

Report on the inquiry into **Rental housing licensing in the City of North Bay**



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**Ontario
Human Rights Commission**
**Commission ontarienne des
droits de la personne**

Report on the inquiry into rental housing licensing in the City of North Bay

1. Summary

The City of North Bay's rental housing licensing bylaw was enacted on January 1, 2012 and came into effect on May 1, 2012. Among other things, this bylaw imposed a bedroom cap, gross floor area requirements and a licensing fee on certain rental units.

The Ontario Human Rights Commission (OHRC) was concerned that the bylaw might reduce the availability of low-cost rental housing and in turn disadvantage groups protected under the Ontario *Human Rights Code* (the *Code*) who rely on that housing. As a result, the OHRC initiated an inquiry to learn more.

During the inquiry, North Bay residents reported a number of concerns to the OHRC, including:

- Students felt targeted by the bylaw and the process involved (including at a public meeting about the bylaw, and because it was rolled out into student areas first).
- The gross floor area requirement, bedroom cap and costs associated with licensing may reduce availability of housing for students, large families and other people protected by the *Code*.
- The City's bylaw exemption process may discriminate against people who are not living as a "traditional family."

The OHRC investigated these and other issues throughout the inquiry, and raised its concerns with the City.

With respect to public meetings and rolling out the bylaw, the City said:

- It will continue to ensure that it sets ground rules before holding public meetings, where people are clearly informed about the purpose of the meeting and understand that discriminatory comments will not be tolerated.
- It has fixed a schedule for rolling out the bylaw across the city in stages over an estimated four-year period, to manage administrative challenges.
- The roll-out will begin in areas where the most complaints were received.

With respect to reduced availability of rental housing for *Code*-protected groups, the City confirmed:

- The gross floor area requirement does not apply to the entire building. While only 40% of basement and main floor areas can be bedrooms, 100% of upper floors can be bedrooms.
- The City instituted a licensing fee that achieved "less than 100% cost recovery" in an attempt to mitigate hardship experienced as a result of the bylaw.

The City also confirmed that where the bylaw states:

9.1 The City of North Bay may authorize variances from this By-law with respect to the number of Bedrooms if:

9.1.1 in the opinion of the City the general intent and purpose of this By-law are maintained; and

9.1.2 the single detached dwelling was originally constructed to contain more than the maximum number of bedrooms as permitted by this By-law

It means that:

- The bylaw enables property owners to apply for a variance from the five-bedroom cap if their building was “originally constructed” to contain more than five bedrooms
- The bylaw enables property owners to apply for a variance from the 40% gross floor area requirement (on ground and lower levels) if their building was “originally constructed” to contain more than 40% of floor area for bedrooms on those levels.

Some rental units are exempt from the bylaw. There is a perception in the community that exemptions are not granted to student-occupied units and are only available to units occupied by “families.” The City explained to the OHRC that exemptions are based on the number of people in the rental unit who pay rent – and not on whether any of those people are related. Later correspondence from a City official to a landlord indicated that exemptions would be granted to properties rented to “traditional families.”

With respect to additional concerns raised by the OHRC, the City said:

- In cases where a rental unit is closed because of the bylaw, the City “is reasonable with respect to the time it takes to find alternate housing (if necessary) and would only require immediate removal in the case of serious life safety issues.”
- “The City enforces matters (such as compliance with this By-law) with the property owner. The tenants would only be the subject of enforcement action where appropriate (e.g. noise infraction).”
- The City will provide landlords with information about their responsibilities under the *Code*, and the City will add this information to its website.
- The City has and will continue to “educate the public regarding this By-law using whatever means are appropriate and relevant,” and it “continues to educate the public that the By-law does not strictly apply to ‘student rentals.’”
- The City will monitor and evaluate the bylaw on an ongoing basis.

In considering whether North Bay’s licensing bylaw appears to be discriminatory, the OHRC examined whether:

1. Elements of the rental housing licensing regime create a distinction that causes someone to be disadvantaged; and
2. The disadvantage occurs because of that person’s association with a *Code* ground.

The bylaw grants exemptions based on the number of people paying rent. This focuses on people rather than buildings, and will be discriminatory in some cases. The City should eliminate this distinction to ensure compliance with the *Code*.

If one City official's correspondence (indicating that "traditional families" will be granted an exemption) reflects the City's exemption application process, then that process is discriminatory and the City should change the process to ensure compliance with the *Code*.

From the information we obtained during the inquiry, it does not appear that other aspects of the bylaw are discriminatory.

The OHRC commends the City for its promising practices (some of which are highlighted in the OHRC's *Room for everyone: Human rights and rental housing licensing* guide). Recommendations are included later in this report.

2. Inquiry methodology

The OHRC's inquiry looked into whether anyone may have experienced *Code*-based discrimination as a result of North Bay's rental housing licensing regime. The inquiry is authorized under clauses 29 (c) and (e) of the *Code*, which permit the OHRC to "undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices" and to "initiate reviews and inquiries into incidents of tension or conflict."

The OHRC's mandate includes protecting the human rights of people who are vulnerable because of their age, receipt of public assistance, disability, family status and other factors. Many vulnerable people rely on rental housing. The inquiry was designed to collect information about these people's experiences with the rental housing licensing bylaw, and to collect information about the City's processes and policies related to rental housing licensing.

2.1 Surveys and follow-up to surveys

The OHRC used surveys to collect information from tenants, landlords and organizations that help people who are looking for rental housing. Targeted outreach for this project included making surveys available on the OHRC website, and emailing them directly to agencies that work with vulnerable people in the North Bay community.

