



Office of the Commissioner
Community and Health Services

Memorandum

To: Committee of the Whole

From: Adelina Urbanski
Commissioner, Community and Health Services

Date: June 9, 2016

Re: **Proposed Appeal Procedure for Service Manager Decisions**

PURPOSE

The Province has announced that it intends to introduce regulations under the *Housing Services Act, 2011* (HSA) that will require the Region, as the Service Manager for housing, to create a process for social housing providers to appeal Regional decisions. The Association of Municipalities of Ontario (AMO) opposes regulation in this area as it is not appropriate or necessary. This memo provides information about the proposed appeal procedure and seeks Council's endorsement of the AMO position. A copy of AMO's May 25, 2016, letter to the Minister of Municipal Affairs and Housing is appended to this memorandum as Attachment 1.

BACKGROUND

The HSA currently includes provisions that require Service Managers to establish appeal processes for tenants and applicants who disagree with social housing provider and waiting list system decisions. The existing HSA regulations set out the requirements for the appeal process and the Region has a long-standing process that meets these requirements. The HSA also includes a provision requiring each Service Manager to establish a process for the social housing providers to appeal the Service Manager decisions. However, to date, the Province has not enacted any regulations related to this provision. AMO's position is that the Province should remove this provision from the HSA.

The Provincial regulation registry indicates that the Province will introduce regulations to require an appeal process for housing providers. The registry does not include information about what decisions would be subject to appeal. However, areas that could be subject to appeal include the amount of Regional subsidy a social housing provider should receive and decisions related to interventions in the operations of housing provider in difficulty, such as occurred when the Region intervened with Thornhill Green.

The social housing funding formula is set out in the HSA and it includes a balanced accountability framework that ensures housing providers are treated fairly if a Service Manager needs to intervene in their operations. The HSA narrowly defines the circumstances where Service Manager intervention is permitted and requires that the remedies applied, such as appointment of directors to the Board or appointment of a receiver, be appropriate to the situation. The HSA includes procedural fairness provisions to ensure that housing providers have the opportunity to correct their operational issues before a remedy is implemented. Housing providers can appeal to the Ombudsman and they have the right to seek a judicial review of a Service Manager's decision made under the HSA. An additional appeal process will add unnecessary cost and delay effective administration of the social housing program. Further, and more concerning, this provision has the potential to overturn Council decisions. In severe circumstances where remedial opportunities to rectify a housing provider's operations were not successful, Council approval is generally sought for more impactful remedies and to protect the housing provider's tenants. It is these circumstances that could be subject to a challenge.

The Province has not indicated what procedural requirements would apply to the housing provider appeal process. The existing HSA procedural rules for rent subsidy decisions require that the appeal decision be made by someone who did not participate in the original decision. It is likely that a similar requirement would apply to housing provider appeals. Given the seriousness of appealable decisions, the Region will likely be required to create a process that empowers a third party to review and over turn Council decisions.

AMO's May 3, 2016 submission to the Province in response to proposed HSA regulatory changes notes that with respect to housing provider appeals:

AMO does not support further regulation in this area as it is not necessary or appropriate. It is not appropriate as the funders of the social housing system, Service Managers need the ability to manage their housing portfolios in a fiscally responsible manner to be accountable to municipal councils. It is not necessary as the Act already contains safeguards for housing providers with recourse to the courts, and with the Ombudsmen.

... More importantly, as a matter of principle, it would undermine the authority of municipal Councils to make decisions, usurping the authority under the Municipal Act.

RECOMMENDATION

AMO continues to raise this issue with the Province. This memo recommends that Council endorse the AMO position on housing provider appeals and that the Chairman communicate the Region's concerns to the Minister of Municipal Affairs and Housing.

Adelina Urbanski
Commissioner, Community and Health Services

Attachment (1)

#6753417

Sent via e-mail: Minister.MAH@ontario.ca

May 25, 2016

The Honourable Ted McMeekin
Minister of Municipal Affairs and Housing
College Park
17th Floor
777 Bay Street
Toronto, ON M5G2E5

Dear Minister McMeekin:

I am writing as a follow-up to AMO's submission on the proposed regulatory changes under the *Housing Services Act, 2011*. Specifically, I am writing to emphasize our very serious concerns with the proposal to prescribe in regulation certain Service Manager decisions for reviews as requested by housing providers under Section 157 of the Act.

As stated strongly in our submission, AMO does not support further regulation in this area as it is not appropriate or necessary. In fact, we believe that Section 157 should be revoked from the Act. It is neither appropriate or necessary.

It is not appropriate as municipal Service System Managers need the ability to manage their housing portfolios in a fiscally responsible manner to be accountable to municipal councils and District Social Service Administration Boards, and to safeguard the existing housing units available in the system. Most importantly, as a matter of principle, it will serve to undermine the authority of municipal Councils and DSSAB Boards to make decisions, usurping their authority under the *Municipal Act* and the *District Social Services Administration Boards Act*.

It is not necessary as the Act already contains safeguards for housing providers with recourse to the courts, and with the Ontario Ombudsman. It could potentially involve a fiscal impact to municipal governments in cases where appeals are successful as Service System Managers hold the contingent liability with respect to the housing provider's obligations. An outside body should not determine that a Service Manager must consent to actions that might place it at risk.

Further, deliberation of this change at this point in time is premature. If not willing to revoke the section from the Act, the Ministry should at least defer a decision on further regulation as it is pre-empting its own legislatively mandated review of enforcement provisions (sections 82-99) under Section 100 of the Act scheduled for January 1, 2017.

Such a review should consider how successfully the enforcement provisions in the Act balance the powers of the Service System Manager to effectively administer the housing programs in its service areas, with the authority of the housing provider to manage its properties and, whether additional review provisions are warranted.

I am available to speak with you further on this matter.

Yours truly,



Gary McNamara
AMO President

cc: Laurie LeBlanc, Deputy Minister, Ministry of Municipal Affairs and Housing
Janet Hope, Assistant Deputy Minister, Ministry of Municipal Affairs and
Housing, Housing Division
Iain Angus, Chair, Northern Ontario Service Deliverers Association
Keith Palmer, President, Ontario Municipal Social Service Association
Douglas Bartholomew-Saunders, Chair, Urban Commissioners