

NO: **R115**

COUNCIL DATE: **May 28, 2012**

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **May 28, 2012**

FROM: **General Manager, Planning and Development**

FILE: **4815-01**

SUBJECT: **Surrey Rental Premises Standards of Maintenance By-law**

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## RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information;
2. Authorize the City Clerk to bring forward for the required readings the Surrey Rental Premises Standards of Maintenance By-law attached as Appendix I to this report; and
3. Request that the Mayor, on behalf of City Council, forward a letter to the appropriate Ministers of the Provincial Government with a request that the Province transfer sufficient funding to the City of Surrey and other local governments to undertake the work associated with standards of maintenance by-laws related to rental accommodations, which work is falling to local governments by virtue of the Provincial government not providing sufficient resources for the Residential Tenancy Branch to undertake such work, despite the fact that the Residential Tenancy Branch's mandate includes undertaking such work.

## INTENT

The purpose of this report is to provide information about and seek Council approval to bring forward a Rental Premises Standards of Maintenance By-law for the City of Surrey, which would assist in ensuring basic levels of maintenance for rental accommodation in Surrey. The report also seeks Council approval to forward a request to the Provincial Government to transfer sufficient funding to the City of Surrey to cover the costs of the work associated with administering the proposed by-law since such work falls under the mandate of the Province, but the Province is not undertaking the work to a satisfactory level, which is impacting those residents in the Province who rely on rental accommodation for their shelter.

## BACKGROUND

The Provincial Government has the mandate for regulating residential rental accommodation in British Columbia. The *Residential Tenancy Act*, SBC 2002, c.78 (the "Act") is the Provincial legislation that applies to tenancy agreements, rental units and other residential property. The Residential Tenancy Branch ("RTB") is the Provincial body with responsibility for administering

the *Act* and the related regulations. As such, the fundamental mandate for ensuring that residential rental housing stock is properly maintained lies with the Province.

In the 1990s the Provincial government amended the *Municipal Act* to allow local governments to enact standards of maintenance ("SOM") by-laws to enforce basic levels of maintenance for rental accommodation. In addition, the Province developed a Model Standards of Maintenance Bylaw to serve as a starting point for municipalities to use in drafting a bylaw suited to local conditions. In 1999, Surrey City Council considered Corporate Report No. R1743 entitled "Standards of Maintenance By-law for Residential Rental Accommodation". The report acknowledged that the adoption of a SOM by-law might have some positive effects with respect to the maintenance of the City's residential rental housing stock; however, it noted that the administration of such a by-law would result in additional costs to the City and that the mandate for such work was with the Province. On account of the fact that aggrieved tenants had some alternatives (i.e., the RTB and health unit) to have their complaints addressed, Council adopted the recommendations of the report and did not pursue the adoption of a SOM by-law at that time.

In April 2012, the Social Planning Advisory Committee ("SPAC") passed two motions related to supporting vulnerable tenants. The SPAC recommended that Council:

- forward a resolution to the UBCM calling on the Provincial Government to amend the *Residential Tenancy Act*, such that the Residential Tenancy Branch enforces decisions related to the upkeep of rental tenancies in the Province and does so within a reasonable timeframe; and
- adopt a standards of maintenance by-law that addresses issues related to the provision of water, heat, light, basic utilities, and elevators in rental premises.

During its Regular meeting on May 7, 2012 Council adopted the SPAC recommendations.

On May 10, 2012, the Lower Mainland Local Government Association unanimously passed the City of Surrey's resolution calling on the Provincial Government to amend the *Residential Tenancy Act*. The resolution will now be forwarded to the UBCM for consideration at the annual Convention in September.

## **DISCUSSION**

Over the past year, the SPAC has been considering the issues of vulnerable tenants living in buildings that are not being adequately maintained by their landlords.

### **Facts on Renters & Rental Housing in Surrey**

Renter households tend to have lower incomes than owner households. According to the 2006 census:

- 25% of Surrey households are renters (lower than the Metro Vancouver average of 35% renter households); and
- the median income of renter households in Surrey is \$37,090, as compared to \$70,074 for owner households.