The OHRC did not accept any anonymous submissions, but made a commitment to respect the confidentiality of responses. The OHRC did not disclose surveys to any party.

The survey period ran from March 8 to April 30, 2012. The OHRC received 188 survey submissions from tenants, landlords and organizations in North Bay. The OHRC conducted follow-up interviews with some survey participants via telephone and email immediately after the surveys closed, and again in early 2013.

Our goal was to collect people's stories about the impact of the bylaw. The surveys were not designed to constitute a statistically representative sample of the community. Instead, the goal was to collect qualitative data. The resulting responses have given the OHRC valuable insight into effects and potential effects of the bylaw and the experiences of the people who did respond.

The majority of tenants who completed surveys identified themselves as students who were attending either college or university full-time or part-time, were between 16 and 25 years old, and were currently renting rooms in houses. The most common sources of income disclosed by the tenants were Ontario Student Assistance Program (OSAP) loans and employment.

2.2 Additional comments

The OHRC provided contact information on its website for anyone who had questions or comments about the inquiry. We received five submissions from homeowners outlining their perspectives and concerns.

2.3 Materials disclosed by the City

The OHRC requested, under clause 31(7)(a) of the *Code*, that the City share documents it had relating to the purpose of the bylaw and its implementation. The OHRC reviewed the materials provided by the City – including documents about public consultations, reports, complaints relating to the bylaw, minutes from City Council meetings, and emails sent to and from City staff.

2.4 Correspondence with the City

The OHRC corresponded with the City and requested more information where necessary to make sure that the City's positions are accurately represented in this report.

2.5 Other information

The OHRC analyzed the information gathered from the surveys, additional commentary, disclosure materials and discussions with the City, along with data gathered from other sources, including primary and secondary sources and legal and social science research. The report was also informed by the OHRC's previous work on housing, including province-wide consultations with planners, tenant groups, and a broad range of individuals and organizations in the housing sector.

This report is based on all of the submissions and information that the OHRC reviewed during the inquiry process.

3. Background

3.1 An overview of North Bay's Residential Rental Housing Licensing By-law

The bylaw is being rolled out in phases, with city-wide compliance set for 2016. The City first applied its bylaw to neighbourhoods with high student populations: those adjacent to Nipissing University and Canadore College.

For a landlord to get a rental housing licence from the City of North Bay, no more than 40% of the rental unit's gross floor area on the ground floor and in the basement can be bedrooms. Section 9.1 of the bylaw enables property owners to apply for a variance from the 40% gross floor area requirement (on ground and lower levels) if their building was "originally constructed" to contain more than 40% of floor area for bedrooms on those levels.¹

A maximum of five rental bedrooms are permitted, but the City may, under section 9.1 of the bylaw, authorize variances to increase the five-bedroom cap, if the house was originally constructed to have a larger number of bedrooms.

Properties with six or more bedrooms occupied by tenants that are not granted a variance must adhere to rules for "lodging houses" in the City's zoning bylaw. Lodging houses must be located in a zone where rooming or lodging houses are a permitted use. Lodging houses are not permitted in "low density" zones in the City.

The initial licensing fee is \$300. Renewals must be made every two years, and cost \$300. The licensing fee includes the cost of inspections by the City's Building Department, Fire Department and Planning Department. An inspection by the Electrical Safety Authority (ESA) is also required, and costs approximately \$300.²

To get a licence, a landlord must provide the City with a number of items, including floor, maintenance and parking plans; proof of insurance; compliance statements from the City's Fire Chief, Chief Building Official, Zoning Administrator and the ESA; a statement of past noise bylaw convictions from the City's By-law Enforcement Coordinator; and proof of payment of any fines.

Landlords who fail to abide by the bylaw can have their licences revoked or suspended, and/or face fines of up to \$25,000 for a first offence (for an individual) or up to \$50,000 for a first offence (for a corporation). Subsequent offences can result in higher fines.

¹ Confirmed by letter from the City's counsel to the OHRC, April 2, 2013.

² Letter from the City's counsel to the OHRC, September 28, 2012.

3.2 Impetus for the bylaw

According to the bylaw, the purpose of North Bay licensing rental housing was to:

- Protect the health and safety of renters
- Ensure that required essentials such as plumbing, heating and water are provided to renters
- Make sure that rental premises “do not create a nuisance to the surrounding properties and neighbourhood”
- Protect the residential amenity, character and stability of residential areas.³

It appears that a significant trigger for the bylaw was a series of complaints from homeowners about rental units. For example, a 2011 City Council report says:

The City of North Bay has recognized a need within the community to deal with various rental housing issues occurring within the City of North Bay. This comes from a variety of complaints that have been received over many years regarding conflict around, and resolutions to, students and non-student issues in residential neighbourhoods in the City.⁴

The OHRC reviewed complaints submitted to the City. The complaints were varied in nature, but a majority related to noise and property maintenance issues in houses rented by students.

