

# Report to Council



**Date:** July 9, 2012  
**File:** 0505-35-00  
**To:** City Manager  
**From:** Theresa Eichler, Community Planning Manager and  
Lauren Sanbrooks, Planner  
**Subject:** Housing Workshop - Housing Agreements

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## **Recommendation:**

THAT Council receives, for information, the report from the Community Planning Manager dated July 9, 2012, with respect to Housing Agreements.

## **Purpose:**

The purpose of this report is to provide Council with an overview of the City's housing agreements.

## **Background:**

Housing agreements secure commitments from developers to provide affordable housing that has been identified as part of developments through the application approval processes. Housing agreements are built on the premise of a "win-win" arrangement - a developer gains the ability to build more units on a site than would otherwise be possible and in return, the city obtains affordable rental, non-market or special needs housing. The process of implementing the agreement begins with the signing of the agreement by the developer/owner and the City. Council must approve the agreement by passing an agreement by-law before the Clerk's Department can register a notice of the agreement at the Land Titles Office. As dwellings reach occupancy or are sold, an affidavit, which is provided as Schedule "A" in the agreement, is submitted to the City declaring that the affordability requirements for the dwelling have been met.

Since Kelowna's first Housing Agreement was implemented in 1999, there have been a total of 27 Housing Agreements approved by By-law.

## **Types of Housing Agreements**

The City currently has several types of housing agreements: three rental agreements (affordable rental, purpose built, & affordable rental in an owner/stratified building); affordable owner; agreements that provide for affordable rental or owner dwellings; and special needs housing agreements. There are also agreements for non-market<sup>1</sup>/subsidized housing, one for families with members in health care (respite housing) and one seniors' housing agreement.

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<sup>1</sup> Non-market housing receives subsidies in order to reach the housing needs of lower income households, while market housing is built by the private sector without significant government subsidies.

A handwritten signature in black ink, located in the bottom right corner of the page.

**Ownership Housing Agreements:**

Ownership Housing Agreements set a maximum price at which a property can be sold in order to preserve the affordability of the housing unit for a particular class of purchasers<sup>1</sup>. Ownership housing agreements require staff time to help with the submission of the required affidavit at the point of sale.

There are eight active ownership Housing Agreements.

Included in the original version of the ownership Housing Agreements was a “sunset clause.” The “sunset clause” notes that after an owner had lived in the dwelling for at least ten years, he/she could formally request that the City allow the agreement to be released. However, if the unit is sold within the ten year period, it must be sold as “affordable” and the new owner enters a new ten year period. In 2009, Council directed that all ownership housing agreements be in perpetuity and that the 10 year “sunset clause” be removed. Close to that time, the Canada Mortgage and Housing Corporation (CMHC) raised an issue over mortgage insurance. Lenders typically do not favour limitations on title of property when financing homes. A new Schedule “C” to address the mortgage issue, and the removal of the 10 year clause were incorporated into the owner agreement template in 2009.

Details on requests for changes to the ownership housing agreements will be covered in a separate report.

**Rental Housing Agreements:**

Under rental housing agreements, units must be rented or leased only to a tenant whose household has a gross annual income equal or lesser than the maximum allowable income<sup>2</sup>, or a month-to-month basis or by a lease agreement not to exceed a certain number of years.

The City currently has five active rental Housing Agreements.

Rental units are the only type of market housing that can address the most pervasive affordability issues. In spite of recent spikes in the rental vacancy rate, the long term need for more rental housing remains. Most (60-70%) of Kelowna’s rental housing stock is either temporary, costly, or in buildings that could be redeveloped or converted to ownership housing or other uses. Rental housing agreements secure units in a building as affordable, meeting both the rent and income criteria and keep these units in perpetuity. In terms of meeting a recognized affordable housing need, the rental agreements are preferred.

Rental housing agreements have become more complex as the City has tailored agreements to respond to developer requests. For example, models have been developed to allow rentals in a stratified building; to allow a building owner to identify dwellings within a rental building to be offered as affordable rentals; and for purpose-built rental housing.

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<sup>2</sup> **Rental housing affordability:** the income required to spend no more than 30% of total household income before tax on the average rents for Kelowna published in the annual Kelowna Rental Market report by the Canada Mortgage and Housing Corporation

**Purpose-Built Rental Housing:**

Purpose-built rental housing is defined as a building of five or more dwellings that is intended to remain as rental for the long term. It is considered affordable housing because rent increases are controlled by the Province. Purpose-built rental housing can be secured to remain, in perpetuity, as rental housing with no defined rent or income limitations. It can also be secured with a 10 year option. Under the latter scenario, the owner could, after 10 years, request the City remove the notice of the agreement from the title of all or some of the dwellings. If there has been a rental grant issued to the property in question, the funds would have to be repaid to the City for any dwelling(s) that are released from the housing agreement. Two housing agreements that have received Council support but have not had notices registered on title as of yet are for purpose built rental housing.

**Special Needs Housing Agreements:**

Special needs housing agreements are put in place to recognize the use of housing for this purpose. Procedurally, special needs housing is not considered affordable housing unless it is also defined as affordable.

There are only two active special needs Housing Agreements. Both are for minor group living homes.