According to Planning and Development data, Surrey has close to 6,000 private-market purpose-built rental housing apartments and townhouses. The majority of these buildings were constructed between 1960 and 1980.

The fact that many tenant households have low incomes in combination with the fact that Surrey's purpose-built rental housing stock is relatively old and the fact that some landlords are not adequately maintaining and repairing their buildings put vulnerable tenants at-risk of living in unsafe and unhealthy homes.

### **ACORN's Healthy Homes Campaign**

Since 2005, Surrey-based chapters of ACORN Canada have chosen tenant issues as their priority. The organization formally launched a "Healthy Homes" campaign in May 2011.

ACORN members appeared as a delegation before the SPAC at its meeting on January 19, 2012. The group spoke about the lack of repairs to some rental buildings in Surrey, as well as the unreasonable length of time that some landlords take to undertake repairs. The delegation highlighted the ineffectiveness of the RTB process in responding to the need for repairs.

ACORN members recommended that the City advocate to the Provincial Government for changes to the RTB's dispute resolution process. In addition, the group recommended that the City of Surrey adopt an SOM by-law.

### **Residential Tenancy Branch**

On October 6, 2011, members of SPAC met with the Executive Director of the RTB to learn about the RTB's dispute resolution process related to upkeep of rental accommodations and to explore whether there might be an opportunity for the City of Surrey to work with the RTB to develop more effective approaches for addressing tenant concerns.

An overview of the RTB's dispute resolution process is attached as Appendix II. Various aspects of the RTB's process may be challenging for many tenants (especially for those who have low incomes, language barriers, and/or are unfamiliar with the Canadian legal system); however, of particular concern is the fact that the RTB does not enforce its decisions or orders. Participants must resort to the courts for enforcement, which is an onerous burden to a tenant.

The RTB's Executive Director reported that SOM by-laws can assist tenants in the RTB dispute resolution process. The reports that local government inspectors provide under an SOM by-law can be used as evidence in tenant's claims against landlords. Tenants living in municipalities without an SOM by-law must provide their own evidence of disrepair since the RTB does not have any specific standards, nor do they conduct on-site inspections.

### **Standards of Maintenance in Other Metro Vancouver Municipalities**

SOM by-laws are used by local governments to enforce minimum interior building standards for rental premises. The primary focus of SOM by-laws are to:

- assist tenants in having unsafe or unhealthy accommodation due to poor building maintenance be properly addressed by the landlord in a timely manner; and
- protect and maintain the stock of affordable housing.

The City of Vancouver has had a SOM by-law in place since 1981. Since the Province amended the *Municipal Act* in 1994 providing municipalities with the power to enact SOM by-laws, the following Metro Vancouver municipalities have adopted SOM by-laws:

- District of North Vancouver (1997);
- City of North Vancouver (1998);
- New Westminster (2004);
- Delta (2004);
- Richmond (2006); and
- Maple Ridge (2008).

While most SOM by-laws are based on the Provincial model bylaw and address a range of standards (e.g. structural, roofing, exterior and interior walls etc.), the City of Richmond's SOM by-law is specific to water, heat and light. The proposed Surrey SOM by-law is modelled after the Richmond by-law.

### **Proposed Standards of Maintenance By-law**

The proposed Surrey SOM By-law is attached as Appendix I. This by-law addresses the provision of water, heat, light, basic utilities, and elevators. It is intended to provide the City with a tool for responding to tenant complaints related to the basic amenities associated with rental accommodation. The City should continue to advocate to the Provincial Government for amendments to the *Act* to ensure that it adequately undertakes its mandate with respect to the maintenance of rental accommodation. Of note, fire and electrical safety are already covered under other Provincial legislation and are therefore not addressed in the proposed Surrey SOM By-law.