Concerns identified by homeowners, in their submissions to the OHRC and in communication to North Bay City staff, include:

- Parking: “The lack of parking results in a health and safety hazard because the extra vehicles congest the street not allowing emergency vehicles easy passage.”⁵
- Theft: “...yard lights or Christmas lights stolen...”⁶
- Noise: “... noise such as shopping cart races or loud music or screaming and cursing at all hours of the night and early morning...”⁷
- Littering and drinking in public: “I even observe these individuals walking down the street, drinking alcohol with no regard of where they leave their empty bottles, leaving me with the ‘responsibility’ of picking up their empty and broken beer bottles from my property.”⁸
- Poor property maintenance: “Many of these properties exhibit broken garage doors, rutted lawns, and external damages of various types...”⁹
- Concerns that “family” neighbourhoods are being converted into student ghettos: “We the owner/residents, who invested our life savings in our homes are not

³ The Corporation of the City of North Bay By-Law No. 2012-55, Residential Rental Housing Licensing By-Law p. 2.

⁴ Report Number CSBU 2011-36 to City Council, February 28, 2011, p. 1.

⁵ E-mail to the OHRC from North Bay resident, March 13, 2012.

⁶ E-mail to the OHRC from North Bay resident, March 16, 2012.

⁷ E-mail to the OHRC from North Bay resident, March 16, 2012.

⁸ E-mail to the OHRC from North Bay resident, March 14, 2012.

⁹ Email to the City, April 29, 2011.

moving, because we are still hoping to keep this from being a student ghetto. We do expect the City of North Bay to take stronger measures to stop the proliferation of this type of residence and return the neighbourhood to families.”¹⁰

While some student tenants surveyed said they had not heard negative comments in the community about student renters, or they had heard positive comments, others shared their concerns about negative comments they heard.

For example, one student tenant said that she heard “[t]ypical poor views on students being in ‘family neighbourhoods.’” Another student said “a lot of people in the neighbourhoods see students as a hindrance on the neighbourhood.”

One student said, “Many people have a dislike for students because a small minority have caused problems in the past in regards to noise and other disruptions.” Another student tenant told the OHRC:

Some neighbours tend not to like students, as we are portrayed as strictly “party animals” though this is simply not true. Sometimes our neighbours won’t talk to us because of this preconceived notion. Makes it hard to get to know the people around you.

Some students felt the bylaw specifically targeted them. For example, one student said that the bylaw “is very unfair, and designed to limit student housing...” Another student told the OHRC:

...This bylaw is a way for the city to please the homeowners, but my thought is there were already bylaws in place that the city chose not to enforce, so they are choosing to make a new bylaw that singles out one population – students, to “improve” the problem instead of just enforcing the bylaws for noise, garbage and parking that they already had. This is an injustice, especially because it is negatively going to affect North Bay when less students and landlords choose to live here because they either can’t find affordable housing or the landlords can’t afford to purchase a house for only a couple [of] students to live in it.

Some students surveyed said they felt their contributions to the City of North Bay were being overlooked. One respondent said:

Students bring a large population of people to a very small city... we spend our money here, we volunteer, we do all sorts of good things for the community.

Another student commented:

Students need to be seen as more than a bunch of rowdy kids; we work and study hard, hold down jobs, and volunteer in a huge variety of ways within the community all while attending classes and making time to enjoy our university or college careers.

¹⁰ Correspondence to North Bay City Council and Mayor from a resident, forwarded via email on October 3, 2010.

As noted above, the City received correspondence from homeowners voicing concerns about “single family” neighbourhoods being transformed into “student ghettos.” These types of concerns should not form the basis for bylaws that regulate rental housing. Instead, municipalities should work to encourage inclusionary zoning and should challenge stereotypes about a particular group or groups within the community.

In response to a letter from the OHRC which asked the City to comment on the intent of the bylaw with regard to student housing, the City stated:

The intent of the By-law is to regulate Rental Housing. The By-law does not single out students or any Code protected group for that matter. The concept of the By-law may have arisen out of complaints regarding student housing, however, it does not mean that the intent of the By-law is to regulate student housing. Student housing is one component of the overall rental housing market within our area. The By-law is meant to complement other City of North Bay By-laws and help to maintain the character of residential areas.¹¹

The OHRC acknowledges that, on more than one occasion, the City communicated that it cannot target students. For example, City officials explained in responses to emailed complaints from homeowners that the City cannot prevent students from living in an area, and the City cannot pass bylaws that prevent a group of students from renting a house together.¹²

3.3 Alternatives to the bylaw

As described above, the City has identified the goals of its bylaw as protecting health and safety, preventing nuisance, and protecting residential amenity, character and stability.

Tools other than the bylaw exist to address these goals. For example:

- Existing provisions in the Fire Code and Building Code work to protect the health and safety of renters.
- In 2009, the City supported a Town and Gown initiative to establish voluntary inspections of rentals offered on Nipissing University and Canadore College’s “off-campus” housing websites. While the plan was to have voluntary inspections which could then be posted online (so that students could select the safest units) it appears that the initiative did not get off the ground.¹³
- A City representative noted that in 2009, building services and property standards complaints experienced a “marked decrease in complaints” and went on to say that “one of the significant factors in the reduction was public awareness – certainly the City’s bylaw enforcement officer’s presence in the City did not go unnoticed.” The City representative commented that the formation of a “good neighbourhood

¹¹ Letter from the City’s counsel to the OHRC, September 28, 2012.

¹² Emails from City staff, October 1, 2010.

