

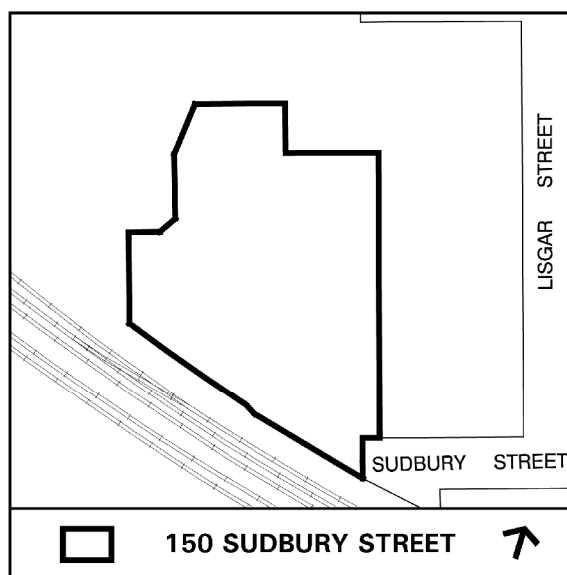
**150 Sudbury Street – City Initiated Official Plan  
Amendment to Allow Condominium-Registered Rental  
Units – Preliminary Report**

<b>Date:</b>	April 27, 2010
<b>To:</b>	Toronto and East York Community Council
<b>From:</b>	Director, Community Planning, Toronto and East York District
<b>Wards:</b>	Ward 18 – Davenport
<b>Reference Number:</b>	10 150937 STE 18 OZ

**SUMMARY**

This proposed Official Plan Amendment (OPA) was initiated by the City after January 1, 2007 and is subject to the new provisions of the Planning Act and the City of Toronto Act, 2006. The Executive Committee and Affordable Housing Committee both directed City Planning staff to immediately commence the Official Plan Amendment process. Given the timelines and meeting schedules, at the time of drafting this report, Planning staff did not have City Council direction to commence. Recommendations from the Executive and Affordable Housing Committees will be before City Council on May 11 and 12, 2010.

The proposed OPA amends the definition of “rental housing” for the lands known as 150 Sudbury Street in order for Toronto Artscape Inc., a non-profit housing provider, to benefit from municipal assistance through property tax waivers for the provision of affordable rental housing. City Council adopted amendments to the Zoning By-law for 150 Sudbury Street, which secures 20 artist live/work units with affordable rents (0.8 times the average CMHC market rent for the City). The Bills have not yet been placed before City Council for enactment. These 20 units are



proposed to be condominium registered units, which is explicitly prohibited by the definition of “rental housing” in the Official Plan. In order to benefit from municipal assistance for affordable rental units, while at the same time being condominium registered units, a site specific OPA is required for the 20 live/work units.

This report provides the background and rationale for the proposed site-specific OPA and seeks Community Council's directions on further processing of the applications and on the community consultation process. In consultation with the Ward Councillor, staff have scheduled a community consultation meeting for May 19, 2010. Staff is targeting the statutory public meeting for the June 22, 2010 meeting of Toronto-East York Community Council.

## **RECOMMENDATIONS**

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### **The City Planning Division recommends that:**

1. Staff be directed to schedule a community consultation meeting, together with the Ward Councillor, for the proposed site-specific Official Plan Amendment for the lands known as 150 Sudbury Street, attached as Attachment 1 to the report dated April 27, 2010, from the Director, Community Planning, Toronto and East York District.
2. Notice for the community consultation meeting be given to landowners and residents within 120 metres of the site.
3. Notice for the public meeting under the Planning Act be given according to the regulations under the Planning Act.
4. Should City Council, at its meeting on May 11, 12, 2010, not adopt the recommendations of the Executive Committee (Item EX43.29) and Affordable Housing Committee (Item AH12.5) respecting "Request for Property Tax Waiver for Artscape's Affordable 20 Units of Rental Housing at 150 Sudbury Street", staff be authorized to discontinue the Official Plan Amendment process for 150 Sudbury Street.

### **Financial Impact**

The recommendations in this report have no financial impact.

## **DECISION HISTORY**

### **Executive Committee Recommendations**

At its meeting on April 19, 2010 the Executive Committee adopted the recommendations listed below. The Executive Committee decision document can be accessed at this link: <http://www.toronto.ca/legdocs/mmis/2010/ex/decisions/2010-04-19-ex43-dd.htm>. These recommendations arose from recommendations from the Affordable Housing Committee, which can be accessed at this link:

<http://www.toronto.ca/legdocs/mmis/2010/ex/bgrd/backgroundfile-29373.pdf>.

