

## Submission to the Multi-tenant (rooming) house regulatory review

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### **Human Rights Working Group, Toronto Alliance to End Homelessness**

The Toronto Alliance to End Homelessness' Human Rights Working Group was founded in January 2019 to continue the work begun 17 years ago by the HomeComing Coalition -- a human rights organization that supports inclusive communities where *everyone* belongs.

Over the past decade, we have seen many gains. In 2009, the Ontario Human Rights Commission identified "discriminatory NIMBY" as a human rights concern. The City of Toronto adopted a Housing Charter that upheld the right of all people to live in the neighbourhood of their choice without discrimination. In response to a legal challenge led by the Dream Team and the Human Rights Legal Support Centre, Toronto and five other Ontario municipalities abandoned separation distances for group homes. In 2017, Toronto introduced new protocols to ensure processes used to introduce homeless shelters no longer stigmatize the people who will live there or become a platform for discrimination.

On June 21, 2019, the *National Housing Strategy Act* became law. The Act declares "the housing policy of the Government of Canada [is] to recognize that the right to adequate housing is a fundamental human right affirmed in international law." The Act recognizes that housing is "essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities." Among other things, the Government of Canada has committed itself to "improving housing outcomes for persons in greatest need; and providing for participatory processes," naming in particular people with lived experience of housing need and homelessness.<sup>1</sup>

### **Toronto is poised to make human rights the foundation of its housing strategy**

At its May 2019 meeting, Toronto City Council voted unanimously to include, as part of the City's consultation process on Toronto's 10 year housing plan, a "rights-based approach to housing" in policy areas that fall within the City's jurisdiction.<sup>2</sup> Since then, Toronto's Housing Secretariat has sought the advice of housing advocates on how a rights-based approach might address some of the quandaries in developing Toronto's housing policies and practice.

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<sup>1</sup> Bill C-97, Division 19, National Housing Strategy Act, passed by the House of Commons on June 6, 2019. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/third-reading#ID0EP1MO>

<sup>2</sup> Toronto City Council, Item PH5.1, The Right to Adequate Housing, May 14 & 15, 2019.

The regulation of Toronto's rooming houses has been one such quandary. In this submission, TAEH's Human Rights Working Group explores what a human rights-based approach to rooming housing regulation could look like, and what it would mean for the City's licensing review.

### **First principles**

The United Nations Committee on Economic, Social and Cultural Rights identifies seven components of adequate housing: 1) affordability; 2) security of tenure, 3) habitability, 4) location, 5) availability of services, materials, facilities and infrastructure, 6) accessibility, 7) cultural adequacy.

How might these principles guide a multi-tenant regulatory framework? We suggest the following:

**Affordability.** According to the City Planning Division's 2018 study, 74% of the housing available below CMHC's Average Monthly Rent was in shared accommodation.<sup>3</sup> With the exception of the City's rent-geared-to-income units, these are among the very few homes affordable to:

- single Ontario Works recipients (shelter allowance = \$390)
- single Ontario Disability Support Program participants (shelter allowance = \$497/month)
- minimum-wage earners (30% of monthly income = \$637/month)<sup>4</sup>
- seasonal or part-time workers (including students) or seniors relying solely on OAS/GAINS/GIS.

Any regulatory regime that results in increased rents erodes tenants' ability to pay for food and other necessities, and puts tenants at risk of eviction for arrears. Any regulatory regime that makes the development of new rooming houses uneconomical reduces the options available to low-income home-seekers.

**Security of tenure.** Tenants must be protected from arbitrary eviction. This includes illegal evictions by landlords, but also sudden displacement by the City itself.

**Habitability.** The City of Toronto has a robust array of by-laws and regulations that promote habitability. Any regulatory regime should enable tenants to invoke these protections, free from the fear that they and their housemates will lose their homes if they complain.

