



STAFF REPORT INFORMATION ONLY

Consistency of the Official Plan and the Toronto Housing Charter

Date:	December 8, 2009
To:	Planning & Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference Number:	pg10002

SUMMARY

At its meeting of September 16, 2009, the Planning and Growth Management Committee considered a motion from Councillor Di Giorgio concerning possible amendments to the Official Plan intended to facilitate Toronto Housing Charter opportunities for all residents of the City. Specifically, the motion addressed allowing the conversion of existing affordable rental units to provide affordable homeownership in various parts of the City, and stems from a recent Court decision pertaining to an OMB hearing on 1465 Lawrence Avenue West.

The Committee requested that the Chief Planner, in consultation with Legal staff, report on the matter. Affordable Housing Office staff has also been consulted during the preparation of this report. Planning and Legal staff consider that the Official Plan housing policies are in conformity and consistent with the broader provincial policy framework including the Provincial Policy Statement. As well, these policies are consistent with the intent of the Toronto Housing Charter. No amendments to the Official Plan are necessary or desirable to facilitate the implementation of the Toronto Housing Charter.

Financial Impact

This report has no financial impact.

DECISION HISTORY

This report was requested by the Planning and Growth Management Committee at its meeting on September 16, 2009, in response to a motion made by Councillor Di Giorgio

The Councillor's motion is presented in Attachment A of this report and the P&GMC Decision Document is provided as Item PG31.6 at the following link:

<http://www.toronto.ca/legdocs/mmis/2009/pg/decisions/2009-09-16-pg31-dd.htm>

Specifically, the Councillor requested that “the Chief Planning Official in consultation with Legal Staff bring forward a report to the next Planning and Growth Management Committee that explores suitable amendments to the Official Plan that facilitate and permit the Toronto Housing Charter opportunities for all residents of the City. Moreover, the report should also identify performance indicators in the Official Plan that would monitor the proposed amendment to ensure that homeownership opportunities are provided in areas where a range of housing types do not exist.”

In his letter, the Councillor suggests that the City's Official Plan housing policies may not conform with the Provincial Policy Statement (PPS), as in his opinion, they do not facilitate a full range of housing types. The letter suggests that these Official Plan policies do not allow residents to live in their neighbourhood of choice without discrimination as intended under the Toronto Housing Charter. It states that Section 3.2.8(b)(i) of the Official Plan “essentially violates the Toronto Housing Charter” and that an amendment is required “that recognizes the delicate balance that exists between City wide interests and local interest”.

The Planning and Growth Management Committee then referred Councillor Di Giorgio's communication to the Chief Planner and Executive Director, City Planning Division, for consideration and requested that a report to the Committee be prepared, in consultation with Legal staff, as soon as possible.

COMMENTS

The following discussion provides an overview of the Policy Planning Framework, Provincial Policy Statement, Official Plan housing policies and the Toronto Housing Charter, in the context of Councillor Di Giorgio's motion.

The Policy Planning Framework

When assessing applications for the conversion of rental housing, staff is required to consider the broader policy framework, which includes: the *Planning Act*, the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, the *Condominium Act*, the City's Official Plan Policies, Section 111 of the City of Toronto and its implementing by-law, and other related legislation and policies. More recent policies, such as the Toronto Housing Charter, have been drafted in accordance with the City's Official Plan and other elements of this broader framework.

The policy framework has been carefully developed over several years to ensure that each component complements and builds upon the related legislation and policies. The current policies represent an evolution of policy over a number of decades.

Planning Act

The *Planning Act* is the umbrella legislation. A number of sections of the *Planning Act* are relevant to this discussion, including Sections 1.1, 2, 3 and 51(24). Section 2 of the Act specifically states that “the council of a municipality...in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as, but not limited to...

- (h) the orderly development of safe and healthy communities;...
- (j) the adequate provision of a full range of housing;...
- (l) the protection of the financial and economic well-being of the Province and its municipalities;...
- (n) the resolution of planning conflicts involving public and private interests;
- (o) the protection of public health and safety;
- (p) the appropriate location of growth and development;”

Regard must be given to these and other criteria when considering rental housing conversion applications and section 2(j) is particularly relevant to this discussion.

