How Are Local Governments Responding to Student Rental Problems in University Towns in the United States, Canada, and England?

Jack S. Frierson*

Table of Contents

I. Introduction ............................................. 499

II. Background: Comparison of the Planning Powers Exercised by University Towns in the United States, Canada, and England ........................................ 502
   A. United States .............................................. 502
   B. Canada ................................................... 504
   C. England .................................................. 507

III. Analysis: Local Government Responses to Student Rental Problems in U.S., Canadian, and English University Towns ...................................... 510
   A. United States ............................................. 511
      1. Athens, Georgia: Definition of Family and Rental Regulation Ordinances .................................... 511
      2. Gainesville, Florida: Landlord Permit, Point System, and Other Regulatory Options ......................... 515
   B. Canada ................................................... 518
      1. Kingston, Ontario: The Difficulties of Zoning Against Student Rental Problems Without Restricting the Definition of Family ...................................... 518
      2. Waterloo, Ontario: Lodging House Licensing By-law and Minimum Distance Separation Restrictions ....................... 522

* J.D., University of Georgia School of Law, 2005; B.A., University of Georgia, 1992.
C. England ............................................ 525
1. Oxford: Balance of Dwellings Policy and Increased Restrictions on HMOs ........................................ 527
2. Cambridge: University Housing and Planning Policies Provide Fewer Student Rental Problems .......... 533

IV. CONCLUSION: BASIC STEPS FOR RESOLVING STUDENT RENTAL PROBLEMS IN UNIVERSITY TOWNS ........... 537
I. INTRODUCTION

In the United States, Canada, and England, university towns face similar problems arising from the conversion of traditionally family-occupied homes in residential neighborhoods to student rental properties. Recurrent problems associated with a concentration of student rentals in a residential neighborhood include: late-night noise, increased traffic, litter, illegal parking, and a general decline in the quality of life for permanent residents. In Athens, Georgia, for example, homeowners and long-time residents of neighborhoods near the University of Georgia campus are frustrated because of the increasing number of historically family-occupied homes that have become student rental property. In Kingston, Ontario, similar conversions to student rentals have transformed a historically family residential neighborhood near Queen's University into an area that residents, students, and officials now call the "student ghetto." Similarly, in Oxford, England, local officials are trying to restore neighborhoods near the University of Oxford that have undergone "studentification"—the term University of Brighton's Dr. Darren Smith coined to describe the adverse effects that an influx of students can have on residential neighborhoods.

These university towns and numerous others are currently trying to stabilize the character of their residential neighborhoods and protect the rights of permanent residents against student rental problems. However, numerous factors make these problems complex and difficult to control. One factor is that major public universities do not generally provide adequate on-campus housing for their students, and thus rely on the private rental market to accommodate the majority of students. For example, the University of

---

1 For the purpose of this Note, the term "university town" refers to cities which are home to a major public university and independent of a major metropolitan area.


3 See Emily Sangster, Giving the Ghetto a Make-Over, QUEEN'S J., June 24, 2003, http://www.queensjournal.ca/articlephp?point=vol131/issue2/news/lead1...


5 See DUNCAN ASSOCIATES, ANALYSIS OF ISSUES REGARDING STUDENT HOUSING NEAR THE UNIVERSITY OF FLORIDA 30-31 (2002) (comparing housing in twelve U.S. university towns). One U.S. university own has gone so far as to publicly oppose a local university's failure to provide housing for a substantially increased number of enrolled students. Id. at 43. West
Georgia, with an enrollment of over 33,000 students, has the capacity to house only about one-fifth of the student body on campus, consequently leaving the Athens housing market to accommodate over 27,000 students. Another factor is that university towns are often home to other higher-education institutions that also rely on the private rental market for student housing. The city of Oxford, for example, is also home to Oxford Brookes University, several private colleges, and numerous international language schools, all of which add to a highly competitive demand for rental housing. Another factor is that local landlords seek to capitalize on the heightened demand for off-campus housing by leasing homes in residential neighborhoods near university campuses to groups of young students—many of whom are first-time renters unaware of the local laws and their responsibilities as neighbors.

Although university towns normally have public nuisance laws addressing these quality-of-life problems, limited resources and the proliferation of student rentals often prevent local officials from adequately enforcing these laws. Because of frequent disturbances and the general decline of their neighborhoods, some long-time residents are calling it quits and reluctantly moving out of their neighborhoods. Meanwhile, other residents are taking action through neighborhood coalitions and petitions to local officials to enact legally enforceable solutions.

The purpose of this Note is to discuss the various planning laws and policies that Athens, Kingston, Oxford, and three other university towns have enacted to control student rental problems in residential neighborhoods, and to suggest effective local government and university responses to control the adverse effects of these student-rental problems. Although no single solution

---

7 See DUNCAN ASSOCIATES, supra note 5, at 30-31.
8 See Travis Lowry, Student Parties Anger Locals, BROCK PRESS, Nov. 11, 2003, http://www.brockpress.com/news/554608.html; see also Sangster, supra note 3 (noting that when there is a large concentration of rentals, local residents tend to move out).
exists to resolve the student rental problems in these university towns, this Note suggests that an effective strategy to resolve such problems should include four basic elements: (1) the university's cooperation in controlling the number of students living off-campus, (2) consistent enforcement of local nuisance laws, (3) effective planning laws and policies limiting the concentration of student rentals in residential neighborhoods, and (4) mutual "town and gown" efforts to foster good relations between officials, permanent residents, and students.

This Note focuses on the cities of Athens, Kingston, and Oxford because they are historic university towns facing similar student rental problems. This Note also discusses Gainesville, Florida; Waterloo, Ontario; and Cambridge, England, in order to describe alternative regulatory action taken by other university towns to address similar problems. This Note discusses these six university towns because they share comparatively similar demographic characteristics: each town is home to at least one major public university, exists independent of a metropolitan city, has a population of 100,000 to 150,000 residents, and has a student population representing a significant proportion of the total population.

Before analyzing the particular responses of each university town, Part II discusses the different land use planning systems of U.S., Canadian, and British municipalities, including how municipalities derive their planning powers and the particular planning devices used to control land use in residential neighborhoods. In particular, Part II describes zoning in the United States and Canada and the use of a statutory plan in England. Part III analyzes the legal responses to student rental problems in each university town. In particular, Part III discusses the effectiveness of definition-of-family ordinances in the cities of Athens and Gainesville and the alternative planning

---

10 The University of Georgia, founded in 1785, was the first state-chartered public university in the United States. The University of Georgia, A Brief History of the University of Georgia, reproduced from F.N. Boney, A PICTORAL HISTORY OF THE UNIVERSITY OF GEORGIA (1984), http://www.uga.edu/profile/history.html (last updated Sept. 20, 2004). Queen's University, established by Queen Victoria's Royal Charter in 1841, is one of Canada's oldest universities. Queen's University, Quick Facts, http://www.queensu.ca/about/ (last visited Apr. 12, 2005). Oxford University is the oldest university in the English-speaking world. Oxford University, A Brief History of Oxford, http://www.ox.ac.uk/aboutoxford/history.shtml (last visited Apr. 12, 2005).

11 Gainesville is home to the University of Florida, the state's largest university; Waterloo is home to both the University of Waterloo and Wilfred Laurier University; and Cambridge is home to another one of the world's oldest and most famous universities, the University of Cambridge.
devices used by university towns in Canada and England, where national and provincial laws prohibit occupancy-restrictions based on relatedness. Finally, Part IV discusses the four basic steps university towns should include in an effective strategy to control student rental problems.

II. BACKGROUND: COMPARISON OF THE PLANNING POWERS EXERCISED BY UNIVERSITY TOWNS IN THE UNITED STATES, CANADA, AND ENGLAND

The land use planning systems of the United States, Canada, and England vary significantly. Generally, however, the national governments of all three countries delegate land use regulation to the states, provinces, or regional governments, which in turn delegate planning authority to the municipalities.

A. United States

The United States is a federation of fifty states which derives its power from the United States Constitution. The Tenth Amendment to the Constitution grants to the states all “powers [neither] delegated to the [federal government] by the Constitution nor prohibited by it to the states.” Thus, a state may enact any law within its territory so long as it does not conflict with either the federal constitution or the constitution of the state. Since land use control is regarded as a police power reserved to the states, “it is the states that exercise mandatory planning and land use controls often delegating a portion of that power to local governments through planning and zoning enabling statutes.”

In the United States, zoning is the principal planning device local governments use to control land use. Through zoning ordinances, a county or municipality legislatively divides its jurisdiction into separate districts containing specific regulations which authorize and prohibit certain uses of property within each district. In Euclid v. Ambler Realty Co., the United States Supreme Court held that a city’s zoning ordinance was valid even though it prohibited the use of property in a residential district for the purpose of subdividing lots into further residential lots. The Court stated that the ordinance was “a reasonable exercise of the police power to prevent courts, by their decisions, to influence the use of the land in irrational or undesirable ways.”

---

13 U.S. CONST. amend. X.
14 Callies, supra note 12.
15 Id.
16 BLACK’S LAW DICTIONARY 1612 (7th ed. 1999).
States Supreme Court held that zoning is a constitutionally valid exercise of police power so long as the zoning regulations bear a substantial relation to the public health, safety, morality, or general welfare of the community. Therefore, under the doctrine of home rule, states grant counties and municipalities the authority to pass zoning ordinances that are reasonable and not in conflict with state law. In Georgia, for example, the state constitution expressly authorizes local governments to "adopt plans and exercise the power of zoning." However, the state legislature establishes minimum zoning procedures that each county or municipality must follow in enacting a new zoning ordinance. The purpose of the minimum zoning procedures is "to assure that due process is afforded to the general public when local governments regulate the uses of property." Thus, in granting local governments broad zoning powers, the state assures protection of citizens' guaranteed constitutional rights.

