

Feasibility of Developing a Business Licence Framework for Accessory Units

The option to apply Business Licence processes to accessory units for the purposes of compelling greater landlord responsibility is feasible, consistent with the mandate of Business Licence and follows existing practice and policy for other business licence types. It should be noted that there are other regulatory options that will be explored prior to implementing a requirement for a business licence.

While licensing is feasible, it does create an additional level of oversight in new frameworks whose impacts have yet to be determined and could result in a significant increase in licensed businesses over time. The 2013 Canada Mortgage and Housing Corporation (CMHC) rental survey estimates that Calgary is currently home to approximately 16,000 accessory units. Business Licence currently licenses 35,497 businesses; the addition of this licence category would add 45 % more businesses to the system over time.

Unlike many other municipalities not all businesses are licensed in the City of Calgary. The basic purposes of licensing businesses and business activities are:

- Where there is a clear danger to public safety;
- Where the licensing function clearly assists in legislative compliance such as crime prevention and the recovery of stolen property;
- Where some form of consumer protection is warranted such as supplier qualifications, or limitations on the businesses that are conducted at the potential consumer's residence;
- **Where the operation of the business rather than its location can cause negative spill-over effects into the neighbourhood;**
- Where the business activity clearly conflicts with the moral values of the citizens of Calgary; or
- Where an alternative to the business tax is needed so that some businesses that do not pay the tax do not have an unfair advantage over those that do.

The negative impact associated with accessory units has not been examined in a comprehensive fashion. If licensing were to be considered as part of an over all approach to managing accessory units, it would be prudent to firstly establish a monitoring program to evaluate the effects of policy and Land Use Bylaw (LUB) changes prior to imposing a regulatory structure that may not be required. Administration has proposed that a monitoring program be established for a period of one year to monitor affects of any regulatory changes.

The benefits of implementing a licensing regime include:

- Coordination of approvals and inspections between Planning, Animal & Bylaw Services, Fire and Building Regulations;
- Centralized application and billing processes;
- Centralized complaint monitoring;
- Adoption of an existing regulatory framework that includes provisions for the conditioning of licensing; and
- An appeal mechanism through the Licence and Community Standards Appeal Board for property owners.

Feasibility of Developing a Business Licence Framework for Accessory Units

Key Points

- Licensing is permitted under existing Provincial legislation,
- Based on estimated potential volume can be managed on a cost recovery basis,
- Might align with the current mandate of Business Licence,
- Cannot be applied to specific city wards which are subject to change and have no direct bearing on the operation of a business,
- Can be incorporated into the existing business licence approvals frame, and
- Will be difficult and time consuming to enforce due to the fact that they are home based businesses.

Mandate

The Business Licence mandate states the purposes of licensing business activities include;

- Where the operation of the business rather than its location can cause negative spill-over effects into the neighbourhood,

Legal Advice

The Law department has advised Administration that the Municipal Government Act would not restrict The City from licensing accessory units if the current licensing framework is applied.

However a licensing framework cannot be applied to specific wards only. A clearly identifying characteristic must be established that creates a division between how a business activity is regulated within the same jurisdiction. The method used to establish the ward boundaries does not provide that clear distinction between each ward related to the regulation of business activities. Any licensing process proposed by administration would have to be applied to the City as a whole. This practice would be consistent with how other businesses are regulated in Calgary.

A licensing framework would also have to be carefully drafted to ensure that it aligns with but does not intrude into areas already regulated by existing City bylaws, such as the LUB, Community Standards Bylaw and Streets Bylaw. Similarly, an accessory units licensing bylaw would also need to be aligned with the provincial Residential Tenancies Act, which regulates landlord-tenant issues in Alberta.

Financial Analysis

An analysis of the potential volume of licensees indicates that inclusion of this new licence type could be fully funded without mill rate support **over time**. Administration does not have any estimates on the uptake volumes that can be anticipated in the first five years, but based on the uptake of the Development Permit process and elimination of the Land Use Amendment fee initial uptake is anticipated to be modest. Business Licence will have to focus early efforts on education and enforcement to achieve reasonable levels of compliance with a new licence category. These efforts can be funded through revenues obtained from other licence categories until levels of compliance generate sufficient revenue to achieve full cost recovery.

Feasibility of Developing a Business Licence Framework for Accessory Units

The Canada Mortgage and Housing Corporation estimated that in 2013 there were approximately 16,000 accessory units in Calgary. A conservative estimate based on past experience with other business types would allow for the potential licensing and fee recovery of approximately 70% of the total market. Recovery rates differ from the actual business activity rate due to a number of factors including non-compliance or lack of awareness by business owners. It should be noted that early recovery rates would be much lower than 70% as these businesses may require time to come into compliance with other legislation such as Building and fire Code requirements.

The current general Business Licence fee is \$130, the total predicted revenue based on the market recovery rates and the current licence fee structure equals \$1,440,000

Resource requirements

Based on the current ratio of Business Licence Inspectors to licensed business of 1:4750, an additional three (3) Licence Inspectors at a cost of \$110,000 each or \$330,000 in total would be required to administer this licence type.

