

Secondary Suite Registry Bylaw Amendments

EXECUTIVE SUMMARY

The Secondary Suite Registry (Registry) is a database of legal and safe secondary and backyard suites (suites) within Calgary. Registered suites are provided with a unique identification number and two stickers which are for display on the property where the suite is located. The database is made available to the public online as a web based map which is searchable by address and unique identification number. The Registry was originally established on 2015 September 28, at the time, participation in the Registry was voluntary.

The Registry is intended to provide certainty for homeowners and tenants that suites meet all City requirements and provides a less cumbersome, lower cost alternative to a licencing process. It is intended to give suite owners a “stamp of approval” that can be easily verified by tenants and prospective purchasers of properties with suites. It also makes it easier for enforcement officers to identify potentially illegal suites.

On 2018 March 12, through C2018-0128, Council made registration of a suite mandatory by approving the Suite Registry Bylaw 11M2018. At that same Council meeting, Administration was directed to draft amendments to the new Registry bylaw which includes removing a suite from the Registry if:

- a suite receives three infractions to the Community Standards Bylaw; and
- after a period of five years or when property title changes, unless the suite is re-registered and inspected by The City for compliance with the Safety Codes Act and the Land Use Bylaw

Administration looked at these amendments as three distinct components and reviewed each component on their own merits. The results of this review are three amending bylaws for Councils consideration.

The Law Department has advised that the first component, an amendment to the Suite Registry Bylaw to require compliance with the Community Standards Bylaw poses significant legal concerns. Imposing a penalty upon owners of properties with suites that is not also imposed upon owners of other types of residential rental properties would likely be struck down in court as being discriminatory. Based on the advice from Law, Administration recommends that Council not approve the “Community Standards Bylaw Contraventions” amending bylaw (Attachment 1). Alternatively, Calgary Community Standards proposes to continue to use the compliance techniques that have shown success by working with Calgarians to bring properties into compliance with the Community Standards Bylaw.

The second and third components, a requirement to renew registration after five years, plus a requirement to re-apply if the property is transferred, are both technically and legally feasible. The second component, the five-year renewal, could be undertaken and offers some benefit by ensuring that the registered suite is still in compliance with the approvals granted by The City under the Safety Codes Act and the Land Use Bylaw at the time of its approval.

On the third component, it also could be undertaken, however if the five-year renewal was approved then the recommendation to re-register at the point of sale could be considered redundant and would have limited benefit. This re-registration would be more difficult for Administration to monitor and enforce.

Secondary Suite Registry Bylaw Amendments

In summary, Administration recommends that Council only approve the “Five Year Renewal” amending bylaw (Attachment 2).

ADMINISTRATION RECOMMENDATION:

That the SPC on Planning and Urban Development recommends that Council give three readings to the proposed bylaw to amend Bylaw 11M2018 to provide for a registration renewal requirement after five years as set out in Attachment 2.

RECOMMENDATION OF THE SPC ON PLANNING AND URBAN DEVELOPMENT, DATED 2018 JUNE 14:

That Council give three readings to Proposed Bylaw 32M2018 Five Year Renewal Amending Bylaw (Attachment 2).

PREVIOUS COUNCIL DIRECTION / POLICY

On 2018 March 12 through C2018-0128 *Secondary Suite Process Reform*, Council gave three readings to the Suite Registry Bylaw 11M2018, and during the second reading, referred Councillor Magliocca's proposed amendment to Bylaw 11M2018 to Administration to draft proposed amendments and to report to Council as soon as possible as follows:

1) Under Section 7 “Removal from Registry” to include:

- (1)(d) the registered suite receives three infractions to the Community Standards Bylaw; and
- (3) A suite is removed from the registry after a period of five years or when property title changes, unless the suite is re-registered and satisfies the requirements set out in section 5 and is inspected by The City under the Safety Codes Act and the Land Use Bylaw at the time of renewal.

BACKGROUND

The Secondary Suite Registry (Registry) was initially created on 2015 September 28. For a suite to be placed on the Registry, the owner will have obtained all required City approvals and completed inspections to verify compliance with an approved development permit and safety codes.

On 2018 March 12 through consideration of C2018-0128 *Secondary Suite Process Reform*, Council made participation in the Registry mandatory for any suite that is made available for rent to the public. Through report C2018-0128, Administration originally recommended that the Registry should not penalize legal suite owners with ongoing Registry renewal fees.

At the same meeting, Council directed Administration to draft proposed amendments to the Registry bylaw that would cause a suite to be removed from the Registry. This report deals with each of the three components separately, allowing for Council to consider approval of one, two, three or none of the amendments.

Secondary Suite Registry Bylaw Amendments

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The Suite Registry is a database of legal and safe secondary suites and backyard suites which helps citizens verify if a suite has been approved and inspected by The City under the Safety Codes Act and the Land Use Bylaw at the time of its approval. Suites would be removed from the Registry should unauthorized changes to the suite occur that cause a suite to become non-compliant with the original approvals. An owner of the suite would then have to resolve the infraction(s) or the components of the suite would have to be removed. Owners would be subject to additional enforcement actions should they continue to offer an unregistered suite to the public.

