. The jurisdictions studied were:

- 1) Berkley, Michigan;
- 2) Boulder, Colorado;
- 3) Burlington, New Jersey;
- 4) Elgin, Illinois;
- 5) Elliot City/ Howard County, Maryland;
- 6) Mankato, Minnesota;
- 7) Salisbury, Maryland;



- 8) Tacoma Park, Maryland;
- 9) Vancouver, British Columbia; and
- 10) Waukegan, Illinois.

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.

## Appendix D Analysis of Strategy Options

### 1. Regulate Rental Providers

Rental providers could be regulated in at least two distinct ways: through some sort of licence, or through some type of self-regulatory mechanisms. Both approaches, however, would require oversight by the City.

#### 1.1 Licensing of Rental Providers

Under COTA, subject to an amendment to the regulation limiting the City's licensing powers (as already identified for the COTA two-year review), the City will be able to license rental providers and charge an annual licensing fee. The fee could be used to cover the costs associated with inspection and enforcement activity respecting licence requirements. The intent behind such licensing would be to ensure that all MRAB rental providers in the City of Toronto meet the established standards of operation and maintenance. Non-compliance would have to have credible and substantial consequences.

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. Although both Calgary and Edmonton regulate apartment building operators

under their business licensing bylaws, their powers under the Municipal Government Act, in this respect, are considerably broader than those of Toronto under COTA. Thus, to implement a similar programme would likely require legislative amendments, mainly specific licensing powers.

## 1.2 Self-Regulation for Rental Providers

A different regulatory option for rental providers involves self-regulation. This option involves the mandatory membership in a City-approved professional rental providers association for all rental providers operating in Toronto. The association would have its own disciplinary board and would ensure that all its members met the required standards of professional practice. These standards would satisfy the requirements that the City would want rental providers to meet. Members in good standing would then presumably also meet the requirements of the City. Some industry groups have already proposed this approach, but a legislative amendment will likely be needed to impose this requirement on rental providers.

Despite this, self-regulation would still require some level of oversight from the City to ensure that members did in fact meet the stated requirements and that the association did in fact conduct itself in accordance with its agreement with the City. Third-party certification then would not mean an exemption from City audits, but rather placement in a lower-risk category which would in turn mean less frequent inspections. Over the course of the coming year, staff will examine existing schemes to evaluate how they might be tied in to a systematic audit programme.

Although self-regulation would be helpful in promoting best practices, it may not be ideal for dealing with specific maintenance problems. These would still have to be dealt with through the current system. Failure to comply could result in a suspension of the member, and conditions being placed on the membership, or in outright expulsion. Disciplinary action through the association would need to ensure an adequate system of appeals. Finally, expulsion from the association would, like with licensing, require substantial and credible consequences.

Any costs incurred for major capital upgrades by private market rental providers could be passed on to tenants, upon application to the Board, in the form of rent increases. Similarly, social housing providers, including TCHC, under the constraint of their agreements to provide specified rents would be faced with the option of asking its main funder, the City, to provide the additional money required to meet its obligations, or be forced to raid their own operating funds to try to achieve compliance.

## 2. Regulate Buildings and Dwelling Units

The regulation of buildings and dwelling units, on the one hand could provide the greatest direct level of oversight with respect to quality of repairs and maintenance. On the other hand, this is probably one of the more complex and resource-intensive options, as there are about 400,000 dwelling units that could be subject to regulation.

### 2.1.1 Licensing of Buildings

Apartment buildings could be licensed and a licensing fee could be used to fund the administration and enforcement of the licensing standards. These standards would address the physical and mechanical condition of buildings. Buildings could be placed on a proactive inspection schedule to ensure compliance. This approach, however, would be challenging as staff would have to inspect over 6,000 buildings across the City.

The status of a licence could be based on the number and type of deficiencies found in buildings. Those exceeding a deficiency threshold would have to be brought before a tribunal, set up for the purpose, to determine the action, if any, required on the licence. Despite an obvious need for there to be credible consequences in the instance when a licence is revoked, it is just as important that any licensing system not lead to the unresolved de-housing of tenants. Although perhaps manageable on a smaller scale, these conflicting issues make licensing, especially with respect to high-rise buildings, a practically unworkable proposition.

In other instances tenant displacement, due to fires or building closures due to unsafe condition orders, has been addressed through the creation of the Critical Incident Working Group (CIWG), which consists of over a dozen agencies and divisions around the City, including Woodgreen Community Centre and the Red Cross. CIWG has developed a protocol for helping displaced tenants in the short and long-terms.

### 2.1.2 Certification of Buildings

An alternative regulatory approach for buildings involves their certification. Under such a scheme, each building would be required to have a certificate from a corresponding professional for its structural condition as well as for its major electrical, mechanical and life systems. Certification of buildings could very well be combined with self-regulation, as described earlier. The Certified Rental Building Program, recently launched by the Federation of Rental-housing Providers of Ontario (FRPO) is a good example of what such a scheme might look like. As mentioned in Section 1.2, staff will evaluate these schemes to determine how they might be tied in to a building audit programme.

