

A potential licensing system for secondary suites

Background

This document provides an overview of a potential licensing system for secondary suites. As well, it provides information that relates to Council's direction arising out of report CPC2015-070, which proposed land use bylaw amendments for secondary suites in four wards. Council directed that Administration "develop and implement a requirement for a secondary suite registry / licence for all new secondary suites in Wards 7, 8, 9 and 11, following the adoption of Bylaw 14P2015." Therefore a discussion of both the registry and licence options is provided, however the main focus of this attachment is on the licensing approach.

Registry vs. Licensing

Council approved a Secondary Suite Registry program in 2015 March (PUD2015-0229). In the 2015 May Council deliberations around report CPC2015-070, there was discussion of a licensing program as well as a registry. There are similarities between a registry and a licence program, as well as some key differences. These are summarized below.

Feature	Registry	Licence
Safety codes compliance is a prerequisite	Yes	Yes
Applies to family-occupied as well as rental suites	Yes	Yes
Mandatory process for suite owners	No – voluntary	Yes
Provides right to inspect for City	No	No
Provides for suspension, revocation or penalty for non-compliance with terms of the registry/licence	No	Yes
Provides a searchable list of suites inspected for safety	Yes	Yes
Cost to suite owner	Free in first year	To be determined
Annual renewal required	Yes	Yes
Requires a new Bylaw	No	Yes
Requires adding staff to support inspection and enforcement functions	No	Yes

The Registry for Secondary Suites will be a voluntary process that is low-cost and administratively easy to implement. It is intended to assist The City in collecting accurate and complete information on suites, and ensure that suites are compliant with land use rules and safety codes. Registering a suite that has been inspected for compliance will provide the owner and potential occupants with the assurance that the suite can be legally be occupied.

A licence program would also be a repository for information on secondary suites, and a successful safety inspection would be a pre-requisite to obtaining a licence. The licensing approach would place greater emphasis on the enforcement component. That is, it would be prohibited to operate a suite without a licence. Licensing would not, however, add anything to the enforcement authority that Safety Codes Officers currently have under the *Safety Codes*

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Act, R.S.A. 2000, c.S-1, or to the authority to enforce existing bylaws such as the Land Use Bylaw, Community Standards Bylaw or others.

Responsibility for Licensing

The Compliance Services Division of Animal and Bylaw Services within Community Services and Protective Services (CS&PS) Department is charged with the responsibility of administering and enforcing City licensing bylaws. The mission of Compliance Services is “to promote and maintain a safe and desirable living and working environment for all citizens and communities. We help maintain and improve the quality of our community by administering a fair and unbiased compliance program by the facilitation, execution and enforcement of bylaws and regulations.”

Licensing has traditionally provided a means for municipalities to exercise control over certain activities in their communities. Generally, it is aimed at the prevention of physical, moral or economic harm, and its usefulness derives from the ability of the municipality to regulate an individual or business from engaging, without government approval, in an otherwise lawful activity.

Jurisdiction

The Municipal Government Act, R.S.A. 2000, c.M-26 (“MGA”) empowers municipalities with the authority and flexibility to provide services in the best interest of the community. S. 7 (a) of the MGA states that a council may pass bylaws for municipal purposes respecting the safety, health and welfare of people and the protection of people and property. S. 8 (c) (iii) of the MGA provides that a council may pass a bylaw to provide for a system of licences, permits or approvals that will prohibit any development, activity, industry, business or thing until a licence, permit or approval has been granted.

The City of Calgary has adopted a number of bylaws that require a licence for particular activities or things. Examples include the Alarm Services Bylaw, Concert Bylaw, Bicycle Courier Licensing Bylaw, Massage Licence Bylaw and several other business categories regulated through a bylaw. In general the method of licensing, the enforcement strategy, and the level of fines for contravention of the bylaws are proportionate to the impact of the activity that licensing is intended to address.

A business licence by definition applies to a “business.” Since many secondary suites accommodate family members or caregivers these are not in the nature of a business and therefore the Business Licence Bylaw would not capture these situations. However the licensing of secondary suites could be implemented through the adoption of a “Secondary Suite Licence Bylaw” that would intend to capture both rental suites and those occupied by family members or caregivers.

