



More Homes Built Faster Act – OHRC submissions **December 9, 2022**

Context

Ontario has enacted legislation to support its [newest Housing Supply Action Plan](#), *More Homes Built Faster*. This plan is part of a long-term strategy to increase housing supply and provide increased housing options.

In addition to the new legislation, the government is seeking feedback on several housing regulatory changes, including:

1. [Proposed Planning Act and City of Toronto Act Changes](#) (due November 24, 2022)
2. [Municipal Rental Replacement By-Laws](#) (due November 24, 2022)
3. [Ontario Land Tribunal Act, 2021](#) (due November 25, 2022)
4. [O. Reg 232/18: Inclusionary Zoning](#) (due December 9, 2022)
5. [Proposed Building Code Changes to Support More Homes Built Faster](#) (due December 9, 2022)
6. [Rent-to-Own Arrangements](#) (due December 9, 2022)
7. [A Place to Grow and Provincial Policy Statement](#) (due December 30, 2022)

OHRC submissions

Submissions/comments are required in two timeframes. The first round is due November 24 and 25. The second is due December 9 and 30. The OHRC has determined that it will provide comment on the following, given potential impact on *Code* protected groups:

- [O. Reg 232/18: Inclusionary Zoning](#) (due December 9, 2022, **see below**)
- [Rent-to-Own Arrangements](#) (due December 9, 2022)
- [A Place to Grow and Provincial Policy Statement](#) (due December 30, 2022)

The other proposed regulatory changes do not appear to have *Human Rights Code*-related implications.

OHRC submission: [O. Reg 232/18: Inclusionary Zoning](#)

The OHRC welcomes the government's effort to address the housing crisis. As the government moves to implement *More Homes Built Faster*, it is vital to take a human rights-based approach to housing law, policies, programs and bylaws. This includes Ontario's obligations under the *Human Rights Code* (*Code*) and recognition of the right to housing as affirmed in the *National Housing Strategy Act*.



Inclusionary zoning background:

Inclusionary zoning is a land use planning tool, authorized under the *Planning Act*, that municipalities may use to require that affordable housing units be included in residential developments of 10 or more units in identified Protected Major Transit Station Areas (PMTSAs) or in Community Planning Permit System (CPPS) areas ordered by the Minister. The Minister also has the authority to direct municipalities to adopt official plan policies authorizing the use of inclusionary zoning. Inclusionary zoning can be a useful tool to facilitate the supply of affordable housing in areas that generally have characteristics such as growth pressures, high housing demand and availability of higher-order transit.

The *Planning Act* and O. Reg. 232/18 set out the legislative and regulatory requirements for municipal implementation of inclusionary zoning, including the authority for municipalities to adopt inclusionary zoning official plan policies and make inclusionary zoning bylaws. Beyond the prescribed minimum requirements, municipalities have flexibility and discretion to tailor their inclusionary zoning policies to their local context. Currently under the regulation, municipalities have the discretion to establish an affordability period, to determine the percentage of total units to be set aside as affordable, and to develop an approach to determining affordable prices/rents for inclusionary zoning units.

Proposal:

The proposed amendments to O. Reg 232/18 would establish an upper limit on the number of units that would be required to be set aside as affordable, set at 5% of the total number of units (or 5% of the total gross floor area of the total residential units, not including common areas). It would also establish a maximum period of 25 years that the affordable housing units would be required to remain affordable. Amendments would also prescribe the approach to determining the lowest price/rent that can be required for inclusionary zoning units, set at 80% of the average resale purchase price of ownership units or 80% of the average market rent (AMR) for rental units. These proposed amendments would only apply on lands within PMTSAs.

The proposed changes would provide more development cost certainty and establish a more consistent approach to inclusionary zoning requirements across the province.



Housing and human rights:

Adequate housing is essential to one's sense of dignity, safety, inclusion and ability to contribute to the fabric of our neighbourhoods and societies.¹ The importance of housing to human dignity and its status as a human right has been confirmed through both international law and in the Ontario *Human Rights Code*. Canada has recognized that adequate housing is a fundamental human right by ratifying the *International Covenant on Economic, Social and Cultural Rights (ICESR)*. Article 11 of the *ICESR* recognizes the right of everyone to adequate housing, and subsequent United Nations reports and recognitions have confirmed the importance of housing and its link to the prohibition of discrimination in all its forms.

