

CITY OF HAMILTON

COMMUNITY SERVICES DEPARTMENT
Housing Services Division

TO: Chair and Members Emergency & Community Services Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: June 11, 2012	
SUBJECT/REPORT NO: Sole Shareholder Direction for CityHousing Hamilton (CS12003) (City Wide)	
SUBMITTED BY: Joe-Anne Priel General Manager Community Services Department	PREPARED BY: Gillian Hendry 905-546-2424 ext 4818
SIGNATURE:	

RECOMMENDATION

- (a) That the City of Hamilton, in its capacity as sole shareholder of CityHousing Hamilton Corporation, approve the Declaration and Direction of the Sole Shareholder which establishes the governance model of the CityHousing Hamilton Corporation attached as Appendix A to Report CS12003; and,
- (b) That the Mayor and City Clerk be authorized and directed to execute the Declaration and Direction of the Sole Shareholder, effective September 30, 2012 as set out in recommendation (a), on behalf of the City of Hamilton in its capacity as the sole shareholder of CityHousing Hamilton Corporation in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

The development of a governance structure for CityHousing Hamilton was identified as a priority in an operational review that was completed by the Housing Services Division in 2010. The City's role as sole shareholder of CityHousing Hamilton (CHH) is not defined in a formal way and as a result, there is no common understanding of the roles

and responsibilities of the primary stakeholders including the City of Hamilton as sole shareholder, the CHH Board of Directors and City and CHH staff.

Council directed staff to prepare an implementation strategy for the development of a governance framework, municipal accountability structure and a Shareholder Direction for CHH. Report CS10037 - Comprehensive Operational Review of CityHousing Hamilton (CHH), received by Emergency and Community Services Committee on April 7, 2010 outlined the findings of the review.

Appendix A to Report CS12003 - the "Declaration and Direction of the Sole Shareholder" (the "Shareholder Direction") is a legally binding document which establishes the governance model and accountabilities for both the City and CityHousing Hamilton. The Shareholder Direction clearly outlines the City's roles and responsibilities as sole Shareholder as well as expectations and mandates for CHH and its Board of Directors. It is recommended that the City, acting in its capacity as sole shareholder of CHH, approve and execute the proposed Shareholder Direction to CHH.

A new governance model for CityHousing Hamilton is recommended in order to clearly define the City of Hamilton's roles and responsibilities in relation to CHH, including those of the CHH Board and to establish an accountability framework between CHH and the City.

An autonomous governance model will support CHH as a separate, legal corporation and community based social housing provider similar to all other non-profit and co-operative social housing providers in Hamilton. Such a structure will clearly separate the City's two roles as sole Shareholder of CHH and that of Service Manager (and funder) of all social housing in the city, including CHH.

A working group with staff from the Housing Services and Legal Services Divisions developed the proposed governance model and the Shareholder Direction for CHH. Key stakeholders engaged in the consultation process included City staff from the Community Services Department, Finance and Administration, Human Resources, Information Services, and the Clerk's Office as well as the CHH Chief Executive Officer (CEO) and the CHH Board of Directors.

The working group considered three possible governance options:

1. Autonomous (or arms-length) Model
2. City-Run Model and
3. Blended (current) Model

The following issues were considered in the development of the governance model and the Shareholder Direction:

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- The City's role as sole Shareholder of CHH is not formally defined and as a result, there is no common understanding of the roles and responsibilities of the City, CHH Board of Directors, Senior CHH Staff and Senior City Staff.

It was further noted that the working relationships that CHH has with other City Departments and services needs to be clearly defined.

- At present, there is a direct employee-employer reporting relationship between the CEO of CHH and the General Manager of the Community Services Department. The CEO also reports directly to the CHH Board of Directors regarding all operational matters related to CHH. This dual reporting relationship creates uncertainty because the reporting relationships are neither well defined nor provide clarity in terms of accountability of the General Manager vs the CEO vs the Board.

A similar dual role occurs for the City Treasurer in his role as both Treasurer of the City of Hamilton and Treasurer for CHH. The City Treasurer's primary accountability is to the City of Hamilton which makes participation on the CHH Board complex and problematic.

- There is currently no reporting mechanism from CHH to the City as sole Shareholder. This creates an accountability and knowledge gap for Council regarding the business of CHH as a corporation of the City of Hamilton.

The recommended autonomous governance model addresses the role ambiguity and resulting gaps between these two organizations by formalizing the City's role in relation to CHH, which are as follows:

1. **Sole Shareholder of CHH** – The City of Hamilton is the sole Shareholder of CityHousing Hamilton (CHH), a legal entity incorporated under the *Ontario Business Corporations Act*.
2. **Service Manager, under the *Housing Services Act, 2011*** - The City is responsible for the administration and funding of housing programs in Hamilton, including those operated by CHH. Report CS12002 - Operating Agreement between the City of Hamilton as Service Manager and CHH was presented to E&CS committee on May 14, 2012 and recommended that the City enter into an Operating Agreement with CHH to fulfil its role as Service Manager.

