APPENDIX A

Bill No.
2008

By-law No.

A By-law to provide for the licensing and regulation of Residential Rental Units in the City of London.

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

AND WHEREAS section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, 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(1) of the Municipal Act, 2001 provides that, without limiting sections 9 and 10 of the Act, a municipality may: provide for a system of licenses with respect to a business and may,

(a) prohibit the carrying on or engaging in the business without a license;
(b) refuse to grant a license or to revoke or suspend a license;
(c) impose conditions as a requirement of obtaining, continuing to hold or renewing a license;
(d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a license;
(e) impose conditions, including special conditions, as a requirement of continuing to hold a license at any time during the term of the license;
(f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and,
(g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licenses established by the municipality;

AND WHEREAS the Council for the City of London considers it necessary and desirable for the public to regulate the business of renting residential premises for the purpose of protecting the health and safety of the persons residing in residential rental premises by ensuring that the certain regulations are met, that the required essentials such as plumbing, heating and water are provided and for ensuring that the residential rental premises do not create a nuisance to the surrounding properties and neighbourhood;

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

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;
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 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:

"Applicant" means a person applying for a license under this By-law;

"Building" means any structure consisting of a roof supported by walls or columns which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment and includes a carport;

"City" means The Corporation of the City of London;

"City Treasurer" means the Treasurer of The Corporation of the City of London or a person delegated by him or her for the purposes of this By-law.

"Council" means the Municipal Council of The Corporation of the City of London;

"Director of Building Controls" means the Chief Building Official as appointed by Council pursuant to the Building Code Act;

"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;

"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;

"Licensee" means any person licensed under this By-law;

"License Manager" means the Director of Building Controls;

"Lot" means a parcel of land which is;

(i) shown on a registered plan of subdivision; or

(ii) described in a single Transfer/Deed of Land of legal effect registered in the Land Registry Office or the Land Titles Office for the Land Registry Division of Middlesex.

"Manager of By-law Enforcement" means the Manager of By-law Enforcement of the City or a person delegated by him for the purposes of this By-law;

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

"Municipality" means the land within the geographic limit of the City of London;

"Owner" includes:

(i) each owner of a Rental Unit;

(ii) each person who permits occupancy of a Rental Unit; and,
(iii) the heirs, assigns, personal representatives and successors in title of a person referred to in clauses (i) and (ii).

"Rental Property" includes each Building containing a Rental Unit and the Lot on which the Rental Unit is situated.

"Rental Unit" means a single room or a series of rooms of complementary use which is located in a Building, in which food preparation, eating, living, sleeping and sanitary facilities are provided for the exclusive use of the occupants thereof, which has a private entrance directly from outside the building or from a common hallway inside the building, in which all occupants have access to all of the habitable areas and facilities of the unit, and which is occupied and used or capable of being occupied and used as a single and independent housekeeping establishment and is used or intended for use as a rented residential premises.

"Tenant" includes a person who pays rent in return for the right to occupy a Rental Unit and includes the person's heirs, assigns (including subtenants) and personal representatives.

2.0 PROHIBITIONS

2.1 No person shall operate a Rental Unit without holding a current valid licence for such premises issued under the provisions of 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 license imposed under this By-law.

2.4 No person shall operate a Rental Unit while their license issued under this By-law is under suspension.

3.0 APPLICATION OF BY-LAW

3.1 This By-law shall not apply to:

(a) a Rental Unit in a Building containing 7 or more Rental Units;
(b) a Rental Unit operating as a lodging house with a valid license for such premises or business issued pursuant to the City's By-law L-6; and,
(c) a Rental Unit that meets all of the following conditions:

(i) the Rental Unit constitutes the principal residence of the Owner;
(ii) the Rental Unit is temporarily rented by the owner for a period of time no greater than 12 consecutive months in any 24 month period;
(iii) the Rental Unit was occupied by the Owner immediately prior to its rental;
(iv) the Owner of the Rental Unit is temporarily living outside of the City; and,
(v) the Owner intends to reoccupy the Rental Unit upon termination of the temporary rental.

4.0 ADMINISTRATION

4.1 The administration of this By-law is assigned to the License 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 licenses under this By-law;
(b) issue licenses in accordance with the provisions of this By-law;
(c) impose terms and conditions on licenses in accordance with this By-law; and,
(d) refuse to issue or renew a license or revoke or suspend a license in accordance with this By-law.
5.0 APPLICATIONS FOR A LICENCE AND RENEWAL OF LICENCE

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

(a) the name, municipal address and telephone number of each Owner;
(b) if the Owner is a partnership, the name, address and telephone number of each partner;
(c) if the Owner 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 Rental Unit;
(e) a sworn statement by the Owner certifying the accuracy, truthfulness and completeness of the application;
(f) if the Owner is a partnership, a sworn statement by each partner certifying the accuracy, truthfulness and completeness of the application; and,
(g) if the Owner 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.

5.2 Every person applying for a license or a renewal of a license 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) a copy of the Transfer/Deed and parcel abstract dated no later than fifteen (15) days prior to the date of the application evidencing the Owner's ownership of the Rental Unit;
(c) 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;
(d) if the Applicant or Licensee is a partnership, details of each partner's interest in the partnership; and,
(e) any other documentation or information as may be required in any other Part of this By-law and by the License Manager.

5.3 The License Manager may require affidavits in support of an application for or a renewal of a license.

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

(a) the Director of Building Controls;
(b) the Manager of By-law Enforcement;
(c) the Fire Chief; and,
(d) the Medical Officer of Health.

6.0 ISSUANCE OF LICENCES

6.1 Every license issued under this By-law shall be in the form and manner as provided by the License Manager and without limitation shall include on its face the following information:

(a) the license number;
(b) the name, address and telephone number of each Licensee;
(c) the date the license was issued and the date it expires; and,
(d) the municipal address of the Rental Unit.
6.2 Every license 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 license all of which shall be performed and observed by the Applicant or the Licensee:

(a) the Applicant or Licensee shall pay the prescribed license fee as set out in Schedule "A" to 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 allow, at any reasonable time, the City to inspect the Rental Unit and the Rental Property;
(d) the Applicant or Licensee shall ensure that the Rental Unit and the Rental Property are not constructed or equipped so as to hinder the enforcement of this By-law;
(e) the conduct 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 Rental Unit in accordance with the law or with honesty and integrity;
(f) the Rental Unit and Rental Property shall be in accordance with the requirements of the Building Code Act and the Regulations thereunder, the Fire Protection and Prevention Act, 1997 and the Regulations thereunder, and the City's Property Standards By-law CP-16;
(g) where the Rental Unit or Rental Property is altered and a building permit is required to carry out the alterations, the Rental Unit and Rental Property, as altered, shall be in accordance with the Building Code Act and the Regulations thereunder, the Fire Protection and Prevention Act, 1997 and the Regulations thereunder, and the City's Property Standards By-law CP-16;
(h) the use of the Rental Unit and Rental Property permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use;
(i) the Applicant or Licensee shall not directly or indirectly require or cause a Tenant to refuse to consent to lawful entry and inspection of a Rental Unit or Rental Premises for the purpose of determining compliance with this By-law;
(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 License Manager within ten (10) days;
(k) the Applicant or the Licensee shall have a written tenancy agreement with each Tenant;
(l) 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 Rental Unit near the front entrance.

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

6.4 A license issued under this By-law shall be valid only for the Rental Unit named therein. A separate license shall be required for each Rental Unit.

6.5 The issuance of a license 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.

6.6 Every license, 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 Rental Unit named therein.

6.7 No license issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, seized, distrained or otherwise dealt with.

6.8 The Licensee shall notify the License Manager of any change in ownership of the Rental Unit and shall surrender his, her or its license to the License Manager within seventy-two (72) hours of the completion of such change.

6.9 All license fees and inspection fees paid under this By-law are non-refundable.
7.0 POWERS OF THE LICENCE MANAGER

7.1 The power and authority to refuse to issue or renew a license, to cancel, revoke or suspend a license, to impose terms and conditions, including special conditions, on a license, or to exempt any person from all or part of this By-law are delegated to the License Manager.

7.2 The License Manager may issue a license or renew a license where the requirements and conditions of this By-law have been met.

7.3 Notwithstanding any other provision of this By-law, the License Manager may impose terms and conditions on any license at issuance, renewal or any time during the term of the license, including special conditions, as are necessary in the opinion of the License Manager to give effect to this By-law.

7.4 Where the License Manager is of the opinion that:

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

the License Manager shall make that decision.

7.5 Where the License Manager has made a decision under subsection 7.4 the License 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 License Manager; and,
(d) state that the Applicant or Licensee is entitled to a hearing by the Hearings Committee if the Applicant or Licensee delivers to the City Clerk, within ten (10) days after the notice in subsection 7.5 is served, and the appeal fee as set out in Schedule "A" of this By-law.

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

7.7 Despite subsection 7.6 where a license is voluntarily surrendered by the Licensee for revocation, the License Manager may revoke the license without notice to the Licensee.

8.0 HEARINGS BEFORE THE HEARINGS COMMITTEE

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

8.2 The provisions of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, except sections 17, 17.1 and 19, applies to all hearings conducted by the Hearings Committee under this By-law.

8.3 When the Applicant or Licensee, who has been given written notice of the hearing, does not attend at the appointed time and place, the Hearings Committee may proceed with the hearing in his or her absence and the Applicant or Licensee shall not be entitled to any further notice of the proceeding.
8.4 At the conclusion of the hearing, the Hearings Committee may give its decision orally or in writing but in each case it shall provide its decision in writing, with reasons, within thirty (30) days of the hearing to the Applicant or Licensee and the License Manager.

8.5 The Hearings Committee may uphold or vary the decision of the License Manager or make any decision that the License Manager was entitled to make in the first instance.

8.6 The decision of the Hearings Committee is final.

9.0 ENFORCEMENT

9.1 This By-law may be enforced by a City municipal law enforcement officer or a London Police Service police 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.

10.2 A director or officer of a corporation who knowingly conspires in the contravention of any provision of this By-law is guilty of an offence.

10.3 A person convicted under this By-law is liable to 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 section 10.3 where the person convicted is a corporation, the corporation is liable to 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 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 "Residential Rental Units Licensing By-law".

12.2 This by-law shall come into force and effect on October 1, 2009.

PASSED in Open Council , 2009

Anne Marie DeCicco-Best
Mayor
First reading -
Second reading -
Third reading -
| Licence Fee  | $150 per Rental Unit for a five year period |
| Licence Renewal Fee | $150 per Rental Unit for a five year period |
| Appeal Fee | $125 |
General Principles for a Residential Rental Unit Licensing By-Law for the City of London

Adopted by the London Housing Advisory Committee
March 11, 2009

The London Housing Advisory Committee (LHAC) reiterates the policy recommendations it has taken in support of a city-wide Rental Residential Business Licensing Program and adopts the following principles which should guide the city in implementing this program:

1) The provision of rental residential housing units is a business and should therefore be governed by the same types of licensing requirements applicable to other businesses in the city. In the past, the province has limited the City's power to apply its business licensing requirements to residential rental units, but now that this limitation has been removed, the City should exercise its new authority and treat the rental housing industry in a manner similar to other businesses.

2) The Rental Residential Business Licensing Program should be city-wide in application, and the end goal of the Program should be to include all residential rental units regardless of the size or location of the property. The licensing fees should be kept to the minimum necessary for cost-recovery.