Certification could be supplemented with inspections by the City, targeting specific items. Failure to earn a clean certificate, indicating that the building meets the City's standards, would require remediation and re-inspection by either a qualified professional or the City. Failure to remediate would result in further enforcement action.

### 2.1.3 Rating of Buildings

MRABs could be graded or classified in accordance with their condition, as a means of providing both information to consumers and an incentive for landlords to bring deficient properties into compliance. Buildings could be graded using a "red/yellow/green" system, much as it currently applies to restaurants or it could use a demerit point type system. In either case, such classifications would have to take into account the number of units, and

the facilities and types of systems in place. It would also have to overlay a risk-assessment system over a more standard system of points, in order to ensure, for example, that health and safety matters be dealt with in priority, ahead of aesthetic or minor maintenance issues.

Of course, a building rating system could also be used in combination with a licensing or certification system for regulating MRABs. Not only could the rating be used as a way to assess buildings and make this assessment accessible to the public by posting it on the City's web site or in the main common areas of the building itself, but it could also be tied to a graded licensing scheme by which the licensing fee would vary directly with the risk category of the building. The level of fees would be largely based on the levels of administration and enforcement required to achieve compliance. Staff will review these options and provide some specific recommendations in its future report to the Executive Committee.

### 2.2.1 Unit Certification

Another regulatory option involves the certification of dwelling units prior to being let. A copy of a "clean" unit certificate would have to be provided by the landlord to the potential tenant. Unit certification could be used in conjunction with building licensing or certification. A rating system could also be used with dwelling units as a means for consumers to assess potential housing.

Inspections would have to be scheduled and repairs would have to be carried out, if required, before the unit could be let. This scheme is akin to the used-vehicle information requirements established by the Province and will likely require a legislative amendment. The main issue with this system is that only units that become vacant would be subject to the inspection. And, because units could not be let until certified, there is considerable risk that units may sit idle for a month or longer as they await inspection.

It should also be noted that although the underlying legislation under which Municipal Standards Officers act provides for the right of entry into buildings, this right does not extend to dwelling units. Officers may only access and inspect apartments by being explicitly granted access by the occupant, exercising their authority under an Emergency Order, or executing a warrant to enter. Thus, the City would have considerably less leverage to pro-actively address issues in occupied units. Criteria for unit inspections would clearly have to take these issues into consideration. Finally, this approach would also require strict monitoring and follow-up inspections to ensure compliance, placing considerable pressures on resources. Given these issues, a pro-active audit and/or certification programme is not practically feasible.

In theory, by regulating buildings and/or units, especially if done in combination with regulating rental providers, a number of non-compliance matters across a number of buildings, operated or owned by the same rental provider, could be addressed. This would allow staff to bring forward these matters concurrently and to deal with the offending rental provider in a more comprehensive manner. Unfortunately, the difficulties cited

earlier with respect of credible and meaningful enforcement do not make this a viable option.

As part of its MRAB audit and enforcement programme, starting in December of 2008, Municipal Licensing and Standards will, during the course of its work, also establish a mobile administrative centre to process complaints that have not been addressed by landlords. Although technically not part of the programme, these complaints shall be forwarded to the corresponding District office for follow-up action. To some extent depending on volume, staff aim to respond to unit complaints within five business days, 90% of the time.

Just as with the licensing of landlords, there is some question as to whether a business licence could be used to effectively regulate buildings and dwelling units.

### 2.2.2 Registration and Certification

Instead of establishing a business licensing regime for buildings or landlords, which implies a number substantive enforcement and administration challenges, a registry combined with an annual fee to fund a certification programme could be established. Certification would be achieved by meeting specific standards which could be verified by building audits, conducted by either the City, an approved third party, or a combination of both. The programme would be cost-recovery with fees based on the size of buildings, their respective facilities, and the specific requirements of the audits. Buildings that did not achieve certification would be subject to graduated enforcement action by the City.

Finally, not unlike any of the options already discussed, any capital costs incurred by market rental providers could be recovered through higher rents, putting additional cost pressures on low-income renters. Although rent increases could not generally be passed on to tenants in social housing, these rental providers would have no choice but to either use operating funds or ask for additional funds from the City or other levels of government.

### 3. Establish an Escrow Account

Escrow is a legal arrangement in which an asset is delivered to a third party to be held in trust pending a contingency or the fulfillment of one or more conditions in a contract, such as payment of a purchase price. Although the specific details could vary, in the context of an MRAB regulatory strategy, an escrow account would entail monies from rental providers held in trust by the City for the purpose of ensuring the maintenance of their buildings. It should be noted that the City does have the legislative authority to undertake necessary repairs and to charge the landlord back for their cost. Currently, with respect to MRABs, the City invokes its authority largely for health and safety matters, such as no heat in the winter. The establishment of an escrow account system of the types described below will require a legislative amendment and could be structured in one of two ways, as outlined below.

