

In the zone:

Housing, human rights
and municipal planning



Ontario
Human Rights Commission

Commission ontarienne des
droits de la personne



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Introduction

“Every person has a right to equal treatment with respect to the occupancy of accommodation without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.”

– Ontario Human Rights Code, s.2(1)

This guide offers an overview of the human rights responsibilities of municipalities in housing. It offers information about the various legislated tools municipalities have, and shows some examples of how municipal planners, councillors, Housing Service Managers, District Social Service Boards and others can use “best practices” to overcome discriminatory neighbourhood opposition and promote housing that is free from discrimination. The guide can also be a resource for organizations and advocates who are working with municipalities to advance human rights in housing.

Affordable housing (which includes social housing and market rental housing, lodging houses, and many other housing forms) and housing that is accessible and barrier-free help build attractive, liveable and economically competitive communities. Housing is the foundation for stable living conditions, and a key starting point for financial stability and being included in the community.

Affordable housing can take many forms, such as rooming or lodging houses, group homes, social and supportive housing, boarding houses, institutional care homes and transitional housing.

Many people face barriers to securing affordable housing because of discrimination based on grounds of the Ontario *Human Rights Code* (the *Code*). Many people who identify under *Code* grounds (such as race, disability, family status and receipt of public assistance) face an urgent need for affordable housing.

There is an acknowledged need for affordable housing in Ontario and across Canada – but the public controversy that is attached to affordable housing continues to be one of the biggest barriers to developing it. A key part of achieving inclusive neighbourhoods where all residents feel welcome to live, work and play is taking steps to overcome community opposition to affordable housing.

One way to overcome these barriers is to clearly and consistently make the connection between human rights and the bylaws, policies and procedures that govern housing. This guide can help you make this connection. It represents the best advice from the OHRC, and draws on information from Ontario's Ministry of Municipal Affairs and Housing. As well, we consulted with a team of planning experts, planning and human rights lawyers, housing providers and advocates to make sure the guide reflected a wide range of perspectives.

In the summer of 2011, the Ministry of Municipal Affairs and Housing published its *Municipal Tools for Affordable Housing Handbook* (www.mah.gov.on.ca/Page9572.aspx), which offers an in-depth look at the many tools municipalities have for increasing and protecting affordable housing. *In the zone* talks about the same options, from a human rights perspective.

This guide does not offer a high level of detail about these tools like the handbook does. Instead, it is designed to complement the handbook, to help municipalities use familiar tools with the added goal of meeting human rights obligations.

Connecting human rights and housing is more than just “a good thing to do.” Under Ontario's *Human Rights Code*, it's the law. This guide offers steps to

help make the law a lived reality for all Ontarians.

Housing is a human right – on an international scale

The international community has long recognized that housing is a fundamental and universal human right that must be protected in law. Since proclaiming the *Universal Declaration on Human Rights* in 1948, the United Nations has recognized the right to housing in many documents. Examples are:

-  *Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (the ICESCR)*
-  *International Convention on the Elimination of All Forms of Racial Discrimination*
-  *Convention on the Elimination of All Forms of Discrimination Against Women*
-  *Convention of the Rights of the Child.*

Canada has ratified all of these treaties.

Ontario is one of the wealthiest jurisdictions in the world. Yet, many Ontarians do not have access to adequate and affordable housing. Access to appropriate housing is inequitable for many groups identified by prohibited grounds of discrimination

including race, disability and family status. International human rights groups have severely criticized Canada's housing situation numerous times. For example, in 2007, Miloon Kothari, the former United Nations Special Rapporteur on adequate housing, described Canada's housing situation as "very stark and very disturbing" and amounting to a "national crisis."¹

The international community has made the connection between human rights and housing. Canada and Ontario have laws such as the *Human Rights Code* that can help make this same connection. Solid planning processes are among the

steps municipalities can take to ensure human rights at the community level.

Every municipality is different

Municipalities in Ontario come in all shapes and sizes. Each has different issues, different neighbourhoods and different community needs. And each has a different capacity to respond to these needs. This guide offers a variety of steps municipalities can tailor to meet their unique circumstances, while also meeting their human rights responsibilities.

About the *Human Rights Code*

The Ontario *Human Rights Code* offers protection from discrimination in five social areas:

- Services, goods and facilities
- Accommodation, which includes housing
- Employment
- Contracts
- Membership in trade, vocational and professional associations

In the area of housing, the *Code* offers protection based on the following grounds:

- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed (religion)
- sex (includes gender identity, pregnancy and breastfeeding)
- sexual orientation
- age (18 years or older, and in some cases 16 years or older)
- marital status
- family status
- disability (includes perceived disability)
- receipt of public assistance

¹ Kothari, Miloon, United National Special Rapporteur on adequate housing, "Preliminary Observations at the end of his Mission to Canada 9 – 22 October 2007," A/HRC/7/16/Add.4 (*Preliminary Observations*). In May 2008, Ms. Raquel Rolnik (*Brazil*) was named as the new Special Rapporteur on adequate housing.



Defining discrimination in housing

Every person has the right to be treated equally in the area of housing without discrimination because of any of the grounds set out in the *Code*. The purpose of anti-discrimination laws is to prevent the violation of human dignity and freedom by imposing disadvantage, stereotyping, or political or social prejudice.

There are several ways of defining and identifying discrimination. The OHRC's *Policy on Human Rights and Rental Housing* states that discrimination includes any distinction, including any exclusion, restriction or preference based on a prohibited *Code* ground, that impairs the recognition of human rights and fundamental freedoms.



The most important issue to determine is whether a prohibited *Code* ground was a *factor* in the discrimination. Even if a *Code* ground is only one of the factors in a decision to restrict a person's equal access to housing, this may be a violation of the *Code*.




Discrimination in housing may often take on systemic or institutional forms. Systemic or institutional discrimination

includes municipal bylaws, policies or practices that create or perpetuate a position of relative disadvantage for people identified by *Code* grounds. These may appear neutral on the surface, and may have been well-meaning, but nevertheless have an exclusionary impact based on *Code*-protected grounds. The key here is not to just consider intent – it is equally important to think about the impact municipal decisions have.