3) Should the City Council determine that it be necessary to phase-in the licensing program, the selection of criteria should be based on objective and ascertainable factors that bear a reasonable relationship to the safety of tenants and condition of the housing stock. Factors such as the age of the building and the number of stories are better criteria than the reported number of rental units on the property. Under no circumstances should the geographic location of the property determine its order of licensing in a phase-in. There should be no cap on the number of licenses issued and minimum distance separation between addresses should not be considered as a criteria.

4) Any such phase-in should be for a reasonably short period, and accompanied by a target schedule along with ongoing reporting and review of the program.

5) The City Council should reject attempts on the part of the rental housing industry to influence the policy process by resorting to tactics designed to scare tenants with false representations about a landlord's ability to pass through licensing fees to existing renters.
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<tr>
<th>Geography = London</th>
<th>Structural type of dwelling (10) = Total</th>
<th>Housing tenure (4) = Rented</th>
<th>Condition of dwelling (4)</th>
<th>Period of construction (11)</th>
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Note(s):
1. 2001 to 2006
   Includes data up to May 16, 2006.

Data quality note(s)
• 2001 adjusted count: most of these are the result of boundary changes.

How to cite: Statistics Canada. 2008. Period of Construction (11), Structural Type of Dwelling (10), Housing Tenure (4) and Condition of Dwelling (4) for Occupied Private Dwellings of Census Metropolitan Areas, Tracted Census Agglomerations and Census Tracts, 2006 Census - 20% Sample Data (table). Topic-based tabulation. 2006 Census of Population.

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<th>Period of construction (11)</th>
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<th>Condition of dwelling (4)</th>
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Note(s):


Data quality note(s):

- 2001 adjusted count; most of these are the result of boundary changes.


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Date modified: 04/01/2008 09:50:59 AM
### Geography = London

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<th>Housing tenure (4) = Rented</th>
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**Note(s):**

1. 2001 to 2006 includes data up to May 16, 2006.

**Data quality note(s):**

- 2001 adjusted count; most of these are the result of boundary changes.

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**Source:** Statistics Canada, 2006 Census of Population.


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**Date modified:** 04/01/2008 09:50:59 AM
### Census > 2006 Census: Data products > Topic-based tabulations >

Period of Construction (11), Structural Type of Dwelling (10), Housing Tenure (4) and Condition of Dwelling (4) for Occupied Private Dwellings of Census Metropolitan Areas, Tracted Census Agglomerations and Census Tracts, 2006 Census - 20% Sample Data

**Geography = London**

**Structural type of dwelling (10) = Apartment, duplex**

**Housing tenure (4) = Rented**

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<th>Period of construction (11)</th>
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<th>Regular maintenance only</th>
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**Note(s):**

1. 2001 to 2006
   Includes data up to May 16, 2006.

**Data quality note(s):**

- 2001 adjusted count, most of these are the result of boundary changes.

**Source:** Statistics Canada, 2006 Census of Population.


http://www12.statcan.gc.ca/english/census06/data/topics/Print.cfm?PlD=89060&GlD=762726&Dl=7&D2=2&D3=0&D4=0&D5=0&D6=0 (accessed March 24, 2009).

**Back to referring page**

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Date modified: 04/01/2008 09:50:59 AM

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3/24/2009 2:05 PM
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Note(s):
1. 2001 to 2006
   Includes data up to May 15, 2006.

Data quality note(s)
- 2001 adjusted count; most of these are the result of boundary changes.


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Date modified: 04/01/2008 09:59:59 AM
Census > 2006 Census: Data products > Topic-based tabulations >

Period of Construction (11), Structural Type of Dwelling (10), Housing Tenure (4) and Condition of Dwelling (4) for Occupied Private Dwellings of Census Metropolitan Areas, Tracted Census Agglomerations and Census Tracts, 2006 Census - 20% Sample Data

**Geography = London ▲**

<table>
<thead>
<tr>
<th>Period of construction (11)</th>
<th>Total - Condition of dwelling</th>
<th>Regular maintenance only</th>
<th>Minor repairs</th>
<th>Major repairs</th>
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<td>2001 to 2006</td>
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**Note(s):**
1. 2001 to 2006
   Includes data up to May 16, 2005.

**Data quality note(s)**
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http://www12.statcan.gc.ca/english/census06/data/topics/Print.cfm?PID=89060&GID=762726&D1=6&D2=0&D3=0&D4=0&D5=0&D6=0 (accessed March 24, 2009).

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Councillor Nancy Branscombe
Chair, Planning Committee
City of London
P.O. Box 5035
London, Ontario
N6A 4L9

Subject: City Staff Report - Hybrid Residential Licensing / Targeted Area Property Standards Enforcement Program

Dear Councillor Bryant and Planning Committee Members:

I am writing regarding the City Staff Report related to the licensing of residential properties and targeted property standards enforcement. Fanshawe College continues to support the implementation of this program in the manner recommended by City staff.

Various discussions have occurred as to possible models for this program and we strongly believe that it should be implemented as a city-wide program rather than using it in a geographical area, as some other municipalities have considered. While we are primarily concerned about the safety and security of students that attend Fanshawe College, we maintain that this is a matter for all tenants throughout the City. The College believes it is important to allow the inspection of the inside of student housing in order to facilitate the creation of a safer environment for students and their neighbours. We have worked, and continue to work, collaboratively with the London Fire Service and the City staff to address safety issues in off-campus housing.

It has been our experience in working with students for many years that a positive and pro-active approach yields positive outcomes. Fanshawe College has supported, and will continue to support the City in its efforts to address property standards through bylaws. We will continue to engage our student government to work with us on off-campus housing issues and educate and counsel our student body to be good neighbours.

Yours truly,

Bernice Hull
Vice-President Administration

CC: Dr. Howard Rundle, President, Fanshawe College
Mayor Anne Marie DeCicco-Best, City of London
Jonathan Hillis, President, Fanshawe Student Union
March 24, 2009

Councillor Nancy Branscombe
Chair, Planning Committee
City of London
P. O. Box 5035
London, Ontario
N6A 4L9

Dear Councillor Bryant and Planning Committee Members:

Re: City Staff Report – Hybrid Residential Licensing /Targeted Area Property Standards Enforcement Program

We are writing to you at this time regarding the City Staff Report related to the licensing of residential properties and targeted property standards enforcement. The University of Western Ontario supports the implementation of this program in the manner recommended by the City staff. We believe that the licensing of residential properties as proposed will result in safer and more secure housing that will benefit students who attend The University of Western Ontario as well as other members of the London community who are tenants in residential premises.

In the Greater Campus Neighbourhood Report, it talked about the importance of “leveling the playing field” for all landlords. As a large landlord itself, The University takes safety very seriously and works closely with the City Fire Inspectors who inspect our residential buildings every year. Our own Fire Safety staff members inspect thousands of detectors each and every year, fire extinguishers are inspected monthly, and appropriate actions are taken immediately if there are any deficiencies. City staff has commented in the past that they have not been called to the University on a property standards issue.

In the 2005 “Studentification Report” by Dr. D. Smith of the University of Brighton in the United Kingdom, Dr. Smith made several recommendations regarding the actions that municipalities, neighbourhood associations and academic institutions could do to improve student rental housing. One of the recommendations was to have municipalities take on all their “health-related powers to regulate” and the licensing proposal goes a long way to ensuring safe rental housing for our community.

It has been our experience in working with students for many years that a constructive, positive and pro-active approach yields positive outcomes. We will continue to engage our students and
student government to work with us on off-campus housing issues and to educate and counsel our student body to be good neighbours and members of the London community.

Yours truly,

Gitta Kulczycki
Vice-President (Resources and Operations)

CC: Dr. Paul Davenport, President, The University of Western Ontario
    Mayor Anne-Marie DeCiccio-Best, City of London
    Susan Grindrod, Associate Vice-President, Housing and Ancillary Services, UWO
    Helen Connell, Associate Vice-President, Communications and Public Affairs, UWO
    Jacqueline Cole, University Students' Council, UWO
IF IT WERE LITIGATED - FACTUM AGAINST LANDLORD LICENSING

1. Municipal regulation in London, Ontario of Rental Property Operations under a system of Landlord Licensing is not a safety issue:

   (a) There is no evidence that Tenant-Occupied residential dwellings in London, Ontario, when taken as a group, are any less safe than Owner-Occupied residential dwellings, when taken as a group.

   (b) There is no evidence that Tenant-Occupied residential dwellings in London, Ontario, when taken as a group, are any less safe than Tenant-Occupied residential dwellings in any other city in Ontario, when taken as a group.

2. The PRIMARY reason for Landlord Licensing in London, Ontario is not over a concern for safety of Tenants but rather to prevent students at the University of Western Ontario and Fanshawe College from renting various forms of accommodation within the city of London and particularly within walking distance of each school. The city of London has a history of focusing on the prevention of student housing:

   (a) Case Law summary states that the city of London recently dealt with development issues specifically because of neighborhood concerns about students:

      "In September 2003, city was approached by area residents concerned about student housing and its impact on their community. ...city passed interim control by-law freezing development along street in area for one year and recommended that land use study be undertaken. ...Upon learning of by-law in February 2004 developer [who had bought property on the street] brought an application for order quashing by-law. Application dismissed. ...Court was not asked to rule on merits of city's decisions or whether proper planning principles were considered." (RSJ Holdings v. London (City) 2005, 10 M.P.L.R. 298) (as summarized in Municipal Law, Vol. 79, #3020, page 671)

   (b) The staff report from the city of London, Ontario dated February 25, 2008, which explained Landlord Licensing, identified "students" on page 2 as a primary reason for why property standards complaints more than doubled in 2007:

      "This can be attributed to the number of"
single detached dwellings which have been converted from owner occupancy to rental accommodations for students."

3. Case Law is clear that a municipality in Canada can NOT control who will occupy a dwelling:

(a) "...It is open to the Municipality to determine how a dwelling is used but NOT who can use that dwelling." (Bell v. The Queen [1979] 2 S.C.R. 212 at page 217)

(b) To distinguish between an OWNER as occupant and a TENANT as occupant by way of Landlord Licensing is prima facie evidence of attempting to control who can use a dwelling.

4. There is nothing in the Ontario Municipal Act that specifically empowers a municipality to license, govern or regulate Rental Property Operations thereby requiring some type of Occupancy Permit. Nor is there anything in the Ontario Municipal Act that specifically empowers a municipality to make up a definition of what constitutes a business:

(a) "It is trite law that a municipality acts by by-law empowerment under the Municipal Act. If there is no clear by-law empowerment under that Act or another Act, the municipality is powerless to act. (Aboutown Transportation Ltd. v. London (City) [1992], 9 O.R. (3d) 143; 10 M.P.L.R. (2d) 164 (Gen. Div.))

5. Most Rental Property Operations are NOT a business:

(a) The Federal Government of Canada by way of The Income Tax Act as administered by Revenue Canada sets out clear guidelines as to when a Rental Property Operation becomes a business:

"To determine whether your rental income is from property or from business, consider the number and kinds of services you provide for your tenants."

"In most cases, you are earning income from property if you rent space and provide basic services only. Basic services include heat, light, parking and laundry facilities. If you provide additional services to tenants, such as cleaning, security and meals, you may be carrying on a business. The more services you provide the greater the chance that your rental property operation is a business."
"For more information about how to determine if your rental income is income from property or income from business, see Interpretation Bulletin IT-434..." (Rental Income Booklet T4036(E) Rev. 03, Page 5: "Do You Have Rental Income or Business Income?")