For example, the city of Athens has enacted a detailed set of zoning ordinances, which establish the specific zoning procedures, official maps, classifications, purposes, and permitted and prohibited uses. Pursuant to the constitutional standards set forth by the Georgia Zoning Procedures Law, the County Commission must evaluate every proposed zoning ordinance in light of eight factors to balance the local "interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of the property in issue." Three particular factors the Commission must consider are: the pattern of land use surrounding the property at issue, the

17 Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926). The United States Supreme Court is the highest court in the separate judiciary branch of the federal government, and it has the supreme power to decide the constitutionality of land use regulations passed by federal, state, or local governments. Callies, supra note 12.
18 See, e.g., GA. CONST. art. IX, § 2, ¶ 1 (authorizing to each county the legislative power "to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law").
19 GA. CONST. art. IX, § 2, ¶ 4.
20 See, e.g., GA. CODE ANN. §§ 36-66-1 to -5 (1999) (including minimum procedures such as a public hearing; notice to the general public indicating the property at issue, present zoning classification, and proposed zoning classification; and a requirement that each local government adopt and publish standards governing the exercise of the zoning power).
24 ATHENS-CLARKE COUNTY, GA., CODE OF ORDINANCES § 9-4-3(B)(2) (2004).
impact on the environment, and the aesthetic effect of the existing or future use of the property.\textsuperscript{25}

In addition to zoning, local governments in the United States also use comprehensive land use plans (comprehensive plans), which contain policies developed by local officials and citizens to guide future development and zoning decisions. Although zoning is the primary form of land use control in the United States, an increasing number of local governments require that zoning decisions conform to or concur with the policies of the comprehensive plan.\textsuperscript{26} Similar to zoning, states authorize municipalities and counties to develop comprehensive plans. In Georgia, for example, the Georgia Planning Act of 1989 authorizes local governments to develop comprehensive plans that “develop, establish, and implement land use regulations [and] a plan for capital improvements,” as well as to take “all action necessary” to encourage better land use practices within the state.\textsuperscript{27}

Unlike zoning, however, the legal authority of a comprehensive plan varies between counties and municipalities. For most local governments, comprehensive plans are not legally binding and serve merely as guiding policies for future development.\textsuperscript{28} In some instances, however, local governments treat comprehensive plans with greater legal significance. The city of Athens, for example, requires that all applications for amending a zoning ordinance address the impact of the proposed change on the comprehensive plan “and its intended outcome.”\textsuperscript{29} Although a comprehensive plan does not have the legal authority of an ordinance, a comprehensive plan, in conjunction with zoning, can be an important planning device for determining the permitted land uses in a local jurisdiction.

B. Canada

As in the United States, Canada’s land use planning takes place primarily at the local level through municipal zoning by-laws. However, Canadian provinces play a generally greater role than U.S. states in local planning decisions by requiring municipalities to adhere to planning statutes and policy statements.\textsuperscript{30}

\begin{itemize}
  \item\textsuperscript{25} Id.
  \item\textsuperscript{26} Callies, supra note 12.
  \item\textsuperscript{27} GA. CODE ANN. § 36-70-3 (1999).
  \item\textsuperscript{28} Callies, supra note 12.
  \item\textsuperscript{29} See ATHENS-CLARKE COUNTY, GA., CODE OF ORDINANCES § 9-4-3 (2004).
  \item\textsuperscript{30} See Ontario Ministry of Municipal Affairs and Housing Land Use Planning, http://mah.
Although a member of the British Commonwealth, Canada functions as an independent nation organized into three primary levels of government: federal, provincial or territorial, and municipal. Under the Constitution Act of 1867, which distinguishes between the legislative powers of the provinces and those of the federal government, the provinces possess exclusive power to make laws affecting property and municipalities within their respective jurisdictions. Accordingly, provinces determine the planning powers of municipal governments.

In the province of Ontario, for example, the Planning Act of 1990 (Planning Act) establishes a land use planning system in which municipalities regulate local land uses according to provincial policies and fair planning processes. The Planning Act requires that local governments address a list of provincial interests in making planning decisions, including "the orderly development of safe and healthy communities," "the adequate provision of a full range of housing," and "the appropriate location of growth and development."

Through the Ontario Ministry of Municipal Affairs and Housing (MMAH), the province exercises control over land use planning. The Minister of the MMAH, for example, delegates planning authority to municipalities and may withdraw such delegation at his discretion. The Minister also issues Provincial Policy Statements, which provide overall policy directions on matters such as the long-term health and safety of the population and the economic well-being of the province and municipalities. In addition, the MMAH provides planning services and advice to municipalities and the public on land use issues.

gov.on.ca/userfiles/HTML/nts_1_3077_1.html (last visited Apr. 12, 2005).


35 Planning Act, § 2(h), (j), (p).

36 Id. § 4(1), (5).

37 Id. § 3(1); see also MMAH, The Planning Act, supra note 34.

38 MMAH, The Planning Act, supra note 34.
In regard to land use planning devices, the Planning Act authorizes municipalities to prepare official plans to guide future development in the community.\textsuperscript{39} An official plan provides goals, objectives, and policies for guiding development and controlling the effects of development on the social, economic, and natural environment.\textsuperscript{40} In certain respects, official plans operate like comprehensive plans do in the United States. For example, municipalities develop official plans for similar purposes: (1) to ensure that growth is coordinated and meets the community needs, (2) to provide a framework for setting local regulations and standards, and (3) to guide evaluation and settlement of conflicting land use.\textsuperscript{41} Also, municipalities use citizen input in the preparation of their official plans.\textsuperscript{42}

However, in contrast to comprehensive plans in the United States, official plans are legally binding.\textsuperscript{43} Therefore, official plans must address all Provincial Planning Statements issued by the MMAH,\textsuperscript{44} and once enacted, local officials must use them to guide all planning decisions.\textsuperscript{45}

The Planning Act also authorizes the councils of local municipalities to adopt zoning by-laws.\textsuperscript{46} In numerous respects, Canadian zoning by-laws are similar to U.S. zoning ordinances: Canadian zoning divides municipalities into different land use zones; restricts the use of land in the community; and states exactly the sorts of development, building standards, and parking requirements permitted.\textsuperscript{47} Furthermore, Canadian procedures for considering, adopting, and appealing zoning decisions also resemble U.S. procedures. Before passing a zoning by-law or amendment, a local council must provide the public with adequate information regarding the proposal and hold at least one public meeting.\textsuperscript{48} In addition, when considering a proposed zoning by-law or

\textsuperscript{39} \textit{Id.}

\textsuperscript{40} Planning Act, § 16(1).

\textsuperscript{41} \textit{See} Ontario Ministry of Municipal Affairs and Housing, Official Plans, \url{http://www.mah.gov.on.ca/userfiles/HTML/nts_1_8520_1.html} (last visited Apr. 12, 2005) [hereinafter Official Plans].

\textsuperscript{42} \textit{Id.}

\textsuperscript{43} \textit{See} Callies, \textit{supra} note 12.

\textsuperscript{44} Official Plans, \textit{supra} note 41.

\textsuperscript{45} \textit{Id.}

\textsuperscript{46} Planning Act, § 34(1).

\textsuperscript{47} Ontario Ministry of Municipal Affairs and Housing, Zoning By-laws, \url{http://www.mah.gov.on.ca/userfiles/HTML/nts_1_8522_1.html} (last visited Apr. 12, 2005) [hereinafter Zoning By-laws].

\textsuperscript{48} \textit{Id.}; accord GA. CODE ANN. §§ 36-66-1 to -5 (1999) (demonstrating that similar zoning procedures exist in U.S. municipalities such as Georgia).
amendment, a local council must evaluate the proposal against the following criteria: conformity with the official plan, compatibility with adjacent land uses, suitability of the land for the proposed purpose, and adequacy of parking. Finally, once a municipality passes or rejects a zoning by-law or amendment, citizens may appeal the decision to the Ontario Municipal Board, an administrative tribunal responsible for hearing appeals on municipal matters.

However, the Canadian zoning system differs from zoning in most U.S. states because zoning by-laws must accord with the official plan. In essence, zoning by-laws effectuate the official plan and provide for its day-to-day administration. Consequently, applications for a development permit or a zoning amendment must conform to the uses prescribed in both the zoning by-laws and the official plan. In accordance with the provisions of the Planning Act, the city of Kingston implements an official plan and zoning by-laws to control land use and development within its municipality.

C. England

Significant differences exist between England's structure of government and land use planning system and those of the United States and Canada. To begin with, England operates under a central government comprised of Parliament, parliamentary ministers of the party in power, and a monarch. Parliament has exclusive authority to create local governments and pass laws affecting the use and ownership of property. In contrast to the United States and Canada, where the individual states and provinces exercise almost exclusive control over land use planning, Parliament has plenary power to control planning and development through the Department of Environment, Transportation, and the Regions (Department of the Environment) and the passage of legislative acts.

49 Zoning By-laws, supra note 47.
50 Id.
51 Id.
53 Callies, supra note 12 (explaining that the monarch’s role in government is essentially symbolic).
54 Id.
55 Id.
However, England does not have a formal national land use plan. Instead, national legislation provides for land use planning to take place through a tiered system in which municipalities function as the primary planning authorities. Under the Town and Country Planning Act of 1990 (TCPA), each municipality must adopt a development plan for determining development and other land uses within its jurisdiction. The development plan must consist of: (1) the policies of the structure plan of the county in which a municipality sits; (2) the policies of a municipality’s local plan; and (3) any alterations to these plans formally adopted by the planning authorities.

A structure plan is a written statement of the general strategic policies that a county uses for planning and development control within its jurisdiction. The TCPA requires each county to formulate these policies in accordance with national planning guidance documents. Yet, more importantly, a local plan is a written statement of the detailed policies and specific proposals that a municipality uses to make day-to-day planning decisions regarding the development and use of land within its jurisdiction. Under the Planning and Compensation Act of 1991, each municipality must prepare a local plan that includes policies “in respect of: (a) the conservation of the natural beauty and amenity of the land; (b) the improvement of the physical environment; and (c) the management of traffic.” Furthermore, in preparing or changing a local plan, a municipality must provide local citizens a minimum number of opportunities to participate in the process of determining where development should occur in the community.

---

57 Town and Country Planning Act, 1990, c. 8 (Eng.).
58 Id. § 12(1)-(4).
59 Id. § 54(1). Note, however, that the policies of a development plan differ for Greater London and its surrounding counties. See id. § 27.
61 Town and Country Planning Act, § 31 (detailing the form and content of a structure plan); see also Callies, supra note 12.
62 PPG12, supra note 60, Annex A.
63 Planning and Compensation Act, 1991, c. 34 (Eng.).
64 Id. § 36A(1)-(3).
The policies of a municipality's local plan must generally conform to the county's structure plan. However, if there is a conflict between the provisions of the two plans, the policies of the local plan prevail over the policies of the structure plan for all purposes. Prior to adopting a structure or local plan or changing any policies therein, a local government must receive approval of the plan or provisions from the Secretary of State, who possesses the authority to prescribe or modify policies in either plan.

