

Response to City Council's Request for an Audit of Affordable Replacement Rental Units

Date: June 8, 2021

To: Audit Committee

From: Auditor General

Wards: All

SUMMARY

In December 2020, City Council adopted a motion requesting the Auditor General to consider adding to the Auditor General's 2021 Work Plan an audit of previous replacement rental units to assess whether the CreateTO incident was an isolated issue and whether units were allocated in accordance with City policy.

This report provides a response to City Council's request.

It is the Auditor General's view that the City already has the roadmap it needs to strengthen how it administers new and replacement affordable rental units. Specifically,

- 1. The Auditor General has already completed several audits along the housing continuum and made recommendations to support the City** in how it provides access to affordable and deeply affordable housing so that the City can prioritize households who need assistance the most. Implementation of these audit recommendations will help strengthen how the City administers and oversees financial assistance for housing to ensure households are eligible and meet the spirit of the City's housing programs. The City should consider the findings and recommendations from these audits and apply them more broadly to affordable rental housing.
- 2. City Planning has committed to reviewing compliance of existing agreements that secure replacement rental units in Q3 2021** to verify that owners are advertising and filling units on a fair and open basis. The Auditor General's Office will consider the outcomes of City Planning's review.
- 3. The Auditor General's 2021 Work Plan already includes operational reviews of City Planning and affordable rental housing** in the project horizon for 2021-2022, contingent upon the availability of resources.

For these reasons, the Auditor General will not be updating her 2021 Work Plan to include a separate audit of replacement rental units.

At this time, the Auditor General recommends that as Shelter, Support and Housing Administration, City Planning, and the Housing Secretariat consider integrating and harmonizing processes and requirements for access to affordable rental housing and/or financial assistance for eligible households, they:

- consider recommendations raised in previous Auditor General audit reports regarding the centralized social housing waiting list, rent-geared-to-income eligibility, and the affordable home ownership program, and
- implement any relevant recommendations in the broader context of affordable rental housing (e.g., income and asset limits, eligibility assessments, income verification, etc.).

Attachment 1 includes a summary of recommendations made in those reports that may be of greater relevance. The Auditor General will assess whether further work is needed in this area after the City has implemented the above referenced recommendations.

RECOMMENDATIONS

The Auditor General recommends that:

1. City Council request the General Manager, Shelter, Support and Housing Administration; Chief Planner & Executive Director, City Planning; and Executive Director, Housing Secretariat to consider the audit recommendations from past Auditor General reports included in Attachment 1 and implement any recommendations that are relevant to the broader context of affordable rental housing.
2. City Council request the General Manager, Shelter, Support and Housing Administration; Chief Planner & Executive Director, City Planning; and Executive Director, Housing Secretariat to consider how access plans, tenant selection, eligibility verification requirements, and compliance monitoring can be incorporated and standardized in all agreements for affordable rental housing units.
3. City Council request the General Manager, Shelter, Support and Housing Administration; Chief Planner & Executive Director, City Planning; and Executive Director, Housing Secretariat in consultation with the City Solicitor, to review template agreements for rental replacement and affordable housing developments to determine whether additional provisions are needed in any of these agreements to ensure appropriate tenant access, selection, and eligibility for replacement rental housing and affordable rental housing units, and to ensure compliance with such provisions.

FINANCIAL IMPACT

The recommendations in this report have no financial impact.

DECISION HISTORY

In the spring of 2020, the former Chief Executive Officer of CreateTO emailed CreateTO staff and Board members highlighting a rental opportunity from a developer who "... as part of their approvals, [were] required to rent out something like 30 units at below market rents". He had become aware of the opportunity because he knew the developer. Several weeks after he sent the initial email, the former CEO emailed staff requesting them to withdraw their name from consideration, indicating "it does not look good that City staff are getting below market rents because of a policy imposed by the City." A CreateTO internal investigation determined that two CreateTO employees had continued to pursue and were living in below market units within the development, despite the instructions from the former CEO to rescind their interest. Their employment was later terminated.

At its meeting on December 16, 17 and 18, 2020, City Council requested the Auditor General:

"...to consider adding to the Auditor General's 2021 Work Plan, an audit of previous replacement rental units to assess whether the CreateTO incident is an isolated issue and whether units have been allocated in accordance with City policy, in consultation with the Chief Planner and Executive Director, City Planning."