The use of special needs housing agreements for recognizing minor group living homes appears to be superfluous. Minor group living homes, as land uses, are technically exempt from municipal zoning under Section 20 of the Community Care and Assisted Living Act. Recent development proposals and inquiries for “group living homes, minor” have challenged the City in the capacity of these homes to blend with the form and character of other buildings in the neighbourhood. New development regulations in the Zoning By-law may be a more effective way to regulate this form of housing.

**Non-Market Housing Agreements:**

The City has two housing agreements that recognize non-market rental housing. One is Sunpointe, on Rutland Rd., which has 100 units of subsidized housing for residents receiving licensed health care. The other is an apartment building with 21 dwellings for women with low income. More recently, the City has not pursued housing agreements for buildings that are already subject to agreements with other governments or lease agreements with the City.

**Other Housing Agreements:**

There are two housing agreements that were created for specific development proposals. One is for seniors' housing and the other is for temporary dwellings for families with members who are hospitalized. The latter agreement has a bylaw that has received three readings from Council but is not yet completed.

### Summary of Housing Agreements

A summary of the dwellings that are defined by housing agreements is provided in the table below.

**SUMMARY OF DWELLINGS IN AFFORDABLE HOUSING AGREEMENTS - JULY 2012**

	OWNER	AFFORDABLE RENTAL	PURPOSE-BUILT RENTAL	NON-MARKET	SPECIAL NEEDS/other <sup>3</sup>	TOTAL
<b>BUILT</b>	27	11		121	2	161
<b>NOT BUILT</b>		14	8			22
<b>AGREEMENT PENDING</b>	7		67			74
<b>TOTAL</b>	34	25	75	121	2	257

### Housing Agreements Issues

As the City, developers and housing occupants have worked with housing agreements, a number of issues and areas of concern have arisen:

- Federal and provincial government agencies, including BC Housing and Canada Mortgage and Housing have presented considerable resistance to housing agreements due to the fact that they affect the title of the property;
- Not all owners and developers are receptive to the agreements. Many see them as a barrier to selling dwellings;
- The housing market has shifted nearly 180° since 2006 (e.g.: ownership supply has increased for homes below starter price);
- Owners and developers sometimes see the agreements as infringing on their property and housing market rights;
- There continue to be challenges with the economic viability of building new rental housing without government subsidies;
- Special needs agreements for minor group living homes have questionable effectiveness in terms of their ability to enable this housing form or meet the needs of the surrounding neighbourhood;
- Non-market housing, which is subsidized by government and/or charitable/non-profit agencies, is already subject to inter-agency agreements, including lease agreements (e.g. City-owned land) and Memorandums of Understanding (MOU) that secure the housing for its intended purpose. A housing agreement with the City becomes superfluous to these documents and is not always readily welcomed by other government agencies;
- Lack of monitoring system/resources for units with housing agreements. The affidavits intended to enforce compliance with owner agreements have not been consistently filed and there are three departments that have a partial role with housing agreements but none that owns them;
- Administrative structure is not in place to address long term management and monitoring of housing agreements. Larger numbers of agreements and dwellings that

<sup>3</sup> There was one agreement which simply designated the dwellings within the building for senior residents with no other requirements.

are affected by agreements would further complicate the situation and, to properly manage it, there needs to be one body/agency that manages these and other affordable housing issues, such as a municipal department (e.g. Vancouver), or housing authority (e.g. Whistler);

- The OCP 2030<sup>4</sup> does not contain specific requirements for situations when an amendment to the Future Land Use designation increases density. This issue will be explored as part of work currently underway regarding amenity bonusing;
- City policy direction to realize some affordable housing as part of new development may be thwarted if builders, owners and developers are not able to come to terms with the use of housing agreements. There are already examples of this.

A table has been developed to illustrate the various community issues that relate to housing agreements and give a rough idea of the performance of the agreements by subject area (see second attachment).

### Next Steps

Housing agreements have proven to be cumbersome and difficult for all parties to work with. Legal advice on simplifying and improving the agreement process has helped, but individual requests continue to present challenges. However, the City does not mean to compromise the needs of its residents for affordable housing.

To date, affordable housing generated under these agreements has been sparse, particularly when compared to the effort of securing the affordable dwellings and the advantage that is presented for some developments that otherwise may not have received support from the City. There is also the issue of managing development applications that amend the OCP in the context of whether affordable housing is presented as a benefit.

A number of next steps regarding the use of Housing Agreements can be explored should Council direct staff to do so. Next steps could include one or more of the following:

1. Status quo.
2. Grandfather existing owner agreements and do not create any new owner agreements.
3. Allow conversion of owner to rental agreements or agreements that allow affordable owner, or affordable rental of designated dwellings (developer / individual).
4. Pursue financial incentives for entry level home ownership (e.g.: Saskatoon).
5. Cancel use of special needs agreements for group living homes, minor (retroactive & new).
6. Develop zoning regulations for group living homes, minor.
7. Ensure special needs housing in housing agreements is consistent with the definition used in the zoning bylaw;
8. Manage rental agreements by requiring the submission of an affidavit for the affordable dwellings as part of the business licence renewal for these buildings (similar to the process recommended for secondary suites).
9. Discontinue use of all housing agreements, while continuing to manage the ones that are in place.