1. City Council approve in principle the following recommendations as set out below:
  - a. Exempt the 20 affordable rental housing units to be operated by Toronto Artscape Inc. at 150 Sudbury Avenue from taxation for municipal and school purposes for a period twenty years.
  - b. Grant authority to the Director, Affordable Housing Office, in consultation with City Finance and City Legal, to amend the definition of "housing project" in By-law No. 282-2002, the City's Municipal Housing Facility By-law, to exempt the affordable rental housing units at 150 Sudbury from the restriction that affordable rental housing projects not be registered condominiums.
  - c. Grant authority to the Director, Affordable Housing Office to negotiate and enter into a municipal capital facility agreement with Toronto Artscape Inc., or such other corporation controlled by it, to secure the ongoing affordability of the rental housing units being exempted from taxation, on such terms and conditions, including the taking of security, as the Director considers appropriate and in a form satisfactory to the City Solicitor.
  - d. Grant authority to and direct the Director, Affordable Housing Office to execute, on behalf of the City, the municipal housing facility agreement, and any security or financial documents required thereby conditional to staff immediately bringing forward a site specific official plan amendment to allow condominium registered units owned by Artscape at 150 Sudbury Street as affordable rental housing to the Toronto East York Community Council.
2. City Council request the Chief Planner and Executive Director, City Planning, in consultation with Deputy City Manager Sue Corke and Director, Affordable Housing Office, to bring forward to Planning and Growth Management Committee any needed changes to the Official Plan to facilitate affordable rental housing owned by a non-profit housing provider within a registered plan of condominium on a City-wide basis.
3. City Council authorize the appropriate officials to take the necessary action to give effect thereto.

This report responds to the Committee direction to immediately bring forward a site-specific Official Plan Amendment.

### **Toronto and East York Community Council Recommendations**

At its meeting on January 12, 2010, the Toronto and East York Community Council considered a Planning Report (dated November 23, 2009), from the Director, Community Planning, which recommended, among other matters, amendments to the 150 Sudbury Street site specific Zoning By-law 1169-2009, Section 14, to amend the definition of “artist live/work studio” to mean,

a dwelling unit containing a studio space for the production of art and that a minimum of 20 of such units in Building A will be rented at no more than 0.8 times the CMHC average market rent for dwelling units of similar size in the City of Toronto and inhabited only by a working artist and his or her household.

City Council has yet to enact Bills amending the site specific By-law, but at its meeting on January 26 and 27, 2010, City Council adopted the recommendations contained in the Planning Report, which can be accessed at this link:

<http://www.toronto.ca/legdocs/mmis/2010/te/bgrd/backgroundfile-25914.pdf> City

Council’s decision document can be accessed at this link:

<http://www.toronto.ca/legdocs/mmis/2010/cc/minutes/2010-01-26-cc45-mn.htm>.

### **Ontario Municipal Board Decision**

On January 8, 2008 the Ontario Municipal Board approved By-law 1169-2009 with respect to the lands at 150 Sudbury Street. The proposed development consisted of 2 buildings, both of which are under construction. As part of the Ontario Municipal Board decision the developer agreed to sell to either the City, or an arts organization approved by the City, 5,200 square meters of space in the first building, to be used as artist live/work studios. The space was to be sold to the City at below market costs to ensure that the units were affordable.

### **ISSUE BACKGROUND**

The Affordable Housing Committee on April 8, 2010, considered a letter (dated March 22, 2010) from Councillor Adam Vaughan, requesting support for recommendations to implement the intent of the Council-approved settlement for 150 Sudbury Street by implementing a waiver of property taxes for affordable housing developed at this location by Artscape. Councillor Vaughan’s letter to the Affordable Housing Committee can be accessed at this link: <http://www.toronto.ca/legdocs/mmis/2010/ah/bgrd/backgroundfile-28680.pdf>

This City-initiated OPA is in response to Councillor Vaughan’s motion and the Affordable Housing Committee’s recommendations to the Executive Committee.

### **Provincial Policy Statement and Provincial Plans**

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council’s planning decisions are required to be consistent with the PPS.

## Official Plan

Section 3.1.2 of the Official Plan (“OP”), Housing, requires the provision of a full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods.

Policy 3.2.1.4 outlines how the City can provide assistance in the production of affordable housing. Policy 4 states:

“Where appropriate, assistance will be provided to encourage the production of affordable housing either by the City itself or in combination with senior government programs and initiatives, or by senior governments alone. Municipal assistance may include:

- a. in the case of affordable rental housing and in order to achieve a range of affordability, measures such as: loans and grants, land at or below market rates, fees and property tax exemptions, rent supplement and other appropriate assistance; and
- b. in the case of affordable ownership housing provided on a long term basis by non-profit groups, especially affordable low rise family housing, measures such as: land at or below market rate, fees exemption and other appropriate forms of assistance; and
- c. with priority given to non-profit and non-profit co-operative housing providers.”