Council directed Administration to include additional ways that a suite could be removed from the Registry. This includes removing a suite from the Registry if:

- a suite receives three infractions to the Community Standards Bylaw; and
- after a period of five years or when property title changes, unless the suite is re-registered and inspected by The City for compliance with the Safety Codes Act and the Land Use Bylaw

There are three distinct components of Council direction to address. Each component has a draft amending bylaw which Council can choose to adopt or abandon. Those draft amending bylaws are:

- Community Standards Bylaw Contraventions amending bylaw (Attachment 1);
- Five Year Renewal amending bylaw (Attachment 2); and
- Renewal Upon Transfer of Property (Attachment 3).

Community Standards Bylaw Contraventions (Attachment 1)

The first component of Council direction was to strike a suite from the Registry if the property has been the subject of three infractions to the Community Standards Bylaw. The Law Department has advised that this amendment to require compliance with the Community Standards Bylaw poses significant legal concerns. Imposing a penalty upon owners of properties with suites that is not also imposed upon owners of other types of residential rental properties would likely be struck down in court as being discriminatory. Based on the advice from Law, Administration recommends that Council not approve the "Community Standards Bylaw Contraventions" amending bylaw (Attachment 1).

Alternatively, Calgary Community Standards proposes to continue to use the compliance techniques that have shown success by working with Calgarians to bring properties into compliance with the Community Standards Bylaw, utilizing techniques in which they have found success in achieving compliance with the Community Standards Bylaw (Attachment 4).

The Levels of Bylaw Enforcement (Attachment 5) outlines a process of progressive enforcement which includes education; issuing warnings or orders; taking corrective action; issuing fines; or Municipal Government Act Orders. Community Peace Officers use their discretion to determine the best course of action when responding to infractions dependent on the severity of the situation, previous interactions with the citizen and the desired outcome. Of the 59,405 general bylaw calls to Calgary Community Standards in 2017, 97 per cent of those were resolved through education and warnings, and only three per cent (1,756) resulted in either a bylaw

Secondary Suite Registry Bylaw Amendments

violation ticket or other corrective action. Administration supports adhering to the Levels of Bylaw Enforcement for all residential built forms, including secondary suites.

Five Year Renewal (Attachment 2)

The second component, is to amend the Registry bylaw so that a suite registration must be renewed every five years. This proposal acknowledges that as time passes, changes can occur in a suite that could compromise either safety or cause a non-compliance condition with a prior City approval. Administration concurs that the proposed five-year renewal would see benefits. This renewal would allow The City to convey useful information to a property owner regarding their registered suite and ensures the registered suite is still in compliance with the approvals granted by The City under the Safety Codes Act and the Land Use Bylaw at the time of its approval. The renewal process could be managed in a simple and cost-effective manner for both The City and for the secondary suite owner. There would also be greater confidence in the Registry for the public.

The potential perceived disadvantage to requiring a five-year renewal is that owners of properties with suites may view this as red tape and a disincentive to owners either renewing or legalizing their suite in the first place. This could be mitigated through a simple on-line process and a relatively low fee. Administration recommends that the fee be set at a level that would cover the cost of processing the renewal, conducting audits and/or periodic inspections and following up with suite owners who have not renewed. Administration recommends that Council approve the “Five Year Renewal” amending bylaw and that the renewal fee should be set at \$116.

Renewal Upon Transfer of Property (Attachment 3)

As a stand-alone bylaw amendment, Administration does not recommend adding the requirement to re-register at the point of a property sale. As well, if the five-year renewal is approved, this requirement of re-registration would be redundant and would offer limited additional benefit. This component would also be difficult for Administration to monitor and enforce.

It should be noted that The City does not receive notification of a property transfer in all cases. The number of annual transactions unknown to The City could result in many new owners of safe and compliant suites unwittingly becoming illegal by virtue of not renewing and paying the registration fee.

Additionally, this amendment is linked to a person and not the actual suite or property. Renewal at the point of sale does offer an opportunity to advise new owners of their obligations under the Land Use Bylaw, Safety Codes Act and Registry Bylaw; however, Administration could provide this information without the need for a renewal.

Similar to the “Five Year Renewal” amendment, owners of properties with suites may view this as red tape and serve as a disincentive to owners either renewing or legalizing their suite in the first place. Again, this could be mitigated through an online process and low fee and Administration recommends setting the “Renewal Upon Transfer of Property” fee at \$116.

Secondary Suite Registry Bylaw Amendments

Stakeholder Engagement, Research and Communication

Previous engagement, research and communication on the subject of regulating suites was conducted in 2012/2013 as part of the suite safety pilot. The findings were that the majority of the suites that did not have permits were found to have safety issues. Further, Administration found that there are real and perceived disincentives to obtaining permits and legalizing a suite.

The list of disincentives to legalizing a suite included:

- The cost to construct, renovate or upgrade to meet safety requirements;
- The perception of a lengthy and complex Development Permit approval process;
- The cost of permits and approvals;
- Increased income taxes, if rental income is reported to the Government of Canada; and
- Perceived increased property taxes.