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<sup>3</sup> Toronto City Planning Division, 2018 Rental Housing Market Conditions in Toronto: Report to the Tenant Issues Committee, February 9, 2018. <https://www.toronto.ca/legdocs/mmis/2018/td/bgrd/backgroundfile-112710.pdf>. Note that in the absence of a CMHC Average Market Rent for shared accommodation, a rent threshold of \$800 was imputed.

<sup>4</sup> Assuming a 35 hour work week, 52 weeks/year @ \$14/hour

**Location.** Although we recognize that this review is focused on regulatory rather than planning mechanisms, we take this opportunity to remind the City of the need to stem the rapid loss of dwelling rooms throughout the old City of Toronto (where transit and services are most available) and to legalize the many dwelling rooms proliferating throughout Scarborough and the rest of the inner suburbs.

**Accessibility.** The vast majority of rooming houses are *not* accessible to people with impaired mobility, nor can they be readily adapted to be so. As we protect and expand the City's rooming house stock, we must also continue to employ universal design standards on all new affordable housing developments.

**Cultural adequacy.** In many parts of Toronto, newcomers comprise the majority of rooming house residents. At a minimum, any regulatory regime must be both accessible and trustworthy for people who do not speak English, who are experiencing exploitation, or who fear deportation.

### **Recommendation 1: Put tenants first**

Although many Torontonians have a stake in a rooming house regulatory regime -- owners, operators, neighbours, and the City itself -- the *primary* stakeholder must be the people who live in rooming houses. It is their home.

As primary stakeholders, current and prospective dwelling room tenants should:

- be the primary group consulted in any review of regulatory policy and informed of any changes in the policy. This will require outreach through social agencies, advocacy organizations, legal clinics, and community, cultural and faith groups trusted by dwelling room tenants
- be equipped to advocate on their own behalf. This includes being informed of their legal rights, familiarity with any City complaints process, and access to advice and representation at the Landlord and Tenant Board -- the venue where most landlord/tenant disputes are addressed. In particular, they must be assured that any complaints will not result in the loss of their homes
- have a formal role in any decisions affecting their homes, including City inspections and any hearings that would affect the status of their homes. In particular, they must receive full information on the implications of decisions that may affect either their tenure or their rent.

### **Recommendation 2:**

**Instead of a "licensing regime," establish a tenant protection and affordable housing strategy**

Toronto's decades-old licensing system no longer appears to be an effective way to regulate rooming houses. The costs of conforming to City standards and Provincial Codes, and delays in obtaining approvals, seem to have led operators to simply go

underground and, if discovered, close shop and either sell their houses or return them to single family dwellings.<sup>5</sup>

In deciding whether to continue a licensing approach, we ask the City to consider:

- **Other housing is not licensed.** Homes that offer care, support services or food (retirement homes, group homes, personal care rooming houses, etc.) *are* typically regulated municipally or provincially, or both. But homes that do not offer services beyond housing – rental apartment buildings, second suites, privately own homes – are not licensed.
- **Toronto's by-laws do not depend on licensing to be effective.** Toronto's Property Standards offer a detailed and consistent set of standards that govern *all* residential uses, including rooming houses. These standards govern virtually all the concerns typically raised about rooming houses, such as occupancy standards, repairs, pest control, yard and property maintenance, heating and air conditioning, etc. The City also has other tools – noise and other by-laws, the Criminal Code and the Ontario Building Code, Fire Code, Electrical Code, etc. -- to protect residents. These standards are in force whether a home is licensed or not.
- **Fire inspectors already have the right to enter any home, whether it is licensed or not.** Section 19 of Ontario's *Fire Protection and Prevention Act* states that an "inspector may, without warrant, enter and inspect land and premises for the purpose of assessing fire safety. The power to enter and inspect land and premises without a warrant may be exercised at all reasonable times."

