



STAFF REPORT ACTION REQUIRED

Proposed Framework for Multi-Residential Rental Property Licence

Date:	May 3, 2016
To:	Tenant Issues Committee Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2016\Cluster B\MLS\LS16005

SUMMARY

This report outlines a proposed framework for licensing multi-residential rental properties as a regulatory tool for contributing to safe and adequate rental housing in Toronto. The framework was drafted in response to direction from Licensing and Standards Committee. The report summarizes the results of a jurisdictional scan, as well as preliminary stakeholder consultations with tenant organizations, landlord groups, Toronto Community Housing and staff from relevant City divisions.

The licensing framework proposed in this report will be the subject of further public consultations to assess its impact on tenants, landlords and other stakeholders. The framework incorporates existing enforcement activities related to multi-residential properties such as building audits as well as in-suite inspections. It also creates additional requirements to improve the sustainability of minimum property standards in rental properties such as annual inspections and maintenance plans. The estimated costs of administering and enforcing the proposed licence are outlined in this report, including an estimated licensing fee of \$12 to \$15 per unit based on cost recovery. However, further analysis is required.

This report also responds to other opportunities and challenges raised during the stakeholder consultations and Committee meetings related to the licensing framework and strengthening the City's response to non-compliant landlords.

Legal Services and Shelter, Support and Housing Administration were consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council direct the Executive Director, Municipal Licensing and Standards to conduct public consultation on the proposed framework for a multi-residential rental property licence and report back on the consultation findings, a draft by-law, and associated fee in the fall of 2016.

Financial Impact

There are no immediate financial implications resulting from the recommendations in this report.

Revenues generated from the multi-residential rental property licence will be used to offset the administration and enforcement of the licensing program. The current initial cost estimate for the program is \$3.5 million annually offset by licensing fees in the range of \$12 to \$15 per unit. A further detailed analysis is pending Council direction.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of April 14, 2016, Licensing and Standards Committee referred the letter from Tenant Issues Committee to the Executive Director, Municipal Licensing and Standards, which requested the following items:

- An appropriate name for the proposed licensing regime of multi-residential rental properties to use in future staff reports and City communications.
- Report back on the regulatory changes required under the provincial *Residential Tenancies Act* to prohibit landlords with outstanding work orders from applying for a guideline or above-guideline rent increase, leasing vacant units and "other options".
- Report back on how the following might strengthen the Multi-Residential Apartment Building (MRAB) Audit and Enforcement Program: a. the use of rent escrow accounts to deal with non-compliant landlords, and b. the use of community organizations to help with Municipal Licensing and Standards' tenant education, communication and outreach.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS10.2>

At its meeting of July 7, 8, and 9, 2015, City Council received the staff report for information and supported a cost recovery model for the MRAB program, which was to include an increased budget for stakeholder engagement, outreach and education.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS5.4>

At its meeting of June 26, 2014, Licensing and Standards Committee requested the Executive Director, Municipal Licensing and Standards review the feasibility, merits and experience of other jurisdictions, in licensing landlords in Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.LS29.4>

ISSUE BACKGROUND

At its October 1999 meeting, City Council adopted a report from the Planning and Transportation Committee recommending that multi-residential apartment buildings in Toronto be licensed. The regime was to include a pro-active inspection program for all common areas of the buildings. Such a licensing system, however, was not permitted under provincial legislation at the time.

Enabling legislation, in the form of the *City of Toronto Act, 2006*, (COTA) came into force on January 1, 2007, allowing the City to license multi-residential buildings. City Council directed staff to report back on a regulatory strategy that would ensure multi-residential rental buildings are maintained according to applicable regulations. At the time, staff concluded that the best regulatory option was an audit and enforcement program that proved successful in New York and Los Angeles because it utilized existing enforcement tools and could be implemented immediately.

On December 1, 2008, Municipal Licensing and Standards launched the MRAB audit and enforcement program to uphold minimum property and maintenance standards through pro-active audits. An audit includes a comprehensive inspection of all common areas of a building such as the garage, mechanical rooms, lobby, hallways, laundry room(s) and exterior areas. MRAB audits and complaint-driven in-suite inspections are the main compliance tools through which the City currently promotes safe, secure and decent rental housing in Toronto.

On June 26, 2014, Licensing and Standards Committee requested that ML&S review the feasibility of licensing landlords in order to strengthen the capacity of the City to increase compliance with City by-laws. The term "multi-residential rental property licence" is used in this report because it better reflects practices in other municipalities and the licensing authority granted to the City of Toronto.