The proposed SOM By-law will apply to all rental premises that have a residential tenancy agreement that falls under the *Residential Tenancy Act*. This includes apartment units in purpose-built rental buildings, condominium apartments rented out by owners, and secondary suites. It will not apply to housing not covered under the Residential Tenancy Act, such as emergency and transitional housing, accommodation where the tenant shares bathroom or kitchen facilities with the accommodation's owner, or tourist accommodation.

Legal Services has reviewed the proposed SOM By-law and has no concerns.

### **Costs Associated with the Proposed By-law**

The costs associated with the administration of an SOM By-law have varied between municipalities that have previously adopted an SOM By-law from a few complaints a year in Richmond to several a week in Vancouver. It is expected that as tenants become aware of the SOM By-law in Surrey, and given the age of rental tenancies in Surrey, that the workload associated with the administration of the Surrey By-law will be toward the higher end of the range. The City of Vancouver has 29 Property Use Inspectors that enforce 11 different by-laws related to private property, including their SOM By-law. Staff will monitor the Surrey workload experience with the proposed by-law for the first few months after its adoption and will report further to Council (possibly as part of the 2013 budget approval process) on any additional resources that are considered necessary to support the work generated by the By-law.

As noted above, the Province is responsible for residential rental housing stock through the RTB. The fact that local governments are feeling obliged to adopt SOM By-laws relates to the fact that tenants are not being cared for at the Provincial level due to under-resourcing of the RTB. In this regard, it is proposed that the City forward a letter to the Province requested that the Province transfer sufficient funding to the City of Surrey and other local governments to undertake the work associated with standards of maintenance by-laws related to rental accommodations which work is falling to local governments by virtue of the Provincial government not providing sufficient resources for the RTB to undertake such work despite the fact that the RTB's mandate includes such work.

## **SUSTAINABILITY CONSIDERATIONS**

The adoption of a SOM By-law will assist in achieving the objectives of the City's Sustainability Charter; more particularly, action item SC9: Adequate, Appropriate and Affordable Housing; however, in the absence of receiving a transfer of funding from the Province in relation to undertaking the work associated with the By-law, it will detract from the City's fiscal sustainability.

## **CONCLUSION**

Based on the above discussion, it is recommended that Council:

- authorize the City Clerk to bring forward for the required readings the Surrey Rental Premises Standards of Maintenance By-law, which is attached as Appendix I to this report; and
- Request that the Mayor on behalf of City Council forward a letter to the appropriate Ministers of the Provincial Government with a request that the Province transfer sufficient funding to the City of Surrey and other local governments to undertake the work associated with standards of maintenance by-laws related to rental accommodations, which work is falling to local governments by virtue of the Provincial government not providing sufficient resources for the Residential Tenancy Branch to undertake such work, despite the fact that the RTB's mandate includes undertaking such work.

*Original signed by*  
Jean Lamontagne  
General Manager,  
Planning and Development

AM:saw

### Attachments:

- Appendix I Proposed Surrey Rental Premises Standards of Maintenance By-law  
Appendix II Residential Tenancy Branch – Dispute Resolution Process

CITY OF SURREY

BY-LAW NO. \_\_\_\_\_

A by-law to regulate rental premises

- (a) WHEREAS conditions contrary to the health, safety or protection of persons may be found to exist in rental properties and such conditions are contrary to the health and well-being of tenants in the City;
- (b) AND WHEREAS the abatement of such conditions will improve the general welfare of the residents of the City.

Under its statutory powers, including Sections 8, 12, 16 and 63 of the *Community Charter*, S.B.C. 2003, c. 26, as amended, the Council of the City of Surrey enacts the following provisions.

**INTENT OF BY-LAW**

- (a) to prescribe standards for the maintenance of rental properties; and
- (b) to improve the general welfare of the community through the regulation of rental properties.

**PART 1  
INTRODUCTORY PROVISIONS**

**Title**

- 1. This By-law may be cited as "Surrey Rental Premises Standards of Maintenance By-law, 2012, No. \_\_\_\_\_".

