



CITY OF HAMILTON
COMMUNITY AND EMERGENCY SERVICES DEPARTMENT
Housing Services Division

TO:	Chair and Members Community and Emergency Services Committee
COMMITTEE DATE:	August 10, 2016
SUBJECT/REPORT NO:	Municipal Housing Facilities By-law (CES16031) (City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

RECOMMENDATIONS

That the Municipal Housing Facilities By-law, attached as Appendix A to Report CES16031, which has been prepared in a form satisfactory to the City Solicitor, be enacted, and that By-law 03-148 be repealed.

EXECUTIVE SUMMARY

The current Municipal Housing Facilities By-law (the “Housing Facilities By-law”) was originally enacted in 2003, with a minor update in 2006. The City’s current Housing Facilities By-law no longer meets the needs for current and potential future housing programs. Report CES16031 recommends that a new Housing Facilities By-law be enacted and the current by-law repealed.

The Housing Facilities By-law acts as an enabling legislative framework under the *Municipal Act, 2001* and permits the City to enter into agreements that provide incentives or assistance to organizations that develop or operate affordable or social housing. These agreements allow the City to provide such incentives without constituting “bonusing” under the *Municipal Act, 2001* and have been a requirement of every funding program made available through the provincial and federal governments since 2002. Examples of incentives can be:

- Capital funding through loans and grants;
- Giving, lending, leasing or selling municipal property;
- Exempting land from taxation for municipal and school board purposes; and,
- Exempting development charges.

The Housing Facilities By-law is an enabling by-law only. Before any incentives can be provided under the Housing Facilities By-law, Council must pass a second site-specific by-law that authorizes the City to give the incentive to the provider and the conditions upon which the incentive is bring provided. Accordingly, Council has the opportunity to consider whether or not to provide any form of assistance on a case-by-case basis and approving the new Housing Facilities By-law does not commit the City to approve any specific incentive.

The recommended new Housing Facilities By-law includes:

- Updated definitions related to “affordable housing” for rental and ownership housing units;
- Requirements about the level of household income required to benefit from assistance under the By-law;
- Adding provisions to allow the City to consider providing municipal and school property tax relief; and,
- General updates.

Staff are currently working on two specific initiatives that warrant an update to the current Housing Facilities By-law.

Tax Exemptions for CityHousing Hamilton

On November 11, 2015, Council passed Item 7 of the Audit, Finance and Administration Committee Report 15-011 which directed staff as follows:

“That the General Manager of Finance and Corporate Services, through the 2016 tax supported budget process, identify options as to how the potential savings related to school board taxation could flow from the Service Manager to CityHousing Hamilton for the purpose of capital repair/rehabilitation and/or the creation of new affordable housing units.”

In order to fulfil this Council direction, a new Housing Facilities By-law is necessary to authorize the City to consider passing the by-law to exempt eligible CityHousing Hamilton projects from taxation for education purposes and to create that savings for CityHousing Hamilton. Staff are currently completing a report on this item which will be presented to the Audit, Finance and Administration Committee in September.

Affordable Housing Incentive Program

Staff are also working on the creation of a consolidated suite of affordable housing incentive programs designed to encourage the development of new affordable housing, by the private sector and non-profit housing providers. However, to establish the ability to even consider these various incentives, the Housing Facilities By-law should be updated to reflect current definitions of affordable housing and other general updates.

This will significantly enhance the City's ability to respond to partnership opportunities with the private sector.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There are no financial impacts associated with Report CES16031.

Staffing: There are no staffing impacts associated with Report CES16031.

Legal: In order to enter into a municipal capital facilities agreement in respect of municipal housing project facilities, the City must enact a municipal housing facilities by-law. On June 11, 2003, City Council enacted By-law 03-148, "To adopt a Municipal Housing Facilities By-law" (as amended by By-law 06-142). However, By-law 03-148 is outdated and does not clearly enable the provision of property tax exemptions for social housing or other affordable housing incentives.

It should be noted that the by-law is an enabling legislative framework only and does not commit the City to providing any incentives. Council will have the opportunity to consider future recommendations about incentives from staff on a case-by-case basis.

The owner of a property benefitting from incentives provided under a municipal housing facilities by-law enters into a Municipal Capital Facilities Agreement with the City. Site-specific by-laws that deem properties to be municipal housing capital facilities are registered against title for the properties.

HISTORICAL BACKGROUND

Changes to a *Municipal Act, 2001* regulation in 2001 allowed housing to be designated as a "municipal capital facility" and continues today under existing legislation. This specific category of municipal capital facility is called "municipal housing project facilities."

On April 10, 2002, through Report PD02001, City Council approved a recommendation that endorsed the establishment of a "Municipal Housing Facilities By-law". On June 11, 2003, City Council enacted By-law 03-148, "To adopt a Municipal Housing Facilities By-law".