COMMENTS

With approximately fifty percent of Toronto residents living in rental housing, an aging apartment building stock, and ongoing issues with non-compliant landlords, licensing of the rental housing sector presents new opportunities to ensure renters have a safe, secure and decent place to live.

Current enforcement activities such as complaint-driven in suite inspections and the MRAB audits are effective for responding to existing deficiencies in apartment buildings. However, these measures are reactive and do not necessarily promote building maintenance strategies that will sustain minimum property standards over time. Tenant organizations have also highlighted the need for better communication between tenants and landlords regarding service disruptions or how to submit service requests.

Licensing enables the City to apply additional requirements from landlords to promote tenant engagement and quality rental housing including the development of maintenance plans and the use of tenant notification systems. The City can also use the licensing system to collect valuable information about the current rental stock such as the age of

the building and the number of occupied units. These additional regulatory tools will help not only support the quality of rental apartment buildings in Toronto and its impact on surrounding communities, but also protect tenants as consumers.

Jurisdictional scan

Staff reviewed residential rental property licensing and registration approaches in Canada, United States and United Kingdom. A scan of practices in these different jurisdictions is contained in Attachment 1 of this report. Under these regimes, a fee is charged to the rental-housing provider and there are often licensing requirements such as periodic inspections and information about the property. Although staff learned from promising practices in other jurisdictions, not all are applicable to Toronto due to different legal regimes and local conditions. Furthermore, Toronto is in a unique position as it already engages in proactive audits of apartment buildings through its MRAB program.

Stakeholder engagement

From August 2015 to February 2016, ML&S staff met internal and external stakeholders to explain City Council's directives and gather feedback on the challenges and opportunities of introducing a licence for multi-residential rental properties in Toronto.

Rental Housing Providers

ML&S met with members of the Federation of Rental-housing Providers of Ontario (FRPO), the Greater Toronto Apartment Association (GTAA) and the Landlord's Self-Help Centre. Representatives from the FRPO and GTAA asserted that any licence fee would be passed on to tenants through applications to the provincial Landlord and Tenant Board for an above guideline rent increase.

Staff also heard that apartment owners believe they are already unfairly taxed compared to home and condominium owners, and should not be charged an additional fee. These representatives also stated that additional fees would deflate the industry and that incentives are needed to encourage the building of new rental housing because the current stock is aging, contributing to a poor state of repair and high maintenance costs. These groups were supportive of City efforts to target non-compliant landlords through enforcement programs such as MRAB.

Tenant Advocates

ML&S met with members of the Federation of Metro Tenants Association, the Association of Community Organizations for Reform Now (ACORN), the Advocacy Centre for Tenants Ontario, Scarborough Community Legal Services, Willowdale Community Legal Services, and Kensington-Bellwoods Community Legal Services.

Representatives of these organizations highlighted that the City's main objective should be to improve the living conditions of tenants and protect the tenant as a consumer. Staff heard that they should consider what approach is the best means to these ends, which may or may not be a licensing regime.

Representatives stated that tenants will accept in principal a nominal increase in rent (if passed on by a landlord if charged a fee) so long as it contributes to improving the quality of their rental housing. Representatives also asserted that they would also accept a rent increase if it means significant improvements to property standards enforcement, particularly an increase in the number of Municipal Standards Officers (MSOs).

Staff heard that stronger penalties, particularly monetary ones, are needed to improve compliance with City by-laws. Staff heard that licensing should impose additional requirements on rental property providers beyond what is required of them in the property standards by-law, including education, training and annual building inspections.

These groups were not supportive of the industry regulating itself, for example through voluntary certification. Concerns were also raised regarding the possibility of revoking or suspending a licence, particularly if it has the potential to de-house tenants.

Framework for multi-residential rental property licence

The proposed framework outlines the scope and requirements of a multi-residential rental property licence. It is based on preliminary feedback from internal and external stakeholders, promising practices in other jurisdictions, standards for industry certification in Ontario (i.e. FRPO’s Certified Rental Buildings Program) and the experience gained through the MRAB program. The proposed licence requirements are not intended to be operationally or administratively cumbersome for property owners and property management companies, but rather it codifies existing best practices in the industry. The framework is not final and ML&S will be consulting the public and stakeholders on the proposed licence requirements and program associated fee.