¹³ Town and Gown meeting minutes, September 14, 2009, p. 2-3; Letter to the OHRC, September 28, 2012.

housing committee” also had a “very positive impact on the issues surrounding student housing in the community.”¹⁴

- Bicycle patrols by the North Bay Police Service in September 2011 appeared to reduce noise issues. Materials disclosed by the City reveal that City staff received positive feedback from homeowners about this initiative.¹⁵
- A student body council suggested block parties and other student/home owner relationship building events (such as student/owner committees) to address tension.¹⁶

The City, however, says that the bylaw is a necessary element of its rental housing regulation regime. The City stated:

The By-law is meant to complement other City of North Bay By-laws and help to maintain the character of well-established residential areas. We have enforced existing by-laws and continue to communicate with the public to educate them regarding this By-law.¹⁷

The City takes the position that its bylaw is achieving positive results. The City comments:

In the administration of this By-law, the City of North Bay is protecting tenants' rights to amenities as prescribed by the Ontario Building Code including acceptable levels of building fire safety, building safety in use, building health, indoor living conditions, privacy and view to the outdoors, and conservation of buildings are being ensured. These are all clearly defined objectives of the Ontario Building Code and can be found in Table 2.2.1.1, Division A, Part 2... of the Ontario Building Code and are the premise on which the prescriptive requirements are based.¹⁸

The City provided the OHRC with results of inspections that were completed as part of the rental housing licensing program to date, where deficiencies were found in more than a quarter of buildings inspected. Breaches included deficiencies with respect to Electrical Safety Authority standards, illegal apartments that raised fire separation issues, missing or insufficient carbon monoxide detectors and smoke detectors, safety issues involving basement bedrooms, ventilation issues, missing or broken handrails, weather stripping problems, unsafe exterior stairs or decks, lack of a self-closing device between dwelling and attached garage, and structural issues.¹⁹

¹⁴ Email from City staff, January 27, 2010.

¹⁵ Emails to City staff, September 5, 2011 and September 13, 2011.

¹⁶ Letter from student council to City, undated.

¹⁷ Letter from the City's counsel to the OHRC, September 28, 2012.

¹⁸ Letter from the City's counsel to the OHRC, September 28, 2012.

¹⁹ Letter from the City's counsel to the OHRC, September 28, 2012.

3.4 Implementing the bylaw

In *Room for everyone: Human rights and rental housing licensing*, the OHRC recommends that municipalities that are considering rental housing licensing consult with groups who are likely to be affected by that licensing, through accessible, well-advertised general meetings and also through targeted outreach to vulnerable or marginalized groups.²⁰

The City carried out public consultations before enacting the bylaw. Students told the OHRC that they were concerned about the timing of the consultations (as the public meetings were held in May and June, when many students had left North Bay for the summer), and a lack of student involvement in the process. While a number of tenants surveyed said that they were aware of the bylaw before it was passed, many said they were unaware of the City's consultation process for the bylaw.

The OHRC received a submission from a homeowner in North Bay asserting:

The bylaw was created in consultation with the landlords, tenants, the College, the University, the Fire Department, the Police, the student Councils and the Home Owners. Input from all parties was considered. At every stage the City of North Bay held Town hall meetings and apprised all parties as to what was being considered and objections, or suggested improvements were evaluated and considered ...

Materials disclosed to the OHRC by the City show that, from approximately 2008 to 2011, the City conducted consultations on the bylaw. In a March 28, 2012 letter to the OHRC, the City described its consultation as extensive,²¹ and states that it met with "a wide variety of interest groups including landlords, tenants, neighbourhood residents, Legal Aid Clinic, District of Nipissing Social Services Administration Board, North Bay Police, Canadore College Administration and Student Union, Nipissing University Administration and Student Union and various City Departments responsible for enforcing existing City By-laws."²² The City also said that it held public meetings to discuss the bylaw, and anyone in the community was welcome to attend.²³ The City also states: "The development of this By-law was well covered in local media and any person who felt that they were affected by the By-law was welcome to speak to City Staff or directly to City Council."²⁴

It appears that, while the City's advertising for and timing of public meetings were not optimal, the scope of the City's outreach was appropriate.

²⁰ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 2.

²¹ Letter from the City's Chief Administrative Officer to OHRC Executive Director dated March 28, 2012

²² In an August 13, 2012 letter to the OHRC, the City reiterated that it had "regular" meetings with Canadore College and Nipissing University about student housing and the bylaw.

²³ Letter from the City's counsel to the OHRC, September 28, 2012.

²⁴ Letter from the City's counsel to the OHRC, September 28, 2012.

In *Room for everyone: Human rights and rental housing licensing*, the OHRC recommends that licensing bylaws be rolled out in a consistent, non-discriminatory way.²⁵

The City rolled out its bylaw in areas of the City heavily populated by students. The City indicates that this process is not intended to target students. The City contends that the phased-in approach was used to allow staff time and resources to be allocated appropriately, and to ensure the bylaw was well transitioned into the community. The City reported that it received the highest number of complaints from the area to which the bylaw first applies.

While the bylaw came into effect on May 1, 2012, a media report on September 14, 2012 said:

Between 45 and 50 licences have been issued or are in the process of being issued. But the city has indicated there may be more than 200 landlords who should now be licensed.²⁶

A media report on January 13, 2013 said that 84 licences had been issued or were being processed.²⁷

The lack of immediate and widespread landlord compliance has limited the OHRC's ability to fully measure the bylaw's impacts at this stage.

3.5 The current housing environment

In *Room for everyone: Human rights and rental housing licensing*, the OHRC said:

In accordance with the 2005 *Provincial Policy Statement*,²⁸ municipalities should provide for an appropriate range of housing types and densities required to meet projected requirements of current and future residents by, among other things, establishing and implementing minimum targets for providing housing that is affordable to low and moderate income households.²⁹

Throughout the inquiry, the OHRC heard from some tenants and organizations that the current housing environment is a tough one – with rising prices and decreasing availability of rental units. For example, one organization said that the housing market is “consistently challenging with high rental costs and low vacancy rates.”