### 3.1 Reserve Fund

Under a reserve fund scheme, rental providers would be required to make predetermined contributions to this account. In the case where a building was found to be deficient and the City determined that the repairs needed to be made forthwith, the escrow account would be accessed for this purpose. An escrow account could also be accessed for predetermined preventative maintenance, subject to all other conditions. This form of escrow is akin to a mandatory reserve fund for MRABs, but managed by the City. In Ontario, project-specific reserve funds in the private rental sector are subject to corporate taxation and are therefore not a current practice of landlords.

Escrow accounts in the form of reserve funds may not make sense in cases where buildings have a history of having, and actually implementing, a scheduled maintenance plan. If, however, escrow accounts were only required from certain buildings, the City would have to establish the criteria by which to determine whether an escrow account is required. This would mean both an initial case-by-case assessment of buildings and periodical review to ensure ongoing compliance. The size of the account would also have to be determined on a case-by-case basis, by looking at the size, facilities and specific conditions of each building. Alternatively, participation in an escrow account could be limited to cases when compliance with existing Orders is not forthcoming, as is done in Los Angeles and described below.

### 3.2 Targeted Escrow

A variation of this model is used in some cities in the United States, such as Los Angeles, where the municipal government has the right to collect rents from tenants in cases when landlords have not been properly maintaining their rental properties. This money is held in escrow and used for repairs, as well as to cover the City's associated administrative costs. In Ontario, escrow is not generally allowed in real estate and other transactions and as such an escrow system would likely require legislative amendments.

It has not generally been considered within the purview of Canadian municipalities to collect apartment rents to enforce property standards. The RTA already has a provision that permits tenants to request paying rent to the Landlord and Tenant Board in cases of serious maintenance problems.

In addition, the RTA allows tenants to apply for an Order to Prohibit Rent Increases (OPRI) in situations when there are serious outstanding work orders or maintenance issues. It is worth noting that this provision is not as effective as the previous OPRI provision set out in the former *Rent Control Act, 1992*, by which OPRI were automatically issued when there was non-compliance with serious work orders, without tenants having to apply for such action. The current system relies heavily on the initiative of the tenant and, it may be argued, does not favour vulnerable tenants who may not have the knowledge or means to avail themselves of the process.

In the case of social housing, the responsibilities of rental providers and the City are clearly stipulated in and governed by the SHRA. This includes the flow of operating

funds, and the setting and collection of rents. Given the relationship between the City and social housing providers, an escrow system may not make the same sense as with market rental providers.

Finally, Canadian mortgage law allows mortgagors to assume the rights to rents when there is a breach of mortgage conditions. Therefore this model of escrow may need to be evaluated in the context of other relevant Canadian and Ontario legislation, as any bylaw that is in conflict or frustrates provincial or federal legislation, regulations, or other instruments of a legislative nature is without effect, and not permitted for the City to undertake.

In the case of rental market buildings, much of the cost associated with the fund could likely be passed on to the tenants, as the account held in trust by the City would be akin to a tax or charge, and as such, under section 126 of the RTA, would be subject to an above-guideline increase in rent. In the case of social housing, the ultimate cost would likely have to revert back to the City or other levels of government.

An escrow system would likely have to be implemented as a component of some registry, certification, or licensing scheme in order to identify and track all eligible properties. As such, this option would have to include resources for inspections as well.

Despite the foregoing discussion, it is imperative to note that there is some considerable question as to whether the authority exists to implement any type of escrow account arrangement. More than likely, the establishment of an escrow system would require changes to the RTA, the SHRA, and COTA. Such changes could take years to bring about and without any guarantee that they would be an effective tool in the Toronto context. For this reason, staff do not recommend pursuing this option.

#### 4. Training and Communications Strategy

A communication plan for tenants and rental providers will be a key part of any implementation plan. With respect to rental providers, this may also include a training program. To the extent possible, a communications strategy would make use of existing communication channels, such as divisional public newsletters and notices. Training would also be developed as a joint effort between Divisions, with some elements already in existence in the corporation.

As part of its MRAB audit and enforcement programme, Municipal Licensing and Standards will be launching a dedicated web page listing Orders issued, their status, as well as any other relevant public information respecting the inspections. If a different regulatory strategy is adopted in the future, the web page will continue to provide information on the regulatory and enforcement activity.



## Conclusion

Irrespective of the approach or approaches adopted, a significant amelioration of the condition of the housing stock will require substantial capital funding. In the long run, such funding will largely trickle down to tenants in market rental accommodations, increasing economic pressures on low-income households. In the case of social housing, for which rents are governed by long-term operating agreements, these additional capital costs would eventually fall back on the City.