More specifically, section 51(24) sets out criteria to be used when considering plans of subdivision and condominium, including conversion applications, and reads in part as follows:

“in considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience and welfare of the present and future of inhabitants of the municipality and to:

- a) the effect of development of the proposed subdivision (conversion) on matters of provincial interest as referred to in Section 2 of the *Planning Act*;
- b) whether the proposed subdivision is premature or in the public interest;
- c) whether the plan conforms to the official plan and adjacent plans of subdivision;
- d) the suitability of the land for the purposes for which it should be subdivided;...
- g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the building and structures proposed to be erected on it and the restrictions, if any, on adjoining land;”

Provincial Policy Statement (PPS)

The current PPS was issued on March 1, 2005 under the authority of Section 3 of the *Planning Act*. It provides policy direction on matters relating to land use planning that are of provincial interest. This 2005 version of the PPS applies to all matters or proceedings that commenced on or after its date of issuance.

Section 3 of the *Planning Act* was amended in 2005 to require that all decisions affecting planning matters “shall be consistent with” the PPS.

There are a number of policies in the PPS that are relevant to the provision of housing that is affordable to low and moderate income households. Section 1.4.3 of the PPS

directs municipalities “to provide for an appropriate range of housing types and densities to meet projected requirements of current and future residents of the regional market area.” The regional market area is a defined term which for the City of Toronto refers to the entire geographic area within the City of Toronto.

In an effort to ensure that the projected requirements of its current and future residents are adequately met, and to satisfy provincial requirements under the Growth Plan, City Planning staff has undertaken a number of population and housing projections. Specifically, these have projected that Toronto’s demand for rental accommodation could grow by about 93,500 households by the year 2031. However, very little rental housing has been produced in the City for approximately the last 15 years. It is estimated that about 95% of all housing constructed during that time has been in the ownership sector. With only 5% of units produced as rental housing, it is becoming increasingly more difficult for the City to ensure that a full range of housing, including rental, is being provided to meet the projected requirements of current and future residents of the City.

Official Plan Housing Policies

The City’s current Official Plan was adopted by City Council in November 2002. The housing and other policies of the Plan underwent a thorough and rigorous consultation and review process prior to their adoption. The housing policies contained in Section 3.2.1, along with other policies in the Plan, were appealed to the OMB. Modifications to several of the housing policies, including the condominium conversion policy (no. 8), were adopted by Council in December 2005. In October of 2006, the relevant housing policies were brought into force by the Ontario Municipal Board.

In formulating these policies, careful consideration was given to ensuring that they complied with Section 2 of the *Planning Act* and, in accordance with Section 3 of the *Planning Act*, were consistent with the Provincial Policy Statement, 2005. The City’s housing policies of the Official Plan could not otherwise have been approved by the Board.

Some of the most relevant policies of Section 3.2.1 of the Plan to this issue, are policies 1, 2 and 8 (or 3.2.1.1, 3.2.1.2 and 3.2.1.8). Policy 1 deals with the provision of a range of housing and reads as follows:

- “1. A full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents. A full range of housing includes: ownership and rental housing, affordable and mid-range rental and ownership housing, social housing, shared and/or congregate-living housing arrangements, supportive housing, emergency and transitional housing for homeless people and at-risk groups, housing that meets the needs of people with physical disabilities and housing that makes more efficient use of the existing housing stock.”

Policy 2 reads:

- “2. The existing stock of housing will be maintained and replenished. New housing supply will be encouraged through intensification and infill that is consistent with this Plan.”

To assist with understanding these two policies and how they are intended to be implemented, there is explanatory text which precedes the Official Plan housing policies. The first paragraphs of this text under Section 3.2.1, Housing, state that specific policies are needed when a particular type of housing is not being adequately supplied by the market to meet demand or maintain diversity in the stock. The explanatory text further states that housing gains are required through new supply and where new supply is insufficient, existing housing must be maintained. As mentioned above, rental housing is clearly a segment of the market that is not experiencing gains, and is actually on the decline in various parts of the City.

