

# Toronto Network of Non-Profit Housing Providers

An Initiative Supported by ONPHA



ONTARIO NON-PROFIT  
HOUSING ASSOCIATION

October 12, 2016

TO: Amy Buitenhuis, City of Toronto

FROM: The Toronto Network of Non-Profit Housing Providers

RE: **Multi-Residential Apartment Building (MRAB)  
License in the City of Toronto**

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The Toronto Network of Non-Profit Housing Providers would like to thank you for consulting with us as you consider the introduction of a Multi-Residential Apartment Building (MRAB) License.

Our network is committed to the provision of decent, well-maintained affordable housing for low- and moderate-income households. We own and manage almost 75,000 units in Toronto, about 25% of the total apartment universe in the City, and many of our members provide specialized housing and support services for tenants who need help to enjoy a successful tenancy. There are also several other non-profits in the City, including non-profit co-operatives, which are not part of our network. They too form an important fabric of needed affordable housing in our City.

Almost 80% of the households living in our housing receive a subsidy based on their income to make the housing affordable. Most social housing in Toronto is governed by either provincial legislation, the *Housing Services Act* (the *HSA*), or by federal, provincial or municipal operating agreements. While there is some variation between legislation and operating agreements, their principles are similar.

For example, under the provincial legislation, "A housing provider shall ensure that its housing projects are well managed, are maintained in a satisfactory state of repair and are fit for occupancy."<sup>1</sup> Furthermore, enforcement of the *HSA* lies with the housing system service manager, which also has the responsibility for

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<sup>1</sup> See Housing Services Act s.69(2)

paying operating and rent-geared-to-income subsidy to housing providers. Most provincially administered operating agreements have similar provisions.

Tenant rents make up the other part of our revenue along with commercial revenue and sometimes community donations. In Toronto, the service manager is the City of Toronto itself. Some housing providers with operating agreements also report through to the City, while others, mainly supportive housing providers, have agreements administered and regulated by the Ministry of Health and Long-Term Care (MOHLTC).

It is our understanding that the current discussion about landlord licensing had its genesis in a 2014 Council Report requesting that City staff review the “feasibility, merits and experience at other jurisdictions, in licensing landlords in Toronto....”<sup>2</sup> In the 2015 staff report, Council recommended that staff consider how the MRAB program could be implemented based on a cost-recovery model. Staff also prepared a jurisdictional scan in 2015 which noted that several jurisdictions have explored licensing and instead decided to engage in proactive inspection and enforcement (namely Guelph and Hamilton). The current Toronto MRAB Audit and Enforcement Program operates similarly after having considered the topic of licensing in 2007.

The premise of the City’s proposed licensing program is “Every tenant deserves a safe, secure and decent place to live”. As social housing providers, we agree with you wholeheartedly. Many providers include this goal either in a mission statement or in their Articles of Incorporation. Providing good housing – as opposed to making a profit – is the very reason for our existence. We believe that secure, decent and affordable housing is a human right and fundamental social determinant of health. It has the power to change lives and is the foundation of vibrant and successful communities. However, we are concerned that the new landlord licensing proposal has unintended consequences that will impair our members’ ability to carry out their mandates.

We believe that the current MRAB Audit and Enforcement Program has been working well because it:

- prioritizes buildings with the highest health and safety risks;
- brings inspectors into these buildings to both audit the building and hear tenant concerns;

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<sup>2</sup> Retrieved from: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.LS29>.<sup>4</sup>

- works with landlords and tenants to resolve problems;
- creates specific Action Plans to get work done; and
- promotes tenant and landlord education.

Therefore, the Toronto Network of Non-Profit Housing Providers recommends that the City of Toronto abandon their current proposal for MRAB licensing, and continue to monitor, regulate and enforce landlord standards through the mechanisms already in place. If the ultimate decision is made to adopt a policy of landlord licensing, we recommend that all non-profit landlords be exempt.

