

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON NOVEMBER 7, 2017
FROM:	SANDRA DATARS BERE MANAGING DIRECTOR, HOUSING, SOCIAL SERVICES AND DEARNESS HOME
SUBJECT:	PROPOSED MUNICIPAL HOUSING FACILITIES BY-LAW

RECOMMENDATION

That, on the recommendation of the Managing Director, Housing, Social Services and Dearness Home, the attached proposed by-law (Appendix 'A') **BE INTRODUCED** at the Municipal Council meeting to be held on November 14, 2017 to repeal By-law No. A.-5814-11, known as the 'Municipal Housing Facilities By-law' and replace it with a new Municipal Housing Facilities By-law

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Community and Protective Services Committee – November 25, 2002 – Municipal Housing Facilities By-law

Strategic Priorities and Policy Committee – October 26, 2015 – Housing Development Corporation, London Incorporation and Initial Corporate Organization

Community and Protective Services Committee – July 18, 2017 – Delegation of the Rental Housing Component of the Provincial Service Manager Administration Agreements for the Development of Affordable Housing to the Housing Development Corporation, London (HDC)

BACKGROUND

The City of London's Strategic Plan strategic area of focus, Growing Our Economy (Urban Regeneration), requests Civic Administration to 'create new partnerships to build, and support the building of, new affordable housing'.

Section 110 of the *Municipal Act, 2001* grants municipalities the authority to enter into agreements in respect of municipal capital facilities with private and non-profit sector partners, and to provide financial and other forms of assistance to such partners without violating the 'bonusing' provisions of the Act.

In 2001, the class of 'municipal housing project facilities' was added to the classes of municipal capital facilities for which municipalities can enter into agreements pursuant to section 110 of the Act. The purpose of this addition was to encourage new affordable rental housing development.

In order to enter into a Municipal Housing Project Facilities Agreement, municipalities are first required by the Act to enact a Municipal Housing Facilities By-law that complies with prescribed criteria. Ontario Regulation 603/06 provides that a Municipal Housing Facilities By-law shall at least contain a definition of 'affordable housing', policies regarding public eligibility for housing units to be provided, and a list of provisions that Municipal Capital Facilities Agreements are required to contain.

In December of 2002, the City of London enacted its first Municipal Housing Facilities By-law (A.-5814-11) to permit the City of London to enter into municipal housing project facilities agreements with housing providers for the purpose of advancing the development of affordable housing.

Civic Administration reviewed the current By-law (A.-5814-11) pertaining to municipal housing facilities and determined that the existing By-law is outdated and does not reflect the current Service Manager's delegated authority activities to the Housing Development Corporation (HDC) and also contains out of date information.

The attached revised proposed by-law (Appendix 'A') has been developed to address:

1. Various program eligibility criteria;
2. Business of the HDC and the City of London;
3. Expanding beyond the social housing waitlist;
4. Alignment with the Service Manager delegated authority to HDC; and
5. Removing references of old legislation and programs.

The Proposed Changes to the by-law include:

1. Changes to the Recitals

Where required, changes have been made to reflect Legislative requirements, regulatory references, new Legislative Acts and delegated authority which required updating references to the *Housing Services Act, 2011*, *Municipal Act 2001* and the Housing Development Corporation, London.

2. Definitions

The definitions for Act, Affordable Housing, Average Rents, Clerk, Housing Provider, Municipal Housing Project Facilities, Municipal Housing Project Facilities Agreement, Municipal Housing Projects Facilities By-law, Rent Supplement Agreement, Unit Size, and Waiting List have been updated to reflect more current wording and requirements.

3. Confirmation of the role of the Service Manager and Delegation of Responsibilities to the HDC.

Further to the Council's approval of the delegation of responsibilities to the HDC (By-law A.-7598-265), the proposed by-law has been revised to reflect the delegated HDC activities associated with the administration of Municipal Housing Facilities Agreements including:

1. Entering in to Municipal Housing Facilities Agreements;
2. Indemnify requirements to include HDC;
3. Enforcement of the terms and conditions of the Municipal Housing Facilities Agreements; and
4. Ability to enter in to Rent Supplement Agreements.

4. Municipal Housing Facilities Agreement Guidelines

Proposals to Municipal Housing Facilities Agreements include:

1. Clarifying that affordable housing units are available to all of those deemed eligible;
2. Removing the option that rent can exceed the definition of affordable;
3. Removing the term of the agreement not to be less than twenty years;
4. Provisions regarding rent increases;
5. Conditions associated with financial or other assistance given to housing providers;
6. Housing Providers Reporting Requirements;
7. Security requirements; and
8. Provisions expanded to include guaranteeing borrowings and providing the services of employees of the municipality.

APPENDIX A

Bill No.
2017

By-law No.

A by-law to provide for municipal housing facilities.