Another organization said that there are people “paying \$650.00 a month for a room, sharing one bathroom with 5 or 6 other rooms.” The organization went on to say that people face challenges getting housing based on “[d]isability, receipt of public assistance and ancestry” and that “landlords would rather make their money from students than those on disability.”

²⁵ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 4.

²⁶ Gord Young, North Bay Nugget, “City enforcing housing bylaw...” September 14, 2012.

²⁷ Gord Young, North Bay Nugget, “Recent bylaw moves into second phase...” January 13, 2013.

²⁸ *Provincial Policy Statement*, Government of Ontario, 2005, section 1.4 (Housing).

²⁹ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 5.

A tenant who as a single parent said:

Landlords in North Bay are very picky on who they rent to. ... I had one landlord who said he didn't want to rent to me because I have a teenager. He said teenagers "hang around outside too much and make noise." ...

When I first moved to North Bay I was temporarily on OW, I found they didn't want to rent to me because I was on the system, so I ended up taking an apartment I didn't like. Once I started working, I looked for better housing and found landlords were more willing to rent to me because I have an 'employment income.'

A student who is a single mother said:

Almost all rental housing offered is geared towards students (offering single room in a house or shared apartment).

On the other hand, one student said the "[h]ousing vacancy rate in this city is very small" and another student tenant recently told the OHRC:

I have moved because of rent increase. My landlord increased our rent by \$400 and demanded we add an extra bedroom. We could not find another person so we all split up and moved to new locations. I was paying \$525 for my portion of the rent before and am now paying \$795. for my apartment...

Some students emphasized the difficulty of finding affordable housing close to school. For example, one student tenant said:

There aren't as many available residences close to the school and when it is, it is usually too expensive, unless it is low income or there are many students living in it.

The City stated:

We would suggest that [any increasing cost and decreasing availability of rental housing] is not related to the implementation of the Rental Housing By-law. The vacancy rate in the City, as reported by CMHC, changed from 2.3% in April 2010 to 1.1% in April 2011 to 2.4% in April 2012. ... This suggests that it should actually be easier to find rental accommodation after the implementation of the By-law. Finally, it will always be difficult to find housing in desirable areas simply as a fact of supply and demand and the landlord's ability to demand higher rents because of that.³⁰

³⁰ Letter from the City's counsel to the OHRC, September 28, 2012.

4. Reported impacts

During the inquiry, the OHRC heard concerns from tenants, landlords and other individuals about:

- Meetings about the bylaw
- The bedroom cap
- Gross floor area requirements
- Bylaw-related costs
- Exemptions from the bylaw.

4.1 Meetings

Some students who completed surveys mentioned comments allegedly made by attendees at a public information session hosted by the City of North Bay on March 11, 2012. One student who attended the meeting said:

I was one of the two students who were there and I believe we were verbally attacked. Every comment we had to say about the bylaw or it being against rights we were laughed at and made a mockery out of. It was rude and I was ashamed that I live in a city and am supporting their economy and they have no respect for the students. Not all students are "dogs and pigs" as they quoted. They said they are terrified of students that we are all out of control. ... The whole meeting was very negative and I was personally offended and very angry coming home from it.

In correspondence to the OHRC, the City stated that the comments "were not tolerated by City Staff ... [and] staff spoke specifically with the two students present to [assure] them of the same."³¹

In response to a preliminary OHRC recommendation that the City "set ground rules prior to holding public meetings, where people are clearly informed about the purpose of the meeting, and understand that discriminatory comments will not be tolerated," the City indicated that "this is continually ensured at all public meetings."³²

As noted in *Room for everyone: Human rights and rental housing licensing*, the OHRC calls on municipalities – including North Bay – to lay out ground rules at the beginning of meetings stating that discriminatory language will not be tolerated. As well, they should actively interrupt and object to this type of language when it happens.³³ This should be done in public, in front of all participants, so all in attendance understand that the discriminatory language is unacceptable.

³¹ Letter from the City's counsel to the OHRC, September 28, 2012.

³² Letter from the City's counsel to the OHRC, September 28, 2012.

³³ *Room for everyone: Human rights and rental housing licensing*, OHRC, p. 14.

4.2 The bedroom cap

Room for everyone: Human rights and rental housing licensing recommends that municipalities avoid arbitrary bedroom caps in licensing bylaws.³⁴

The City of North Bay originally proposed capping bedrooms at four, but increased the cap to five based on feedback received during consultations. In a public meeting of Council on June 29, 2011, City staff explained that the decision to move from a cap of four to a cap of five was “partially in an attempt to minimize the number of individuals that are being displaced by the by-law.” Staff “estimated that there could be approximately 250 people that are displaced, which would probably double if the number is limited to 4.”³⁵ In a letter to the OHRC, the City says that by increasing the bedroom cap from four to five:

[T]he City was attempting to alleviate the perceived impact of the By-law on rental accommodations while also managing the impact on landlords. The purpose of this change was not simply to address displaced tenants but rather to provide additional opportunities for safe rental accommodations.³⁶

In response to a request from the OHRC to clarify the rationale for the five-bedroom cap, the City stated:

As buildings originally constructed as traditional single family dwellings are converted to what is by definition boarding, lodging and rooming houses it is imperative that the City of North Bay ensure the performance level of these buildings is adequate.³⁷

On the other hand, survey responses show that a five-bedroom cap could have an adverse impact on some tenants. One tenant surveyed spoke about dealing with uncertainty:

A lot of housing near the school used to have more than 5 bedrooms, some places are still renting more than 5 bedrooms. As a precaution I refused to consider any housing with more than 5 students living there, as I do not want to end up without a home. This made it very hard to find somewhere near the school.