Furthermore, if you speak with senior agents at Revenue Canada they will tell you that the amount of money generated from a Rental Property Operation intrinsically has nothing whatsoever to do with determining whether a Rental Property Operation is a business. (Telephone conversation with a Senior Agent at Revenue Canada.)


7. For Rental Property Operations that are a "business" as defined by the Federal Income Tax Act, regulation, governing and licensing under the Ontario Municipal Act does not presently and specifically exist under any of the Business Licensing provisions contained in Sections 11.1, 150 and 151.


(b) when dealing with matters that involve land, however, (as Rental Property Operations do) NOTHING can be imputed into the legislation that is not clearly there in black and white. (Central Control Board [Liquor Traffic] v. Cannon Brewery Company [1919] A.C. 744 (H.L.) at page 752 AS APPLIED IN Liberatore v. St. Thomas (City) [1995] 56 L.C.R. 281 at page 305, 1995 Carswell-Ont 393 (Ont. Gen. Div.))

(c) According to the 2008 Municipal Act Part II - General
Municipal Powers - Section 8(2) Ambiguity - it states:

"the ambiguity shall be resolved to include, rather than exclude, powers the municipality had on the day before this Act came into force."

Hence, since there is no mention of Landlord Licensing in the 2008 Municipal Act, whether or not Landlord Licensing is permitted must be determined by referring to the most previous Act where Landlord Licensing is mentioned and that previous Act contains Ontario Regulation 243/02 which clearly forbids Landlord Licensing.

8. The definition of a "Lodging House" contained in Section 11.1 of the Ontario Municipal Act which states:

"Lodging House means any house or other building or portion of it in which persons are lodged for hire..."

can not be simply extended to mean Rental Property Operations in general because the Courts have said that if a situation exists where several people, not related by blood, have rented a residential unit wherein the occupants of the unit have all signed the lease, have unrestricted use of the entire dwelling, make collective decisions respecting: assignment of bedrooms, payment of rent, housekeeping & privacy, and the Landlord does not provide board (meals), that this set of circumstances does NOT constitute the definition of a Lodging House, Boarding House or Rooming House. (St. Catharines (City) v. Fish (2000), 16 M.P.L.R. (3rd) 93, 2000 Carswell-Ont 3475 (Ont. S.C.J.) AND Good v. Waterloo (City) (2004), 1 M.P.L.R. (4th) 182, 2004 Carswell-Ont 3722, 72 O.R. (3rd) 719, 190 O.A.C. 35 (Ont. C.A.); affirming (2003), 2003 Carswell-Ont 3959, 43 M.P.L.R. (3d) 241, 67 O.R. (3d) 89 (Ont S.C.J.))

9. If Landlord Licensing were permitted at the whim of any municipality in Ontario and imposed ad hoc without standardized province-wide regulations, the result, depending on which regulations were imposed, could be to prevent Rental Property Operations in all but the newest forms of accommodation which would already meet the current Building Code and those where it was financially feasible to make the upgrades to meet the current Building Code which would effectively grant a monopoly to both of these two groups of Rental Property Operations.

(a) According to the Ontario Municipal Act, a municipality in Ontario can NOT create a monopoly
directly or indirectly:

"A municipality shall not confer on any person the exclusive right of carrying on any business, trade or occupation unless specifically authorized to so under any Act." (Ontario Municipal Act, 2008 Edition, Section 18)

10. There is no enabling legislation in the Ontario Municipal Act granting a municipality the right to create a monopoly for a Rental Property Operation.

11. When a municipality passes a by-law that sets up some type of monopoly without specific authorization to do so, the Courts will strike down that by-law. (R. v. Nault [1983], 30 Sask. R. 35, 1983 Carswell-Sask 618 (Prov. Ct.))


13. If a Tenant bought their residential rental unit, under London's Landlord Licensing by-law, no license, which effectively is an Occupancy Permit, would be required for that residential dwelling unit; however, if no license (Occupancy Permit) were obtained by the Owner, the Tenant could not continue to occupy that same residential dwelling unit.

(a) For a municipality to impose a licensing situation which effectively amounts to requiring an Occupancy Permit for a Tenant-Occupied residential dwelling unit while not requiring an Occupancy Permit for an identical Owner-Occupied residential dwelling unit is a violation of Section 15(1) of the Canadian Charter of Rights and Freedoms:

"Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

14. Section 15(1) is not limited only to the areas of
discrimination which are stated and includes many other areas of discrimination not so enumerated:

"Some of the personal characteristics which might form a basis for discrimination are listed in s. 15(1), but I do not think this is intended as a complete listing." (Andrews v. Law Society (British Columbia) [1985], 66 B.C.L.R. 363, 20 C.R.R. 225 (S.C.))

15. Landlord licensing would effectively mean that, if no license were obtained by the Owner, a person desiring to be a Tenant would not have the right to choose a particular address for residency unless they purchased the dwelling unit.

Additionally, it is proposed in the staff report dated February 25, 2008 that one of the requirements for absentee Landlords will be that if they live more than 15 kilometers outside of the limits of the city of London, the Landlord will have to designate an agent who is located in or within 15 kilometers of the City limits to act as a contact person.

(a) It has been held that a residency requirement in order to obtain employment by way of a business license was a violation of Section 7 of the Canadian Charter of Rights and Freedoms because the judge reasoned that Section 7 gave people THE RIGHT TO CHOOSE A PLACE OF RESIDENCY. (Vauggeois, Re (1999), 1999 ABQB 30, [1999] A.J. No. 3, (sub nom Vauggeois v. Red Deer (City)) 240 A.R. 89, 50 M.P.L.R. (2d) 276, 60 C.R.R. (2d) 183, 169 D.L.R. (4th) 744, 1999 Carswell-Alta 69 (Alta. Q.B.))


16. A by-law only has to have the POTENTIAL effect of restricting a right enshrined in the Charter of Rights and Freedoms to be declared unconstitutional. (Laplante c. Longueuil (Ville) (1993), [1994] R.L. 79 (Que. S.C.))

17. The right of a person to choose whether they will be an Owner-Occupant or a Tenant-Occupant of a residential dwelling unit is a common law right enshrined by way of
Sections 7 and 15(1) of The Charter of Rights and Freedoms and can NOT be potentially compromised by a Rental Property Landlord Licensing by-law requiring a myriad of fees, inspections, requirements (like expensive site plans) and forced compliance with the current Building Code for Tenant-Occupied residential dwelling units when no such by-law exists for identical Owner-Occupied residential dwelling units.

18. Landlord Licensing that requires inspections for and compliance with the current Building Code for Tenant-Occupied residential dwellings while coexisting with non-existent requirements for Owner-Occupied residential dwellings would effectively mean, for example, that a 7 year old child living in an Owner-Occupied residential dwelling would get LESS protection from Building Code violations than a 7 year old child living in a Tenant-Occupied residential dwelling which is a violation of Section 15(1) of the Charter of Rights and Freedoms.

19. Landlord Licensing is unreasonable in the sense of Lord Russell's rationalization of what constitutes that which is unreasonable because Landlord Licensing effectively divides London residents into two distinct sets of different classes of people neither of whom, within each set, is equal under the law. The two sets are: Owners who Owner-Occupy versus Owners who Tenant-Occupy AND Occupiers who are Owners versus Occupiers who are Tenants. Hence,

(a) because Landlord Licensing is "...partial and unequal in [its] operation as between different classes...the Court might well say 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.'" (Ball v. The Queen [1979] 2 S.C.R. 212 at page 222)

20. No reason was given as to why Ontario Regulation 243/02 disappeared from the Ontario Municipal Act in 2007. That regulation stated in part that:

"A local municipality does not have the power under section 150 or 157 of the Act to establish a registry for or to license, regulate or govern the rental of a residential unit." (2005 edition, Ontario Municipal Act, Licensing Powers, O. Reg. 243/02, page 359)

In the staff report dated February 25, 2008 the City's rationale on page 1 is that because Ontario Regulation 243/02 was removed from the Municipal Act on January 1, 2007 that, by deduction, the City can now license Landlords under the business licensing provisions of the Municipal Act.
The most logical reason, however, for the removal of Ontario Regulation 243/02 was that the people who initially authored this part of the regulation quoted immediately above were not aware of the Case Law and Charter Law cited herein and that when the Case Law and Charter Law cited herein became known, the authors realized that this part of Ontario Regulation 243/02 quoted immediately above was redundant in that it prevented a municipality from licensing landlords which a municipality already couldn't do anyway because of the Case Law and Charter Law cited herein.

Collaterally it makes no sense that the removal of Ontario Regulation 243/02 could have had anything to do with the Ontario Government contemplating the solving of a safety standards issue by way of optionally allowing Rental Property Landlord Licensing that would require enforcing the Building Code because it would be logical to assume that some municipalities would enact nothing, some might regulate moderately while some could opt for very great control. Without some form of forced (instead of optional) and standardized (instead of ad hoc) regulation to ensure safety, if that ever was the contemplation on the part of the Provincial Government, uniform safety could never be realized by allowing each municipality to optionally implement Landlord Licensing.

Additionally, there is nothing in the 2008 edition of the Municipal Act that links Landlord Licensing with an optional or mandatory requirement to enforce the Building Code against residential rental dwellings to the exclusion of all other types of residential dwellings.

Could it be that by removing Ontario Regulation 243/02 the Ontario Government intended only that a municipality could impose a tax on Tenants via Landlord Licensing and nothing more? It's not likely because the power of a municipality to enact a discriminatory tax on people does not exist in the 2008 edition of the Municipal Act.

21. Ontario Bill 130, which was passed in 2006, deleted Municipal Act Subsections 150(9) and 150(10) which previously restricted the ability of municipalities to set license fees:

"Subsection 150(9) required that the fees charged for licensing a "class of business" did not exceed the cost directly related to the administration and enforcement of the by-law or portion of the by-law licensing that class of business." (2008 Edition - Ontario Municipal Act & Commentary - page 42)
(a) The net effect of the elimination of Subsections 150(9) and 150(10) means that if a municipality is allowed to license Rental Property Operations the license fees could EXCEED the costs directly related to the administration and enforcement thereby imposing a TAX on Tenant-Occupants when no such TAX would apply to Owner-Occupants which is a violation of Section 15(1) of the Charter of Rights and Freedoms quoted in Paragraph 13 above which guarantees equality for all people regardless of station in life.

(b) and, it has been held that when license fees exceed administration costs the fee then becomes a form of taxation and must not be discriminatory, unless expressly authorized by statute. (Ontario Private Campground Assn. v. Harvey (Township) (1997) 31 O.T.C. 335, 39 M.P.L.R. (2d) 1, 119 Carswell-Ont. 1547, 33 O.R. (3d) 578, 146 D.L.R. (4th) 347 Ont. Gen Div.) AND (R. v. McDonald (1935), 8 M.P.L.R. 558, [1935] 2 D.L.R. 605, 1935 Carswell-NB 15 (N.B.C.A.))

22. There is no enabling legislation in the 2008 edition of the Ontario Municipal Act that permits discriminatory taxation between Tenant-Occupied residential dwelling units and Owner-Occupied residential dwelling units.


Badge #1:

The first time the public heard anything about Landlord Licensing in London was by way of an article published in the London Free Press on January 21, 2008. The author of the article, Randy Richmond, of Sun Media (the owner of the London Free Press), reported that Orest Katelyk, manager of London by-law enforcement, said London's proposed Landlord Licensing by-law is intended to deal with health and safety issues and "does not address behavioural issues." The article went on to say:
"But politicians could adapt the bylaw to target student housing, he [Katolyk] agreed."

