

**Ontario Human  
Rights Commission**

Office of the Chief Commissioner

180 Dundas Street West, 8<sup>th</sup> Floor  
Toronto ON M7A 2R9  
Courier postal code: M5G 1Z8  
Tel.: (416) 314-4537  
Fax.: (416) 314-7752

**Commission ontarienne  
des droits de la personne**

Cabinet du commissaire en chef

180, rue Dundas ouest, 8<sup>e</sup> étage  
Toronto ON M7A 2R9  
Code postal pour livraison : M5G 1Z8  
Tél. : (416) 314-4537  
Téléf. : (416) 314-7752



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September 25, 2009

Zoning Bylaw Project  
City of Toronto  
Metro Hall, 22nd floor  
Toronto, ON M5V 3C6  
55 John Street

To Whom It May Concern:

**Re: OHRC Comment on the City of Toronto's Proposed Zoning By-law**

Thank you for inviting feedback to the City of Toronto's Proposed Zoning By-law. The Ontario Human Rights Commission is pleased to have the opportunity to provide input into the by-law, particularly with respect how the by-law may affect the human rights of people protected by the Ontario *Human Rights Code*. Please find attached our written comments. If you have any questions or wish to discuss this issue further, please do not hesitate to contact me. If members of your staff require further information from us, please have them contact Anya Kater, Senior Policy Analyst at 416 314-4551.

Yours truly,

A handwritten signature in cursive script, appearing to read "Barbara Hall".

Barbara Hall, B.A, LL.B, Ph.D (hon.)  
Chief Commissioner

# COMMENT OF THE ONTARIO HUMAN RIGHTS COMMISSION

On

## The City of Toronto's Proposed Zoning By-law

September 25, 2009

The Ontario Human Rights Commission (the "Commission") thanks the City of Toronto ("City") for the opportunity to comment on its proposed zoning by-law. The Commission will focus its comments on sections of the zoning by-law that have human rights implications, and in particular on elements that have implications for the inclusion or exclusion of people from Ontario *Human Rights Code*-protected groups.

The Commission's comments are based on its expertise as a domestic human rights institution with a broad mandate and comprehensive powers for the protection and promotion of human rights consistent with the "Paris" *Principles Relating to the Status of National Institutions*. The Commission's comments derive from its interpretation of its enabling legislation, the Ontario *Human Rights Code* (the "Code"). The Commission's report, *Right At Home: Report on the Consultation on human rights and rental housing in Ontario*, the Commission's soon-to-be-released policy on rental housing, and relevant domestic case law also provide a framework for this discussion. All Commission documents, save for the housing policy, are available on its website at [www.ohrc.on.ca](http://www.ohrc.on.ca). The Commission's policy on human rights and rental housing will be released on October 5, 2009.

### Housing as a Human Right

The international community has long recognized that housing is a fundamental and universal human right that must be protected in law. Canada has ratified several international human rights instruments that recognize the right to housing.<sup>1</sup> In doing so, Canada has endorsed the view that housing is a human right. The challenge for Canada is to make these high-level principles a lived reality for Canadians. Human rights bodies, federal, provincial and municipal governments play critical roles in making this happen. Municipalities, including municipal councils, policy makers, planners and program designers, have unique opportunities to ensure people's human rights are respected in the design and delivery of housing and housing legislation.

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<sup>1</sup> *Universal Declaration of Human Rights*, signed Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); *International Covenant on Economic, Social and Cultural Rights*, (1976) 993 U.N.T.S. 3, Can. T.S. 1976 No. 46. The United Nations General Assembly adopted and proclaimed the *Universal Declaration of Human Rights* in 1948. The *ICESCR* was adopted by the United Nations in 1966 and entered into force in 1976. Canada ratified the *ICESCR* in 1976. Other international treaties that Canada has signed that uphold the right to housing include the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Convention on the Rights of the Child*.

The Commission is providing comment on the City's proposed zoning by-law because the by-law has the potential to affect the housing rights of many people across the City, particularly with respect to those living in affordable housing (group homes, seniors' residences, shelters, lodging houses, etc.). The right to be free from discrimination in housing under the *Code* could extend to the development of affordable housing projects for people and groups identified by the *Code*. In addition, the Commission believes it is important to highlight the City's progressive vision of housing and human rights through its newly developed Housing Charter.

