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SPECIFIC MANDATE DESIGNATION FOR SOCIAL HOUSING PROVIDERS

The Community Services and Housing Committee recommends the adoption of the recommendations contained in the following report, June 5, 2007, from the Commissioner of Community Services, Housing and Health Services:

1. RECOMMENDATIONS

It is recommended that:

1. Council approve, in principle, a process for the consideration of requests by social housing providers for specific mandate designations, subject to the requirement that any housing provider applying for specific mandate designation:
 - Provide a legal opinion to the Commissioner of Community Services, Housing 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 in either of those sections of the Code and complies with the policies of the Ontario Human Rights Commission.
 - Clearly define the population to be served.
 - Indemnify the Region with respect to any costs that the Region may incur as a result of any litigation related to the specific mandate designation.
 - Acknowledge that all 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* (SHRA) 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.

Provided that the housing provider has met the aforementioned conditions, staff will forward any referrals to Committee and Council for its decision to permit a specific mandate designation.

2. Prior to implementing the specific mandate process outlined in Recommendation No. 1, staff report back to Committee and Council regarding the outcome of the Ontario Human Rights Commission consultation on Human Rights and Rental Housing in Ontario and any implications arising out of the consultation.

2. PURPOSE

A small number of housing providers have expressed an interest in obtaining the Region's approval for a specific mandate designation for their particular housing

community. The purpose of this report is to seek approval of a process to allow the Region to consider requests and approve specific mandate designations.

3. BACKGROUND

Prior to devolution, the Ministry of Municipal Affairs and Housing (MMAH) assigned specific mandates to some housing providers. These were mandates that would be considered acceptable under the *Human Rights Code* (e.g. seniors and alternative housing for the hard-to-house). Assigned mandates were included in the transfer orders to Service Managers.

Although MMAH did not approve mandates based on religion or ethnicity, historically, some housing providers selected applicants as if they had approved mandates. Housing providers had control of their own waiting lists prior to the proclamation of the SHRA. Now, housing providers must select applicants chronologically from the centralized waiting list which, by legislation, York Region must administer.

The SHRA, Section 99 (3) provides the authority for Service Managers to assign new mandates and to change or cancel existing mandates as long as the housing provider agrees and the agreement is in writing. The *Human Rights Code* provides a framework within which such decisions must be made.

3.1 Specific Mandates for Housing Providers

When social housing projects were originally developed, ethnic and religious communities were encouraged by the Province to build housing for low income families in their own communities. Many of these non-profits also provide unique programs and services for their communities. The right to concentrate on housing members of their own communities was a strong motivation for these groups to sponsor the housing projects. With the proclamation of the SHRA and the requirement to offer housing to households from a centralized chronological waitlist, many of these housing communities have moved away from the original concept of the sponsoring community. Some of the housing providers are frustrated and feel that they have been betrayed by the Province. In fact, some of them would not have sponsored housing at all if they had known that they would be unable to concentrate on housing people from their own communities.

3.2 Mandates and the Human Rights 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.”

3.3 Exceptions to the Human Rights Code

The *Human Rights Code* provides for exceptions to Part 1 in the following circumstances:

Section 14 of the *Human Rights Code* 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 infringements 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 of the *Human Rights Code* 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.

These two Sections provide Service Managers with the flexibility to amend the mandates of housing providers if they choose to do so.

3.4 Other Service Managers

To date, only the City of Toronto has assigned mandates based on religion or ethnicity to housing providers.

In February 2003, the City of Toronto issued a City Guideline which outlines the process that housing providers must use if they would like to have a mandate approved or changed.

The City of Toronto requires housing providers who wish to have a mandate approved to provide a legal opinion which verifies that the housing provider falls under the exemptions allowed in Section 14 or 18 of the *Human Rights Code*. In addition, the housing provider must indemnify the City with respect to costs that the City might incur as a result of litigation related to the mandate.

Prior to Council approval to allow specific mandates, City of Toronto staff consulted with stakeholders to obtain their feedback. This was done at the same time as the pre-devolution consultations. Although they would rather not be required to indemnify the City with respect to costs the City might incur as a result of litigation related to the mandates, the stakeholder group agreed with the recommendation to allow specific housing mandates.

To date, the City of Toronto has granted mandates to four housing providers. Three were to specific ethnic groups and one was for a specific religious mandate. Subsequently, the City has received enquiries about specific mandates from about twenty providers, but none of these has submitted a request.

Applicants self-select the housing community in which they wish to reside. Housing Connections (similar to the Region's Housing Access Unit) assesses general eligibility for the social housing waiting list and refers eligible applications to the housing provider to determine if they meet the assigned mandate. If not, they are removed, with written notice, from that provider's subsidiary waiting list.