In Ontario, the important social role of homes is recognized through the *Code's* specific protections against discrimination in accommodation. Every component of the right to housing must be exercised without discrimination².

Homes are not simply an asset to be managed, but the place where individuals build their lives. Landlords and real estate developers play an important role in Ontario's economy, but that role is subject to the restrictions of the *Code*, which ensure that homes are treated as more than simply a commodity.

The OHRC recognizes the changing reality of housing, but changes are still subject to the *Ontario Human Rights Code* ("The *Code*"), which has primacy over all other provincial legislation. In the last two decades, the nature of real estate markets has been drastically transformed as new actors, including financialized landlords, have dominated the market. These changes have disproportionately harmed vulnerable people, including groups protected by the *Code*.³

¹ OHRC, *Right at Home: Report on the consultation on human rights and rental housing in Ontario* (2008) at 6. The Quebec Court of Appeal has said that housing, even more than employment, is a basic need of every individual in our society. See *Desroches v Quebec (Comm des droits de la personne)* (1997), 30 CHRR D/345 (Que CA).

² *Commission des droits de la personne et des droits de la jeunesse (Pheneus et une autre) c Fornella*, 2018 QCTDP 3.

³ Manuel Aalbers, *The Financialization of Housing: A Political Economy Approach* (New York: Routledge, 2016); Elvin Wyly et al, "American Home: Predatory Mortgage Capital and Neighbourhood Spaces of Race and Class Exploitation in the United States" (2006) 88B:1 *Geografiska Annal* 105; Elvin Wyly et al, "Cartographies of Race and Class: Mapping the Class-Monopoly Rents of American Subprime Mortgage Capital" (2009) 33:2 *Int J Urban Reg* 332; Elvin Wyly et al, "Gender, Age, and Race in Subprime America" (2011) 21:4 *Housing Policy Debate* 529; Loretta Lees & Elvin Wyly, *Gentrification* (New York: Routledge, 2008); Raquel Rolnik, "Late Neoliberalism: The Financialization of Homeownership and Housing Rights" (2013) 37:3 *Int J Urban Affairs* 1058.



Inclusionary zoning and the right to housing:

The OHRC is supportive of the Ministry of Municipal Affairs and Housing's (MMAH) efforts to standardize rules for inclusionary zoning, and strongly encourages MMAH to take a human rights-based approach to this work. The OHRC believes this is an opportunity to strengthen inclusionary zoning to increase access to permanent affordable housing, especially for vulnerable tenants who generally are protected by the *Code*. As a result, the OHRC recommends there would not be any change that weakens the rules that govern inclusionary zoning.

The current approach requires municipalities to develop inclusionary zoning policies/bylaws based on the distinct needs in their communities. These needs are determined by consultations with stakeholders and the public and feasibility studies. For example, the City of Toronto has adopted an [inclusionary zoning policy](#) that includes targeted set-aside rates based on building type and geography, which are set to progressively increase. For condo units, the set-aside rates almost always exceed 5% regardless of geography, and progressively increase to higher rates. Toronto's definition of affordability is based on household income, ensuring households do not spend more than 30% of their income on housing. Last, the period of affordability in Toronto is set at 99 years, making Toronto's inclusionary zoning policy a permanent arrangement.

OHRC recommendations

The OHRC is concerned that the proposed amendments to O. Reg 232/18 significantly limit municipalities' ability to develop frameworks based on local needs. Of more concern, the proposed amendments appear to threaten and weaken the effectiveness of inclusionary zoning as a key tool for creating, and maintaining, long-term affordable housing for the many Ontarians who are struggling to find a home.

Therefore, the OHRC strongly urges MMAH to include the following in its proposed amendments and standardized rules:

- Define affordability by using percentage of household income (30%) paid towards housing and not percentage of average resale purchase price of ownership units or of the average market rent (AMR) for rental units
- Require that the period of affordability be permanent, e.g., 99 years
- Increase set aside rates to align with most other inclusionary zoning policies in North America, e.g., 10%.⁴

Strengthening inclusionary zoning policies has the potential to increase access to affordable housing, especially for people with low incomes, who are disproportionately members of *Code*-protected groups. This approach will tend towards respecting the

⁴ According to a [2021 study](#) by Grounded Solutions Network, the vast majority of inclusionary zoning programs have a minimum set-aside of at least 10% of units.



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equal dignity and worth of each Ontarian. Weakening or eliminating inclusionary zoning policies will have the contrary effect.