### **The Toronto Housing Charter**

The Commission commends the City for its development of the Housing Charter, which is a policy statement that sets out how people's human rights are respected within housing. Specifically, the Housing Charter provides that a full range of available housing enables the health, economic, and social well-being of residents, and that:

- All residents should have a safe, secure, affordable and well-maintained home from which to realize their full potential
- All residents should be able to live in their neighbourhood of choice without discrimination
- All residents have the right to equal treatment in housing without discrimination as provided by the *Ontario Human Rights Code*, and to be protected from discriminatory practices which limit their housing opportunities

The Commission is pleased to consult and work with the City to support the housing rights of residents and to advance the principles contained in the Toronto Housing Charter. The Commission also supports the City's Housing Opportunities Toronto program, which places priority on addressing homelessness, improving the state of the City's affordable housing and building more units. The Commission is also pleased that the Housing Charter will provide guidance for the City's future planning activities. It is worth noting that the statements outlined in the Housing Charter are based on many of the *Code* principles of dignity, individualized support, autonomy, and full participation and integration in community life.

The Housing Charter also provides an important foundation when considering zoning practices and how these affect the availability of affordable housing and the inclusion or exclusion of people from *Code*-protected groups.

### **Human rights and zoning**

The City's Housing Charter provides a framework with which to ensure the equal treatment and the inclusion of affordable housing in all neighbourhoods. People living in affordable housing are often from *Code*-protected groups, and include families, youth, older people, people from racialized and Aboriginal communities, immigrants, women, and people with disabilities, including psychiatric disabilities. People from these groups

tend to be vulnerable to discrimination in many different ways; for example, when securing housing, maintaining tenancy, and experiencing eviction. In addition, discriminatory neighbourhood opposition, more commonly known as “NIMBYism”, creates a formidable barrier to establishing affordable housing projects. Negative attitudes and stereotypes about the intended residents of a housing project result in affordable housing development being unnecessarily delayed, halted or restricted.

In the Commission’s housing consultation, many consultees raised concerns about how municipal processes and by-laws - including zoning by-laws - may contribute to opposition to affordable housing projects. Concerns were raised that by-laws and processes may result in restrictions or extra requirements for housing that serves people from *Code*-protected groups, which may prevent people from living in the neighbourhoods of their choice. When planning policies or practices are directed towards, or disproportionately affect *Code*-protected populations in a negative way, they may be seen to violate the *Code*.

The Commission’s position is that concerns about affordable housing projects should be anchored legitimately in planning issues, rather than stereotypical assumptions about the people for whom the housing is being built. In addition, planning decisions about housing should be reviewed to ensure that they do not result in adverse discriminatory effects on people from *Code*-protected groups, especially people who, because of low socio-economic status, are likely to live in shared accommodation.

The Commission supports that zoning by-laws should be deemed invalid if their purpose is to regulate the user, as opposed to the use of the land. This is consistent with the interpretations of the Supreme Court of Canada case, *R. v. Bell*, and section 35(2) of the *Planning Act*.<sup>2</sup>

In applying these principles to the City of Toronto’s proposed zoning by-law, the Commission has identified the following issues, particularly with respect to group homes, (including correctional group homes), residential care homes, seniors’ community houses, rooming and lodging houses, municipal shelters, and crisis care shelters.

## **Definitions**

Defining the characteristics of individuals associated with certain types of affordable housing can be problematic when these housing projects are then subjected to zoning restrictions or onerous requirements not imposed on other housing establishments and

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<sup>2</sup> *R.v.Bell* (S.C.C.), (1979), 98 D.L.R. (3<sup>rd</sup>) 255; *Planning Act*, R.S.O. 1990, c.P.13. s.35 (2). The authority to pass a by-law under section 34, subsection 38(1) or section 41 does not include the authority to pass a by-law that has the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a building or structure or a part of a building or structure, including the occupancy or use as a single housekeeping unit.

not grounded in legitimate planning rationale. Zoning by-laws that define the use of land by reference to personal characteristics have been held to be invalid. For example, the Manitoba Court of Appeal ruled that a city's zoning by-law violated s. 15(1) of the Canadian *Charter of Rights and Freedoms* by excluding group homes from certain zones and defining them through reference to characteristics of the users (people who were "aged," "receiving supervision or treatment for alcohol or other drug addiction," "convalescent or disabled people," or "discharged from a penal institution").<sup>3</sup>

However, section 14 of the *Code* does permit the use of special programs in housing. This allows preferential treatment or programs aimed only at people identified by *Code* grounds, if the purpose of the program is to relieve hardship or economic disadvantage or to help disadvantaged people or groups achieve equal opportunity.