Sec. 15 of the Act also gives a fire inspector the right to enter any premises, without a warrant, where there are reasonable grounds to believe a risk of fire poses an immediate threat to life. The inspector is further permitted to remove persons, dispose of materials or "do any other thing" they believe is urgently required to remove or reduce the threat to life.<sup>6</sup>

### **A better approach**

Toronto already has a framework for promoting quality rental housing: RentSafeTO. This registration system enables the City to:

- identify and maintain data on rental buildings
- facilitate and act on tenant complaints

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<sup>5</sup> For example, on the author's own street in Leslieville, until recently there were six rooming houses. According to the City's records, none were licensed. Today, only two rooming houses remain, both operated by non-profit organizations.

<sup>6</sup> Fire Protection and Prevention Act, 1997, S.O. 1997, Chapter 4. Last amendment, 2019.  
<https://www.ontario.ca/laws/statute/97f04#BK25>

- require landlords to plan for fire safety, cleaning, waste management, etc.
- conduct periodic inspections
- fine owners who fail to make repairs, or (a better approach) complete repairs and collect the costs from the owner through property taxes.

Under Toronto's RentSafeTO system, the opinions of neighbours are not sought, but those of tenants are. In contrast, under the Municipal Code Section 285-16 the Commissioner can, through a hearing, refuse a rooming house licence or issue a temporary or conditional licence when there has been a complaint by the authorities, the tenants *or the neighbours*. In some cases, complaints from neighbours have led the Licensing Commissioner to prevent tenants from enjoying rights available to their neighbours, such as the ability to have visitors or sit in their own yard.

Under RentSafeTO, landlords bear the consequences for violations. The penalty for rooming house violations can include the refusal of a license, followed by closure. Although owners may suffer the loss of their business, this loss is mitigated by their ability to sell the property, usually as a single-family home. *Tenants lose their homes* without compensation unless the City steps in at its own expense to help them find (and afford!) a new home.

### **Recommendation 3: Remove barriers to registration**

There is one critical distinction between apartment owners and rooming house operators: apartment buildings operate in plain view, rooming houses are often hidden. To increase the likelihood of rooming house operators coming forward, and to use the registration process to effectively promote tenant health and safety, we recommend the following:

- Set registration fees at the low end: \$100 rather than the higher Etobicoke fees
- Require operators to submit site plans or floor plans, a property maintenance, a waste management plan and pest management plan upon registration. These plans are not costly to provide and will offer significant benefits to tenants
- Avoid imposing additional inspections or requirements that exceed those already required under existing regulations
- Where a rooming house is already in operation, obtain rent rolls to help the City protect tenants' right to return should they be displaced by redevelopment or fire, enforce rental replacement regulations and monitor illegal rent increases. (It is assumed that tenants are free to enter into or leave relationships without informing the City. Annual or bi-annual inspections should be sufficient to identify any problems with over-crowding.)

- Do not require zoning or other reviews which could cause delays or create opportunities for not-in-my-backyard discrimination based on negative perceptions of rooming houses.
- Set service standards for City approvals. We understand that jurisdictions such as Kitchener, Halton (and recently Etobicoke) have been able to approve applications for new rooming houses in under three weeks. Historically, approvals in Toronto have taken a year or more. A commitment to rapid approvals would be an important signal that Toronto supports the creation of affordable rooms.

***Meeting Code requirements: the elephant in the room***

For many rooming house operators, the single biggest deterrent to registration will be the cost of Fire and Building Code requirements for rooming houses.

During rooming house consultations in 2015, MLS staff requested examples of the costs of bringing rooming houses to Code. The Appendix describes four such examples. Each were (and continue to be) quality accommodation operated by non-profit organizations funded by either the City of Toronto or Ministry of Health and Long-Term Care. Nonetheless, the costs of renovation to meet Code ranged from \$91,000 to \$221,000 + HST. Two of the houses were deemed impossible to renovate.

Privately-owned operators will encounter similar costs. We can also assume renovation costs have increased since 2015.

We cannot resolve this quandary, except to support the City's harm reduction approach to the housing it funds -- ensuring quality through its role as funder, while avoiding tenant displacement or the loss of quality affordable housing stock.