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.AU7.5>

This report provides a response to City Council's request.

Separately, in response to a request from the Planning and Housing Committee, the General Manager, Shelter, Support and Housing Administration, Chief Planner & Executive Director, City Planning, and Executive Director, Housing Secretariat, reported back (through a joint staff report) to the April 22, 2021 Planning and Housing Committee on an implementation plan that establishes transparent access plans for new affordable housing, including replacement rental units, and a process to ensure compliance with access plan requirements.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH22.10>

The joint staff report also describes the current organizational review, which considers harmonizing the management and administration of affordable housing across the City.

The Planning and Housing Committee had also previously requested that City staff review compliance of existing agreements that secure replacement rental units to ensure that owners are advertising and filling units on a fair and open basis. The joint staff report indicates that City Planning will fulfill this request in Q3 2021 through a historical review of previous replacement rental agreements to ensure compliance.

COMMENTS

Background: City's Current System for Filling Affordable Rental Units

In their report to the April 22, 2021 Planning and Housing Committee, the General Manager, Shelter, Support and Housing Administration (SSHA), Chief Planner & Executive Director, City Planning, and Executive Director, Housing Secretariat reported that:

- Affordable housing is developed and operated by private and non-profit housing providers under various agreements with the City that secure and govern affordability. In addition to the City's social housing stock, there are over 8,000 affordable units currently under agreement with the City. This number is expected to rise substantially over the next 10 years as the City works to meet its target in the HousingTO 2020-2030 Action Plan to approve 40,000 new affordable rental homes.
- The City's affordable housing initiatives vary in affordability terms, administration, and methods to remedy compliance. The majority of the City's affordable units are currently overseen by SSHA (over 7,700 units), with the remaining affordable units secured through City Planning policies (over 500 units) which have a separate set of administrative and tenant access rules.
- Ensuring these units are filled by eligible households is critical to optimizing Toronto's limited affordable rental supply.

The staff report to the Planning and Housing Committee provided a description of the City's current systems for filling affordable units.

<https://www.toronto.ca/legdocs/mmis/2021/ph/bgrd/backgroundfile-165633.pdf>

Auditor General's Consideration of Risks

In evaluating City Council's request, the Auditor General assessed the relevance of previous recommendations from audits along the housing spectrum, current work underway by Shelter, Support and Housing Administration, City Planning, and the Housing Secretariat, and the prioritization of the Council-requested audit relative to projects in the Office's existing work plan and backlog of other audits.

In order to assess potential risks, the Auditor General's Office also obtained an understanding of how affordable replacement rental units are allocated. This included interviews with management, a review of relevant by-laws, agreements, internal documents, and information from previous Auditor General's Office reports. The extent of work performed to assess potential risks does not constitute a performance audit conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). In particular, we have not audited to confirm that processes and controls, as described to us by SSHA, City Planning, and Housing Secretariat management, have been effectively designed and implemented and are operating effectively.

We understand that City Planning is now working with SSHA and the Housing Secretariat to identify opportunities to improve how affordable rental units resulting from the planning process are made available to households, including ensuring that they are made available to households who need affordable housing. Divisional management advised that they are working to address the following areas for improvement.

1. Clear terms and conditions are needed to ensure access to affordable replacement rental units are through fair, open, and transparent processes

City Planning currently secures affordable housing through the development review process in two policy areas: replacement rental units, as required pursuant to Section 111 of the *City of Toronto Act, 2006*, and affordable units secured as a Section 37 community benefit under the *Planning Act*.

City Planning advised that the *Planning Act*, Section 111 of the *City of Toronto Act, 2006*, Chapter 667 of the Municipal Code (adopted pursuant to Section 111), and Council-adopted Section 37 implementation guidelines do not speak to how rental units are to be tenanted or made available.

For example, the development located at 1955-1985 Yonge Street, 3 Belsize Drive and 18-22 Millwood Road was subject to Section 37 and Section 111 agreements between the owner of the lands and the City. City Council adopted staff recommendations regarding the application to demolish 33 existing residential units located at the property subject to the following conditions under Chapter 667. The requirements in these agreements included the following:

- the owner shall provide and maintain 33 residential rental units on the subject site for a period of at least 20 years, of which at least 27 shall have affordable rents¹ and six shall have rents no higher than mid-range² rents.
- the owner is required to offer all replacement rental units not occupied by a returning tenant to the public on a fair and open basis consistent with general provisions in the rental market. (*Note: Few tenants resided in the building at the time of demolition. City Planning advised that only one tenant elected to return to a replacement unit, meaning 26 affordable and six mid-range units were available to the public.*)

The concept of "fair and open basis consistent with general provisions in the rental market" is not well-defined, which opens the requirement up to different interpretations. City Planning advised that there is no further guidance to describe or define requirements for how these affordable replacement rental units are to be offered on a "fair and open basis".