If approved, it is recommended that the Shareholder Direction be effective September 30, 2012. In the interim, City and CHH staff will establish a transition team to formalize the working relationships between CHH and City Departments and services such as Corporate Finance, Human Resources and Information Services. This team will ensure

that policies and procedures are in place from both a CHH and City perspective to support the expectations outlined in the Shareholder Direction.

Alternatives for Consideration – See Page 9

FINANCIAL / STAFFING / LEGAL IMPLICATIONS
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Financial:

In the autonomous governance model, the CHH financial functions would be separate from those of the City:

- The Business Administrator for CHH would be converted to the Chief Financial Officer for CHH. The Chief Financial Officer would report to the CEO of CHH rather than through to the City's Finance and Administration Section.
- A CHH Board will appoint the duties of Treasurer of CHH to an individual other than the City Treasurer. Extensive financial expertise is required.
- An audited annual financial statement and further quarterly financial statements would be prepared for City Council in their role as sole shareholder of CHH.
- Funding for CHH would be formalized through an Operating Agreement as outlined in Report CS12002 - Operating Agreement between CHH and the City of Hamilton (May 14, 2012).

Staffing:

- In the autonomous governance model, City Housing Hamilton staff, including the CEO would remain employees of the City of Hamilton and continue to be subject to the City's Human Resources policies and procedures with no changes to salaries and benefits.
- The CEO of CHH would no longer report to the General Manager of the Community Services Department but would report to the CHH Board of Directors for all CHH operational matters.
- The CHH Board of Directors, in consultation with the City Manager of the City of Hamilton, would be responsible for any matters related to the status of the CEO such as hiring, termination and performance review.
- All other CHH staff would report to the CEO.
- The CUPE Local 5167 collective agreement would continue to apply to current members as well as future members falling within the scope of agreement.
- CHH would employ a Human Resources Generalist to perform all HR functions for CHH and assist the CEO with developing CHH policies. This HR role would assume an indirect reporting relationship to the City's Human Resources Department to ensure compliance with existing policies and procedures as well as the collective agreement. A vacant CHH FTE will be converted for this purpose and therefore no additional FTEs are required.

Legal:

The Shareholder Direction clearly outlines the City's roles and responsibilities as sole Shareholder as well as expectations and mandates for CHH and its Board of Directors.

HISTORICAL BACKGROUND

The organizational structure in CHH has evolved through a series of events initiated with the passage of the now repealed and replaced Social Housing Reform Act in 2000. In 2001, the responsibility for social housing within the City of Hamilton was formally transferred from the Province of Ontario to the City.

Local Housing Corporations were established as legal entities to assume ownership and operation of the social housing portfolio previously owned by the former Ontario Housing Corporation. The City became the sole shareholder of the Local Housing Corporation portfolio (the former Hamilton-Wentworth Housing Authority) and became responsible for all aspects of its management, operations and financing.

In 2006, three other social housing providers – Hamilton Municipal Non-Profit, Hamilton Portuguese Non-Profit Housing and Dundas Valley Non-Profit Housing were amalgamated with the Local Housing Corporation to form CHH. Effective October 1, 2009, the ownership of First Place Hamilton was added to the CHH portfolio.

CHH is now the third largest social housing provider in Ontario, behind Toronto and Ottawa with a portfolio of over 7,000 market and rent geared to income units.

Since its inception, CHH has been governed by an independent Board of Directors. The Board is accountable to the shareholder for fulfilling strategic expectations concerning performance of the organization. The Board's role is to provide oversight and direction to the senior staff who manage CHH. The current Board is comprised of five City Councillors and four community representatives.

Initially, all housing functions including CHH, were within the City's Economic Development and Planning Department but were relocated to the Community Services Department in 2003. In October 2009, the Housing Division was separated into two divisions – CHH and the Housing and Homelessness Division. A Director was assigned to the Housing and Homelessness Division (now, Housing Services Division). A Chief Executive Officer (CEO) was assigned to CHH.

During the fall of 2008 and winter of 2009, a comprehensive operational review of CHH was undertaken by the Housing Services Division. SHS Consulting, in association with Refact Consulting, was retained to conduct the review. Report CS10037 – Comprehensive Operational Review of CityHousing Hamilton - was received by the

Emergency & Community Services Committee on April 7, 2010. Council directed staff to prepare an implementation strategy for the development of a governance framework, municipal accountability structure and shareholder direction for CHH.

Since the release of the report, Housing Services Division and Legal Services Division staff have undertaken a rigorous consultation process with key stakeholders including various City Departments such as Finance and Administration and Corporate Legal Services, CHH staff and the CHH Board of Directors.

POLICY IMPLICATIONS

There are no policy implications to Report CS12003.