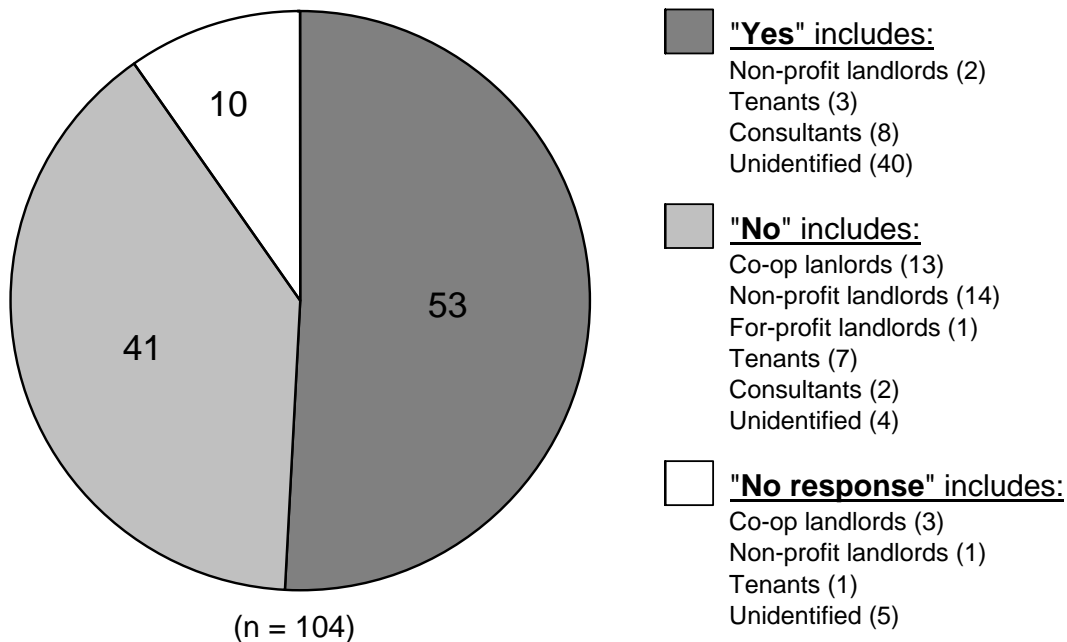
The audit and enforcement programme will use existing resources and thus be cost neutral to housing providers. Its success will be measured by landlord compliance and improved conditions in the City's rental buildings. The ultimate success of a preservation strategy, however, will also be dependent on whether sustainable funding models can be created for both the private and social rental sectors.

Appendix E  
Detailed Responses from Public Consultations

Public consultations took place over two weeks in the month of May of 2007: three in the evening at City Hall, Grand Ravine Community Centre, and Scarborough Civic Centre; and one in the morning at North York Civic Centre. Approximately 160 people attended the open-house format sessions.

The public was able to review a list of regulatory options and ask questions of City staff. Attendees were encouraged to provide their comments on the specific options and on the regulatory strategy more generally. Comments were provided orally to staff (22), through the completion of forms provided at the sessions (27), by e-mail or voice-mail (37), and by making written submissions (19). Only those responses addressing the ideas for a strategy were counted. Chart 1 breaks down the 104 responses received by staff with respect to whether attendees were in favour of introducing a new regulatory strategy for MRABs.

Chart 1: Are You in Favour of a New Regulatory Strategy for MRABs?



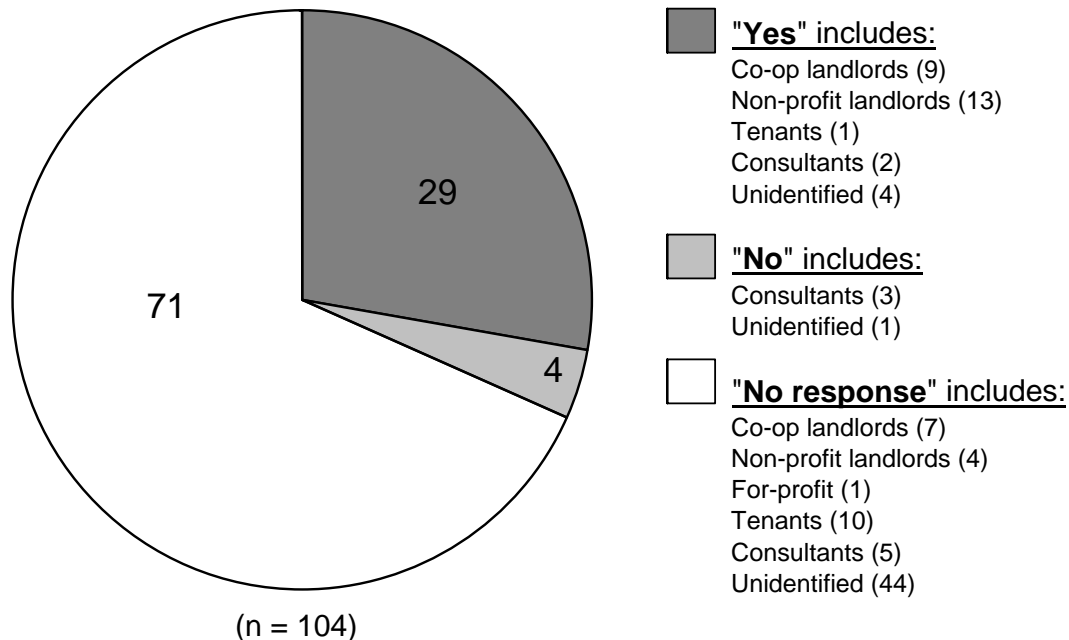
Landlord responses were broken down by the following three types: Co-operatives, non-profit housing providers, and for-profit providers. No differentiation was made between tenants. A large number of respondents did not identify themselves, and are labelled as “Others”, but based on their responses it appears that almost all were tenants or in support of tenants. “Consultants” refers to submissions made by independent consultants. A detailed breakdown of the responses is provided in Tables E2 and E3.

