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SPECIFIC HOUSING MANDATES FOR JUBILEE GARDEN NON-PROFIT HOUSING CORPORATION AND FRIULI BENEVOLENT CORPORATION

(Regional Council at its meeting on June 25, 2009 referred this Clause to the September 16, 2009 meeting of the Community Services and Housing Committee for further discussion.)

The Community Services and Housing Committee recommends the adoption of the recommendations contained in the following report dated June 4, 2009, from the Commissioner of Community and Health Services.

1. RECOMMENDATIONS

It is recommended that:

1. Council assign to Jubilee Garden Non-Profit Housing Corporation a mandate that requires it to restrict occupancy of the rent-geared-to-income (RGI) units in its housing site to applicant households who are members of the Shia Imami Ismaili Muslim Community.
2. Council assign to Friuli Benevolent Corporation a mandate that requires it to restrict occupancy of the RGI units in its housing site to seniors of Italian origin.
3. The Commissioner of Community and Health Services be authorized to enter into an Agreement and Indemnity with Jubilee Garden Non-Profit Housing Corporation and with Friuli Benevolent Corporation that gives effect to their specific housing mandate.
4. Staff report back to Committee on the impact of one full year of implementation of the specific mandate designation policy.

2. PURPOSE

This report seeks approval of specific mandate designations for the communities of Jubilee Garden Non-Profit Housing Corporation and Friuli Benevolent Housing Corporation. This only affects RGI units. Providers have always had control over renting their market units.

3. BACKGROUND

Specific mandates for housing providers

Prior to devolution, the Ministry of Municipal Affairs and Housing (MMAH) assigned mandates to some housing providers. These mandates were acceptable under the *Human Rights Code* (seniors and alternative housing for the hard-to-house). MMAH did not assign mandates based on religion or ethnicity. Ethnic and religious communities were encouraged by the Province to build housing for low income members of their communities. Housing providers had control of their own waiting lists and some selected households as if they had assigned mandates.

With the proclamation of the *Social Housing Reform Act, 2000*, housing providers are required to select applicant households chronologically from a centralized waiting list which, by law, the Region administers.

The *Social Housing Reform Act, 2000* provides authority for the Region to change, cancel or assign new mandates, as long as the housing provider agrees and the agreement is in writing.

A small number of housing providers have expressed an interest in obtaining a specific mandate designation for their housing communities. With the requirement to use the centralized waiting list, many of these housing communities have moved away from the original concept of the sponsoring community and a number of Boards have advised that they feel their original agreement with the Province has been broken.

The Ontario *Human Rights Code* provides exceptions to Part 1 of the Code

The *Human Rights Code*, Part 1 Section 2 states that “Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.”

Sections 14 and 18 of the Code provide exceptions to Part 1 and give Service Managers the flexibility to assign or change mandates if they choose to do so.

Section 14 protects affirmative action programs. If a program can clearly demonstrate that it is designed to relieve hardship or economic disadvantage, assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity, or contribute to the elimination of the infringement of rights protected under the Code, the program would satisfy the requirements of the Section provided that it does not otherwise violate the Code.

Section 18 creates an exemption based on the preservation of Canada's multicultural heritage by allowing discrimination in the provision of services to occur where it is part of a broader program, serving the social and cultural needs of a particular ethnic group.

In June 2007, Regional Council approved a framework to allow the Region to consider requests and approve specific mandate designations

The *Social Housing Reform Act, 2000* allows the Region, as Service Manager, to amend, terminate or replace a mandate with a written agreement between a housing provider and the Service Manager. This includes assigning a mandate to a housing provider who does not have one previously approved.

In June, 2007 Council approved a framework for the consideration of applications from housing providers for specific mandate designations (Clause No. 4 of Report No. 6 of the Community Services and Housing Committee). This framework requires housing providers to:

- Provide a legal opinion to the Commissioner of Community and Health Services which addresses the issues raised in Section 14 or Section 18 of the *Human Rights Code* and states that the housing provider falls within the exemptions contained within either of those sections and complies with the policies of the Human Rights Commission.
- Clearly define the population to be served.
- Indemnify the Region with respect to any costs that the Region might incur as a result of any litigation related to the specific mandate designation.
- Acknowledge that all rent-geared-to-income units in projects with mandates continue to be filled through the Region's Housing Access Unit's waiting list process in accordance with the *Social Housing Reform Act, 2000* and its associated regulations, as well as the Region's Program Instructions.
- Agree that the Region reserves the right to unilaterally change or terminate the mandate should the results of an evaluation indicate that it is prudent to do so.