Badge #2:

The January 21, 2008 article published in the London Free Press also details an interview with Susan Eagle, an elected member of London Council, where she says regarding Landlord Licensing, that good Landlords will benefit because they won't have to compete against negligent ones who cut costs and offer lower rents.

Two points are worth scrutinizing here:

Firstly, the city of London has never offered any evidence that they have ever been asked by any Landlord to write a by-law which would correct a low rent competition situation.

Secondly, and perhaps more important, what Susan Eagle is really saying here is that Tenants whose rents are low better get used to paying substantially more for rent once Landlord Licensing is passed by Council and that Landlord Licensing is going to be used to manipulate many of the low rents out of existence in the marketplace.

Badge #3:

In the January 21, 2008 newspaper article published in the London Free Press Susan Eagle was described as a longtime advocate for renters. If this is true, what is difficult to understand is why she is supporting a Landlord Licensing by-law that will manipulate many of the low rents out of the marketplace so that the playing field can be leveled which will actually HARM Tenants who will see rent increases that will bring their rents more in line with landlords that charge HIGH rents.

More importantly, however, this situation of manipulating the marketplace to eliminate low rents begs the question:

"Where are people who can’t afford high rents going to live?"

Badge #4:

In the article published on January 21, 2008 in the London Free Press Orest Katolyk says that Landlord Licensing is necessary because:

"If they [tenants] don't complain, we don't know about it [referring to Building Code violations]. A lot of the time, the tenants won't complain because they fear retribution."
Two points should be scrutinized here:

Firstly, the city of London has offered no evidence that Tenant-Occupied residential dwelling units, taken as a group, are any more dangerous because of Building Code violations than Owner-Occupied residential dwelling units, taken as a group.

Secondly, if it were true that Tenants in statistically significant numbers are afraid to report and bear witness against Landlords and Property Managers, then, by the same rationale, our entire justice system, which relies on witness testimony, must be on the verge of total collapse. We know this justice system collapse argument isn't true and by the same token there is no substantial evidence (or perhaps any evidence for that matter) that Tenants fear retribution from Landlords and Property Managers.

Badge #5:

The January 21, 2008 article in the London Free Press points out that budget documents which the reporter saw suggest that the cost to the City for Landlord Licensing would be $218,704 per year to hire two full-time inspectors and supply them with offices and computers.

The point worth noting here is that there are approximately 55,000 residential rental dwelling units in the city of London. If one assumed that each inspector will work Monday to Friday or 260 days per year and take no vacation time or sick days and could properly inspect six units per day (three in the morning and three in the afternoon) it would take these two inspectors 17.62 years to complete their inspections. (260 days x 6 inspections per day = 1560 x 2 inspectors = 3120 inspections per year; 55,000 divided by 3120 inspections = 17.6 years)

It is appropriate to point out here that Case Law states that when a municipality undertakes to do inspections of this nature that the municipality will be held to a "duty of care" by way of its "operational" duty to ensure that the premises are safe and will be held to that standard even if someone is injured many, many years after the inspection was done. (Mortimer v. Cameron (1994), 19 M.P.L.R. (2d) 286 at page 290 and page 291)

Based on the decision in Mortimer v. Cameron, the only rational conclusion that one can come to is that if a municipality passes a Landlord Licensing by-law requiring an inspection of each residential rental dwelling unit, an inspection must be done EACH YEAR WHEN THE LICENSE IS RENEWED to ensure that there are no NEW Building Code
violations. And this would mean that in London, Ontario it would require no fewer than 35 inspectors to cover 55,000 residential rental dwelling units each year (55,000 units divided by 1,560 inspections per year = 35.26 inspectors).

It is difficult to reconcile that the city of London doesn't know about the Case Law in Mortimer v. Cameron and the impact it would have on Landlord Licensing by way of an inspection requirement because the judgement was rendered on February 16, 1994 and INVOLVED THE CITY OF LONDON regarding a building inspection that was done in 1972 and an injury that occurred on July 17, 1987 for which the city of London was found substantially liable.

Even if one CAN reconcile that the reason the city of London hasn't told anyone about the true cost implications from Mortimer v. Cameron that Landlord Licensing would involve because no one at City Hall remembered about the astronomical judgement, it is virtually impossible to reconcile how the city of London could enact a Landlord Licensing by-law, which the Council purports is being passed, for safety reasons, to ensure compliance with the current Building Code thereby requiring forced inspections, whereby any grade five school child could figure out will take two inspectors almost 17 years to fully implement. City Hall MUST know the mathematics and have craftily concealed the 17.6 year figure or the fact that many, many more inspectors will be required.

Badge #6:

The January 21, 2008 article in the London Free Press quotes Orest Katolyk as saying that the annual costs of a Landlord Licensing by-law would be recovered by licensing fees and that "We would like it to be cost-neutral" indicating that the City will not make a profit. The figure of $218,704 for the cost of two additional inspectors was obtained from budget records and if it is correct leaves the reader with the impression that the licensing fee cost to Landlords would be about $4.00 per year per residential dwelling unit ($218,704 divided by 55,000 residential rental dwelling units = $3.98)

Two things need scrutinizing here:

Firstly, as analyzed in Badge #5, in order to inspect 55,000 residential rental dwelling units per year it would take at least 35 additional inspectors which translates into a true fee cost of $3,827,320 ($218,704 divided by 2 inspectors = $109,352 per inspector x 35 inspectors = $3,827,320). When the $3,827,320 cost is spread over 55,000 residential rental units the true fee
cost, just for the inspectors, is closer to $70 per unit per year ($3,627,230 divided by 55,000 rental units = $66.59 per year). There will, of course, be additional fee costs like staffing implications in the Clerk’s Office and so forth.

Secondly, while the $70 yearly figure per residential rental unit more closely reflects the true fee cost for the hiring of the inspectors, there is also no mention whatsoever by Mr. Katolyk of the substantial costs many of the Landlords will face in order to meet the current Building Code which will be a condition of obtaining the license.

While it is true that many of the recently constructed rental units, where building permits were obtained, will easily pass an inspection, there is no mention by Mr. Katolyk of the thousands of older units that will not meet the current Building Code, the substantial costs of upgrading these units, and that it will be cost prohibitive to upgrade an enormous number of these units which will remove them, as residential rental units, from the marketplace.

Additionally, Mr. Katolyk omits any discussion about how residential rental units that are upgraded will see vastly increased rents to reflect the upgrading costs which will eventually be passed on to the Tenants bringing the rents more in line with those charged by the owners of the more recently constructed rental units all of which brings us back to the comments made by Susan Eagle in Badge #2 about how good Landlords will no longer have to compete against negligent Landlords who cut costs and offer lower rents.

Although it isn’t mentioned, in the January 21, 2008 newspaper article, the definition of a negligent Landlord would apparently be one whose residential rental unit does not meet the current Building Code, the implication of which is that the unit isn’t safe to live in. There is no proof, however, that a residential dwelling unit isn’t safe to live in just because it doesn’t meet ALL of the requirements of the current Building Code.

Furthermore, it should be noted here that in the January 21, 2008 newspaper article Mr. Katolyk omitted to mention that if a dwelling unit didn’t meet the current Building Code it would not ALWAYS mean that the dwelling wasn’t safe to live in. For example, if the ceiling height in a particular room were a little less than the current Building Code requirement it would not be unsafe.

Badge #7:
On March 8, 2008 and March 15, 2008 the city of London placed an advertisement in the London Free Press regarding the holding of a public meeting on March 18, 2008 at Centennial Hall, in downtown London, to discuss several methods of Landlord Licensing. This is the first time that the public learned that a Landlord Licensing by-law had a collateral purpose to "protect the residential amenity, character and stability of residential areas" in addition to "address[ing] sub-standard housing conditions." The bulk of the advertisement read as follows:

"The main purpose of the proposed rental residential licensing program is to take a proactive approach to address sub-standard housing conditions that are likely to adversely affect the residents of rental properties; and to protect the residential amenity, character and stability of residential areas." (Underlining added)

This is the first statement from the city of London which subtly links Landlord Licensing with some sort of scheme that might involve the elimination of certain rental properties whose Tenants have upset the amenity, character and stability of these residential areas. But the word "student tenant" is not yet mentioned. That doesn't happen until one reads the staff report dated February 25, 2008.

At the end of the advertisement it was stated that a copy of the staff report was available on the City's web site. As it turned out, one ratepayer who didn't have access to the internet, discovered that it was also possible to get the staff report from the Clerk's Office at City Hall but only after REPEATED DEMANDS which took about 30 minutes. Another ratepayer who tried to obtain a copy of the staff report from the Clerk's office was told that no such report existed and he walked away empty handed. So much for fairness and openness which is discussed more fully in Badge #13.

Badge #8:

The staff report dated February 25, 2008 consists of 8 pages and was authored by the General Manager of Planning and Development, R. Panzer, for the Planning Committee meeting held on February 25, 2008.

On page 1 the staff report explains, apparently in the City Solicitor's opinion, how Landlord Licensing became legal in Ontario beginning with the Municipal Statutes Law Amendment Act of 2006 (Bill 130) which eliminated Ontario Regulation 243/02.
It would appear from this short paragraph on page 1 of the staff report that the City is relying totally on the removal of Ontario Regulation 243/02 from the Municipal Act for its empowerment regarding Landlord Licensing and that at no time was a Case Law search, Charter Law conflict investigation and/or a legal argument presentation prepared or ever considered that would oppose Landlord Licensing.

Badge #9:
On page 2 of the staff report dated February 25, 2008 the following paragraph begins to identify what Landlord Licensing is really all about:

"It was also noted that there was an increase in the number of complaints for property standards issues in single detached dwellings. The number of complaints more than doubled from 222 complaints in 2002 to 459 complaints in 2007. This can be attributed to the number of single detached dwellings which have been converted from owner occupancy to rental accommodations for students." (Underlining added)

The staff report conveniently leaves out any mention of whether or not these 459 complaints involved all different properties or a mix of different and same.

But assuming that the complaints in 2007 dealt with all different properties, the staff report doesn't mention that this would represent only .8% of the residential rental market (55,000 divided by 459 times 100 = .8%). That's significantly less than one percent but the staff report conveniently omits this vital information.

Badge #10:
On page 3 of the staff report dated February 25, 2008 it states:

"Quite often tenants are reluctant to make complaints about living conditions due to fears of retribution or eviction."

Two points deserve scrutiny here:

Firstly, the staff report offers no statistical evidence to back up the claim of Tenant fears and simply gives the number as "quite often." Whatever that is remains a mystery and is meaningless without a study that shows statistical evidence. In other words, there is no hard evidence to support the claim or it would have been
provided.

Secondly, the staff report does not state how the report writer knows that Tenants fear "retribution and eviction." It seems logical, however, that if a Tenant really did fear "retribution and eviction" then they would not report or communicate anything to anybody (especially a by-law enforcer); therefore, the question has to be raised as to how did the report writer find out that Tenants fear "retribution and eviction?" Without some kind of explanation from the report writer as to how he or she came to have this information, there is no way to properly evaluate or even believe the statement.

The question that really has to be asked here is:

"Should a municipal government be allowed to knowingly pass off supposition, hypothesis and conjecture as literal fact for the purposes of giving the appearance that their actions have been fair and open?"

Badge #11:

On page 2 of the staff report dated February 25, 2008 it states:

"A rental residential licensing program is a tool which will allow for a "fair playing field" within the rental housing market whereby rental units will be subject to a number of uniform conditions applied solely for the purpose of providing and maintaining safe residential housing."