Not surprisingly, perhaps, most landlords who attended and responded (28) were explicitly against a new regulatory strategy. On the other hand, tenants (3) and others (40) who attended and responded were in support of some type of new regulatory strategy. Of note, however, is the fact that five out of the seven confirmed tenants that attended and were opposed to a new regulatory strategy identified themselves as belonging to a co-operative housing arrangement.

A significant number of respondents emphasised that not-for-profit housing should be exempted or treated differently than for-profit housing providers. Thirty-three respondents (32%) addressed this issue; the vast majority of these in favour of an exemption or at least different rules. Chart 2 provides a breakdown of these responses.

The reason most often cited for why an exemption from the new regulations should be provided to not-for-profit housing, including co-operatives, is that they are regulated under legislation and other operating agreements. Not-for-profit landlords also expressed their concerns over the cost associated with the implementation of a regulatory strategy. Overall, 45 respondents identified the cost of a strategy as an issue of concern. This was an issue with many landlords who responded (26) and a number of tenants who responded (3 out of 11). Tenants who responded were specifically concerned with the resulting costs being passed on to them.

Chart 2: Should Not-for-profit and Social Housing be Treated Differently?



Overall, the ideas for a regulatory strategy most often addressed by respondents were: the licensing of apartment buildings (24); the establishment of a property review team and implementation of a building audit program (17); the proactive inspection of units (17); and the establishment of an escrow account (16).

For the licensing of apartment buildings, 14 respondents explicitly spoke in favour of such an idea, while 8 explicitly spoke against it; another 2 mentioned the idea but did not explicitly speak for or against it. On the other hand, although only 17 respondents spoke in favour of the establishment of a property review team and the proactive inspection of dwelling units, no respondents spoke against such ideas. Based on a ranking by difference between those who spoke in favour and against an idea for a strategy, Table E1 provides the top five options.

The ideas to establish a property review team and building audit program and to provide training for rental providers were the only two options that received endorsement from both landlord and tenant respondents.

Based on the consultation with the public, there appeared to be a preference for a regulatory programme that improves and concentrates the current efforts of the City through a building audit and unit inspection programme. There also was considerable interest in establishing some sort of escrow programme. Such a programme, if feasible, could work as part of an escalated enforcement regime similar to the one used in Los Angeles. Finally, there was also some support for differentiating between profit and not-for-profit providers with respect to how the regulatory programme is applied.

Table E1: Comparative Preference of Top Five Approaches.

	For	Against	Difference
Establishment of a property review team and building audit program	17	0	17
Proactive inspection of dwelling units	17	0	17
Establishment of an escrow account	15	1	14
Establishment of a communication program for tenants	10	0	10
Provision of training for rental providers	9	0	9

In their submissions, Non-profit housing providers, including TCHC, pointed out a number of concerns. They indicated that a municipal regulatory scheme may create unnecessary overlap with the current regulatory regime under the Social Housing Reform Act. They point to the fact that the City can, under the SHRA, take a number of steps if a housing provider is in breach of its obligations, including reducing or discontinuing subsidy payments, performing the duties or exercising the powers of the provider, appoint a receiver or receiver and manager for a housing project operated by a provider, and remove and appoint directors of the provider. They also point to the limitations of current budgets, set under a legislated funding formula. They also cite the legislative constraint to raising additional funds through either raising rents or borrowing funds. They also expressed concerns that City Orders could undermine established capital spending plans

based on building condition assessments as well as local decision-making by Tenant Councils that set capital-spending priorities for their community housing units.

Table E2: Are You in Favour of a New Regulatory Strategy for MRABs?

<i>N = 104</i>	<i>In favour of new regulations?</i>		
	Yes	No	Unsure
<b>Landlords:</b> Co-ops	-	13	3
Non-profit	2	14	1
Profit	-	1	-
	<b>2</b>	<b>28</b>	<b>4</b>
<b>Tenants:</b>	<b>3</b>	<b>7</b>	<b>1</b>
<b>Others:</b>	<b>40</b>	<b>4</b>	<b>5</b>
<b>Consultants:</b>	<b>8</b>	<b>2</b>	<b>-</b>
	<b>53</b>	<b>41</b>	<b>10</b>
	( 51 % )	( 39.4 % )	( 9.6 % )

Table E3: Should Not-for-profit and Social Housing be Treated Differently?