We heard concerns from students that they or their roommates would be displaced due to the five-bedroom cap. For example, one student tenant said:

Abiding by this by-law, we have 6 people living in our house. This by-law would force one of us to move out and possibly not allow us to even use all the bedrooms in the house. All this would force stress on full-time students and do not need the stress as we are all already very busy with trying to pursue our education.

³⁴ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 6.

³⁵ Public Council meeting notes, June 29, 2011, page 1.

³⁶ Letter from the City's counsel to the OHRC, September 28, 2012.

³⁷ Letter from the City's counsel to the OHRC, September 28, 2012.

Another renter said:

1 student/roommate will have to move out in order to meet the new bylaws. We are all really good friends, so we would not let just one move out by themselves, meaning two people will end up moving out.

The OHRC attempted, but was unable to obtain, a recent update as to whether these tenants or their roommates had been displaced as anticipated.

The OHRC also heard concerns about how the five-bedroom cap might reduce the amount of available rental housing in North Bay. One student tenant said:

While I appreciate and approve of the fact that rental housing now needs to undergo an inspection and certification process before landlords are able to rent it I have concerns regarding the limitations on bedrooms per house. I have seen many rental units in North Bay that are over five bedrooms (six is fairly common) that have good-sized bedrooms, and plenty of common space. These units are now going to have to cut down the number of tenants allowed within them. Therefore there will be more students looking for units to rent and the already too large demand for student housing will increase and will probably go unmet.

Others echoed this concern. For example, one landlord surveyed initially said:

To comply with the By-law I am required to stop renting one room – to reduce from 30 to 25 students. Under this By-Law, 5 students would be denied high-quality affordable shelter... If I reduce one student per house for a total of 5 – there will not only be fewer spaces to rent, the remaining tenants' rent will increase to compensate for lost revenue – or if I cannot make up the revenue, I will sell the units.

However, during a recent follow-up, this landlord reported to the OHRC that they had applied for a variance with respect to the five-bedroom cap, that variance had been granted, and so no bedrooms were lost.

It appears that the following factors may mitigate the impact of the five-bedroom cap:

- Variances are allowed for homes that were originally constructed with more than five bedrooms
- Properties that exceed five bedrooms can potentially operate “in a zone where rooming or lodging houses are a permitted use”³⁸
- The bylaw does not limit the number of people per bedroom.

Information currently before the OHRC does not establish that people have been disadvantaged by the five-bedroom cap because of their association with a *Code* ground.

³⁸ North Bay “Residential Rental Housing By-law” brochure, available online at: www.cityofnorthbay.ca/common/pdf/RRHL%20-%20Information%20Borchure.pdf.

4.3 Gross floor area requirements

As noted in *Room for everyone: Human rights and rental housing licensing*, municipalities should avoid arbitrary floor area requirements that are more stringent than Building Code regulations, because they could contravene the *Human Rights Code*.³⁹

Two student tenants surveyed said their landlords told them that one room in their house could no longer be used as a bedroom because of the gross floor area requirement of the bylaw. Both tenants moved for reasons unrelated to the bylaw, so they were not ultimately affected by the bylaw.

Another student reported:

The North Bay bylaw states that no more than 40% of the rental unit's gross floor area on the ground floor and in the basement can be bedrooms. Due to this factor, one (1) of the five (5) tenants in our house will be required to vacate their bedroom in the basement. Unfortunately, aside from losing a friend and forcing them to search for a new rental accommodation, the four (4) remaining tenants would have split the original rental fee; an addition of 25% to each individual's rent. This would significantly increase the price and it could create a situation where we risk losing our current housing because we can not afford to pay more rent.

The OHRC was unable to follow up with this student to confirm that displacement had in fact occurred.⁴⁰

In response to a survey question that asked whether landlords had reduced the number of rental rooms or units in their buildings, or increased the rent for any of their rental rooms or units, as a result of the gross floor area requirement, some landlords indicated that they had done one or the other or both.

These arguments are countered by the fact that buildings which were purpose built to have more than 40% bedrooms on the ground and lower levels may be granted a variance, and the gross floor area requirement does not affect upper levels at all.

In sum, the inquiry did not produce information to establish that people have been disadvantaged by the gross floor area requirement because of their association with a *Code* ground.

³⁹ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 7.

⁴⁰ Some survey respondents, like this one, did not consent to follow-up from the OHRC.

4.4 Bylaw-related costs

The OHRC addresses bylaw-related costs in *Room for everyone: Human rights and rental housing licensing*. Specifically, it underlines how there must be a reasonable connection between the cost of the service and the amount charged, and it urges municipalities to be mindful that fees associated with licensing, if passed on to renters, might drive up the price of housing.⁴¹

It appears that some landlords are increasing rents because of the bylaw. For example, a landlord who rents out one property said “I expect to increase \$25-\$50 per roommate to cover the costs associated with the licensing fee.” A landlord of multiple properties recently reported that the average cost associated with licensing a property is \$1000 – \$1200, based on his personal experiences and those of other landlords that he knows in North Bay.