One question, which has two parts, must be asked here: Why did the sentence not simply stop after the words:

"...rental units will be subject to a number of uniform conditions."

Why did the author think it was necessary to add the words:

"applied solely for the purpose of providing and maintaining safe residential housing."

At this point it is necessary to return to Badge #1 and the newspaper article published on January 21, 2008 where it says at the end of the article:

"But politicians could adapt the bylaw to target student housing, he [Katelyk] agreed."
Could it be that the additional words were an attempt to damage control to minimize the statement made by Mr. Katolyk that a Landlord Licensing bylaw could be used by politicians to attack nuisance issues that was mentioned in Badge #1 and that lurking somewhere beneath the surface of Landlord Licensing there is a sinister and collateral purpose?

We know that many Ontario municipalities have already tried to prevent students from being able to obtain accommodations through the use of by-laws purported to be in the public interest: NORTH YORK (Bell v. The Queen [1979]); ST. CATHARINES (St. Catharines (City) v. Fish [2000]); WATERLOO (Good v. Waterloo (City) [2004]; and LONDON (RSJ Holdings v. London (City) [2005]) to name a few.

Could it be that London has realized that attacking students directly just doesn't work and hence, could there be a new strategy to attack the PLACE where students live instead of the students themselves?

In other words, don't try to get rid of the students directly because the Courts won't go along with that. Instead:

(1) Make up a story that residential rental properties are unsafe (include a few isolated examples of breaches of the Building Code which are in no way remotely representative of the total situation for residential rental properties and hope no one will notice);

(2) Create a by-law by way of Landlord Licensing to remedy the bogus safety problem (knowing that no person can effectively argue against safety);

(3) Don't mention anything about Owner-Occupied residential dwelling units and whether or not they are safe. Just make the safety issue exclusive to residential rental properties (because that's where students live);

(4) Hope that nobody, particularly the Courts, realizes that there is no safety issue (because common sense dictates that if there was a safety issue it would apply equally to all residential dwelling units and not just Tenant-Occupied units);

(5) Create a myriad of rules that will allow for fees, inspections, expensive documents (like site plans), and forced compliance with the current Building Code (knowing that overwhelmingly most older rental properties will not pass and the cost to bring them
up to Code will be prohibitive);

(6) Set up a City operated loan company (we'll talk about that later in Badge #19) to assist with Owner-Occupant purchasers who will be required, as a condition of getting the loan, to write a restriction into the deed saying that the property can never again be used for rental purposes so that these Owner-Occupant purchasers can buy the thousands of rental properties that will have to be sold.

Voila! The Court cases have been skirted and the students have been eliminated by way of relegating ALL of them to "second class" citizenship unless, of course, they buy a residential rental dwelling unit which would restore their status to "first class" (whereby they would not face regulation via Landlord Licensing) but we all know that the overwhelming majority of students couldn't afford to do that.

Badge #12:

On page 3 of the staff report dated February 25, 2008 it purports to state, in part, why Landlords will benefit from Landlord Licensing:

"A level playing field is created amongst all landlords; those landlords who are providing safe and suitable housing are not competing with landlords who are benefiting financially by not complying with various property standards."

There are at least two things that need scrutinizing here:

Firstly, there is no evidence offered here, or anywhere else, that any Landlord has ever approached the city of London for assistance with preventing competition however created.

Secondly, if we return to Badge #2 we see that the rationale, given the January 21, 2008 newspaper article, has changed from Tenants benefiting from low rents to Landlords benefiting financially somehow.

It makes sense that older rental properties should rent for less money than newer rental properties because it cost less to build these older rental properties and if these older rental properties were forced to upgrade to the current Building Code it also makes sense that where significant upgrades have occurred the costs incurred will have to be passed on to the Tenants by way of higher rents.
It is virtually impossible, however, for a Landlord to receive high rents for substandard rental property because it begs the question:

"Why would a Tenant pay excessive rent for substandard rental property when they could pay the same money for much better accommodations?"

The statement quoted above which states that Landlords are benefiting financially factually can't happen as long as the Tenant did their homework and viewed various competing rental properties, which is the norm.

Hence, the ONLY way the playing field could be leveled would be for low rents to be eliminated by forcing compliance with the current Building Code. The author of the staff report must have realized this and that is why the emphasis was shifted from elimination of low rents in the January 21, 2008 newspaper article to Landlords benefiting financially somehow in the February 25, 2008 staff report.

Badge #13:

On page 4 of the staff report dated February 25, 2008 it is stated:

"All of these options (license all rental properties, license in specific areas only, license based on form of rental unit) are available under a residential licensing system and further analysis will be undertaken subject to public comments received at the public meeting [sic]."

When the public meeting was held at Centennial Hall on March 18, 2008 there were approximately 50 speakers from the general public who, with the exception of four, told the City to forget Landlord Licensing and focus on more vigorously enforcing the already existing laws and by-laws.

Of the four people who supported Landlord Licensing only one was in favor of it carte blanche and that was Gina Barber, a member of London's Board of Control which is an appendix-like body of London's City Council.

Of the other three speakers, they supported Landlord Licensing with qualifications:

David Simmonds, president of University of Western Ontario Student's Council, said he supported Landlord
Licensing provided it was being done for safety purposes and not for dealing with "nuisance issues."

A female Tenant, about 20 years old, said she supported Landlord Licensing but thought it should contain a clause forbidding Landlords from passing their increased costs on to Tenants which would result from fees and so forth.

A male individual, about 40 years old, said he supported Landlord Licensing. His reasoning was that for the last two years he had not been able to get a night's sleep because of the noise and racket going on in the rented dwelling next door to his dwelling. He said that repeated attempts to get the City or the police to rectify the situation had failed and he was, therefore, supporting Landlord Licensing out of desperation to finding a solution to the noise problem next door. It should be noted here that the noise issue this man was complaining about had nothing whatsoever to do with a safety issue related to Building Code violations.

Some of the speakers who opposed Landlord Licensing said that the City should force a "Code of Conduct" on the students at UW0 and Fanshawe College. The City could make it a condition of getting or keeping a business license, for UW0 and Fanshawe College, that all students who register for the next semester are required to agree to a Code of Conduct and if any student is convicted of any by-law offense, Provincial law offense, or Criminal Code offense that that student will be expelled from the school for at least two years from the date the offense occurred. City of London politicians, however, are reluctant to flex any muscle against these two schools and no reason is ever given.

Another companion measure that was suggested at the public meeting is to get some control over the bars that are frequented by UW0 and Fanshawe College students. These bars break many existing Provincial liquor license rules and routinely serve a variety of customers who are either already intoxicated or serve them to the point of and beyond that of intoxication and then eject them onto the street, where, on the way home, these drunken patrons cause substantial property damage and other disturbances. City politicians are reluctant, for some never stated reason, to link any business license for a bar to a requirement of having to breathalize all customers before serving them so that if the customer, for example, registered over .03 on the breathalyzer the customer could not be served an alcoholic beverage.

London's politicians apparently don't have any problem with UW0, Fanshawe College, or the local bars. But they seem to have big problems with Landlords and Tenants.
One thing is certain: City Hall didn't listen to the vast majority of the speakers at the March 18, 2008 public meeting which brings us to an interesting question: "Why are these public meetings held?" Is it just to satisfy, one requirement that a public meeting must be held and that anyone who wishes to speak for a maximum allowable time of about two or three minutes must be heard? Under a fair and open system does the local government then have the right to rationalize that the decision was already made months ago and the public meeting was therefore nothing but a legal formality? This certainly doesn't seem like:


Badge #14:

On page 5 of the staff report dated February 25, 2008 it states:

"Another issue which commonly arises, especially with absentee landlords or abandoned properties, is persons trespassing on residential property and "squatting" or illegally residing in residential buildings. To address this issue, one of the proposed conditions [of Landlord Licensing] is a requirement that the landlord provide proof that each tenant is a party to a tenancy agreement. Having this information and having additional landlord contact information will assist enforcement personnel in addressing issues related to vagrants "squatting" in residential buildings."

Two points should be scrutinized here:

Firstly, there is no statistical evidence given here. We are not told how many vacant buildings are involved and what percentage of the total number of residentially
Zoned dwellings in London have seen this problem of squatting. We are led to believe, however, that there IS a monumental problem involving "squatting" that can be solved ONLY by Landlord Licensing.

Secondly, and perhaps more important, the author of the staff report has omitted one glaring fact: A vacant residential dwelling unit has no status either as a Tenant-Occupied unit or as an Owner-Occupied unit. It is simply a VACANT residential dwelling unit and, therefore, has no place in the discussion of rental properties or any proposed by-law that will regulate Landlords.

If implemented, however, getting the names of all Tenants from the Lease would be a valuable tool in determining the number of people occupying the dwelling especially if there were a Landlord Licensing requirement permitting only 1 person to each bedroom (which isn't legal because it interferes with a person's right to choose a place of residency (see Paragraph 15 for Case Law) but will probably be a condition of obtaining a Landlord License).

Badge #15:

On page 5 of the staff report dated February 25, 2008 it states:

"As part of the application for a rental residential business license, a floor plan must be submitted. All rooms must be shown and drawn to scale. All points of egress out of the building and window sizes for any bedrooms located in the basement must be shown. Ceiling heights in basements containing living spaces must also be indicated."

There are two points to note here:

Firstly, the author has craftily mixed potential safety issues, like bedroom window size (which is important in the event of needing to escape because of a fire), with non-safety issues, like ceiling height, that the enforcers of Landlord Licensing will use via the Building Code to eliminate many older rental properties.

It is a given fact that basement ceiling height in most older residential dwellings will not meet the current Building Code requirement but that doesn't necessarily make this type living space unsafe, especially if the ceiling height was only a few inches below the current requirement. This ceiling height requirement will be used, however, to eliminate many older rental properties from the marketplace which, it appears, was the PRIMARY intention all along of this Landlord Licensing scheme.
Secondly, the author conveniently omits to mention that there are thousands of older Owner-Occupied residential dwelling units in the City that have basement ceiling heights in living space areas that don't meet the current Building Code height requirements and that the city of London doesn't have any problem with that.

Badge #16:

On page 5 of the staff report dated February 25, 2008 it states:

"When marketing or advertising a rental residential unit, all documents, including newsprint and internet advertising, shall include the inscription "City of London Rental Residential Unit License No." followed by the account number of the license issued."

At the public meeting that was held at Centennial Hall on March 18, 2008 one Landlord pointed out that the addition of this many words would double the cost of his advertising. Another Landlord pointed out that his cash flow from a rented house that he had was only $8.00 positive per month.

(a) It should be noted here that it has been held by a Canadian Court that:

"A man could not be said to be "engaged" in any business unless he used that particular business as one of his means of livelihood." (Slocock v. Simpson [1912] 1 W.W.R. 1096)

(b) and, that if there is no gain, then there is no business activity, (R. v. Malenki (1990), 68 Man. R. (2d) 125; 1990 Carswell-Man 345 (Q.B.))

It would appear that what the author of the staff report is trying to do is to eliminate most small landlords by way of all the requirements, financial and otherwise, that were outlined in the staff report. It should be noted here that most students rent from small landlords and it is a very interesting coincidence that many of the residential rental dwelling units that will not meet the current Building Code, which will eliminate them from the marketplace because of the prohibitive upgrading costs, will involve student rental accommodations from small landlords. As Orest Katolyk said in The Londoner on February 26, 2008 under the headline: "Student housing strategy draws support" regarding Landlord Licensing:

"It will certainly have an impact on many of the (places) where students live..."