Procedurally, the TCPA requires a landowner to obtain planning permission from the municipality's planning authority in order to carry out any material development or change in use of the land. Thus, unlike landowners in the United States and Canada, a landowner in England has little more than the right to continue the present use of the land. Under the Planning and Compensation Act of 1991, when a planning authority considers whether to grant planning permission for each application, it must make its decision in accordance with the policies of its development plan, "unless material consideration indicates otherwise." The policies of a local plan are not laws per se, but planning authorities treat such policies similarly to zoning laws in the United States and Canada. In granting planning permission for a proposed development, a planning authority may impose conditions to regulate the development or use of "any land under the control of the applicant (whether or not it is land in respect of which the application was made) or require the carrying out of works on any such land," so long as the conditions are reasonably connected with the development authorized by the permission.

In accordance with the national planning acts, Oxford and Cambridge have adopted local plans. For example, in 1996, Cambridge adopted the Cambridge Local Plan pursuant to Section 36 of the TCPA and in conformance with the Cambridge Structure Plan of 1989. The Cambridge Local Plan consists of fifteen chapters divided into objectives, strategies, and statutory policies, including land use policies.

---

66 Id. § 46(1) (Eng.).
67 Id. § 48(1).
68 Id. §§ 35, 44-45.
69 Id. §§ 56-57.
70 Callies, supra note 12.
71 Planning and Compensation Act, 1991, c. 34, § 54A (Eng.).
72 Callies, supra note 12.
73 Town and Country Planning Act, 1990, c. 8, § 72(1) (Eng.).
74 Id., see also CAMBRIDGE, ENG., CAMBRIDGE LOCAL PLAN ¶ 1.10, 1.11 (1996) (Eng.).
Unlike the U.S. and Canadian systems of land use planning, the English planning system does not provide for comprehensive zoning. However, the Town and Country Planning (Use Classes) Order of 1987 establishes a system of use classes for certain uses of buildings and other areas of land.\textsuperscript{75} Under this order, as well as the TCPA, the change of use of a building from one purpose to another within the same use class does not constitute development of the land.\textsuperscript{76} Therefore, English law does not require a landowner making such a change of use to obtain prior planning permission. Although the use class system is not as elaborate as the U.S. and Canadian zoning schemes, use classes play a significant role in the English planning system.

In sum, the U.S., Canadian, and English land use planning systems differ significantly. Municipalities in the United States primarily use zoning ordinances to control land use, while in England, municipalities principally refer to the policies of the local plan. Canadian municipalities, however, use both an official plan and zoning by-laws to make land use decisions. The distinctions between these three systems, as Part III discusses, significantly limit the ability of university towns in the United States, Canada, and England to borrow certain legal responses from one another to address student rental problems.

III. ANALYSIS: LOCAL GOVERNMENT RESPONSES TO STUDENT RENTAL PROBLEMS IN U.S., CANADIAN, AND ENGLISH UNIVERSITY TOWNS

This Part discusses the different legal responses of university towns to address the problem of student rentals in residential neighborhoods. Part A discusses definition-of-family zoning and rental regulation ordinances in the cities of Athens, Georgia, and Gainesville, Florida. Part B discusses the prohibition of definition-of-family restrictions in Ontario, and the alternative legal and non-legal responses of the cities of Kingston and Waterloo, including lodging house by-laws and improved "town and gown" relations. Finally, Part C discusses the planning policies of the cities of Oxford and Cambridge, including policies requiring off-campus housing limitations as conditions to planning permission for university development projects.

This analysis illustrates that no single solution exists to resolve the common, complex problem of student rentals in family residential neighbor-

\textsuperscript{75} See Town and Country Planning (Use Classes) Order, 1987, Statutory Instrument No. 764, § 3, sched. (Eng.).

\textsuperscript{76} Id. § 3(1); Town and Country Planning Act, § 55(2)(f).
RENTAL PROBLEMS IN UNIVERSITY TOWNS

hoods. Although the analysis reveals certain basic elements that contribute to an effective strategy for addressing student rental problems, ultimately each university town must work within the context of its municipal, state, province, and national laws to create its own solution.

A. United States

In the United States, student rental problems typically arise in neighborhoods zoned as single-family residential districts (SFR neighborhoods). In response to such problems, university towns like Athens, Georgia, and Gainesville, Florida, have adopted zoning ordinances restricting occupancy and regulating rental properties to protect these neighborhoods. The U.S. Supreme Court has upheld such ordinances on the grounds that homeowners in residential neighborhoods have a legitimate right to "a quiet place where yards are wide, people are few, and motor vehicles [are] restricted." However, in some cases, state law limits the zoning devices local government may use to effectively regulate student rental houses in residential neighborhoods.

1. Athens, Georgia: Definition of Family and Rental Regulation Ordinances

During the last fifteen years, the city of Athens has enacted two controversial zoning ordinances to address the student rental problems in residential neighborhoods near the University of Georgia, including the Definition of Family Ordinance. This ordinance, which narrowly defines "family" as two or more persons related by blood or law, prohibits more than two unrelated occupants from living together in SFR neighborhoods. The ordinance applies equally to owner-occupied and rental homes, and prohibits both families and single occupants from sharing their homes with more than one unrelated person. University towns commonly provide occupancy restrictions in residential neighborhoods, but only a small minority limit unrelated persons as severely as Athens. The city of Gainesville, discussed below, like many

79 Id.
80 See Athens Fair Housing Association, Comparison Charts (comparing the definition of family laws and other zoning-related information from university towns and cities in all fifty states), at http://www.athensfairhousing.com/comparison_charts/index.html (last visited Jan. 10,
other university towns, allows up to three unrelated occupants per home in SFR neighborhoods.  

Athens enacted the Definition of Family Ordinance in 1991 and later amended it in 2001, but, until recently, many landlords and tenants ignored the law because of the city's failure to enforce the law. In 2003, however, the city caught the attention of persons in violation of the ordinance by enacting the Rental Regulation Ordinance, the intent of which was to give law enforcement officers a tool to prosecute renters in violation of the definition-of-family and quality-of-life ordinances. 

The Rental Regulation Ordinance required landlords and tenants of rental homes in SFR neighborhoods to sign a disclosure form, attesting: (1) that they have knowledge of eight ordinances regarding occupancy restrictions, parking, trash can placement, litter, noise, and domestic animals; (2) that the names of occupants and their relationship to each other are correct; and (3) that such occupancy by those persons complies with the Definition of Family Ordinance. In addition, the ordinance required landlords to designate a Person-in-Charge, who, in addition to the landlords and tenants, had to keep a copy of the form, and present it upon demand to any enforcement officer investigating an ordinance violation at the property. The ordinance also provided that any landlord, tenant, or person-in-charge found in violation of the provisions would be subject to penalties including fines and/or time in jail.

The Rental Regulation Ordinance, however, never became effective. Shortly after its enactment, a coalition of landlords and renters immediately challenged the constitutionality of both the Rental Regulation and Definition of Family Ordinances, and, in February 2004, an Athens-Clarke County Superior Court judge struck down the Rental Regulation Ordinance, but upheld the Definition of Family Ordinance.

For the third time since its enactment in 1991, the superior court judge upheld the Definition of Family Ordinance based on Village of Belle Terre v.
Boraas, in which the U.S. Supreme Court upheld a similar local zoning ordinance challenged by landlords and three of the tenants (six unrelated students) in Belle Terre, New York.\(^8\) Although the Georgia Supreme Court has not ruled on the issue of definition of family ordinances, the Superior Court's decision to follow Belle Terre reflects the decisions of a majority of state courts that have ruled on the issue, including several recent state supreme court decisions.\(^8\)

In Belle Terre, the landlords and tenants challenged the definition-of-family ordinance as discriminatory and an unreasonable invasion of privacy.\(^9\) The Court, however, deferring to the local government's discretion, held that the law was reasonable and rationally related to a permissible state objective.\(^9\) Furthermore, the Court stated that "every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function."\(^9\) Moreover, the Court held legitimate those laws which "lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."\(^9\) In sum, Belle Terre suggests that restrictive definition of family ordinances for SFR neighborhoods are a legitimate means of addressing student rental problems in the United States.

In striking down the Rental Regulation Ordinance, the Superior Court held that the ordinance was unconstitutional and a violation of state law.\(^9\) In particular, the court found that the ordinance violated the Fourth Amendment protection against unreasonable searches and seizures\(^9\) and the Fifth Amendment privilege against self-incrimination,\(^9\) by compelling a landlord or tenant to present self-incriminating information (the registration form) to an investigating officer.\(^9\) The court also found that the law violated House Bill

\(^{8}\) Belle Terre, 416 U.S. at 9. In Belle Terre, the local zoning ordinance also limited to two the number of unrelated occupants in SFR neighborhood homes.

\(^{9}\) See Vicki L. Been & Robert C. Ellickson, Land Use Controls: Cases and Materials 854 (Aspen 2d ed. 2000) (stating that even though "Belle Terre failed to convince some of the state courts . . . the majority of the cases . . . have followed [its] reasoning . . . if upholding zoning ordinances with restrictive definitions of family" and collecting cases).

\(^{91}\) Id. (quoting Reed v. Reed, 404 U.S. 71, 76 (1971)).

\(^{92}\) Id. at 8.

\(^{93}\) Id. at 9.

\(^{94}\) Floyd, supra note 87, at A1.

\(^{95}\) See U.S. Const. amend. IV.

\(^{96}\) See also U.S. Const. amend. V.

\(^{97}\) Floyd, supra note 87, at A1.

Despite the court's invalidation of the Rental Regulation Ordinance, the Definition of Family Ordinance is still an effective device to reduce student rental problems if the city of Athens improves enforcement of the ordinance. Since the court's decision, city officials have taken steps to improve enforcement by reforming the Marshal's Office and providing new officers to investigate and prosecute violations of quality-of-life ordinances.\footnote{See Press Release, Georgia Office of the Governor, Governor Perdue Signs House Bill 748 (June 4, 2003), available at http://www.gov.state.ga.us/press/2002_2003/press136.shtml.} If the city begins to enforce the definition of family ordinance effectively, it is likely that many students will move out of SFR neighborhoods to avoid the penalties for violating the occupancy restrictions and the substantial increase in per person shares of rent that will occur when only two persons can live together in the same rental house. Furthermore, improved enforcement will also discourage landlords from owning property in SFR neighborhoods, and cause many to redirect their investments in student rental properties elsewhere.