The City contends that, “If a landlord is trying to recoup the fees associated to the By-law, being \$300 from the City and \$300 from ESA, the total cost per month, per tenant, should be no more than \$5 (assuming one tenant per bedroom) [\$600/12 months = \$25/month /5 bedrooms = \$5 per bedroom].” The City notes that “there may be other reasons for increases in rent including inflation, a landlord’s desire to simply increase his or her profits, supply and demand and the cost to bring property into compliance with the Fire Code, Building Code and other provincial legislation all of which the City of North Bay has no control.”⁴²

The City states that it was cautious to ensure that the fees associated with the bylaw were reasonable and would not cause “undue hardship.” The City also indicates that the fees associated with the bylaws do not achieve 100% cost recovery.

In a 2011 report to City Council, City staff stated:

In terms of alleviating the impact on tenants, the City has consulted with the DNSSAB [the District of Nipissing Social Services Administration Board], we understand that in their view, there would be little or no impact on rent or number of accommodations from the By-law. Indeed, if prices do settle as a result of not having the artificial income boost from excessive rental housing within one house, then lease prices may in fact settle as well.⁴³

While some tenants surveyed raised concerns about bylaw-related rent increases, others supported the City’s view. For example, one student tenant said: “I will be residing only doors away from where I was this year and at a lower cost to me.”

⁴¹ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 13.

⁴² Letter from the City’s counsel to the OHRC, September 28, 2012.

⁴³ Report CSBU 2011-74 to City Council, July 26, 2011, page 4.

A survey respondent who rents her housing wrote that she was in favour of the bylaw and hoped that it would help to drive the cost of rent down in North Bay, stating:

I'm hoping this bylaw might help to make housing a little more accessible to those of us that are not single university students. I pay way too much for a small two-bedroom apartment for myself and my two daughters because landlords are renting out tiny closets for \$600 a month to desperate students. If there is a limit to how many people these landlords can shove into a house, maybe other housing opportunities will be developed to help students of every type.

Municipalities are allowed to charge fees for licensing, as long as they are proportional to the expenses of the program. The City appears to have established that proportionality – and in fact appears to fall short of achieving full cost recovery. There is no information before the OHRC to show that the City's licensing fees discriminate against people because of their association with a *Code* ground.

4.5 Exemptions from the bylaw

Apartment buildings and housing projects are exempt from the bylaw. The bylaw describes some other types of housing that are also exempt from licensing:

- A Rental unit that is occupied by one (1) Tenant, in which no more than one (1) other Bedroom is occupied by a Tenant;
- A Rental Unit that is occupied by the owner of the Rental Unit as their sole residence and in which no more than two (2) bedrooms are occupied by Tenants.

The bylaw defines a “tenant” as “a person who pays rent or provides services in lieu of paying rent, in return for the right to occupy a Rental Unit.”

Materials disclosed by the City show that at a March 9, 2011 information session for landlords, City staff stated, “Families are o.k. if they have more than 4 bedrooms. This By-law is for renters.”⁴⁴

In response to a request to clarify this statement, the City said:

If one or two people rent a dwelling and are responsible for paying rent for the entire household (whether related or not) they are not captured by the By-law. Where the renters each pay individual rent for their rental bedroom, either to the landlord or person charged with collecting rent, they are captured by the By-law.⁴⁵

According to this interpretation, a four-bedroom house occupied by four people – one of whom pays the rent – is not subject to the bylaw. Conversely, the same four-bedroom house occupied by four individuals – all of whom contribute to the rent – is subject to the bylaw. This appears to be arbitrary. It will also be discriminatory in some cases, against

⁴⁴ Notes from March 9, 2011 “Information Session for Landlords.”

⁴⁵ Letter from the City's counsel to the OHRC, September 28, 2012.

those who are more likely to live together but pay rent separately – such as single people protected by the *Code* ground of marital status, or students who may be proxy for *Code* grounds such as age, marital status or receipt of public assistance.

The OHRC is concerned that the system of exemptions is not only arbitrary and in some cases discriminatory – but is also being *applied* in a discriminatory way that breaches the *Code*. The City sent an email to a North Bay Landlord, on March 7, 2013, which stated:

...If your rental unit does not qualify for a license **due to renting to traditional families**, or having less than 3 bedrooms, then please just state this and I will make a note on our system. [emphasis added]

If this email reflects the City's application of the bylaw, it would appear that a four-bedroom house occupied by a "traditional family" is not subject to the bylaw, but the same four-bedroom house occupied by a group of single people or a "non-traditional" family is subject to the bylaw.

This type of enforcement is not necessary or justifiable from a planning perspective. For example, in 1979 the Supreme Court of Canada found in *R. v. Bell* that buildings cannot be regulated more strictly solely because unrelated people occupy them.⁴⁶ Subsequently, the Ontario government added the following provision at section 35(2) of the *Planning Act*:

No distinction on the basis of relationship

The authority to pass a by-law under section 34, subsection 38 (1) or section 41 does not include the authority to pass a by-law that has the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a building or structure or a part of a building or structure, including the occupancy or use as a single housekeeping unit.

In the OHRC's view, this type of enforcement would also breach the *Code*, in that it would discriminate against students, single people, certain religious or ethnic groups, and other *Code*-protected people who may not live in a "traditional family" unit.

