

Bill No. 308
2016

By-law No. CP-_____

A by-law to provide for the licensing and regulation of informal residential care facilities and services in the City of London.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, (the *Municipal Act, 2001*), provides that a municipal power shall be exercised by by-law:

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality; in paragraph 6, Health, safety and well-being of persons, in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 11 Business Licensing;

AND WHEREAS subsection 151 of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10 of the Act, a municipality may provide for a system of licences with respect to a business;

AND WHEREAS the Council for the City of London considers it necessary and desirable for the public to regulate informal residential care facilities and services for the purpose of protecting the health, safety and well-being of persons, nuisance control and to address quality of life issues in London's neighbourhoods;

AND WHEREAS section 23.2 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS Council for the City of London is of the opinion that the delegation of legislative powers under this by-law to the Licence Manager and the Hearings Officer including without limitation the power to issue, revoke, suspend and impose conditions on a licence, prescribe operational standards to be imposed on licensees are powers of a minor nature having regard to the number of people, the size of geographic area and the time period affected by the exercise of the power in accordance with subsection 23.2(4) of the *Municipal Act, 2001*;

AND WHEREAS subsection 391(1) of the *Municipal Act, 2001* provides that a municipality may impose fees and charges on persons,

- (a) for services or activities provided or done by or on behalf of it;
- (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and,
- (c) for the use of its property including property under its control;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity, and any person who contravenes such an order is guilty of an offence;

AND WHEREAS it is deemed expedient to pass this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London hereby enacts as follows:

1.0 DEFINITIONS

1.1 For the purpose of this By-law:

“**Accredited Program**” means:

- (a) The Middlesex-London Health Unit’s Food Handler Certification Course;
- (b) A food handler training and certification program or course provided by a Board of Health established under the *Health Protection and Promotion Act*, R.S.O. 1990, c.H-7, as amended, and any regulations thereunder; or
- (c) A food handler training and certification program or course that has been accredited by the Medical Officer of Health;

“**Applicant**” means a person applying for a licence under this By-law;

“**Certified Food Handler**” means a person who holds a valid Food Handler Certificate;

“**Chief of Police**” means the chief of police for the London Police Service;

“**City**” means The Corporation of the City of London;

“**Council**” means the Municipal Council of The Corporation of the City of London;

“**Chief Building Official**” means the Chief Building Official as appointed by Council pursuant to the *Building Code Act*;

“**Enforcement Officer**” means a Municipal Law Enforcement Officer appointed by the Council, a police officer with the London Police Service or an officer, employee or agent of the City whose responsibilities include the enforcement of this By-law;

“**Fire Chief**” means the Chief of London Fire Services of the City or a person delegated by him or her for the purposes of this By-law;

“**Food Handler Certificate**” means a certificate issued to a person by the provider of an Accredited Program certifying that the person has successfully completed that program;

“**Hearings Committee**” means a person or body that has been delegated the power or duty to hold a hearing or provide an opportunity to be heard for the purpose of this By-law;

“**Hearings Officer**” means a Hearings Officer appointed under the City’s Hearings Officer By-law A.-6653-121, as amended;

“**Informal Care Services**” means the provision of services to support the routines of daily life including without limitation to assistance with money management, assistance with facilitating the payment of rent, assistance with facilitating the payment of bills, receiving payment for rent and services including rent received on behalf of another party, housing finding and stabilization, assistance with finding housing whether temporary or permanent, meal preparation, the provision of food or meals, advocacy, transportation, assistance with transportation, or other services;

“**Informal Residential Care Facility**” means a residential facility that is occupied or intended to be occupied by three or more persons for the purpose of receiving Informal Care Services, whether or not receiving the services is the primary purpose of the occupancy but does not include a residential facility that is funded or licensed by the federal or provincial government or regulated under one of the following:

- (a) *Long-Term Care Homes Act, 2007*;
- (b) *Retirement Homes Act, 2010*;
- (c) *Homes for Special Care Act*;
- (d) *Public Hospitals Act*;

“Licensee” means any person licensed under this By-law;

“Licence Manager” means the Managing Director of Development and Compliance Services or his or her designate;

“Chief Municipal Law Enforcement Officer” means the Chief Municipal Law Enforcement Officer of the City or his or her designate;

“Medical Officer of Health” means the Medical Officer of Health for the Middlesex-London Health Unit or a person delegated by him or her for the purposes of this By-law;

“Operational Standards” means the operational standards prescribed by the Licence Manager under subsection 7.9(b) of this By-law;

“tenant” means a person other than an operator or employee who resides in an Informal Residential Care Facility and to whom the operator provides Informal Care Services and the term “tenant” has a corresponding meaning;

2.0 PROHIBITIONS

2.1 No person shall operate an Informal Residential Care Facility without holding a current valid licence issued under this By-law.

