

Staff Report



Development Services Department

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REPORT TO: Community and Infrastructure Services Committee

DATE OF MEETING: December 4, 2023

SUBMITTED BY: Rosa Bustamante, Director of Planning, 519-741-2200 ext. 7319

PREPARED BY: Natalie Goss, Manager, Policy & Research, 519-741-2200 ext. 7648
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WARD(S) INVOLVED: All Wards

DATE OF REPORT: November 15, 2023

REPORT NO.: DSD-2023-486

SUBJECT: Rental Housing, Eviction and Displacement Study

RECOMMENDATION:

That staff be directed to engage the development industry and community stakeholders on a rental replacement by-law as outlined in Option 3 of report DSD-2023-486; and,

That staff continue to work with community stakeholders to explore additional tools that may be within Kitchener's jurisdiction to support the transitioning of displaced residents; and further,

That staff continue to collaborate with the Region of Waterloo on shared solutions related to rental housing, eviction, and displacement.

REPORT HIGHLIGHTS:

- The purpose of this report is to provide an update to Council on Kitchener's rental housing, eviction and displacement study.
- In the area of eviction and displacement there is currently one legislative tool available to Kitchener as a municipality: a rental replacement by-law. This tool only applies to displacements where a rental property with 6 or more units is demolished.
- This report outlines considerations of a rental replacement by-law including the effectiveness of the tool in addressing displacement and the financial considerations and impacts of this type of bylaw on the development feasibility of existing rental properties with 6 or more units. Despite the financial considerations for future development, staff recommends moving forward with a rental replacement by-law to maximize protection of existing tenants.
- Eviction and displacement are complex matters. Staff continues to have conversations with the Region of Waterloo and community stakeholders about the tools that are available to municipalities and all opportunities to partner with other orders of government and community stakeholders to address housing challenges.

*** This information is available in accessible formats upon request. ***
Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

- There are no financial implications of this report.
- This report supports *A Caring Community* by directing staff to continue exploring tools and resources to support tenants in Kitchener.

EXECUTIVE SUMMARY

On January 30, 2023, Council passed a resolution addressing rental housing and displacement, directing staff to provide recommendations and review the rental replacement by-law tool under the Municipal Act. The report provides an update on the resulting Rental Housing, Eviction, and Displacement Study, focusing on a potential rental replacement by-law. The City retained Parcel Economics (“Parcel”) to conduct a financial feasibility analysis of a rental replacement by-law in Kitchener.

Parcel’s financial feasibility analysis assesses the potential impacts of a rental replacement by-law on residential development in Kitchener. Findings suggest an impact on the development feasibility of existing rental properties. Options for the parameters of a potential rental replacement by-law in Kitchener are outlined. Going forward, staff recommend engaging with community stakeholders and the development industry on a consistent City-wide approach which maximizes the protection of existing tenants.

Recent changes to provincial legislation, particularly through Bill 97, grant the province the authority to prescribe additional regulations for rental replacement by-laws. The staff recommendation is for Council to direct the preparation of a rental replacement by-law, and continue engagement with the Region and community stakeholders to explore additional tools supporting displaced residents.

BACKGROUND:

On January 30, 2023, Council passed a resolution related to rental housing and displacement in Kitchener. At that time, Council directed that staff provide recommendations on how the City can support the transitioning of displaced residents; that staff review rental replacement by-laws in Ontario and assess its applicability in Kitchener; that staff work with community stakeholders to explore tools, and; that the resolution be circulated to the Region, local municipalities, and to the Association of Ontario Municipalities (AMO). Council requested staff to report back by the end of 2023.

Since that time, staff initiated the ongoing Rental Housing, Eviction and Displacement Study. The purpose of this report is to update Council on this study and seek direction for next steps.

This report is an important starting point of an ongoing conversation with Council regarding the specifics of available tools at the municipal level to support existing tenants. **This report focuses on a rental replacement by-law as one tool that may be implemented in short order.** While this report provides an update on staff’s current understanding about legislative tools regarding eviction and displacement, it is not intended to provide a comprehensive list. Staff continue to learn and engage with community partners to gain a better understanding of this matter and will report back to Council further throughout 2024.

