

Declarations and Affirmations respecting Homelessness and Housing

Date: January 28, 2019

To: City Council

From: City Solicitor

Wards: All

SUMMARY

This report responds to the January 22, 2019 referral by Planning and Housing Committee and request for a report directly to the January 30, 2019 City Council on three proposed actions for City Council to take concerning affirming International Human Rights obligations, issuing a declaration of a human rights disaster akin to a Municipal Emergency or a national emergency, and making applications for establishment of an intergovernmental table concerning housing and homelessness within Toronto.

In 2017, City Council adopted the "Toronto Housing Charter – Opportunity for All" in which it recognized that all residents should have a safe, secure, affordable and well-maintained home. Through this Housing Charter policy statement, Council affirms its commitments to housing. However, international human rights law references to the right to adequate housing do not create legal obligations on the City. Though Canada has ratified international treaties and covenants that recognize the right to adequate housing, no statute has implemented this right domestically. Without implementation into Canadian law, international treaty obligations are not legally binding in Canada. This does not, of course, prevent City Council from affirming, as a matter of policy, its commitment to taking measures to address homelessness.

With respect to the recommendation that City Council declare homelessness a human rights disaster akin to a Municipal Emergency or a national emergency, and an urgent human rights crisis, there is nothing which legally prevents Council from making such a statement. However, the *Emergency Management and Civil Protection Act* (the "Act") and the City's Emergency Management Plan (the "Plan") are not designed to address social and economic problems of an ongoing systemic nature that cannot be resolved in days, weeks or months. Response to the issue of homelessness will require the development of long-term sustainable solutions, rather than the City's traditional emergency management response as contemplated by the City's current Plan. Staff are also unaware of any advantage to such a declaration in terms of authority for staff to

respond as directed by Council or increased availability of funding or Federal or Provincial assistance.

I have consulted with the City Manager's Office with respect to the third recommendation and would note that staff would convey a request to the Province should City Council request that the Provincial government apply to the Federal Department of Public Safety and Emergency Preparedness (known as Public Safety Canada) to establish an intergovernmental table to address housing and homelessness in Toronto.

RECOMMENDATIONS

This report be received for information.

FINANCIAL IMPACT

The content of this report will have no financial impact beyond what has already been approved in the current year's budget. The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Homelessness and the Municipal Emergency Plan

City Council at its December 14, 15 and 16, 1999, meeting adopted the joint report dated November 18, 1999, from the Commissioner of Community and Neighbourhood Services, Commissioner of Works and Emergency Services, and the City Solicitor.

<https://www.toronto.ca/legdocs/1999/agendas/council/cc/cc991214/cms6rpt/cl002.pdf>

EX33.47 Housing Opportunities Toronto: An Affordable Housing Action Plan 2010-2020

City Council at its August 5 and 6, 2009, meeting adopted the Housing Opportunities Toronto Action Plan, 2010 – 2020 as the plan to address Toronto's affordable housing challenges over the next 10 years, including the Toronto Housing Charter.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX33.47>

PH1.2 Declaring Toronto's Homelessness and Housing Crisis a State of Emergency

Planning and Housing Committee at its January 22, 2019 meeting referred the following three proposed Recommendations to staff for report directly to the January 30, 2019 City Council meeting:

"1. City Council affirm its commitment to complying with its obligations under International Human Rights Law to take all appropriate measures to address homelessness as a human rights crisis.

2. City Council declare homelessness a human rights disaster akin to a Municipal Emergency or a national emergency and an urgent human rights crisis, and seek assistance from the Province under the Emergency Response and Civil Protection Act.

3. City Council request the Provincial government to apply to the Federal Ministry of Public Safety and Emergency Preparedness, and alert the Minister of Families, Children and Social Development and his Parliamentary Secretary, to seek the establishment of an intergovernmental table with participation of those affected and their representatives tasked with addressing the housing and homelessness crisis in Toronto, and in any other similarly affected municipalities throughout Ontario."

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH1.2>

COMMENTS

Background

Pursuant to the Emergency Management and Civil Protection Act (the "Act"), the City of Toronto enacted Municipal Code Chapter 59, Emergency Management, ("Chapter 59") establishing responsibilities and authorities with respect to an emergency response under that Chapter, along with providing for the formulation of a plan for the provision of emergency services during emergencies affecting the City of Toronto (the "Plan").

The Act defines an emergency as "a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise".