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<sup>4</sup> OCP 2020 required affordable housing contributions if increases in density by changing the land use designation were proposed.

To help Council with providing direction to staff, it is advised that the majority of administrative complications seem to revolve around ownership housing agreements. Housing agreements are not the sole means of aiding with housing affordability. The City has already pursued a number of other options, including land partnerships and inclusive zoning. Most other options entail the investment of additional revenue or resources.

Saskatoon was the location for the 2012 Federation of Canadian Municipalities (FCM) annual conference and creative programs used by that City were presented there. Saskatoon has been very active in the area of affordable housing for a number of years and has been consulted regularly during research for Kelowna. The new mortgage flexibilities program was of interest and some preliminary investigation has been conducted. Some differences include the size of Saskatoon, the different Provincial environments, property taxes at double the rate of those in Kelowna, accounting for school taxes and the BC homeowner grant.<sup>ii</sup> Therefore, it would take twice as long to recover the funds for down-payment homeowner grants in Kelowna, without increasing taxation for these dwellings to recover cost more quickly. Further, this is an additional cost to the City. Most of the success of the Saskatoon program is based on participation of home builders, which has been good. Saskatoon has received substantial provincial funding as well, which it has used to build its housing reserve fund and acquire lands that it uses for housing partnerships. The mortgage flexibilities program also links up with the City's land resources.

Kelowna's Housing Opportunities Reserve Fund was modeled using Saskatoon's and other municipalities' examples. Land acquisitions are a priority for this fund. However, annual budget commitments to the City's fund are presently prioritized for rental housing grants.

Staff can return to Council with recommendations at a later date, based on discussion at July 23, 2012 Council meeting.

**Internal Circulation:**

City Clerk  
Director of Land Use Management  
Manager, Urban Land Use

**Legal/Statutory Authority:**

*Local Government Act* Section 905

A housing agreement under section 905 of the Local Government Act (LGA) is the only tool available to the City to ensure that affordable housing commitments are kept.

Under Section 905(2) of the LGA: "*A housing agreement may include terms and conditions agreed to by the local government and the owner regarding the occupancy of the housing units identified in the agreement...*"

**Zoning By-law:**

Bonuses are available in return for housing secured by agreement in five of the Residential Multiple Unit zones (RM2 to RM6). For the RM2 and RM3 zones, the bonus is 0.05 in floor area ratio (FAR) and the rest offer a bonus of 0.1 in FAR in return for housing secured by a housing agreement. Half the area of the bonus is generally recommended to be returned as affordable/special needs housing secured by an agreement. There is a cash-in-lieu policy available as well if a development seeks these bonuses but cannot deliver the housing on site

(Council Policy 344). Staff has advised that the bonuses are generally sought in addition to a zone change, not simply on property that is already zoned to the applicable RM zone.

**Existing Policy:**

Official Community Plan

Objective 5.9 - Support the creation of affordable and safe rental, non-market and/or special needs housing.

**Financial/Budgetary Considerations:**

Administrative costs associated with housing agreements relate primarily to staff time (see "Personnel Implications") and legal expenses.

At present, those pursuing housing agreements are charged a \$150 processing fee. This fee does not fully cover costs to the City. Creating new housing agreements or significantly changing agreements can generate up to \$5,000 in legal fees. A minor legal review of an agreement is approximately \$200 - \$300, based on filed information. This cost is not recovered from the applicant.

**Personnel Implications:**

Housing agreements can require significant staff time due to administrative complexities and change requests. A straight forward housing agreement using the templates that the City has endorsed should take no more than about ten hours of staff time in total for all those who are involved in the process (estimated time to review agreements can range from 1-5 hours). Complexities happen when the developer wants changes to housing agreements and legal consultation is involved. These situations can take months to resolve and many hours of staff time in the three different departments (Land Use Management, Policy and Planning and City Clerk's Office).

**External Agency/Public Comments:**

Requests for change to housing agreements are covered under a separate report.

**Legal/Statutory Procedural Requirements**

*Local Government Act Section 905*

A housing agreement under section 905 of the Local Government Act (LGA) is the only tool available to the City to ensure that affordable housing commitments are kept. Under Section 905(2) of the LGA: "*A housing agreement may include terms and conditions agreed to by the local government and the owner regarding the occupancy of the housing units identified in the agreement...*"

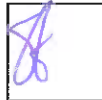
Considerations not applicable to this report:  
Communications Comments  
Alternate Recommendation

Submitted by:



T. Eichler, Community Planning Manager

Approved for inclusion:



Signe K. Bagh, MCIP

Director, Policy and Planning

Attachments:

2 Flow Charts for Housing Agreement Process

Table of Issues and Housing Agreements

Presentation on Housing Agreements

cc:

City Clerk

Director of Land Use Management

Manager, Urban Land Use



## End Notes (Below):

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<sup>i</sup> More details on the calculation of ownership affordability are provided below:

In order to purchase an affordable housing unit the Annual Gross Income of all individuals planning to live in the unit cannot exceed the median income for a two or more person Kelowna household as based on the most recent Census of Canada. Income and purchase numbers are updated yearly by the City, using the average annual BC Consumer Price Index. Home prices and income information are also revised following the release of the most recent Census income data and at that time, home prices are re-calculated based on the current mortgage rates, property taxes, utility costs and other defined shelter costs for ownership (based on CMHC<sup>i</sup> practice). The intent is to create entry level housing / starter homes.

