



Kensington-Bellwoods Community Legal Services

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January 16, 2013

TO: Mr. Peter Milczyn, Chair and members
Planning & Growth Management Committee, City of Toronto
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CC: Alan Theobald and Klaus Lehmann
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Dear Committee Members,

RE: Prohibiting visitor parking charges in draft Zoning By-law

I write to you on behalf of the Tenant Advocacy Group ("TAG"), a committee of clinic lawyers, community legal workers, advocates and organizers who represent tenants in the City of Toronto. TAG participates in your Rental Housing Advisory Committee ("RHAC") through a representative. At RHAC's meeting of December 10, 2012 it was announced that your committee had directed City planning staff to remove a proposed prohibition of visitor parking charges from the draft Zoning By-law. **We wish to take this opportunity to state our opposition to that directive, and hope that you will reconsider it.**

Fairness for residents

A simple prohibition of fees and charges for visitor parking by housing providers is fair and clear to all residents. It is especially fair to any of the City's tenants who signed leases with the belief that the free visitor parking spaces offered by their landlords were free and would remain free for those tenants' guests.

When multi-residential complexes charge fees for visitor parking, many visitors will predictably park on nearby streets – thereby increasing road congestion. This frustrates the planning policy objectives of mandated visitor parking in site plans and site-specific by-laws (not to mention the draft harmonized by-law). A prohibition on such fees would help minimize the impact of high-density housing on surrounding neighbourhoods, homeowners, and businesses alike.

Moreover, we believe that the presence of such a clear and simple rule would protect the City's most vulnerable residents, and allow them to seek out efficient, dense forms of multi-residential housing without fear of social isolation from their families and loved ones. When the City has used (and continues to use) its planning instruments to mandate that developers to include visitor parking spaces in multi-residential projects, the City has extracted an efficient benefit for its residents. Keeping visitor parking free is the only way to ensure that residents may share in this benefit regardless of their incomes.

Legal uncertainty

The absence of a prohibition on visitor parking – combined with attempts by some housing providers to convert free visitor parking to metered parking – creates a great deal of legal uncertainty for tenants and housing providers alike.

In some cases, imposing fees for visitor parking is likely to be discriminatory and therefore contrary to the Ontario *Human Rights Code*, particularly where it imposes a disproportionate burden on residents who require frequent visitation by caregivers, support workers, and others. A simple prohibition avoids expensive, case-by-case litigation by all sides.

In other cases, landlords imposing fees for visitor parking previously provided free to tenants is likely to be contrary to the *Residential Tenancies Act, 2006* ("RTA") altogether. In much the same way, unilateral imposition of electricity smart sub-metering by Toronto landlords in 2005 was ultimately found unlawful by both the Landlord and Tenant Board ("LTB"), the Ontario Energy Board and the Divisional Court – but only after several years of time-consuming, expensive litigation.

Some tribunal decisions may treat a landlord's unilateral elimination of free visitor parking as a withdrawal of a service or facility, entitling the tenant to a reduction in rent under section 130 of the RTA. In that case, each tenant would have to file an application to the LTB for a rebate within one year of the withdrawal. This is a long and complicated process in which many tenants are unlikely to engage (much less be aware of), generating an unfair windfall for landlords.

Other tribunal decisions may treat new visitor parking charges as illegal fees for a facility (i.e. visitor parking) that is never actually withdrawn. In that case, each tenant would need to instruct her visitors to park without paying, and challenge

any eventual ticket, fine or towing charge as unlawful. This would be a risky process to impose upon tenants, many of whom are already economically vulnerable.

An opportunity for smart policy

The smart sub-metering fiasco taught us that some landlords can and will plunge thousands of tenants into an abyss of legal uncertainty, in the hope that most tenants will not fight back. For those tenants who do, years of litigation await them. Ultimately, the province correctly ended much of the uncertainty of unilateral smart sub-metering through legislative amendments requiring tenant consent, largely putting an end to the unilateral imposition of new charges by landlords.

The City has an opportunity and, in our view, a responsibility to do much the same thing with regard to visitor parking. The proposal to make the draft Zoning By-law silent on this point would only improve the likelihood of discrimination and lease violations in a manner that targets the most economically vulnerable residents, adds to the type of social isolation characteristic of poverty, and congests neighbourhood streets. This will undoubtedly generate costly litigation and uncertainty for all concerned.

However, by keeping a simple prohibition against use fees for visitor parking in the draft Zoning By-law, the City would maintain principled distinction between the business of operating commercial parking lots, and the business of providing homes to Toronto residents. In doing so, the City would ensure that all residents, regardless of income, share efficiently and equitably in the public benefit extracted through responsible development.

We would be glad to provide further input, at the committee's invitation. Please do not hesitate to contact me if you have any questions. Sincerely,

TENANT ADVOCACY GROUP

Per:



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cc: Tenant Advocates Group