RELEVANT CONSULTATION

To develop the Sole Shareholder Direction and the governance model, staff consulted the following individuals and groups:

- General Manager of the Community Services Department
- Treasurer of the City of Hamilton
- Chief Librarian of the Hamilton Public Library
- Finance and Administration, Corporate Services, City of Hamilton
- Information Services, City of Hamilton
- Human Resources, City of Hamilton
- CEO of CHH
- The Chair and Board of Directors for CHH

A common theme throughout the consultation process was the need for a clear definition of the roles and responsibilities for all key stakeholders involved in the operation and governance of CHH including City and CHH staff, the CHH Board of Directors and City Council.

All stakeholders agreed that:

- A Shareholder Direction is necessary.
- There is a need for a clear accountability framework and governance structure.
- The autonomous governance model was preferred and should be used as a vehicle to support the CHH renewal process and not diminish it.
- The City as sole Shareholder should support the operations of CHH as much as possible.

- Although the model is autonomous, CHH should have strong internal policies and procedures to support a transparent accountability framework.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The consultant's report, "Renewing CityHousing Hamilton" identified the development of the CHH governance structure as one of the priorities in the CHH renewal process. The following recommendations were included in the report:

That the City of Hamilton establishes a Shareholder Direction for CHH outlining:

- The role of the shareholder and their broad expectations for CHH;
- The role and authorities of the CHH Board in providing oversight for CHH, including a defined list of matters requiring shareholder approval;
- The role and authorities of City staff in assuming the operational duties of CHH;
- The role and authorities of City staff as Service Manager and advisor to the shareholder;
- The accountability measures required by the shareholder;
- The reporting expectations of the shareholder, including an obligation to approve an Annual Report; and,
- A mechanism for amending the Shareholder Direction as needed.

The consultants identified a lack of clarity in the working relationships that CHH has with other City Departments and services. An advantage of having CHH situated "in-house" is the opportunity to leverage expertise from other municipal services such as broader housing services, social services, finance and administration, information services, communications and staff training. However, because the working relationships are not clearly defined between CHH and City services, the consultants recommended that:

- That CHH enhance or establish working relationships with other City branches to help leverage available resources and expand expertise in the delivery of its housing services, and;
- CHH should facilitate Service Agreements that accurately reflect CHH expectations and are enforced.

The financial procedures for CHH have remained enmeshed with the City. The consultant recommended that CHH take a more direct role in managing its financial resources to:

- Move towards a full cost accounting model that reflects the true cost of operating CHH; and,
- Create a more CHH-centric model for budget development, one that:
 - fosters a bottom-up approach to identifying financial needs;
 - promotes key stakeholder input;
 - incorporates analysis by project and portfolio; and,
 - accurately reflects the operational realities of CHH.

The City, in its capacity as Shareholder of CHH, may decide to form an accountability committee comprised of CHH and City staff to monitor various aspects of the CHH operations. Membership could be comprised of:

- City Finance and Administration staff;
- City Housing Services Division staff in the role of Service Manager; and,
- CHH staff as appointed by the CHH Board.

There is no consistent form of governance for city housing authorities throughout the province. The devolution of social housing to the municipal level is now 10 years old and municipalities have had time to assess their governance structures. A number of municipalities are in the process of reassessing and changing their structures.

The City of Windsor has adopted the autonomous model and staff looked to the City of Windsor's Shareholder Direction as a starting point. The City of Windsor originally had the same model as currently exists in Hamilton. The rationale for change was to treat its own non-profit housing corporation the same as all other non-profit housing providers in the City – at arms length. The Cities of Ottawa and Toronto also have separate housing corporations.

The Region of Kitchener-Waterloo has gone in the opposite direction and has chosen to bring their non-profit housing back into the municipal structure. The Region of Peel has also brought their housing back into the municipal structure.

ALTERNATIVES FOR CONSIDERATION

A city-run model emerged as an alternative governance model during the consultation process. In this model, CHH and its Board of Directors would be dissolved and CHH

would become a Division within a City Department or a Department within the City structure. A Shareholder Direction would be unnecessary in this Model.

The City's two roles as owner and operator of CHH and that of Service Manager under the new *Housing Services Act* would be less clearly delineated.

CHH as a separate corporation has greater flexibility than if it were a part of the City's organizational structure including the ability to develop new housing.

Financial:

The City would continue to fund CHH in accordance with the Housing Services Act, 2011 and an Operating Agreement as recommended in Report CS12002 – Operating Agreement between CHH and the City of Hamilton, presented to E&CS Committee on May 14, 2012.

There are legal processes required to dissolve any corporation, some of which may involve incurring additional costs, especially if the corporation has assets to transfer to the City.

Staffing:

There are no staffing implications for this model as CHH staff would remain City employees.