It's not just about adding housing – think about potential losses

Municipalities have human rights responsibilities in their roles as facilitators of affordable housing. But they must also take steps to apply a human rights lens to decisions that could result in the **loss** of affordable housing. Examples include:

-  Revitalization projects that raise property values
-  Lodging house zoning or regulations that act to reduce availability

-  Rental housing licensing
-  Heritage planning
-  Zoning bylaw amendments that place new restrictions on the location of accessory apartments, yet do not grandfather existing accessory apartments.

In each of these examples, the discrimination may not be intentional, but again, look beyond the intent to the impact. Unless municipalities take steps to mitigate the effect of these decisions on people who identify with *Code* grounds, they may be at risk of human rights complaints.

Did you know?

Because the *Human Rights Code* is “quasi-constitutional,” it has primacy over provincial and municipal legislation, unless the legislation specifically says that it operates despite the *Code*. This means that when municipal bylaws and the *Code* conflict, the *Code* takes precedence.

It's not our choice

“We don’t get to approve who buys the house across the street from us, and we don’t get to choose our neighbours. We don’t have the right to discriminate.”

– Barbara Hall
Chief Commissioner,
Ontario Human Rights Commission



Overcoming opposition to affordable housing

NIMBYism – a human rights issue

When affordable housing is being considered, there is almost always some opposition. Some of it may be legitimate (such as wanting to build a high-rise apartment building on a street with only single detached housing) – but other opposition has the potential to leave municipalities vulnerable to human rights complaints.

Discriminatory opposition to affordable housing for groups protected under the *Code* is a prime example of the “Not in My Backyard” syndrome or “NIMBYism.” It happens when people hold negative attitudes or stereotypes about the people who live in affordable housing or use emergency shelters. This is often directly related to one or more *Code* grounds. This kind of opposition can be hidden in planning terms, and can be expressed in many ways, sometimes based on exaggerated concerns about changes to the neighbourhood, impact on traffic or about the building form.

NIMBYism often arises as a response to a local development. As well, it can be seen from “single issue” groups that are opposed to affordable housing.

Opposition to housing projects based on stereotypes or prejudice towards the people who will live in them can be a violation of people’s rights to be free from discrimination in housing – which means it can be against the law.

The bottom line is that people do not have the right to choose their neighbours.

Dispelling the common NIMBY myths

Affordability and Choice Today (ACT) is an initiative funded by the Canada Mortgage and Housing Corporation. ACT, operated by the Federation of Canadian Municipalities (FCM) with the participation of the Canadian Home Builders’ Association and the Canadian Housing and Renewal Association, works to overcome planning and building regulations that create barriers for


developing affordable housing. It does this by promoting practical solutions at the local level. In its guide called *Housing in my Backyard: A Municipal Guide for Responding to NIMBY*, ACT lists some common NIMBY objections and how municipalities can respond:

 **Myth: Property values will go down.**

Reality: Many studies on affordable housing conclude that there is no impact on property values.² One study done in Toronto found that, “there was no evidence that the existence of the supportive housing buildings studied has negatively affected either property values or crime rates in the neighbourhood. Property values have increased and crime decreased in the period considered by the study.”³

 **Myth: Traffic will increase.**


Reality: Like any new development, a higher density or infill-housing proposal must meet the municipality’s planning and engineering standards. In addition, multiple-family dwellings near quality transit services are likely to attract residents with lower levels of car ownership, as are dwellings geared to older people, people with disabilities, and families with lower incomes.

 **Myth: There will be a strain on public services and infrastructure.**

Reality: Generally, higher-density housing needs less extensive infrastructure than new development – features like piped water, sewer services, schools and roads already exist. Also, higher-density development and infill can provide the larger customer base needed to increase the range and quality of available services (such as public transit).

 **Myth: New residents won’t fit into the neighbourhood.**

Reality: Often, the future occupants of new affordable housing already live in the neighbourhood. They are people sharing an apartment with other family members or friends, or struggling to pay market rent by giving up meals or having to walk because they cannot afford transit fares. Inclusive communities provide housing opportunities for all.

 **Myth: Affordable housing won’t fit the character of the neighbourhood.**

Reality: Affordable housing must comply with the same building restrictions and design standards as market-rate housing, and will be designed to fit in with the character of the neighbourhood.

² Ontario HomeComing Coalition, *Yes, In My Backyard – A Guide for Ontario Supportive Housing Providers*, 2005, p. 27

³ de Wolff, Alice. *We are Neighbours: The Impact of Supportive Housing on Community, Social, Economic, and Attitude Changes*, 2008, Wellesley Institute, p.iv.

Myth: Crime will increase.

Reality: A Canadian study of 146 supportive housing sites concluded that “there was no statistically significant evidence that supportive housing led to increased rates of reported violent, property, criminal mischief, disorderly conduct or total crimes.”⁴ In fact, the future occupants of new affordable housing often already live in the neighbourhood.


Types of discriminatory opposition to affordable housing

Discrimination in housing can result from attitudes, actions, laws or policies that create barriers for people based on *Code* grounds, such as people receiving social assistance or people with disabilities, who seek to move into affordable or supportive housing in a neighbourhood. This opposition can violate the *Code* when it results in changes to existing planning processes, barriers to housing access, or when it exposes proposed residents to discriminatory comment or conduct. Exclusions or limitations written into municipal bylaws can also violate the *Code*.





Talk about land use, not people

Concerns about affordable housing projects must be based on legitimate land-use planning considerations, and not on stereotypical assumptions about the people who will live there. When policies or practices are directed towards, or disproportionately affect, *Code*-protected groups, they may violate the *Code*.

Some examples of discriminatory practices could include:

-  requiring affordable or supportive housing providers to adopt restrictions or design compromises that are not applied to other similar housing structures in the area, such as:
 - requiring fences or walls around the property to separate it from other neighbourhood homes because of the intended residents
 - putting arbitrary caps on the numbers of residents allowed by project, ward or municipality
 - adding visual buffers or removing balconies so tenants can't look out on their neighbours
 - requiring residents to sign contracts with neighbours as a condition of occupying the building

⁴ George Galster, Kathryn Pettit, Anna Santiago, and Peter Tatian, *The Impact of Supportive Housing on Neighbourhood Crime Rates*, 2002.