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Licensing Framework

The City of Calgary has developed a general framework for the practice of licensing. The activity or thing which is the subject of a licence bylaw is evaluated. The licence bylaw typically prescribes parameters for the activity or thing to be carried out lawfully. The community impact of the activity or thing that is being licensed is weighed to determine the enforcement framework. Enforcement methods may include fines or other penalties such as suspension or revocation of the licence.

A potential Secondary Suite Licence Bylaw could enable Administration to:

- 1) Receive and process all applications for all licences and renewals of licences under the Secondary Suite Licence By-law;
- 2) Ensure that the applicant is in compliance with other legislative requirements;
- 3) Issue licences in accordance with the provisions of the Secondary Suite Licence By-law;
- 4) Impose terms and conditions on licences in accordance with the Secondary Suite By-law; and
- 5) Refuse to issue or renew a licence, or suspend or revoke a licence in accordance with the Secondary Suite Licence By-law.

Review of other cities

For comparison, a review of some other Canadian cities which have introduced licensing for secondary suites was undertaken. In Burnaby, BC and Vancouver, BC, a rental secondary suite is required to have a business licence, which must be renewed annually. In Mississauga, Ontario, a "Second Unit Licensing Bylaw" came into effect in 2014 January and requires landowners to have a licence for a second unit in a dwelling. These cities require that the requisite land use approvals and building and safety codes permits are in place before the licence can be issued. A licence can be revoked, have conditions added or be refused for renewal if the terms of the relevant licence bylaw are not complied with. In 2015 May, the City of Mississauga's Planning and Development Committee received update reports on the Second Unit program in general and the licensing program specifically. The Committee directed Administration to review the licensing program and consider the option of a registry instead.

Implementing a Secondary Suite Licence program

An application for a secondary suite licence would trigger a review of the permits necessary for the suite to be legal. These would include a Development Permit in compliance with the Land Use Bylaw, and the necessary Safety Codes permits including a building permit and trade permits such as gas, plumbing, electrical and mechanical.

The time to process a secondary suite licence application would vary depending on whether any of the pre-requisite approvals and permits are required and how long it takes the applicant to obtain the necessary approvals.

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Roles for City Administration

The licensing program would require cooperation between the Planning, Development & Assessment department (PDA), which is responsible for planning approvals and building and trade permits and inspections, and the Community Services and Protective Services (CS&PS) department, which is responsible for licensing within Animal and Bylaw Services and fire inspections within the Calgary Fire Department.

Inspection and Permit Services

The Customer Advisory Services (CAS) division within Inspection & Permit Services acts as the primary point-of-contact for the majority of Planning and Development (PD) customers. CAS provides front line services through a number of access points including the counter, on-line applications and phone-in inquiries to 403-268-5311.

Secondary suite licence applications would be submitted to CAS, who would identify the approvals and permits required. The applicant would be advised of the process to obtain these permits including inspections.

Business Licence

An application would be assigned to a specific Licence Inspector from the Business Licence group, who would be responsible to ensure that all corresponding approvals are obtained by the prospective Licensee. If Alberta Building Code or Fire Code standards have not been met the applicant will be required to make the necessary changes to comply.