Figure 1 depicts the recent and upcoming updates to Council for housing related studies and initiatives with this report highlighted in red below.

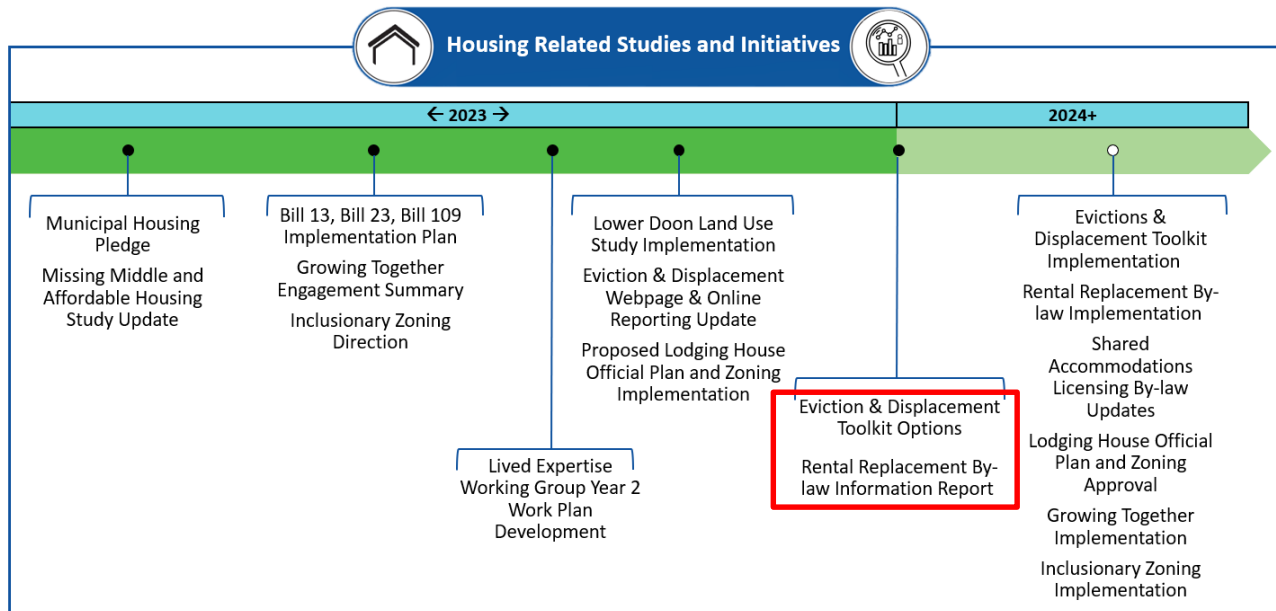


Figure 1: City of Kitchener Housing related studies and initiatives

REPORT:

The purpose of this report is to provide an update on staff’s current understanding about legislative tools regarding eviction and displacement in response to Council’s resolution in January 2023 as well as respond to the action item outlined in Kitchener’s Housing for All housing strategy. This report primarily focuses on legislative tools regarding rental replacement and its potential applicability to Kitchener, with a secondary focus on other rental tools and initiatives to be further explored in a future report.

Evictions & Displacement

The Residential Tenancies Act, 2006, is the Provincial legislation which governs rental housing in Ontario, including matters related to evictions. Generally, when a tenant is evicted from their unit, they must be provided with an N12 or N13 notice from the landlord which provides the landlord’s reason for the eviction. These notices are filed with the Landlord and Tenant Board (LTB). The LTB enforces the Residential Tenancies Act.

The City obtained eviction data from the Landlord and Tenant Board for N12 and N13 forms that have been filed in Kitchener. **Figure 2** explains the two notice types and **Table 1** includes statistics from 2017-present on the number of these notices processed by the LTB.