-  requiring extra public meetings, lengthy approval processes, or development moratoria because the intended residents of a proposed housing project are people from *Code*-identified groups
-  imposing minimum separation distances or restrictions on the number of housing projects allowed in an area
-  making discriminatory comments or conduct towards the intended residents of a housing project at public planning meetings or in published or displayed notices, signs, flyers, pamphlets or posters
-  enacting zoning bylaws that restrict affordable housing development that serves people identified by *Code* grounds (e.g. group homes) in certain areas while allowing other housing of a similar scale.

Example:

A community agency meets with municipal staff to discuss the impact the municipality's bylaws are having on the development of group homes. In this small municipality, a group home for 10 residents must be spaced 1,000 metres from another group home. This restricts the ability of group home residents, who are people with developmental and mental health disabilities, to live in the neighbourhood of their choice without discrimination. This also creates a shortage of group homes in the municipality despite a high need for housing for people with developmental and mental health disabilities.

In response to the concerns raised, the municipality examines the issue taking human rights considerations into account, and amends the zoning bylaw to remove the separation distances.

Zone supportive housing as residential

Affordable, supportive and group housing – with or without support workers – are still residential uses. The OHRC does not support zoning such living accommodations as businesses or services, because these zoning categories can subject the people who live in the housing to higher levels of scrutiny and expectations than do other forms of residential housing.

The Community Living experience

A few years ago, Community Living Toronto received funding to find and set up a couple of new group homes in Etobicoke. The group homes were to house 3-5 individuals with an intellectual disability, who had spent all or most of their lives living in Etobicoke. These people worked or attended day programs in Etobicoke and many of their key family members also lived there. Etobicoke was their home – and the community they wanted to live in.

I soon discovered that Etobicoke had a distancing bylaw that stated that new group homes (defined as 3-10 persons requiring a group living arrangement supported by a recognized social service agency) could not be located within 800 metres of any other group home or residential facility. After identifying all the group homes in Etobicoke and placing them on a map, I quickly discovered that there were only a couple of “postage stamp” areas where a new group home could be legally located. Given the timelines for the start-up, the distancing requirements and all of the complications with the start-up of new group homes, we had to go to another area of Toronto to find housing for most of these individuals.

– Dale Makino, Program Manager, Etobicoke/York Region, Community Living Toronto

Make sure public meetings are really needed

Under the *Zoning Act*, municipalities must host a public meeting when considering zoning bylaws or amendments. However, if zoning rules already allow the housing being considered (“as-of-right”), a meeting is not required. Yet many local councillors call meetings anyway, which often gives voice to discriminatory discussions. In these meetings, people wishing to live in the housing are subjected to hurtful comments and a level of negative scrutiny that none of their potential neighbours had to face when moving into the neighbourhood.

These meetings also reinforce the incorrect assumption that neighbourhood residents have the right to approve who moves in next door, and often inflame, rather than calm, neighbourhood opposition to the housing. They also inflame the potential for human rights complaints.

At the same time, sometimes people are genuinely afraid because they’ve been given misinformation about risks, and not calling public meetings can cause resentment. In these cases, a public meeting can be helpful as long as it is carefully planned, communicated and moderated. If done well, meetings can be used to overcome attitudes

that were based on misinformation, educate, get buy-in, engage the silent majority and defuse tensions and fears.

Example:

A municipal council had a staff recommendation to fund an as-of-right social housing project. The council deferred the decision until a public meeting could be held. When lawyers advised that holding such a meeting could be discriminatory, the municipality changed the meeting format to a session on the value of social housing.

Best practice – public meetings

At the beginning of each public meeting to talk about a new affordable housing project, lay out clear ground rules. State that the only issues open for discussion are legitimate land use issues such as location, size, setback and parking requirements. Advise attendees that the meeting will not be a forum to make negative comments about the people who will be living there. In addition, actively interrupting and objecting to discriminatory language or prejudicial comments can help prevent them from happening again.

Can neighbours choose tenants? No.

In many meetings, community groups demand to have a say in how tenants are selected for a housing project. And in some cases, developers agree to this to allow the project to move forward. The practice of allowing neighbours to select tenants as a condition of “approving” the project can amount to discrimination.

Elected officials have human rights obligations

Discriminatory comments can also happen outside of community meetings (for example, in municipal council meetings involving planning, zoning or funding approvals). Elected representatives are not exempt from the *Code* – they have a legal duty to not discriminate, and they are elected to represent all of their constituents.

Extra requirements mean more barriers

If a municipality imposes different or extra requirements for public meetings, consultations, hearings, design charettes or other processes on affordable and/or supportive housing that are not placed on ownership housing, then this could amount to discriminatory behaviour. Using excessive or extra requirements for consultation for certain types of housing delays the development process, increases the uncertainty and costs associated with the project and could, if the delays and extra requirements add up, ultimately jeopardize the project itself. Developers of affordable and/or supportive housing should face the same regulatory processes as other forms of housing, and not face additional or excessive requirements for meetings and consultations. Smart developers usually seek to creatively engage their potential neighbours, but requirements for excessive consultation can frustrate a project.

– Michael Shapcott, The Wellesley Institute



Principles for human rights in housing

The following human rights principles apply to housing:

- 🏠 Everyone in Ontario has the right to be free from discrimination in housing based on membership in a Code-protected group. This covers getting housing, during tenancy and evictions
- 🏠 People should be able to live in the community of their choice without discrimination
- 🏠 Healthy and inclusive communities provide and integrate a range of housing for people of all income levels
- 🏠 Landlords, housing providers, neighbourhood associations, municipalities, appeal bodies like the Ontario Municipal Board and the courts all have an obligation to make sure that people do not face discrimination in housing
- 🏠 Discriminatory opposition to affordable housing projects is often found in the form of policies, legislation, actions, attitudes or language used that create barriers for people from Code-protected or disadvantaged groups
- 🏠 Legislation governing municipalities, such as the *Municipal Act, 2001* and the *Planning Act*, are frameworks for municipal autonomy, decision-making, transparency and accountability. In carrying out their responsibilities under these and other legislation, policies and programs, municipalities are responsible for ensuring they do not violate the Code.