<sup>ii</sup> The affordable price set by Saskatoon for a three-bedroom townhouse is \$260,000 in 2012 and this would be assisted by the Saskatoon program with a 5% down payment (\$13,000) on the basis that it would be paid back in property taxes within five years. This home would pay \$2,095 in property taxes in Saskatoon and \$1,090 in Kelowna, after the homeowner grant.

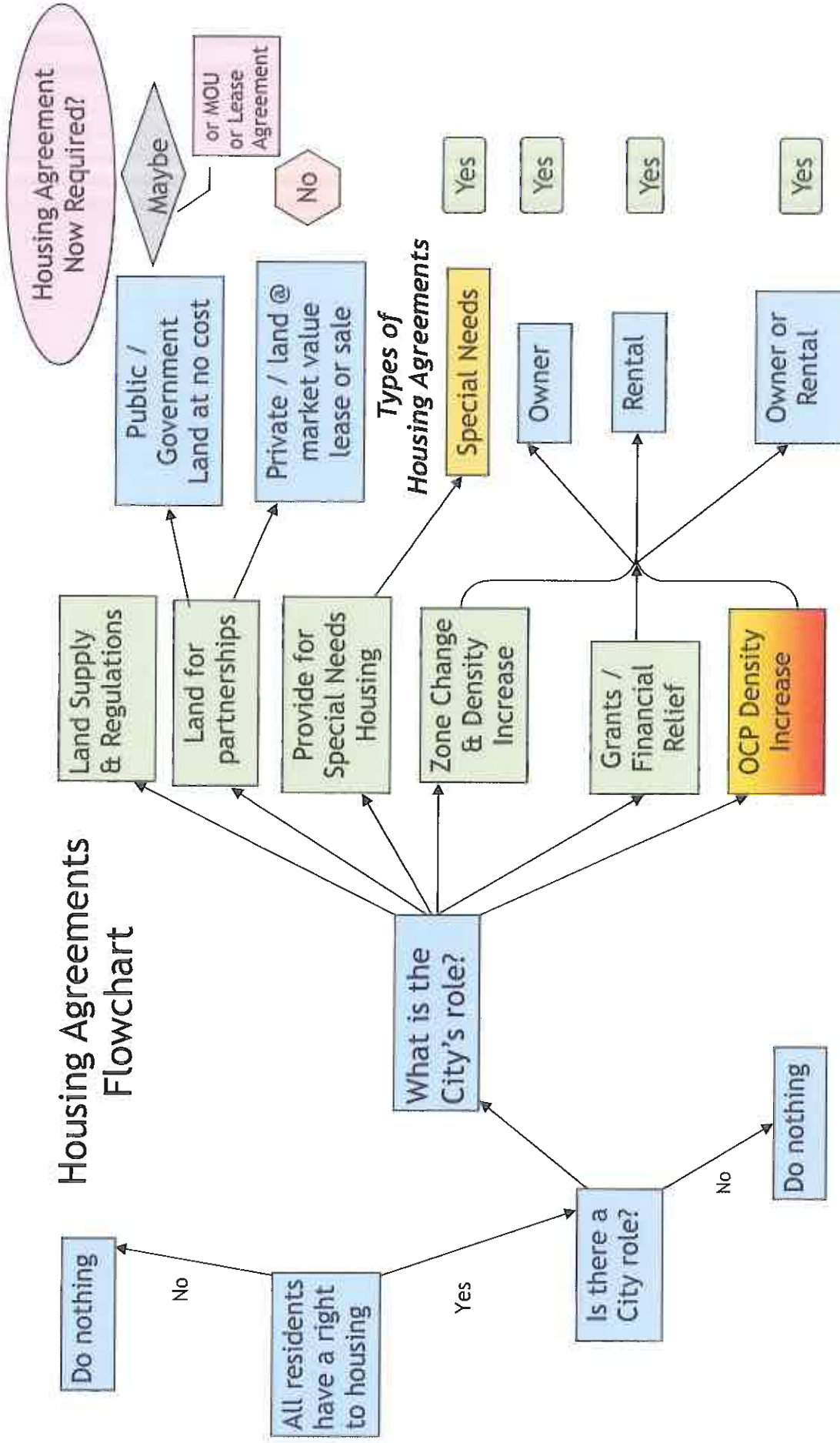
Issue / Indicator	Owner Agreements	Rental Agreements	Special Needs/Group Living Home Agreements
<b>Effectiveness:</b> <ul style="list-style-type: none"> <li>meeting a recognized housing need</li> <li>targeting the right households</li> <li>achieving occupancy</li> <li>market viability</li> </ul>	√x	√√	x
<b>Responsiveness:</b> <ul style="list-style-type: none"> <li>is it meeting a recognized housing need?</li> <li>does it allow the developer to proceed in a reasonable fashion</li> <li>can we provide the realtor and owner of a dwelling to be sold with timely information?</li> <li>Is there enough flexibility &amp; receptiveness to change?</li> </ul>	√	√√√	√
<b>Efficiency:</b> <ul style="list-style-type: none"> <li>what is the length of required time &amp; ease to: <ul style="list-style-type: none"> <li>initiate</li> <li>finalize</li> <li>implement</li> <li>enforce</li> </ul> </li> </ul>	√	√	√
<b>Acceptance By:</b> <ul style="list-style-type: none"> <li>Lenders, CMHC</li> <li>Developers</li> <li>Residents of affordable dwellings</li> <li>Residents of a building or development that has affordable dwellings but who do not live in one of them.</li> </ul>	√	√√	√
<b>Administrative Capacity:</b> <ul style="list-style-type: none"> <li>easy or hard to administer</li> <li>amount of staff time necessary</li> </ul>	√xx	√√	√
<b>Legal Strength</b> <ul style="list-style-type: none"> <li>form of the agreement</li> <li>City's leverage to require HA</li> </ul>	√√	√√	√
<b>Individual Rights</b> <ul style="list-style-type: none"> <li>right to housing</li> <li>right to market a home/dwelling(s)</li> <li>right to build housing</li> <li>use of property</li> <li>rights of other residents</li> </ul>	√	√√√	√
<b>Social Equity</b> <ul style="list-style-type: none"> <li>treating developers fairly;</li> <li>helping residents find housing</li> <li>treating residents fairly</li> <li>significance of contribution</li> </ul>	√	√√√	x