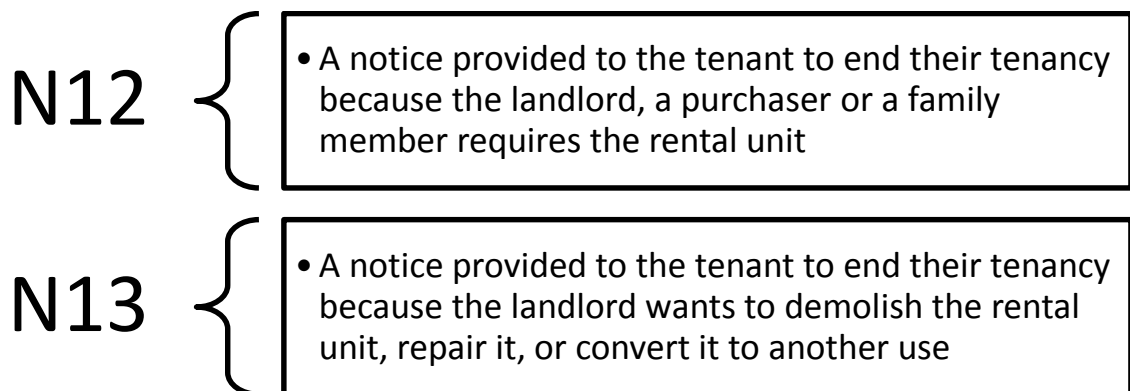


Figure 2: Explanation of N12 and N13 Notices

Table 1: N12 and N13 notices filed to the Landlord and Tenant Board (LTB)

Year	N12	N13
2017	134	15
2018	32	10
2019	67	21
2020	49	7
2021	76	17
2022	132	28
Jan – Jul 2023	101	47

It is acknowledged that evictions may also occur informally and without proper notice, and thus would not be captured by the statistics above. Staff continues to work with community stakeholders to understand the depth of evictions and have also recently made available an evictions and displacement survey on the City’s website to better understand the local context.

Municipal Tools & Eviction

Under the current Provincial legislative framework, the only legislative tool at the municipal level to directly regulate evictions is through a rental replacement bylaw passed under the Municipal Act. Evictions must comply with the Residential Tenancies Act, and disputes are settled by the Landlord and Tenant Board (LTB), which enforces the Act. **Figure 3** outlines municipal jurisdiction for matters related to evictions in Ontario, based on staff’s knowledge of the legislative framework in Ontario.

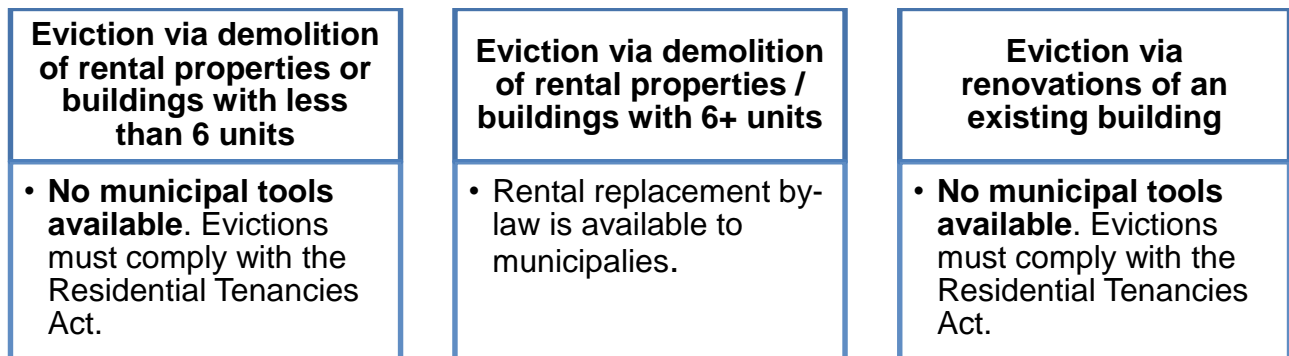


Figure 3: Jurisdiction for municipalities and evictions

Staff continues to build an understanding of the complexities of eviction and displacement. Throughout 2023, staff has continued to engage with community and government partners on matters related to rental housing including through discussions with the Region of Waterloo, with the Lived Expertise Working Group (LEWG), and with community stakeholders.

To provide further resources, staff has updated the corporate webpage in fall 2023 with:

- A new webpage on the City of Kitchener website to provide resources and information to renters in Kitchener about their rights as a tenant. The webpage also links to external sources with additional information (i.e. Region of Waterloo resources).
- The webpage includes a survey that is available as a “self-reporting” tool where tenants can fill in details where they have been evicted.