This approach to enforcement could also lead to other *Code* violations. It could, for example, cause landlords to ask discriminatory questions. One landlord survey respondent expressed concerns about having to ask personal information about a prospective tenant's family and personal life due to the confusion around family status and licensing:

⁴⁶ The Court in *R. v. Bell*, [1979] 2 S.C.R. 212 at 223 found that "...the device of zoning by reference to the relationship of occupants rather than the use of the building is one which is *ultra vires* of the municipality under the provisions of *The Planning Act*." See also the decision of the Ontario Supreme Court (affirmed by the Ontario Court of Appeal with leave to appeal to the Supreme Court of Canada refused) in *Smith et al. v. Township of Tiny* (1980), 27 O.R. (2d) 690 (Div. Ct.); affd. 29 O.R. (2d) 661 (ON C.A.).

... it [the bylaw] would imply that we need to ask tenants personal questions about their family life/relationships with the people they will be moving in with, which I refuse to do since this would seem inappropriate and illegal.

Another landlord recently told the OHRC that his tenants started receiving calls from City officials in December, and had received two calls in the previous week from City staff who asked about whether they had a partner, where their families lived, if they had any addresses outside of North Bay, among other things. He went on to say that his tenants reported feeling harassed by the City because of the questions about their relationships.⁴⁷ The same landlord reported that during an inspection, an inspector for the City said, “if you're not a traditional family, mom dad, kids grandparents, then you need to license the property.”⁴⁸

A few landlord respondents made the direct link between renting to students and requiring a licence. These landlords either said they did not need a licence because they were renting to a family or complained that the bylaw applies to their property *because they rent to students*, and *not* to other landlords who rent to families. Some landlords reported that they will not rent to students, because they do not want to apply for a licence.

Questioning people about household composition – and in particular about who is sleeping where – can have a negative impact relating to *Code* grounds such as marital status, family status and sexual orientation, and indicate an intent to deny housing based on these grounds. It is the OHRC’s position that people should be able to make personal household decisions – such as who will share a bedroom – without the scrutiny of the landlord or the City.

4.6 Conclusion

Information obtained through the inquiry shows that aspects of the licensing bylaw and its application will in some cases be discriminatory. The City should remove any distinctions based on the number of people contributing to the rent, and should not favour “traditional families” in its exemption process.

It is essential that the City continue to educate people about the bylaw and related human rights principles, given that:

- Students report that they were called derogatory names at a public meeting. As discussed in greater detail in the OHRC’s *Room for everyone: Human rights and rental housing licensing*, students are protected by the *Code* where they experience discrimination because of their association with *Code* grounds such as age, marital status or receipt of public assistance.
- Confusion remains about when exemptions apply to groups of renters who occupy the same dwelling.

⁴⁷ Conversation with landlord March 27, 2013.

⁴⁸ Email to OHRC staff dated March 27, 2013.

- Student survey respondents said landlords also told them they could only have five *people* in a rental property because of the bylaw, when the bylaw only actually imposes limits on the number of *bedrooms* for rent.
- Tenants raised concerns about losing their housing because they were not sure if their housing was licensed. Some expressed fears about signing new leases as they were not sure if the properties (especially if they had more than five bedrooms) were licensed.

It is also important that the City monitor the housing market, to make sure that the rental housing licensing bylaw does not limit access to low-cost rental housing, and that there continues to be a mix of housing types and densities required to meet projected requirements of current and future residents.

5. Recommendations

5.1 Removing the exemption based on number of people paying rent

In the licensing bylaw and exemptions application process, the City should remove any distinctions that are based on the number of people contributing to the rent. The City should not favour “traditional families” in the exemptions process.

5.2 Monitoring

In communications with the OHRC, the City committed to monitoring and evaluating the bylaw on an ongoing basis. The OHRC recommends that the City implement a five-year monitoring program that tracks the impact of its licensing bylaw on *Code*-protected groups, consistent with the principles laid out in the OHRC publication *Count Me In! Collecting human rights-based data* and *Room for everyone: Human rights and rental housing licensing*, recommendation 12. The OHRC would be happy to help the City in this endeavour.

Exemptions to the bylaw should also be monitored to ensure that they are granted in a non-discriminatory manner.

5.3 Enforcement

As the OHRC noted in *Room for everyone: Human rights and rental housing licensing*, licensing bylaws should clearly establish that property owners rather than renters will be held responsible for any licensing violations.⁴⁹ The City has said that in cases where the bylaw leads to closing a rental unit, the City will be reasonable with the time it will give to tenants to find alternate housing (if necessary) and will only require immediate removal in the case of serious life safety issues. The OHRC recommends that the City include this

⁴⁹ *Room for everyone: Human rights and rental housing licensing*, OHRC, p.19.

in an enforcement policy, or in the bylaw itself. The OHRC also recommends that the City educate tenants and property owners about any enforcement policies or amendments to the bylaw.

5.4 Education

In communications with the OHRC, the City said it has and will continue to “educate the public regarding this By-law using whatever means are appropriate and relevant.” The City will also:

- Continue to educate the public that the By-law does not strictly apply to “student rentals”
- Provide landlords with information about their responsibilities under the *Code*
- Add *Code*-related information to its website.

The OHRC recommends that the City train all staff on the process for granting exemptions from the bylaw. The City should also educate the public about this.

The OHRC recommends that the City develop a “Q & A” section on its website and a brochure that it mails to “all tenants” of registered rental addresses, to address these and other common questions about the bylaw, and which also refers to the *Code*.

The OHRC wishes to thank all of the people who took part in the inquiry, particularly the tenants who shared their opinions and experiences. The OHRC also thanks the staff and officials at the City of North Bay for their cooperation. The OHRC remains available to assist the City in its ongoing monitoring and public education efforts related to the bylaw and its relationship to the Ontario *Human Rights Code*.