

**Ontario Human
Rights Commission**

**Commission ontarienne
des droits de la personne**



**Submission from the
Ontario Human Rights Commission**

To the

**Statutory Public Meeting for the
Draft City-wide Zoning By-law**

**City of Toronto Planning and Growth Management Committee
Report No. PG21.1**

March 6, 2013

Introduction

The Ontario Human Rights Commission (OHRC) is pleased to provide input on the City of Toronto's Draft Zoning By-law. But we remain concerned that some central human rights issues are not addressed.

We commend the City for its Housing Charter, which reflects a respect for human rights in its basic principles, and recognizes that "all residents should be able to live in their neighbourhood of choice without discrimination." These positions are consistent with Ontario's *Human Rights Code* (the *Code*), and the OHRC's *Policy on Human Rights and Rental Housing*. The challenge, however, is to apply this vision to planning activities – something the City of Toronto has not yet achieved in its latest revision of its City-wide Zoning By-law.

We believe that the City-wide Zoning By-law falls short of both the *Code* and the City's Housing Charter because it:

- Retains a requirement for minimum separation distances between group homes, and
- Does not allow rooming houses as of right in most parts of Toronto.

Affordable housing and the *Code*

Certain *Code*-protected groups are more likely to require low-cost, affordable and assistive housing, such as group homes, residential care homes and rooming houses. This is particularly true with respect to age, sex, gender identity and expression, receipt of public assistance, disability (including mental health), marital and family status, citizenship, place of origin and race. People in these groups are negatively and disproportionately affected when this housing is lost or restricted.

Community organizations, advocacy groups, the Human Rights Legal Support Centre and the OHRC have brought these matters to the attention of the City numerous times over several years. In recent discussions with HomeComing Community Choice Coalition, the Advocacy Centre for Tenants Ontario (ACTO), and the Centre for Equality Rights in Accommodation (CERA) and other groups, we heard continuing concerns that Toronto's zoning by-laws were hampering the ability of many vulnerable people to call Toronto neighbourhoods home.

The City's planning expert says changes are needed

The City recently engaged a planning expert, Sandeep K. Agrawal, PhD, AICP, MCIP to look at some of the human rights issues the OHRC has raised from a planning perspective. We were pleased to see that Dr. Agrawal's recommendations mirrored the position the OHRC and community groups have taken for years – that there is no sound planning rationale for minimum separation distances (or MSDs) for group homes, and that they should be removed.

Dr. Agrawal also looked at whether removing MSDs would cause undue hardship, which is sometimes used as a defence against discrimination claims. His conclusion was that removing the MSD requirement for group homes would not cause undue hardship – and in fact would reduce the hardship that already exists in the City’s planning process.

Dr. Agrawal also recommended removing language from the definitions of “group home” and “residential care home” that relates to the personal characteristics of the residents, such as disability, stating that this proposed change is in response to human rights concerns. This has been done in the City-wide Draft By-law and is a good first step, but it’s a minimal element of Dr. Agrawal’s expert advice. The OHRC is greatly concerned that the by-law retains the restrictions relating to group and residential care homes, pending a report due in October, and urges the City of Toronto to act now on removing MSDs, and not to wait for another seven months.

These restrictions have an ongoing real and significant negative impact on many *Code*-protected groups – so any delay is furthering the harm.

Human rights and zoning

Under the law, the province of Ontario and all its municipalities must comply with the *Human Rights Code*. The *Code* applies to the *Planning Act*, the *Municipal Act* and the *City of Toronto Act*. The *Code* applies to planning decisions and by-laws, and prevails when there are conflicts. In other words, the City of Toronto and other municipalities have a legal requirement to make sure their by-laws, policies and practices respect human rights.

Systemic discrimination

The *Code* prohibits “systemic” discrimination where barriers are built right into systems. Whether it is intentional or accidental, systemic discrimination has a powerful impact on the people experiencing it.

Many instances of systemic discrimination arise because people do things “the way we have always done them,” and do not make the connection between human rights and the decisions they are making. In our housing work, we have found that resistance to affordable housing is often based on stereotypes and misconceptions about the people who will live in it, and the incorrect belief that it is acceptable to prevent certain groups of people from living in certain neighbourhoods. People often say things like “There’s a better fit for them somewhere else” or “Our neighbourhood has always been like this.” These are the same comments that were made 50 years ago when neighbourhoods were trying to keep out racialized and Jewish people – and are equally offensive today.

The OHRC is working with municipalities to help them look for and eliminate discrimination in their practices, policies and decision-making – wherever it exists. We have focused on municipal zoning and by-laws because they sometimes can have a very exclusionary impact that is deeply felt by vulnerable people, preventing them from being “at home” in their own communities.

Legal issues in zoning

The OHRC has had discussions with many municipalities on zoning issues, and continues to be involved in cases at both the Human Rights Tribunal and the Ontario Municipal Board (OMB).

The OMB has found that, where by-laws result in restrictions for groups protected by the *Code*, a municipality may need to show that:

- The restrictions are rationally connected to municipal objectives
- They are established in good faith
- It would be impossible to accommodate the group affected without undue hardship.

[*Advocacy Centre for Tenants Ontario v. Kitchener (City)* (2010) O.M.B.D. Case No. PL050611]

The OHRC is asking the City of Toronto to apply this rationale to the zoning decisions it will be making in the coming months.

Minimum separation distances and group homes

The OHRC continues to be concerned that this Draft By-law does not remove MSDs for group homes.

In 2004, the OMB found that distancing requirements are acceptable for homeless shelters. But, the OMB also said that shelters are not “housing” (OMB decision No. 0569, March 15, 2004, commonly referred to as the Sojourn House case). But group homes are housing, and should not be subject to MSDs.

MSDs limit housing options for people protected under *Code* grounds and should be removed. They are inconsistent with the *Code* – and also with the City of Toronto’s own Housing Charter.

Restrictions on the location of rooming houses

Rooming houses are important and much-needed forms of housing for many persons with disabilities, single people who receive public assistance, newcomers and other *Code*-protected groups. The OHRC reiterates its position that rooming houses should be allowed as of right in Toronto’s residential neighbourhoods, consistent with the same land use principles as any other housing. The City deferred action on this matter more than three years ago to consult on the matter, but does not appear to have done so. Torontonians who require this form of housing are still waiting, and barriers continue to prevent people from getting the housing they need.

The right thing to do – and it's the law

The OHRC's guide, *In the zone: Housing, human rights and municipal planning*, was published in 2012 after significant research and consultation with planners and others in the housing sector. The guide sets out recommended practices for municipalities to avoid discrimination in planning processes and zoning by-laws.

In considering human rights and zoning there are two central points:

1. Zoning must not directly or indirectly keep certain groups of people out of neighbourhoods.
2. Municipalities should focus on legitimate land use planning – looking at things like parking, built form, and infrastructure like sewers and roads – instead of “people zoning.”

The OHRC asks the City of Toronto to follow these key points, the *Code*, and its own Housing Charter, by removing minimum separation distances for group homes and permitting, as ACTO's submission says, “rooming houses in all residential zones, provided they meet all other requirements of that designation.”

There is a common saying that justice delayed is justice denied. This also applies in this case – human rights delayed are human rights denied. Changing zoning requirements to reflect human rights principles now, not in the undefined future, is the right thing to do for vulnerable people living in Toronto. But this step is more than the right thing to do – it's the law in Ontario.

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