Staff are also required to forward requests to Committee and Council for decisions to permit specific mandate designations.

Council also requested that staff report back to Committee and Council regarding any implications arising out of the Ontario Human Rights Commission's consultation on Human Rights and Rental Housing in Ontario.

4. ANALYSIS AND OPTIONS

4.1 The Human Rights Commission

The Ontario Human Rights Commission released its Report on Consultation on Human Rights and Rental Housing but reserved recommendations on ethnic or specific housing mandates

The Commission undertook a broad exploration of human rights issues in the area of rental housing to hear about the practical experiences of everyone involved as a key step towards understanding, preventing and addressing discrimination. The Commission intends to use the information to establish policy to clarify the application of the Human Rights Code to rental housing, increase public awareness of human rights issues in rental housing and to identify other ways the Commission can assist with the goal of adequate, affordable and discrimination-free rental housing for all Ontarians.

The Commission heard a wide range of discriminatory issues from tenants, advocacy groups, landlords, etc. The Report did discuss some discriminatory issues in social housing. The discussions mentioned the lack of supportive housing, shortage of support services, the acute shortage of social housing units, the length of the waiting lists resulting in excessive waiting times, the barriers associated with the chronological waiting list and disparities in applying the duty to accommodate.

Major themes which surfaced in the consultation include the link between poverty and homelessness, systematic problems regarding inclusive design and barrier removal, NIMBYism (NIMBY - Not in My Back Yard) and confusion around the Code and other legislation.

The Commission has developed a plan of action which includes 37 recommendations for all levels of government and other decision-makers, and 10 commitments for themselves. One of these commitments is to develop a policy on human rights and rental housing, which will discuss inclusive design, the duty to accommodate and define undue hardship. This policy is expected sometime in 2009.

Although the Report did not address the issue of specific housing mandates, there could be some complicating factors if the new policy results in new legislated requirements for waiting lists. However, in adopting its framework in June 2007, Council reserved the right to unilaterally amend or terminate the mandate should the results of an evaluation indicate it is prudent to do so and the Region would impose any new waiting list obligations introduced by the Province.

4.2 Approval process for specific housing mandates

Using the framework approved by Council in June 2007, staff have developed a procedure for processing specific mandate requests from housing providers.

It is proposed that housing providers wishing to request a specific mandate designation execute an Agreement and Indemnity and forward it to the Region, along with a written legal opinion which addresses the issues raised in Section 14 or Section 18 of the *Human Rights Code* and states that the housing provider falls under the exemptions contained in either of those sections of the Code.

Staff will notify applicant households of the specific mandate designation but it will be up to the housing provider to determine eligibility under the mandate

If a housing provider receives a specific mandate designation, staff in the Housing Access Unit will notify applicant households currently on the waiting list of that provider that they may not be eligible to reside in that building because they may not meet the mandate. Applicants may choose, at that point, to withdraw their names from the waiting list of that provider.

The rent-geared-to-income application package will be revised to include notifications of any approved specific mandate designations so that new applicants may make informed decisions as to their building selections.

It will be the responsibility of the housing provider to determine eligibility under the mandate once the applicant household reaches the top of the chronological waiting list.

Staff will monitor the use of the waiting list to ensure compliance with the *Social Housing Reform Act, 2000*.

4.3 Consideration of approval of specific housing mandates for Jubilee Garden Non-Profit Housing Corporation and Friuli Benevolent Corporation

Two housing providers are requesting specific housing mandates based on the exemptions contained in Section 18 of the Code.

Jubilee Garden Non-Profit Housing Corporation

Jubilee Garden, located at 102 Yorkland Street, in the Town of Richmond Hill, is a 100 unit townhouse complex for families of which 74 units are RGI units. Jubilee Garden was constructed under a provincial housing program in the early 1990s to provide homes and unique services tailored to the Ismaili community.