<i>N = 104</i>	<i>Should non-profits be treated differently?</i>		
	Yes	No	No input
<b>Landlords:</b> Co-ops	9	-	7
Non-profit	13	-	4
Profit	-	-	1
	<b>22</b>	<b>-</b>	<b>12</b>
<b>Tenants:</b>	<b>1</b>	<b>-</b>	<b>10</b>
<b>Others:</b>	<b>4</b>	<b>1</b>	<b>44</b>
<b>Consultants:</b>	<b>2</b>	<b>3</b>	<b>5</b>
	<b>29</b>	<b>4</b>	<b>71</b>
	( 27.9 % )	( 3.8 % )	( 68.3 % )

## Appendix F Divisions Impact Statements

### Municipal Licensing and Standards

Municipal Licensing and Standards is the lead Division for development, implementation and operationalizing of any MRAB regulatory strategy. The extent to which a regulatory strategy will have an impact on divisional resource requirements will depend largely on the scope, complexity and intensity of the strategy adopted.

Currently, Municipal Licensing and Standards does not have a systematic apartment building audit programme. As of October 16, 2008, 14 building audits had been conducted. Over the same period the Division responded to 8,077 complaints, resulting in 2,675 property standards Orders, across all property types.

In the case of the proposed building audit programme, the scope of the audit and the time-frame to complete an audit of the stock are the main resource drivers. Beyond the proposed 12 redeployed Officers, additional staff will be hired to fill existing vacancies and assume some of the workload of the redeployed staff. New staff will require training on the Division's current computer system, operational practices, health and safety procedures, and general enforcement and administrative processes. Without increased staffing levels, however, the service delivery in other programme areas could be materially compromised. Although difficult to ascertain, an increase in volume of Orders could also have an impact on both the work of the Rooming House Licensing Commissioner and the Property Standards Committee.

Any licensing strategy would have a considerable impact on the resources of the Division's Licensing Issuance Office, located at 850 Coxwell Avenue, although some of the impact could be mitigated through the implementation of an e-filing system. In addition, a licensing regime would more than likely have to be supported by systematic inspections, which in turn would again draw heavily on the Division's inspection services. Some of the onus could be put on rental providers by requiring professional reports on structural, mechanical and life systems, as part of a certification programme, thus reducing some of the demands on divisional resources.

The administration of an escrow account system would largely be carried out by the City's administrative support divisions. Depending on the model adopted, the impact on these services could be considerable. An escrow account system, however, would more than likely form part of a more comprehensive strategy and would therefore still draw resources from Municipal Licensing and Standard to track and enforce on rental providers and their properties.

Any communications to tenants and rental providers would be co-ordinated by the Cluster Communications Unit and supported by Municipal Licensing and Standards (and perhaps other Divisions). Any landlord training undertaken with respect to an MRAB

regulatory strategy would likely be co-ordinated, and at least to some extent delivered, by Municipal Licensing and Standards. This would therefore have an impact on divisional investigative, licensing, training, and administrative resources.

Depending on the option or options chosen, there could be additional administrative, financial and technology support requirements in the Policy, Planning, Finance & Administration division that supports Municipal Licensing and Standards. The exact requirements and cost, however, will be determined when the strategy selected by the Committee is developed.

There is a strong need to determine the baseline success of the audit and enforcement programme, with its redeployment of staff, before a much more resource-intensive option is implemented. A baseline measure will allow staff to better assess the effectiveness of other options.

#### Affordable Housing Office (AHO)

From the perspective of the Affordable Housing Office, a building audit programme could be used to conduct a life cycle analysis of structures and their systems and provide a systematic basis upon which to base a rehabilitation plan for existing stock.

Since 2001, Council has approved 81 affordable housing projects representing 5,148 units. Thirty-six projects comprising 1,435 units are currently occupied. Part of the review, recommendation and approval process is based on commonly-understood assumptions about incomes and expenses for these projects. Unlike the projects approved and administered under the Social Housing Reform Act, these recently-approved projects do not benefit from ongoing operating subsidies. They must recover their operating cost increases through rental increases that are tightly controlled by long-term operating agreements. An MRAB regulatory programme could significantly change the expense profile of current projects and put them in financial difficulty. As rents are largely fixed, there is limited opportunity to increase rents sufficiently to cover costs. The precise impact, however, can only be evaluated on a project-by-project basis once a strategy has been fully developed and the details are understood.

The Affordable Housing Office could be involved in the development and delivery of information to both rental providers and tenants, and specific training to rental providers. It should be noted that for many years the Ontario Non-Profit Housing Association (ONPHA) and the Co-op Housing Federation of Toronto (CHFT) have been educating their members on housing development, property management, and tenant relations. Similarly, the private sector has developed certification programs for residential property managers supported by ongoing training, education and continuing improvement of professional standards.

In addition, in the case of landlord training, a mechanism would have to be established by which landlords reluctant to take the training would be compelled to do so. These rental

providers, often small independent landlords, would, in many cases, be the ones that could benefit the most from such a programme.

Although the impact of an MRAB regulatory strategy on the AHO budget would be minimal, the cumulative impacts on the operating budgets of previously-approved AHO (Let's Build) projects would be dramatic. These projects cannot absorb operating cost increases and still meet the affordability requirements of program operating agreements.