WHEREAS the City of London is the designated Service Manager under the Housing Services Act, 2011 for the provision of housing programs and services in the geographic area of the City of London and County of Middlesex;

AND WHEREAS the Housing Development Corporation, London (HDC) is a municipal services corporation incorporated by the City of London for the purposes of administration and capital development activities of affordable housing throughout the London and Middlesex communities and is delegated to act on behalf of the City as Service Manager for these purposes;

AND WHEREAS section 110 of the *Municipal Act 2001, (the "Act")*, S.O. 2001, c. 25, as amended, allows municipalities to enter into agreements for the provision of municipal capital facilities by any person;

AND WHEREAS one of those enumerated classes of municipal capital facilities is municipal housing facilities;

AND WHEREAS the said Ontario Regulation 603/06, as amended, requires that before a by-law authorizing an agreement under section 110 of the Act respecting municipal housing facilities is entered into, a municipal housing facilities by-law must be enacted which must comply with requirements set out in that Regulation;

AND WHEREAS Council is of the opinion that making use of section 110 of *the Municipal Act* is a desirable means of increasing the supply of affordable housing by providing financial or other assistance at less than fair market value to private and non-profit housing providers on the criteria set out in this by-law;

THEREFORE, the Council of The Corporation of the City of London enacts as follows:

SHORT TITLE MUNICIPAL HOUSING FACILITIES BY-LAW

1. Definitions

In this by-law,

Act - defined

"Act" means the *Municipal Act 2001*, S.O. 2001, c. 25, as amended, and its Regulations;

Affordable Housing - defined

"Affordable Housing" means affordable housing as set out in section 4 of this by-law;

Average Market Rent" or "AMR" - defined

"Average Market Rent" or "AMR" for any calendar year means average monthly rents based on the London Census Metropolitan Area (CMA) by unit type for that calendar year as determined by CMHC; or modified average monthly rents determined by City's Civic Administration if CMHC rental housing market information is either unavailable or is deemed to require modification based on local market conditions;

City – defined

"City" means The Corporation of the City of London;

Clerk - defined

"Clerk" means the person appointed by Council pursuant to section 228 of the Act;

CMHC - defined

"CMHC" means the Canada Mortgage and Housing Corporation;

Council - defined

“Council” means The Municipal Council of the Corporation of the City of London;

HDC – defined

“HDC” means the Housing Development Corporation, London;

Household Income - defined

“Household Income” means the gross annual income from all sources of all persons who reside in a housing unit, or who will reside in a housing unit if such housing unit were rented to them;

Housing Provider - defined

“Housing Provider” means a person with whom the City or HDC has entered into or will enter into a Municipal Housing Facilities Agreement under section 2 of this by-law;

Municipal Housing Facilities - defined

“Municipal Housing Facilities” means the class of municipal capital facilities, as prescribed by paragraph 6.1(1) of section 2 of Ontario Regulation 603/06, as amended;

Municipal Housing Facilities Agreement - defined

“Municipal Housing Facilities Agreement” means an agreement as set out in section 2 of Ontario Regulation 603/06, as amended such as but not limited to a contribution agreement;

Municipal Housing Facilities By-law - defined

“Municipal Housing Facilities By-law” means a by-law enacted by Council pursuant to paragraph 18 of Ontario Regulation 603/06, as amended;

Rent Supplement Agreement - defined

“Rent Supplement Agreement” means an agreement related to a subsidy paid to a landlord on behalf of a renter who meets the established eligibility criteria;

Unit Size - defined

“Unit Size” means the size of a unit within a defined Municipal Housing Facility or potential Municipal Housing Facility, measured by the number of bedrooms; and

Waiting List - defined

“Waiting List” means the system for prioritizing and selecting households waiting for rent-geared-to income assistance defined within the Housing Services Act, 2011 or successor legislation.

2. Council may pass by-laws permitting the City and/or HDC acting on behalf of the City to enter into Municipal Housing Facilities Agreements with Housing Providers, pursuant to subsection 110 of the Act, as amended, for the provision of the Municipal Housing Facilities.
3. Upon passing of a by-law referred to in Section 2 of this by-law, the Clerk shall give written notice of the by-law to the Minister of Finance.
4. The definition of Affordable Housing for the purpose of a Municipal Housing Facilities Agreement shall be rental housing that costs less than 30% of total household income, inclusive of electrical, fuel and water and other municipal services, and shall also be no more than the CMHC Average Market Rent for the associated unit size within the City of London CMA. This definition shall apply to those specific units in a development that are directly funded through a Municipal Housing Facilities Agreement.
5. The City or HDC acting on behalf of the City shall not enter into an agreement mentioned in section 2 of this by-law unless it has determined that any funded housing rental units to be provided as part of the Municipal Housing Facility fall within the definition of Affordable Housing.
6. Affordable housing units to be provided as part of the Municipal Housing Facility shall be made available to eligible individuals and families in the general public including those individuals and families who may be on the Waiting List.
7. Under no circumstances shall a designated affordable rental housing unit within an associated Municipal Housing Facilities Agreement unit be made available

- (a) at rent that is not within the definition of Affordable Housing in this By-law or the associated Agreement; or
- (b) to individuals or families who, at the time the affordable housing unit is initially rented to them, do not meet the established eligibility criteria for affordability as determined by the associated City and/or HDC program.

