

December 7, 2022

*Delivered via E-mail: [PlanningConsultation@ontario.ca](mailto:PlanningConsultation@ontario.ca)*

Re: ERO posting re Inclusionary Zoning; ERO Number 019-6173

Comments Due: December 9, 2022

**MMAH Proposed Amendments to O.Reg 232/18 Inclusionary Zoning**

CELA writes to provide our comments in respect of the above-noted posting for consultation on the Environmental Registry of Ontario.

CELA is a specialty legal clinic within the Ontario-wide network of clinics funded by [Legal Aid Ontario](#). We provide [free legal services](#) to people and groups across Ontario that qualify for legal aid.

We work to protect human health and our environment by seeking justice for those harmed by pollution and by working to change policies to prevent such problems in the first place. As a Legal Aid Clinic our top priority is to represent low income individuals and communities and to speak out for those with less influence and who receive less of a say in decision-making.

Through landmark legal cases CELA has helped shape government and industry approaches to pollution and other environmental threats. Our [Public Legal Education](#) efforts help to explain the law and citizen environmental rights in Ontario.

CELA supports inclusionary zoning as an important tool in providing a good housing mix, including affordability, in Ontario communities. CELA does not support the proposed limits on inclusionary zoning that are proposed in the current MMAH consultation as detailed below.

CELA endorses the submission to the current consultation by our colleagues at the Advocacy Centre for Tenants Ontario, a copy of which is appended to our letter. We also endorse the earlier brief by the Wellesley Institute, which was submitted to an MMAH consultation on inclusionary zoning regulations in 2018; also appended to our letter.

We highlight the following points:

1. The province should not be establishing maximum “set-aside” rates for affordable housing in municipalities. These should be established in each municipality based on their local circumstances. In particular, the maximum should not be capped at 5% which is far too low compared to the rates that municipalities have found to be necessary in considering inclusionary zoning by-laws they have already implemented. It is also unconscionably low given the need in Ontario, and when compared to other jurisdictions.

2. The province should not be establishing maximum “affordability terms” for affordable housing, whether the tenure is rental or owner-occupied. This should be left to municipalities according to local circumstances and other variables. Furthermore, affordability terms capped at 25 years are far too short both from the perspective of incenting investment in affordable homes, and from the perspective of ensuring an affordable housing supply that lasts for the next generation of Ontarians.

CELA hopes these comments and recommendations are helpful. We would be happy to answer any questions arising from this submission.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

A handwritten signature in black ink, appearing to read 'T. McClenaghan', written over a faint rectangular box.

Theresa McClenaghan  
Executive Director & Council

December 5, 2022

Sent by email: [PlanningConsultation@ontario.ca](mailto:PlanningConsultation@ontario.ca)

**Re: Proposed Amendment to O. Reg 232/18: Inclusionary Zoning**

The Advocacy Centre for Tenants Ontario (ACTO), is a non-profit organization working to advance and protect the interests of low-income and moderate income tenants. We strive for the advancement of human rights and justice in housing through legal advice and representation, law reform, community organizing, training and education. This includes managing and providing tenant duty counsel services for Ontarians at the Landlord and Tenant Board.

ACTO welcomes the government's attention to the growing housing crisis in Ontario. Ontarians are acutely aware of the urgency of the housing affordability crisis. This crisis has placed growing pressure on the 30 percent of Ontarians renters who have seen their housing costs far outpace their income growth. From the 2021 Census, almost 40% of renters in Ontario pay unaffordable rents with the median household income of renters was \$58,400.<sup>1</sup> In a survey conducted in May 2022, 60% of renters reported that they had to cut back on food costs in order to pay their rent.<sup>2</sup>

We are deeply concerned about the impacts of the proposal to limit inclusionary zoning (IZ) bylaws and thresholds and place a provincial standard for all municipalities. Currently under the regulation, municipalities have the discretion to determine the set aside rates to establish the length of an affordability period and to develop a method in forming the affordability prices/rates for IZ units. The proposed new limit of 5% on the set aside rate of affordable units and a 25 year affordability period will severely weaken the impact of IZ regulations in providing the affordable housing stock that is desperately required in Ontario. The proposed regulatory changes impose a one-size-fits-all approach to a program which should reflect local realities. A province-wide regulation on IZ is unnecessary and inefficient. Municipalities should be able to develop IZ policies that are informed by their housing markets, the needs of their residents, and local financial contexts.