The remainder of this briefing note sets out our concerns and explanations related to this recommendation:

## 1. Overlapping Regulatory Regimes

All social housing providers have a duty to their residents. Most providers are already accountable to the City, through the Shelter, Support and Housing Administration division (SSHA) for the provision of well-maintained buildings. Under the terms of the *HSA*, the service manager already has powers to undertake audits and investigations. If a housing provider experiences one or more of twelve possible “triggering events”, the service manager has legal remedies which it can follow in order to address the situation. Examples of triggering events include the following:

- contravention of the Act or regulations;
- ceasing to carry out its (the housing provider’s) business; or
- failing to fulfill obligations.

If the housing provider has been triggered (via a formal letter), the service manager is required to use reasonable efforts to assist the housing provider to deal with the situation<sup>3</sup>. The service manager also has remedies at its disposal including:

- discontinuing or suspending the subsidy payments;
- performing any of the duties and exercising any of the powers of the housing provider;
- appointing an operational advisor for the housing provider;
- appointing an interim receiver or interim receiver and manager for the housing provider;

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<sup>3</sup> See “Assistance before triggering event”, *Housing Services Act* s. 84 (1)

- seeking the appointment by the Superior Court of Justice of a receiver or receiver and manager for the housing provider;
- removing some or all of the directors of the housing provider; and/or
- appointing one or more individuals as directors of the housing provider.

SSHA already has a protocol for ensuring providers' compliance with the *HSA* that includes regular operational reviews (which include on-site inspections), submission of annual reports and additional on-site inspections by City staff where there is reason to believe there have been breaches of the *HSA*.

SSHA also has dedicated staff with expertise in asset management who work with our members to review building condition assessments or capital repair plans providing technical advice to organizations that need support. In effect, including social housing providers in a licensing system would mean duplicating SSHA's work.

Additionally, our network members have been participating on multiple working groups over the past year hosted by SSHA to establish standards in six categories, including building maintenance and improvement. The Raising the Bar<sup>4</sup> initiative will involve housing providers being subject to common standards beginning in 2017. Our main concern is that the existence of an additional set of operating requirements or standards creates the danger that two departments of the City will claim administrative responsibility for a single issue but will apply different standards.

Beyond this, the 2015 Council report notes that the most basic licensing regime requires that property owners provide contact information to the municipality in order to create a database for current and prospective tenants. As most of our members are funded by the City, this information is already available internally.

If the point of the central database is help publicize information for the general public, this may not be the right approach for our members since most housing provider's buildings are not open for rent by the general public. For example, supportive housing is only for those applicants that meet the specific program conditions as determined by government funders. Those with mental health or addictions can only be housed through the Access

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<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=500bb18e8856f410VgnVCM10000071d60f89RCRD>

Point<sup>5</sup>, a centralized registry for households needing support services in order to live independently in the community.

Access to rent geared to income (RGI) housing, without supports, occurs via Housing Connections<sup>6</sup> (now an internal unit at the City) which already maintains a large database of addresses identifying building locations.

One premise behind the program is around 'safe' housing but it is not clear how a licensing regime will increase the City's ability to ensure that in our members' buildings. Some members offer housing specifically for women fleeing domestic violence and safety is extremely important – and perhaps involves a different matter than what is intended by the use of the word 'safe'. In these cases, the addresses of these buildings are not made public for good reason. A large database of addresses in a central registry would not be recommended for buildings like this.

## **2. Limitations of Current Budgets**

Most social housing providers are funded through a benchmarked formula set by the province about 10 years ago. These revenue and expense benchmarks are indexed annually and based on actual revenue and expense data in the past. The benchmarks though, serve as a limitation on the funding providers have available, including administration and maintenance. There is little flexibility to address unplanned expenses.

## **3. Funding for Training and Education**

The license contemplates landlords having a notification plan, a waste management plan, maintenance plan, cleaning plan and state of good repair capital plan. These are all good business practices and we are supportive of them. Many members already have these plans in place although some may not. Our network members engage with the service manager on some of these areas already or we take part in training offered by the Ontario Non-Profit Housing Association (ONPHA). However, providers needing to prepare one or more of these plans, would require additional resources and funding. Consultants would need to be hired and staff and tenant education programs instituted. We would need time to locate government funding to do the training and education that would be required to meet the conditions of the license.