**Definitions**

- 2. In this By-law,

"Building"

means any structure used, designed or intended for the support, enclosure, shelter or protection of Persons or property;

"City"

means the City of Surrey.

"Council"

means the City Council of Surrey.

"Inspector"

means:

- (a) the Fire Chief, and every Person appointed by Council or the Fire Chief, as applicable, to be an officer or employee of the City's Fire and Rescue Service;
- (b) a Building Inspector;
- (c) a peace officer;
- (d) the Manager, By-laws & Licensing Services and every By-law Enforcement Officer,;
- (e) a safety officer under the *Safety Standards Act*, S.B.C. 2003, c. 39, as amended;
- (f) a health inspector appointed by the Fraser Health Authority;
- (g) the deputy of a Person, officer or employee referred in paragraphs (a) to (f); and
- (h) other Persons designated by Council by name or office or otherwise to act in the place of the Persons, officers or employees referred to in paragraphs (a) to (g).

"Owner"

has the same meaning as owner as defined in the *Community Charter*, S.B.C. 2003, c. 26, as amended.

"Person"

includes a corporation, partnership or party and the personal or other legal representatives of a Person to whom the context can apply according to law.

"Rental Premises"

means:

- (a) a Building, a part of a Building or a related group of buildings, in which one or more Rental Units or common areas are located;
- (b) the parcel or parcels on which the Building, related group of buildings or common areas are located;
- (c) the Rental Unit and common areas; and
- (d) any other structure located on the parcel or parcels.

"Rental Unit"

means living accommodation rented or intended to be rented to a Tenant

"Repair"

includes replacing, making additions or alterations or taking action required for the Rental Premises to conform to the standards prescribed by this By-law

"Tenancy Agreement"

means an agreement, whether written or oral, express or implied, between a landlord and a Tenant respecting possession of a Rental Unit, use of common areas and services and facilities, and includes a licence to occupy a Rental Unit

"Tenant"

includes:

- (a) the estate of a deceased Tenant, and
- (b) when the context requires, a former or prospective Tenant.

**Interpretation**

3. In this By-law, every reference to an enactment is a reference to the enactment and also to any regulation made under the enactment, all as may be amended, re-enacted or replaced from time to time.

**Severability**

4. In the event that any portion of this By-law is declared *ultra vires* by a Court of competent jurisdiction, then such a portion shall be deemed to be severed from the By-law to the extent and the remainder of the By-law shall continue in force and effect.

**PART 2  
OWNERS DUTIES AND OBLIGATIONS**

5. An Owner of Rental Premises must not use, permit the use of, lease, rent or offer for lease or rent any Rental Unit that does not at all times conform to the standards prescribed by this By-law.
6. An Owner of Rental Premises shall maintain the Rental Premises in accordance with the requirements and standards prescribed in this By-law.



7. Without limiting Sections 5 and 6, the Owner of every Rental Premises shall be responsible to ensure that all standards and requirements of this By-law are maintained, provided and carried out in a timely manner, and that the requirements of Part 5 of this By-law are complied with.

### **PART 3 PROVISION OF SERVICES AND UTILITIES**

#### **Water**

8. Every hand basin, bathtub, shower and sink in a Rental Premises shall, at all times when occupied by a Tenant, be provided with a continuous and adequate supply of hot and cold running water, and every toilet and toilet sink shall have an adequate supply of running water.
9. Hot water shall be supplied to a Rental Premises at a minimum temperature of 45°C and a maximum of 60°C.

#### **Heat**

10. Furnaces and other heating equipment installed within a Rental Premises must be capable of continuously maintaining each room in every Rental Premises at a minimum temperature of 22°C, measured at a point 1.5 metres from the floor and in the centre of the room.
11. At the request of any Tenant of a Rental Premises, the Owner of the Rental Premises must, without unreasonable delay, provide sufficient heat to the Tenant's Rental Premises to meet the minimum temperature standard prescribed in Section 10.