Legal:

Legal Services would be involved in coordinating the processes in dissolving CHH Corporation.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ Council and SMT are recognized for their leadership and integrity

Financial Sustainability

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Social Development

- ◆ Everyone has a home they can afford that is well maintained and safe

Healthy Community

- ◆ Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix A to Report CS12003 – Declaration and Direction of the Shareholder

DECLARATION AND DIRECTION OF THE SOLE SHAREHOLDER
(the "Direction")

This Direction is effective as of September 30, 2012

FROM: City of Hamilton
TO: CityHousing Hamilton Corporation ("CHH")
AND TO: The Board of Directors of CHH

WHEREAS CHH is a social housing provider in the geographical area of the City of Hamilton, owning and operating approximately 7,079 units spread over 1,265 properties and providing housing to approximately 18,000 residents;

AND WHEREAS the City of Hamilton is the sole legal and beneficial shareholder of CHH owning one hundred (100) common shares in the capital stock of CHH;

AND WHEREAS the City of Hamilton is also the designated service manager for the purposes of the *Social Housing Reform Act*, S.O. 2000, c. 27, as amended;

AND WHEREAS Subsection 108(3) of the *Business Corporations Act*, R.S.O. 1990, c.B.16, as amended, provides that where a shareholder is the sole beneficial shareholder of a corporation, that shareholder may make a written declaration that restricts in whole or in part the powers of the Board of Directors to manage or supervise the management of the business and affairs of the corporation;

AND WHEREAS the City of Hamilton provides this Declaration in accordance with Subsection 108(3) of the *Business Corporations Act*, to restrict the powers of the Board of Directors to manage and supervise the management of the business and affairs of CHH as hereinafter provided in this Direction.

IT IS HEREBY DECLARED AND DIRECTED THAT:

ARTICLE 1 - INTERPRETATION

1.1 In this Direction, including its Schedules, unless the context requires otherwise, the following words, phrases and terms shall have the meaning ascribed to them as follows.

“Affordable Housing” means housing at a price/cost such that households within the 60th income percentile of income in Hamilton do not pay more than 30% of their gross income.

“Articles” means the Articles of Arrangement of CHH dated January 1, 2006, as amended from time to time.

“Annual Information Return” means the Ministry of Government Services, Ministry of Finance, Corporations Tax Branch Form 1 – Ontario Corporation, Annual Return form, required to be filed under the *Corporations Informations Act*, R.S.O. 1990, c.C.39, as amended.

“Annual Report” has the meaning ascribed to it in section 4.1 hereof.

“Auditor” has the meaning ascribed to it in section 5.9 hereof.

“Board” means the Board of Directors of CHH

“Chair” means the Chair of CHH.

“Chief Executive Officer” means the Chief Executive Officer of CHH.

“Chief Financial Officer” means the Chief Financial Officer of CHH.

“Citizen Member” means, with respect to a member of the Board or a candidate for such membership, an individual who is not a member of Council.

“City” means the City of Hamilton.

“City Manager” means the City Manager of the City of Hamilton.

“CityHousing Hamilton Corporation” and the “Corporation” means CityHousing Hamilton Corporation, an amalgamation of Hamilton Housing Corporation, Municipal Non-Profit (Hamilton) Housing Corporation, and Dundas Valley Non-Profit Housing Corporation, amalgamated under the *Business Corporations Act* on January 1, 2006, and having Ontario Corporation Number 1681566.

“Confidential Information” shall have the same meaning as ascribed to in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended.

“Corporate Strategic Plan” means the Strategic Plan approved by Council on June 11, 2008, as may be amended or revised from time to time.

“Council” means the Council of the City.

“Direction” means this shareholder’s declaration and direction as may be amended from time to time.

“Director” means a member of the Board of Directors of CHH.

“External Auditor’s Findings Report” means communication of matters identified by the Auditor during the financial statements audit which matters include misstatements, other than trivial errors, fraud, misstatements that might cause future financial statements to be materially misstated, illegal or possibly illegal acts or significant weaknesses in internal control.

“Financial Statements” means, for any particular period, audited or unaudited (as stipulated in the Direction), consolidated or unconsolidated (as stipulated in the Direction), comparative financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of change in financial position, a report or opinion of the Auditor (in the case of audited financial statements) and such other statements, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable law.

“Housing Portfolio” means all Housing Projects operated by CHH

“Housing Projects” means all or part of the residential accommodation located in one or more buildings used in whole or in part for residential accommodation, which may include commercial properties ancillary to the foregoing, including vacant land, if any, owned by CHH.

“MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, including any regulations thereunder and any successor legislation.

“Officer” means an Officer of the Corporation.

“Operating Agreement” means the Operating Agreement between the Service Manager and CHH, as may be amended or revised from time to time.

“Person” means an individual, sole proprietorship, partnership, unincorporated association, unincorporated organization, trust body corporate and a natural person in her or his capacity as trustee, executor, administrator or other legal representative.

“Resident Canadian” means an individual, who is, a Canadian citizen ordinarily resident in Canada or, in the alternative, a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (Canada), 2001, c.27 and ordinarily resident in Canada.

“Service Manager” means the City (in its capacity as service manager) as defined in the *Social Housing Reform Act*, S.O. 2000, c. 27, as amended.

“Shareholder” means the City (in its capacity as the sole legal and beneficial shareholder of CHH).

“Social Housing” means housing with rent geared to the household's income such that the household is not paying more than 30% of their gross income.

“Tenants” means the tenants of CHH (as that expression is defined in the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, as amended and including any regulations thereunder and any successor legislation thereto).