Additionally, in June 2023 Council added a permanent dedicated staff resource in the Planning Division to lead and assist with policy related housing matters.

Rental Replacement By-laws

As outlined above, there is only one tool available to municipalities regarding displacement and eviction – a rental replacement by-law. Under Section 99.1 of the Municipal Act, 2001, municipalities may enact bylaws to prohibit and regulate the demolition or conversion of multi-unit residential rental properties of six or more units. There are three municipalities in Ontario which are known to have enacted a rental replacement by-law: Toronto (2006), Mississauga (2018), and Oakville (2023).

A rental replacement by-law can ONLY be applied to properties with 6 or more rental units which are proposed for demolition or conversion.

The Municipal Act currently contains flexibility on parameters a municipality can include within a rental replacement by-law; the main one being limiting applicability to properties with 6 or more rental units. Typical parameters included in the Toronto, Mississauga, and Oakville by-laws are:

- Applies to properties with 6 or more rental units proposed to be demolished;
- The replacement units must be comparable in size, quality, and rent price to the original unit; and,
- The replacement unit must be retained as rental unit for 10 to 20 years.

Financial Feasibility Analysis – Rental Replacement By-law in Kitchener

Following Council’s motion in January, the City retained Parcel Economics (“Parcel”) to complete a feasibility assessment of a rental replacement by-law in Kitchener including assessing the financial impacts on residential development. Parcel is a land economics firm who also led the City’s [Enabling Missing Middle and Affordable Housing Feasibility Study](#) endorsed by Council on May 8, 2023.

Parcel’s rental replacement report includes background information including the policy context in Ontario for rental replacement by-laws, an overview of the rental housing market in Kitchener, a financial feasibility analysis of impacts of a rental replacement by-law, conclusions, and appendices with their detailed assumptions which informed their analysis. Parcel’s report (*Rental Replacement By-law, Financial Feasibility Study*) is included as **Attachment A**.

This report will focus on summarizing the key findings from the financial feasibility analysis of Parcel’s report on a rental replacement by-law in Kitchener.

Parcel’s financial feasibility analysis focused on two key questions:

1. Will a new rental replacement by-law risk materially impact residential development in Kitchener?
2. If a rental replacement by-law is pursued in Kitchener, what are the optimum parameters to balance the need to accommodate new growth while encouraging the maintenance (or expansion) of local purpose-built rental inventory?

Methodology

Consistent with Parcel's approach to the Enabling Missing Middle and Affordable Housing Feasibility Study, Parcel undertook financial analysis for **3 development typologies** in **condo and rental tenures** to assess financial impacts of a rental replacement by-law. To account for different land values across the city, the typologies were assessed in a **central and suburban context**, as further outlined in **Figure 4**.