To help put these principles into practice, the OHRC released its *Policy on Human Rights and Rental Housing* in October 2009. This policy provides extensive details about both rights and responsibilities relating to rental housing in Ontario. It is available at: www.ohrc.on.ca/en/resources/Policies/housing/pdf.

The Ministry of Municipal Affairs and Housing administers a variety of policies, legislation and resources that municipalities can use to encourage new affordable housing (for example, the recently published *Municipal Tools for Affordable Housing Handbook*). These tools and resources, when combined with the OHRC's *Policy on Human Rights and Rental Housing*, make it possible to apply an effective human rights lens that can help to overcome discriminatory opposition to affordable housing.

Best practices – housing strategies

- Create an overall housing strategy for the municipality, addressing different types of housing, such as lower-end market, social, and special needs housing.
- Include policies for as-of-right affordable and/or supportive housing throughout the municipality in all neighbourhoods
- Offer a mixture of rental and ownership opportunities
- In the housing strategy, develop a set of principles that sets out the connection between human rights and housing.



Applying housing legislation and programs to prevent discrimination

Responsibility for housing, either as a Service Manager or as a landlord, also includes a responsibility for human rights. A human rights lens needs to be applied to all housing matters, including the use of tools enabled by legislation.

Municipalities must follow a variety of provincial legislation regulating housing and housing-related issues. Examples are the *Residential Tenancies Act* and the *Housing Services Act*. Both of these contain provisions that can help prevent discrimination and encourage inclusiveness.

But a municipality's responsibility does not end there – it must also comply with the *Human Rights Code*. And if there is a conflict between the legislation and the *Code*, the *Code* must prevail.

What is a Service Manager?

Local Service Managers are responsible for funding and administering social housing. A Service Manager can be a regional government, county, or a separated city, depending on local circumstances. Service Managers are also responsible for administering other social programs, such as Ontario Works and childcare.

(Source: www.mah.gov.on.ca/Page6450.aspx)

Residential Tenancies Act, 2006 (RTA)

The *RTA* is the legislation governing rental housing in Ontario. Under the *RTA*, when selecting prospective tenants, landlords can only consider information that complies with the *Human Rights*

Code and related regulations. They may not discriminate on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

If a person is already a tenant, the *RTA* does not allow landlords to evict them based on any of the grounds of discrimination included in the *Code*.

The *Code* also provides that every person has the right to equal treatment and to be free from discrimination when applying for housing and during their tenancy, and a tenant has the right to freedom from harassment by the landlord or other tenants based on race, ancestry, etc. The *Code* also outlines a landlord's legal duty to accommodate tenants based on the *Code* grounds.

For more information on appropriate landlord practices, see the OHRC's *Policy on Human Rights and Rental Housing*, available at www.ohrc.on.ca/en/resources/Policies/housing.

Housing Services Act, 2011

The *Housing Services Act, 2011* outlines the provincial commitment to affordable housing. It clarifies the housing roles and responsibilities of municipalities, and helps them to set municipality-specific priorities for affordable housing, social housing, housing for persons with disabilities, and preventing homelessness.

Service Managers, which include regional governments, cities and district boards, are responsible for delivering and administering affordable and social housing as well as other social service programs such as Ontario Works and childcare. Service Managers also have obligations under the *Human Rights Code* to provide housing that is free from discrimination. This includes a legal duty to respond to requests for accommodation based on *Code* grounds, and to accommodate to the point of undue hardship. For more information, see the OHRC's *Policy on Human Rights and Rental Housing*.

Under Section 6 of the *Housing Services Act*, Service Managers have to develop Local Housing and Homelessness Plans to set the municipality's overall strategy in these areas. While developing and implementing these plans, Service Managers have an excellent opportunity to make sure human rights are supported and respected. Best practices include:

- 🏠 Developing anti-discrimination and anti-harassment policies
- 🏠 Reviewing and removing barriers

- 🏠 Designing inclusive housing programs
- 🏠 Drafting procedures to respond to accommodation requests
- 🏠 Setting procedures for resolving disputes quickly and effectively
- 🏠 Setting up education and training programs.

For more detailed information on these Acts, refer to the *Ministry of Municipal Affairs and Housing's Municipal Tools for Affordable Housing Handbook*.



Municipalities have authority – and human rights obligations

Licensing rental housing

Under the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, municipalities have broad powers to pass bylaws (subject to certain limits) on matters such as health, safety and well-being of the municipality, and to protect persons and property.

Both Acts also give municipalities the specific authority to license, regulate and govern businesses operating within the municipality. This includes the authority to pass licensing bylaws covering the business of renting residential units and operating rooming, lodging or boarding houses/group homes.


With this authority also comes a human rights responsibility. The *Code* requires that these decisions consider all members of their communities. The *Code* also requires that such decisions do not have a disproportionate adverse impact on or target people or groups who identify with *Code* grounds.

At the same time, the Ministry of Municipal Affairs and Housing is encouraging municipalities to use the tools at their disposal to create more affordable housing. In light of recent affordable housing legislation, licensing bylaws that reduce or restrict affordable housing may not be in line with the provincial vision.

Building Code Act, 1992

The *Building Code Act, 1992 (BCA)* governs the construction, renovation, demolition and change of use of buildings. The Building Code is a regulation under the *BCA* and sets out minimum technical and administrative requirements. Principal authorities, which include municipalities, are responsible for enforcing the *BCA* and Building Code.

Current Building Code requirements for barrier-free design include:

-  specific dimensions and placements for barrier-free entrances, paths of travel and washrooms

- 🏠 requiring new tactile signs for people with visual disabilities
- 🏠 requiring that a percentage of units in new apartments buildings or hotels include accessible features.

These accessibility requirements are *minimum* standards that builders may exceed, and they have been progressively enhanced in each successive edition of the Building Code.

The proposed Accessible Built Environment Standard developed under the *Accessibility for Ontarians with Disabilities Act (AODA)* may lead to further enhancements to the Building Code's barrier-free design requirements. The goal of the AODA is to achieve accessibility for Ontarians with disabilities in the areas of goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025.

The *Human Rights Code* comes first

In many cases, the requirements of the *Human Rights Code* exceed those of the AODA and the Building Code. When this happens, requirements under the *Human Rights Code* take precedence.