There have been no complaints to date, from individuals or groups, who feel that they have been disadvantaged because of the specific mandates granted.

4. ANALYSIS AND OPTIONS

4.1 Specific Mandates for Housing Providers

If a specific mandate designation were to be approved for a housing provider, that mandate would permit the provider to fill up to 100 percent of its rent-geared-to-income (RGI) vacancies with applicants who meet that mandate. In effect, the housing provider would regain control of decisions about the households that would be offered housing in their buildings.

There are a few housing providers in York Region that have expressed interest in obtaining specific mandates.

4.2 Potential Impact

If specific mandate designations were allowed, a preliminary analysis indicates that those applicants on the chronological waiting list may have a longer wait for housing as they would not be able to access those units with a specific mandate. This could reduce the number of units available to the general public by as many as 700 units.

4.3 Considerations

RGI housing is a very scarce resource and if specific mandates are approved, the number of RGI vacancies available to chronological applicants on the centralized waiting list will be reduced and the waiting time increased significantly.

There may be a perception that the Region will create (or maintain) exclusive communities within the Service Manager area.

Some groups may 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 an even harder time being served.

While specific mandate designations may fall within the special programs provisions of the *Human Rights Code*, the introduction of specific mandates for social housing may expose the Region to challenges under the *Code* by those persons or groups who are excluded from housing units, even if the Toronto criteria are adopted.

On May 9, 2007, The Ontario Human Rights Commissioner launched a consultation on Human Rights and Rental Housing in Ontario. One of the items in the Social Housing Section of the Background Paper refers to human rights issues due to non-compliance with the Code. It states “As well, social housing projects that are aimed at persons less than the age of 65 or at a particular community of persons (e.g. housing limited to persons from particular ethnic or religious groups) are often beneficial but may raise human rights issues where they do not comply with the requirements of the Code”.

It is for this reason the Region would require the housing provider to provide a legal opinion which concludes that the housing provider falls within the exemptions contained in Section 14 or Section 18 of the Code.

What the Commission ultimately decides, based upon this consultation process, may impact the Region’s decisions or process about whether to permit specific mandates for housing providers. Thus it is prudent to await the conclusion of this consultation process before finalizing any policy respecting the matter.

When housing projects were originally developed, the Province encouraged groups to build housing for their own communities. Many housing providers did join the housing program specifically to meet the housing needs of their own communities. They also sponsored and raised funds that were ultimately used to provide programs and services within their housing community as opposed to contributing towards the capital cost of the actual building. They likely would not have sponsored this housing had they known that they would not be able to continue to focus on their own communities. They may not be disposed to contribute to any new housing development in the future if they are unable to have specific housing mandate designations.

York Region has a large and increasing immigrant population. In Vision 2026, York Region has made a commitment to celebrate diversity, to recognize its multicultural population and to respond to diversity with innovative service delivery options. York Region may be perceived to be failing to honour this commitment if specific housing mandates are not permitted.

Staff have consulted with housing providers within the service area to obtain their feedback.

4.4 Approval Process for Specific Housing Mandates

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

It is proposed that a housing provider wishing to request a specific mandate designation would submit a written request to the Region and meet the following conditions:

- Provide a legal opinion to the Commissioner of Community Services, Housing 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 under the exemptions contained in either of those sections of the Code.
- Clearly define the population to be served.
- Indemnify the Region with respect to any costs that the Region may incur as a result of any litigation related to the specific mandate designation.
- Acknowledge that all units in projects with mandates continue to be filled through the Region's Housing Access Unit's waiting list process in accordance with the SHRA 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. (For example, a community may change at some point in the future making it difficult for a housing provider to fill vacant units with households who meet the mandate. It would be preferable to change or terminate the mandate rather than accumulate vacancy loss).

Staff will forward any requests that meet the conditions listed above to Committee and Council for consideration.

4.5 Evaluation

The specific mandate policy will be evaluated after it has been in place for two years to measure its impact. Further reviews will take place every five years thereafter to determine whether any approved specific mandates should be altered. For example, communities change over the years and a specific mandate may no longer reflect the needs of the community.

5. FINANCIAL IMPLICATIONS

There may be financial implications arising from this report should there be any litigation as a result of approving specific housing mandate designations.

6. LOCAL MUNICIPAL IMPACT

A preliminary analysis indicates that the general population from the chronological waiting list would likely have to wait longer for housing units to become available. The most significant impact would be felt in the City of Vaughan because a number of housing facilities in Vaughan were sponsored by cultural or faith communities who may seek a specific mandate.

Allowing specific housing mandates will help to preserve the unique character of certain housing projects and respect their historic relationship with their founding community.

7. CONCLUSION

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

For more information on this report, contact Sylvia Patterson, Director, Housing Services Branch in the Community Services and Housing Department.

The Senior Management Group has reviewed this report.