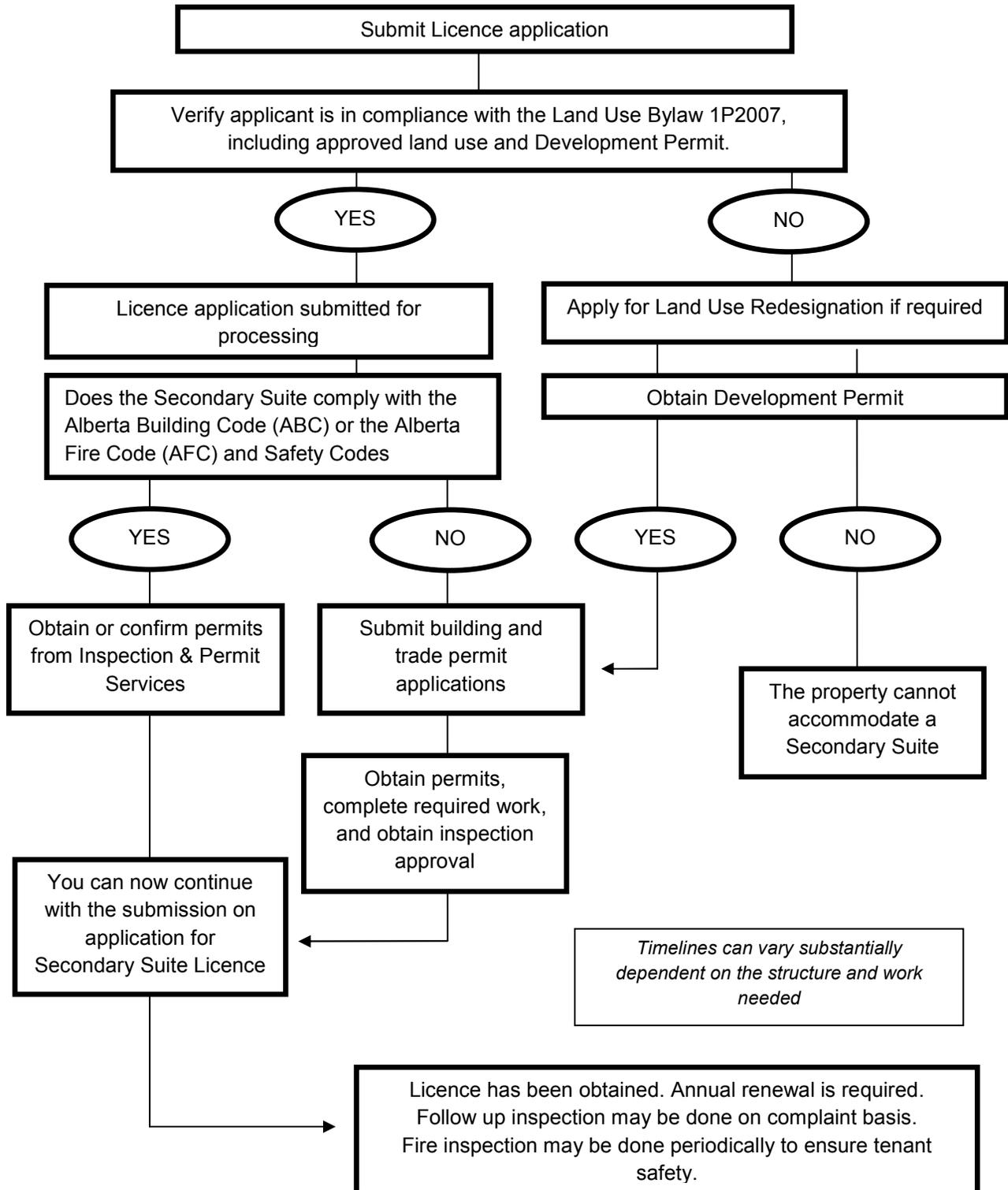
Fire Prevention Bureau

Each application must meet the requirements set out in the Alberta Building Code (ABC) or the Alberta Fire Code (AFC). Existing and new secondary suites will need to be inspected to identify deficiencies. Follow-up inspections to ensure compliance and safety standards may be required periodically, and upon renewal at the discretion of the Calgary Fire Department.

The following diagram illustrates what the Secondary Suite Licence application process would look like.

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Potential application process for a Secondary Suite Licence



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Compliance and Enforcement

The Secondary Suite Licence Bylaw would require that secondary suites are constructed in compliance with applicable legislation. The Bylaw would prescribe offences and associated penalties such as fines, suspension, revocation or applying conditions to the licence.

A Secondary Suite Licence Bylaw would not, on its own, give The City of Calgary authority to inspect a private dwelling, even if it were the subject of a licence. Licence Inspectors cannot attend and make entry to a private dwelling to make observations or identify potential infractions without consent or a warrant.

Presently enforcement of bylaws and safety codes for suites is carried out based on complaints. The standard timeline for addressing most Business Licence Complaints is 45 days. In 2014, approximately 1000 complaints about potentially illegal secondary suites were recorded in the 3-1-1 system. Based on the current ratio of Business Licence Inspectors to licensed businesses of 1:4750, it is estimated that an additional three Licence Inspectors would be required to enforce a Secondary Suites Licence Bylaw.

It should be noted that Calgary currently has bylaws in place to deal with complaints that may be associated with any kind of residential property, whether a secondary suite or otherwise. Property maintenance, nuisances, noise and many other matters are addressed in the Community Standards Bylaw. Parking is regulated by the Land Use Bylaw as well as the Street Bylaw and Traffic Bylaw. Adding a licence requirement for secondary suites would not change or enhance the enforceability of these other bylaws.

Enforcement activities may include the following:

- Schedule and attend inspection by physical visit to review and determine safety code compliance for the suite;
- Based on findings – approve, require homeowner to comply with safety codes, or order the suite to be removed; and
- Follow up on decommissioning or closure of suite.

Administration staff time may be required for the following tasks:

- Mailing warning letters and/or notices of deficiency;
- Review and follow up on warning letters;
- Consolidate relevant documents and history;
- If charges are filed, prepare court brief and legal documents; and
- Scheduling and cold calls.

Enforcement outcomes may include laying charges resulting in penalties, which may lead to a Licence Review Hearing (LRH). The LRH may result in further sanctions such as licence suspension, revocation or conditions imposed. Provision would be made for these rulings to be appealed before the Licence and Community Standards Appeal Board.

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Enforcement of the Secondary Suite Licence Bylaw may help achieve regulatory compliance by educating property owners and occupants about applicable building codes and licence requirements, and providing a timeline to allow the property owner to bring the suite into compliance.

Fees

Currently, the business licence base fee, determined under the 2015 Business Licence Fee schedule as prescribed under the Business Licence Bylaw 32M98 is \$177 annually. The fee for a Secondary Suite Licence would be determined in the Secondary Suite Licence Bylaw and would be based on the principles and process prescribed by the User Fees and Subsidies Policy (CFO010). The cost for the applicant to obtain planning and building approvals will be determined by the fee schedules for the permits and approvals required.

Applicability

Council's direction from the 2015 May 11 deliberations on CPC2015-070 recommended that Administration address a "secondary suite registry / licence for all new secondary suites in Wards 7, 8, 9 and 11." It should be noted that Administration does not recommend the implementation of a registry or licence program that is limited only to new suites, or only to selected geographical areas. A key benefit of a registry or licence program would be to bring existing illegal suites into compliance with land use rules and safety codes. Limiting the program to new suites would not contribute to achieving this benefit. As well, currently it is possible to have secondary suites in land use districts that are distributed across the city; it would be preferable to bring as many suites as possible into the ambit of the registry or licence program, not just those in selected wards. Otherwise there would be a disparity between the requirements and enforceability of the registry or licence provisions based on location and no other reason. While it is possible for a bylaw to prescribe different rules of applicability for different geographical areas, such distinctions must be made for a defensible reason. In this instance there is no obvious reason to limit the application of the registry or licence program to particular locations.

Implementation and resources

Implementing a Secondary Suite Licence Bylaw would require additional resources to manage applications and ensure that the pre-requisite permits are in place before the licence is issued. As noted, it is estimated that an additional three Licence Inspectors would be required, with salary and wage costs estimated at \$366,000 per year. Associated overhead expenditures for the additional staff (facility costs, fleet, fuel, etc.) are estimated at another \$82,000 per year, for a total of \$448,000 in operating costs per year.

Conclusion

A registry program for secondary suites is a way to track suites and encourage compliance with safety regulations. From The City's perspective it is a low-cost option that is administratively

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easy to introduce, and is expected to be an incentive to suite owners to provide assurance that their suites are legal and safe to occupy. Council has recently directed that a registry program be implemented.

A licence program would also track suites and require safety code compliance. It will require Council to pass a bylaw that mandates licensing. The emphasis would be on enforcement of the licence bylaw itself, which would require additional staff resources to fully implement. For suite owners it may be perceived as an additional expense and red tape, adding another barrier to achieving compliance.