

Report HDR-SS-19-13

To: Chair Burley and Members of the Social Services Committee
From: Rod Wyatt
Meeting Date: June 12, 2013
Subject: **Smoke-Free Policy, Grey County and Owen Sound Housing Corporation Sites**
Status: Received by Committee as presented per Resolution SSC66-13 June 12, 2013; Endorsed by County Council July 2, 2013;

Recommendation(s)

WHEREAS in 2012 there were three fires in units of the Grey County and Owen Sound Housing Corporation, two of which were caused by careless smoking and there was evidence of unsafe smoking practices in the third unit;

AND WHEREAS complaints from tenants about the impact of second hand smoking have increased and there is greater awareness of the health issues associated with smoking and exposure to second hand smoke;

AND WEHREAS smoking is already prohibited in common areas of the buildings such as hallways, entrances and common rooms by the provisions of the Smoke Free Ontario Act;

NOW THEREFORE BE IT RESOLVED THAT the public housing units of the Grey County and Owen Sound Housing Corporation be designated as smoke free units as of January 1, 2014;

AND THAT all new leases signed as of January 1, 2014 (new move-ins and transfers) in all buildings and properties be 100 percent smoke-free and restrict smoking outdoors to a distance of five meters or more away from any windows, entrances or exits, patios and balconies to the building/unit;

AND THAT existing tenants will be grandfathered (exempted) for the length of their tenancy in their current unit, unless they transfer or choose to sign a no smoking policy lease addendum.

Background

The impetus for developing a smoke free policy for the public housing units managed by the County of Grey was the three fires that occurred in 2012. In the two apartment fires (one of which resulted in a fatality), careless smoking was identified as the cause. In the third fire, a family row house unit, the fire was started in the kitchen but the Fire Marshall had noted in his report finding unsafe smoking practices in the unit.

Concerns have been expressed by local fire departments noting unsafe smoking practices such as over flowing ash trays and carpet burns they have observed during their inspections in our apartments.

Costs to prepare a unit for a new tenant after the move-out of a tenant(s) who was a smoker can be greater than double the costs of preparing a unit after the move-out of non-smoking tenants. Units that have had a tenant who smokes requires the washing of all walls, floors, cupboards and appliances and often more than one coat of paint on ceilings and walls to cover the impact of smoking. In the most severe cases the appliances have to be replaced because they are too stained to clean. In one extreme case recently a new tenant moving-in to a former smokers unit complained of the smoke smell. The unit had been washed and painted twice. This tenant had some health issues. Staff rented some air cleaning equipment designed to remove smoking odours. The cost to remediate this unit in terms of cleaning, preparation, rental of equipment and staff time working with the family of this new tenant was considerable. This was the direct result of the previous long term tenant who was a heavy smoker.

Housing staff are dealing with an increased number of complaints from our existing tenants regarding the impact of second hand smoke. Although smoking is not allowed in common areas of buildings such as hallways, second hand smoke can infiltrate into the units of non-smoking tenants through the patios/balcony areas or through the ventilation systems. Many tenants are better informed about the health hazards of second hand smoke and second hand smoke is a source of irritation to many non-smoking tenants, particularly those with breathing problems.

With the adoption of smoke-free building policy for the public housing units managed by the County of Grey, smoking issues will not be eliminated. Existing tenants who smoke will be grandfathered as they have signed leases that did not prohibit smoking in their rental units. Through attrition the number of smoking units will decrease over time and the impact of second hand smoke in and about the buildings will diminish.

Definitions and Exemptions:

The definition of smoking is the same as in the Smoke Free Ontario Act and means inhaling, exhaling, breathing or carrying any lighted cigar, cigarette, pipe or other tobacco product in any manner or any form.

There would be two exemptions to this non-smoking policy.

- Medical use of marijuana for those suffering from grave and debilitating illness and having Authorization to Possess issued by Health Canada.
- Traditional use of tobacco by aboriginal tenants for activities carried out for traditional aboriginal cultural or spiritual purposes. The sacred use of tobacco does not include the recreational use of tobacco.

Existing tenants who are smokers will be grandfathered (exempted) from the policy while they remain in their existing units. Should they transfer to another unit, it would be to a designated, non-smoking unit. Once they move from their current unit, that unit would become a non-smoking unit for the new tenants moving in.

A non-smoking unit would be a unit where smoking would be prohibited. This would include inside the unit and the patio/balcony areas. Any smoke activity would have to take place more than 5 meters (16 feet) from any windows, doors, entrances/exits from the unit and building. These areas would be designated.