Chapter 59 provides for the establishment of the Toronto Emergency Management Program Committee Control Group ("TEMPC") consisting of representatives of the City and numerous outside agencies. The TEMPC has been delegated the authority to formulate the Plan to govern the provision of necessary services during an emergency and to establish the procedures for responding to an emergency, as defined. Also, Chapter 59 establishes a group of senior staff and representatives of other agencies, the Toronto Emergency Management Program Committee Control Group ("Control Group"). Chapter 59, further outlines the authorities and responsibilities of the Control Group to empower this collection of staff to ensure the implementation of a suitable emergency response utilizing the Plan.

The Planning and Housing Committee referred the three proposals referenced above under the Decision History to staff for the purposes of a report to City Council for the January 30, 2019 meeting. The following is an analysis of each of these proposals.

Council Affirmation of International Human Rights Obligations

1. City Council affirm its commitment to complying with its obligations under International Human Rights Law to take all appropriate measures to address homelessness as a human rights crisis.

Several international treaties and conventions ratified by Canada recognize the right to adequate housing, in particular the International Covenant on Economic, Social, and Cultural Rights. Governments may be guided in their policy-making, actions and strategies by the values expressed in international treaties. For example, City Council recently affirmed its commitment to housing through the 2017 "Toronto Housing Charter – Opportunity for All". There is no right to housing in Canada, nor is there a positive obligation on any level of government to provide housing or adequate shelter, in human rights law. This is because international human rights laws that speak to a right to adequate housing are not binding in Canada given that they have not been implemented into domestic laws.

Although the right to adequate housing in international human rights treaties does not create legal obligations on Council, City Council can choose to affirm its commitment to take measures to address homelessness, as matter of policy.

Council Declaration of Homelessness as a Human Rights Disaster

2. City Council declare homelessness a human rights disaster akin to a Municipal Emergency or a national emergency and an urgent human rights crisis, and seek assistance from the Province under the *Emergency Response and Civil Protection Act*.

City Council may choose to formally recognize that "homelessness [is] a human rights disaster akin to a Municipal Emergency or a national emergency, and an urgent human rights crisis." While this would not be a declaration under the Act, in this instance a declaration under the Act would be unlikely to assist in resolving the issue of homelessness.

There is nothing in the Act that specifically requires the provincial or federal government to provide funding or other support to the City in responding to an emergency declared by the City. While it is possible that the provincial and federal governments would assist the City if they considered it appropriate and/or necessary to do so, there is no legal compulsion for either or both of them to assist in response to a formal declaration of emergency made under the Act. While homelessness, is a critical and urgent issue for the City, it is not the type of problem that the Act, Chapter 59, or the Plan were designed to address. The definition of "emergency" established in the Act, contemplates a temporary situation resulting from a specific incident requiring a response that is outside of the everyday capacities and abilities of a municipality to address, and does not reflect matters which are social and economic problems arising from a series of contributing factors of an ongoing, systemic nature that cannot be resolved in days, weeks or months.

For purposes of the Act, a declaration must be made by the Head of Council (i.e. the Mayor), rather than City Council as a whole. Under the Act, the Premier of Ontario has the power to essentially overrule a municipal declaration of an emergency, made in accordance with the requirements of the Act, by declaring the emergency terminated.

Implementing Chapter 59, or the Plan, through the Head of Council declaring "homelessness" as an emergency, would have two immediate effects. One would be that City Council would be deemed to have delegated to the Mayor all of its statutory

authority under the *City of Toronto Act, 2006* (and other legislation) for use in addressing the emergency, and also that the Control Group would be able to - notwithstanding the requirements of any by-law to the contrary, including by-laws regarding purchasing and financial control - implement and direct the Plan including expending funds for the purposes of responding to, and recovering from, the declared emergency of homelessness. Under Chapter 59, a declaration of emergency cannot extend past a maximum duration of 30 days unless City Council authorizes an extension. Any sustainable response to the issue of homelessness will require the development of long-term solutions, rather than implementation of the City's traditional emergency management response captured in the City's current Plan.

Request for Intergovernmental Table on Housing and Homelessness

3. City Council request the Provincial government to apply to the Federal Ministry of Public Safety and Emergency Preparedness, and alert the Minister of Families, Children and Social Development and his Parliamentary Secretary, to seek the establishment of an intergovernmental table with participation of those affected and their representatives tasked with addressing the housing and homelessness crisis in Toronto, and in any other similarly affected municipalities throughout Ontario."

I have consulted with the City Manager with respect to this matter and advise that staff would convey a request to the Province should City Council request the Provincial government apply to the Federal Department of Public Safety and Emergency Preparedness (known as Public Safety Canada) to establish an intergovernmental table to address housing and homelessness.

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SIGNATURE

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