Scope

The proposed licensing framework focuses on multi-residential rental properties of 10 units or more, and 3 storeys or higher. This scope reflects the mid-rise and high-rise apartment buildings included in the current MRAB program.

Property Information and Operational Plans

As licence requirements, the framework proposes that multi-residential rental properties submit to ML&S the plans and information outlined in **Table 1**. These requirements allow the City to collect valuable information about Toronto's multi-residential rental stock and promote operational practices that support tenant engagement and quality rental housing. The documents will be collected at the time of licence application and reviewed to ensure they align with industry best practices.

Table 1: Requirements of the multi-residential rental property licence

Requirement	Description
Notification plan	Includes requirements to notify tenants of service disruptions, outstanding City orders, etc. as well as a centrally located posting board for all notifications.

Service request process	Provide tenants with information on how to submit service requests and have a process in place for receiving and tracking tenant requests.
Waste management plan	Indicate whether the City or a private contractor collects waste, and if the City collects the waste, a waste diversion plan is required.
Maintenance plan	Includes both interior and exterior maintenance as well as pest management plan, snow removal/de-icing plans, and maintenance of mechanical systems (i.e. heating, elevators).
Cleaning Plan	Includes regular cleaning of all common areas (both interior and exterior).
State of good repair capital plan	Property owner would be required to develop and file with ML&S a State of Good Repair Capital Plan.
Property owner information	Contact information of the owner of the residential rental property and their representative must be provided to the City.
Description of property	Includes address, year built, type of construction, number of floors, number of units, and estimated number of occupied units.
Description of common elements	Includes information on heating systems, cooling systems, elevators, fire alarms, sprinklers, windows, security systems, amenities (i.e. pool, gym, storage), parking structures, laundry facilities, and other mechanical systems not listed.
Certificate of insurance	Rental property providers will be required to provide proof of insurance to the City.

Annual inspections and risk-based audits

The proposed framework requires annual basic inspections of the licensed buildings to determine if the state of the property necessitates a more comprehensive audit. If high-risk health and safety conditions are identified during the preliminary inspections, ML&S will follow up with an audit and enforcement, akin to what is done through the current MRAB program. Pro-active inspections promote the continued maintenance of rental properties and help identify deficiencies that may not otherwise be reported by tenants due to lack of knowledge or fear of reprisal.

Compliance regulatory agencies

The framework also proposes that licenced multi-residential rental properties comply with any outstanding orders from other regulatory bodies such as Toronto Fire Services (TFS), Electrical Safety Authority (ESA) and the Technical Standards and Safety Authority (TSSA). This requirement would address potential risks to life and safety related to fire hazards, electrical hazards, functioning heating systems, and functioning elevators. ML&S already engages these agencies in the MRAB audit process and is working to include Enbridge due to their regulatory responsibility for fuel fired heating systems and safety.

Program Costs and Licensing Fee

The proposed licensing framework for multi-residential rental properties includes a licensing fee to recover the costs of licence administration and related compliance activities such as in-suite inspections, audits and enforcement actions. Fees are based on cost recovery and subject to the City of Toronto User Fee Policy.

Currently, the cost of property standards enforcement in multi-residential rental properties is funded through the tax base. This includes 6 MSOs that respond to in-suite service requests as well as the 16 MSOs that conduct building audits and re-inspections as part of the MRAB program. The MRAB program also includes a supervisor and one dedicated support assistant.

The estimated cost for the proposed licence program includes the above staff complement as well as three new staff (Manager, Support Assistant and Supervisor) to provide adequate oversight and support. It also incorporates associated costs such as the development of I&T systems and dedicated resources for stakeholder engagement, outreach and education as per direction from Licensing and Standards Committee. As a result, the estimated cost for the proposed licensing program is approximately \$3,500,000.

Staff propose that City-owned assets (e.g. Toronto Community Housing Corporation properties), which make up approximately 11% of all apartment buildings and 16% of all rental units captured by the proposed licence, continue to be tax funded and their licence fee waived. Staff are in consultation with other stakeholders such as Shelter, Support and Housing Administration to determine if fees should be waived for other City-supported housing models.

With the exclusion of TCHC multi-residential rental properties, an estimated licensing fee of \$12 to \$15 per unit would recover the costs of the licensing program proposed in this report.