8. A Municipal Housing Facilities Agreement shall contain, but shall not be limited to, the following provisions:

- (a) the term of the associated Agreement;
- (b) that each unit in the Municipal Housing Facilities shall, throughout the term of the Agreement, meet the definition of Affordable Housing;
- (c) provisions reflecting those matters set out in sections 5, 6 and 7 of this by-law;
- (d) that, subject to section 9 of this by-law, units subject to the Agreement shall not be rented to the Housing Provider or shareholders or directors of the Housing Provider, or any individual not at arm's length to the Housing Provider or shareholders or directors of the Housing Provider;
- (e) that the City or HDC acting on behalf of the City, may register the Agreement on title;
- (f) that the Municipal Housing Facilities Agreement shall be binding on the Housing Provider's heirs, successors and assigns;
- (g) that during the term of the Municipal Housing Facilities Agreement, the Housing Provider shall, as a condition precedent to a sale to a subsequent purchaser, require the subsequent purchaser to enter into an agreement with the City or HDC acting on behalf of the City, and that agreement shall impose the terms of the Municipal Housing Facilities Agreement on that subsequent purchaser;
- (h) that in addition to a general indemnity, the Housing Provider shall specifically indemnify the City and HDC if the provision set out in clause (g) of this section of this by-law is breached;
- (i) that a list of the benefits being conveyed to the Housing Provider under this by-law, including their estimated present day monetary value;
- (j) that if the Housing Provider does not carry out its obligations under the agreement, the Housing Provider shall, if demanded, pay to the City or HDC the entire amount of benefits conveyed under the agreement, together with any applicable costs and interest;
- (k) such other contractual provisions which are required to be inserted based on fundamental contractual drafting principles;
- (l) the number of housing units being provided;
- (m) provisions regarding rent increases;
- (n) the conditions attached to the financial or other assistance given to the Housing Provider;
- (o) that the Housing Provider shall submit required supporting documentation and report annually to the satisfaction of the City or HDC; and
- (p) other terms and conditions satisfactory to the City or HDC which may include, but which are not limited to, any and all forms of property transactions together with any and all general and specific security as the City or HDC considers necessary and desirable.

9. Despite clause 8(d) of this by-law, units subject to a Municipal Housing Facilities Agreement may be rented to directors of the Housing Provider or an individual not at arm's length to the directors of the Housing Provider if:

- (a) the Housing Provider is a non-profit housing co-operative as defined in the *Co-operative Corporations Act*, R.S.O. 1990, c.C.35, as amended or a not-for-profit corporation; and
- (b) the Housing Provider is at arm's length to any individual or private for-profit corporation with which the director or individual not at arm's length to the director, as the case may be, has a non-arm's length relationship.

10. (1) As a means of increasing the affordability of housing within the project, the Municipal Housing Facilities Agreement may include provisions requiring a Housing Provider to enter into a Rent Supplement Agreement with the City or HDC.

(2) If the Municipal Housing Facilities Agreement requires the Housing Provider to enter into a Rent Supplement Agreement with the City or HDC as set out in subsection 10(1), the Rent

Supplement Agreement shall be entered into concurrently with the Municipal Housing Facilities Agreement although the duration of the supplemented periods may vary from the Municipal Housing Facilities Agreement but shall be a condition of the City or HDC entering into the Municipal Housing Facilities Agreement.

(3) As a further means of increasing the affordability of housing, the Municipal Housing Facilities Agreement may require, in exchange for capital grants or other program or funding incentives that Affordable Housing other than those set out in section 4 of this by-law may be established for some of the units with separate eligibility requirements.

11. A Municipal Housing Facilities Agreement may allow for the lease, operation or maintenance of the Municipal Housing Facility by any person.
12. A Municipal Housing Facilities Agreement may, with respect to the provision, lease, operation or maintenance of the municipal housing facilities that are subject to the agreement, provide for financial or other assistance at less than fair market value or at no cost to the housing provider, and such assistance may include:
 - (a) giving or lending money and charging interest; and/or
 - (b) giving, lending, leasing or selling property;
 - (c) guaranteeing borrowings; and
 - (d) providing the services of employees of the municipality.
13. Where the provisions set out in section 110(6) of the *Municipal Act* have been satisfied, Council may exempt from all or part of the taxes levied for municipal or school purposes land or a portion of it on which the Municipal Housing Facilities are or will be located, subject to Council approval of a by-law providing for such exemption.
14. Where the provisions set out in section 110(7) of the *Municipal Act* have been satisfied, Council may exempt from the payment of all or part of the development charges imposed by the City under the *Development Charges Act, 1997*, S.O. 1997, c.27, land or a portion of it on which the Municipal Housing Facilities are or will be located, subject to inclusion of the associated exemptions in the City's approved Development Charges By-law.
15. This by-law may be cited as the Municipal Housing Facilities By-law.
16. By-law A.-5814-11 is hereby repealed.
17. This by-law comes into force on the day it is passed.

PASSED in Open Council on

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading -