

**38 Abell Street (formerly known as 150 Sudbury Street) –  
City Initiated Official Plan Amendment to Allow  
Condominium-Registered Rental Units – Final Report**

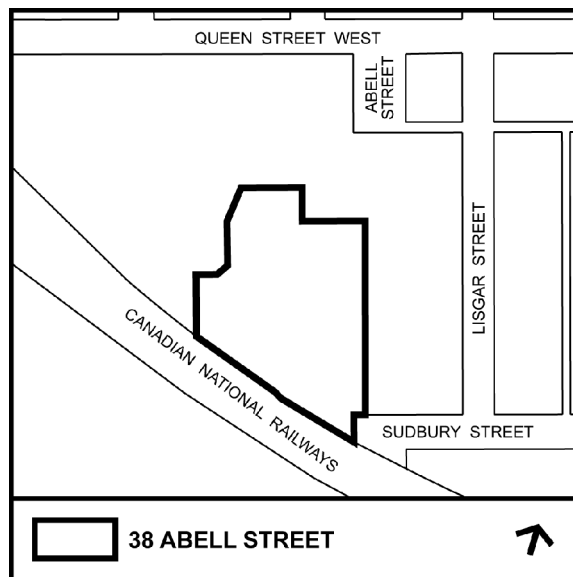
<b>Date:</b>	May 26, 2010
<b>To:</b>	Toronto and East York Community Council
<b>From:</b>	Director, Community Planning, Toronto and East York District
<b>Wards:</b>	Ward 18 – Davenport
<b>Reference Number:</b>	10 150937 STE 18 OZ

**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*. At its meeting on May 11 and 12, 2010, City Council directed City Planning staff to immediately commence the Official Plan Amendment process.

The proposed OPA amends the definition of “rental housing” for the lands known as 38 Abell Street (formerly 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, the proposed site specific OPA is required for the 20 live/work units at 38 Abell Street.

This report discusses the issues and recommends approval of the City initiated amendment to the Official Plan.

## **RECOMMENDATIONS**

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

1. City Council amend the Official Plan, for the lands at 38 Abell Street substantially in accordance with the draft Official Plan Amendment attached as Attachment No. 1 to the report dated May 26, 2010 from the Director, Community Planning, Toronto and East York District.
2. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Official Plan Amendment referred to in Recommendation 1, above, as may be required.

### **Financial Impact**

The recommendations in this report have no direct financial impact.

In a report to the Affordable Housing Committee (dated June 1, 2010), the Director, Affordable Housing Office (AHO), recommended property tax exemptions for the 20 affordable housing units to be owned and operated by Toronto Artscape Inc. (“Artscape”), which entails direct financial impacts. In the June 1, 2010 report, the Director, AHO recommended amendments to the City’s Municipal Housing Facilities By-law and describes the financial impacts associated with the property tax exemption over the 25-year term.

## **DECISION HISTORY**

### **City Council**

At its meeting on May 11, 12, 2010, City Council adopted the recommendations from the Executive and Affordable Housing Committees. City Council amended the Executive Committee recommendations by extending the term to 25 years of property tax waivers from the originally recommended 20 years. City Council’s decision document can be accessed at this link: <http://www.toronto.ca/legdocs/mmis/2010/cc/decisions/2010-05-11-cc49-dd.htm>. City Council adopted the following recommendations (EX43.29):

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 Street from taxation for municipal and school purposes for a period of 25 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.

Parts 1a to d above are conditional on 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 thank Toronto Artscape Inc. for its work in making new affordable housing opportunities available for artists in Toronto and request Toronto Artscape Inc. to work with the Affordable Housing Office to expand its efforts to all parts of Toronto to meet the housing needs of low and moderate income artists.
4. City Council authorize the appropriate officials to take the necessary action to give effect thereto.

This report responds to the Council's direction (in Recommendation 1, above) to immediately bring forward a site-specific Official Plan Amendment.

### **Executive Committee Recommendations**

At its meeting on April 19, 2010 the Executive Committee adopted the recommendations from the Affordable Housing Committee. The 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>.