**Set-Aside Rate**

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<sup>1</sup> Wellesley Institute: "Erosion of Affordable Rental Housing in Toronto: Findings from the 2021 Census"

<sup>2</sup> EKOS Public Opinion Poll, May 2022

It is difficult to understand the policy rationale for reducing municipal tools designed to create new units considering the provincial importance of creating more affordable housing. Currently, municipalities are able to determine their own policies with respect to set-aside rates based on an independent financial feasibility assessment. These are the percentage of units or the percentage of the residential area in a development that is required to be “set-aside” as affordable housing. Major cities across North America such as New York, Boston, San Francisco, and Montreal have successfully dedicated 10-35% of new developments to affordable housing units.<sup>3</sup> Municipalities in Ontario have set-aside rates between 5% and 15%. Mississauga, for example, requires set-aside rates that range from 5% to 10% depending on the location in the city.<sup>4</sup> However, the Province is proposing to limit the maximum set-aside rate a municipality can require to 5%. According to a City of Mississauga report this limitation will result in a 40% decline of affordable housing.<sup>5</sup> Municipalities should be able to determine their own set aside rates, informed by the local market.

### **Affordability Term**

The length of time an affordable housing unit is required to remain affordable is one of the key tools to effectively increase affordable housing in Ontario. Under current regulations, municipalities are required to conduct an independent feasibility study of proposed IZ bylaws to ensure they are financially viable. This results in IZ requirements that are responsive to the local housing market and economic context, instead of a one-size-fits-all approach.

Currently in Mississauga and Toronto, ownership units must remain affordable for 99 years. Rental units in Mississauga must stay affordable for 25 years whereas in Toronto, the rental units must stay affordable for 99 years. The current Provincial Regulations do not set any limits to the affordability term and allow municipalities the flexibility to determine the appropriate term. The proposed Regulations will set the maximum affordability period a municipality can require to 25 years.

The proposed 25 year affordability time limit is well below the length of time that municipalities have found to be financially viable based on independent financial assessments. This limit is also below the best practices used in other jurisdictions, such as Montreal, Vancouver, Boston, and New York City, and recommended by housing experts.

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<sup>3</sup> [https://www.socialplanningtoronto.org/bill\\_23](https://www.socialplanningtoronto.org/bill_23)

<sup>4</sup> City of Mississauga, Corporate Report on Bill 23

<sup>5</sup> City of Mississauga, Corporate Report on Bill 23

Even more troubling, reducing the affordability of units to 25 years merely passes the crisis on to the next generation of tenants and decision-makers. Once the 25 year affordability period is over, policymakers will be faced with the need to provide funding to retain these affordable units or risk tenants being evicted. An extended affordability period is critical if IZ is to provide long-term contributions to addressing our affordable housing crisis. Again, municipalities should be able to determine their own affordability periods, informed by local markets and conditions.

### **Affordable Price and Affordable Rent**

The proposed change to supersede municipalities from setting their own affordable housing price and rent percentage is another mechanism that will disrupt the supply of affordable housing. Currently, municipalities are able to decide what is affordable for their own constituents as they have conducted financial assessments, as per the Province's direction, and consulted with stakeholders to establish these important benchmarks.

For example, Mississauga's current Official Plan indicates that housing is affordable if it costs no more than 30% of gross annual household income. Its IZ policy is targeted to housing for moderate-income households. For affordable ownership units, this equates to prices that are no greater than about 50% to 60% of resale market prices.<sup>6</sup> For affordable rental units, this equates to rents that are no greater than Average Market Rent as established by Canada Mortgage and Housing Corporation (CMHC).

The proposed IZ regulations require that municipalities cannot set the affordable rent any lower than 80% of Average Market Rent for rental units. These limitations in affordability thresholds will exclude low and moderate income households from affording any inclusionary zoning units. A study conducted by the Commissioner of Planning & Building for the City of Mississauga determined that under their current affordability plan, a minimum household income of \$70,000 would be required to afford an inclusionary zoning unit. If the province were to change the affordability definition under the proposed regulation, the minimum household income would need to increase to \$95,000 in order to afford an IZ unit. The Province is proposing to require that municipalities set the affordable ownership price at 80% of resale prices. Only a small segment of the population could afford an IZ ownership unit given the current resale values in most urban centres in Ontario. Changing the definition of affordability will severely limit the utility of the IZ tool to increase housing supply that is affordable for moderate income households.

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<sup>6</sup> City of Mississauga, Corporate Report on Bill 23

The cost of living is currently at a soaring rate, and households are struggling to pay their rent. Municipalities should be able to set their own definition of affordability, as they best understand the housing crisis that exists in their cities.

