The Right to Choose Where to Live

These residences are restricted in Hamilton.

The Ontario Human Rights Commission says housing is a human right and that the city should not discriminate.

The homes in the pictures above offer supportive services for residents. These services can include assistance with meal preparation and planning, assistance with medication management, assistance with budgeting, help with activities of daily living, training, counselling and/or supervision. The residents who live in these homes may be persons with disabilities, whether they be physical, developmental or mental health disabilities, they may be pregnant and parenting youth, or they may be persons escaping abuse. A small number of such residences are for persons who have completed a criminal sentence or are on parole and require support and supervision to transition back into regular life.

Supportive housing is regulated by the City of Hamilton’s "Radial Separation Bylaw", which says that residential care facilities with more than four residents must be more than 300 metres apart (approximately six city blocks). Hamilton’s bylaw, however, is coming into direct conflict with the Ontario Human Rights Commission.

“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

“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)

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Based in part on research from “The Right to Choose Where to Live: Challenging the radial separation by-law and perceptions of supportive and supported housing in Hamilton” (May 2011) by Meng (Dolly) Lin, McMaster University. This project received financial assistance from Affordability and Choice Today (ACT) a housing regulatory reform initiative of the Federation of Canadian Municipalities, Canada Mortgage and Housing Corporation, the Canadian Home Builders’ Association and the Canadian Housing Renewal Association. Financial assistance was also received from the Ontario Trillium Foundation and the United Way of Burlington and Greater Hamilton.

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A McMaster University Health Sciences student, Meng (Dolly) Lin, completed a study on Hamilton’s radial separation bylaw and perception of supportive housing in Hamilton. During the course of her research, Ms. Lin and Mohawk College student Veronic Sanyaoalu interviewed neighbours, residents and staff members of supportive housing facilities.

“Many service providers are frustrated at why services could not be brought to the individuals in need, and delivered in the neighbourhoods where they live and where they already have relationships with the community, in order to allow for dignified care.” [...] 

“These by-laws are concerning for two reasons. First, they impede equal access to safe and affordable housing options for a specific population group. Second, it normalizes the ‘not in my backyard’ phenomenon, termed NIMBYism.”

–Meng (Dolly) Lin, *Right to choose where to live: Challenging the radial separation by-law and perceptions of supportive and supported housing in Hamilton*

Ms. Lin and Ms. Sanyaoalu also surveyed 86 Hamilton residents in all parts of the city and found that negative attitudes about supportive housing were in the minority.

**Do you agree or disagree with the following statement:**

“Nobody has the right to exclude any one else from their neighbourhood.”

Do you agree or disagree with the following statement:

“Supportive housing facilities must be established. It has to be in somebody's neighbourhood, so I will be comfortable with the idea of my neighbourhood being chosen.”

One stereotypical concern about supportive housing is that it can negatively influence property values. But evidence in Hamilton’s Durand neighbourhood, where there is a large number of supportive housing units, does not bear this out. For example, one condo building in the heart of Durand was recently able to sell individual units for over $350,000 even though four of its six closest neighbours are residential care facilities.

Here is what The Hamilton Spectator recently reported on this topic:

“Cameron Nolan, President of the Realtors Association of Hamilton-Burlington, said he isn’t aware of any Canadian research that has determined the effect of care facilities on housing prices. However, in his experience, he says they don’t bring down property value.

‘My own experience suggests there is no negative impact on property value from the insertion into a neighbourhood of a group home or other residential care facility,’ he said. ‘One can expect the general experience of realtors in the Greater Hamilton-Burlington area is similar.’”

Municipalities should zone for land use, not for people

The Ontario Human Rights Commission (OHRC) recently published a guide to housing, human rights and municipal planning, called "In the Zone". These quotes from the report explain why all residential uses and types (whether they be private or collective) must be treated in the same manner:

"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 Acts 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." [...] "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."

What are some alternatives to radial separation bylaws?

Barbara Hall, Chief Commissioner of the OHRC, has suggested that a proactive approach can be helpful for avoiding controversies and confrontations:

"Using legal forums is not the first choice for the OHRC to overcome discriminatory barriers to housing. This is because by the time a case goes to a tribunal or court, the damage to the people wanting to live in a neighbourhood or community is already done. Instead, our goal is to prevent the damage from happening in the first place, by working with municipalities to arrive at systemic solutions that make communities welcoming to all residents." [...] "Arbitrary separation distances can lead to contraventions of the Human Rights Code. Many municipalities try to use minimum separation distances as a way to manage 'overconcentration' of some types of housing within one neighbourhood. Minimum separation distances 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."

Incentives that the city could use in some parts of the city to attract supportive housing units to be located outside of areas with high numbers of residential care facilities include:

- Authorizing increases in the height and density of development otherwise prohibited by a zoning bylaw.
- Reduce planning application processing fees or approval timelines in specific areas for such housing.
- Reduce or exempt an applicant from parking requirements in specific areas for such housing.

How can any concerns with supportive housing be dealt with?

As with negative behaviour of any other residents or property owners in a neighbourhood, if there are any concerns with the behaviour of residents or operators of supportive housing, they can be dealt with through existing laws, bylaws and enforcement bodies. This would include contacting Municipal Law Enforcement for building standards, noise complaints, garbage and litter, and snow removal; Public Health Services for smoking by-law enforcement, safety, or food inspections; Fire Department for fire code violations; or Hamilton Police Services for criminal matters.
Impacts on development of affordable housing

The same issues that Hamilton is facing regarding supportive housing, often come up with affordable housing as well.

“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.

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.

– In the Zone: Housing, human rights and municipal planning, published by the Ontario Human Rights Commission

Social inclusion lens must be part of public discourse

The use of exclusionary language is an additional aspect that cannot be overlooked when discussing concerns about supportive housing, especially because many people who live in these homes are among our city’s most vulnerable residents.

“Each person in our society has an inherent value and worth, regardless of their need for supports in their life.”

– Jeff Neven, Homestead Christian Care

In a letter to the City of Hamilton, Barbara Hall stated that elected officials in particular have human rights obligations with regards to the public discourse on these issues:

“Terms such as ‘undesirables’, as reported in public meetings, reinforced with the use of terms like ‘undesirable activities’ in the Planning Report, are the type of stereotypes based on age and mental health that the OHRC is working hard to eliminate. Under the Code, municipalities have an obligation to make sure public meetings and discussions do not discriminate or subject Code-protected groups to unwarranted scrutiny or personal attack.”

Hamilton’s Stinson neighbourhood sets the example

The Stinson Neighbourhood Association has an engaging and compassionate attitude when it comes to the approximately 130 residents of supportive housing living in their midst. In one of their newsletters, they extend their “Neighbours Care” philosophy to include residents, staff and operators of residential care facilities in their neighbourhood.

“Their primary concern is about the quality of life and quality of care in certain residential care facilities rather than whether they should be allowed in their neighbourhood or not,” explained Jeff Neven of Homestead Christian Care to The Hamilton Spectator.