Over the last three census periods, the tenure split between rental and ownership has been gradually shifting in favour of the ownership market both across the City and in many neighbourhoods. This has been due primarily to the addition of new condominium housing as well as some rental units changing to owner-occupancy. The existing rental stock has also seen some losses due to conversion and demolition activity permitted by the City’s policies and legislation, as well as through Council and OMB decisions.

New supply for a specific housing demand, such as for less expensive ownership units, should be met through new construction and not at the expense of existing purpose-built rental housing that is in short supply. The market in Toronto has, in fact, been producing a wide range of housing options for the ownership market, including modestly-sized and priced units for first-time buyers. It is also producing a large quantity of such units in the form of condominium ownership; Toronto has the largest rate of new production of condominium units in North America. That has been the situation for a number of years now and the Official Plan recognizes this in stating in the explanatory text:

“the current production of ownership housing, especially condominium apartments, is in abundant supply. What is needed is a healthier balance among high rise ownership housing and other forms of housing, including purpose-built rental housing, affordable rental housing and affordable low rise ownership housing for large households with children and multi-family households. Policies, incentives and assistance are needed in order to respond to the City’s unmet housing needs, especially mid-range and affordable rental housing. More than half of Toronto households rent, yet no new rental housing is being built in quantity.”

While housing affordability in both the rental and ownership markets is a challenge in Toronto, it is not good planning to allow reductions in the stock of existing affordable rental housing that is not being provided by the market in favour of potentially modestly-priced condominium units that are being supplied elsewhere in the Toronto market.

If there is concern with the mix of tenures in a specific neighbourhood, the Official Plan direction is to address this through “intensification and infill that is consistent with this Plan.” Generally, where the market and good planning will support it, ownership opportunities can be added to neighbourhoods through intensification and infill. Conversion of badly needed rental housing stock would not be furthering the objectives of intensification or infill, nor of providing an adequate supply of rental housing or a full range of housing tenure within the City. Further reducing the rental housing supply in the City would exacerbate an existing market failure in order to address increased ownership housing, a sector in which the supply is already being addressed by the market.

Another relevant policy to this discussion is no. 8 (or 3.2.1.8), which is set out below:

- “8. The conversion to condominium, or the severance or subdivision, of any building or related group of buildings, containing six or more rental housing units will not be approved unless:
- a) all of the rental housing units have rents that exceed mid-range rents at the time of application, or
 - b) in Council’s opinion, the supply and availability of rental housing in the City has returned to a healthy state and is able to meet the housing requirements of current and future residents. This decision will be based on a number of factors, including whether:
 - i) rental housing in the City is showing positive, sustained improvement as demonstrated by significant net gains in the supply of rental housing including significant levels of production of rental housing, and continued projected net gains in the supply of rental housing;
 - ii) the overall rental apartment vacancy rate for the City of Toronto, as reported by the Canada Mortgage and Housing Corporation, has been at or above 3.0% for the preceding four consecutive annual surveys;
 - iii) the proposal may negatively affect the supply or availability of rental housing or rental housing sub-sectors including affordable units, units suitable for families, or housing for vulnerable populations such as seniors, persons with special needs, or students, either in the City, or in a geographic sub-area or a neighbourhood of the City; and
 - iv) all provisions of other applicable legislation and policies have been satisfied.”

As outlined above, the City has not been experiencing gains in rental supply. Given the lack of new rental construction, there has been increasing demand for the available stock. Vacancy rates have gone down dramatically in the last several years from a high of 4.3 % in 2004 to 2.0% in 2008.

As well, the conversion of rental housing, especially during a time of tighter supply could have a greater impact on more vulnerable populations mentioned in iii) above such as seniors, students or persons with special needs. Rental housing is also the first place of

residence for most newcomers to Canada. Often these vulnerable groups, particularly in the affordable housing stock, have few alternatives available to them.