The benefits of an effective Definition of Family Ordinance, however, come at a steep price for the many respectful, law-abiding citizens—homeowners and renters, students and nonstudents alike, who must relocate to comply with the ordinance.\footnote{See Allison Floyd, A-C Weighs Next Move After Ruling, ATHENS BANNER-HERALD, Feb. 21, 2004, at A1.} In particular, the ordinance severely harms moderate-income homeowners who rely on sharing their homes with unrelated renters to meet their monthly mortgage payments.\footnote{See id.} Thus, an effective Definition of Family Ordinance operates as a highly restrictive planning device that may sweep too broadly in the attempt to solve student rental problems in SFR neighborhoods. For these reasons, university towns should consider less restrictive planning devices to control student rental problems before resorting to such severe limitations on occupancy.

\footnote{See id.}
2. Gainesville, Florida: Landlord Permit, Point System, and Other Regulatory Options

In response to persistent student rental problems near the University of Florida, the city of Gainesville has adopted a comprehensive scheme of zoning provisions affecting student renters and landlords alike. An important component of this zoning scheme is the city’s Definition of Family Ordinance, which allows up to three unrelated occupants to share a SFR neighborhood home. By comparison, this ordinance is less restrictive than the Athens Definition of Family Ordinance. However, what most significantly distinguishes Gainesville’s zoning scheme from the Athens scheme is its valid rental regulation ordinance.

Section 14.5-1(e) of the city code, covering landlord permits, requires landlords applying for a landlord permit to certify that they have provided tenants with copies of the Florida statutes on residential tenancies, the Gainesville Landlord Permit Ordinance, and the city’s quality-of-life ordinances, as well as a pamphlet containing the city’s guidelines for rentals in residential neighborhoods. In addition, the Landlord Permit Ordinance requires landlords to certify that, if provided notice from the city of repeated ordinance violations at one of their rental properties, they will “pursue all lawful remedies” to terminate the rental agreement of tenants who have repeatedly failed to comply with the law or provisions of the lease agreement.

These provisions ensure that tenants receive notice of the laws regulating the conduct of renters in residential neighborhoods, and hold landlords, as well as tenants, accountable for ordinance violations occurring on the rental property. Unlike the invalidated Athens Rental Regulation Ordinance, the Landlord Permit Ordinance does not infringe on the Fourth and Fifth Amendment rights of tenants and landlords. Instead, the ordinance creates a form of private enforcement by obligating landlords to take action against repeat violators of the quality of life ordinances.

The Landlord Permit Ordinance also provides that landlords who live outside the county must appoint a local agent for enforcement officers to notify

103 DUNCAN ASSOCIATES, supra note 5, at 1.
106 Id. § 14.5-1(e).
107 Id.
in the event of repeated ordinance violations. This provision, similar to the person-in-charge provision in the invalidated Athens ordinance, requires a landlord to give the name, telephone number, and address of a local agent, thereby significantly improving the city’s ability to contact a party responsible for the property in regard to student rental problems.

Perhaps the most effective provision in Gainesville’s Landlord Permit Ordinance, however, is the provision establishing a point system to track ordinance violations at permitted rental properties. Section 14.5-2(e) of the city code requires the city to assess points to the landlord’s rental property permit for repeated warnings and adjudications of quality of life ordinance violations occurring at the rental property. If a landlord accumulates six or more points at one house during a twelve-month period, her permit for that rental house is subject to revocation. Other university towns have enacted similar point assessment provisions for landlord permits. For example, Tallahassee, Florida, home of Florida State University, uses a system whereby a residential rental property loses its conforming status if it amasses three or more violations within a six-month period.

The provisions of the Landlord Permit Ordinance affecting landlords are justifiable means for regulating student rental problems because the management of student rentals in residential neighborhoods is big business for many landlords in university towns. According to Duncan Associates, a firm hired to analyze Gainesville’s student rental problems,
Landlords of student rentals are analogous to bar owners because they operate businesses that "create the potential for conflicts with neighbors and the larger community." Moreover, landlords and bar owners are in a far better position than a university town's enforcement department to control the behavior of their tenants and patrons. Therefore, just as bar owners must manage the behavior of persons on their premises to keep their business licenses, it is reasonable for a university town to require landlords to account for repeated problems arising at their student rental properties.

Finally, the city of Gainesville has also adjusted administratively to address student rental problems. In particular, the city hired two additional enforcement officers and raised landlord permit fees to account for the increased costs of administering and enforcing the Landlord Permit Ordinance. Other university towns also impose enforcement costs on landlords. In fact, the city of East Lansing, Michigan, home of Michigan State University, charges landlords separate fees for every inspection city officials make at rental properties, including investigations generated from a complaint. Such landlord permit fees, if reasonable, are justifiable in light of the fact that landlords' "businesses" contribute significantly to the problem of ordinance violations in residential neighborhoods.

Student rental problems such as late-night parties, noise, and parking violations are recurring in nature and require an immediate response by enforcement officers. Furthermore, municipal enforcement departments are often understaffed and face more urgent matters than complaints about late-night noise and parking. Thus, any action to increase a university town's ability to enforce quality of life ordinances—whether through landlord permit fees or other reasonable means—is an important step in reducing student rental problems in residential neighborhoods.

In sum, the Landlord Permit Ordinance is an effective component of Gainesville's comprehensive zoning scheme. However, as in the case of Athens, state law may prohibit university towns in other states from enacting a similar ordinance. Even if Athens government officials were to rewrite the

115 Id.
116 Id. at 63.
117 Id. at 60.
118 E-mail from John Wachtel, Neighborhood Planning Coordinator, City of Gainesville Community Development Department (Jan. 5, 2004, 15:01:28 EST) (on file with author).
119 See DUNCAN ASSOCIATES, supra note 5, at 65.
120 Id. at 45.
121 Id. at 46.
invalidated Rental Regulation Ordinance adopting the provisions of the Landlord Permit Ordinance, the ordinance would still violate Georgia House Bill 748, which prohibits municipalities from registering residential rental property and collecting landlord fees. Therefore, while Gainesville enjoys a broad scope of zoning powers, other university towns must develop alternative legal responses to address student rental problems.

B. Canada

Unlike the Fourteenth Amendment to the U.S. Constitution, the Canadian Charter of Rights and Freedoms expressly provides that Canadian citizens are entitled to "equal protection and equal benefit of the law without discrimination." Based on this anti-discrimination provision, Ontario’s Planning Act prohibits municipalities from enacting zoning by-laws that “have the effect of distinguishing between persons who are related and persons who are unrelated.” Therefore, unlike the cities of Athens and Gainesville, university towns in Ontario may not resort to definition-of-family by-laws to regulate student rental problems in residential neighborhoods. Instead, university towns such as Kingston and Waterloo must take more cooperative approaches, such as enhanced “town and gown” relations, and less restrictive legal responses to address the substantial increase in students living in the private rental market.

1. Kingston, Ontario: The Difficulties of Zoning Against Student Rental Problems Without Restricting the Definition of Family

The city of Kingston’s student rental problems exist because of an over-concentration of student rental houses in historically family residential neighborhoods near Queen’s University. Although the city has enacted several

---

123 See U.S. CONST. amend. XIV, § 1 (providing that no State shall deny any person the equal protection of the laws).
125 Planning Act, R.S.O. 1990, ch. P.13, § 35(2) (Can.).
126 Megan Easton, Town-Gown Faces New Challenges with Double Cohort Arrival, QUEEN’S GAZETTE, Nov. 18, 2002, at 1-2, available at http://qnc.queensu.ca/gazette/3dd8f871e3178.pdf (discussing the impact of a doubling of first-year university student enrollment due to Ontario’s decision to phase out Grade 13 in the province’s high schools).
by-laws addressing the area’s problems of noise, poor maintenance of homes, and parking on the lawns, it has been unable to solve its student rental problems, particularly in the neighborhood commonly referred to as the “student ghetto.”

Interestingly, the Kingston Official Plan treats student housing as a special category requiring specific policies. In fact, the Official Plan provides that the Council shall “recognize and encourage appropriately designed student housing,” and that Queen’s University and St. Lawrence College bear a responsibility, along with the city and the private sector, for ensuring that students have access to “affordable, safe, sanitary, adequate, and appropriate” housing. The city, therefore, has land use policies addressing the special housing issues related to students who make up close to twenty percent of the population. However, such policies do not authorize the municipal government to enact zoning by-laws that restrict where students live.

Nevertheless, Kingston has attempted to reduce the problems of student rental through the enactment of other zoning by-laws. In one attempt, Kingston enacted municipal by-laws regulating housing standards and the increased development of large, multiple-unit “monster homes” in single-unit residential neighborhoods (SUR neighborhoods). For example, By-law 93-200, establishes regulations which control the maximum building depth, height, and floor space index in SUR neighborhoods near Queen’s University. Originally, the city attempted to regulate development in these neighborhoods through a site plan control by-law which required buildings to meet certain minimum design standards, including further limits on the size of an addition to a house. However, the by-law was repealed because the Ontario Planning Act prohibits municipalities from regulating aesthetics as a

---

128 Sangster, supra note 3.
130 Id. at 4.7.4(b)(i)(b).
131 Id. at 4.7.4(b)(i)(c).
133 Id.
134 See Easton, supra note 126.
136 Telephone Interview with Sonya Bolton, Senior Policy Planner, Kingston Planning Division (Jan. 9, 2004) [hereinafter Bolton Interview].
In another attempt to address student rental problems, Kingston has enacted by-laws that require more extensive property standards regulating the habitability and maintenance of residential houses and yards. However, the relatively weak enforcement of these by-laws, through periodic inspections and a complaint-based system, has not significantly improved the maintenance of student rentals or prevented landlords from subdividing and annexing new additions to homes in SUR neighborhoods.

Unlike the city of Waterloo and other Ontario university towns, Kingston does not attempt to control its student rental problems through its Lodging Houses By-law, which requires a landlord to obtain a lodging house license prior to renting a house to four or more persons. Although the definition of a "lodging house" varies among municipalities in Ontario, Kingston defines a "lodging house" as any house or building in which persons are "harboured, received or lodged for hire." In contrast to Waterloo, which interprets its Lodging Houses By-law to include student rental units, Kingston interprets the term "lodging house" to require the presence of an on-site resident manager. Most student rentals, of course, do not have a resident manager. Furthermore, as another reason for not attempting to regulate student rental problems through the Lodging Houses By-law, Kingston officials point out that the Ontario, like Georgia, prohibits municipalities from licensing or registering the rental of residential units. Thus, in comparison to the zoning schemes adopted by Athens and Gainesville to control student rental problems, Kingston’s legal attempts to do the same are largely ineffective.