- 1.2 **Extended Meanings.** All words importing the singular number include the plural and vice-versa and words importing gender include all genders.
- 1.3 **Conflict between Articles and Direction.** In the event of a conflict between the provisions contained in the Articles and the provisions contained in this Direction, the provisions contained in the Articles shall prevail.
- 1.4 **Conflict between By-laws and Direction.** In the event of a conflict between the provisions contained in the By-laws and the provisions contained in this Direction, the provisions in this Direction shall prevail.
- 1.5 **Severability.** In the event that any provision of this Direction shall be invalid, illegal or unenforceable, it shall not affect the validity, legality or unenforceability of any other provision of this Direction.
- 1.6 **Proper Law.** This Direction shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

ARTICLE 2 - PURPOSES, OBJECTIVES, PRINCIPLES AND ACTIVITIES

- 2.1 **Purposes.** This Direction is made for the following purposes:

- 2.1.1 **Recognize Board Authority.** Recognize the Board's authority to manage or supervise the management of the business and affairs of the Corporation in accordance with this Direction.
 - 2.1.2 **Communicate Shareholder's Requirements.** Provide the Board with the Shareholder's requirements regarding the Corporation.
 - 2.1.3 **Accountability Framework.** Provide for a framework of accountability, responsibility and relationship between the Corporation and the Shareholder.
 - 2.1.4 **Public Information.** Inform the public of the Shareholder's requirements regarding the Corporation.
- 2.2 Principles.** CHH is integral to the quality of life, the infrastructure and overall well being of the community. The Shareholder directs that, in the best interest of CHH and the community of stakeholders whom CHH affects, all members of the Board shall cause CHH to conduct its affairs in a responsible and prudent manner and as part of that:
- 2.2.1 CHH should provide quality, affordable housing accessible to those in need who are eligible for social housing;
 - 2.2.2 CHH should conduct its affairs in accordance with the law, including without limitation the *Social Housing Reform Act*;
 - 2.2.3 CHH should conduct its affairs in accordance with its contractual obligations, including without limitation any applicable operating agreements.
 - 2.2.4 CHH should strive to deliver programs and services on a financially sustainable basis, using the most appropriate methods and structures for doing so.
 - 2.2.5 CHH should be familiar with the demographics and socio-economic status of the Tenants whom are the primary recipient of its programs and services.
 - 2.2.6 CHH should ensure that its policies and programs are consistent with the principles set out in this Direction.
 - 2.2.7 CHH should ensure that its policies and programs are not inconsistent with the Corporate Strategic Plan approved by the Council of the City of Hamilton.

2.2.8 CHH should be accountable for its delivery of housing services and programs in accordance with the principles and objectives outlined in this Direction.

2.3 Objectives. The objectives sought to be achieved by the Shareholder with this Direction are as follows:

2.3.1 CHH will utilize its assets for the purpose of providing housing.

2.3.2 CHH will utilize its assets for the purpose of meeting development objectives

2.3.3 The assets of CHH are expected to be maintained in good repair and the usefulness of the assets is expected to be maintained in order to provide quality housing.

2.3.4 The assets of CHH will be maintained, operated, managed and protected to optimize long-term sustainability.

2.3.5 CHH will meet the financial performance standards from time to time set by the Shareholder and the Board.

2.3.6 CHH will support and promote efforts aimed at providing Tenants with healthy, safe and sustainable communities.

2.3.7 CHH will protect Tenants from harassment, in an environment where human rights are upheld.

2.3.8 Subject to the terms of this Direction, CHH will be responsible for the management of its Housing Portfolio, for making policy and operational decisions and for being accountable for such policy and operational decisions.

2.3.9 CHH will act to mitigate financial risks to the Shareholder, while service standards and levels are maintained or enhanced.

2.4 Activities. Subject to CHH's financial resources and consistent with the overall principles and objectives outlined in this Direction, CHH may engage in any of the following business activities:

2.4.1 Own, operate or have an ownership interest in affordable rental housing, social housing, affordable-ownership housing, vacant land

and commercial properties ancillary to the foregoing and provide related services.

- 2.4.2 Develop new Housing Projects (subject to prior approval of the Service Manager).
- 2.4.3 Redevelop existing Housing Projects (subject to prior approval of the Service Manager).
- 2.4.4 Deliver program-related services on behalf of the Service Manager including but not limited to rent supplement programs, the completion of applicant/tenant income testing functions and a housing registry or wait list, as may be approved in writing by the Service Manager from time to time.
- 2.4.5 Deliver program-related services on behalf of other agencies, boards and commissions, as may be approved in writing by the Service Manager from time to time.