The Housing policies also include Housing Definitions, two of which are listed below:

**“Rental housing** is a building or related group of buildings containing one or more rented residential units, including vacant units that have been used for rented residential purposes, and units that are being or have last been used for rented residential purposes in equity co-operative or co-ownership housing, but does not include condominium-registered or life-lease units.”

**“Affordable rental housing and affordable rents** means housing where the total monthly shelter cost (gross monthly rent including utilities – heat hydro and hot water – but excluding parking and cable television charges) is at or below one times the average City of Toronto rent, by unit type (number of bedrooms), as reported annually by the Canada Mortgage and Housing Corporation.”

## Garrison Common North Secondary Plan

The property is located within the Garrison Common North Secondary Plan area. Among other major objectives of the Secondary Plan, it states that new development within Garrison Common North will provide for a range of housing types in terms of size, type, affordability and tenure, to encourage households of all sizes to locate within Garrison Common North. The Secondary Plan can be accessed at this link:

[http://www.toronto.ca/planning/official\\_plan/pdf\\_secondary/14\\_garrison\\_common\\_june2006.pdf](http://www.toronto.ca/planning/official_plan/pdf_secondary/14_garrison_common_june2006.pdf).

## **Zoning**

The property is subject to the site specific zoning By-law 1169-2009. The by-law can be accessed at this link: <http://www.toronto.ca/legdocs/bylaws/2009/law1169.pdf>

## **Reasons for the Site-Specific Official Plan Amendment**

The 20 artist live/work studio units owned by Artscape at 150 Sudbury Street are intended to be units within a registered plan of condominium, for which an application for plan of condominium has not yet been submitted to the City. In accordance with the recommendations adopted on April 8, 2010 by the Affordable Housing Committee and by Executive Committee at the April 19, 2010 meeting, the Municipal Housing Facilities By-law is to be amended to consider the 20 units as affordable rental housing and to provide a property tax exemption for 20 years notwithstanding that the units will be condominium-registered. That By-law otherwise excludes condominium-registered units as rental housing. Because the Official Plan definition of “rental housing”, quoted above, explicitly excludes condominium-registered units, the Municipal Housing Facilities By-law cannot be amended without first amending the Official Plan to allow rental housing to be condominium-registered at this location.

The 20 artist live/work studio units will have rents set at a maximum of 0.8 times the affordable rent levels as defined in the Official Plan, which means rent levels at 0.8 times the CMHC average market rent for the City. Artscape has advised that the tenants of the artist live/work studios will be occupying the units in August, 2010, meaning that if Artscape is to obtain property tax exemptions from the outset, this site-specific OPA must be adopted at the July, 2010 meeting of City Council.

## **COMMENTS**

### **Draft Official Plan Amendment**

The Official Plan definition of “rental housing” explicitly excludes condominium-registered units as a result of legal advice received during the formulation of the Plan. That legal advice was to the effect that a Section 37 or other agreement which attempts to secure rental housing cannot over-ride the rights conferred by the Condominium Act, which means that despite the agreement provisions, individual condo-registered units could be sold and the municipality may not be able to enforce the agreement terms securing the units as rental units.

City Planning staff does recognize that the risk of condo units secured in a Section 37 or other agreement as rental housing being individually sold would be lessened (although not eliminated altogether) if the condo units were owned by a non-profit housing provider. Non-profit housing properties have been sold in the past and will be in the future, and there is less opportunity for government review of such sales if they occur after the expiry of housing subsidy agreements. Such sales result in the permanent loss of rental housing on that property and in the local community. In the particular circumstances of the Artscape proposal, however, the risk would be at a level acceptable to City Planning staff, and thus the site-specific amendment is supported by City

Planning staff, subject to including an additional condition extending the term for which the units are secured as rental housing.

If the secured rental units were purpose-built rental units, i.e. not condo-registered, they would be protected as rental units from demolition and conversion to condo units, even after the expiry of a Section 37 agreement or a housing agreement, by the City's Official Plan policies and the By-law on rental demolition and conversion (the "Section 111 By-law"). Such protection, subject to City Council decisions, would last for as long as the rental demolition and conversion policies and By-law remained in effect. Thus, once the term for which the units were secured as affordable rental housing had expired, the units would continue to be protected as rental housing units (even if not at affordable rents). However, condo-registered units could not be protected as rental housing by the Official Plan or the Section 111 By-law once the term of the affordable rental agreement had expired (typically 20-25 years), and could then be sold individually.