Despite the intention to achieve inclusive buildings, accessibility requirements set out in the Building Code do not always result in equal access for people with

disabilities as required by the *Human Rights Code*. Housing providers should consider their obligations under the *Human Rights Code* when designing housing. Relying on relevant building codes has been clearly rejected as a defence in claims of discrimination under the *Human Rights Code*.

Retrofitting buildings to make them accessible can be a very costly process, because the accommodation required may not fit easily within the original design. The best way to avoid these costs is to design up-front for inclusion. By looking at accessibility early when preparing building designs, it is possible to add in accessibility features at the lowest cost, and to prevent significant financial outlays in the future.

Best practice - design inclusively

Design buildings and renovation projects as inclusively as possible, and consider the obligations of the *Human Rights Code*. Never create new barriers when building new facilities or renovating old ones.

For more information on making buildings accessible, see the Canadian Standards Association's Barrier-Free Design (www.csa-intl.org/onlinestore) and the Principles of Universal Design (www.design.ncsu.edu/cud/about_ud/udprinciples).

Did you know?

In the case of *Quesnel v. London Educational Health Centre* (1995), 28 CHRR D/474 (Ont. Bd. Inq.), a woman who used a wheelchair could not get chiropractic treatment because the building was inaccessible to wheelchairs. The Health Centre argued that it had followed all of the Building Code rules of the time, but the Board of Inquiry (now the Human Rights Tribunal of Ontario) found that it had discriminated based on disability. The Board stated that the *Human Rights Code* took precedence over the *Building Code*, and ordered the Centre to install a wheelchair ramp.

Maintaining properties

The *Building Code Act* provides authority for municipalities to pass property standards bylaws covering the maintenance and occupancy of buildings and properties.

Under the *BCA*, these bylaws cannot set out requirements, standards or prohibitions that distinguish between persons who are related and persons who are unrelated when considering the occupancy or use of a property, including the occupancy or use as a single housekeeping unit. Such bylaws must be about buildings and property, not people.

Best practices – work with the wider community

- Allow housing for seniors, people with disabilities and other people identified under *Code* grounds across a municipality, including but not limiting it to locations that are close to amenities such as transit and community services, by including objectives and policies to this end in official plans.
- Work closely with housing developers, agencies and people who will benefit from such housing when choosing the right planning tools and developing housing strategies.
- Work with community stakeholders to review policies, bylaws and practices to identify and remove potential barriers to affordable housing (such as discriminatory neighbourhood opposition) for groups who experience discrimination based on *Code* grounds.



Good planning leads to healthy, inclusive communities

Planning Act

The *Planning Act* provides a framework for municipalities to make land use decisions to fit local needs and circumstances. It also recognizes human rights as part of the planning process. In making these decisions, municipalities must make sure they do not violate the *Human Rights Code*.

The built environment – buildings, transport networks, green spaces, public realms, natural systems and all the other spaces that make up a community – plays a critical role in shaping the physical, psychological and social health of individuals and their communities.

Healthy communities need a mixture of rental and ownership opportunities, as well as market, non-market and social housing. Planning restrictions that result in a concentration of low-income

housing in certain areas because they are effectively prohibited elsewhere in the municipality can lead to neighbourhoods that are stigmatized, resulting in social exclusion and instability. For example, grocery stores and banks often view “poor” neighbourhoods as unprofitable places to do business. The result is that people in these neighbourhoods face added barriers to their nutritional and financial well-being.

What sound land use planning does:

Sound land use planning creates opportunities for inclusiveness and supports the natural evolution of welcoming neighbourhoods that are free from restrictions.

What sound land use planning does

not do: Sound land use planning does not include making decisions about the types of people who are allowed – or not allowed – to live in a neighbourhood.

Did you know?

A 2010 OMB decision [*Advocacy Centre for Tenants Ontario v. Kitchener (City)* (2010), O.M.B.D. Case No. PL050611] identified that when bylaws result in restrictions for groups protected by the *Code*, a municipality may need to show that they are rationally connected to municipal objectives, they were established in good faith, and that it would be impossible to accommodate the group affected without undue hardship.

The proposed bylaw was designed to limit certain housing forms in an area the City felt was over-concentrated with single-person, low-income households, residential care facilities and social/supportive housing.

The OMB ruled that while decentralization might be a valid planning tool, it must be balanced based on *Human Rights Code* obligations. The OMB ordered the City to revisit the bylaw, and the City ultimately repealed it due to changing planning circumstances.

The issues outlined in this decision can also be applied to other similar housing situations. For example, if a municipality enacted bylaws that limited or restricted where young people or students were allowed to live, it could face challenges before the OMB and also complaints (called applications) to the Human Rights Tribunal of Ontario.

Zone for land use, not for people

Section 34 of the *Planning Act* sets out the powers of municipalities to pass zoning bylaws to regulate matters including the use of land (e.g. residential, commercial, industrial), and standards associated with land uses such as location, size, setback and parking requirements.

Section 35(2) of the *Planning Act* says municipalities may not pass zoning bylaws that distinguish between people who are related and people who are

unrelated in respect of the occupancy or use of a building. For example, a zoning bylaw cannot stipulate that a family rather than roommates must occupy a house.

Example:

A community agency wants to build a rooming house with low rents, for 10 residents, who may be people with mental health disabilities, single people receiving social assistance and/or newcomers to Canada. Zoning bylaws in the city prohibit rooming houses in that neighbourhood, as well as in most residential areas in the city.

The agency wants to build this project in a residential neighbourhood, and seeks to amend the bylaw to allow this use and to reduce the parking requirements. Neighbourhood residents are opposed to the project, saying that their neighbourhood cannot sustain this type of project, and the project will decrease property values, as well as create crime and security issues.

The city listens to the residents' concerns, but examines the potential land use impact of the rooming house and determines that it would not negatively affect the neighbourhood. Excluding the rooming house would restrict the opportunity of the residents, who are from Code-protected groups, to live in the neighbourhood. This could violate their rights under the *Human Rights Code*.

The city also needs to meet its goals for intensification and affordable housing targets and wants to encourage more income-integrated neighbourhoods, so it amends the bylaw and allows the parking exemption. After studying the issue more fully, the city eventually changes its zoning bylaws to allow rooming houses as-of-right in all residential areas.