By-law 03-148 addressed incentives for affordable rental housing development through four possible incentives or concessions that the City could use:

- Low interest loans or grants;

- Giving, selling or leasing land at less than market value;
- Guaranteed borrowing; and,
- Services of municipal employees.

Property tax exemptions were not included in By-law 03-148.

By-law 03-148 was a requirement to participate in the delivery of the Community Rental Housing Program, resulting in approximately \$17,500,000 in Federal cash grants that were available to private sector and community-led housing providers administered by the City. A municipal housing facilities by-law has been a requirement of every provincial or federal incentive program since that time.

For example, Council passed site-specific by-laws and authorized assistance for affordable homeownership initiatives under the former HomeStart program and to provide forgivable loans for new rental construction under the former Hamilton Affordable Housing Partnership Initiative Program.

A housing provider who receives an incentive administered through the City (regardless of the source of the funding) is required to enter into a Municipal Capital Facilities Agreement that, among other things:

- requires the project to meet the definition of affordability for at least 15 years;
- defines affordable;
- binds future successors and purchasers to the agreement; and,
- sets out remedies in the case of default.

On May 24, 2006, Council passed an amendment to By-law 03-148 and incorporated affordable homeownership housing as an eligible program within which to consider future incentives.

No amendments have been made to By-law 03-148 since that time.

On November 11, 2015, Council passed Item 7 of the Audit, Finance and Administration Committee Report 15-011 which directed staff as follows:

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In preparing a response to this motion, staff identified the requirement to update By-law 03-148 to establish the clear legal framework to effect the property tax exemptions, including the education portion. Further, in order to achieve flexibility and responsiveness to changing market conditions and to better align with changes in policy

direction from the federal and provincial governments, it was determined that a new housing facilities by-law is necessary.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Municipal Act, 2001

Subsections 110(1), (6) and (7) authorize a municipal council to enter into agreements with certain organizations for the provision of municipal capital facilities for one or more of: (i) various forms of financial assistance; (ii) giving, lending, leasing or selling property; (iii) development charge exemptions; or (iv), exempting land from taxation for municipal and school purposes. This authority can be applied to various classes of municipal capital facilities, including municipal housing facilities.

Housing and Homelessness Action Plan

In December, 2013, Council approved the City's 10-year Housing and Homelessness Action Plan ("Action Plan") which is a strategic and implementation plan to address affordable housing and homelessness in Hamilton (Report CS11017(c)). The development of the Action Plan was informed by extensive community engagement and a comprehensive needs analysis that provides a framework to inform decisions about housing resource allocation in Hamilton.

The Action Plan sets out several strategies which are designed to address the supply, affordability and quality of Hamilton's affordable housing stock. The new Housing Facilities By-law is a key first step to successfully implementing these strategies, which include:

Strategy 1.2: Explore the potential for new incentive and funding programs and expand and promote more broadly existing City incentive programs to increase the supply of affordable housing (e.g., capital grants/loans, tax deferrals, waived development and other charges, etc.)

Strategy 1.5: Explore the feasibility/further promote opportunities that exist in the Urban Hamilton Official Plan for density bonusing and use of Community Improvement Plans to offer other incentives for affordable housing.

Strategy 1.8: Advocate for changes to the City's and senior governments' surplus land policy to make surplus land available for affordable housing development at discounted or no cost.

Strategy 2.1 (a): Encourage mixed housing and mixed income development in all urban neighbourhoods by increasing opportunities for rental, social and affordable housing in areas that currently offer limited opportunities.

Strategy 2.1 (c): Encourage mixed housing and mixed income development in all urban neighbourhoods by exploring opportunities for social housing communities to redevelop to include a mix of new housing options.

Strategy 2.3: Increase homeownership opportunities for renters, including social housing tenants.

Strategy 2.8: Explore options that ensure social housing applicants and tenants have as much choice as possible.

Strategy 4.10: Adequately fund capital reserves for social housing based on Building Condition Assessments and Reserve Fund Studies.

Strategy 4.6: Increase the number of rental units that meet the needs of larger families.

Strategy 4.9: Inventory, rate and increase the number of social housing units that meet the needs of persons with disabilities through existing and new housing opportunities.

Province's Long-Term Affordable Housing Strategy

Creating inclusive, complete communities with a broad mix and range of housing types is an important step to building Ontario's health and prosperity. The updated Long-Term Affordable Housing Strategy focuses on increasing the supply of affordable housing, supporting people, and ending chronic homelessness. A new housing facilities by-law aligns with those goals.

RELEVANT CONSULTATION

Extensive consultation was undertaken with the community, other internal City divisions, housing related sectors and other stakeholders to inform the development of the Action Plan, including its 54 strategies. The Action Plan's implementation is guided by regular consultation with the Housing and Homelessness Planning Group – a multi-sectored community based group reflecting various housing related service providers, the private sector and the non-profit sector. Internally, Housing Services' staff consults with key staff from the Planning & Economic Development Department through a regular Housing-Planning Liaison meeting. Feedback from this ongoing consultation has culminated in the proposed new Housing Facilities By-law.