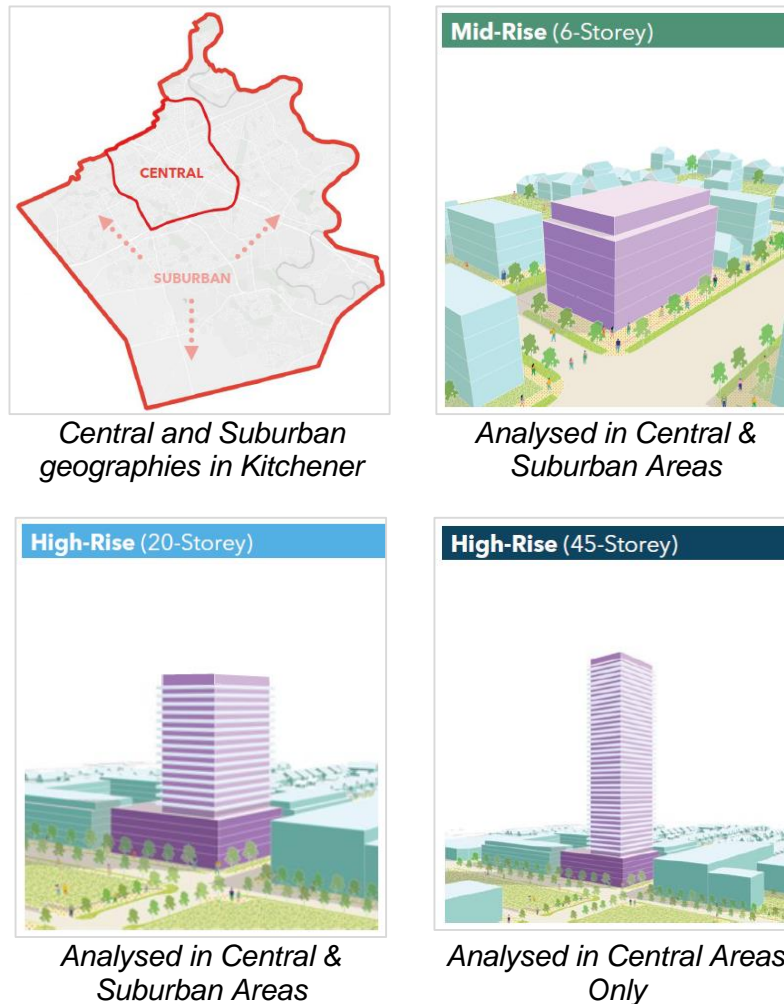


Figure 4: Graphic of the geographies and 3 development typologies analysed by Parcel

Parcel's report assessed how many rental units each typology could "replace" in a new building while maintaining typical development return metrics (i.e., profitability). In other words, finding the point at which a development is no longer profitable when existing rental units must be replaced. The findings of this analysis will help inform staff, Council, and developers of the potential impacts of a rental replacement by-law on the future supply of new housing units.

**There are 21,400 primary rental units in Kitchener (i.e. purpose built rentals).
Of these, 20,500 (96%) would be eligible for rental replacement (6+ units).
Of these only 17% / 3,600 of them have redevelopment potential (~215 buildings).**

Findings – Question 1 (Impacts of a Rental Replacement By-law on Development)

Parcel found that a rental replacement by-law is likely to be a deterrent to intensification of existing rental properties with 6 or more units across the city. Among the development typologies tested in central and suburban areas, only the central High-Rise Condo (45-storeys) demonstrated return metrics that are consistent with those a developer may consider pursuing. Parcel found that existing rental buildings with more than 50 units are highly unlikely to be redeveloped, whether a rental replacement by-law is in place or not.

Findings – Question 2 (Optimum Parameters for a Rental Replacement By-law)

In light of findings from question 1, should the City pursue a rental replacement by-law, Parcel recommended the following parameters:

- A “blanket” approach City-wide that treats all areas the same and would provide clarity and certainty for developers;
- A replacement by-law would apply only where 6 or more rental units are proposed to be demolished, and only where the existing rents are at or below the Average Market Rent (AMR);
- Replacement units should be similar in mix, size, and quality as the original units;
- The replacement units must remain rental for 10 years, or until the tenant moves out;
- Cash-in-lieu payments and off-site units should be permitted;
- Rental replacement should not apply when the vacancy rate is above 3%; and,
- The by-law should be phased in (i.e., by geography, or by incremental introduction of requirements).

Options & Recommendation – Rental Replacement By-law in Kitchener

In consideration of the Rental Replacement Financial Feasibility Study, and ongoing conversations with the Region of Waterloo and community stakeholders about eviction and displacement, staff have outlined 3 options available to Council. These options are:

Option 1 Do Nothing – Do not pursue a rental replacement by-law. Rental properties / buildings with 6 or more units proposed for demolition will continue to be addressed on a case-by-case basis, primarily between the proponent (developer/landlord) and the existing tenants in accordance with the Residential Tenancies Act. Any risk to the ability or willingness of developers to deliver housing supply on properties with 6 or more rental units is avoided.

Option 2 Develop a Rental Replacement By-law (consultant recommendations) –

Direct staff to undertake further engagement on a rental replacement by-law and return to Council in Q1 2024 with a rental replacement by-law for consideration. The by-law will include parameters generally consistent with Parcel’s recommendation. As such, the starting parameters for engagement on a rental replacement by-law would include:

- A “blanket” approach to rental replacement, where all geographies (i.e., central and suburban) and typologies (i.e. mid and high rise) are treated the same;
- An option to provide units off-site (instead of in the new building);
- Replacement units must remain rental for at least 10 years, or until the tenant moves out;
- An option to provide will include cash-in-lieu of replacement units; and,
- Consideration of “phasing-in” of rental replacement by-law requirements.