Yet, despite Kingston’s inability to control student rental problems through effective zoning by-laws, the city and Queen’s University have taken some noteworthy, nonlegal steps to educate students of their responsibilities as renters and to involve the “town and gown” community in addressing these

---

137 Planning Act, R.S.O. 1990, ch. P.13, § 41(4.1) (Can.).
139 Bolton Interview, supra note 136.
141 BACKGROUNDER, supra note 140, at 23.
142 DOWNTOWN RESIDENTIAL REVIEW WORKING COMMITTEE, REPORT TO PLANNING COMMITTEE: DISCUSSION AND RECOMMENDATIONS ON RESIDENTIAL INTENSIFICATION ISSUES IN DOWNTOWN KINGSTON NEIGHBORHOODS 26 (2003) (on file with the author).
143 Id. at 27.
issues. For example, in 1991, when tensions between students and permanent residents increased after numerous large, destructive street parties, Queen’s University, at the suggestion of Kingston’s mayor, established the Office of Town-Gown Relations on campus.\textsuperscript{144} The office dedicates its resources exclusively to educating students about the responsibilities of living in the community, mediating conflicts between aggravated neighbors and students, and providing resources and advice to the community about student housing issues.\textsuperscript{145} In addition, Kingston also recently established the Downtown Residential Review Committee, which is composed of members from Queen’s University Housing Services, Kingston City Council, the Kingston Planning Division, as well as students, by-law officers, and local citizens’ groups.\textsuperscript{146} The committee’s goals are to raise public awareness of the poorly-maintained property standards in the “student ghetto” and to reduce the student rental problems that affect the neighborhood.\textsuperscript{147}

The nonlegal steps taken by Kingston and Queen’s University to promote “town and gown” cooperation demonstrate an important element in reducing student rental problems and the tension between permanent residents and students in residential neighborhoods. Each year many first-time student renters, unaware of their legal responsibilities as renters, enter the local housing market in university towns. In response, city and university officials should take organized steps to educate these student renters about their responsibilities as neighbors and citizens. City and university officials should also take organized steps to assure homeowners and other permanent residents in the community that they understand the residents’ concerns and care about the quality of life in the affected neighborhoods.

In sum, Kingston’s inability to enact effective zoning by-laws demonstrates the difficulty of addressing student rental problems without the legal authority to restrict occupancy based on the definition of “family.” However, Kingston and Queen’s University provide a good example of how the “town and gown” can work together and cooperate to improve relations between student renters and permanent residents.

\textsuperscript{144} Easton, \textit{supra} note 126, at 2.
\textsuperscript{145} \textit{Id.}
\textsuperscript{146} Sangster, \textit{supra} note 3.
\textsuperscript{147} \textit{Id.}
2. **Waterloo, Ontario: Lodging House Licensing By-law and Minimum Distance Separation Restrictions**

In their consideration of alternative legal responses to address student rental problems, the planning departments of Kingston and other Ontario university towns are paying particular attention to the zoning scheme enacted by the city of Waterloo, home of the University of Waterloo and Wilfrid Laurier University.\(^{148}\) Waterloo differs demographically from Kingston because of its close proximity to the city of Kitchener, which has a population close to 200,000.\(^{149}\) However, the city has enacted a zoning scheme that, pending recent legal challenges, may be an effective scheme for other university towns to adopt in order to control the proliferation of student rentals in residential neighborhoods.

The Waterloo zoning scheme includes lodging house licensing, minimum spacing requirements, and a system of consistent enforcement. To begin with, Waterloo has enacted the Lodging House Licensing By-law for the purpose of controlling student rentals in residential neighborhoods.\(^{150}\) The Lodging House Licensing By-law, administered by the Fire Prevention Office, requires that a landlord obtain a license prior to renting a house in a SUR neighborhood to more than four "lodgers."\(^{151}\) The by-law also provides that, before a landlord obtains or renews a lodging house license,\(^{152}\) the Fire Prevention Office must certify that the landlord’s rental property satisfies the fire code\(^{153}\) and property standards.\(^{154}\) In addition, the by-law contains two more provisions that distinguish it from Kingston’s Lodging House By-law: (1) lodging house classifications\(^{155}\) and (2) minimum distance separation (MDS) restrictions for lodging houses in SUR neighborhoods.\(^{156}\)

First, the Waterloo Lodging House Licensing By-law classifies lodging houses based on occupancy: a Class I permit applies to lodging houses in which four or more lodgers live with the proprietor and to lodging houses in

\(^{148}\) Bolton Interview, *supra* note 136.


\(^{150}\) WATERLOO, ONT., BY-LAW No. 00-140 § 3.1-.3 (2000) (Can.).

\(^{151}\) *Id.* § 8.2. A license must be renewed annually for each lodging house.

\(^{152}\) *Id.* § 4.1.2.

\(^{153}\) *Id.* § 4.1.

\(^{154}\) *Id.* § 4.1.9.1.

\(^{155}\) *Id.* § 4.1.9.
which more than six lodgers live without the proprietor; a Class II permit, on the other hand, applies to lodging houses in which four or five lodgers live without the proprietor. However, the Lodging House Licensing By-law does not apply to student residences owned or operated by a university, lodging houses occupied by less than four persons, or residential units. The by-law prohibits the issuance of Class I permits in SUR neighborhoods and also prohibits the issuance of Class II permits in SUR neighborhoods unless there is a minimum distance of seventy-five meters between the proposed lodging house and another lodging house in the neighborhood. In addition, the by-law also requires a minimum number of off-street parking spaces on lodging house properties according to the classification and number of occupants.

Currently, there are close to 1000 licensed lodging houses in Waterloo. Over eighty percent of the licensed lodging houses are Class II, and half of those are located in SUR neighborhoods. According to Kathy Mortimer, a planner for Waterloo’s Development Services, the MDS restrictions, which affect about seventy percent of the neighborhoods in Waterloo, are effective in banning additional lodging houses in “maxed out” residential neighborhoods and also in dispersing lodging house development to other areas, particularly along main corridors zoned for greater intensification. She attributes the effectiveness of the Lodging House By-law, at least in part, to the Fire Inspectors Office’s diligent administration of the licensing program, which includes: conducting bi-annual inspections, enforcing the by-laws, and prosecuting landlords for by-law violations. Other sources also attribute the effectiveness of the by-law to the cooperation of Waterloo’s universities,

---

158 WATERLOO, ONT., BY-LAW No. 00-140, § 3.3 (2000) (Can.).
159 Id.
160 CITY OF WATERLOO, supra note 157.
161 BACKGROUNDER, supra note 140, at 22.
162 Id.
163 E-mail from Kathy Mortimer, Planner, City of Waterloo Development Services (Jan. 14, 2004, 09:20:54 EST) (on file with author); see also Telephone Interview with Kathy Mortimer, Planner, City of Waterloo Development Office (Jan. 14, 2004). Mortimer adds, however, that the dispersion of lodging houses away from SUR neighborhoods has raised concerns among residents of more suburban neighborhoods whose quality of life has been ill-affected by the new lodging houses. Id.
164 Id.
especially in advertising only licensed rental properties, and the community’s efforts to educate students about the by-laws.\textsuperscript{165}

In comparison to the Athens and Gainesville zoning schemes, the Waterloo Lodging House Licensing By-law operates similarly to prevent dramatic increases in the number of student rentals in traditionally family-occupied residential neighborhoods. However, the Lodging House Licensing By-law, in permitting four to five occupants in a Class II lodging house and applying MDS requirements only to new lodging houses in SUR neighborhoods, is significantly less restrictive than the Athens and Gainesville zoning schemes. Indeed, many Class II lodging houses in operation at the time the by-law was enacted are exempt from the seventy-five meter MDS provision.\textsuperscript{166} Consequently, the Lodging House Licensing By-law has limited effectiveness in stabilizing the traditional character of SUR neighborhoods. In fact, the Lodging House Licensing By-law has not prevented the replacement of families with students in some residential neighborhoods near the universities.\textsuperscript{167} Nevertheless, without recourse to definition of family restrictions such as those in Athens and Gainesville, lodging house classifications and MDS restrictions may be the most effective zoning provisions for addressing student rental problems in Ontario university towns.

Recently, however, a landlord in Waterloo successfully challenged the city’s application of the Lodging House Licensing By-law to a particular rental property, arguing that the student tenants functioned as a “single housekeeping unit,” thus making the property a residential unit instead of a lodging house.\textsuperscript{168} The court rejected the city’s argument that the occupants were merely a collection of individuals analogous to a “group home.”\textsuperscript{169} The court distinguished the student rental from a lodging house because the landlord did not exercise significant control of the premises and the students made collective decisions about “renting together, assigning bedrooms, payment of rent and

\textsuperscript{165} BACKGROUNDER, supra note 140, at 24.
\textsuperscript{166} See WATERLOO, ONT., BY-LAW No. 00-140 § 4.1.9 (2000) (Can.).
\textsuperscript{169} Id. at 6.
utilities, housekeeping (or lack of), furniture, entertaining, and respect for others' privacy." The city has since appealed the decision.171

The court's decision did not overrule Waterloo's Lodging House Licensing By-law, but it nonetheless created serious concerns for the city and permanent residents if landlords and student renters can sidestep the by-law by claiming residential unit status. The effectiveness of the by-law depends upon the classification of student rentals as lodging houses. If landlords can avoid such classification, Waterloo and other Ontario university towns will be forced, yet again, to seek new means of addressing student rental problems in residential neighborhoods.

C. England

The context and legal means for addressing student rental problems in English university towns differ from those in the United States and Canada. The most significant distinctions are that the English land use planning system operates according to a municipality's local plan instead of zoning, and, with respect to university housing, the colleges of each English university provide accommodations for many students on campus or in university-owned housing in the private market.172 English universities, like U.S. and Canadian universities, rely on the private rental market to accommodate a significant portion of their students; however, some English public universities succeed in providing housing for a majority of the student body. For example, at the University of Cambridge, the colleges provide housing for the vast majority of undergraduate students either on campus or in purpose-built student accommodations located in residential neighborhoods.173 In contrast, public universities in the United States generally do not provide housing on or off campus for the majority of their students.174

170 Id. at 7. A group home is a single housekeeping unit in a residential dwelling having three to ten occupants who live together under some form of supervision due to their emotional, mental, or physical condition. WATERLOO, ONT., No. 00-140, § 2.2 (2000) (Can.).
171 Telephone Interview with Kathy Mortimer, supra note 163.
174 See DUNCAN ASSOCIATES, supra note 5, at 31.
Nevertheless, many students at the Oxford and Cambridge, along with students from other universities, private colleges, and educational institutions, "live out" in the private rental market in Oxford and Cambridge. In many cases, students live together as groups of four to six persons in private rental homes or in "houses of multiple occupation" (HMO) near the university campuses. For planning purposes, the term "HMO" describes a house occupied by: (a) two or more households or (b) more than six occupants living together as a single household unit. If not properly managed, these HMOs can cause amenity problems such as "loss of privacy, noise disturbance, poor maintenance . . . the accumulation of bicycles and comings and goings at unsocial hours." Such amenity problems often exist in areas of small private housing where there are concentrations of HMOs. The problems associated with HMOs are substantially similar to the problems of student rentals and lodging houses in the United States and Canada.