2.2 No person shall hold himself, herself or itself out to be licensed under this By-law if they are not.

2.3 No person shall contravene or fail to comply with a term or condition of his, her or its licence imposed under this By-law.

2.4 No person shall operate an Informal Residential Care Facility while their licence issued under this By-law is under suspension.

3.0 ADMINISTRATION

3.1 The administration of this By-law is assigned to the Licence Manager who shall generally perform all of the administrative functions conferred upon him or her by this By-law and without limitation may:

- (a) receive and process all applications for all licenses and renewals of licences under this By-law;
- (b) issue licenses in accordance with the provisions of this By-law;
- (c) impose terms and conditions on licences in accordance with this By-law; and
- (d) refuse to issue or renew a licence or revoke or suspend a licence in accordance with this By-law.

4.0 APPLICATIONS FOR A LICENCE AND RENEWAL OF LICENCE

4.1 Every application for a licence and renewal licence shall be made to the Licence Manager on the forms provided by the Licence Manager. Without limitation, every application for a licence or a renewal shall include the following information:

- (a) the name, municipal address and telephone number of each Applicant or Licensee;
- (b) if the Applicant or Licensee is a partnership, the name, address and telephone number of each partner;
- (c) if the Applicant or Licensee is a corporation, the address of its head office, the name, address and telephone number of each director and officer;
- (d) the municipal address and legal description of the business;

- (e) a sworn statement by the Applicant or Licensee certifying the accuracy, truthfulness and completeness of the application;
- (f) if the Applicant or Licensee is a partnership, a sworn statement by each partner certifying the accuracy, truthfulness and completeness of the application; and
- (g) if the Applicant or Licensee is a corporation, a sworn statement by an officer of the corporation duly authorized for that purpose certifying the accuracy, truthfulness and completeness of the application.

4.2 Every person applying for a licence or a renewal of a licence shall provide in full at the time the application is submitted all of the information requested on the application form as well as:

- (a) payment of the prescribed fee as set out in Schedule "A" of this By-law;
- (b) if the Applicant or Licensee is a corporation, a copy of the incorporating documentation, a copy of the last initial notice or notice of change which has been filed with the provincial or federal government and a Certificate of Status issued by the Ministry of Government and Consumer Services dated no later than fifteen (15) days prior to the date of the application for a licence;
- (c) a police records check from the London Police Service dated no later than 60 days prior to the application for a licence;
- (d) if the Applicant or Licensee is a partnership, have each partner submit to the Licence Manager a police records check from the London Police Service dated no later than 60 days prior to the application for a licence;
- (e) if the Applicant or Licensee is a corporation, have each director submit to the Licence Manager a police records check from the London Police Service dated no later than 60 days prior to the application for a licence;
- (f) proof of insurance in respect of the Informal Residential Care Facility that:
 - (i) is satisfactory to the Licence Manager;
 - (ii) includes general liability insurance in an amount not less than \$5,000,000;
 - (iii) includes risk property insurance for the Informal Residential Care Facility including its furniture and fixtures in an amount sufficient to cover current replacement of the property;
 - (iv) identifies the use as an Informal Residential Care Facility; and
 - (v) requires that the Licence Manager be notified within 60 days of its expiry; and
- (g) any other documentation or information as may be required in any other Part of this By-law and by the Licence Manager.

4.3 The Licence Manager may require affidavits in support of an application for or a renewal of a licence.

4.4 Every application may be subject to investigations by and comments or recommendations from the municipal or provincial department or agencies as the Licence Manager deems necessary including but not limited to:

- (a) the Chief Building Official;
- (b) the Fire Chief;
- (c) the Chief Municipal Law Enforcement Officer;
- (d) the Chief of Police; and
- (e) the Medical Officer of Health.