Badge #17:

On page 5 of the staff report dated February 25, 2008 we find a discussion of the fees associated with Landlord Licensing. While no specific numbers are quoted, it is made clear that in addition to the two additional inspectors talked about in the newspaper article dated January 21, 2008, there will be staffing costs in the Clerk's Department so the $3,827,320 figure calculated in Badge #6 is only a part of the iceberg regarding fees. It appears, however, that the City has NO INTENTION of revealing the total fees Landlords will be facing BEFORE a Landlord Licensing by-law is enacted. So much for fairness and openness.

Badge #18:

The Londoner published another article on February 27, 2008 with the headline that read: "The bid to rein in our student housing." The article stated in part:

"of all the issues that come before city council, the police services board and neighbourhood associations, perhaps none is more explosive or emotional than rowdy students and unkept student housing."

The article goes on to explain the origin of a new document called "New Partnerships of Great Neighbourhoods Surrounding Our University and Colleges." The document was presented to City Council by John Fleming, the City's manager for land use and planning. In the document Mr. Fleming outlined a 10-point strategy of which two points are most interesting:

"Provide safe housing, perhaps through a new
city-wide housing licensing bylaw to ensure existing rentals meet current standards."

AND

"Providing affordable housing for students, renters and homeowners, perhaps with long-term loans in return for deed restriction."

The public will find out later on, however, at a meeting held at King's College on May 28, 2008 that the deed restriction will ELIMINATE RENTERS and in no way provide affordable housing for them.

Badge #19:

On May 24, 2008 the City ran an advertisement in the London Free Press entitled "Closing the Gap - London's Student Housing Strategy" and served notice that there would be three public meetings held during May and June of 2008. The first meeting was on May 28th at King's College where members of the public were given a nine page document entitled "Strategic Directions for Closing the Gap" which outlined the same ten point proposal that John Fleming presented to City Council that was reported on by The Londoner on February 27, 2008 some of which was covered in Badge #18.

The meeting at King's College was attended by about 150 people. At the beginning of the meeting the City planning official, who chaired the meeting, showed a slide presentation of numerous by-law infractions like garbage strewn all over a property and motor vehicles parked on front lawns. He said it took him only about 30 minutes to drive around and find infractions like these which the City just doesn't do anything about.

Most of the people that attended the meeting thought the City should more vigorously enforce existing by-laws for noise, untidy lots and parking violations; strengthen the fines; legislate a Code of Conduct for UWO and Fanshawe College students (best done through Business Licensing although that method wasn't mentioned); and do something to curb the problem of the bars routinely serving people to the point of and beyond intoxication.

(continued on next page)
The 2nd and 9th points of the document that was presented were the only parts of the document that focused on Landlord Licensing yet throughout the ENTIRE meeting the speaker, a City planning official, mentioned Landlord Licensing at least 15 times which gave many of the people who attended the meeting the impression that the meeting was called almost solely for the purpose of trying to sell Landlord Licensing to the public.

It is the 10th point, however, that stunned many of the people in attendance: It was titled "Providing Affordable Housing for Students, Renters and Homeowners" and outlined a scheme to invest City money in long-term loans to home purchasers in "targeted" areas that would "convert housing back from rental to home ownership" with a "deed restriction requiring home owner occupancy."

The question that needs to be asked here is this:

"Why would John Fleming, the author of this document, think that a City assisted loan program would be necessary when historically there are never very many rental properties that come up for sale in the London marketplace?"

Could it be that he knows that most of the older residential rental properties will find it cost prohibitive to comply with the current Building Code by way of Landlord Licensing and, therefore, he also knows that there will be an enormous number of these rental properties that will have to be sold?

Point number 10 in this document is very strong evidence of a collateral and sinister purpose for Landlord Licensing and that the requirement of residential rental units having to meet the current Building Code has virtually nothing to do with safety issues because the City apparently has no problem with financing these dwellings for Owner-Occupants with no requirement of upgrading these dwellings to meet the current Building Code. If these dwellings are unsafe for Tenant-Occupants, it stands to reason that they're also unsafe for any occupant including Owner-Occupants.

Point number 10 also provides very strong evidence of an attempt, by way of deed restriction preventing a rental use of the dwelling unit as a condition of qualifying for a long-term loan, to relegate Tenants to second class citizenship status and is reminiscent of the discriminatory practice in the 1920s and 1930s where deed restrictions were in effect in parts of Ontario, particularly in "cottage country," that forbade ownership by anyone who was of Jewish descent.
To think in this supposedly enlightened time that a
municipal government could propose and/or enact a by-law
that would grant first class citizenship to an Owner-
Occupant and second class citizenship to a Tenant-
Occupant by way of Landlord Licensing and/or home loans
tied to deed restrictions forbidding Tenant-Occupancy is
unbelievable and is a clear violation of Section 15(1) of
the Charter of Rights and Freedoms which guarantees
equality, under the law, to all persons.

The logical question one has to ask is that if deed
restrictions of this nature are going to be allowed,
after Tenants who is next on the list? -- blue-collar
workers? -- card carrying members of the New Democratic
party? -- persons who have ever paid a psychic for
advice? -- anyone in show business? -- members of the
Masonic Lodge? -- any man or woman born under the Zodiac
sign of Taurus? Like Tenants, none of these categories
of people are enumerated in Section 15(1) of The Charter.

Badge #20:

On June 11, 2008 The Londoner published a letter-to-the-
editor. It read in part:

"My concern regarding student boarding houses
isn't about licensing landlords, but rather
the influx of homes being bought in this area
for the sole purpose of students housing.
Recently a house on Wallbrook Cres. was sold
to people who intend to use it for student
housing. I would like to see a cap on the
number of single family homes being bought
for this purpose."

Could it be that the City is using Landlord Licensing as
a smoke screen to eliminate student housing because City
officials know that the cost of upgrading the vast
majority of these student dwellings to the current
Building Code will be cost prohibitive and that
effectively the City is implementing a strategy via
Landlord Licensing which will achieve the objective that
the writer of this letter has outlined?

Badge #21:

On November 13, 2008 the London Free Press published an
article entitled "Orser vows fight to stay on planning
committee." Stephen Orser is a City Council person.
The article outlined Orser's view of important issues
facing the Planning Board. One of those issues stated
was:

"Whether and how to license landlords after
years of complaints focused on student neighbourhoods around Fanshawe College and the University of Western Ontario."

The quote from this article strongly suggests that Landlord Licensing is all about controlling and/or eliminating students who have rented accommodations near Fanshawe College and UWO and has nothing whatsoever to do with Tenant safety.

Badge #22:

On November 17, 2008 the London Free Press ran a story entitled "Proposed changes crank up city's noise bylaw." While the article did not speak about Landlord Licensing it raised the issue of who is causing all the noise where the article stated:

"Though noise complaints occur across the city, people living close to Richmond Row and the Fleming Drive area near Fanshawe College have long complained about the problem."

The article went on to say:

"John Fracasso, of the Piccadilly Neighbourhood association, said residents are awakened often by young people going to and from bars.... They're often drunk on their way to the bar and drunker when they're coming home, said Fracasso. And it's not just weekends; it's every night."

From these two quotes it appears logical that if someone could find a way to get rid of the "young people" (aka students) you would get rid of the noise. Could it be that the true purpose of Landlord Licensing is a way to accomplish this goal?

Badge #23:

On December 3, 2008 The Londoner published an article entitled "Strategies to control rowdy students" and reported on five priorities developed by the city of London. The third priority stated:

"Introduction of a rental housing licensing bylaw, which will come to council later this month, to put more responsibility for controlling rowdy students on landlords."

This quote begs the question:

"How does safety via compliance with the
current Building Code have anything to do with a Landlord's ability to control rowdy student Tenants?*

The answer is simple: Landlord Licensing has nothing whatsoever to do with safety. It's about making it impossible for students to live in dwellings which are in residential neighbourhoods and is an attempt to skirt the decision of the Supreme Court of Canada in Bell v. The Queen (1979) where it was held that:

"...it is open to the Municipality to determine how a dwelling is used but not who can use that dwelling."

Badge #24:

In the staff report dated February 25, 2008 it is stated on page 3 that:

"...property standards complaints are made by tenants, neighbours or through referrals from other agencies."

The inference here is that the City has no reliable way of knowing about property standards violations except by way of this supposedly haphazard method quoted above that has apparently been in existence for a very long time.

Landlord Licensing is being promoted as the premier solution to this supposed quagmire of uncertainty.

Two things are glaringly absent from this analysis, however:

Firstly, there is no mention of not knowing about property standards violations that exist in Owner-Occupied residential dwellings.

Secondly, there is no mention that Landlord Licensing won't solve the supposed quagmire of not knowing about the property standards violations in Owner-Occupied dwellings and that the old, supposedly unreliable system quoted above that has existed for many years will, therefore, still continue.

The fact that the City responded to 459 property standards complaints in 2007 (Ref: staff report, February 25, 2008, bottom of page 2) and the fact that the slide presentation given at King's College on May 28, 2008 identified dozens of property standards violations that were compiled in about 30 minutes is evidence that there must be some reliable method that is already in place for locating a very great number of
property standards violations in the city of London.

Because there already exists some fairly reliable method of identifying property standards violations, the only reasonable conclusion one can draw here is that identifying property standards violations can’t be the primary reason for Landlord Licensing and that there must be a more important and collateral purpose.

Badge #25:

In all material reviewed above the City has told us, more or less, that they don’t have the tools to deal effectively with noise, garbage strewn all over a property, motor vehicles parked on front lawns and a host of other nuisance issues that the public has repeatedly complained about; hence, Landlord Licensing is needed to solve all these problems (i.e. “protect the residential amenity, character and stability of residential areas” as discussed in Badge #7).

Let’s take a look at what powers the city of London already possesses:

Regarding the noisy behavior of any person the City has the already existing Noise By-law; when a nuisance of any type, including noise, is directed against more than one property the Criminal Code of Canada can also be used under the section dealing with Common Nuisance which carries a maximum penalty of two years in prison. Subsequently, if convicted under the Common Nuisance section of the Criminal Code of Canada a Peace Bond can be sought with amounts of $2000 or more being the norm.

Regarding garbage not properly stored or contained, the City can ask the Department of Health to inspect the property.

Regarding unkept exterior grounds, the City can enforce the Untidy Lot By-law which already exists.

Regarding smoke coming from bonfires, the City has a by-law limiting outdoor fires to containers that are no larger than about 4 square feet and there must be a container; in other words, uncontained fires are illegal no matter what size they are. The Fire Department enforces this already existing by-law.

Regarding the consumption of alcohol, there is a host of Provincial liquor laws that could be enforced -- for example, unless a special license has been issued, it is an offense to be walking around on public property with open containers of beer, wine or liquor.
Regarding property damage, the sections dealing with Wilful Damage and Mischief in the Criminal Code of Canada can be used.

Regarding gatherings of two or more people, that involve property damage and/or violence and/or potential violence, the sections dealing with Unlawful Assembly and The Riot Act in the Criminal Code of Canada can be used.

For exterior safety issues there is the Building Code and the Fire Code, and the power to obtain a Court order for repairs.


For investigating possible violations of zoning laws there is the power of search warrant where NO PROBABLE GROUNDS HAVE TO EXIST to search for leases and cancelled cheques to determine whether or not a legal "family" exists. This type of search was conducted in Oshawa, Ontario in September of 2007 where 17 different dwellings were searched. (Ref: Macleans on Campus: http://oncampus.macleans.ca/education)

If the City issues a work order that is not complied with, the City already has the power to effect the work and put the cost of effecting the work on the tax bill for the property.