Did you know?

In 2002, an Ontario court ruled that a bylaw in an Ontario municipality that restricted the number and location of foster and group homes with four or more foster children was illegal because it distinguished between related and non-related persons and thus contravened the *Planning Act (Children's Aid Society of the Region of Peel v. Brampton (City), [2002] O.J. No. 4502 (S.C.J), aff'd [2003] O.J. No. 2004 (C.A.)*.

About minimum separation distances

Many municipalities want to use minimum separation distances as a way to manage overconcentration of some types of housing within one neighbourhood. While there may be merit in the goal of spreading housing types and services across a municipality, higher real estate costs and other factors may make this difficult.

When other factors act as barriers, minimum separation distances further limit housing options and can have a negative impact on the people who rely on these options. Instead, look at the broader issues and consider incentives and ways to encourage and facilitate

affordable housing in the other parts of the municipality. This is a positive approach, instead of the punitive one that minimum separation distances often suggest.

Did you know?

The courts have stated that zoning powers do not include the power to zone by referring to the user of the land or to define the use by referring to a personal characteristic. For example, the Manitoba Court of Appeal ruled that a zoning bylaw breached s.15 of the *Charter of Rights and Freedoms* because it restricted the location of group homes for older persons, people with disabilities, persons recovering from addictions and discharged penal inmates to a limited number of zones, and required minimum separation distances (*Alcoholism Foundation of Manitoba v. Winnipeg (City)*, [1990] M.J. No 212 (C.A.): the Supreme Court of Canada denied leave to appeal).

Best practice

In 2010, the City of Sarnia changed its bylaws to ensure that people with disabilities do not face additional barriers in finding supportive housing. A group of psychiatric survivors had filed a human rights complaint against the city, alleging that its zoning bylaws violated the human rights of people with disabilities living in group homes. The city changed the bylaw so that:

- distancing requirements for all group homes were removed
- the requirement that group homes with more than five residents be located on an arterial or collector road was removed
- group homes are now included in all zones allowing residential use
- residential care facilities are a permitted use in any residential zone.

Leadership in York Region

In December 2009, the Regional Municipality of York adopted an Official Plan that outlines specific policies for promoting an appropriate mix and range of affordable housing, including:

- Requiring local municipal official plans and zoning bylaws to permit a mix and range of housing types, lot sizes, unit sizes, functions, tenures and level of affordability that is consistent with intensification and density requirements.
- Requiring all new secondary plans to include a strategy to implement affordable housing policies, including:
 - Specifications on how the affordable housing targets in this plan will be met
 - Policies to achieve a mix and range of housing types within each level of affordability
 - Policies to ensure larger sized, family units within each housing type and level of affordability
 - Consideration of locations for social housing developments.
- A minimum of 25% of new housing units across the region must be affordable (and with a range of types and sizes to accommodate different household types), and a portion of these units should be accessible for people with disabilities. In addition, a minimum of 35% of new housing units in Regional Centres and key development areas must be affordable.
- Developing an affordable housing implementation framework in partnership with local municipalities and the development industry to achieve the targets in this plan
- Considering innovative financial arrangements to encourage and support the development and maintenance of non-profit and affordable housing, such as height and density incentives, Community Improvement Plans, and reduced municipal fees and charges.
- Encouraging the construction of new non-profit, special needs, emergency, affordable and seniors' housing in proximity to rapid transit and other human services.
- Preparing education and awareness programs with community, government and industry stakeholders to highlight the economic and social advantages of incorporating affordable housing into our communities.
- Identifying optimal sites for affordable housing early in the development process to maximize funding opportunities.
- Encouraging accessibility features in all new housing, and building design that will facilitate subsequent conversion to provide additional housing units, such as secondary suites
- Requiring local municipalities to adopt Official Plan policies that protect rental housing from both demolition and conversion to condominium or non-residential use, and to include “as-of-right” secondary suite policies, on a municipal-wide basis.



Using existing tools can have human rights benefits

Legislation like the *Planning Act* and the *Municipal Act*, along with the Provincial Policy Statement, 2005 (PPS) and other Ministry of Municipal Affairs and Housing public documents offer many well-known tools to plan for affordable housing and make neighbourhoods healthy and inclusive.

Beyond planning, however, municipalities have limited tools for actually building affordable housing – they often lack the federal and provincial funding to make much-needed expansions of the affordable housing stock. Given these existing barriers, it is even more critical that municipalities apply the principles of the *Code* in their planning activities.




Municipalities can use existing planning tools when considering their human rights requirements. By increasing options for housing in a community, a municipality can also increase the opportunity to include many people whose low income is related to a *Code* ground.

Planning for affordable housing can also advance human rights. Here are examples of tools that municipalities are already using, which they can also apply to meet human rights goals.

Under the *Planning Act*, municipalities can:

- 🏠 secure affordable housing in exchange for increased height and density of a development
- 🏠 use Section 37 of the *Act* as an incentive-based system to authorize increases in the height and density of development otherwise prohibited by a zoning bylaw, in return for the provision of facilities, services or matters specified in the bylaw
- 🏠 reduce or waive planning application processing fees as a financial incentive to encourage affordable housing
- 🏠 reduce or exempt an applicant from parking requirements to promote affordable housing
- 🏠 use a Development Permit System to streamline approvals and reduce the time and costs needed to develop affordable housing

Under the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, municipalities can:

-  reduce fees/taxes or provide low-interest loans to groups seeking to build affordable housing
-  give full or partial exemption from growth-related development charges for affordable housing
-  pass a bylaw to prohibit and regulate the demolition or conversion of a residential rental property that contains six or more dwelling units to a purpose other than a residential rental (e.g., condominium).

These are just some of the many provincial laws that enable municipalities to promote and offer incentives to build affordable, equitable housing.

For more detailed information on these and other tools, refer to the *Municipal Tools for Affordable Housing Handbook*, available online at www.mah.gov.on.ca.

As well, *Affordability and Choice Today (ACT)* provides practical information and grants to help local teams modify planning and building regulations in ways that can improve housing affordability and choice. Information on best practices and on how to apply for a grant is available at www.actprogram.com. ACT has also released a guide for municipalities to address NIMBYism, called *Housing in My Backyard: A Municipal Guide for Responding to NIMBY*.