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<sup>5</sup> <http://theaccesspoint.ca/>

<sup>6</sup> <http://www.housingconnections.ca/>

#### **4. Legislation Constrains Providers' Ability to Raise Additional Funds**

As noted above, almost 80% of social housing residents in Toronto pay a rent geared to their income. The rent calculation is fixed under the terms of the *HSA*, and surcharges are not permitted. The *HSA* gives our members no room to increase their spending above the rate of inflation. Again, if City building inspectors interpret the code more strictly or aggressively, our members will not have sufficient funding to respond to compliance orders.

#### **5. Capital Spending Plans (state of good repair plan)**

In co-operation with the City, most housing providers have already undertaken a building condition assessment (BCA) and established a capital spending plan. Funding provided under the federal/provincial 2009/10 Social Housing Renovation and Retrofit program (SHRRP) was critically important for many members. SHRRP funding allowed many members to complete a BCA relying on the right technical expertise. These BCAs have established a set of priorities for future improvements and/or renovations to buildings, and the spending plans set out how housing providers will budget the necessary funds so that they will be available on a timely basis. These BCA's require regular updating and our members undertake these updates as needed.

Even with BCAs and capital spending plans in place, it is no secret that social housing in Toronto is underfunded. Toronto Community Housing Corporation's (TCHC) well-publicized capital repair backlog is part of the equation. The other non-profits in our network have similar issues. In June 2015, Council requested the General Manager of SSHA to report on "the final recommendations for the capital repair financing strategy to support capital renewal of non-profit and co-op housing in Toronto"<sup>7</sup>. The report also noted that "BCA's for the non-TCHC portion of the portfolio make it clear that current reserves are grossly inadequate to fund the capital requirements of these buildings over the next thirty years". We do however, support the City's efforts to engage with the federal and provincial governments to help fund capital repair in the social housing sector.

We are also concerned that if a municipal licensing inspector insists on certain work being undertaken in advance of our members' planned date for

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<sup>7</sup> See "Transforming Social Housing: Renewing the Partnership with the City's Social Housing Providers". Retrieved from: <http://www.toronto.ca/legdocs/mmis/2015/cd/bgrd/backgroundfile-81272.pdf>

such work, it will reduce providers' ability to carry out the work in a cost-effective manner, including the opportunity to bundle projects in a larger portfolio. Instead, they will be forced into a piecemeal, reaction-based approach, which will be more expensive and less efficient over the long run.

## **6. Constrained Ability to Borrow**

Private-sector landlords have the ability to borrow additional capital funds and pass on the carrying cost to their tenants. This option is not available to social housing providers. First, their ability to borrow additional funds is prevented by the *HSA*. Second, they have no ability to increase their revenue to carry the cost of such borrowing, as discussed above.

We believe that this constraint on borrowing will mean that our members may be less able to respond to inspectors' orders than private-sector landlords, who can leverage their equity and pass these costs through to tenants. This would create an unfortunate and inaccurate public perception of social housing – one that may not reflect well on the City in its role as service manager.

## **7. Cost of Licensing Fees**

The proposed program involves a potential cost of \$12 to \$15 per unit annually. For some of our network's larger providers, this could mean additional costs of \$5,664 to \$7,080 per year. In other jurisdictions with a licensing system, the landlord is permitted to pass on the cost of the licensing fee to the tenants. This includes cities in the United States where some social housing providers are subject to a licensing regime. This is not an important issue in American cities, since subsidies are generally paid by the federal government, through the Department of Housing and Urban Development (HUD). However, as noted above, social housing providers in Toronto are subsidized by the City itself – there is minimal or no subsidy provided by federal or provincial governments.