Another important distinction of English land use planning is that, unless there are seven or more occupants living together as a household, national legislation prohibits municipalities from regulating the occupancy of homes in residential neighborhoods based on relatedness. Section 55 of the Town and Country Planning Act of 1990 provides that a change of use within the same limited class of uses does not constitute development and, therefore, does not require planning permission. In addition, the Town and Country Planning (Use Classes) Order of 1987 classifies a dwelling having six occupants living as a single household in the same use class as a dwelling inhabited by a single occupant or family. Thus, a landlord may rent a traditionally family-occupied home in a residential neighborhood to single household of up to six students without having to obtain planning permission.

Lastly, another aspect of English land use planning that distinguishes it from the United States and Canada is that public universities are subject to

---

178 Id. ¶ 6.57.
179 See Town & Country Planning Act, 1990, c. 8, § 55(2)(f) (Eng.).
planning controls. English universities, unlike U.S. and Canadian universities, must apply for planning permission when they develop property. Consequently, university towns, such as Oxford and Cambridge, can grant planning permission for a university development project subject to the university meeting certain conditions, including a good faith effort to reduce the number of students living in the private market.

1. Oxford: Balance of Dwellings Policy and Increased Restrictions on HMOs

The city of Oxford is home to the world famous Oxford University, where most undergraduates live in their respective colleges during the first year and move into the private rental market during their second or third years. The city is also home to Oxford Brookes University and numerous other educational institutions. Consequently, Oxford faces serious housing problems because of the large number of students living in the private rental market, limited housing within the city, and escalating rental prices. According to Steve Pickles, Planning Officer for Oxford’s Planning Policy Department, problems are particularly severe in east Oxford, where there is a high concentration of student rentals and HMOs. Many families are moving out of East Oxford neighborhoods because the conflicting and transient lifestyle of students has caused instability and a lost sense of community.

To protect neighborhoods from student rental problems, Oxford City Council (Council) has adopted three planning devices: the Oxford Local Plan 1991-2001 (OLP), the HMO Registration Scheme, and the Second Draft Oxford Local Plan 2001-2016 (OLP2). The OLP explicitly addresses the

---

182 E-mail from Brian Human, Planning Officer, Cambridge Development Department (Dec. 31, 2003, 09:10:08 EST) (on file with author).
183 Oxford University Student Union, supra note 175.
184 See Montanari, supra note 4 (describing increased pressure on private housing caused by increase in university enrollment).
185 Telephone Interview with Steve Pickles, Planning Officer, Dep’t of Planning Policy, Oxford, England (Jan. 5, 2004).
186 Id.
need to regulate the proliferation of student rentals and student accommodations in residential neighborhoods. Section 3.65 provides the city’s general policy:

The Council recogniz[es] the value of students being able to mix with the local community and the preference of some students for such accommodation, but the Council’s basic approach to the housing of students must, in the conditions of housing shortage . . . be to avoid their taking up accommodation which should be available to long term residents of the City.\(^{190}\)

In addition, the OLP states that this general policy should be achieved largely through universities and other educational institutions providing purpose-built student accommodations in locations outside of residential neighborhoods.\(^{191}\)

The OLP also contains specific housing policies that disfavor the conversion of smaller dwellings in residential neighborhoods to purpose-built student accommodations, flats, or HMOs. Housing Policies HO 18 through HO 21 provide that the Council must determine proposals for the change of an existing dwelling to student accommodations, flats, or an HMO based on the dwelling’s size: the conversion of a dwelling with a floor area of less than 110 square meters is normally not permitted; and the conversion of a dwelling with a floor area greater than 110 square meters is permitted only if it meets specific requirements.\(^{192}\) Furthermore, Policy HO 19 disfavors planning permission for a HMO that lacks adequate parking.\(^{193}\) The purposes of these policies are to preserve houses suited to family accommodation and to protect the neighborhood against the ill effects of over-intensive occupation.\(^{194}\) These purposes are similar to those of the Athens Definition of Family Ordinance and the Gainesville Single-Family Residential Zoning Ordinance in the sense that they


\(^{191}\) See id. This policy is particularly important in Oxford where many students come from all parts of England and abroad to attend language schools and the two universities.

\(^{192}\) Id. § 3, HO 18 to HO 21. The Council considers planning permission for dwellings with a floor space greater than 110 square meters in light of whether the dwelling’s occupancy is restricted to persons over the age of fifty-five, whether a substantial extension is acceptable in environmental terms, or whether there is a long history of some form of multiple occupation in the dwelling.

\(^{193}\) Id. § 3, HO 19.

\(^{194}\) Id. § 3.58-.62.
aim to protect homeownership and preserve the essential characteristics of the family residential neighborhood.\textsuperscript{195}

Housing Policies HO 18 through HO 21, however, provide exceptions. For example, if Oxford University demonstrates a need to convert a residential dwelling to student accommodations which it could not meet by "other more acceptable means,"\textsuperscript{196} or if it demonstrates that the proposed student accommodation will reduce housing problems elsewhere in Oxford, the Council may grant permission subject to certain conditions.\textsuperscript{197} The conditions may include an agreement by the university to reduce the number of students living in the private rental market or to provide a resident caretaker for the proposed student accommodations.\textsuperscript{198} The Council, in order to protect the character of the neighborhood, may also use its planning powers to impose conditions on development proposals of private landlords. For instance, HO 19 states that, if the Council grants planning permission for a HMO, it must also seek to preserve the character of the neighborhood by imposing conditions that require (a) a caretaker or a notice showing the landlord's address, (b) garbage and bicycle storage, and (c) protection against nuisances to neighboring residents.\textsuperscript{199} Despite these provisions, however, the OLP still fails to regulate a substantial source of student rental problems: dwellings in residential neighborhoods occupied by six or fewer persons.

In 1999, Oxford responded to increasing student rental problems, particularly in east Oxford, by enacting the HMO Registration Scheme to ensure that landlords comply with certain property standards and to protect the residential neighborhoods.\textsuperscript{200} Oxford has encountered some difficulties enforcing the scheme because of the breadth of the housing problems and the fact that many shared houses in east Oxford do not legally constitute HMOs.\textsuperscript{201} Nonetheless, the HMO Registration Scheme has forced some landlords to either bring their housing up to code or move outside the Registration Area.\textsuperscript{202}

\textsuperscript{197} Id.
\textsuperscript{198} Id.
\textsuperscript{199} Id. § 3, HO 19.
\textsuperscript{200} Polly Curtis, Students Living in 'Sub-standard' Housing, EDUCATIONGUARDIAN.CO.UK (Oct. 3, 2002), at http://education.guardian.co.uk/print/0,3858,4514611-108229,00.html.
\textsuperscript{201} Monica Sloan, 98% of Shared Homes in East Oxford Are "Unsafe", THISISOXFORDSHIRE.CO.UK, Apr. 1, 2003, at http://www.thisisoxfordshire.co.uk/oxfordshire/archive/2003/04/01/TOPNEWS0ZM.html.
\textsuperscript{202} Id.
Most importantly, however, the Council recently approved a revised draft of a new Oxford Local Plan (OLP2) that will replace the existing plan in 2006. The Council must treat the OLP2 as a material consideration in all planning decisions.203 Whereas the OLP addresses general housing problems in Oxford, the OLP2 includes new and amended policies that address the specific problems of substandard HMOs and declining quality of life in residential neighborhoods.

The OLP2 contains two new policies relevant to the issue of student rentals, including one that calls for a balance of dwellings in residential neighborhoods. Housing Policy HS.12 provides that in determining planning permission for changes of use in residential neighborhoods, "the City Council will have regard to the local distribution of dwelling types (including size of unit, tenure, and specialist occupation) with a view to achieving a balanced and suitable distribution of dwelling types in each locality."204 Recognizing that a predominance of one form of housing in a residential neighborhood (i.e., student rental houses and HMOs) may have "unwelcome social effects," the OLP2 authorizes the Council to refuse permission for a residential development that does not contribute to "an appropriate mix of dwelling types."205 The emphasis of Policy HS.12 on a mix of dwellings in residential neighborhoods contrasts with the Athens and Gainesville zoning schemes, which encourage family-occupied dwellings to the exclusion of other types in single-family residential neighborhoods. However, under the English planning system, which does not distinguish between a family and a group of six unrelated persons living as a household, a balance of dwellings provides the optimal stability a university town can possibly achieve.

The OLP2 includes another new policy designed to protect residential neighborhoods from potential sources of noise, litter, and other nuisances associated with student rentals. Under Policy HS.26, planning permission applicants must demonstrate that the proposed development or change of use will adequately protect the privacy and amenities of neighboring residential properties.206 For each application, the Council must assess the proposed development’s potential for noise intrusions and invasions of privacy, and whether there is adequate storage provided for trash, recycling, and bicycles.207

---

203 OXFORD, ENG., SECOND DRAFT OXFORD LOCAL Plan 2001-2016, § 1.2.4A (2003) (Eng.).
204 Id. § 7, HS.12.
205 Id. § 7.4.1.
206 Id. § 7, HS.26.
207 Id.
Although the privacy and amenity policy does not affect student rental houses having fewer than seven occupants, it nonetheless prevents an over-concentration of HMOs and purpose-built student accommodations in residential neighborhoods. Thus, the OLP2 provides two new policies—Housing Policies HS.12 and HS.26—that, in conjunction with the OLP, should protect Oxford against the development of HMOs and student accommodations that threaten the stability of residential neighborhoods in Oxford.

