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Town of Aurora

General Committee Report

No. PDS23-001

Subject: Secondary Suites in Residential Homes Building Inspection Strategies and Proposed Policies

Prepared by: Wm. Jean – Manager Building Division/CBO

Department: Planning and Development Services

Date: January 17, 2023

Recommendation

1. That Report No. PDS23-001 be received for information.

Executive Summary

The purpose of this report is in response to Council's request that staff be directed to review the existing Secondary Suite Registration by-law and provide a report to Council on possible improvements to ensure that existing and new secondary suites are properly inspected and registered. This report provides the powers and duties of various agencies and statistics over the past years on complaints and permits. It also contains recommendations to increase the inspection effectiveness to ensure safe dwelling units.

- The Town of Aurora currently has a By-law requiring secondary suites be registered with the Town
- Creation of new secondary suites must comply with the Ontario Building Code and the Electrical Safety Code
- Existing registered secondary suites must comply with the Ontario Fire Code
- The Building Division has developed a strategy to attempt to inspect and close out any outstanding building permits for secondary suites

- An information brochure to be provided to homeowners and interested parties has been created
- A policy on registering Orders at the Land Registry has been established
- Homeowners will be educated on fire safety issues related to secondary suites through a Pre-construction Building Inspection.

Background

On July 12, 2022, Councillor Gaertner tabled a Motion that staff, who have knowledge of the historical and current problems enacting the Sections of By-law No. 5429-12 – Registration of Second Suites required for safety, be directed to bring forward updates to at the very least ensure that a house has a working hardwired fire alarm system and a second means of emergency escape.

On December 6, 2022, Councillor Gilliland submitted a similar Motion that dealt with the proactive inspection of property standards issues for existing residential rental units such as apartments and including existing secondary suites.

This report deals mainly with strategies on dealing with new secondary suites or secondary suites that do not have building permits. A future report will be forthcoming on the Councillor's Gilliland's Motion regarding the implementation of a proactive inspection program for all rental properties.

Analysis

The Town of Aurora currently has a By-law requiring secondary suites be registered with the Town

The Strong Communities Through Affordable Housing Act, 2011 was adopted in support of the Province's Long Term Affordable Housing Strategy. The Act required municipalities to implement Official Plan policies and prescriptive zoning regulations to allow for the creation of second units within detached, semi-detached and townhouse dwellings. In response to this Provincial legislation, Town Council passed Official Plan and Zoning By-law amendments to facilitate the legal construction of secondary units subject to specific criteria for eligibility. Together with these amendments, Town Council enacted a Secondary Unit Registration By-law setting out requirements for legal creation and registration of a secondary unit, including compliance with the Building Code, Fire Code and the Electrical Safety Code.

The Secondary Unit Registration By-law No. 5221-10 initially came into effect on April 13, 2010. It was repealed on August 14, 2012 with the passing of By-law No. 5429-12, which established new regulations for the registration of second suites (the "Registration By-law"). The Registration program is beneficial to the Town to assist with identification, tracking and addressing of all legal second units. It also ensures that the newly created unit has been inspected for compliance with applicable Provincial regulations to ensure the safety and well-being of the occupants in both dwelling units and first responders who are required to enter the dwelling. In response to the passing of Bill 23, More Homes Built Faster Act, 2022, the current Registration Bylaw will be updated to include the provision for the additional 2 (two) units within a residential property.

Creation of new secondary suites must comply with the Ontario Building Code and the Electrical Safety Code.

The Building Code Act requires that a building permit be issued for the construction required to change the use of a building from one dwelling unit to two dwelling units. The Ontario Building Code is a set of construction regulations prescribed by the Province of Ontario under the Building Code Act, 1992, as amended. The regulations set out the minimum standards of construction in Ontario and are enforced by municipalities through the appointment of a Chief Building Official and Building Inspectors as are necessary to deliver the service within their jurisdiction. There are forthcoming changes to the Ontario Building Code in the near future. However, there are no anticipated changes to the Ontario Building Code that will affect new secondary suites.

One of the mandatory requirements to complete registration is documented compliance with the Electrical Safety Code. The Building Division, before finalizing a building permit for a second suite, requires an inspection report from the Electrical Safety Authority ("ESA") or a written assessment report from a Licensed Electrical contractor.

Further, the Registration By-law requires a sign address be posted on the secondary unit exterior with a "B" symbol after the numbering indicating the dwelling unit has a secondary suite. This signage must be in place prior to the finalization of the building permit.

Existing registered secondary suites must comply with the Ontario Fire Code

The Ontario Fire Code is very similar in nature to the Ontario Building Code from the perspective that it is provincial legislation established under the statute, the Fire Protection and Prevention Act, 1997. The Fire Code can be applied to a building after completion of construction whereas the Building Code is only applicable during the construction phase of a building. The application of the Fire Code to a secondary suite is limited to suites that have been established prior to 1995 when secondary suites were allowed, as of right, under the former Resident's Right's Act. If the secondary unit was established before 1995, the Fire Department would conduct the inspections and any required upgrades would be done through a building permit. Currently, there are 338 secondary suites registered with the Town.

The Building Division has developed a strategy to attempt to inspect and close out any outstanding building permits for secondary suites

Year	Secondary Suite Complaints
2013	10
2014	12
2015	19
2016	19
2017	15
2018	24
2019	19
2020	11
2021	19
2022 (as of August 1, 2022)	9
Total	157

The above chart shows the number of complaints received for the past 10 years regarding secondary suites. The following are the results from the investigation on these complaints:

1. Complaint was not valid – 76
2. The owner obtained a building permit after investigation and Orders issued– 42
3. The secondary unit was removed voluntarily by owner and verified by the Building Inspector – 19
4. Complaint is still under investigation – 16 (6 in 2022)
5. Fire Department Retrofit on legal existing secondary unit – 4

The Building Division will continue the investigation on the 16 complaints still under investigation.