¹ Affordable units are required to be rented at no more than the average market rent for the City of Toronto by bedroom type, inclusive of utilities.

² Mid-range units can be rented up to a maximum of one and one-half times the average market rent by bedroom type.

In the past, City Planning has not consistently required developers / owners to provide them with supporting documentation to show how access to affordable replacement rental units have been offered to the public on a fair and open basis. At the development located at 1955-1985 Yonge Street, 3 Belsize Drive and 18-22 Millwood Road, City Planning advised that staff took steps to ask the developer to use best efforts to rent the unit to eligible tenants, but the onset of the COVID-19 pandemic created challenges in following up and receiving information. City Planning management advised us that they were not aware that CreateTO staff were offered the opportunity to access the affordable rental units until after a media outlet began seeking information on the matter. We have referred allegations of potential non-compliance with the Section 111 agreement to City Planning for further investigation. City Planning is actively investigating whether all affordable replacement rental units in this development were offered to the public on a "fair and open basis consistent with general provisions in the rental market." We will review the outcomes of actions being taken by the City on this matter.

City Planning has advised that from 2019 onwards, it started incorporating clauses in more recent Section 111 agreements for owners to provide the City with an access plan describing how they will offer the units in a fair and open manner. City Planning also advised that their staff have ongoing relationships with owners who can consult with staff to come up with strategies on how to market / offer replacement rental units. We were advised that requiring owners to provide access plans is now standard practice.

It is possible that there are developments where City Planning is not aware of the methods by which the developer / owner is providing access to affordable replacement rental units, and whether such units were offered to the public on a fair and open basis. Between 2015 and 2020, City Council approved over 800 affordable replacement rental units that are subject to the City's Official Plan policies.

In the report considered at the April 22, 2021 Planning and Housing Committee (PH22.10), City Planning advised that in Q3 2021, they will fulfill City Council's October 2020 request to review compliance of existing agreements that secure replacement rental units to ensure that owners are advertising and filling units on a fair and open basis. Further, that this will be done through a historical review of previous replacement rental agreements to ensure compliance.

In contrast, access plan requirements are not new to agreements that SSHA administers (for new affordable rental units). Where Open Door incentives are layered on top of Section 37 units and/or where there are municipal housing facility agreements, access and tenant selection for these units is overseen by SSHA. SSHA management advised that access to new affordable rental units (i.e. those that fall under the Open Door or similar programs) require owners to provide access plans that are reviewed and approved by SSHA. For those units, the agreements require an access plan that "specifies how tenants are to be selected and how information about such process is disseminated to the public". One access plan we reviewed indicated that the housing provider's intent was to offer affordable rental units through a publicly listed expression of interest, where the units were to be advertised through the provider's website, the City's website, and through a social media campaign.

In the report considered at the April 22, 2021 Planning and Housing Committee (PH22.10), staff recommended that *"City Council direct the Chief Planner and Executive Director, City Planning, to include requirements in all new term sheets to be implemented in all new agreements securing new affordable housing units and new affordable replacement rental units for land owners to advertise and allocate affordable units in a manner consistent with practices for new affordable housing units secured by the Housing Secretariat, and administered by Shelter, Support and Housing Administration, including requirements for an approved access plan, housing benefit targets, income eligibility and the use of a centralized affordable access system."*

This recommendation was not adopted because the Planning and Housing Committee referred the item back to management with a request to report back to the Committee after engaging with stakeholders.

The Auditor General is of the view that implementing more consistent practices and standardized agreement terms for tenant access, selection, and income eligibility would support the City's objective of ensuring that new and replacement affordable rental units are filled by eligible households to optimize Toronto's limited affordable rental supply.