### **Conclusion**

We are deeply concerned about the impacts of the proposed limitations to Inclusionary Zoning policies. These policies can be an effective tool to generate affordable housing by leveraging private sector investments. When every data point shows a worsening housing affordability crisis, there is no rationale for constraining the development of new affordable units that have been demonstrated to be financially viable. The proposed regulations will limit the ability to use an effective tool to address the urgent housing affordability crisis in Ontario. We urge the government to reconsider these regulatory changes, and allow municipalities to enact bylaws suited to their local contexts and needs.

Sincerely,



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## **Wellesley Institute Submission in Response to the Proposed Regulation Under the Planning Act Related to Inclusionary Zoning**

### **Executive Summary**

Wellesley Institute welcomes the opportunity to respond to Ontario's proposed regulations on inclusionary zoning. These will implement a priority in the Long-Term Affordable Housing Strategy, and we commend the government for moving forward on this.

Housing is an important factor in health and well-being. People with low incomes or other disadvantages face large problems of housing affordability and quality, which is bad for health. Inclusionary zoning is a tool that can help provide affordable options, reduce housing problems, and build mixed communities.

This brief suggests some modifications to the proposed regulations. These proposals build on Wellesley Institute's expertise and research on inclusionary zoning. These changes would improve the ability of municipalities to use inclusionary zoning, and enhance opportunities to create more affordable housing.

- **Allow more flexible 'set asides.'**  
Allowing a higher percentage of affordable units in developments would make the policy more effective. Requirements of 15–20 percent affordable have been successful in many jurisdictions.
- **Provide for longer 'affordability periods.'**  
Increasing the length of time that housing must remain affordable creates longer-lasting benefits. Affordability for more 30 years – often permanent – is used in many jurisdictions.
- **Facilitate the transfer of units to non-profits for affordable rental.**  
Inclusionary zoning can create either affordable ownership or rental. Enabling and encouraging the transfer of rental units to non-profits can ensure affordability and help people in need.
- **Reduce the cost burden on municipalities.**  
To require that municipalities cover 40 percent of developers' cost of making housing affordable is onerous and will impede take-up. This should be substantially reduced.
- **Permit municipalities to contribute with density bonuses.**  
Where municipalities are required incentivize or reimburse developers for the cost of making housing affordable, they should be empowered to use density bonuses to achieve this.

## **Wellesley Institute Submission in Response to the Proposed Regulation Under the Planning Act Related to Inclusionary Zoning**

EBR Registry Number: 013-1977

**January 25, 2018**

Wellesley Institute welcomes the opportunity to respond to the proposed Ontario inclusionary zoning regulations. We commend Ontario for moving forward on inclusionary zoning as was identified in the Long Term Affordable Housing Strategy and as it complements the Ontario Fair Housing Plan. Wellesley Institute has been at the forefront of research on inclusionary zoning, including hosting a foundational conference in 2008 and publishing research reports on implementing inclusionary zoning in Ontario.<sup>1</sup> We recently met with stakeholders and experts to identify ways of strengthening the proposed Ontario inclusionary zoning regulations.

Affordable housing is a bedrock foundation for health. Wellesley Institute research highlights that affordable mixed-income housing strengthens individual and population health.<sup>2</sup> When people cannot find housing they can afford, families, communities, and our health suffers. Unaffordable housing eats into families' budgets, producing instability and leaving little for the other necessities of healthy lives. Racialized people, women, and recent immigrants disproportionately bear the burden of unaffordable housing. This is one of the primary drivers of the significant health inequities in Ontario. Inclusionary zoning policies can help level housing inequities and improve health by providing more affordable options.

Inclusionary zoning can provide the power to build significant affordable housing and help to dispel rising segregation and inequality. It has been effective in comparable jurisdictions across the US and Europe in producing affordable homes for people by scaling up affordable housing production with increased market housing development.<sup>3</sup> Inclusionary zoning has also contributed to more inclusive communities by mixing affordable and new market housing together. However, inclusionary zoning policies come in varying shapes and sizes, some of which do very little, and only well-designed policies will play a significant part in addressing the dearth of mixed-income affordable housing.

Wellesley Institute recognizes Ontario's need to arrive at a policy that accommodates diverse interests. Those interests include developers, municipalities, and providers of affordable housing. They include the two-thirds of Ontario's population and growth that is not served by new housing development because it is not affordable to them.<sup>4</sup> Developers are concerned that inclusionary zoning will affect their business model and potentially the viability of projects. Experience in other jurisdictions shows, however, that the development industry adapts to inclusionary zoning requirements as it does to other regulatory provisions, without deleterious impact on real estate development.