The City has the legal power to enact by-laws requiring:

(1) UWO and Fanshawe College to adopt a Code of Conduct for all their students by way of a requirement for the school to obtain or hold a business license because both these institutions deal in the "business" of education and are therefore subject to business licensing.

The Code of Conduct would state that any student who is convicted of any by-law offense, Provincial law offense, or Criminal Code offense would be expelled from the school for two years from the date the offense was committed and would forever lose all attendance records, credits, certificates, and diplomas that were obtained from the school from the date the offense was committed running through to the point when the expulsion was terminated.

(2) A Breathalyser Requirement for all places of "business" that generate, for example, more than 20%
of their gross revenue from the sale of alcoholic beverages so that if a person registers over .03 they can not be served. A by-law of this type could be created under the business licensing provisions of the Municipal Act and could be a condition of obtaining or holding a business license for a "business" that serves alcoholic beverages.

The fact that universities, colleges and places that serve alcoholic beverages are already regulated by provincial legislation does NOT prevent a municipality from further regulating these type of businesses. The only way the "Doctrine of Paramountcy" could prevail in preventing municipal regulation is where there is a direct conflict with legislation from a higher level of government. (Law Society of Upper Canada v. Barrie (City) (2000), 11 M.P.L.R. (3d) 89, 183 D.L.R. (4th) 757, 46 O.R. (3d) 620, 2000 Carswell-Ont 16, [2000] O.J. No. 9 (Ont S.C.J.))

Additionally, the City could request that an attending police officer read the Riot Act in appropriate situations or the City could have a City official quickly attend the situation at hand and read the Riot Act. The penalty for a crowd of people failing to disperse immediately upon the reading of the Riot Act is a potential life in prison for each person. The Riot Act can be read by any City official including a police officer. Also, any force necessary can be used to arrest a person who fails to immediately disperse.

The reality, however, is that the city of London rarely enforces the laws and by-laws that already exist and is reluctant, for some unknown reason, to enact a Code of Conduct for UWO and Fanshawe College students; or to enact a Breathalyser requirement for places that serve alcoholic beverages; or to invoke the various sections of the Criminal Code of Canada, like the Riot Act or Common Nuisance, when appropriate to do so; or to enforce various Provincial liquor laws.

It appears that the city of London would rather rely on Landlord Licensing to solve problems that the City could otherwise solve with already existing laws and powers unless, of course, the real reason for Landlord Licensing is to get rid of a large number of Tenants, who happen to be students, by way of forcing compliance with the current Building Code.

It is interesting to note here that the ONE power the city of London does NOT presently have is to go into any neighbourhood within its jurisdiction and get rid of the
OCCUPANTS in rented dwellings and that Landlord Licensing would give the City that power by way of allowing a direct attack on a never before seen scale, which, in turn, would eliminate the occupants, if the dwelling did not meet the current Building Code and it was cost prohibitive to bring it up to Code.

Badge #26:

On December 3, 2008 The Londoner published a story entitled "Strategies to control rowdy students." On page 5 City planning official Michael Tomazincic is quoted as saying:

"A family still operates as one unit whereas five students living together operate as separate families and it creates a huge issue."

Effectively what Mr. Tomazincic is trying to do here is to go directly against the Case Law that was given in Bell v. The Queen (1979); St. Catharines (City) v. Fish (2000); and Good v. Waterloo (City) (2004).

Hence, with the exception of a rooming house-boarding house-lodging house situation, several students, not related by blood, who have rented a house and are living together ARE a family as far as the law is concerned.

The arrogance of certain City officials and members of Council in not only failing to accept but outrightly opposing these Court decisions is prima facie evidence of a high handed attitude at City Hall which is the very opposite of fairness and openness that one should expect from their government.

Badge #27:

The City says, at the bottom of page 4 of the staff report dated February 25, 2008 that they don't have a reliable mechanism for contacting the owner of a non-Owner-Occupied property:

"one of the common issues with respect to absentee landlords is that there is no local contact for emergency or enforcement staff to contact should emergency situations arise."

The staff report purports to solve this "no LOCAL contact" dilemma by Landlord Licensing which will require a local property manager person who can be contacted when emergencies arise for every rental property.

This "solution" begs the answer to the question:
"If there was a local property manager involved by way of Landlord Licensing, what guarantee would there be that that person will answer the telephone, open their mail, return the City's messages (if there even is a message machine) or open their door?"

The more important issue here, however, revolves around the fact that a residency requirement is not legal. (See Paragraph 15 of this document for the Case Law.)

Badge #28:

It appears that the city of London is trying to cover up the fact that they have engaged in extremely poor planning when it comes to housing UWO and Fanshawe College students. The City apparently likes the revenue from the vast number of building permits they have issued to these two businesses while the City has given no thought whatsoever as to where the increasing student population is going to live.

Instead of accepting the fact that poor planning principles have been followed and trying to correct the problem, for example, by working with developers to plan future complexes that will house several hundred or possibly one or two thousand students under well managed developments that are within walking distance to each school, the City has chosen to dig itself deeper into the mud by enacting a Landlord Licensing by-law that has the true purpose of getting rid of students in close-to-the-school residential areas of the City.

This situation begs the question:

"Where does the city of London expect all these students to live when they are thrown out onto the street as a result of Landlord Licensing?"

If students are forced to live a considerable distance from UWO and Fanshawe College because their previously existing walking-distance-to-school residential dwellings are terminated because of Landlord Licensing they will be forced to rely almost solely on public transit that is very time consuming and presently terminates at midnight all of which amounts to more of the previous bad planning.

Badge #29:

Returning to the staff report dated February 25, 2008, on page 3 under the heading "Why license rental residential units?" it is stated that:
"Currently, property standards complaints are made by tenants, neighbours or through referrals from other agencies."

While it isn't stated, it is implied here that Tenants don't know exactly what is and is not a Building Code deficiency and that Landlord Licensing will solve this "problem."

If this Tenant confusion over what is or is not a Building Code deficiency is true then what is being said here is that Owner-Occupants must be a lot smarter and/or more knowledgeable than Tenant-Occupants. No proof exists, however, that Owner-Occupants are smarter and/or more knowledgeable than Tenant-Occupants so why isn't the city of London targeting Owner-Occupied residential dwellings for Building Code deficiencies? Could the answer really be that there is a collateral and sinister purpose behind searching for Building Code deficiencies in Tenant-Occupied residential dwellings via Landlord Licensing?

Badge #30:
Does the city of London know that Gestapo tactics could be used by by-law enforcers if Landlord Licensing is passed into law? The answer has to be YES! unless the people running City Hall don't read newspapers, know nothing about licensing powers contained in the Municipal Act, and have never seen a copy of The Charter of Rights and Freedoms.

In the January 21, 2008 article published in the London Free Press it was stated that:

"While Oshawa is using the license to control student housing in areas plagued by riotous behaviour, Katolyk said London's proposed bylaw is intended to deal with health and safety issues and "does not address behavioural issues.""

So, if they read newspapers at City Hall they MUST know about the problems in Oshawa which are similar to London's problems with students. And they must know that Gestapo tactics like MASS SEARCH WARRANTS were issued in Oshawa and that 17 dwellings were raided in September of 2007 where students lived EXCLUSIVELY. In other words, there were no search warrants issued for Owner-Occupied dwellings, just Tenant-Occupied dwellings and that it was students that were living in those Tenant-Occupied dwellings.

Additionally, City Hall MUST know that Section 151(2) of
the Municipal Act permits a Municipality to suspend a license WITHOUT A HEARING for up to 14 days at a time and that the other Gestapo-like powers under Section 151(1) of the Municipal Act covering licenses are enormous and allow just about everything EXCEPT taking people away in the middle of the night, to destinations that are never made public, where the person will never be seen again or brought to trial.

Hence, if Landlord Licensing is enacted in London, Ontario City Hall knows perfectly well that:

(a) "the right to security of the person" (Section 7 of The Charter of Rights and Freedoms) will be violated;

(b) "the right to be secure against unreasonable search and seizure" (Section 8 of The Charter of Rights and Freedoms) will be routinely violated just like it was in Oshawa;

(c) Tenants will be targeted because of who they happen to be and that, although Tenants are not specifically enumerated in Section 151(1) of The Charter of Rights and Freedoms, these Gestapo tactics will target ALL STUDENT TENANT-OCCUPANTS of residential dwellings regardless of whether or not the student has been involved in breaking any by-law(s); or committing any breach(s) of the Criminal Code; or committing any offense(s) under Provincial laws.

24. Landlord Licensing would prevent an Owner-Occupant as well as a Tenant-Occupant from renting a room or sharing existing space to help defray expenses as BOTH would require a Landlord License which, when all the costs were factored in, would be cost prohibitive in the vast majority of cases.

The right to rent a spare room or share existing space in your dwelling is a common law right of a property owner or a legal occupant. Common law rights were discussed in Coinamatic Canada Inc. v. Toronto (City) (2003) 2003 CarswellOnt 3839, 47 M.P.L.R. (3d) 1 (Ont. Div. Ct.); leave to appeal (2004), 2004 CarswellOnt 1306 (Ont. C.A.). Although common law rights did not exist in this particular case, it was established in this particular case that such rights could exist if the circumstances were different.

25. According to Case Law, because the Building Code relates to the CONSTRUCTION of a structure, the argument of FORCED COMPLIANCE with the Building Code ENDS with the person who built the structure that doesn't comply. For the Building Code to apply to FUTURE OWNERS and/or FUTURE OCCUPANTS there would have to be a prohibition in the
Building Code against ownership, occupancy or inhabiting a structure that does not comply. If no such prohibition is stated in the Building Code, the Building Code can NOT be enforced against a FUTURE OWNER and/or OCCUPANT of a structure that does not comply. (Rubinstein v. Municipal Court of Outremont (City) (1955), [1956] Que S.C. 229, [1956] C.S. 229, 1955 Carswell-Que 160 (Que S.C.) MUN 79.2056)

Following the Court's logic forward, forced compliance with the Building Code can NOT be made a condition of ALL persons obtaining a Landlord License when the Building Code, in and of itself, can only apply to the ORIGINAL PERSON WHO BUILT THE STRUCTURE. In other words, if Landlord Licensing is declared to be legal, the only person who could be made to comply with the Building Code, as a condition of getting the license, would be a Landlord who actually built the structure he or she is trying to rent.

By making it a requirement via Landlord Licensing that ALL persons obtaining a Landlord License make their rental dwelling unit(s) comply with the Building Code, the City is effectively attempting to get around the Court ruling that says the Building Code can only apply to the original person who built the structure.


28. If it appears that the true purpose of a by-law is really some other collateral purpose, then the by-law is in bad faith. (913719 Ontario Ltd. v. Cambridge (City) (1996), 1996 Carswell-Ont 2987, 10 O.T.C. 250, 34 M.P.L.R. (2d) 213 (Ont. Gen. Div.))

29. When a municipality enacts a by-law that has INHERENT UNFAIRNESS and/or IMPROPER MOTIVE the Court will strike that by-law down. (1163133 Ontario Ltd. v. Owen Sound (City) (1997), 43 M.P.L.R. (2d) 139, 1997 Carswell-Ont 4201 (Ont. Gen. Div.); Rowland v. Collingwood (Town) (1908), 16 O.L.R. 272 (Ont. K.B.))
30. It has been held:

"Even if the majority of the electors approve, it is a by-law of the council, and if tainted ...by improper motives at the beginning and passing it, it cannot be made good by a majority of the electors sanctioning it."