ARTICLE 3 - BOARD MATTERS

- 3.1 Board Responsibilities.** Subject to any matters requiring approval of the Shareholder pursuant to this Direction, the Board shall manage or supervise the management of the business and affairs of CHH in a manner consistent with the principles, objective and other provisions outlined in this Direction and the Operating Agreement. More specifically this shall include without limitation the following:
 - 3.1.1 Establishing the values, mission and vision for CHH and preparing strategic plans.
 - 3.1.2 Establishing policies to guide the operations of CHH.
 - 3.1.3 Approving an annual operating plan and budget for CHH.
 - 3.1.4 Approving an annual capital plan and budget for CHH.
 - 3.1.5 Monitoring the performance of CityHousing Hamilton Corporation in terms of its finances, costs, quality of Tenant services, building condition and community development.
 - 3.1.6 Making recommendations to the Shareholder, in consultation with the City Manager with respect to the recruitment of the Chief Executive Officer, including establishing the employment terms and conditions and performance expectations.

3.1.7 Making recommendations to the Shareholder, in consultation with the City Manager, with respect to the performance evaluation, discipline and termination of the Chief Executive Officer.

3.1.8 Communicating regularly to its key stakeholders on the performance and plans of CityHousing Hamilton Corporation.

3.2 Officers. The Board shall elect a Chair from among its Directors and other key Officers from among its members, providing that the Secretary need not be Director. In the event the Chair resigns or otherwise vacates the position of Chair prior to the end of her or his term, the Board shall elect a Chair from among its remaining Directors.

3.3 Employees.

3.3.1 **Chief Executive Officer.** The Chief Executive Officer (“CEO”) shall be a City of Hamilton employee but shall report to the Board with respect to all functional and operational matters of CHH. The CEO shall report to the City Manager administratively and organizationally. The City Manager shall have sole discretion for the discipline and termination of the CEO, notwithstanding such discipline and termination may be brought as a result of a recommendation of the Board.

3.3.2 **Chief Financial Officer.** The CEO shall recruit a Chief Financial Officer (“CFO”). The CFO shall be a City of Hamilton employee and shall report to the CEO. The CFO shall comply with and adhere to all City of Hamilton policies and procedures except to the extent that CHH had adopted its own policies with respect to financial, accounting or procurement in accordance with this Direction.

3.3.3 **Other Employees.** All other employees currently employed by the City of Hamilton for the purpose of operating, administering and supporting CHH (the “CHH Employees”) shall be City of Hamilton employees and shall report through an organizational structure approved by the CEO and the City Manager. All CHH Employees shall adhere to and be subject to the Human Resource and Corporate policies and procedures of the City of Hamilton, except to the extent that CHH has approved different policies and procedures in accordance with this Direction. In the event that CHH approves different policies and procedures in accordance with this Direction, such different policy and procedure shall be clearly communicated to the CHH Employees.

3.4 Conflict of Interest.

3.4.1 **Board Compliance.** The Directors and Officers shall comply with all applicable conflict of interest law including without limitation:

3.4.1.1 *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50, as amended, including any regulations thereunder and any successor legislation;

3.4.1.2 *Business Corporations Act*, R.S.O. 1990, c.B.16, as amended, including any regulations thereunder and any successor legislation.

3.4.1.3 *Social Housing Reform Act*, S.O. 2000, c. 27, as amended and includes any regulations thereunder and any successor legislation.

3.4.2 **Employee Compliance.** The CEO shall ensure that the CFO and CHH Employees comply with all applicable conflict of interest law and any related CHH and City of Hamilton policy in respect of conflicts of interest.

3.5 Remuneration. Except for remuneration from the City as approved by Council from time to time, the Directors shall serve as such without remuneration and no Director shall directly or indirectly receive any profit or payment of any nature from CHH on any basis including without limitation in the capacity of Officer. The foregoing is provided that Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties as Directors.

3.6 Removal of Directors. A Citizen Member may be removed from the Board by resolution of the Board, at a properly constituted meeting, for such reasons including, but not limited to:

3.6.1 Breach of the Director's obligations under the *Business Corporations Act*;

3.6.2 Conflict of interest that cannot be resolved in any other manner satisfactory to the Board and Shareholder;

3.6.3 Engagement in activities that are deemed by the Board and/or the Shareholder to be inconsistent with the principles, objectives and other provisions of this Direction;

3.6.4 Inability to meet the eligibility criteria of a Board member as described in sub-section 5.3 of this Direction;

- 3.6.5 Absence from three (3) consecutive meetings of the Board during any calendar year without written approval of the Board.

3.7 Regulatory Matters.

- 3.7.1 **MFIPPA.** CHH is subject to MFIPPA, which requires the Board to appoint a “head” for the purposes of disclosing or refusing to disclose “records” or “confidential information”, as those expressions are defined in the MFIPPA. CHH shall appoint the CEO as the head of CHH for the purposes of MFIPPA. The CEO may designate either the CFO or another CHH Employee to act as “head” for the purposes of MFIPPA.
- 3.7.2 **Other Legislation.** CHH is subject to a variety of legislation that governs its operations and which establishes responsibilities of the Board including without limitation the *Housing Services Act, 2011*, S.O. 2011, c. 6, the *Residential Tenancies Act*, S.O. 2006, c. 17, the *Human Rights Code*, R.S.O. 1990, c.H.19, and municipal property standards by-laws. In all such cases such legislation shall prevail over this Direction where there is a conflict between this Direction and such legislation. Should such a conflict occur, CHH shall contact the Shareholder to discuss the manner in which the interests of the Shareholder may best be protected.
- 3.7.3 **Annual General Meeting.** The Board shall hold an annual general meeting of the Shareholder of CHH not later than six (6) months after the end of CHH’s fiscal year.
- 3.7.4 **Payment of Auditor.** CHH shall satisfy payment of the remuneration of the Auditor.