In addition to the new policies, the OLP2 modifies the OLP policies regarding purpose-built student accommodations and HMOs. Policy HS.18, for example, states that the Council must not grant planning permission to private developers to build purpose-built accommodations for full-time Oxford students unless the developers promise to provide appropriate management controls and that the development will not have "an unacceptable impact on the amenities of local residents."

In the case of university proposals for student accommodations, Policy HS.17 provides that the Council should grant permission for such proposals if they are built exclusively for students and located on suitable sites. Therefore, without denying future development of needed student accommodations, these policies enable the Council to effectively control where development of student accommodations occurs. Moreover, the policies authorize the Council to require on-site supervision for student accommodations, which can be effective in protecting residential neighborhoods from the noise, parking, and litter, and other quality-of-life problems associated with student accommodations.

The most significant modifications in the Second Draft, however, are its policies disfavoring and, in some cases, prohibiting planning permission for HMOs. Policy HS.19 provides that the Council may not consider planning permission for development of HMOs unless the HMOs are designed for and restricted to persons with special housing needs such as the elderly and the disabled. In addition, Policy HS.19 prohibits planning permission for the change of use of any building to a HMO in the HMO Registration Areas. For locations outside the HMO Registration Area, the Council may grant planning permission only if the proposal:

200 Id. § 7, HS.18.
201 Id. § 7, HS.17.
210 Id. § 7, HS.19.
211 Id.
a) meets Policy HS.12, requiring the Council to balance the types of dwellings in the neighborhood;
b) provides for appropriate car and bicycle parking;
c) includes adequate and accessible amenities and refuse storage space;
d) provides good access into, and within, the building; and
e) will not result in more than 25 percent of the residential properties on the street becoming HMOs.212

The city modified the OLP policies regarding HMOs because the over-concentration of HMOs was causing public nuisances for neighboring properties in East Oxford and other areas.213 In doing so, the city incorporated provisions similar to the seventy-five meter MDS restrictions in Waterloo’s Lodging House By-law.214 For example, Policy HS.19, apart from prohibiting further development of HMOs in the HMO Registration Areas, limits the percentage of HMOs and student accommodations outside such areas.215 These policies should reduce further degradation in East Oxford and other areas and protect against the nuisances and quality of life problems associated with HMOs. However, as the OLP2 points out, Policy HS.19 applies only to HMOs and shared uses that require planning permission.216 The amended policies still do not protect permanent residents from student rental problems where there are six or fewer occupants.

To address student rental problems in these rental properties, Oxford should consider using its planning powers to compel universities to reduce the number of students living off-campus. Under Policies HO 26 and HO 28, the OLP states that the Council should use planning conditions and agreements to ensure that neither Oxford University nor Oxford Brookes University has more than 4000 undergraduates living in the private rental market.217 Furthermore, Policies ED.6 and ED.8 of the OLP2 provide that the Council should approve the development of a non-student housing proposal only if the number of full-time university students living in the private rental market does not exceed

212 Id.
213 Id. § 7.10.1A.
214 WATERLOO, ONT., BY-LAW NO. 00-140 § 4.1.9 (2000) (Can.).
216 Id. § 7.10.3.
RENTAL PROBLEMS IN UNIVERSITY TOWNS

3500 until the year 2008 and 3000 after that date.\textsuperscript{218} Under these policies, the Council can require the universities to provide more university-managed student housing in order to procure future planning permission for other development. Policies ED.6 and ED.8 of the OLP2 also authorize the Council to condition approval of a university's application for development subject to the university restricting the total number of students who may bring cars to Oxford.\textsuperscript{219} Such conditions operate to reduce student-related problems of noise, traffic, and parking.

These policies provide Oxford the legal authority to affect the number of students living in residential neighborhoods in homes that are not subject to the planning permission system. Without recourse to restrictive zoning devices like those enacted by Athens and Gainesville, this legal authority is Oxford's most effective option for controlling the negative effects caused by students living in such rental properties.

2. Cambridge: University Housing and Planning Policies Provide Fewer Student Rental Problems

The city of Cambridge, another famous, historic university town of comparable size and student enrollment to Oxford, does not have serious student rental problems in residential neighborhoods near the University of Cambridge. According to Brian Human, a Planning Officer for the Cambridge Development Control Department, the number of students-occupied homes in traditionally family residential neighborhoods is probably increasing; however, problems associated with student rentals or HMOs are not particularly acute.\textsuperscript{220} He attributes the absence of serious problems to two facts: first, students in residential areas are still fairly dispersed; and second, the colleges of the university exercise a fair degree of control over students.\textsuperscript{221} In addition, he states that residents have expressed more concern in recent years about the conversion of family houses to university student accommodations than to HMOs.\textsuperscript{222}

An important reason that Cambridge has fewer student rental problems than Oxford and the abovementioned U.S. and Canadian university towns is that the

\textsuperscript{218} \textsc{Oxford, Eng., Second Draft Oxford Local Plan 2001-2016, § 10, ED.8 (2003)} (Eng.).
\textsuperscript{219} \textit{Id.}
\textsuperscript{220} E-mail from Brian Human, \textit{supra} note 182.
\textsuperscript{221} \textit{Id.}
\textsuperscript{222} \textit{Id.}
University of Cambridge houses almost all undergraduates on campus for the duration of their time at Cambridge. According to Miles Greensmith, another Planning Officer for the Cambridge Development Control Department, the University of Cambridge provides housing for close to ninety percent of its undergraduates and over fifty percent of its graduate students. In addition, many students at Anglia Polytechnic University, also in Cambridge, live either in university-provided accommodations or at home with their families. In contrast to Oxford University and the other university towns discussed in this Note, the University of Cambridge has consistently matched increases in student enrollment with proportionate increases in student accommodations.

The primary housing issue in Cambridge is affordability, and there is a strong demand for rental housing because of the large student population from the universities, private colleges, and numerous other educational institutions. Similar to Oxford, many of these students live in HMOs, some of which provide substandard housing and cause local amenity problems.

To address these amenity problems and prevent future student rental problems, the city of Cambridge has enacted planning policies to prevent an over-concentration of student rentals, student accommodations, and HMOs, and to protect against their associated nuisances. The Cambridge Local Plan (CLP) provides two general policies, similar to those in the OLP, concerning the development of student accommodations and the subdivision of large dwellings in residential neighborhoods. The first policy requires the Cambridge City Council (City Council), in considering proposals for student accommodations, to take into account whether there is: (a) a need for more student housing; (b) adequate assurance that there will be no adverse impact on the quality of life for neighboring properties; and (c) adequate proposed supervision, such as a porter or caretaker. The protect the city’s housing stock, the second policy provides that, in general, the City Council should not grant planning permission to subdivide family houses with less than 110 square

---

223 University of Cambridge, supra note 173.
225 Id.
227 Id. ¶ 6.6.
228 Id. ¶ 6.13.
229 Id.
230 Id. ¶ 6.32.
meters, and that development proposals for the subdivision of larger homes must meet certain conditions. For example, Policy HO9 provides that the City Council may approve the subdivision of single residential properties of more than 110 square meters into smaller self-contained units only if the proposal: (a) includes car and cycle parking, (b) includes refuse storage space, and (c) avoids noise nuisances. These policies are similar to those in the OLP because they favor protection of smaller homes for first-time buyers and moderate-income families.

The CLP also provides housing policies that prevent over-intensive concentrations of HMOs and other student rental dwellings in residential neighborhoods. Although Cambridge acknowledges the importance of HMOs for people with limited housing opportunities, it also recognizes that a large concentration of HMOs in residential neighborhoods depletes the housing stock for potential homeowners and can lead to quality of life problems for neighboring properties. Therefore, Policy HO11 prohibits planning permission for the change of use to a HMO in small houses containing less than 110 square meters of floor space and two-story terraced houses. Cambridge also takes a similar restrictive approach in respect to the conversion of larger dwellings to HMOs in residential neighborhoods. Policy HO12 provides that the City Council must consider the proposed development of an HMO having a floor space greater than 110 square meters against the following criteria: "(a) the proportion of HMOs in the surrounding area; . . . (c) the ability to meet the [City Council's] car and cycle parking standards; (d) the provision of refuse storage space; and (e) the ability to avoid nuisance[s to neighboring residential properties]." This policy, which is similar to Oxford's Balance of Dwellings Policy, requires the City Council to consider the individual characteristics of each neighborhood, taking into account the number of students already living in rental houses and HMOs as well as the potential problems of noise, litter, and parking. Furthermore, the policy allows the city to consider the proportion of HMOs and similar shared dwellings on a case by case basis. Thus, Policy HO12 is a lesser restrictive planning device as compared to Waterloo's seventy-five meter MDS provision for Class II lodging houses.

231 Id. ¶ 6.53-.54.
232 Id. ch. 6, HO9.
233 Id. ¶ 6.57.
234 Id. ch. 6, HO11.
235 Id. ch. 6, HO12.
Additionally, in 1999, Cambridge enacted further planning measures for the prevention of undue concentrations of HMOs in residential neighborhoods: the Cambridge City Council (Registration of Houses in Multiple Occupation) Control Scheme. This law requires that all landlords register their HMOs with the city, and to provide the number of households, the number of registered occupants, and the contact information for a person-in-charge of the HMO. In addition, the law authorizes the city to impose conditions relating to the management of the HMO, alter the number of registered households or persons if the house becomes unsuitable for the registered occupancy, and revoke a registration for breach of the conditions relating to occupancy or management. The law, which is similar to the Oxford HMO Registration Scheme, is designed to make landlords accountable for substandard housing and over-occupancy violations. The HMO Registration Scheme does not apply to university-managed student accommodations or student rentals that are not subject to planning permission. However, if the law is sufficiently enforced, it can be an effective tool for maintaining the property standards of HMOs in residential neighborhoods and holding landlords personally accountable for such standards.

Finally, similar to Oxford, Cambridge possesses planning powers to control the development of universities and other educational institutions. Through planning conditions and agreements, Cambridge can require the universities to increase student accommodations for university development proposals that will increase student enrollment. For local colleges and other educational institutions (e.g., language schools), the CLP either strictly limits or, in some circumstances, prohibits further development which does not also provide for increases in student accommodations. The CLP also provides that, where appropriate, the City Council may use its planning powers to encourage the universities to institute management policies that require supervision at university-provided student accommodations. Furthermore, the CLP authorizes the city to limit the number of students who may bring cars to

---

237 Id. §§ 6(i), 7(1).
238 Id. §§ 8-10.
239 Id. § 4(1).
240 Telephone Interview with Miles Greensmith, supra note 224.
242 Id. ¶ 9.43.
Cambridge. Thus, Cambridge, like Oxford, possesses effective legal authority to encourage the universities to take measures that help reduce the problems of student noise, traffic, and parking in the residential neighborhoods.