**Recommendation 4:  
Strengthen the role of tenants**

Without incentives, few rooming house operators will come forward even to register. In some jurisdictions, municipalities offer grants, low-interest loans and other benefits to rooming house operators. These are all options worthy of exploration. However, when housing funds are scarce, the benefit of these incentives must be measured against the value of creating new non-profit owned, perpetually-affordable, self-contained units.

Instead of focusing outreach solely on owners and operators, we recommend creating incentives for tenants to identify their own houses. Keys to success might include:

- outreach to rooming house tenants receiving City- or LHIN-funded housing allowances, or referred to rooming houses by City-funded Housing Help Centres or support agencies

- outreach via student unions, legal clinics, newcomer services, tenant advocacy organizations, and other agencies, complemented by broad outreach via transit ads, radio and ethnic media
- guaranteed anonymity
- support for legal clinics and tenant-led advocacy organization to organize rooming house tenants, and inform them of their rights at both the house and city-wide level

**Recommendation 5:**

**Any rooming house closure should make tenants safer, not less safe**

At a public meeting in Scarborough a few years ago, a representative of Fire Services reported, with pride, that he had closed 40 rooming houses. At a minimum of four tenants per house, at least 160 tenants lost their homes.

The City has established protocols to assist rooming house tenants displaced by redevelopment or fires. These protocols include informing tenants of their rights, assistance finding new homes, provision of housing allowances, and for vulnerable tenants, ongoing supports in their new home. However, these protocols have not always been invoked when it is the City that closes the rooming house.

Given that the purpose of rooming house closures is to protect tenants from unsafe conditions, we urge the City to extend re-housing supports to rooming house tenants displaced for any reason. *At a very minimum, no person should become homeless because of a rooming house closure.*

# Appendix:

## The impact of rooming house licensing

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*Compiled by Joy Connelly, November 7<sup>th</sup>, 2015*

### **Background:**

On October 26<sup>th</sup> I met with Joanna Duarte Laudon, Municipal Licensing and Standards, to discuss ideas raised in my blog entry, *Rooming houses for a more affordable Toronto*.<sup>7</sup>

In that blog, I suggested that preserving and expanding Toronto's affordable housing stock should be a primary goal of any rooming house regulations. My concern was that a "universal licensing" regime using current standards would be unaffordable for both non-profit and privately owned rooming houses, and yet do little to improve the lives of tenants.

Ms. Duarte Laudon encouraged me to cite some examples. Over the past week I contacted a handful of colleagues operating non-profit rooming houses. Although these examples do not pretend to represent a valid sample of rooming houses, their experiences suggest:

- Current building and fire codes can require costly renovations -- even for quality rooming houses that have been operating without incident for over 25 years. These costs are likely to significantly increase the costs to public funders, reduce the number of non-profit rooming houses; and discourage private operators from applying for a license
- A single complaint from a rooming house neighbour can have an adverse affect on rooming house residents
- Current municipal zoning definitions do not accurately reflect the nature of supportive and alternative housing

### **Definitions:**

For the purposes of this report:

- *supportive housing* is funded by the Ministry of Health and Long-Term Care and the Local Health Integration Networks
- *alternative housing* is funded by the City of Toronto to house people with a history of homelessness.

Approximately 40% of Toronto's supportive housing for people with mental health or addictions issues, and half of Toronto's alternative housing, meets the City's current rooming house definition. Some of these houses are licensed as rooming houses, but most are not.

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<sup>7</sup>Opening the Window, September 17, 2015, [<http://openingthewindow.com/2015/09/17/rooming-houses-for-a-more-affordable-toronto/>]



### Example #1:

This non-profit housing provider has been operating an unlicensed 21-room rooming house for over 25 years. The house includes many fire safety features. All stairways are enclosed with doors at either top or bottom; exterior doors have wired glass; there are pull stations and fire extinguishers in several locations; and there is a steel exterior fire escape stair.

