



Report To:	DSB Program Planning Committee
From:	Connie Morphet, Director of Finance & Administration Patrick Wittmann, Supervisor of Infrastructure & Asset Management
Date:	April 22, 2015
Re:	Duty to Accommodate – Issue Report

Report:

To inform the Board of the Duty to Accommodate in reference to the Human Rights Code and the DSB staff efforts to create a policy with associated procedures for accommodation.

Background

When a tenant declares legitimate needs, based on Human Rights Code grounds (such as disability or family status), landlords have a legal duty to provide accommodation to meet special needs. The landlord must accommodate up to the point of undue hardship, based on cost, outside sources of funding or health and safety concerns.

Tenants and landlords share the responsibility for making the accommodation work. Each must work together to try to solve problems and provide any information required to make the accommodation.

For example, the landlord might need to make changes to units, a building entrance, sidewalks or parking areas to accommodate a Human Rights Code request.

Some tenants may need changes to rules and policies to accommodate changing family situations or religious practices. Sometimes a tenant who is unwell or who disrupts others (either because of a disability or due to that person being the target of discrimination themselves) may need help. Landlords should assess their role to see if there are things they can do as a landlord to help the situation i.e. mental health referral.

Landlords must work with tenants to find, and put in place the most appropriate accommodation as soon as possible.

Tenants who feel that they have been discriminated against by their landlord may file a complaint with the Human Rights Commission.

The DSB acknowledges its responsibility under the Ontario Human Rights Code (OHRC) and other legislation to accommodate the needs of tenants and to actively remove barriers, physical or otherwise, which may prevent those individuals from participating fully in the activities of the DSB and from having a successful tenancy.

The Code-Protected Grounds are defined and the discrimination of individuals or groups is prohibited under the Human Rights Code.

Prohibited grounds for discrimination include an individual or groups:

- Race
- Skin colour
- Ancestry
- Creed (religion)
- Place of origin
- Ethnic origin
- Citizenship
- Sex (including pregnancy and gender identity)
- Sexual orientation
- Age
- Marital status (including same-sex partnerships)
- Family status
- Disability
- Receipt of public assistance

A barrier may be a part of the physical or built environment which limits or prevents the accessibility of a space. A barrier may also be a policy, procedure, method of communication or requirement that excludes individuals or groups from fairly and equally accessing a good, service, or resource.

Principles of Accommodation

The three key principles of accommodation are:

- Respect for dignity,
- Individualization, and
- Integration and full participation.

Respect for Dignity

Dignity will include consideration of how accommodation is provided and the person's own participation in the process. Housing providers should consider different ways of accommodating people identified by Human Rights Code grounds along a continuum, ranging from those ways that most respect privacy, autonomy, integration and other human rights values, to those that least respect those values.

Individualization

There is no set formula for accommodating people identified by *Code* grounds. Each person's needs are unique and must be considered afresh when an accommodation request is made. While some accommodations may meet one person's needs and not another's, housing providers will likely find that many of the identified changes that they implement will benefit large numbers of people.

Integration and full participation

Accommodations should be developed and implemented with a view to maximizing a person's integration and full participation. Achieving integration and full participation requires barrier-free and inclusive design and removing existing barriers. Where barriers continue to exist because it is impossible to remove them at a given point in time, then accommodations should be provided to the extent possible, short of undue hardship.

Housing providers are only required to implement accommodations that would not amount to undue hardship. The [test for undue hardship](#) is set out fully in the Ontario Human Rights Commission [Policy and Guidelines on Disability and the Duty to Accommodate](#). The same standard applies to all grounds of the Human Rights Code.

Accommodation providers should accept requests in good faith, unless there are objective reasons not to do so. Where necessary, landlords and other accommodation providers may make reasonable requests for information that is necessary to clarify the nature and extent of the accommodation need. Providers must deal with accommodation requests in a timely way and take an active role in making sure that alternative approaches and possible solutions are investigated. For example, a housing provider is not justified in denying accommodation to a tenant based on the discriminatory views of other tenants.

It should be noted that a request for accommodation could be major or minor. To clarify, a tenant could request an additional grab bar, a lower light switch, or an automatic door opener or full unit modification for wheelchair accessibility. Advance thought into projects that could benefit the building as a whole should be given proper consideration as it indicates a willingness to identify and alleviate barriers (i.e. ramps at exits).

The Human Rights Code prescribes three considerations when assessing whether an accommodation would cause undue hardship.

These are:

- Cost
- Outside sources of funding, if any
- Health and safety requirements, if any

No other considerations, other than those that can be brought into these three, can be properly considered. A housing provider should consider next-best, phased-in, or interim accommodations if undue hardship has been proven.

Costs will amount to undue hardship if they are:

- Quantifiable;
- Shown to be related to the accommodation; **and**
- So substantial that they would alter the essential nature of the enterprise, or so significant that they would substantially affect its viability.