Our members also have no ability to pass these costs to tenants. While private sector landlords can use the Landlord and Tenant Board as an avenue to raise rents above provincial increase guidelines, social housing landlords must comply with rent calculation formulas prescribed under the *HSA*. Without the ability to offset licensing costs through rent, they would have to constrain spending on existing operations in order to pay the fees or the City would have to increase subsidies by the amount of the fee. It is not clear that either of these approaches have any benefits for tenants. It would



also create a rotating door for funding, where one department of the City pays for the cost of another department.

## 8. Devaluation of Current Tenant Engagement

Community-based housing providers are engaged with their tenants already as it is often a cornerstone of the non-profit housing business model. Some social housing providers also have residents on their Board of Directors (housing cooperatives only have residents on their Boards.) In the case of TCHC, City Council appoints two tenants to the Board, following a democratic tenant vote. In addition, TCHC has an extensive tenant engagement program (mandated via the City's Shareholder Direction). Tenants are involved in some decisions about local capital-spending, while tenants on the Boards of all providers share in the responsibility of making overall planning decisions for their non-profits.

If City inspectors were to impose their own requirements for the maintenance of buildings, this will devalue our members' efforts to involve tenants in the eyes of the very people they are trying to empower.

## 9. Other Concerns:

The points we have noted above outline our concerns about unintended consequences for our members, their tenants and the City. In addition, we have a number of questions about the implementation of the proposed licensing regime.

- a) **Enforcement:** A regulatory regime depends on the credibility of its enforcement mechanism. The background material notes that the City contemplates laying charges up to \$100,000 or undertaking the work itself. The City may not have contemplated the administrative burden associated with enforcement. There may be situations where the City may have to put an unlicensed or underperforming housing operator out of business. What happens if the landlord won't pay the fine? Is litigation a possibility? It's also not clear what happens if charges are laid and the fine is collected. Will the City direct the funds back into the program?
- b) **Tension between revenue generation and tenant protection:** It is possible that the City may create a conflict of interest in the future. If the City finds it difficult to enforce the current rules and generates \$12 to \$15 per unit per year, there is nothing that guarantees that a bad landlord will make the situation better for their tenants. The City could keep giving



these buildings a poor rating and collecting the annual fee. The landlords could pass the cost on to their tenants in the confidence that the City will find it too onerous (or impossible) to take other measures to improve their performance. The tenants will pay the cost of the new fee structure, but will not see any improvements to the condition of their buildings.

- c) **Effectiveness:** The 2015 Council report included two attachments which listed jurisdictions where licensing has been instituted. What isn't clear from the Council report is if there was a systematic evaluation of the effectiveness of any of these systems in bringing about noticeable improvement to the tenants' situation. Perhaps a more in-depth review of other jurisdictions is warranted if this is the goal. What does improve the living conditions of renters? It is in the City's interest to undertake more research on the effectiveness of these types of programs before introducing licensing here.

## Conclusion

The Toronto Network of Non-Profit Housing Providers recommends that the City of Toronto abandon their current proposal for MRAB licensing, and continue to monitor, regulate and enforce landlord standards through the mechanisms already in place. If the ultimate decision is made to adopt a policy of landlord licensing, we recommend that all non-profit landlords be exempt.

As outlined above, the introduction of licensing will make it difficult for non-profit housing providers to operate within overlapping regulatory regimes, and will present significant financial challenges for the sector. It will also impair our ability to follow existing capital spending plans, and will potentially devalue the important tenant engagement that our members have worked to foster. Beyond this, we have several concerns about the enforcement and effectiveness of a new licensing regime, and about the tensions that may stem from it.

Our network is committed to the provision of decent, well-maintained, affordable housing. However, we believe that the City, by coordinating its initiatives and actions across departments, can more effectively achieve its goals and that this regulatory strategy needs to be developed within an integrated, systems approach. We are willing to support City initiatives that will reduce homelessness and promote the provision of housing for all people regardless of income, and look forward to working together to achieve our shared goal of improving the quality of life for our most vulnerable citizens.