The Legal Services Division was consulted and provided advice and feedback regarding the new Housing Facilities By-law and repealing the existing By-law 03-148.

ANALYSIS AND RATIONAL FOR RECOMMENDATION

The key proposed elements of the new Housing Facilities By-law are set out and explained below.

1. Updated Definition of Affordable Housing

The current definition is:

“Affordable housing” for the purpose of a municipal housing project facilities by-law or agreement hereunder shall mean:

- (a) a rental facility where the average monthly rental by structure type and unit size, exclusive of utilities, is less than or equal to the current average CMHC rent for the City for the respective structure type and unit size; or*
- (b) an ownership facility where the market value is less than or equal to the average resale dwelling price.*

The new definition is:

“Affordable housing” means:

- (a) rental housing units with a rent at or below 125% of average market rent;*
- (b) for affordable homeownership, housing units with a sale price of at least 10% below the median resale price of a home;*

The Canada Mortgage and Housing Corporation (CMHC) provides good quality, Hamilton-specific rental housing market data to the Housing Services Division. However, there can be a time lag because in active rental markets the data can be significantly behind the current reality. By allowing for assistance to projects at or below 125% of the average CMHC rate, the City can better respond to current market conditions and pressures in the rental market. As well, the new by-law includes flexibility for the General Manager to make determinations about affordability to recognize specific situations.

As the Housing Facilities By-Law is enabling and does not fully detail a specific incentive program, it is prudent to be liberal in its definition of affordable housing to enable future incentives to keep pace with changes in the rental market without requiring an amendment to the by-law.

For affordable homeownership projects, the new by-law proposes to use 10% below the median price instead of the current average market price. The median price is less influenced by extremes in the market.

2. Establishing Maximum Household Income Requirements

The proposed new provision is:

The City shall not enter into a municipal housing project facilities agreement unless the General Manager determines to his or her satisfaction that the housing units to be provided will be rented or sold to households:

- (a) with an annual household income below the 60th income percentile for renter households in the City; and*
- (b) that do not own a residential property.*

The current Housing Facilities By-law does not speak to the income of households who reside in the projects. This provision creates a requirement for providers who are receiving some form of incentive through the Housing Facilities By-law to ensure that the assistance is targeting the households most in need. This is also consistent with the various other program requirements (e.g. Investment in Affordable Housing Program) which requires participating landlords to verify income annually.

3. Establishing the authority to exempt properties from taxation, including the education portion

The only new authority being established in the new Housing Facilities By-law is the ability to extend property tax exemptions to municipal housing project facilities as provided for in the *Municipal Act, 2001*.

The relevant section of the *Municipal Act, 2001* is:

Tax exemption

(6) Despite any Act, the council of a municipality may exempt from all or part of the taxes levied for municipal and school purposes land or a portion of it on which municipal capital facilities are or will be located that,

- (a) is the subject of an agreement under subsection (1);*
- (b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and*
- (c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality. 2001, c. 25, s. 110 (6); 2006, c. 19, Sched. O, s. 3 (1).*

This has potential application for both social housing providers and for private developers of affordable housing.

In 2011, the City of Toronto began the process of declaring Toronto Community Housing Corporation's premises to be municipal housing facilities. The Municipality of

Chatham-Kent followed shortly thereafter. In December, 2011, the City of Ottawa approved the recommendation to declare Ottawa Community Homes Corporation's social and affordable housing stock as municipal housing capital facilities and exempt these properties from municipal and education property taxes. In all three municipalities, the education portion of the tax savings was redirected towards social housing capital repairs and regeneration.

On November 11, 2015, Council passed Item 7 of the Audit, Finance and Administration Committee Report 15-011 which directed staff as follows:

“That the General Manager of Finance and Corporate Services, through the 2016 tax supported budget process, identify options as to how the potential savings related to school board taxation could flow from the Service Manager to CityHousing Hamilton for the purpose of capital repair/rehabilitation and/or the creation of new affordable housing units.”

The new Housing Facilities By-law includes the necessary provision to enable staff to respond to this Council direction. A subsequent report will be presented to the Audit Finance and Administration Committee in September to recommend that the City pass a specific by-law exempting eligible CityHousing Hamilton projects from taxation, including for education purposes.

An exemption as described above can also be used as an incentive to the private sector to develop and operating affordable housing. This will be investigated as part of a future report.

4. General updates

By-law 03-148 contained a number of typographical errors and outdated provisions. The new Housing Facilities By-law addresses and updates these sections.

ALTERNATIVES FOR CONSIDERATION

None

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

Appendix A to Report CES16031: Municipal Housing Facilities By-law 03-148