The Board of Directors decided to apply for a license because it was “the right thing to do.” Upon application they learned the home was defined as a “Care Occupancy” under the Building Code.<sup>8</sup> Under this designation, the housing provider was required to install a variety of early warning features, and install an automatic sprinkler system by 2019.

A Care Occupancy designation assumes residents will need supervisory staff to help them evacuate the building. (In this house, no residents have mobility limitations, although many have mental health issues.) The Fire Department found the provider’s staffing level (one staff person on-site 24/7) to be acceptable. However the housing provider noted that, had the City required an additional 24/7 staff person, **they would have needed to hire an additional 4.5 FTEs to meet the requirement.**

### Projected costs to meet licensing requirements:

Work Required	Cost (net of HST)	Paid by . . .
Code Consulting	\$17,200	City of Toronto, Social Housing Unit
Fire Alarm Design	\$14,200	City of Toronto, Social Housing Unit
Sprinkler System Design	\$17,100	City of Toronto, Social Housing Unit
Repairs to meet Code <ul style="list-style-type: none"><li>• repair damaged fire separations</li><li>• install additional self closing devices</li><li>• replace glass in one door with wired glass</li><li>• install new hand rails on fire escape</li></ul>	\$6,400	Housing provider
Install second exit second and third floors	(Estimated at \$300,000)	In September, Toronto Fire indicated this change will not be required
Upgrade fire alarm system	\$47,968	City of Toronto, Social Housing Unit
Install automatic sprinkler system <sup>9</sup>	\$118,075	Fundraising
<b>Total One Time Expense</b>	<b>\$220,943</b>	
<b>Annual Ongoing Expense to monitor fire system</b>	<b>\$720</b>	Housing provider

<sup>8</sup> Based on regulations introduced in January 2014 under the *Fire Protection and Prevention Act, 1997* (Ontario Regulation 150/13).

<sup>9</sup> Automatic sprinklers are not a requirement until 2019. However to reduce disruption to tenants the housing provider decided to do this work at the same time as the other upgrades.

**Example #2:**

An alternative housing provider wishes to convert a 5-bedroom house formerly housing a family into a rooming house for five women. It applied for a rooming house license in February, 2015. The City has not yet identified the required work. However a cost consultant has estimated the following costs. These costs have not yet been verified by contractor’s bids.

**Estimated costs to meet licensing requirements:**

<b>Work required</b>	<b>Estimated costs</b>
Install a fire alarm system	\$60,000
Install fire-rated drywall in corridors so stairway can function as a continuous exit	
New fire-rated doors onto the corridor from the bedrooms, living room, dining room and kitchen.	
Sprinkler system including sprinklers in corridors, kitchen, living room, dining room. (Sprinklers were deemed a more cost-effective approach than creating an additional means of egress.)	
Additional changes to handrails and minor exterior changes	\$10,000
Fees for architect, code consultation, mechanical engineer	\$21,000 + disbursements
<b>Minimum projected costs</b>	<b>\$91,000 + HST</b>
Additional possible requirements, including sprinklers in bedrooms	Unknown

**Example #3:**

A neighbour wanted an alternative housing provider to evict a particular tenant. When the provider responded that there were no legal grounds for an eviction, the neighbour complained to the City and MLS told the housing provider it needed to obtain a rooming house license.

The rooming house is a semi-detached house. The housing provider owns the attached house and operates it as a rooming house.

The non-profit agency sought the advice of a consulting firm to determine the costs of applying for a license, but has been unable to proceed because of lack of funds. Anticipated costs include:

*Consulting costs to date: \$10,000 + HST*

*Estimated costs to meet Code requirements: \$200,000 + HST*

*Additional consulting costs to prepare permit and tender documents: \$20,000 + HST*