In sum, the university towns discussed above face similar issues regarding student rental problems in residential neighborhoods, but apply different planning devices to resolve those problems. In the United States, Athens and Gainesville use definition of family occupancy restrictions in SFR neighborhoods, and, in addition, Gainesville enforces a rental registration ordinance. In Canada, Kingston addresses student rental problems through enhanced property standards and a concerted effort with Queen’s University to improve “town and gown” relations, while Waterloo attempts to regulate student rentals under its lodging house by-laws. In England, Oxford and Cambridge enforce HMO registration schemes, and apply policies designed to protect the integrity and amenities of residential neighborhoods when they consider proposals for the development of rental properties. As Part IV discusses below, a university town can draw from these different approaches four basic steps that are essential to an effective strategy to resolve student rental problems in residential neighborhoods.

IV. CONCLUSION: BASIC STEPS FOR RESOLVING STUDENT RENTAL PROBLEMS IN UNIVERSITY TOWNS

No single solution exists for resolving student rental problems in every university town. One reason is because various demographic factors, such as student population, the number of students living in the local rental market, and the availability of affordable housing, distinguish one university town from another. Another reason is because each university town can only exercise the particular planning powers afforded by its municipal, state, provincial, and national laws. In some instances, these laws restrict a university town’s planning options. For example, Georgia law prohibits Athens from enacting a landlord permit ordinance similar to the one used in Gainesville;\textsuperscript{243} Ontario law prevents Kingston from adopting a definition of family ordinance such as those enacted in Athens and Gainesville;\textsuperscript{244} and England’s national law prevents Oxford and Cambridge from regulating student rentals having less than seven occupants.\textsuperscript{245} Even within the same province, as is the case of

\textsuperscript{244} See Planning Act, R.S.O. 1990, ch. P.13, § 35(2)-(3) (Can.).
\textsuperscript{245} See Town and Country Planning (Use Classes) Order, 1987, Statutory Instrument No. 764,
Kingston and Waterloo, it is difficult to enact a common planning scheme. Nevertheless, the various legal responses discussed in this Note suggest four basic steps university towns should include in an effective strategy to reduce student rental problems in residential neighborhoods.

First, university towns should try to reach agreements with their local universities and colleges that encourage such institutions to provide more on-campus housing for undergraduate students. Oxford and Cambridge can achieve such agreements by imposing planning obligations as conditions to planning permission for university development projects. However, U.S. and Canadian university towns, such as Athens and Kingston, do not possess planning authority over public universities; therefore, they probably cannot achieve formal, binding agreements with their universities regarding student housing. Thus, their best option may simply be to encourage cooperation through “town and gown” relations. Procuring “town and gown” agreements in which the university agrees to increase student housing on campus can help ameliorate student rental problems in residential neighborhoods.

Second, university towns should ensure that their enforcement of the local nuisance laws is consistent and effective in preventing students from unreasonably infringing on the rights of their neighbors, especially in residential neighborhoods where there are numerous student rentals. Law enforcement departments in university towns are often understaffed for dealing with the recurrent problems of noise, late-night parties, and parking. In such cases, university towns that require landlord rental permits, lodging house licenses, or HMO registration, should, like the city of Gainesville, consider increasing their annual permit fee to raise funds for the purpose of hiring additional enforcement officers. Reasonable increases in landlord fees are justifiable because many landlords are in the business of renting houses to students in residential neighborhoods. In the alternative, university towns should consider possible improvements in enforcement by administering the landlord permit or license program through another department. Waterloo, for example, improved inspection and enforcement of its occupancy regulations and property standards by delegating administration of its lodging house...
licensing program to the Fire Inspection Office. In addition, university towns should consider adopting alternative enforcement programs, such as the cooperative "party patrols" used in Gainesville and Columbus, Ohio. The "party patrols" consist of students and police officers who, on Friday and Saturday nights, patrol off-campus neighborhoods by foot or bicycle for the primary purpose of informing student residents of public safety laws and their responsibilities in hosting parties and other events. In any case, university towns should strive to improve their enforcement of local nuisance laws as an initial step toward reducing student rental problems in residential neighborhoods.

Third, where enforcement of local nuisance laws proves insufficient for protecting the quality of life in residential neighborhoods, university towns should enact reasonable planning laws and policies that prevent the concentration and proliferation of student rentals in residential neighborhoods. University towns should consider the context of the student rental problems and the full scope of their planning powers before determining which laws to enact. The four most effective planning laws discussed in this Note are: occupancy restrictions, rental regulation laws, density limits, and property standards.

As discussed in regard to Athens and Gainesville, occupancy restrictions such as definition-of-family ordinances can be highly restrictive and controversial. Nonetheless, occupancy restrictions are probably the most effective means of controlling the proliferation of student rentals in residential neighborhoods. Because most students operate on a limited budget, strictly limiting the number of unrelated persons who may live together in residential neighborhoods decreases the affordability of such rental homes for students, as well as the incentive for landlords to invest in those neighborhoods. However, such restrictions may also operate to harm non-students with low or moderate incomes. Thus, U.S. university towns must consider the adverse effects that occupancy restrictions have on non-students, especially homeowners who depend on sharing their homes with renters to meet their monthly mortgage payments.

Rental regulation laws are also effective in controlling student rental problems. In the university towns discussed in this Note, rental regulation laws take various forms: landlord permits in Gainesville; lodging house

249 Telephone Interview with Kathy Mortimer, supra note 163.
250 See DUNCAN ASSOCIATES, supra note 5, at 67.
251 Id.
licenses in Waterloo; and HMO registration in Oxford and Cambridge. A university town should consider including two provisions for an effective rental regulation law: first, the requirement that a landlord disclose to her tenants the local laws pertaining to rentals in residential neighborhoods; and, second, the appointment of an agent or person-in-charge of the rental property. The disclosure provision is effective for informing students of their rights and duties as neighbors in the community and making them more accountable for their behavior. The person-in-charge provision is effective for making landlords more accountable for property standard violations and excessive nuisance violations occurring on their rental properties. A university town should also consider including a provision such as the point assessment system in Gainesville’s landlord permit ordinance, which further increases a landlord’s accountability and incentive to prevent unruly behavior at student rentals in residential neighborhoods.

In addition, density limits between rental houses are effective planning devices for preventing further concentrations of student rentals in residential neighborhoods. For example, Waterloo’s zoning provision, requiring a minimum distance separation between Class II lodging houses, has been effective in dispersing concentrations of high-occupancy student rentals from single-unit residential neighborhoods.252 Similarly, English university towns have enacted effective planning policies for the purpose of limiting the number of rental units in residential neighborhoods. The Oxford and Cambridge local plans contain planning policies which prevent a predominance of student rental houses, especially HMOs,253 and Oxford’s policies even include a maximum distribution of HMOs for neighborhoods outside the HMO registration areas.254 Although Athens and Gainesville do not have minimum distance requirements between rental houses, other U.S. university towns, such as West Chester, Pennsylvania, have enacted similar provisions to prevent an over-intensive concentration of student rentals.255

Although the regulation of property standards may not prevent the proliferation of student rentals, it is an effective planning device for preserving the integrity of neighborhoods where there is a high concentration of student rentals. However, in order for property standards to be effective, a university

---

252 Telephone Interview with Kathy Mortimer, supra note 163.
255 See supra note 5 and accompanying text.
town must be willing and able to enforce them. Kingston, for example, has extensive property standards for its rentals in residential neighborhoods; but, under the city’s ineffective complaint-based system of enforcement, the property standards have not prevented the general decline of certain residential neighborhoods comprised mainly of student rentals.\(^{256}\) Waterloo, on the other hand, under the effective administration of the Fire Inspection Office, has enforced its fire code and property standards as a means of improving the quality of student rental property in residential neighborhoods.\(^{257}\)

Property standards can also be effective in regulating parking. For example, Gainesville has amended its parking designs in residential neighborhoods, now requiring homes to have permanent driveways and parking area boundaries.\(^{258}\) The purpose of Gainesville’s amended property standards is to facilitate the detection of parking violations on and off the residential property.\(^{259}\) Thus, property standards—like occupancy restrictions, rental regulation, and density limits—when combined with effective enforcement, can be effective in reducing student rental problems in residential neighborhoods.

Fourth, and most importantly, local government and universities should work together to foster good relations between officials, permanent residents, and students. Apart from providing more on-campus housing, enforcement, and planning laws, government and university officials should play active roles in resolving problems between permanent residents and students in residential neighborhoods. The city of Kingston and Queen’s University, for example, have cooperated in their efforts to resolve student rental problems. City officials have appointed university officials and students as members of the Downtown Residential Review Committee, which the city created to improve the poor conditions of residential neighborhoods near campus.\(^{260}\) Meanwhile, Queen’s, through its Office of Town-Gown Relations, mediates conflicts between permanent residents and students and devotes much of its resources to educating students about their responsibilities as residents in the local community.\(^{261}\)

Permanent residents of a university town can also play an important role in “town and gown” relations. Neighborhood coalitions are effective in

\(^{256}\) Bolton Interview, supra note 136.
\(^{257}\) Telephone Interview with Kathy Mortimer, supra note 163.
\(^{258}\) GAINESVILLE, FLA., CODE OF ORDINANCES § 30-56(c)(4) (1999).
\(^{259}\) Telephone Interview with John Wachtel, supra note 109.
\(^{260}\) Sangster, supra note 3.
\(^{261}\) Easton, supra note 126, at 2.
addressing the problems that students pose in their neighborhoods. However, they can also be effective in welcoming students into their neighborhoods and communicating to them what it means to be a good neighbor. Neighborhood coalitions can also be influential in communicating with landlords about repeated problems occurring at a landlord's rental properties. Thus, local and university officials, as well as permanent residents, working together, can improve the problems of student rentals in residential neighborhoods through means that do not necessarily require enforcement and legislation.

In sum, these four steps provide a basic framework for U.S., Canadian, and English university towns to use in developing an effective strategy to resolve student rental problems in residential neighborhoods. Many university towns in these three countries have already begun to address these problems. However, it is likely that more university towns will also need to do so as universities further develop and student enrollments increase. Hopefully these university towns will consider the different aspects of the laws and policies discussed in this Note to develop strategies that are beneficial to permanent residents and fair to students who, together, make university towns special places to live and learn.