A primary concern with the conversion option is that while it may offer homeownership to some, it has the effect of reducing the number of affordable rental units that are available on the market. Although existing tenants have the right to stay, new tenants moving into a converted condominium building have less security of tenure and can be evicted for the owner's or his/her family's use.

It is clear that Official Plan policy does allow for some conversions to occur where buildings contain a small number of units (less than six), or where all the units have rents above the mid-range levels. However, particularly in view of recent trends in the rental sector, it would be imprudent and would not be in the public interest to consider any change to the City policies that would place additional pressures on the remaining rental stock.

In tandem with the Official Plan policies, the City also employs its additional powers to prohibit and regulate changes to the rental stock under Section 111 of the *City of Toronto Act*. It is important to note that the Province has recognized the significant role that rental housing serves in accommodating Toronto's residents, which has been demonstrated by it granting this additional authority to the City to protect this important and limited resource.

Toronto's Affordable Housing Action Plan and Housing Charter

On August 5, 2009, City Council adopted the Housing Opportunities Toronto (HOT) Action Plan, 2010-2020. The Plan identifies the actions to be taken by the City and federal and provincial governments over the next 10 years to help people find and secure affordable and adequate housing (http://www.toronto.ca/affordablehousing/pdf/hot_actionplan.pdf).

Consistent with Housing Opportunities Toronto and with federal-provincial housing priorities, the City is also providing affordable ownership opportunities by delivering the homeownership component of the Canada-Ontario Affordable Housing Program. This is supporting affordable ownership activity by Toronto Community Housing, Options for Homes / Home Ownership Alternatives, Habitat for Humanity, and other organizations.

A key component of the Action Plan is the Toronto Housing Charter, which was also adopted by Council on August 5, 2009 (see Attachment B). As stated in the Plan, the Charter "brings together existing Council policy and sets out Toronto's aims and purposes in addressing homelessness and housing issues".

The Charter's Policy Statement is as follows:

"It is the policy of the City of Toronto that fair access to a full range of housing is fundamental to strengthening Toronto's economy, its environmental efforts, and the health and social well-being of its residents and communities."

To help achieve this policy, the Charter further states that, among other matters:

“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, regardless of whether they rent or own a home, or are homeless, have an equal stake and voice in Toronto’s future; and

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 same theme of providing a full range of housing that appears in the PPS and Official Plan housing policies is echoed in the Housing Charter. There is deliberate consistency in the way these policies have been developed, and are being interpreted.

To allow the conversion of the increasingly scarce stock of rental housing to condominium will threaten the availability of secure and affordable units for those who need it most. The Charter asserts that residents should be able to live in their neighbourhood without discrimination. By protecting the rental housing stock from conversion, the City is maintaining the availability of affordable rental housing for its residents now and into the future. Tenants in these existing rental buildings are assured that their housing is being maintained for them and other renters for years to come. However, any effort to convert the stock will in time further erode opportunities available to current and future tenants.

The Councillor has stated in his letter that “in the economic and development climate of today, Sec. 3.2.1.8(b)(i) ...essentially violates the Toronto Housing Charter” by not permitting homeownership to occur through conversion.

Tenants or potential tenants may face discrimination if they are denied the option of affordable rental accommodation as a result of conversion of rental housing to ownership housing. The Charter policy is intended to ensure that whether residents rent or own a home, they have a voice in Toronto’s future. A number of groups acting on behalf of Toronto’s tenants (e.g. the Federation of Metro Tenants’ Associations and the Advocacy Centre for Tenants of Ontario) have consistently and repeatedly voiced their support for the City’s rental housing preservation policies set out in the Official Plan, and their opposition to pressures to convert the stock.

The Charter also states that residents should have an affordable home. However, the conversion of rental to ownership housing would serve to threaten the affordability of the units. As rental apartments, these units are subject to the rules on rent increases set out under the *Residential Tenancies Act*. However, once converted to ownership, there is no

certainty that units would be sold at an affordable level and any agreements to secure affordability in private ownership stock may not be enforceable.

