

Revisiting Legacy Rental Replacement Policies to Align them with the City's Affordable Rental Housing Expectations

Date: February 17, 2022

To: Audit Committee

From: Auditor General

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

Confidential Attachment 1 to this report deals with litigation or potential litigation affecting the City of Toronto.

SUMMARY

A policy objective of the City's Official Plan is to preserve and protect the stock of affordable rental housing. City of Toronto Municipal Code Chapter 667, Residential Rental Property Demolition and Conversion Control, sets out the City's requirements under Section 111 of the City of Toronto Act, 2006 and implementation of its Official Plan policy which requires that where six or more rental units will be lost due to redevelopment, the same number of rental units must be replaced in the new development.

Simply speaking, the City's rental replacement policies and ensuing agreements were designed to preserve rental stock by requiring that:

1. demolished rental units are replaced with the **same number, size, and type** of rental units.
2. existing tenants have the **right to return** to the same size and type of unit, should they choose to do so.
3. replacement units are charged at **similar rents** and annual rent increases meet the provincial rent guidelines.

It is important to recognize that our reading of the Official Plan policy for rental replacements and Chapter 667 of the Municipal Code, as well as discussions with the City Planning Division and Legal Services Division indicates that the primary purpose of Section 111 agreements was to preserve residential rental housing. From what has been written into the Section 111 agreements, it appears that the City's rental replacement policies and processes were not designed for a supplementary purpose – to provide access to affordable rental replacement units based on financial need.

Through our review of ten Section 111 agreements covering over 80 per cent of affordable rental replacement housing units in developments that were fully or partially occupied from 2012 through 2021, we have identified that:

- Section 111 agreements generally require that affordable rental replacement units be offered to the public on a “fair and open basis” – but agreements do not clearly specify what is meant by “fair and open basis”.
- Section 111 agreements generally do not include eligibility requirements for new tenants of available affordable rental replacement units, such as income limits, asset limits, or other limitations on ownership interests in residential property.
- City divisions responsible for administering affordable rental housing are working towards harmonizing their processes and requirements for tenant access and eligibility going forward.

Our audit findings and recommendations focus on what City Planning can do going forward to continue to enhance its agreements and processes to better align with the City's priorities for making affordable rental replacement housing accessible to all households based on financial need. This includes:

- A. Strengthening requirements for offering affordable rental replacement units through fair, open and transparent processes
- B. Standardizing affordable rental housing eligibility requirements including updating Section 111 Agreements
- C. Harmonizing processes and requirements for administering affordable rental housing

RECOMMENDATIONS

The Auditor General recommends that:

1. City Council request the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor and other City divisions that oversee affordable housing, to:

a. report back to City Council, through the Planning and Housing Committee, on the merits of amending rental replacement policies, including City of Toronto Municipal Code Chapter 667, Residential Rental Property Demolition and Conversion Control, to include clear expectations of how future affordable rental replacement units are made available in a fair and open manner to the general public;

b. ensure that future affordable rental replacement agreements between the City and owners include clear, specific requirements for owners to provide formal access plans; such plans to describe, to the satisfaction of the Chief Planner and Executive Director, City Planning, how information about affordable rental replacement opportunities are to be advertised to the general public, including lower-income households, and how new tenants of affordable rental replacement units are to be selected; and

c. implement proactive monitoring processes that ensure sufficient evidence, to the satisfaction of the Chief Planner and Executive Director, City Planning, is obtained from owners to demonstrate compliance with required access plans and all other contractual requirements.

2. City Council request the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor and other City divisions that oversee affordable housing, to:

a. review City of Toronto Municipal Code Chapter 667, Residential Rental Property Demolition and Conversion Control and determine whether affordable housing principles and definitions consistent with amended Official Plan definitions of affordable rent and/or By-law 1756-2019, Municipal Housing Facility can be incorporated into City of Toronto Municipal Code Chapter 667, Residential Rental Property Demolition and Conversion Control and all Section 111 agreements containing affordable rental replacement units going forward;

b. ensure future Section 111 agreements include terms that support the City's ability to require tenant eligibility criteria and verification practices consistent with City of Toronto Municipal Code Chapter 667, Residential Rental Property Demolition and Conversion Control, should affordable housing principles and definitions be adopted; and

c. implement processes to verify compliance with any eligibility requirements incorporated into executed agreements.

3. City Council direct that Confidential Attachment 1 to this report remain confidential in its entirety, as it deals with litigation or potential litigation affecting the City of Toronto.

FINANCIAL IMPACT

The precise extent of any resources required or non-quantifiable benefits to households in need of affordable housing resulting from implementing the recommendations in this report is not determinable at this time.

DECISION HISTORY

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>

In response to City Council's request, the Auditor General carried out a preliminary risk assessment of the area and reported to Council in July of 2021. The report summarized her preliminary assessment of potential risks and understanding of how affordable rental replacement units are allocated.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.AU9.16>

In considering the Auditor General's report in their meeting on July 14, 2021, City Council again requested the Auditor General "to consider conducting an audit, in consultation with the Chief Planner and Executive Director, City Planning, to determine the extent to which developers have complied with the City of Toronto's Rental Replacement Policy".

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.AU9.16>

COMMENTS

A high-level summary of the key audit findings is provided in the one-page Audit at-a-Glance.

The attached audit report provides the Audit Committee and members of Council with the detailed audit results and recommendations together with management's response. Management has agreed with both recommendations.

CONTACT

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SIGNATURE

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Auditor General

ATTACHMENTS

Attachment 1 – Revisiting Legacy Rental Replacement Policies to Align them with the City's Affordable Rental Housing Expectations: An Audit of Affordable Rental Replacement Units

Confidential Attachment 1 – Revisiting Legacy Rental Replacement Policies to Align them with the City's Affordable Rental Housing Expectations – An Example