### Toronto Building

Toronto Building did not identify any impacts on its operations as a result of the implementation of an MRAB regulatory strategy.

### City Planning

An MRAB regulatory strategy could have a positive, complementary impact on City Planning's objectives in preserving rental housing. A balanced approach using a variety of incentives and disincentives, which target problem buildings, may help to extend the lifespan of rental buildings and could, to a small extent, reduce the propensity to apply to demolish rental buildings.

The majority of City Planning's focus in terms of rental housing preservation is on protecting affordable and mid-range housing. The demolition or conversion of buildings made up of units with high-end rents has, under certain circumstances, been permitted under the Official Plan policies. It is conceivable that a licensing strategy with significant fees could place upward pressure on rents. In some limited instances, when a building's rents are already at the upper end of the mid-range, this additional fee could potentially shift the building into a high-end rent category, thereby lifting the protection of the rental preservation policies.

### Toronto Fire Services (TFS)

An MRAB regulatory strategy that includes fire inspections could have a significant impact on TFS resources. Currently, much of the demand on inspection time is complaint driven in addition to a number of special initiatives, including work in the entertainment district, and with marijuana grow operations. Routine inspections, as part of a licensing system, or an increase in the number of inspections as a result of referrals by Municipal Licensing and Standards would require additional staffing and would therefore have to be offset with the corresponding revenue stream in the form of a licensing or user fee. Unless the resources are put in place, an increase in volume could have an impact on the current processing times for charges.

Finally, TFS currently offers a one-day training programme for building supervisors, which covers record keeping, maintenance requirements for life safety equipment, fire safety planning and emergency procedures for staff and tenants, and an overview of the Ontario Fire Code and City bylaws. TFS also has a public education outreach programme



and materials aimed at tenants. These courses and materials could be made available, in whole or in part, as a requirement under a proposed regulatory strategy. Again, depending on volume, there could be an impact on TFS resources.

#### Toronto Public Health (TPH)

Citing growing concerns about the impact of climate change on vulnerable adults and children, Toronto Public Health, under the direction of the Board of Health, has requested that a Maximum Heat Standard be included in any Multi-Residential Apartment Buildings regulatory strategy. Municipal Licensing and Standards and Toronto Public Health do believe that this is the most appropriate way to enforce this requirement.

While it is likely that a maximum heat standard requirement could only initially apply to newer multi residential buildings, Toronto Public Health is requesting that this standard be eventually enforced on a wider category of multi residential settings including boarding homes, lodging homes and rooming houses. It is in these facilities where one is most likely to find the more vulnerable sector of the Toronto population.

It is important to note that most social housing does not have air conditioning and that compliance with a maximum heat standard could therefore result in a substantial budget pressure for the City. It is also important to recognise that meeting maximum heat requirements is likely to have an impact on the City's own climate and sustainable energy targets.

Toronto Public Health will need to maintain educational outreach to vulnerable tenants and landlords from May 15 to September 30 regarding development and implementation of a Hot Weather Protection Plan until the Multi-Residential Apartment Buildings strategy is fully implemented. Municipal Licensing and Standards staff should deal with all regulatory matters while Toronto Public Health staff should provide to tenants and landlords the outreach, education, and public health supports relating to how to "beat the heat" and avoid heat-related illnesses.

#### Shelter, Support & Housing Administration (SSHA)

Under the SHRA, the City of Toronto assumed responsibility for the funding and administration of social housing programs and projects previously funded and administered by the Ministry of Municipal Affairs and Housing and/or the Canada Mortgage and Housing Corporation. The City's 2008 social housing operating budget is \$531.1 million gross, \$191.0 million net, and is largely comprised of direct subsidies to TCHC and other housing agencies to make rents affordable.

The Toronto Community Housing Corporation has 1,054 properties (of more than six dwelling units) and the non-profit and co-operative housing providers have over 180 apartment buildings, in combination representing about 95% of the total social housing stock funded and administered by the City of Toronto. Under the terms of the SHRA and operating agreements, City administered social housing providers must maintain their

projects in a satisfactory state of repair. SS&HA has developed a formal process to assess and enforce compliance with building maintenance standards. Including social housing providers in the MRAB strategy may mean that two City departments are undertaking the same work in different ways.

Many social housing providers may not have sufficient operating or capital reserve funding to pay for higher repair and maintenance costs resulting from the implementation of an MRAB strategy. The operating budgets of social housing providers are limited. The City has little flexibility in how it funds housing providers because it is required to adhere to a funding formula detailed in the SHRA and which further prohibits housing providers from surcharging rent-g geared-to-income (RGI) tenants for items such as license fees. Thus, if the City were to issue work orders, it is likely that the housing provider would not have the funds to carry out the required work, leaving the City itself to provide the money. Rental providers' capital reserves are also very limited. An aging stock, borrowing restrictions to finance capital improvements, and the inability to surcharge RGI tenants (which make up 78% of all social housing residents) to finance such borrowing, severely restrict the social housing providers' ability to keep up with repairs. The exact financial impact of a fee or tax cannot be determined until a specific program and cost structure is established.