2. Eligibility requirements should be incorporated into all agreements

Section 111 agreements do not set out any conditions for tenant eligibility (such as income testing or verification, asset limits, or other ownership interests in residential property) for affordable replacement rental units at rent-up and turnover. The only requirement is that existing tenants prior to demolition must be given the opportunity to elect to return to the replacement rental unit. City Planning does not verify that new or returning tenants of affordable replacement rental units are households who need affordable housing.

In contrast, affordable units overseen by SSHA are subject to the Municipal Housing Facility By-Law, which requires that the gross annual income of all persons who reside in a housing unit can be no more than four times the annualized rent at initial occupancy. For example, \$68,688 would be the maximum annual gross household income to be eligible for a 1-bedroom affordable rental housing unit with an average market rent of \$1,431. The City has an Eligibility and Income Verification Guide³ which housing providers can use to help them determine and document a household's eligibility for an affordable housing unit.

SSHA advised that the housing benefits they administer, including rent supplements (paid to the landlord) and housing allowances (paid to the tenant), are subject to annual income verification to confirm ongoing eligibility.

The Auditor General recommends that, as SSHA, City Planning, and the Housing Secretariat consider integrating and harmonizing processes and requirements for access to affordable rental housing and/or financial assistance for eligible households, they:

³ <https://www.toronto.ca/wp-content/uploads/2020/11/8772-AH-Eligibility-and-Income-Verification-2020-Revised-006.pdf>

- consider recommendations raised in previous audit reports regarding the centralized social housing waiting list, rent-geared-to-income eligibility, and the affordable home ownership program, and
- implement any relevant recommendations in the broader context of affordable rental housing (e.g., income and asset limits, eligibility assessments, income verification, etc.).

Attachment 1 includes a summary of recommendations made in those reports that may be of greater relevance.

Furthermore, the City should consider establishing standardized criteria (based on level of affordability provided) and approaches to verifying eligibility at time of rent-up and on turnover for all housing assistance programs. This can help support the City's ability to provide funding assistance to those households who need it most. As stated in the Affordable Rental Housing Eligibility and Income Verification Guide (2020), *"The key aim of the City's affordable housing programs is to ensure that affordable units are allocated for the benefit of lower-income households."*

3. Standardize and strengthen monitoring to verify housing providers are complying with agreements

With the City's focus on increasing the number of affordable rental units across Toronto, we believe that management needs to strengthen their review process so that staff play a more proactive role in monitoring owners' and/or housing providers' compliance with the related agreements. The extent of reviews by City Planning and SSHA to validate compliance with agreement terms vary.

In overseeing replacement rental units, City Planning advised us that the Division's focus has been to maintain / preserve the rental housing stock (i.e., that the requisite number of units of similar size / type / rent are replaced). City Planning also follows up if tenants raise any concerns or complaints about not being properly allowed to return to a replaced unit that is of similar size / type / rent.

The City should implement proactive monitoring of tenant access, selection and eligibility for affordable replacement rental units at rent-up and turnover. In the report considered at the April 22, 2021 Planning and Housing Committee (PH22.10), management reported that in Q3 2021, staff will conduct a review of existing agreements to ensure compliance. On an interim basis, staff will work with owners to align the tenant access plan process with SSHA's practices.

SSHA advised us that their monitoring process involves obtaining records from housing providers to fulfill annual provincial reporting requirements, and periodic reviews of housing providers' files (on a sample basis) every three years. SSHA's file reviews include assessing whether households meet certain eligibility requirements for their affordable rental units.

Attachment 1 includes a summary of recommendations raised in previous audits regarding the centralized social housing waiting list, rent-g geared-to-income eligibility, and the affordable home ownership program. Those audits highlighted the need for greater monitoring and oversight of housing providers to ensure they are following the City's affordable and social housing program requirements.

For example, in the Auditor General's report "Opening Doors to Stable Housing", we highlighted that "In response to audit recommendations in our 2014 report 'Strengthening the City's Oversight of Social Housing Programs', SSHA Management implemented a risk-based approach to completing operational reviews of housing providers. The purpose of these reviews is to ensure housing providers comply with legislative and regulatory requirements, including City guidelines. In our current audit, we found that only 35 per cent of providers have been reviewed within the Division's established timelines. Of particular concern is the fact that only 15 per cent of high-risk providers had a review completed in the last two years, as required ... We found that proposed changes to improve monitoring were not made in 2018 and the monitoring of housing providers is not being completed as required."