Key:

√ Check-marks mean there are positive aspects; more than one indicates multiple benefits.

x Crosses mean there are challenges; more than one means there are barriers to effectiveness

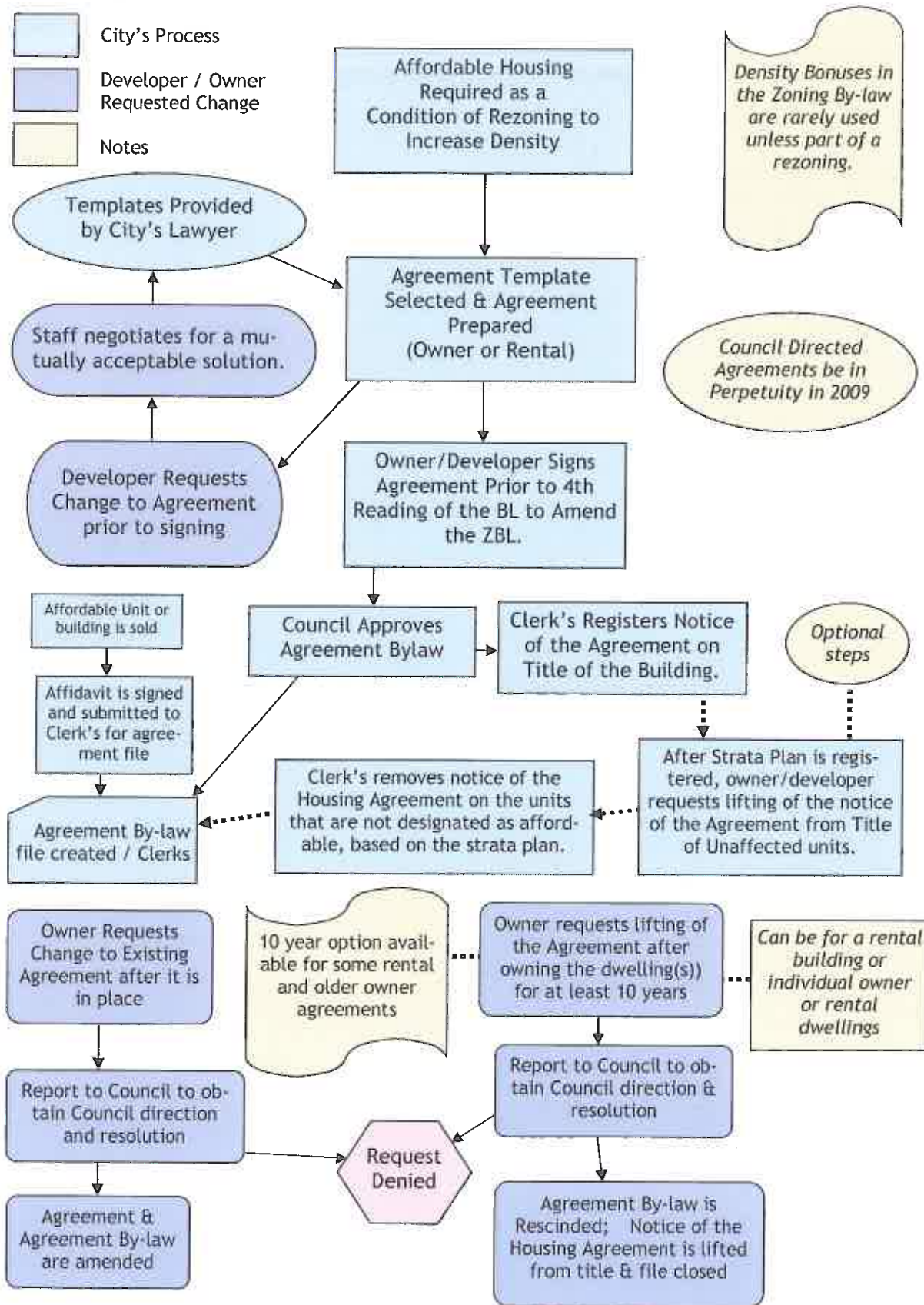
# Housing Agreements Flowchart



# Housing Agreement Process -Affordable Housing-

**LEGEND:**

- City's Process
- Developer / Owner Requested Change
- Notes





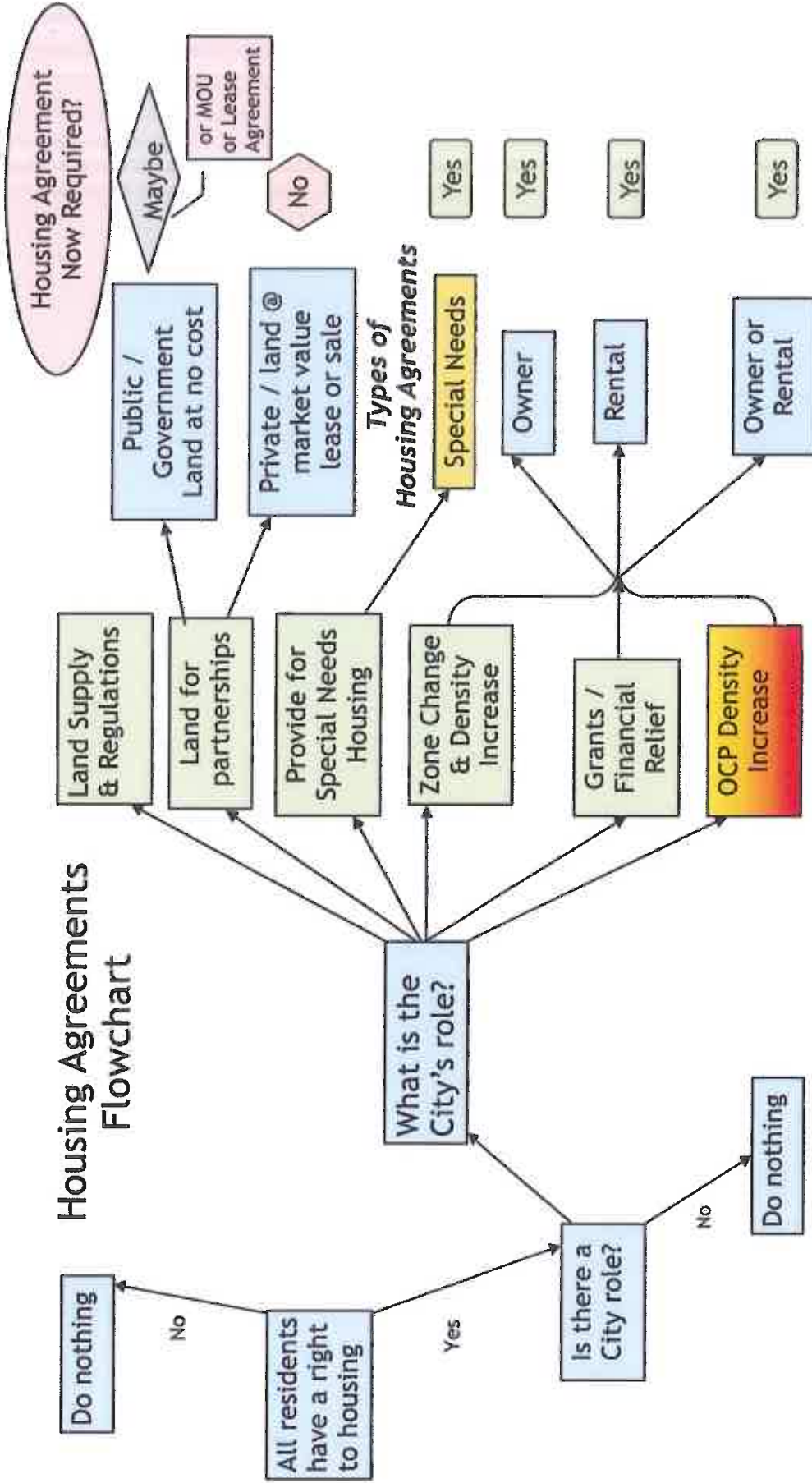
City of  
**Kelowna**

# HOUSING AGREEMENTS

Council Workshop



# Housing Agreements Flowchart



## WHY DO WE HAVE AGREEMENTS?

- ▶ OCP Amendments:
  - ▶ Several existing agreements were to secure affordable housing when an OCP amendment was necessary to permit increased density.
- ▶ Zoning Amendments:
  - ▶ Affordable housing is also negotiated as a condition of rezoning to higher density;
  - ▶ Density bonuses exist in several zones in return for affordable housing
- ▶ *A Housing Agreement is the only tool the City has to ensure that the affordable housing gets built and remains in place for the longer term.*

## HOUSING AGREEMENTS

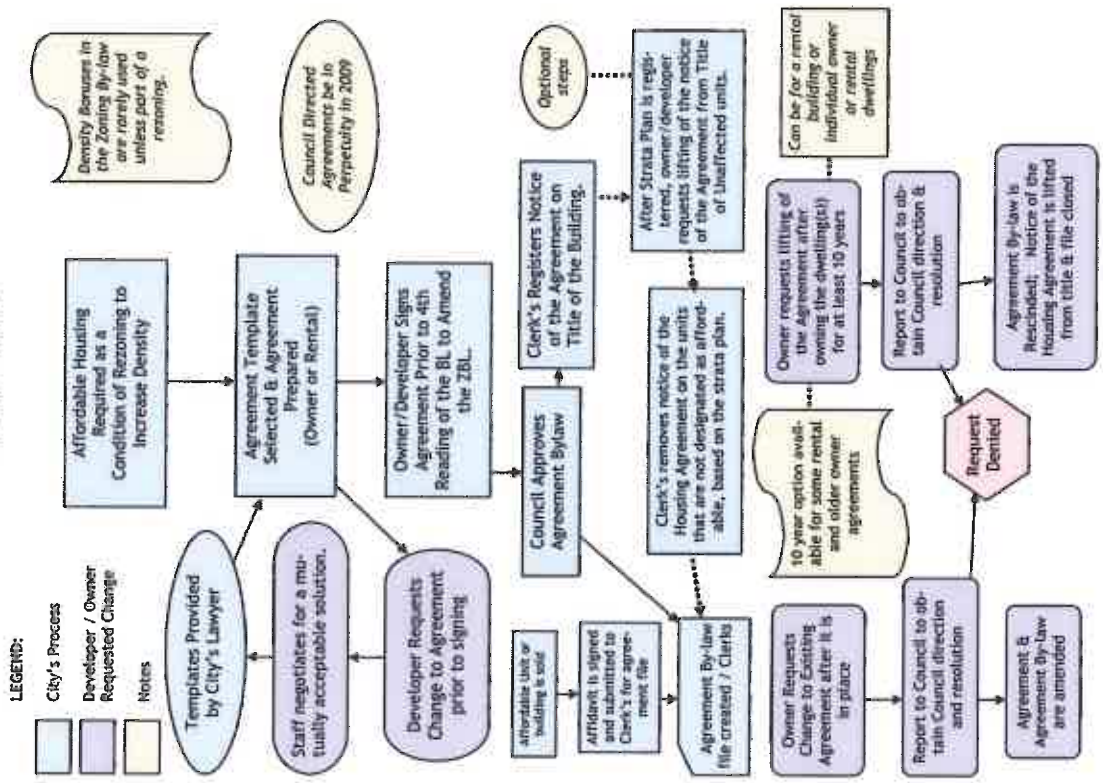
- ▶ 2006 - one owner, one rental & one special needs housing agreement template;
- ▶ City has been flexible in entertaining requests for change;
- ▶ Legal input needed for each new type of agreement;
- ▶ 2012- at least 10 different types of housing agreements.





# THE PROCESS

## Housing Agreement Process - Affordable Housing -



## ADMINISTRATION

- ▶ The City does not have a housing department & there is no “housing authority” body in the Okanagan;
- ▶ Administration is done from the corner of several City staff desks;
- ▶ The City’s lawyers designed the agreements to be simple to administer.
- ▶ Change requests increase complexity.

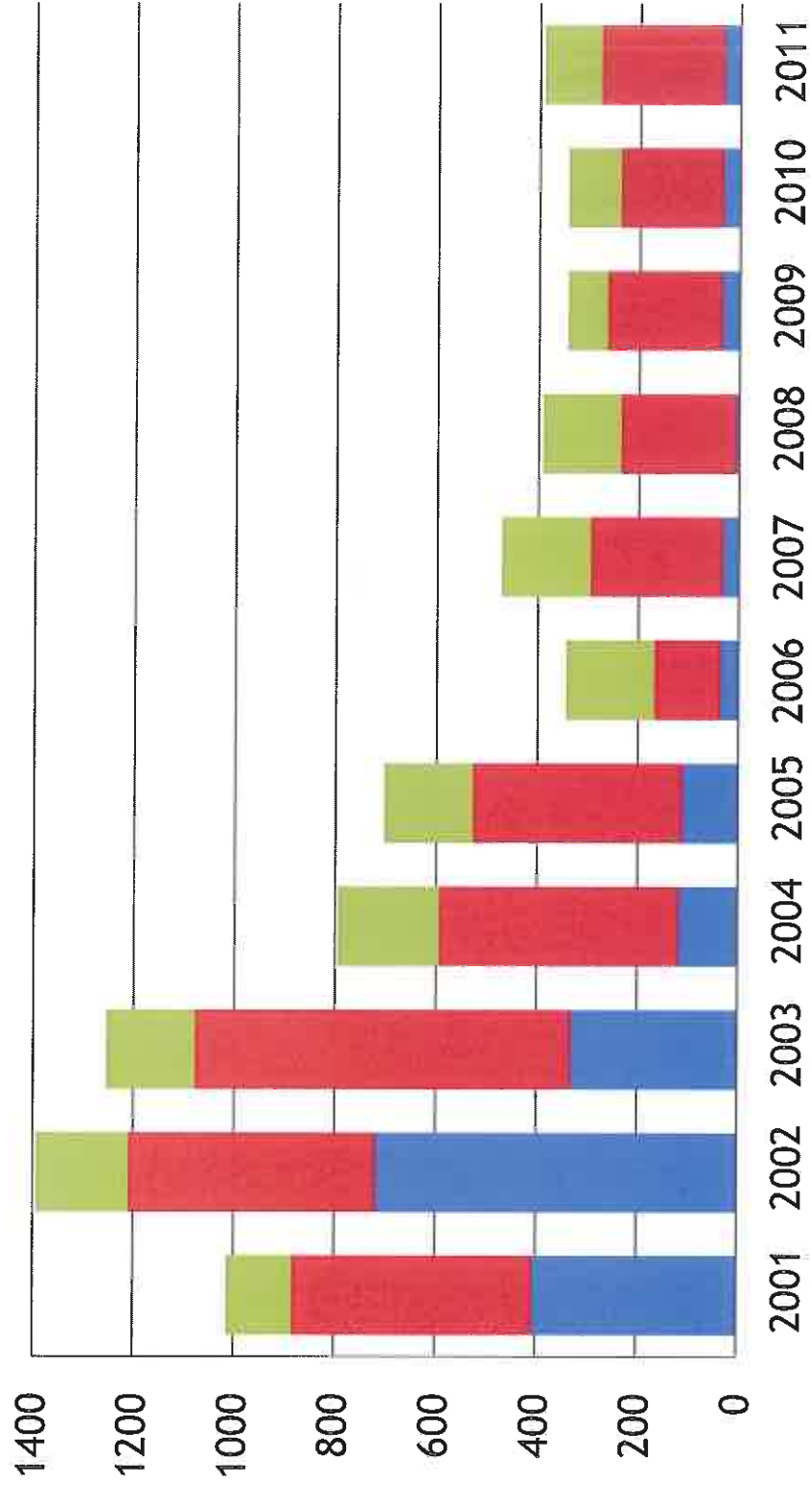
## DWELLINGS IN HOUSING AGREEMENTS

	Owner	Affordable Rental	Purpose- built Rental	Non- market	Special Needs/ Other	TOTAL
BUILT	27	11		121	2	161
NOT BUILT		14	8			22
AGREE- MENT PENDING	7		67			74
TOTAL	34	25	75	121	2	257

## OWNER AGREEMENTS

- ▶ The OCP definition of owner affordability is based on the income required to enter the ownership market = CMHC practice
- ▶ For simplicity: *one income; one price; (maximum)*
  - ▶ Income = \$66,116
  - ▶ Strata home price = \$207,618
- ▶ Market has completely shifted since 2006

## Starter Home Sales / Year by Type of Ownership City of Kelowna



■ Fee Simple ■ Strata fees ■ Manufactured home with pad rental

- ## RENTAL AGREEMENTS
- ▶ Affordable rentals in a larger rental building;
  - ▶ Affordable rentals within owner building;
  - ▶ Purpose built rental;
  - ▶ 10 year rental agreements/new:



## GROUP LIVING HOMES

- ▶ 1998 (circa) housing agreements were introduced as a requirement for minor group living homes;
- ▶ Reason: To provide some clarity around special needs housing as a group living home;
- ▶ Superfluous because Provincial legislation over-rides zoning.

**ISSUES -  
SEE TABLE AT END OF PRESENTATION**

- ▶ **Effectiveness:**
- ▶ **Responsiveness:**
- ▶ **Efficiency:**
- ▶ **Acceptance:**
- ▶ **Administrative Capacity:**
- ▶ **Individual Rights:**
- ▶ **Social Equity:**



## OCP OBJECTIVES FOR HOUSING

- ▶ *5.1 Ensure new development is consistent with OCP goals;*
- ▶ *5.9 & 10.3 Support the creation of affordable and safe rental, non-market and/or special needs housing;*
- ▶ *5.22 Ensure context sensitive housing development.*
- ▶ *5.23 Address the needs of families with children through the provision of appropriate family-oriented housing.*
- ▶ *5.40 Ensure all development is consistent with the vision, goals and objectives of the OCP*

## POTENTIAL DIRECTIONS:

1. Status quo;
2. No new owner agreements / grandfather existing ones;
3. Allow conversion of owner to rental, or owner/rental agreements
  - For developers & individuals;
4. Cancel use of special needs agreements / retroactive & new;



- POTENTIAL DIRECTIONS - CONTINUED**
- 5. Develop zoning regulations for group living homes, minor;**
  - 6. Discontinue use of all housing agreements / manage those in place;**
  - 7. Continue to pursue all other means of supporting affordable and special needs housing.**

Indicator	Owner Agreements	Rental Agreements	Special Needs/Group Living Home Agreements
Effectiveness	√x	√√	x
Responsiveness	√	√√√	√
Efficiency	√	√	√
Acceptance	√	√√	√
Administrative Capacity	√xx	√√	√
Legal Strength	√√	√√	√
Individual Rights	√	√√√	√
Social Equity	√	√√√	x