Option 3 Develop a Rental Replacement Bylaw (different parameters) – This option is the same as Option 2, with differing parameters to maximize protection of existing tenants as follows:

- No ability for developers to provide cash-in-lieu of replacement units. Replacement units would be required to be offered to tenants on-site, or at a similar site (off-site) nearby; and,
- A rental replacement by-law would immediately take full effect (no phasing in).

Table 2: Summary of Options – Rental Replacement By-law

	<i>Option 1</i>	<i>Option 2</i>	<i>Option 3</i>
<i>Pursue a rental replacement by-law</i>	X	✓	✓
<u><i>Parameters of By-law</i></u>			
<i>Same approach City-wide</i>		✓	✓
<i>Replacement units provided on-site OR off-site</i>		✓	✓
<i>Replacement units must remain rental for 10 years</i>	n/a	✓	✓
<i>Cash-in-lieu of providing replacement units</i>		✓	X
<i>Phasing-in of by-law requirements</i>		✓	X

Staff Recommendation – Option 3

Staff recommend pursuing the development of a rental replacement by-law as outlined in **Option 3**. This would maximize protections of existing tenants using an existing tool available under the Municipal Act, without adding significant administrative responsibilities to the City of Kitchener. This approach is consistent with Council guidance in January 2023 and the actions outlined in priority 6 of Housing for All. It is worth noting that Option 3 may have impacts on the long-term development potential of properties with 6 or more rental units, which could impact housing supply over the longer-term. Staff see the risk as low given the relatively small overall number of properties with rental units which would be likely to be redeveloped. Parcel notes that approximately 17% (3,600) of all existing rental units in Kitchener are a candidate for redevelopment (properties which contain 6-30 rental units). This represents around 215 buildings. Should Council proceed with a rental replacement by-law, staff will monitor any potential impacts on Kitchener’s housing supply.

Option 3 leverages the authority of the Municipal Act to apply a rental replacement by-law and offers the strongest protection for tenants. It is the opinion of staff that these protections outweigh the potential risks outlined above. Further, the parameters proposed through **Option 3** are reasonably balanced and a “blanket” approach to rental replacement City-wide would offer predictability and guidance to the development community while perhaps shifting redevelopment opportunities away from properties with 6 or more rental units.

Recent Changes to Provincial Legislation

Rental Replacement By-laws

As part of Bill 97, the province amended the Municipal Act to provide the Minister of Municipal Affairs and Housing (MMAH) with the authority to prescribe *additional* regulations for a rental replacement by-law. Bill 97 received Royal Assent in June and as such, **the province can now prescribe changes to municipal authority for rental replacement which could impact the parameters of a potential by-law in Kitchener.**

The province sought feedback on which potential regulations that would apply to municipalities that pass rental replacement by-laws and no additional changes have been proposed to-date. A [Provincial webpage](#) notes that “the government is considering the feedback received to inform the development of future regulations, if any, under this new authority”. At this time no additional regulations have been included in the Municipal Act on rental replacement by-laws.

Recent Changes to Provincial Legislation – Residential Tenancies Act

Earlier this year, the Province tabled Bill 97 (Helping Homebuyers, Protecting Tenants Act) and it received Royal Assent on June 8, 2023.

Changes to the Residential Tenancies Act were passed regarding evictions. When evicting a tenant to renovate a unit, landlords would be required to:

- Provide a report from a qualified person stating the unit must be vacant for renovations to take place. The report must state that the repairs or renovations are so extensive that they require the vacant possession.
- Update the tenant on the status of the renovation in writing (if they plan to return)
- Give them a 60-day grace period to move back in, once the renovations are complete.
- If the landlord doesn't allow the tenant to move back in at the same rent, the tenant would have two years after moving out, or six months after renovations are complete (whichever is longer), to apply to the Landlord and Tenant Board for a remedy.
- Increase the maximum fines from \$50,000 to \$100,000 in the case of a person other than a corporation and from \$250,000 to \$500,000 in the case of a corporation.