**Additional impact on tenants: Relocation during renovations; permanent loss of access to their basement**

**Projected work required to meet licensing requirements (no itemized costs available)**

<b>Current state</b>	<b>Required work</b>
Corridor and stair widths do not meet Building Code	Complete removal of all walls around stairs. Completely new stairs from ground floor to third floor. This work will affect both the heating and electrical systems
Walls and ceilings have ½ drywall on wood studs.	Add 5/8 inch fire code drywall to walls and ceilings. Remove and replace baseboards and trim. Doors in fire separations require labeled doors and closers
Above work will require replacement of forced air ductwork. Building Code requires fire dampers at each fire separation	Replacement of forced air heating with hot water system
Both houses have inter-connected smoke detectors	New fire alarm system
No basement exit in one house. Portions of basement ceiling in both houses do not meet Building Code	Uncertain. May require closure to make both basements inaccessible to tenants
In both houses there is a 14 inch height difference between exit passageways and balconies, divided by two risers	Building Code requires three risers. No solution proposed. The consultant reports “correction will be difficult and expensive”

**Example #4:**

A supportive housing provider has operated a five-bedroom, semi-detached rooming house for over 25 years. When a neighbour complained, the City gave the housing provider only two choices: to apply for a rooming house license, or reduce the number of occupants from five to three.

The license will require a rezoning for both the supportive housing and the privately-owned attached house. The housing provider does not expect the owner to give permission for the rezoning.

They are therefore anticipating relocating two tenants so that the resulting three-tenant house will no longer meet the definition of a rooming house.

*Cost to the housing provider:* **\$17,064 reduction in annual rent and subsidies placing the house’s long-term viability at risk**

*Cost to the City and the Province:* **Permanent loss of two supportive and affordable units**

*Costs to tenants:* **relocation, loss of local connections.** If this was a privately-owned rooming house, or the housing provider did not have other rooms to offer, **these tenants would be evicted.** The rezoning process will also bring unwelcome attention to vulnerable tenants who have lived quietly in the neighbourhood for over 25 years.

### Example #5:

A supportive housing provider applying for a license was asked by City staff whether the building was a “residential care facility” as described by in the Zoning By-law [#438-86], i.e.:

“a residence for the accommodation of six to ten persons, exclusive of staff, who by reason of their emotional, mental, social or physical condition or legal status require a group living arrangement for their well-being where:

(i) the facility is supervised, or the members of the group are referred, by a hospital, court or government agency; or

(ii) the facility is funded wholly or in part by a government, other than funding provided solely for capital purposes; or

(iii) the facility is regulated or supervised under a general or special Act; but does not include a use otherwise classified or defined in this by-law.

The City of Toronto’s Zoning By-law 569-2013 (Version date: August 19, 2014)<sup>10</sup> does not include a Residential Care Facility among its defined uses.<sup>11</sup>

The supportive housing provider’s response may be of crucial importance, affecting whether the housing is legally permitted and the standards required by the building and fire codes. However, the City’s query is not easy to answer. Supportive housing *is* government-funded, as are thousands of other rent-geared-to-income units. Tenants may benefit but are *not required* to live in a group. Some but not all tenants could be referred by hospitals or government-funded agencies (unless a co-ordinated access system was deemed a government agency).

It would be helpful if, as part of the Rooming House Review, the Planning Department could examine the definitions that might affect supportive and alternative housing providers that offer shared housing, and the implications of those definitions.

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<sup>10</sup> City of Toronto Zoning By-law 569-2013, as amended (Office Consolidation), retrieved November 7, 2015. [[http://www.toronto.ca/zoning/bylaw\\_amendments/ZBL\\_NewProvision\\_Chapter800.htm](http://www.toronto.ca/zoning/bylaw_amendments/ZBL_NewProvision_Chapter800.htm)]

<sup>11</sup> Zoning Bylaw 569-2013 does define a Residential Care Home as “supervised living accommodation that may include associated support services, and:

- is licensed or funded under Province of Ontario or Government of Canada legislation;
- is for persons requiring semi-independent or supervised group living arrangements; and
- is for more than ten persons, exclusive of staff.

However, this bylaw further notes that an apartment building used for the purpose of supportive housing or social housing is not a residential care home.