Drawbacks of Licensing

Some of the drawbacks associated with adopting a licensing framework include;

Landlords perception of licensing as increasing red tape – Additional regulatory processes applied to all accessory units must be carefully weighed against the total negative impact a small minority of business owners may have on the community. In general terms business owners get very little direct benefit from the acquiring a business licence. In all but a very few instances, businesses did not actively pursued inclusion into the licensing regulatory process.

The purpose of the licence process is to mitigate negative impacts the business may have on the broader community while at the same time preventing the development of an onerous regulatory regime.

Mitigating this risk is the positive feedback received from business owners regarding current processes. In 2011 Ipsos Reid Customer Satisfaction survey captured business licence applicants top line satisfaction rate at 82%.

Reducing affordability – Additional regulatory costs associated with a business activity are typically downloaded to the consumer in this case tenants will bear the increased annual licence fee costs.

Potential public expectation gaps surrounding complaint resolution - Public expectations are high with relation to resolution of complaints. The current 311 standards for most Business Licence Complaints are that the complaint is resolved within 30 days. While this is achievable in most businesses with a store front, home based businesses pose some difficult challenges that require additional time to resolve. Entrance onto private property is always challenging when performing enforcement activities and will slow down complaint resolution times. Another example of existing legislation that may prohibit expedited resolution includes the Provincial requirements to provide tenants with sufficient notice (90 days) to tenants prior to eviction.

Feasibility of Developing a Business Licence Framework for Accessory Units

Prosecution of non compliant landlords- Unlike public commercial locations the general public or Licence Inspectors cannot enter the home to make general observations or identify potential infractions. In the case of a business licence, proof of an accessory unit rental needs to be obtained. The neighbour's complaint that a business activity is taking place is not sufficient in most instances to satisfy the court process. Additional evidence such as the observations made by the officer, an offer or advertisement to rent the suite, a contract that shows the suite has been rented or a statement from the current tenant that they are renting or have rented the suite is often required. All of which is obtainable but without cooperation from the tenant or owner it will take time to obtain. It becomes particularly difficult if the tenant/owner relationship is mutually beneficial and cooperation is not obtained from the existing tenants.

Benefits of Licensing

Some of the benefits associated with adopting a licensing framework include;

Consumer protection – The business licence is a universally recognizable document that provides consumers with an assurance that all necessary municipal approvals to conduct business have been obtained.

Coordination of approvals – Prior to the release of a business licence all approvals Council deems necessary such as Planning, Building, Fire, Police, Health, etc. can be coordinated by Business Licence, this is the current practice today with other business licence applicants.

Centralized application intake fee collections – Currently Business Licence invoices and collects inspection and approval fees on behalf of Planning, Fire and Police.

Centralized complaint handling – Currently secondary suite complaints are allocated to the business unit whose legislation regulates the complaint, land use illegal dwelling unit complaints are transferred to Planning, Development & Assessment (PDA) for building code violations and to Community Services & Protective Services (CS&PS) to the Fire Marshal for fire code concerns and to Animal & Bylaw Services for property standards and development compliance. There is no centralized repository of complaints at this time; the establishment of a licence category framework centralizes complaints which are then directed to the appropriate agency for follow-up.

Coordination of enforcement activities - Business Licence has a long track record of developing processes and partnerships with partner agencies to coordinate enforcement activities. The utilization of newly developed synergies between CS&PS Community Standards Bylaw requirements and Business Licence and historical relationships with development compliance inspections, Fire, Planning, Police and Health can be utilized immediately.

Utilization of existing framework - The framework including systems, processes and technology, to address application intake renewals and enforcement requirements has been in place since 2001 and integrates directly with Police, Fire, Planning and Building Permit approvals.

Approvals to operate (Accountability) – Approvals to operate are granted to the business owner annually and are not directly related to the property. Poor business practices that create

Feasibility of Developing a Business Licence Framework for Accessory Units

negative spill over may result in revocation of the owner's current business licence and future applications for similar licences.

Development of accessory unit rules that don't fall under the purview of Planning, Building or Fire mandates – Under the business licence regulatory structure unique benefits that are not available through other legislation have become routine for business licence applicants, examples include:

- Property owners become accountable for tenant's behaviour, not just the maintenance of safety and property standards;
- Providing mechanisms to facilitate proactive compliance checks, for example requiring all advertising for an accessory unit contain a valid licence number that can be cross referenced against the existing licence data base;
- Business licence provides a mechanism to suspend, condition or revoke approvals based on the totality of negative impacts. This may not be feasible if legislative requirements are addressed independently of each other, (example: criminal behaviour, noise or property standards complaints);
- Ensuring sufficient record keeping requirements are met;
- Renewal processes that evaluate annual performance and adherence to regulations; and
- Mandating routine inspection requirements.

Conditions of licence – Conditions of licensing could be applied and tailored to address concerns arising from specific business owners in isolation of other business applicants.

Consumer satisfaction (Landlords) – The Business Licence application and renewal processes have been well received by applicants. In 2011 Ipsos Reid Customer Satisfaction survey captured business licence applicants top line satisfaction rate at 82%. Simplicity of the process and staff knowledge and willingness to provide assistance were key factors in customer satisfaction levels.

Common practice in other jurisdictions – Best practices have been established in advance of developing a Calgary specific model. Licensing of accessory units is a common practice in British Columbia and the Ontario Municipal Government Act was amended in 2007 to permit municipalities to apply a licensing framework to accessory units.