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February 26, 2021

VIA EMAIL: cpsc@london.ca

Chair and Members
Community and Protective Services ("CAPS") Committee
City of London
300 Dufferin Avenue, PO Box 5035
London, Ontario, N6A 4L9

Dear Chair and Members:

Re: Property Standards By-law Review

We are the lawyers for the London Property Management Association ("LPMA"). The LMPA is committed to promoting education and professionalism among its more than 550 members. The vast majority of LPMA members are builders, owners and operators of multi-residential rental properties in London. LPMA is Ontario's oldest regional landlord association and its mandate is to educate its members to administer and manage their rental properties to meet all statutory and professional standards, including full compliance with London's Property Standards By-laws (the By-law) as well as the provisions of the *Residential Tenancies Act* (RTA).

The purpose of this submission is to express, on behalf of its Members, LPMA's concerns about the proposed amendments to the By-law and to ask that your Committee direct staff to report back on those provisions which for which LPMA's concerns are raised and that it will do so following stakeholder consultation. LPMA is concerned about provisions which exceed *Building Code Act* (BCA) requirements and impose "retrofit" in existing buildings. LPMA is concerned about ambiguous terms used in the By-law which confer broad discretion on enforcement officers and create uncertainty for building owners in trying to meet their By-law obligations. LPMA also has concerns about the lack of procedural fairness relative to the issuance of orders and appeals provided for in the By-law. What follows are particulars of LPMA's concerns warranting a further staff review and a request for stakeholder input from LPMA into completion of the By-law's legislative process.

Section 2.1: This provision of the By-law appears to set a standard for housing that in many cases exceeds the BCA, Fire Code, Plumbing Code and Electrical Code that would have been in place at the time the property was constructed. Owners of multi-residential buildings, if forced to "retrofit" their properties, will be forced in some cases, to compel tenants to vacate rental units to enable work to be done; will be forced to seriously disrupt tenants' use and enjoyment of their rental units in those cases where work can be done without displacing tenants; and, spend substantial sums of money which will then be passed on to tenants in the form of Capital Expenditure Applications under the *Residential Tenancies' Act* (RTA). Absent valid "life-safety" grounds for deploying retrofit requirements, it is submitted that such requirements should be removed or alternative means of addressing the specific life-safety issues be explored. In addition, there is a basic legal principle which holds that in the absence of

the lawful delegation of provincial powers, a Municipality lacks legislative jurisdiction to enact and enforce retrofit and impose new standards of construction. Excess exercise of municipal jurisdiction invites legal challenges which ultimately are not a constructive way to deal with what, in our submission, are mutual goals of LPMA members and the City to ensure safe housing for tenants and homeowners. A legal review of the scope of the proposed changes, and stakeholder consultation, are warranted to ensure there is no excess of municipal jurisdiction and that a more measured approach, rather than imposing new and excessive construction requirements in older buildings, is taken.

Sections 2.2, 2.6, 4.1.2, 4.1.3, 4.2.2 are all examples of provisions that are entirely subjective in the eyes of an Inspector and do not take into account the more objective Codes that were in effect at the time the property was constructed. Such provisions create uncertainty for building owners as, in the experience of owners, one inspector may impose one subjective standard and upon review by another inspector, the "goal posts" change and, a few months or years later, yet another inspector may have a different opinion. Such subjective standards have no place in mandatory municipal enactments which impose substantial financial obligations and penalties on citizens. It is submitted that a review of the provisions in question, with stakeholder consultation, will help achieve a better legislative product from the City.

Section 4.8.6 (l): There is no definition of the term "adequate" and again, this is entirely subjective. The language of this provision should be changed so that those required to comply with the section can properly do so. The same criticism applies to Section 4.6.3: There is no definition of the term "compatible finish" and, like art, whether the finish is compatible is "in the eye of the beholder", or beholders as the case often is with municipal inspections.

Section 4.8.11: This provision requires some additional review and consideration. It is unclear whether the City of London emergency/temporary housing for the homeless meets this definition of size. It would appear that the minimum size of 278 sq. ft. will make the provision of affordable housing more expensive and may preclude the conversion of hotel/motel rooms to Single Occupancy Residential units needed to mitigate homeless issues. In fact, there may be bachelor type suites in buildings constructed during the 70's and 80's, many of which are owned or funded by the London Housing Authority, which may not comply with this requirement. If these suites complied with all of the appropriate zoning and building codes of the day when they were constructed shall we just deem them illegal today? That is the potential effect of this By-law; consequently, a more detailed review of this particular provision is warranted.

Section 5.4.4 and 5.4.7: Subject to valid "life-safety" requirements, buildings should be required to comply with the Electrical Code in effect when they were constructed. As stated above, there are serious consequences for both landlord and tenant stakeholders, as well as for the City, if the legislation exceeds municipal jurisdiction and, even if it does not, the financial and daily living consequences for affected stakeholders, including tenants (who are most directly affected) are excessive.

Section 5.4.6: Does not permit motion activated lighting of common areas, a common practice for energy conservation. Energy conservation and innovation should be encouraged, not suppressed.

Section 6.2: 14 days is an arbitrary and insufficient time for an appeal. There is no provision for determining how an Order must be served. It appears that the Order may be served on a tenant (occupant) who may or may not give it to the owner but the Order would not be capable of being appealed after 14 days, even if the owner of the property was unaware of the Order. Such a provision invites judicial review on the basis of a lack of procedural fairness and natural justice owed to the parties subject to such orders.

Administrative Penalties: Given the subjective nature of many of the provisions of the By-law it would be appropriate to enact a statutory right of appeal or review of the Administrative Penalties. Note that under

the RTA, amendments were recently introduced whereby such penalties, if they result from tenant/occupant conduct, can be recovered directly from the tenant in an application to the Landlord and Tenant Board. The amendments have been given Royal Assent but have not yet been proclaimed pending amendments to the *Courts of Justice Act* which will transfer jurisdiction over such matters to the Landlord and Tenant Board. Thus, both landlords and tenants may wish to join in challenging the quantum of administrative fines levied against landlords where the conduct giving rise to the fine is due to actions of the tenant or her invitees. As a practical matter, enforcement of occupant infractions usually is levied against landlords but the new indemnification provisions of the RTA create a mutual interest for these stakeholders in seeking a remedy for excessive administrative fines. The lack of an appeal mechanism of such fines appears to be missing from the powers of the Property Standards Committee and therefore invites jurisdictional challenge on the basis of procedural fairness and natural justice. Clearly the preferred option is stakeholder consultation and review, not overreaching, hasty enactment of defective legislation.

Finally, there are numerous typographical errors to the By-law that need correction.

Based on the foregoing, it is submitted that the request of LPMA that this matter be sent back to staff for stakeholder and staff review, including legal review by city lawyers, is justified and we ask you're your Committee direct such a review.

Thank you, in advance, for your consideration of the submissions of LPMA.

Yours very truly,

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cc: LPMA