#### **Light**

12. Adequate levels of artificial lighting shall be maintained in good working order at all times in all Rental Premises.

#### **Mandatory Provision of Services and Utilities**

13. No Owner, nor anyone acting on the Owner's behalf, shall discontinue, disconnect, shut off or remove, or cause to be discontinued, disconnected, shut off or removed, any service or utility providing light, heat, air conditioning, refrigeration, water or cooking facilities for any Rental Premises occupied by a Tenant, except for such reasonable period of time as may be required for the purpose of Repairing, replacing or altering the service or utility.
14. Despite Section 13, if a Tenant fails to pay service or utility rates or fees as required by the Tenancy Agreement and, as a result of the non-payment, the service or utility is discontinued, disconnected, shut-off or removed, the Tenant shall be deemed to have caused the discontinuance, disconnection, shutting off or removal of the service or utility.

## **Elevators**

15. Every elevator in a Rental Premises shall be maintained in a safe, clean condition, certified under the *Safety Standards Act* and the *Elevating Devices Safety Regulation*, B.C. Reg, 101/2004, as amended.

## **PART 4 APPLICATION**

16. This By-law applies to all Rental Premises and Rental Units in the City that are subject to Tenancy Agreements.

## **PART 5 ADMINISTRATION AND ENFORCEMENT**

### **Inspector's Right of Entry**

17. An Inspector is authorized to enter, at all reasonable times on any property and in a reasonable manner to ascertain whether the requirements of this By-law are met.

### **Notice to Comply to By-law Standards**

18. An Inspector may direct an Owner whose Rental Premises fails to meet the requirements of this By-law to remedy the non-compliance within the time stated by the Inspector in a written notice to comply delivered to the Owner.

### **Penalties**

19. Every Person who contravenes any provision of this By-law or who suffers or permits any act or thing to be done in contravention of or in violation of any provision of this By-law, or who neglects to do or refrains from doing anything required to be done by any provision of this By-law or any notice issued pursuant hereto, commits an offence punishable upon summary conviction, and shall be liable to a fine of not less than the sum of \$200, but not exceeding the sum of \$10,000 and imprisonment for not more than six months.
20. Each day that an offence is permitted to exist shall constitute a separate and distinct offence.

### **Compliance With All Other Laws**

21. Compliance with this By-law does not excuse an Owner or any Person from the requirement to comply with all other municipal By-laws, statutes, regulations, codes and laws.

**Commencement**

22. This By-law shall come into force on the date of final adoption hereof.

PASSED FIRST AND SECOND READING on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

PASSED THIRD READING on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_ MAYOR

\_\_\_\_\_ CLERK

## Residential Tenancy Branch's Dispute Resolution Process

The Residential Tenancy Branch's (RTB) dispute resolution involves the following steps (note that process is similar for tenants and landlords):

1. Tenant fills out the application form;
  - Form is available online or at an RTB office. (There are only 3 offices in BC - Burnaby, Victoria and Kelowna)
2. Tenant pays a \$50 filing fee;
  - Low-income tenants may apply to have the fee waived through a separate form that needs to be filled out at an RTB office.
3. Hearing date and package is sent out to the tenant;
  - Tenant has 3 days from receiving the package to serve the landlord either in person (with a witness) or via registered mail.
4. Tenant must submit evidence to RTB and landlord at least 5 days before the hearing;
  - In the case of repairs, this means photos and proof that the tenant has requested repairs on numerous occasions.
5. Hearing is conducted by teleconference (95% of all hearings are teleconferences); and
  - Tenant may request a face-to-face conference if there are language or other barriers.
6. RTB has 30 days to make a decision (usually a decision is made within 7 days).
  - Written decision is mailed to the party who benefits from the decision. The benefiting party must then serve the other with the order.

The RTB does not enforce orders. If a landlord does not comply with the order, the tenant must apply to the Courts of BC:

- Monetary orders are enforced through the Small Claims Court; and
- Orders of Possession are enforced through the Supreme Court of BC.