The City should examine its use of definitions and should ensure it is not placing onerous zoning or other restrictions on special program housing that is aimed at *Code*-protected groups. The City should particularly note that reference to "retarded persons" to describe group home residents on page 441 of the proposed zoning by-law is problematic.

### **Availability of Affordable Housing in all Neighbourhoods**

The Commission recognizes that the proposed by-law allows group homes, municipal shelters and seniors' community houses in all of the City's residential zones. The Commission supports this same approach for other types of affordable housing where the density of the neighbourhood supports the population density of the building. The Commission encourages the City to look at other types of housing and shelters that may be excluded from various residential zones (e.g. crisis care shelters, residential care homes, etc.) and ensure that any decisions to exclude these structures are strictly based on sound urban planning rationale, and not on negative assumptions about the people living there. The City should take note, for example, that some residential zones (e.g. residential detached zones, residential semi-detached, and residential townhouse zones) are not zoned to allow crisis care shelters, but allow for municipal shelters, despite the fact that the definitions of these two building types are extremely similar.

In addition, restrictions put on seniors' community homes with respect to the age of the building (i.e. that the building must be at least five years old before becoming a seniors' community home) means that new seniors' community homes cannot be built. In many cases, this would limit opportunities for inclusive design, a key concept when addressing special housing needs. The need to retrofit instead of designing inclusively from the outset can also lead to unnecessary expenses that can affect the affordability of this housing.

We understand that the zoning rules around rooming houses are not yet in place, but the Commission encourages that rooming houses be allowed in all parts of the City and in all residential zones. Many consultees in the housing consultation indicate that this

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<sup>3</sup> *Alcoholism Foundation of Manitoba v. Winnipeg (City of)*, (Man. C.A.), (1990), 69 D.L.R. (4<sup>th</sup>) 697.

type of housing, if adequately maintained, can fill a critical gap in the housing shortage for low-income people. This is supported by the City's research on rooming houses.<sup>4</sup> The Commission heard that rooming houses play an important and viable role in meeting affordable housing needs of people protected under the *Code* who are unable to afford conventional housing. The Commission has noted that by-laws that restrict affordable housing development that serves people identified by *Code* grounds, such as lodging or rooming houses, in certain areas while allowing other establishments of a similar scale, can be viewed as discriminatory.

### **Minimum Separation Distances**

The City's zoning by-law identifies minimum separation distances that apply to some affordable housing establishments, such as group homes, residential care homes and seniors' community houses, and crisis care shelters and municipal shelters. For example, the proposed by-law indicates that group homes should be a minimum distance of 300 metres from other group homes or residential care homes.

However, minimum separation distances can have a critical impact on the establishment of affordable housing by limiting the sites available for development, and forcing housing providers to turn away otherwise ideal housing opportunities. Where they are not justified on a rational planning basis and passed in good faith, minimum separation distances can be seen as placing onerous restrictions on housing serving people from *Code*-protected groups that are not placed on other housing types. This could be viewed as discriminatory. They are also criticized as contributing to the social isolation of group home residents, particularly people with psychiatric disabilities.<sup>5</sup> The Commission encourages the City of Toronto to re-examine the issue of minimum distance requirements to allow for maximum flexibility in affordable housing development.

All of these suggested changes would serve to increase the availability of affordable housing by allowing it to be developed in more areas of the City, and would remove barriers that have the potential to violate the *Code*.

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<sup>4</sup> Social Housing Strategists, in association with Richard Drdla Associates, *City of Toronto, Rooming House Issues and Future Options, Final Report* (Toronto, n.p. 2004).

<sup>5</sup> Liliith Finkler, "Zoned Out: Restrictive Municipal Bylaws and Psychiatric Survivor Housing" In Psychiatric Patient Advocacy Office, *Honouring the Past, Shaping the Future: 25 Years of Progress in Mental Health Advocacy and Rights Protection*, (Toronto: Queen's Printer, 2009), 27 at 29.