The City, in conjunction with the provincial and federal governments, invests substantial funds to construct new affordable rental units in Toronto. Any efforts that would jeopardize existing affordable housing would negate the investments and the gains being made by all three levels of government under the non-profit and private sector Affordable Housing Programs.

Aside from the Charter, the Housing Opportunities Toronto seeks to provide opportunities for residents in both the rental and homeownership markets. The Plan clearly outlines a number of City actions to encourage homeownership including:

- “52. Continue measures to improve the affordability of new homes for low-and-moderate income home buyers by:
 - a. Extending the City’s partnerships on affordable ownership housing initiatives, including the allocation of federal and provincial funding.
 - b. Extending City incentives to affordable homeownership initiatives through a revised Housing Incentives Bylaw.
 - c. Maintaining Toronto’s Land Transfer Tax Rebate for first-time home buyers.”

As well, the City has requested that the federal and provincial governments take further action to stimulate homeownership, including:

- “54. The provincial and federal governments continue to protect low-and-moderate-income purchasers from ownership housing cost increases through measures like the harmonized sales tax rebate on new homes.
- 55. The provincial and federal governments continue to provide funding for homeownership as part of affordable housing programs.
- 56. The Province provide Toronto the option of implementing statutory covenants to secure on-going affordability where City benefits have been provided.
- 57. The federal government increase funding to existing rehabilitation assistance programs to fully meet the needs of lower-income homeowners for home repairs and modifications.”

None of these proposals envision converting affordable rental housing to ownership. And recommendation 30 provides that City Actions should ensure that existing affordable rental housing is preserved by:

- “ 30.b. Consistently applying the Official Plan housing policies and the City’s conversion and demolition by-law to prevent the loss of rental housing when property owners apply for City approvals.”

Summary and Discussion

The preceding sections of this report indicate that rental housing supply in the City has not been increasing and the rate of new production has been steadily declining for a number of years. Ownership housing on the other hand has been growing both in terms of the number of units being constructed and its share of the market relative to rental housing. Rental vacancy rates have also dramatically dropped in the last few years. The vast majority of new housing, that is being rented is condominium registered, may not remain as rental housing in the long run and does not offer the same security of tenure for its tenants as conventional rental housing.

The housing policies of the Official Plan promote a range of housing types across the City and in individual neighbourhoods. The vast majority of new housing within established neighbourhoods consists of condominium and freehold units that have been created through infill and intensification. To ensure that there continues to be adequate rental opportunities for the City's current and projected residents, loss of the rental housing stock due to conversion or demolition needs to be restricted. This has been accomplished through the City's Official Plan policies and implementation of the Section 111 provisions.

The Official Plan has gone through a very extensive consultation and review process, and has been the subject of numerous pre-hearings and hearings before the OMB leading to its approval. The policies set out in the Plan are consistent with the Provincial Policy Statement and other provincial and City legislation and policies. Similarly, the recently approved Housing Charter has been developed to complement and support the policies of the Official Plan.

The City is providing affordable ownership opportunities by delivering the homeownership component of the Canada-Ontario Affordable Housing Program. This partnership with the federal and provincial governments is supporting affordable ownership homes sponsored by Toronto Community Housing, Options for Homes / Home Ownership Alternatives, Habitat for Humanity, and other organizations. The City is also pursuing other opportunities for affordable homeownership through implementation of the ten-year housing plan, Housing Opportunities Toronto. While staff agrees that more affordable ownership housing is certainly needed, it should not be provided at the expense of the dwindling rental stock. To do so, would reinforce the disadvantage experienced by Toronto's current and future tenants.

Conclusion

To allow the conversion of existing rental housing stock in order to provide ownership housing opportunities would be contrary to provincial policy, Toronto's Official Plan Housing policies, Housing Opportunities Toronto, and the Toronto Housing Charter.

City Planning and Legal staff consider that the Official Plan housing policies are in conformity and consistent with the broader provincial policy framework including the Provincial Policy Statement. As well, these policies do not conflict with or violate the intent of the Toronto Housing Charter. In fact, the Official Plan Housing policies are consistent with, and further the objectives of, the Toronto Housing Charter.