Bill 97 received Royal Assent on June 8, 2023, but has not yet come into force as a proclamation has not been issued by the Lieutenant Governor.

Region of Waterloo – Plan to End Chronic Homelessness

In early November Regional staff [provided an update](#) to Regional Council on the Region of Waterloo's [Plan to End Chronic Homelessness](#) project. The purpose of this work is to provide a “roadmap for strategies, resources and timelines to end chronic homelessness in Waterloo Region”. During a November staff report one of the directions requested by Regional Council was:

- Direct [Region] staff to work with community to develop a suite of policy incentives supporting the creation of new affordable housing and/or for preventing the loss of existing affordable housing stock and tenant displacement in Waterloo Region and bring forward any further recommendations to Regional Council for consideration and approval.

The staff report also directs Region staff to “work with area municipalities to develop and implement housing programming and policy that prevents displacement and the loss of existing affordable housing”. City staff will continue to collaborate with Region of Waterloo staff on the implementation of the Plan to End Chronic Homelessness work, particularly as it relates to maintaining rental housing stock and preventing tenant displacement.

In summary, it is recommended that Council direct staff to prepare a rental replacement by-law as outlined in this report and that staff continue to work with the Region of Waterloo and community stakeholders to explore additional tools that may be within Kitchener's jurisdiction to support the transitioning of displaced residents.

Should Council wish to advocate to other orders of government on matters related to eviction and displacement, there may be opportunities to do so in the areas of “renovictions” as there are currently no legislative tools for municipalities to pass by-laws in this area.

Since 2020, Council has passed several resolutions or actions related to housing and affordability, including the following:

- On October 5, 2020, Council requested that the Province reinstate the Planning Act provisions enabling a municipality to apply Inclusionary Zoning provisions within its entire jurisdiction, or at minimum, enable Inclusionary Zoning along Major Transit bus routes throughout the City, rather than only in Major Transit Station Areas (MTSAs).
- On October 18, 2021, Council passed a resolution to take additional and meaningful steps to address the ever increasing problem of “Renovictions” and that the motion be sent to the Association of Municipalities of Ontario, the Premier of Ontario, the Ministry of Municipal Affairs and housing, the Region of Waterloo and other Municipalities in Ontario for their consideration and possible endorsement.
- On September 25, 2023, Council called on the Provincial Government to double current social assistance rates for ODSP and OW recipients to reflect the cost of living and to tie these new rates to inflation so that people can afford to live a dignified life in the Province of Ontario.
- On September 25, 2023 Council called on the Provincial Government to support Feed Canada’s recommendation to stop the clawbacks meaning OW and ODSP will allow recipients their first \$1000 earned without penalty and to exempt benefits such as CPP, WSIB, EI and the upcoming CDB from clawbacks as well.
- On October 16, 2023, Council directed staff to propose a zoning by-law amendment that would permit "as -of -right" permissions for up to four (4) residential units on a property wherever zoning permits single detached, semi-detached or street townhouse dwelling units on sufficient lot sizes and report back to Council in Q1 2024.

STRATEGIC PLAN ALIGNMENT:

This report supports A Caring Community by directing staff to continue exploring tools and resources to support tenants in Kitchener.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City’s website with the agenda in advance of the council / committee meeting.

PREVIOUS REPORTS/AUTHORITIES:

- DSD-20-214 – Housing for All – City of Kitchener Housing Strategy
- COR-2022-104 – Housing for All Program Update – 2022 Year in Review
- DSD-2023-160 – Enabling Missing Middle and Affordable Housing
- DSD-2023-295 – Housing for All Strategic Lived Expertise Working Group – First Year Review and Rental Housing, Eviction and Displacement Study Update
- DSD-2023-446 – City-wide Lodging House Review
- *Municipal Act, 2001*
- *Planning Act*

APPROVED BY: Justin Readman, General Manager, Development Services Department

ATTACHMENTS:

Attachment A – Rental Replacement By-law Financial Feasibility Study, Parcel