In market rental housing, landlords may pass the costs resulting from a licensing system to tenants. Households who receive social assistance are particularly vulnerable to such increases, as 80% rent their homes in the private housing market. A 2003 City of Toronto study on Ontario Works (OW) recipients found that 72% of OW households spent a disproportionate amount of their benefits on rent, often paying well in excess of the maximum shelter component of the OW benefit. Tenants who cannot pay their rent are at risk of eviction. In Toronto, 86% of eviction applications filed by landlords are due to non-payment of rent. Family shelters report that, after domestic abuse, eviction is the major reason for families requesting emergency shelter. More above-guideline rent increase applications by landlords could very well result in an increase in the number of grant requests from the Tenant Defence Fund to dispute the application. This, in turn, would have an impact on the limited budget of the programme as well as on the administrative workload. SSHA is currently reviewing the Tenant Defence Fund with a view to expand its mandate to assist tenant groups in dealing with other rental issues, including poor maintenance and repairs.

SSHA has some considerable reservations with respect to escrow accounts, especially in light of the new RTA which includes provisions for tenants to request paying rent to the Landlord and Tenant Board in cases of serious maintenance problems, as well as provisions for tenants to apply for an order to prohibit rent increases in situations where there are serious outstanding work orders or maintenance issues. Without due consideration for the legislation currently in place there is concern that tenants that do not pay rent to the landlord, but pay it to the City under an escrow account scheme, may be at risk of being evicted for non-payment of rent, under application to the Board. Even if feasible, the establishment of an escrow system would require a significant amount of

staff and administration resources. The resulting costs could lead to higher rents and eroding affordability for tenants.

### Social Services

With rental costs in Toronto already in excess of Ontario Works (OW) shelter rates, residents in receipt of this assistance (as well as other low income earners) who are already finding it difficult to locate affordable housing and sustain tenancy, would find themselves in even greater hardship should landlords pass the cost of required repairs to them. Many households on OW are using a portion of their basic allowance to cover current rental costs and even a moderate increase in rent could lead to increased evictions and, eventually, higher levels of homelessness. Single individuals and large families would be particularly vulnerable.

Higher operating costs could also make it increasingly unattractive for providers, including those of rooming houses and those in social housing, to operate in this sector, resulting in a reduction of stock and an increased use of shelters and/or people sleeping rough (i.e., sleeping outside).

Overall, it is important to consider the distributional effects of any proposed strategy. For example, will the benefits of better maintenance offset the increased difficulty for low-income residents to obtain and sustain housing? What impact will an increased pressure for low-income residents to allocate a greater portion of their income to housing as opposed to other basic needs have? These are questions that need further thought and study.

### Solid Waste Management Services (SWM)

At its June 20, 2007 meeting, Council approved a new plan to achieve a goal of 70% waste diversion by 2010. This plan includes a new funding system, the volume-based rate structure, to pay for the required additional programs and services. As of July 1, 2008, building owners have been required to pay a fee for garbage collection based on how much garbage is set out by building residents. Given that the City has moved to a volume-based rate structure for waste, which provides incentives for buildings to meet waste management and recycling criteria, an MRAB regulatory strategy is not likely to have a significant impact on SWM.

The integration of a training programme for rental providers and information for tenants into the MRAB initiative could prove beneficial. SWM already has some materials for landlords and is in the process of developing a tool kit for residents.

### Economic Development, Culture and Tourism (EDCT)

An MRAB regulatory strategy would have no direct impact on EDCT, but there could be indirect implications. Although higher quality rental accommodation would certainly be a positive step for the City as a whole, higher capital and operating costs could either be passed on to tenants, making rents less affordable, or absorbed by landlords, reducing the

value of rental properties and in turn the attractiveness of investment in such properties. A lack of investment could, in the long-run, result in a reduction in supply, pushing rents higher, and exerting upward pressure on wages. The impact of these factors on the City's image as a place to invest, although difficult to quantify, are an important factor to consider.

#### Toronto Police Service

Depending on the regulatory strategy implemented, there could be an increase in calls for service due to disputes and complaints associated with the new regulations. Proactive communication and training of both rental providers and tenants could mitigate this impact.

#### Legal Services

An increase in the number of licensing appeals before the Licensing Tribunal (or any special tribunal) arising as a result of the establishment of an MRAB regulatory strategy or an increase in the number of appealed decisions of the Property Standards Committee or of charges before the Court could create the need to hire additional litigators and support staff. Exact requirements would have to be determined once a specific strategy is developed.

Municipal Licensing and Standards, as part of its analysis on whether a regulatory strategy should be expanded in scope, would also consider establishing a dedicated legal section to effectively handle appeals and prosecute charges.

If an MRAB regulatory strategy requiring staffing levels beyond current resources were to be adopted, any resulting fees would be based on a full cost recovery model for the programme's administration and enforcement. The fees would account for the direct and indirect costs incurred by Municipal Licensing and Standards as well as any other divisions that would be impacted by the implementation of the strategy.