Housing providers cannot use limited resources or budget restrictions as a defense to the duty to accommodate without first meeting the formal test for undue hardship based on costs. Further, housing providers are not to decide which accommodations are most appropriate for a tenant based on financial considerations or budgetary constraints. If an accommodation exceeds a housing provider's pre-determined accommodation budget, the housing provider must look to its global budget, unless to do so would cause undue hardship.

Housing providers are expected to investigate and access outside sources of funding, where they exist, to help defray costs associated with accommodation. Health and safety issues will arise in various housing contexts and have the potential to affect individual tenants and the broader housing community. If the potential harm is minor and not very likely to occur, the risk should not be considered serious.

The ORHC states that the ultimate issue is whether the housing provider has shown that they have provided accommodation up to the point of undue hardship. It also states that the procedure to determine what changes are needed is as important as the substantive content of the accommodation.

Locally

The DSB has received requests for unit modifications to improve accessibility on occasion. The Housing portfolio of 288 units currently has 4 completely accessible apartments (Espanola, St. Charles, Warren, Webbwood). There are other accessible housing facilities dispersed throughout the District that are not managed by the DSB in Espanola, Gore Bay, Little Current and Mindemoya.

Within the DSB's [10-year Housing and Homelessness Plan](#), it is stated that consideration for a Policy to identify and provide support for the needs of individuals with disabilities. In doing so, the DSB could better identify our service levels for this target group within the portfolio. The Plan was also amended to reflect our recognition of the need to increase the number of modified units across the portfolio (reference page 9).

The Plan states: "...Recommended that consideration for building modifications be considered based on available space and funding, to install a mobility lift device in buildings that have significant need. This can only be accomplished where feasible based

on building designs and when new government funding is made available to DSB...” (ref page 46).

Further, the DSB social housing portfolio does not have sufficient modified units and does not have elevators. It is recognized that this limitation has affected the number of applicants in some buildings. This also affects families, as the DSB family units do not meet accessibility needs. Lift or elevator installation cost estimates range from \$250,000 to \$350,000.

Currently, all modified units within the portfolio are rented by tenants needing such accommodations. New Applicants requesting accessible units are placed on the waiting list for appropriate units in areas where they are available. Only those applicants requiring a wheelchair-modified unit are self-identifying currently. However, the application does ask if any accommodations such as grab bars or visual or hearing assistance is required.

Operational Procedures

Regardless of who gets contacted (Integrated Program Assistant, Custodian, Supervisors, etc.) the information from the tenant requesting accommodation must be recorded in a tracking system.

Currently, all requests are referred to the Maintenance Coordinator for initial evaluation with minor accommodations (less than \$500) resolved at this level. These include grab bars, raised toilets, and strobes (hearing impaired alarm system).

Major accommodations (greater than \$500) are re-assigned to the Supervisor of Infrastructure & Asset Management for further review and communication with the Housing Program Supervisor. Recent requests for roll-in shower stalls, electronic door openers, door widening, countertop and cabinet lowering range in cost from \$1,000 to \$5,000.

Lease Options:

The typical rental revenue for a 1 bedroom unit is \$6,852 per year (\$571/month - 2015). Currently, the process for a vacant modified unit is to rent it after 3 months of availability, to tenants without disability where no disabled tenant is on the waiting list in order to minimize the financial impact of the vacancy. The lease agreement under this scenario will be written to ensure that the tenant will be transferred to a ‘regular’ unit upon availability. New applicants requiring modified units will be placed on the waitlist for a suitable unit as per current practice. Vacancy cost implication is up to \$1,713 per unit for the 3 month waiting period.

Implementation

Currently the DSB has 4 fully modified units of the 252 single bedroom/Bachelor units which accounts for 1.6%. If we increased the number of units to 10 (one in each of the single/Bachelor buildings) this would result in 4% being fully modified. The cost implication of the additional 6 units is estimated at \$150,000 to \$180,000.

There are 36 family units of which none are modified. It would not be possible to modify the family units as they are 2 and 3 story walk ups with bathrooms on the upper story's with the bedrooms. The DSB would need to develop new, purpose-built accessible family units in order to accommodate a family. The Investment in Affordable Housing Program - Ontario Renovates component would be better suited toward assisting a family with modifying their home for accessibility. New, fully accessible family housing units would cost approximately \$225,000 to \$275,000.

Objectives

DSB Staff are developing an Accommodation policy in accordance with the Human Rights Code. Consideration must be given to the 10 Year Housing and Homelessness Plan within the process, which speaks to improving accessibility primarily through: "...consideration for refurbishment of a percentage of existing units to fully modified across the portfolio. (H&H Plan page 46). The concern for revenue loss is noted and could be mitigated by temporary rental to tenants without disabilities.

Conclusion

Staff will continue to investigate the duty to accommodate requirements and develop an appropriate policy for the Board's consideration.