Responding to public inquiries about tenancy or human rights

This section includes contact information for various government bodies that monitor both tenancy and human rights issues. Tenants have a number of options for making complaints:

Human Rights Tribunal of Ontario

To file a human rights claim, tenants or prospective tenants can contact the Human Rights Tribunal of Ontario at:
Toll Free: 1-866-598-0322
TTY: 416-326-2027 or
Toll Free: 1-866-607-1240
Website: www.hrto.ca

Human Rights Legal Support Centre

If they need legal help with a human rights claim, tenants or prospective tenants can contact the Human Rights Legal Support Centre at:
Toll Free: 1-866-625-5179
TTY: 416-314-6651 or
Toll Free: 1-866-612-8627
Website: www.hrlsc.on.ca

Ontario Human Rights Commission

www.ohrc.on.ca

The OHRC's website offers a wide variety of information on human rights and housing, for tenants, landlords, housing providers and decision-makers.

Ministry of Municipal Affairs and Housing

Tenants or prospective tenants having problems with a landlord can contact the Ministry's Investigation and Enforcement Unit at 1-888-772-9277, or can apply for help through the Landlord and Tenant Board.

Website: www.ltb.gov.on.ca

If people have inquiries about land use planning in Ontario or the tools described in this guide, they can contact one of the Ministry's five regional offices:

Central (Toronto)

416-585-6226
800-668-0230 (toll-free)

Western (London)

519-873-4020
800-265-4736 (toll-free)

Eastern (Kingston)

613-548-4304
800-267-9438 (toll-free)

Northeastern (Sudbury)

705-564-0120
800-461-1193 (toll-free)

Northwestern (Thunder Bay)

807-475-1651
800-465-5027 (toll-free)



Appendix A

Poverty, social condition and the *Human Rights Code*

The OHRC knows that low social and economic status is a common factor in many types of housing discrimination. People identified by *Code* grounds are disproportionately likely to have low incomes. The shelter allowance rates for people and families who receive social assistance are far below market levels. This, together with a limited supply of adequate and affordable housing in many parts of the province, puts such people at a significant disadvantage when seeking shelter.

The *Code* provides protection against discrimination in housing based on specific grounds, including “receipt of public assistance.” The inclusion of “receipt of public assistance” allows some individuals with low social and economic status to file human rights claims where they have been subjected to differential treatment in housing. However, many people with low social and economic status will not be in receipt of public assistance (e.g. people

earning low wages, homeless people, etc.), but will still experience differential treatment in housing.

In many cases, given the strong link between low social and economic status and membership in a *Code*-protected group, these people will be identified by one or more *Code* grounds, and may experience discrimination based on an intersection of low social and economic status with other grounds.

Example:

A housing provider denies a lone working mother with two children a one-bedroom apartment, even though she cannot afford a larger apartment. Although the grounds for the claim would be marital status and family status (receipt of public assistance does not apply as the woman is working), it is her social and economic condition that forces her to rent a one-bedroom apartment.

In such cases, planners, decision-makers and housing providers need to consider the impact that low social and economic status have on the overall discrimination the person experiences.

The Government of Ontario has acknowledged the connection between poverty and human rights. Section 2.(2)3 of the *Poverty Reduction Act, 2009*⁵ recognizes, “That not all groups of people share the same level of risk of poverty. The poverty reduction strategy must recognize the heightened risk among groups such as immigrants, women, single mothers, people with disabilities, aboriginal peoples and racialized groups.” Section 2.(3)3 of the *Act* recognizes that “housing” is one of the key determinants of poverty, and section 4.(1) requires annual reporting on indicators to measure its success.

Because of the close connection between low social and economic status and membership in a *Code*-protected group, measures that subject people who have low social and economic status to differential treatment will frequently raise human rights concerns. Government, housing planners, policy-makers and housing providers should make sure that their policies and practices do not have an adverse impact on people identified by *Code* grounds.

⁵ *Poverty Reduction Act, 2009*: www.e-laws.gov.on.ca/html/source/statutes/english/2009/elaws_src_s09010_e.htm



Appendix B

Best practices – looking to the United States

New Jersey, Massachusetts and California have all taken noteworthy steps to promote affordable housing. While each state's approach may be different, they all share the following features, which may serve as best practices for future consideration in Ontario:

- 1) The municipalities are given an affirmative obligation to provide for affordable housing. More specifically, this means that they are obliged to use all of their resources and powers proactively to the fullest extent reasonably possible in supporting the development of affordable housing.
- 2) The obligation is defined in terms of measurable targets or quotas that are set by the states. They provide a basis for assessing performance, and ensure that all municipalities are doing their fair share.

- 3) The term “affordable housing” is defined in a rigorous and functional way. These definitions, in turn, provide the basis for setting the household income thresholds used in determining who is eligible for the affordable housing.

- 4) The municipalities are given the tools necessary to meet the obligation. The most effective (but not only) of these tools is inclusionary zoning, which is permitted in all of these states.

- 5) The municipalities not meeting their obligation are subject to effective penalties.

Source: Richard Drdla, Affordable Housing Consultant



Appendix C – Glossary

Affordable housing: Under the *Investment in Affordable Housing program*, the federal/provincial governments define affordable housing as new rental housing that is rented at no more than 80% of the local average market rent as determined by Canada Mortgage and Housing Corporation.

Arterial road: Major traffic and transit route, intended to carry large volumes of traffic.

As of right use: Land uses that are automatically allowed bylaws such as a municipality's zoning bylaw.

Barrier-free design: Design of buildings, products and environments that are inherently accessible to both people without disabilities and people with disabilities.

Charette: A workshop-like public meeting to brainstorm community design issues.

Code grounds: Ontario's *Human Rights Code* prohibits discrimination based on the following grounds:

- race
- ancestry
- place of origin

- colour
- ethnic origin
- citizenship
- creed (for example, religion)
- sex (includes gender identity, pregnancy and breastfeeding)
- sexual orientation
- age (generally 18 years or older, but age 16 or older in some housing situations)
- marital status
- family status
- disability
- record of offences (only in employment)
- receipt of public assistance (only in housing).