Year	Secondary Suite Permits Issue	Secondary Suite Permits - Finalized	Secondary Suite Permit not finalized – still under Inspection	Secondary Suite Permit Issued – No request for Inspections
2013	13	12	1	0
2014	11	7	0	4
2015	2	2	0	0
2016	11	9	2	0
2017	16	11	4	1
2018	18	15	1	2
2019	12	7	2	3
2020	15	12	1	2
2021	16	6	6	4
2022 (as of August 1, 2022)	14	2	4	8
Totals	128	83	21	24

The above chart shows the number of building permit applications received over the past 10 years for secondary suites and the number that have been finalized and still not finalized.

Finalized building permits indicate that the permit is closed, and all building code regulations have been constructed or installed. Currently, there are 21 building permit applications that are still under inspections and 24 building permits where the owner has that have not requested any inspections. A final inspection of these outstanding permits is required to verify all life safety systems are in place. Inspections are conducted by Building Inspectors upon a request by the applicant.

24 building permits have been issued for secondary suites without any request for inspections. This does not necessarily mean that construction has started without inspections. It may mean that the applicant may have decided not to proceed.

The Building Division has developed a strategy to attempt to inspect and close out any outstanding building permits for secondary suites where the applicant has not called a final inspection or if no inspection has been requested. The Building Division will contact the applicant through email to ascertain the status of the construction. This will entail all building permits for secondary suites that have not been finalized or have requested an inspection.

An information brochure to be provided to homeowners and interested parties has been created

Attachment 1, a new Secondary Suites: Information Guide has been developed by the Building Division and will be distributed to each building permit applicant. It will be also posted on the Building Division's website and be distributed to interested parties who deal with the sale of dwelling units such as real estate firms. The purpose is to educate homeowners, builders and all interested parties of the regulations of the Zoning By-law and Provincial Codes.

The Building Code requires only that the permit be posted on site. It does not authorize the inclusion of additional information on the permit placard.

A policy on registering Orders at the Land Registry has been established

It is proposed that any BCA orders be registered in the Land Registry Office as another tool to help gain compliance. Many municipalities follow this practice and have had success in gaining compliance. To offset any arising incremental costs from the administration of this policy, the Town will charge an administrative fee for the cost of associated title searches and registration/discharge fees.

When an Order is registered on title, the builder and homeowner will be notified. Registration of Orders may affect any mortgaging/insurance coverage.

Homeowners will be educated on fire safety issues related to secondary suites through a Pre-construction Building Inspection.

As part of the pre-construction process, a meeting with the building inspector and the homeowner will be performed.

The purpose of this residential-specific inspection is to directly engage the homeowner at the outset of the construction process on the Town's expectations and consequences of non-compliance regarding the construction activity. This is also an opportunity to advise the homeowner of the requirement to call for a final inspection so that the permit can be closed once construction has completed.

The Building Inspector is usually the main point of contact with the homeowner through the construction process which facilitates direct personal dialogue. The interaction between the Building Inspector and the property owner encourages the need for the main life safety issues with the longer-term goal of mitigating against the potential need for future enforcement action.

Advisory Committee Review

Not Applicable

Legal Considerations

Section 16 of the Ontario Building Code Act states that entry into a dwelling by a Building Inspector can only be done by consent of the occupier or by a search warrant. It is the principle of the "sanctity of the home". It is the occupant's legal rights to deny entry. Based on this principle, a municipality cannot impose a fine through a Bylaw if a person refuses entry into their home.

However, a Building Inspector can enter a building without a search warrant if he/she believes there is an unsafe condition. In such a case it must be obvious from the exterior that an unsafe structural condition exists. In the case of a secondary suite legally registered or not one cannot make this determination.

A Building Inspector may file an Information to Obtain a Search Warrant through the courts to gain entry to a dwelling. This methodology has not been used to date since the statistics indicate that access to a dwelling has been gained voluntarily 94% of the time. Also, for there to be success in obtaining such warrant from a Justice of the Peace, there must be overwhelming evidence that there is a life safety issue.

Financial Implications

The implementation of any administration fee will help to offset any incremental costs arising relating to the administration of this program.

Communications Considerations

Staff will inform interested parties of key information, including the Secondary Suites Information Guide, on the Building Division's webpage on aurora.ca.

Climate Change Considerations

This report does not impact the Town's ability to adapt to a changing climate.

Link to Strategic Plan

This supports the Strategic Goal of Supporting Exceptional Quality of Life

Alternative(s) to the Recommendation

1. Council to provide direction

Conclusions

In order to ensure secondary units in the Town are created and legalized in compliance with all regulatory requirements and in consideration of the upward trend of second unit registrations as an affordable housing option, the Building Division will continue to administer a Registration program and the Provincial compliance mandate. The Building Division will implement a number of initiatives to educate homeowners on the life safety issues involved with secondary suites.

On November 28, 2022, the Province passed Bill 23 which would allow for 3 residential units as of right on a residential property. The proposed strategies and policies should assist in building inspection enforcement of additional dwelling units.

Attachments

Attachment 1 – Secondary Suite Guide

Previous Reports

N/A

Pre-submission Review

Agenda Management Team review on December 15, 2022

Approvals

Approved by Marco Ramunno, Director, Planning and Development Services

Approved by Doug Nadorozny, Chief Administrative Officer