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

At its meeting on May 25, 2010, Toronto and East York Community Council (TEYCC) considered Planning staff's Preliminary Report dated April 27, 2010 and adopted the recommendations. The Preliminary Report can be accessed at this link:

<http://www.toronto.ca/legdocs/mmis/2010/te/bgrd/backgroundfile-30270.pdf>

At its meeting on January 12, 2010, the TEYCC 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. These Bills are expected to be before City Council at its meeting on July 6 and 7, 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 Section 37 community benefits approved in the Ontario Municipal Board (OMB) decision the developer agreed to sell at a specified cost 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 (38 Abell Street) by implementing a waiver of property taxes for affordable housing

developed at this location by Artscape. Artscape had previously purchased the space approved by the OMB for artist live/work studios. 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 the Affordable Housing Committee's recommendations to the Executive Committee, prompted by Councillor Vaughan's letter referenced above.

## **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.

The proposed Official Plan Amendment is consistent with the PPS and conforms to the Growth Plan for the Greater Golden Horseshoe.

## **Official Plan**

Section 3.2.1 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>

### **Proposed Site-Specific Official Plan Amendment**

The 20 artist live/work studio units owned by Artscape at 38 Abell Street are intended to be units within a registered plan of condominium, for which an application for plan of condominium was submitted to the City on April 28, 2010 (Application No. 10-165675 STE 18 CD). In accordance with the recommendations adopted by City Council at its meeting on May 11, 12, 2010, the Municipal Housing Facilities By-law (282-2002) is to be amended to consider the 20 units as affordable rental housing and to provide a property tax exemption for 25 years notwithstanding that the units will be condominium-registered. The Director, AHO recommended amendments to the Municipal Housing Facilities By-law in a report dated June 1, 2010 to the Affordable Housing Committee. By-law 282-2002 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. These rent levels will be secured through

the municipal housing project facility agreement, which the City will enter into with Artscape (as described in the June 1, 2010 report from the Director, AHO).

## **Community Consultation**

On May 19, 2010, City staff hosted a community consultation meeting at the Gladstone Hotel. A representative from Artscape and one area resident attended the meeting. The comment staffed received from the area resident in attendance was that the proposed affordable live/work studios are essential to keeping artists in the area.

## **Agency Circulation**

The application was circulated to all appropriate agencies and City divisions. Responses received have been used to assist in evaluating and refining the city initiated amendment to the Official Plan.

## **COMMENTS**

### **Proposed 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 staff, and thus the proposed 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, to which Artscape has consented.

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 Section

111 By-law at any time, so, even assuming that the owner abides by the terms of the agreement, once the agreement has expired, the owner would be free to remove the units from the rental market.

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 efficiently, 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 38 Abell Street, 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.

Aside from the risk discussed above of losing the units as rental units despite being secured as rental units in an agreement, 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, and unlike the situation with purpose-built 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. Artscape has agreed to this provision.

In the shorter term, the proposed 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 38 Abell Street are as follows:

- a. the units are secured in one or more agreements as affordable rental units for at least 25 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.

These conditions are contained in the proposed site-specific OPA. The site-specific conditions recommended 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.

### **Municipal Housing Facility By-law (By-law 282-2002)**

Among other matters, the City's Municipal Housing Facility By-law No. 282-2002 establishes the City's definition for affordable housing according to the *Municipal Act, 1990*, as amended. The By-law can be accessed at this link:  
<http://www.toronto.ca/legdocs/bylaws/2002/law0282.pdf>

In order to implement Council's May 11, 12, 2010 direction with respect to 38 Abell Street, AHO staff reported to the June 4, 2010 meeting of the Affordable Housing Committee recommending amendments to the City's Municipal Housing Facility By-law. Together with the proposed Official Plan Amendment, the proposed amendments to the Municipal Housing Facility By-law, will provide Artscape with the municipal assistance to provide affordable rental housing.

### **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  
38 Abell 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)

**AMENDMENT NO. 121 TO THE OFFICIAL PLAN**  
**LANDS MUNICIPALLY KNOWN IN THE YEAR 2009 AS**  
**38 ABELL 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, clause 2 (Area 2):

“The following policies also apply to the lands known in the year 2009 as 38 Abell 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 25 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 38 Abell Street as shown on attached Schedule 1.

Schedule 1