People are also protected from discrimination when two or more grounds are involved (for example, a single parent with a disability), when they are associated with someone who identifies with a *Code* ground, or when they are perceived to be a member of a group identified by a *Code* ground.

Collector road: Traffic and transit routes designed to carry lower volumes of traffic than arterial roads, and providing continuous access across neighbourhoods.

Community Improvement Plan:

A provision of the *Planning Act* that allows municipalities to prepare plans for designated community improvement project areas. These areas need improvement because of age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings, or for any other environmental, social or community economic development reason.

Discrimination: Discrimination includes any distinction, including any exclusion, restriction or preference based on a prohibited *Code* ground, that impairs the recognition of human rights and fundamental freedoms.

The purpose of anti-discrimination laws is to prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice.

Discriminatory neighbourhood opposition (also called NIMBYism):

Opposition to housing projects that is based on stereotypes or prejudices towards the people who will live in them. It can refer to discriminatory attitudes as well as actions, laws or policies that create barriers for people, such as persons with low income and/or disabilities, who seek to move into affordable or supportive housing in a neighbourhood.

Diversity: The presence, in an organization or a community, of a wide range of people with different backgrounds, abilities and identities such as ethnicity, race, colour, religion, age, sex, gender identity and sexual orientation.

Duty to accommodate: Under the Ontario *Human Rights Code*, people identified by *Code* grounds are entitled to the same opportunities and benefits as everybody else. In some cases, they may need special arrangements or “accommodations” so they can take part equally in all of the social areas covered by the *Code*, including, for example, employment, housing and education. Employers, housing providers, education providers and other parties responsible under the *Code* have a legal obligation to accommodate *Code*-identified needs, unless they can prove it would cause them undue hardship. Undue hardship includes considerations of cost, outside sources of funding and health and safety.

Harassment: Harassment means engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome. Such comment or conduct could include unwelcome attention, remarks, jokes, threats, name-calling, touching or other behaviour. It also includes displaying (in workplaces, schools or housing)

pictures that insult, offend or demean someone because they belong to a Code-protected group.

Housing Service Manager: In Ontario, Housing Service Managers establish, administer and fund housing programs and services, and may provide housing directly. There are 47 Service Managers and District Social Service Boards in Ontario.

Inclusive design: Design approaches meant to produce buildings, products and environments that are inherently accessible to both people without disabilities and people with disabilities.

Lodging house: While there are many definitions for this term, in general lodging or rooming houses are buildings where four or more tenants rent individual rooms that do not have both kitchens and washrooms for a tenants' exclusive use.

NIMBYism (also called discriminatory neighbourhood opposition): "Not in My Back Yard" opposition to housing projects that is based on stereotypes or prejudices towards the people who will live in them. It can refer to discriminatory attitudes as well as actions, laws or policies that create barriers for people, such as persons with low income and disabilities, who seek to move into affordable or supportive housing in a neighbourhood.

Official Plan: A long-range planning and policy document that guides and shapes growth and manages development over a 20-30-year timeframe. Official Plans contain goals, objectives and policies to guide future physical development of a community through the land use planning process while also considering important social, economic and environmental matters and goals.

Ontario Municipal Board (OMB): An independent administrative tribunal responsible for hearing applications and appeals and deciding on a variety of contentious municipal matters. Board members are appointed by the Lieutenant Governor in Council and include lawyers, accountants, architects, planners and public administrators. The OMB operates under the *Ontario Municipal Board Act*, as well as other legislation and its own rules of practice and procedure. It reports administratively to the Ministry of the Attorney General.

Quasi-constitutional: When we call the *Ontario Human Rights Code* "quasi-constitutional," we mean that it has primacy or takes precedence over other laws. In other words, if an Ontario law such as the *Planning Act* says one thing and the *Code* says another, the *Code* will prevail unless the other law specifically states the *Code* will not take precedence.

Racialization: The process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life. This term is widely preferred over descriptions such as “racial minority,” “visible minority” or “person of colour” as it expresses race as something imagined by society rather than as a description of persons based on real characteristics.

Second units (also known as accessory or basement apartments, secondary suites or in-law flats): Self-contained residential units with kitchen and bathroom facilities within dwellings or within other buildings on the same property, such as coach houses or laneway garages.

Social housing: Housing developed under a federal/provincial government program by a non-profit or co-operative housing corporation, where some or all of the rents are subsidized so that households do not pay more than 30% of gross income on shelter.

Supportive housing: Housing developed and/or funded under a provincial government program, with support services to help tenants to live independently.

Systemic discrimination: Systemic or institutional discrimination consists of patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for people identified by Code grounds. These appear neutral on the surface but, nevertheless, have an exclusionary impact on people identified by Code grounds.

Transitional housing: This temporary or interim accommodation (in the form of multi-unit apartments, single room occupancies, scattered site apartments, etc. is combined with case managed support services, aimed at helping people make the transition to long-term and permanent housing, self-sufficiency and independence.

Variance: Permission to deviate from a specific requirement of a zoning bylaw.

Zoning: A system of land use regulation that designates allowed land uses based on their location and whether they conform with the Official Plan.

Zoning bylaw: A bylaw that controls the use of land in a community. It states exactly how land can be used, where buildings and other structures can be located, the types of buildings that are allowed and how they can be used, and the lot sizes and dimensions, parking requirements, building heights and setbacks from the street.

Zoning bylaw amendment: A change in zoning that allows a property to be used or developed in a way that was not allowed before by the zoning bylaw.



For more information

Human rights and housing:

www.ohrc.on.ca

www.ohrc.on.ca/en/resources/Policies/housing/pdf

Affordable and rental housing:

www.mah.gov.on.ca/Page126.aspx

www.mah.gov.on.ca/Page9572.aspx

Planning Act tools:

www.mah.gov.on.ca/Page6819.aspx

Affordability and Choice Today:

www.actprogram.com

www.actprogram.com/CMFiles/CRA_ACT_NIMBYGuide_WebEN.pdf

Poverty and housing:

www.e-laws.gov.on.ca/html/source/statutes/english/2009/elaws_src_s09010_e.htm

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