5.0 ISSUANCE OF LICENCES

5.1 Every licence issued under this By-law shall be in the form and manner as provided by the Licence Manager and without limitation shall include on its face the following information;

- (a) the licence number;
- (b) the name, address and telephone number of each Licensee;
- (c) the date the licence was issued and the date it expires; and,
- (d) the municipal address of the premises to be used for the Informal Residential Care Facility.

5.2 Every licence that is issued for the first time, and every renewal thereof, is subject to the following conditions of obtaining, continuing to hold and renewing a licence all of which shall be performed and observed by the Applicant or the Licensee:

- (a) the Applicant or Licensee shall pay the prescribed licence fee as set out in Schedule "A" of this By-law;
- (b) the Applicant or Licensee shall pay all fees and fines owed by the Applicant or Licensee to the City;
- (c) the Applicant or Licensee shall have a contractual or proprietary interest in the premises upon which the Informal Residential Care Facility is to be operated which will enable the Applicant or Licensee to carry on the business;
- (d) the Applicant or Licensee shall allow, at any reasonable time and when permitted by law, the City to inspect the premises used for the Informal Residential Care Facility;
- (e) the premises used for the Informal Residential Care Facility shall be in accordance with the requirements of the *Building Code Act* and the Regulations thereunder, the *Fire Protection and Prevention Act*, and the Regulations thereunder, and the City's Property Standards By-law CP-16;
- (f) the premises used for the Informal Residential Care Facility are not constructed or equipped so as to hinder the enforcement of this By-law;
- (g) the use of the premises used for the Informal Residential Care Facility is permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use;
- (h) the operation of the Informal Residential Care Facility shall comply with all federal and provincial laws;
- (i) the conduct of the Applicant or Licensee, or any partner, officer, director, employee or agent of the Applicant or Licensee, shall not afford reasonable cause to believe that the Applicant or Licensee will not carry on or engage in the operation of the Informal Residential Care Facility in accordance with the law or with honesty or integrity;
- (j) if the Applicant or Licensee is a partnership or a corporation, any change in the composition of the partnership or of the officers and/or directors of the corporation shall be reported to the Licence Manager within ten (10) days; and
- (k) the Applicant or Licensee shall be in compliance with all provisions of this By-law.

5.3 The issuance of a licence or renewal thereof under this By-law is not intended and shall not be construed as permission or consent by the City for the Licensee to contravene or fail to observe or comply with any law of Canada, Ontario or any by-law of the City.

5.4 A licence issued under this By-law shall be valid only for the period of time for which it was issued.

5.5 Every licence, at all times, is owned by and is the property of the City and is valid only in respect of the person and for the Informal Residential Care Facility named therein. A separate licence shall be required for each Informal Residential Care Facility.

5.6 The Licensee shall notify the Licence Manager of any change in ownership of the Informal Residential Care Facility and shall surrender his, her or its licence to the Licence Manager within seventy-two (72) hours of the completion of such change.

5.7 All licence fees and inspection fees paid under this By-law are non-refundable.

6.0 REGULATIONS

6.1 The Licensee shall ensure that a legible copy of the license issued under this By-law is posted and maintained in a prominent and visible position inside the Informal Residential Care Facility near the front entrance.

6.2 The Licensee shall have a written tenancy agreement with each tenant.

6.3 The Licensee shall develop and maintain a service plan for each tenant which shall include all the information as prescribed by the Licence Manager.

6.4 The Licensee shall maintain a separate file for each tenant which contains the following information:

- (a) Name, gender, date of birth, age, date of admission and date of discharge;
- (b) Name, address and telephone number of next-of-kin;
- (c) Name address and telephone number of the tenant's attorney for personal care, if any;
- (d) Name address and telephone number of the tenant's attorney for property; if any;
- (e) Name, address and telephone number of the tenant's physician(s);
- (f) A service plan required under section 6.3;
- (g) A signed tenancy agreement for the tenant; and
- (h) Such other information as prescribed by the Licence Manager.

6.5 The Licensee shall ensure that the tenant file required under section 6.4 shall be retained for a period of seven (7) years following the discharge of the tenant from the Informal Residential Care Facility.

6.6 The Licensee shall maintain an up-to-date, alphabetical list of the tenants of the Informal Residential Care Facility which includes the name, gender, date of birth, age and date of admission of each tenant.