We recommended "City Council request the General Manager, Shelter, Support and Housing Administration, to enforce the regular review of housing providers and ensure they are completed as required in compliance with policies and procedures and to take corrective action to address any problems identified in the course of such reviews." Since our audit, SSHA management has reported that the implementation of this recommendation is in progress. This recommendation should also be considered in the broader context of affordable rental units.

Regardless of which City division is responsible for overseeing appropriate access and selection of tenants for affordable rental housing, management should ensure that the City has implemented regular monitoring to ensure compliance with agreements and that owners and housing providers are adhering to the intent of the affordable rental housing programs.

We also noted that agreements for replacement rental units and new affordable rental units do not clearly specify what happens when owners or housing providers do not comply with requirements for tenant access and selection. We were advised that in the context of affordable housing agreements, the City provides incentives to the owners to provide affordable housing. As such, the City has the ability to require repayment or to stop providing these incentives in the event of a breach. By contrast, in the context of rental replacement agreements, the City does not provide financial incentives, so the only recourse is to pursue damages for breach of contract, which may be difficult to calculate depending on the nature of the breach.

In moving forward with a centralized approach to administering affordable rental units, the Divisions should review template agreements and determine whether additional provisions are needed to ensure appropriate tenant access, selection, and eligibility for replacement rental units and new affordable rental units. In doing so, staff will need to consider whether amendments to Chapter 667 of the Municipal Code are appropriate and within the jurisdiction of Section 111.

City's plans to move towards a new centralized access system

In the report considered at the April 22, 2021 Planning and Housing Committee (PH22.10), management reported that the City's delivery of affordable housing has expanded and become more complex with the addition of new housing policies and programs, as well as work underway to achieve the HousingTO 2020-2030 Action Plan target of adding 40,000 affordable units over the next 10 years. As such, there is a growing need to coordinate the administration of all new affordable units being delivered across multiple divisions and to provide seamless and transparent access to these units for members of the public.

Management recommended that City Council approve the Implementation Plan which outlines the steps to procuring and implementing a new technology system that will streamline the process of advertising and filling affordable units with an income requirement, including future affordable rental or affordable replacement rental units under development by City Planning.

This recommendation was not adopted because the Planning and Housing Committee referred the item back to management with a request to report back to the Committee after engaging with stakeholders.

In the Auditor General's report *Safeguarding Rent-Geared-to-Income Assistance*, the Auditor General recommended that SSHA create and maintain a centralized database that the City and housing providers can use to administer the RGI program, including eligibility assessments and rent calculations. The recommendation also asked SSHA to consider integrating this centralized database with other City information systems to help with eligibility assessments. Further, the Auditor General's report *Opening Doors to Stable Housing*, also made several recommendations to consider how to integrate eligibility reviews and income verification across various City human services programs (e.g. housing, social assistance, and childcare subsidies). Recommendations from these reports are relevant and should be considered in the broader context of the City's Implementation Plan for a centralized access system to centralize administration of all types of affordable housing along the housing spectrum.

Conclusion

The Auditor General has decided that she will not be adding an audit of replacement rental units to her 2021 Work Plan. The Auditor General considered planned actions by City staff, her Office's assessment of risks to the City, and the prioritization of other needed audit projects in the Office's work plan and backlog of audits.

It is the Auditor General's view that the City already has the roadmap it needs to strengthen how it administers new and replacement affordable rental units. Specifically,

1. The Auditor General has already completed several audits along the housing continuum and made recommendations to support the City.
2. City Planning has committed to reviewing compliance of existing agreements that secure replacement rental units in Q3 2021.

3. The project horizon for 2021-2022 in the Auditor General's 2021 Work Plan⁴ already includes potential projects (contingent upon availability of resources) for an Operational Review of City Planning and an Audit of the Housing Secretariat - Affordable Rental Housing.

Risks and actions underway by management related to new affordable rental housing and replacement rental housing may be considered in future audits. The scope of those audits will be determined after they are initiated. In the meanwhile, the City should still consider the relevance of findings and recommendations identified in previous Auditor General audit reports along the housing continuum. Doing so supports the City's objectives for affordable rental housing, and can help ensure that those who are most in need of housing assistance receive it.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Previous Auditor General Recommendations Relevant to the City's Creation of a Fair and Streamlined Access System for Affordable Housing

⁴ <https://www.toronto.ca/legdocs/mmis/2020/au/bgrd/backgroundfile-158178.pdf>