Strategic Alignment

Municipal Development Plan policies support the retention of the housing stock in Developed Areas and moderate intensification that respects the scale and character of existing development. Supporting secondary suites within the existing building envelope does promote the retention of the housing stock.

Section 2.2.5

- a. “Encourage growth and change in low-density neighbourhoods through development and redevelopment that is similar in scale and built form and increases the mix of housing types such as accessory suites, semi-detached, townhouses, cottage housing, row or other ground-oriented housing.”

Section 2.3.1

- a. “Provide for a wide range of housing types, tenures (rental and ownership) and densities to create diverse neighbourhoods that include:
 - i. i. A mix of housing types and tenures, including single detached, ground-oriented (e.g., duplexes, row houses, attached housing, accessory dwelling units and secondary suites), medium- and higher density and mixed-use residential developments; and,
 - ii. ii. A range of housing choices, in terms of the mix of housing sizes and types to meet affordability, accessibility, life cycle and lifestyle needs of different groups.”
- b. “Promote a broader range of housing choice for all ages, income groups, family types and lifestyles by:
 - i. Encouraging housing opportunities for low- and moderate-income households in all communities;
 - ii. Promoting innovative housing types, such as co-housing, live/work and cottage and carriage housing and accessory dwelling units, as alternative

Secondary Suite Registry Bylaw Amendments

means of accommodating residential growth and providing affordable housing options; and,

- iii. Including supportive land use policies and development strategies in Local Area Plans that encourage the provision of a broader range of housing affordable to all income levels.”
- f. Create affordable housing by encouraging:
 - iv. “The provision of an adequate supply of rental accommodation across the city that is affordable to low-and moderate-income households”

Social, Environmental, Economic (External)

Social

Secondary and backyard suites are one of many housing choices that can accommodate a wide range of households (i.e. ages, income, family size and lifestyles). Expanding the opportunities through policy and rules in the low density residential districts could provide sensitive intensification and more housing options.

Environmental

Policy and rules on secondary and backyard suites provides opportunities to use existing community infrastructure and to meet the varied needs of households.

Economic

Secondary Suites provide an investment opportunity for home owners and investors to assist in revitalizing and reinvigorating older neighbourhoods. The creation of new or the upgrading of existing secondary suites can enable the primary home owners to generate additional legitimate income towards their mortgage that is recognized by lending institutions. It may enable prospective home purchasers to buy a home, when their incomes would have otherwise limited them to renting.

Financial Capacity

Current and Future Operating Budget:

On 2018 March 12 through C2018-0128, Council approved the Registry fee to be set at \$232, which comes into effect on 2020 June 1 after the two-year amnesty period. The Registry fee will go towards funding ongoing enforcement actions of non-compliant suite owners to adhere to prior approvals granted, the Safety Codes Act, and the Registry Bylaw. The fee for a secondary suite renewal should be set at 50 per cent of the initial Registry fee and would be established as part of the budget cycle in the fall of 2022.

Current and Future Capital Budget:

There are no capital budget implications with this report.

Risk Assessment

The risk of amending the bylaw to include compliance with the Community Standards Bylaw is that The City would be creating a bylaw that is not legally defensible. This manner of

Secondary Suite Registry Bylaw Amendments

amendment is likely to create additional process and costs for City staff in getting a suite registered and would not be an effective tool for enforcement of the Community Standards Bylaw. As referenced earlier in this report, Calgary Community Standards is committed to effective enforcement and to mitigating the neighbourhood impacts of non-compliance with the Community Standards Bylaw by using techniques from the compliance continuum.

The risk of approving the proposed amending bylaw is that current and prospective suite owners may be discouraged from legalizing their suite due to a perceived cost increase or cumbersome renewal process. This can be mitigated by creating a simple on-line application process and low-cost approach. The fee for a renewal is recommended to be set at 50 per cent (\$116) of the initial Registry fee.

The risk of amending the bylaw to include a requirement to renew a registered suite whenever the property is sold is The City does not always get property transfer information. If the five-year cycle is adopted, there is a low risk to missing changes in property ownership as they would be captured within the cycle.

The risk of not approving the proposed bylaw amendment is that there could be low confidence in the level of compliance of registered suites as they mature. This could be mitigated through periodic inspections or audits of existing registered suites.

REASON(S) FOR RECOMMENDATION(S):

Administration is confident that a low cost and simple approach to a five-year renewal is feasible and is a reasonable approach to ensuring registered secondary suites remain an affordable and safe housing option for the public.

ATTACHMENT(S)

1. Proposed Bylaw 33M2018 Community Standards Bylaw Contraventions Amending Bylaw
2. Proposed Bylaw 32M2018 Five Year Renewal Amending Bylaw
3. Proposed Bylaw 31M2018 Renewal Upon Transfer of Property Amending Bylaw
4. Compliance Continuum
5. Levels of Enforcement to Achieve Bylaw Compliance