Some of the programs offered over the years at Jubilee Garden include:

- Jamatkhanas (place of worship) at the Community Centre.
- English as a Second Language classes.
- Classes in heritage languages – Gujarati and Farsi.
- Economic Well-being (resume writing/job opportunities/skills training) through Ismaili Employment Development Centre.
- Seminars in Gujarati and Farsi on prevention of heart disease and stroke, health and wellness, budgeting, prevention of domestic violence, etc.
- Seniors' Programs including cultural and heritage programs, information of availability of services for seniors in Gujarati and Farsi and recreational programs.
- Educational Improvement for Children including reading circles, homework help centre, education enrichment and university scholarship program.

The housing provider has completed the Agreement and Indemnity requested by the Region. They have included a legal opinion from Tory's LLP which states that Jubilee Garden's ethnic mandate meets the requirements of Section 18 of the Code. Although the legal opinion is two years old, the housing provider has confirmed in writing that the facts upon which the legal opinion is based are still accurate. The Regional Solicitor has reviewed and accepts this opinion.

Under the specific mandate, Jubilee Garden must restrict RGI tenancy to the Ismaili Community, or more specifically, the Shia Imami Ismaili Muslims.

The housing provider has complied with all of the requirements of the Region.

Friuli Benevolent Corporation

Friuli Terrace, located at 60 Friuli Court, in the City of Vaughan, is a 113 apartment unit complex for seniors of which 78 units are RGI units.

Besides providing housing adapted especially for seniors, the Centre offers many programs to enrich and extend the seniors' independent lifestyle.

Some of these services include:

- Administrative, activity, day program, volunteer, personal support and medical staff, all of whom speak Italian.
- Exercise, arts and crafts, card games, fashion shows, bingo, singing, all in the Italian language.
- Religious services.
- A library which houses an extensive collection of Italian and English books for the use of residents.
- On-site entertainment, as well as excursions to Italian theatre, film and other cultural events.

The housing provider has completed the Agreement and Indemnity requested by the Region. They have included a legal opinion from WeirFoulds LLP which states that Friuli's ethnic mandate meets the requirements of Section 18 of the Code. The Regional Solicitor has reviewed and accepts this opinion.

Under the specific mandate, Friuli must restrict tenancy to seniors of Italian origin. The housing provider has complied with all of the requirements of the Region.

4.4 Potential impact of the approval of specific housing mandates

Rent-geared-to-income housing is a very scarce resource. The approval of specific housing mandates for housing providers will result in a longer wait for housing for those households on the waiting list who do not meet the specific mandate criteria.

Some groups will be disadvantaged by the implementation of specific housing mandates and the Region may receive an increase in the number of complaints from those who will have a harder time being served.

The Region may be exposed to challenges under the *Human Rights Code* and/or the *Canadian Charter of Rights and Freedoms* by persons or groups who are excluded from housing units although specific housing mandates would be approved under the exemptions allowed by the Code.

However, allowing specific mandates will help preserve the unique character of some housing projects and respect their historic relationship with their founding communities.

5. FINANCIAL IMPLICATIONS

There may be financial implications arising from this report should there be any litigation as a result of approving specific housing mandates. If the Region were to be a party to a human rights complaint and if such complaint resulted in a penalty, the Region could not rely on the housing provider's indemnification to avoid costs or other remedies ordered by the Tribunal. The indemnification applies solely to litigation matters.

6. LOCAL MUNICIPAL IMPACT

Approval of specific mandate designations will have some impact in the Town of Richmond Hill and the City of Vaughan. The general population of the chronological RGI waitlist will likely have a longer wait for housing units while applicants who meet criteria for the specific mandate locations may be housed sooner even though they are further down on the chronological wait list.

However, as mentioned above, allowing specific mandates will help preserve the unique character of some housing projects and respect their historic relationship with their founding communities.

7. CONCLUSION

The approval of specific mandates will allow housing providers to address the distinctive needs of applicants or tenants from their particular community, which has made significant contributions to the organization as well as to the greater community.

For more information on this report, please contact Sylvia Patterson, General Manager, Housing and Long Term Care at Ext. 2091.

The Senior Management Group has reviewed this report.