Additional Considerations

Passing on costs to tenants

A key consideration in determining the extent of cost recovery through a licensing fee is the potential impact on rental rates and the availability of affordable housing in the City of Toronto. The *Residential Tenancies Act, 2006 (RTA)* allows for annual guideline rent increases in existing tenancies. Under the *RTA*, landlords may apply for above guideline increases in certain circumstances. Section 126 of the *RTA* allows a landlord to apply for an above guideline increase in certain circumstances.

The Landlord and Tenant Board is the ultimate decision maker on whether an above guideline rent increase is permitted and the City does not have a role in how landlords address any additional costs incurred by landlords, including costs of the proposed licensing regime.

Beyond a licensing fee, there may be other costs associated with improving living conditions for tenants. ML&S staff are engaging the Electrical Safety Authority (ESA) and Technical Standards & Safety Authority (TSSA) to explore ways to reduce the cost that may be passed down to tenants.

Revoking or suspending a licence and de-housing tenants

The objective of the City is to bring a non-compliant rental property into compliance, not to close the property or de-house tenants. In situations where there are life and safety concerns, these issues may be corrected through remedial action undertaken by the City.

Renter awareness and website enhancements

ML&S has been directed to explore the possibility of a program similar to Toronto Public Health's 'Dine Safe' that would inform current and prospective tenants if a specific rental address has outstanding City work orders. Staff are considering various avenues to achieve this objective, including significant enhancement of the ML&S apartment standards website to improve its functionality and accessibility to the public. Currently, the website provides details on City orders issued against all apartment buildings for non-compliance with municipal by-laws.

Rent Escrow Account

At its meeting of February 24, 2016, Tenant Issues Committee requested ML&S to report on the use of rent escrow accounts to deal with non-compliant landlords. Rent escrow is a process often used in various jurisdictions of the United States, which allows for a tenant to pay their rent to a neutral third party or into an account set up by the court or local housing department, rather than to the landlord directly. This redirection of rent occurs during the period of time the repairs in question are outstanding. It does not permit the tenant to stop paying their rent.

The *RTA* does not contain a similar process, although tenants may seek a variety of orders from the Landlord and Tenant Board. If the intent is to assist the City in recovering the costs of any remedial actions for non-compliance with a by-law, it is important to note that the City may recover these costs by adding them to the tax rolls.

Changes to *Residential Tenancies Act*

Licensing and Standards Committee requested staff to consider the regulatory changes required under the *RTA* to prohibit landlords with outstanding work orders, or those not in compliance with a potential licensing by-law, from 1) applying for an above the guideline rent increase, 2) applying for a guideline rent increase or 3) leasing vacant units.

The *RTA*, in its current form, does not automatically prohibit a landlord from pursuing these objectives simply based on non-compliance with City work orders. It does however empower the Landlord and Tenant Board to prohibit an increase in rent if the landlord fails to provide a rental unit “in a good state of repair and fit for habitation and for complying with health, safety, housing, and maintenance standards.” If the City would like to advance the above regulatory changes, City Council should request the Province

of Ontario to amend the *RTA* to prohibit a landlord from seeking rent increases, leasing vacant units and “other options” when there are outstanding City work orders.

In December 16, 17, and 18, 2013, City Council requested the Government of Ontario to,

- discontinue the exemption pertaining to rent increases for rental housing built or occupied after November 1991,
- institute an automatic rent freeze in rental buildings for non-compliance with work orders,
- collaborate with the City to set up an automated system that would allow the Landlord and Tenants Board direct access to work orders,
- amend the *City of Toronto Act* to enable the City to improve the quality of rental housing in Toronto through measures such as rent freezes and vacancy control.

Next Steps

Should Licensing and Standards Committee endorse the Residential Rental Property Licence, ML&S will undertake the following steps to consult the public and stakeholders on the proposed framework.

- **Stakeholder and Public Consultation - June 2016**
ML&S will consult key stakeholders including tenants, tenant advocates, rental housing providers, Toronto Community Housing and other City divisions on the proposed Multi-Residential Rental Property Licence. Staff will hold meetings with key stakeholders, including four public meetings in each of the City's civic centres. The public and stakeholders will also have the opportunity to provide input through phone and/or email.
- **Report Back - Fall 2016**
ML&S will report back on the results of the consultation and the by-law for the Multi-Residential Rental Property Licence.

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SIGNATURE

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ATTACHMENT

Attachment 1: Jurisdictional Scan