6.7 The Licensee shall maintain insurance as required under subsection 4.2(f) of this By-law.

6.8 The Licensee shall ensure that all persons working at the Informal Residential Care Facility or providing Informal Care Services, whether employed by the Licensee or not, are at least 18 years of age.

6.9 The Licensee shall ensure that at all times when food is being prepared, processed, packaged, served or stored at the Informal Residential Care Facility there is a Certified Food Handler working at the Informal Residential Care Facility who is supervising the preparation, processing, packaging, service or storage of food.

6.10 Every person, when working as the Certified Food Handler supervising the preparation, processing, packaging, service or storage of food under section 6.9 shall produce for inspection his or her Food Handler Certificate upon request by an Enforcement Officer.

6.11 The Licensee shall ensure that all serious incidents are responded to and reported within 24 hours of the occurrence, or if on a weekend or a statutory holiday, on the next business day to the Licence Manager.

6.12 For the purpose of section 6.11 a serious incident may include but is not limited to:

- (a) an emergency, including fire or unplanned evacuation of tenants;
- (b) an unexpected or sudden death, including a death resulting from an accident or suicide;
- (c) a tenant who is missing for twenty-four hours or more;
- (d) any missing tenant who returns to the Informal Residential Care Premises with an injury or any significant change in condition regardless of the length of time the tenant was missing, where "significant change" means a major change in the person's health condition that:
 - (i) will not resolve itself without further intervention;
 - (ii) impacts on more than one aspect of the tenant's health condition, and
 - (iii) requires emergency medical attention;
- (e) an outbreak of a reportable disease or communicable disease as defined in the *Health Protection and Promotion Act*;
- (f) an event on the Informal Residential Care Premises that resulted in law enforcement or emergency services intervention resulting in criminal charges or the need for unexpected emergency medical service requiring transportation to a hospital or other emergency care institution; or
- (g) an allegation of abuse, threat of violence, or danger to life of any staff person or tenant.

6.13 Where a Licensee is required to make a report under section 6.11 the report shall be in a form and contain the information as prescribed by the Licence Manager.

6.14 The Licensee shall comply with all of the Operational Standards for Informal Residential Care Facility and Services prescribed by the Licence Manager.

7.0 POWERS OF THE LICENCE MANAGER

7.1 The power and authority to issue or renew a licence, refuse to issue or refuse to renew a licence, to cancel, revoke or suspend a licence, to impose terms and conditions, including special conditions, on a licence, are delegated to the Licence Manager.

7.2 The Licence Manager shall issue a licence or renew a licence where the requirements or conditions of this By-law have been met.

7.3 The Licence Manager may refuse to issue, refuse to renew or revoke or suspend a licence or impose a term or condition on a licence on the following grounds:

- (a) the conduct of the Applicant or Licensee, or any partner, officer, director, employee or agent of the Applicant or Licensee, affords reasonable cause to believe that the Applicant or Licensee will not carry on his or her business in accordance with the law or with honesty or integrity;
- (b) an Applicant or Licensee is carrying on activities that are in contravention of this By-law;
- (c) there are reasonable grounds to believe that an application or other documents provided to the Licence Manager by or on behalf of the Applicant or a Licensee contains a false statement;
- (d) any information contained in the original application form or any other information provided to the Licence Manager, has ceased to be accurate and the Licensee

has not provided up-to-date accurate information to the Licence Manager to allow the Licence Manager to conclude that the Licence should continue;

- (e) an Applicant or Licensee does not meet, at any time, one or more of the requirements of this By-law or any conditions imposed on a Licence;
- (f) the Applicant or Licensee is not in compliance with any federal, provincial law or City By-law, including this By-law;
- (g) the Applicant or Licensee or any partner, officer or director has been convicted of an offence, for which a pardon has not been granted, pursuant to any one or more of Parts V (Sexual Offences), VIII (Offences Against the Person and Reputation) or IX (Offences Against Property) of the *Criminal Code of Canada*, R.S.C. 1985 c. C-46, as amended or any other criminal convictions in the preceding five (5) years;
- (h) the Applicant or Licensee has been convicted of an indictable offence under any Statute of Canada, including but not limited to the *Criminal Code of Canada*, the *Narcotic Control Act*, the *Food and Drug Act*, and the *Controlled Drug and Substances Act* in the preceding five (5) years;
- (i) the Applicant or Licensee has been convicted of any other criminal offence for which, in the opinion of the Licence Manager, it would not be in the interest of public safety to issue a licence; or
- (j) the Informal Residential Care Facility does not comply with this By-law.