ARTICLE 4 - BOARD ACCOUNTABILITY

- 4.1 **Annual Report.** The Board shall prepare and approve an “Annual Report” and submit and present the report to the Shareholder, at a meeting of the Shareholder for the purposes of receiving the report, which may be the Annual General Meeting. The Annual Report shall include:
- 4.1.1 Such explanations, notes and information as are required to account for any variances between the actual results from operations and the budgeted amounts set forth in the approved budget, and any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the Shareholder.

- 4.1.2 Information that is likely to materially affect the Shareholder's objectives.
 - 4.1.3 Information regarding any matter, occurrence or other event which is a material breach or violation of any law, including major findings of internal and other audits.
 - 4.1.4 Information on progress and accomplishments relative to the strategic business plan in place.
 - 4.1.5 Information regarding the performance of CHH such that the Shareholder can determine that the strategic business plan has been respected.
 - 4.1.6 Information regarding the performance of CHH can determine that this Direction has been respected.
 - 4.1.7 Such additional information as the Shareholder may specify from time to time.
- 4.2 Consistency with Other Reports.** CHH's Annual Report shall be consistent with, but not in lieu of, other reporting that the Service Manager may be required.
- 4.3 Strategic Business Plan.** Every four (4) years the Board shall provide the Shareholder, with a strategic business plan for CHH outlining goals, strategies and new directions for the following four (4) years.
- 4.4 Financial Statements.** The Board shall deliver to the Shareholder, as soon as practicable and in any event no later than the 31st day of May in the year following the end of each fiscal year, the CHH audited annual Financial Statements signed on behalf of the Board by two (2) members of the Board along with a copy of the Auditor's Report and the External Auditor's Findings Report and the management letter for consideration by the Shareholder. Further quarterly financial statements shall be delivered by the Board to the Shareholder not later than the second (2nd) month following the end of the quarter.
- 4.5 Accounting.** CHH shall adopt and use the accounting policies and procedures that may be approved by the Board from time to time and all such policies and procedures shall be consistent with the Service Manager requirements and in accordance with generally accepted accounting principles and applicable regulatory requirements.

4.6 Procurement. CHH shall adopt and use a Procurement Policy that is open, fair and transparent in keeping with the principles of public procurement. In the event that CHH fails to adopt such a Procurement Policy, it shall by default be subject to the Procurement Policy adopted by the City of Hamilton. Notwithstanding that CHH adopts its own Procurement Policy, the Shareholder may elect to require CHH to follow the Procurement Policy of the City of Hamilton at any time.

4.7 Access to Records. The Shareholder shall have unrestricted access to the books and record of CHH during normal business hours. The Shareholder shall treat all information of CHH with the same level of care and confidentiality as any Confidential Information of the Shareholder.

ARTICLE 5 - SHAREHOLDER MATTERS

5.1 Matters Requiring Shareholder Approval under the *Business Corporations Act*. CHH shall not, without prior written approval of the Shareholder, enter into any transaction or take any action that requires shareholder approval pursuant to the *Business Corporations Act*.

5.2 Shareholder to Appoint Directors. The Shareholder shall appoint the Board in accordance with this Article.

5.2.1 Eligibility for Board Membership. To be eligible to serve as a Director, an individual must not be statutorily disqualified from being a director under the *Business Corporations Act* or otherwise, and shall be a Resident Canadian, residing in or paying property taxes to the City. In addition, members of Council who act as Directors:

5.2.1.1 Shall have been elected to such office by qualified electors pursuant to the provisions of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, as amended or shall have been appointed as a member of Council pursuant to the provisions for filling vacancies contained in the *Municipal Act, 2001*, S.O. 2001, c.25, as amended.

5.2.1.2 Shall be approved as candidates for the Board by resolution of the Shareholder.

5.3 Qualification of Directors. In appointing Directors to the Board, the Shareholder shall give due regard to the qualifications of Citizens with the aim of ensuring that the Board collectively represents a range of relevant expertise including, but not limited to or exclusively, with respect to:

5.3.1 Social housing;

- 5.3.2 Community development;
- 5.3.3 Business and financial management;
- 5.3.4 Corporate governance responsibilities;
- 5.3.5 Organizational development;
- 5.3.6 Labour relations;
- 5.3.7 Legal and/or legal aid experience;
- 5.3.8 Landlord and tenant and social services matters.

5.4 Composition of the Board – The Board shall be composed of nine (9) Directors appointed by the Shareholder in accordance with the following:

- 5.4.1 Five (5) members shall be members of Council;
- 5.4.2 Four (4) members shall be citizens.