(Rowland v. Collingwood (Town) (1908), 16 O.L.R. 272 (Ont. K.B.))


32. Where there is a viable, less intrusive way open to go that will not infringe The Charter of Rights and Freedoms, that less intrusive way must be followed.


33. Any evidence presented which calls into question a Municipality’s real purpose for enacting a by-law must be examined by the trial Judge and placed in proper context. If the Applicant can show that the Municipality did not act in good faith or abused its power the Applicant might also be entitled to a remedy under Section 24(1) of The Charter of Rights and Freedoms. (1515545 Ontario Ltd. v. Niagara Falls (City) (2006), 206 O.A.C. 219m 17 M.P.L.R. (4th) 163, 2006 Carswell-Ont 57, 78 O.R. (3d) 783, LaForme J.A., Rosenberg J.A., Weiler J.A. (Ont. C.A.); reversing in part (2005), 8 M.P.L.R. (4th) 1, 2005 Carswell-Ont 1349, 75 O.R. (3d) 151, Walters J. (Ont. S.C.J.))

34. The High Court of Ontario (as it was in 1983), in the decision of Linden J., held that under the Constitution Act, 1982 (being Schedule B to the Canada Act 1982 (U.K.), 1982, Chapter 11) MUNICIPAL BY-LAWS ARE SUBJECT TO THE CHARTER. The rationale for the conclusion was contained at page 663 of the decision, where it said:

"The Charter of Rights and Freedoms is meant to curtail absolute parliamentary and legislative supremacy in Canada. As such, the Charter addresses itself expressly to the two levels of government whose primary legislative organs have been held in the past
to be sovereign within their respective spheres. Municipalities, through a distinct level of government for some purposes, have no constitutional status, they are merely "creatures of the legislature," with no existence independent of the Legislature or government of the province." (McCutcheon v. Toronto (City) (1983), 41 O.R. (2d) 652, 22 M.P.L.R. 139)

35. The Ontario Superior Court of Justice in Barrick Gold Corp. v. Ontario (Minister of Municipal Affairs and Housing) (1999), 7 M.P.L.R. (3d) 148, considered unreasonableness and the application of the Municipal Act on an application to quash a municipal by-law. Meehan J. held with respect to unreasonableness that:

"Section 102 of the Municipal Act prohibits the quashing of by-laws on the ground of unreasonableness. However, by-laws may be so unreasonable as to demonstrate an abuse of power and may be found ultra vires the power of Council. (Kruse v. Johnson [1898] 2 Q.B. 91 (Eng. Div. Ct.); Associated Provincial Picture Houses Ltd. v. Wednesbury Corp. (supra) [[1947], [1948] 1 K.B. 223 (Eng. C.A.]); Bell v. The Queen (1979), 98 D.L.R. (3d) 255 (S.C.C.); Canadian National Railway Co. v. Fraser-Fort George Regional District (1996), 140 D.L.R. (4th) 23 (B.C. C.A.)."


37. If a municipal by-law creates separate or different classes of occupiers for residential dwellings, if there is no empowerment to do so in the Municipal Act, then the Court will strike down that by-law. (Wedman v. Victoria (City) (1979), 15 B.C.L.R. 303, 11 M.P.L.R. 68, 105 D.L.R. (3d) 94, 1979 Carswell-BC 312 (S.C.))

38. There is no empowerment in the 2008 edition of the Ontario Municipal Act to create separate or different classes of occupiers for residential dwellings.

39. If a municipal Council held public meetings that were a ruse whereby they took lots of notes from many speakers but with almost no exceptions totally rejected what the speakers said the sum total of which meant that the so-called sufficient public debate and input meant NOTHING because an underlying improper motive was afoot then
there might be sufficient grounds for striking down the
by-law which followed the public meeting(s). (36041
Yukon Inc. v. Whitehorse (City) (2005), 34 Admin. L.R.
(4th) 171, 2005 YKSC 37, 2005 Carswell-Yukon 32, 11

40. On page 7 of the staff report dated February 25, 2008
under the heading "License conditions:" it is stated in
item number 4 that:

"The landlord does not directly or indirectly
require or cause a tenant to refuse consent
to lawful entry and inspection of a rental
unit for the purpose of determining
compliance with the Business Licensing By-law."

London has not YET become Nazi Germany. Any by-law
requirement that prevents a Landlord from speaking to a
Tenant, about ANYTHING, is a control on free speech and
is a violation of Section 2(b) of The Charter of Rights
and Freedoms which states:

"Everyone has the following fundamental freedoms:

2(b) freedom of thought, belief, opinion and
expression, including freedom of the
press and other media of communication"

SUMMATION

The right to rent a residential dwelling is so fundamental to
our way of life, it should not be compromised by any local
by-law or deed restriction which would limit, in any way, a
person's right to freely choose an address.

If Occupancy Permits are going to exist, it should be in the
context of Constitutional Law which will apply equally to
everyone on a nationwide basis and not at the sole discretion
of a Municipal Council to single out Tenants in their
community.

The enforcing of a Building Code, Health Code, or Safety Code
should not be directly, remotely, or collaterally contingent
on who the Occupant of the dwelling happens to be.

The mass demonizing rental properties should never be an
acceptable excuse for bad planning.

Treachery and deceit should never be allowed to be disguised
as fairness and openness by the simple holding of several
public meetings where people are allowed to speak for 2 or 3
minutes.

London's Landlord Licensing by-law is really a carefully
calculated blueprint to relegate Tenants and Owners of residential rental properties to second class citizenship and has been disguised as method to implement Tenant-Occupant health and safety measures as its primary purpose.

London's attempt at Landlord Licensing isn't just tainted with bad faith, it's drowning in bad faith.

There is no way the owner of a vacant residential dwelling should have to explain to a prospective Tenant/Owner that the "Tenant option" is just not workable because of some goof-ball Landlord Licensing local by-law that requires a myriad of fees, inspections, documents (like site-plans, parking plans etc.) and forced compliance with the current Building Code; and that the "Owner-option" is the only feasible way this interested person can live at this address.

The Charter of Rights and Freedoms guarantees that everyone has certain rights that can not be taken away by the majority vote of a Municipal Council without the approval of the Courts.

This document was prepared by
Edgar Alan Smuck
OLD MASONVILLE RATEPAYERS ASSOCIATION (OMRA)
(A Member of the “London Neighbourhood Coalition On Town &
Gown Issues”)

Presentation Topic: City Planning & Development
Proposed Licensing By-Law
“Licensing Of Rental Residential Units”

Where: Public Participation Meeting – Centennial Hall, Tuesday, March 24/09

Our Position, Concerns & Recommendations:

First, back in Oct 2007, we identified & recommended to the City several primary “Areas Requiring Improvement”...one of which was the need to improve “Rental Housing Standards, Rules & Regulations coupled with the need for proactive City By-Law Enforcement...”

Tonight, is another public meeting of series headed in that direction...which we are very pleased to see & be part of...

As such, we support a “Rental Licensing Housing By-Law” to improve public safety, overcrowding & prevent & fix rundown unhealthy conditions...

However, we have 2 concerns...which are: -

1) Discrimination

2) Ambiguity & Closing Loopholes

Therefore, we recommend a “Rental Licensing By-Law” on the condition that:

1) It cover all rental facilities to avoid discrimination based on the size & number of rental units...or area of location.

2) Your “Definition of a Rental Unit” be amended so your By-Law clearly covers rental property with more than 5 single bedrooms...& is not limited to 4 single bedrooms...which we believe is your intent here.
Secondly, We Propose A 2 Step Implementation Process from the get go...

Step 1: To allow our Municipality the leeway required to establish & enforce clear standards & rules...As well, to deploy limited resources most effectively...meaning focusing primarily first on what they perceive to be the areas requiring the most attention...being absentee landlords and smaller residential units, where most of the public complaints/problems are coming from...

As well, the City will have the power to impose inspections inside larger rental facilities, if & when needed... & employ random spot checks which should be incentive enough to get & keep the Owners & Property Managers of larger rental properties in line.

Step 2: To gradually encompass all rental properties...over whatever time the City feels is needed to get their required resources up to speed ...but within a definite timeframe of say 3 to 5 years maximum.

Again, we thank you for your time & the opportunity to participate in the process...

George Lightfoot
President, Old Masonville Ratepayers Association
March 24th, 2009.
To the Chair and Members of the City of London Planning Committee

Regarding the licensing of Rental Properties: Proposed new By-Law:

In preparation for tonight’s presentation I went into my computer and was surprised to see that letters I had written to the City on the topic of over intensification dated from 1999 onwards and these were just the ones in my computer! I have more on file that date from the nineteen eighties, and many of them deal with the issue that we have before us tonight.

This city and others alongside it has tried many different approaches over the years to regulate undesirable over-intensification of its residential neighbourhoods. London and Waterloo come to mind as cities that have had their attempts met with appeals by landlords and developers. These appeals successfully shut down the attempts at control. London has now come up with another attempt to regulate its rental housing stock and we hope very much that this time Council is able to succeed in implementing this new By-law.

Concerning the draft By-law in front of us tonight. What is not to love?

1. The by-law is city-wide, thus it deals fairly with every residential neighbourhood.

2. The fee for a licence is modest and reasonable, and only allows the City to recover the cost of the programme - it is not a greedy tax grab as some may try to characterize it. There is no way that the $50.00 per year fee should cause hardship to any landlord, or prove to be an excuse for putting up rents.

3. The by-law should not be punitive towards those landlords who already run their businesses in a responsible way. In fact, if all the rental properties in London are well maintained and above criticism why should any landlord object to this by-law? It will not cost them anything other than the very minimal licence fee. We know of several landlords who fit into this category, Mr. McGiver, Mr. Kaplansky and Mr. Stanton are amongst those whom we know maintain their properties to a high standard, (even if we disagree with them as to where their new developments should go!)

4. The by-law is designed to address the numbers of very real problem rental properties that are in many cases owned by people who live out of town. They are not properly zoned, they are not well maintained, and they present health and safety issues for the tenants living in them as well as being eyesores to those who live nearby. The safety of tenants is at the heart of this issue. Overcrowding and poor maintenance is a marriage made in hell and may well, in the final analysis, lead to a real conflagration.

5. The By-law’s intention to protect the safety of tenants leads one to hope that this By-Law will not only have teeth, but that it will be enforced effectively. A system that inspects properties and then does not follow up with penalties for illegal situations or non-compliance would indeed be nothing more than a tax grab. This By-law must be accompanied by rigorous oversight. We know of too many cases where totally illegal activities under the building code have never been rectified; where illegal additions still stand and illegal conversions are not returned to their original state. If these infractions are not prosecuted under the Building Department’s watch, will this new By-Law be effective? We are hopeful that the addition of two more Municipal Enforcement Officers will mean that enforcement will be rigorous.
6. People might argue that this is another example of over-regulation, that one cannot turn around these days without being confronted by a piece of legislation that controls our lives. Our response to that is that if all these properties were well maintained and safe, and not crammed together to create unbalanced neighbourhoods, then there would be no need for this legislation. We do urge Planning Committee to recommend that Council pass this By-law next Monday night.

Mrs. Susan Bentley

(and Prof. D.M.R. Bentley) 34, Mayfair Drive, London N6A 2M6

Also undersigned by others who came to the meeting but did not like to speak and others who could not attend but who share our views.

Shirley Hamer, 27 Mayfair Dr., London N6A 2M7

Andrew Dickens 90 Mayfair Dr., London N6A 2M6