7.4 Where the Licence Manager is of the opinion that:

- (a) an application for a licence or renewal of a licence should be refused;
- (b) a reinstatement should not be made;
- (c) a licence should be revoked;
- (d) a licence should be suspended, or,
- (e) a term or condition of a licence should be imposed;

the Licence Manager shall make that decision.

7.5 Where the Licence Manager has made a decision under subsection 7.4, the Licence Manager's written notice of that decision shall be given to the Applicant or the Licensee by regular mail to the last known address of that person and shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the address of the corporation's registered head office.

7.6 The written notice to be given under subsection 7.5 shall:

- (a) set out the grounds for the decision;
- (b) give reasonable particulars of the grounds;
- (c) be signed by the Licence Manager; and,
- (d) state that the Applicant or Licensee is entitled to request a hearing by a Hearings Officer if the Applicant or Licensee files with the City Clerk a notice of appeal in writing and the appeal fee as set out in Schedule "A" of this By-law within ten (10) days after the notice in subsection 7.5 is served. The notice of appeal must comply with the requirements as set out in Schedule 1 of the City's Hearings Officer By-law A.-6653-121, as amended

7.7 Where no appeal is registered within the required time period, the decision of the Licence Manager shall be final.

7.8 Despite subsection 7.6 where a licence is voluntarily surrendered by the Licensee for revocation, the Licence Manager may revoke the licence without notice to the Licensee.

7.9 In addition to any other power, duty or function prescribed this By-law, the Licence Manager may make regulations under this By-law including:

- (a) prescribing the information that must be included in a file for each tenant as required under section 6.4;
- (b) prescribing the Operational Standards including without limitation any matter relating to the health, safety, well-being and protection of the tenants of such facility;
- (c) prescribing the form of and any information required to be provided to the Licence Manager in report under sections 6.11 and 6.12;
- (d) prescribing the format and content of any forms or other documents required under this By-law;
- (e) prescribing the form of and minimum requirements for criminal record checks and insurance policies; and
- (f) prescribing criteria for any requirements or approvals not otherwise specified in this section.

8.0 HEARINGS BEFORE THE HEARINGS OFFICER

8.1 The power and authority to conduct hearings of appeals under this By-law are hereby delegated to the Hearings Officer.

8.2 The provisions of the City's Hearings Officer By-law A.-6653-121, as amended, apply to all hearings conducted by a Hearings Officer.

8.3 The Hearings Officer may uphold or vary the decision of the Licence Manager or make any decision that the Licence Manager was entitled to make in the first instance.

8.4 The decision of the Hearings Officer is final.

9.0 ENFORCEMENT

9.1 This By-law may be enforced by an Enforcement Officer.

9.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law, including carrying out an inspection.

10.0 PENALTY

10.1 Any person who contravenes any provision of this By-law is guilty of an offence and all contraventions of this By-law are designated as continuing offences.

10.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence and all contraventions of this By-law are designated as continuing offences.

10.3 A person convicted under this By-law is liable to a minimum fine of \$500.00 and a maximum fine of \$25,000.00 upon a first conviction and a maximum fine of \$50,000.00 for any subsequent conviction.

10.4 Despite subsection 10.3, where the person convicted is a corporation, the corporation is liable to a minimum fine of \$500.00 and a maximum fine of \$50,000.00 upon a first conviction and a maximum fine of \$100,000.00 for any subsequent conviction.

10.5 In addition to the fine amounts set out in subsections 10.3 and 10.4 above, for each day or part of a day that an offence continues, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 and the total of all daily fines for the offence is not limited to \$100,000.00.

10.6 If this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and,
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

11.0 GENERAL

11.1 If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

11.2 If there is a conflict between a provision of this By-law and a provision of any other City by-law, then the more restrictive provision shall apply.

12.0 MISCELLANEOUS

12.1 This by-law may be referred to as the "Informal Residential Care Facility Licensing By-law".

12.2 This by-law shall come into force and effect on November 21, 2016.

Passed in Open Council on August 30, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – August 30, 2016
Second Reading – August 30, 2016
Third Reading – August 30, 2016

Schedule "A" - FEES

Informal Residential Care Facility Licence Fee \$750

Hearings Officer Appeal Fee \$100