5.5 Appointment Process.

5.5.1 **Council Member Appointments.** Council members shall be appointed to the Board through a process approved from time to time by Council for such appointments.

5.5.2 **Citizen Appointments.** Other members of the Board who are not appointed to the Board through the appointment processes outlined in the immediate preceding paragraph shall be appointed to the Board by a resolution of the Shareholder through the process used by the City for citizen appointments to boards and agencies.

5.6 Vacancies. Subject to the relevant provisions of the *Business Corporations Act*, if a member of the Board ceases to be a Director for any reason, the Shareholder shall fill the vacancy created thereby as soon as reasonably possible from persons eligible for appointment as a Director pursuant to this Direction.

5.7 Term of Appointment. The term of appointment for all Board members shall be concurrent with the term of Council or until their successors are appointed. Directors, if qualified, may be reappointed to the Board.

5.8 Auditor. The Shareholder shall appoint an auditor which Auditor shall be licenced under the *Public Accounting Act, 2004*, S.O. 2004, c. 8 and who shall be engaged to prepare and provide the Auditor's Report, the External Auditor's Findings Report and the Annual Information Return. The Auditor shall also be engaged to prepare a management letter for the purposes of indicating to CHH specific ways to improve report and financial operations to help foster efficient management of the Corporation's resources. The management letter will also describe whether or not CHH has corrected

any identified deficiencies in legislative compliance and in internal controls.

5.9 Other Matters Requiring Shareholder Approval.

5.9.1 **Corporate Issues.** Without the prior approval of the Shareholder, CHH shall not:

5.9.1.1 Create any debt;

5.9.1.2 Proceed with redevelopment projects;

5.9.1.3 Pass or amend any by-laws with respect to the composition or number of Directors or the term of Directors;

5.9.1.4 Pass or amend any by-laws that are inconsistent with this Direction;

5.9.1.5 Take or institute proceedings for any legal reorganization of CHH.

ARTICLE 6 - CONFIDENTIALITY

6.1 Confidentiality.

6.1.1 **Confidentiality Exceptions.** The Directors, Officers and the Shareholder shall ensure that Confidential Information of CHH is not disclosed or otherwise made available to any Person, except to the extent that:

6.1.1.1 Disclosure to the CEO, the CFO, the CHH Employees, authorized agents of CHH, or other employees or agents of the Shareholder is necessary for the performance of any of their duties and obligations under this Direction; and

6.1.1.2 Disclosure is required in the course of judicial proceedings or pursuant to law.

6.2 **Requests to Disclose.** In the event any of the Directors, Officers or the Shareholder receives a request to disclose any Confidential Information pursuant to legal process of any kind, such Director, Officer or Shareholder shall notify CHH promptly so that CHH may seek a protective order or other appropriate remedy. In the event that such protective order

or other remedy is obtained, any of the Directors, Officers or Shareholder shall furnish only that portion of the Confidential Information which any of the Directors, Officers or Shareholder is/are advised by legal counsel is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to the Confidential Information.

ARTICLE 7 - EXCHANGE OF INFORMATION

- 7.1 Notice by CityHousing Hamilton Corporation.** Where Shareholder approval is required, the Board shall deliver reasonable advance notice in writing of the need for such approval and shall provide such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval.
- 7.2 General.** Any demand, notice or communication to be given under this Direction and not otherwise addressed in this Direction shall be in writing and signed by an authorized signatory and shall be personally delivered, mailed by prepaid mail, sent by facsimile or email as follows:

All demands, notices and communications shall:

- If delivered personally, be deemed to have been received upon receipt;
- If transmitted by facsimile or email, be deemed to have been given on the second (2nd) business day following the day they were sent; and
- If mailed, be deemed to have been given on the third (3rd) business day following the date they were mailed.

In the event of disruption of normal postal service, notice may be made by personal delivery, facsimile or email only.

ARTICLE 8 - ENFORCEMENT

- 8.1 Voting Power.** The Board and Shareholder shall at all times use their voting powers (whether expressed by way of vote or written consent) in accordance with the provisions of this Direction and for the purposes of effectuating the same.
- 8.2 Further Assurances.** CHH, upon the reasonable request of the Shareholder, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts and

assurances as may be required for the better carrying out and performance of all the terms of this Direction.

ARTICLE 9 - COMMENCEMENT, AMENDMENT and TERMINATION

- 9.1 Commencement.** This Direction shall come into effect as of July 1, 2012 and continue in effect until terminated by the Shareholder.
- 9.2 Amendment.** This Direction may be amended solely at the discretion of the Shareholder at a duly called meeting.
- 9.3 Termination.** This Direction may be terminated solely at the discretion of the Shareholder upon written notice to the Board of any such proposed termination.

CITY OF HAMILTON

Signed for and on behalf of the City of Hamilton as the sole legal and beneficial Shareholder by:

Signed _____
Name:
Title: Mayor

Signed _____
Name:
Title: City Clerk

Date _____

Date _____