In the general case, the City's Section 37 agreements already deal with situations where rental housing units are secured in buildings that have condominium registration. In such situations, the condominium registration excludes the rental housing units and agreements may be required to provide easements or shared use of parking, waste management pick-ups, etc. To operate smoothly, the purpose-built rental units are usually contiguous and are located either on the same floors or in a separate wing or down one side of the building. Due to Artscape's particular circumstances at 150 Sudbury, including a change in the mix of their ownership and rental units, Artscape has advised that being unable to condominium-register the rental units would be problematic.

If the City allows rental units owned by a non-profit housing provider to be condo-registered, both the building developer and the non-profit housing provider will benefit from the convenience, reduced up-front costs, and increased design flexibility, as compared to a building that contains both condo-registered ownership units and purpose-built rental units. However, in allowing condo-registered rental units, the City (and the public) lose the ability to protect the affordable rental units that will have usually also received public subsidies, once the affordable rental housing term expires (often 20 or 25 years). Staff is therefore recommending that the public interest be further protected in the site-specific Official Plan Amendment by adding a requirement that the rental tenure of the units be extended beyond the initial term so that the two terms combined would total 50 years, and be secured in one or more suitable agreements.

In the shorter term, the proposed draft site-specific OPA could be seen as a precedent for developers and non-profit housing providers who see ownership of condominium units by non-profit organizations as a more convenient means of providing affordable rental housing than the conventional approach of requiring the units to be purpose-built (not condominium-registered) rental housing. Any future proposals to the City to allow condo-registered rental units, would need to be reviewed on a case-by-case basis.

The three conditions upon which staff would support the securing of condominium-registered units as rental units at 150 Sudbury Street are as follows:

- a. the units are secured in one or more agreements as affordable rental units for at least 20 years, in accordance with the Official Plan definitions (as amended to allow condo-registered units);
- b. the units are owned by a non-profit housing provider (Toronto Artscape Inc. fulfills this condition); and
- c. the units are secured in one or more agreements as rental housing for an additional term beyond the initial affordable rental housing term, for a combined total term of at least 50 years.

The Municipal Housing Facility By-law and related housing agreement intended to be implemented by the Affordable Housing Office for the affordable rental units on this site could secure these terms.

The site-specific conditions recommended for this site would not preclude consideration of other terms and conditions in a general Official Plan Amendment to allow condo-registered units owned by non-profit housing providers as rental housing units. More time is needed to fully analyze and consider the many implications and options available to the City for such a general amendment.

### **Issues to be Resolved**

Additional issues may be identified through the further review of the proposed amendment, agency comments and the community consultation process.

### **CONTACT**

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### **SIGNATURE**

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Raymond David, Director, Community Planning,  
Toronto and East York District

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### **ATTACHMENT**

Attachment 1: Draft Official Plan Amendment



## **Attachment 1: Draft Official Plan Amendment**

Authority: Toronto and East York Community Council Item ~ [or Report No. ~, Clause No. ~] as adopted by City of Toronto Council on ~, 20~

Enacted by Council: ~, 20~

### **CITY OF TORONTO**

**Bill No. ~**

**BY-LAW No. ~~20~**

**To adopt an amendment to the Official Plan  
for the City of Toronto  
respecting the lands known municipally in the year 2009, as  
150 Sudbury Street**

WHEREAS authority is given to Council under the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law;

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The attached Amendment No. 121 to the Official Plan is hereby adopted pursuant to the *Planning Act*, as amended.

ENACTED AND PASSED this ~ day of ~, A.D. 20~.

DAVID R. MILLER,  
Mayor

ULLI S. WATKISS,  
City Clerk

(Corporate Seal)

**DRAFT AMENDMENT NO. 121 TO THE OFFICIAL PLAN**  
**LANDS MUNICIPALLY KNOWN IN THE YEAR 2009 AS**  
**150 SUDBURY STREET**

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The Official Plan of the City of Toronto is amended as follows:

1. Chapter 6, Section 14 (Garrison Common North Secondary Plan) is amended by adding the following to the end of Sub-Section 10.2, Site and Area Specific Policies (Area 2):

“The following policies also apply to the lands known in the year 2009 as 150 Sudbury Street and shown as A on Area 2 Map above:

  - (a) The 20 artist live/work studio units initially provided as affordable rental housing may be registered as condominium units, provided such units are:
    - (i) owned by a non-profit housing provider;
    - (ii) secured in one or more agreements with the non-profit housing provider as affordable rental housing for a term of at least 20 years; and
    - (iii) secured in one or more agreements with the non-profit housing provider as rental housing for an additional term beyond the initial term for which they are secured as affordable rental housing, for a combined total term of 50 years.
  - (b) The 20 artist live/work studio units on these lands will be considered to be rental housing for the purposes of the Official Plan.”
2. The Area 2 Map (second of two Area 2 maps) is amended to show the location of 150 Sudbury Street as shown on attached Schedule 1.

## Schedule 1