Issues:

A number of our current tenants and applicants on our wait list for social housing are on disability pensions, and some have addictions and mental health issues. With the implementation of this policy, information will be provided to applicants, tenants, contactors, service personnel, and staff on how it affects them. Some applicants/tenants will have difficulties adapting and will require more information about the intent of the policy. Applicants in particular may reconsider acceptance of an offer to a non-smoking apartment.

Existing non-smoking tenants may become frustrated because the grandfathering of existing smoking tenants. This will not bring immediate results to complaints about second hand smoke or make the buildings entirely smoke free.

Application of this policy may be more difficult for our family units than in our apartment buildings. The family units consist of row housing, semi-detached housing and separate houses. There is more space around units, designated individual patio areas and less dense populations. Peer pressure among tenants to not smoke in non-smoking areas would have less impact than in an apartment building setting and more difficult to monitor.

Housing staff will need to make applicants/tenants aware of the policy implications through tenants meetings, notices and working with the Public Health unit to provide literature on cessation programs and smoking related matters. The implementation date of January 1, 2014 will allow time for staff to inform and consult with our tenants regarding the implication of this policy and to notify contractors, service agencies and staff working in our buildings.

Precedents:

Non-Smoking policies in social housing projects are not new. Some of our non-profit housing providers in Grey County have no smoking policies within their projects. The Bluewater Ridge Affordable Housing project is an example. Bruce County adopted a no smoking policy for their public housing projects in April of 2011.

The Region of Waterloo has had a no Smoking Policy since April 2010. Many other Service Managers and/or social housing providers have or are considering adoption of non-smoking policies for their projects. There have not been any major issues with the adoption on no smoking policies. Key factors in implementing such policies have been consulting and providing information to tenants about the intent and implementation of the policies. The Region of Waterloo has been very positive on the implementation of their policy and has had very few issues regarding compliance and enforcement.

Legal Rights and Enforcement:

There is no right to smoke enshrined in Canadian Law. The Canadian Charter of Rights and Freedoms does not provide smoker's protection against discrimination as smoking (nicotine addiction) is not considered a mental or physical disability under the legislation. Smoking is also not identified under provincial human rights law as grounds for protection from discrimination. Those who smoke tobacco do not have an absolute right to smoke as is evidenced by increasing restrictions on smoking imposed by legislation intended to protect non-smokers from second hand smoke.

Enforcement of smoking issues in a residential situation would have to be enforced through the Residential Tenancy Act. Smoking is not specifically addressed in the Ontario Residential Tenancies Act 2006. However landlords and condominium boards have the legal right to designate specific units or entire buildings as smoke-free. Landlords may legally include no-smoking clauses in new tenancy agreements by banning smoking in individual units including outdoor patios and balconies or on any areas of the residential property. Landlords may not, however, unilaterally amend existing tenancy agreements. Landlords also have the right to seek penalties for non-compliance, including termination of the lease, if a tenant violates the rights of other tenants to reasonable enjoyment of the premises.

With the grandfathering provisions for existing tenants who smoke and difficult enforcement issues using the Residential Tenancy Act, Housing staff would not be able to guarantee a smoke free environment. Similarly staff are not guarantors of tenants' health or of a smoke free building. However housing staff will take reasonable steps in response to non-compliance smoking incidents/complaints to enforce the No Smoking Policy. Complaints would be treated much the same as complaints about noise and pets that interfere with the reasonable enjoyment of the premises for tenants.

Financial / Staffing / Legal / Information Technology Considerations

The main cost of implementing a no-smoking policy for the County of Grey managed public housing portfolio would be signage and staff time to conduct information sessions and tenant meetings. The buildings already have non-smoking signs to comply with the Smoke Free Ontario Act for the public common areas of the buildings. Additional signage would be required to define the additional nonsmoking areas – front entrances and areas five meters away from entrances, exits and windows (exception being the patios and balconies of tenants grandfathered under this policy) and signage on apartment doors designating that unit as a non-smoking unit. We have had discussions with the Public Health Unit regarding appropriate signage and the costs would be within current operational budget limits.

Complaints about violation of the policy would be handled by staff similar to other “interference with the reasonable enjoyment of the premises” complaints in terms of discussions with the tenants involved and it is not anticipated that there would be any unusual legal costs with this policy change. This has been the experience with the Region of Waterloo and in Bruce County.

Link to Strategic Goals / Priorities

Investing in healthy living strategies with community partners

Respectfully submitted by,

Rod Wyatt
Director of Housing