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ATTACHMENTS

Attachment A: Letter from Councillor Di Giorgio to Planning and Growth Management
Committee, dated September 16, 2009
Attachment B: Toronto Housing Charter

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Attachment A:

Letter from Councillor Di Giorgio to the Planning and Growth Management Committee, dated September 16, 2009

New Business

To: Chair of Planning and Growth Management Committee

A recent Divisional Court decision dated August 11, 2009 regarding a site specific application at 1465 Lawrence Ave. W. has identified a glaring weakness and significant shortcoming in the City official Plan. The decision also raises questions about the conformity of the City official Plan with the provincial Policy Statement as it relates to consistency of interpretation.

Historically, Provincial Policy Statements have been interpreted in a consistent manner. Under the Provincial Policy Statement, planning authorities shall provide for an appropriate range of housing types to meet the projected requirements of current and future residents of the regional market area.

While different areas of the regional market area (City of Toronto) face different challenges, municipalities normally adopt Official Plans that conform to the Provincial Policy Statement and that are clear, reasonable and attainable. Traditionally, municipalities have adopted Official Plans that promote strong, liveable and healthy neighbourhoods by encouraging a range of housing types.

In particular, Sec 3.2.1 of the Toronto Official Plan states that “Adequate and affordable housing is a basic requirement for everyone”. The Toronto Housing Charter recently adopted by Council expands on Sec 3.2.1 and is based on the principle that every resident is entitled to housing opportunities in the neighbourhood of their choice, without discrimination.

Under the Provincial Policy Statement, the City of Toronto as a planning authority must introduce Official Plan provisions that facilitate and permit a range of housing types consistent with the Toronto Housing Charter. Unfortunately, lost in all the rhetoric surrounding affordable housing opportunities for all residents in the City of Toronto is the fact that affordable home ownership in predominantly low income areas can only be supplied by the conversion of existing affordable rental units.

In the economic and development climate of today, Sec 3.2.8(b)(i) of the Official Plan essentially violates the Toronto Housing Charter. In my view, the adoption of the Toronto Housing Charter necessitates amendments to the Official Plan that facilitates housing opportunities for all residents. Sec 3.2.8(b)(i) of the official Plan requires an amendment

that recognize the delicate balance that exists between City wide interests and local interest. Council has in the past made similar amendments to the application of Sec 37 of the Planning Act to housing policies.

Therefore, I am requesting that the Chief Planning Official in consultation with Legal Staff bring forward a report to the next Planning and Growth Management Committee that explores suitable amendments to the Official Plan that facilitate and permit the Toronto Housing Charter opportunities for all residents of the City.

Moreover, the report should also identify performance indicators in the Official Plan that would monitor the proposed amendment to ensure that home ownership opportunities are provided in areas where a range of housing types do not exist.

Frank Di Giorgio

ATTACHMENT B:



Toronto Housing Charter Opportunity for All

Policy Statement:

It is the policy of the City of Toronto that fair access to a full range of housing is fundamental to strengthening Toronto's economy, its environmental efforts, and the health and social well-being of its residents and communities.

In that regard:

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, regardless of whether they rent or own a home, or are homeless, have an equal stake and voice in Toronto's future.

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.

All housing in Toronto should be maintained and operated in a good and safe state of repair.

Implementation:

The Toronto Housing Charter – Opportunity for All is designed to guide City Council and the City's public service in the provision of services and programs to residents.

The City of Toronto will consult and work with the Ontario Human Rights Commission to support the housing rights of residents and to advance the policies contained in the *Toronto Housing Charter*.

The City of Toronto will from time to time review the Toronto Housing Charter to reflect any amendments to complementary policies including Toronto's Official Plan, the Human Rights and Anti-Harassment Policy, and the Vision Statement on Access, Equity and Diversity.

A handwritten signature in black ink that reads "David Miller".

David Miller
Mayor

A handwritten signature in black ink that reads "Giorgio Mammoliti".

Councillor Giorgio Mammoliti
Chair, Affordable Housing Committee

August 5, 2009