The proposed regulations require some alterations to maximize the opportunity to create significant affordable housing and build more mixed-income communities through inclusionary zoning. These



changes to the regulations would empower municipalities to implement effective, responsive, and responsible inclusionary zoning policies. Allowing for a higher percentage of affordable units in new developments would strengthen this policy by producing multiple times more affordable units. Increasing the length of time units remain affordable would extend the impact over more decades. Setting priority and supports for the transfer of units to non-profits would address the dire lack of affordable rental. Lowering the costs for municipalities and allowing the use of density bonuses would make inclusionary zoning more attractive for municipalities, leading to more widespread use. Evidence from international jurisdictions supports that these changes would lead to more affordable housing for Ontario.<sup>5</sup> These proposed amendments are detailed below.

**1) Allow more flexible ‘set asides.’**

‘Set asides’ are the percent of a new development that is designated as affordable housing. They can be identified in terms of number of units or gross floor space. The proposed regulations limit the percent of inclusionary affordable housing that can be set aside by municipalities in new developments to 5% (10% near rapid transit) of units or floor space. In comparable jurisdictions, 15%-20% is an effective policy, and in New York City, 50% of units must be affordable to a wide spectrum of households.<sup>6</sup> A 5% set aside would significantly reduce the impact of inclusionary zoning. Amending the proposed regulations to require a set aside no less than 20% would multiply the number of affordable units built, increase income mix in new developments, and make inclusionary zoning more attractive for widespread municipal use.

**2) Provide for longer ‘affordability periods.’**

The periods for which affordable units must remain affordable are referred to as ‘affordability periods.’ The proposed regulations cap the period of affordability at 30 years with a minimum of only 20 years of affordability. Short affordability periods limit the impact of inclusionary zoning and transfer the affordability problem to the next generation. International jurisdictions are moving toward 99 years or in-perpetuity affordability periods, with 30% of US jurisdictions having affordability periods of 99 years or longer.<sup>7</sup> The proposed regulations could be strengthened by allowing for in-perpetuity affordability in the case of long-term affordable rental units and removing the rigid equity phase outs for affordable homeownership units. This would provide affordable units for decades longer and give more freedom to municipalities to implement flexible inclusionary zoning policies.

**3) Facilitate the transfer of units to non-profits for affordable rental.**

Who will own the affordable units once they are built? Inclusionary zoning can be used to build affordable condos for individual families to own, or the ownership could be transferred to non-profits to run as long-term affordable rental. Both affordable ownership and rental are good goals. However, in Ontario the principal need is for long-term affordable rental housing, and this is where our focus should be. The proposed regulations are silent on any mechanism to transfer affordable units to non-profit/co-op housing providers to run as rental housing. Enabling that option can ensure that units are kept as affordable rental for the long term, consistent with the mandate of such providers. It can be combined with federal and provincial subsidies on the same property to help those in deeper need. The proposed regulations could be strengthened by providing encouragement, priority, or supports for the transfer of affordable units to non-profits or co-ops for use as rental. This would increase the supply of affordable rental housing,

increase tenure mix, and would make units more affordable to families along a wider income spectrum.

**4) Reduce the cost burden on municipalities.**

The proposed regulations require that municipalities pay developers 40% of the cost of making the units affordable. This high mandatory municipal contribution will make it unattractive for many Ontario municipalities to use inclusionary zoning widely, or at all. A 40% contribution is fiscally onerous: few municipalities in Ontario will be able to afford many units. Many European jurisdictions with successful inclusionary zoning programs do not require municipalities to contribute to the cost of affordable units at all. The municipal contribution is waived in the proposed regulations for areas which implement a Community Planning Permit System. This waiver provides an incentive for municipalities to move towards a more proactive and locally-informed community planning system, though this system remains several years away from implementation. The proposed regulations could be strengthened by substantially reducing the 40% municipal contribution. This would encourage municipalities to use inclusionary zoning more widely, thus producing more affordable units.

**5) Permit municipalities to contribute with density bonuses.**

The proposed regulations place a high cost on municipalities, but then prohibits a primary way that municipalities can contribute: density bonuses. Some jurisdictions, such as New York City, make good use of these kinds of financial offsets for developers. Density bonuses can help offset the costs of inclusionary units and encourage greater density. They can help ease the transition to inclusionary zoning for developers while the market adjusts. The proposed regulations could be strengthened by allowing municipalities to contribute with density bonuses. This would make inclusionary zoning policies more attractive for municipalities, leading to wider implementation and thus more units and more mixed-income developments.

Action on inclusionary zoning is a positive step for affordable housing in Ontario. The changes to the regulations outlined above would make inclusionary zoning a more effective policy to help maximise the opportunity for Ontario and local communities. These changes are consistent with the experiences of effective international jurisdictions. They would lead to more affordable units being built, allow those units remaining affordable for decades longer, and contribute to more economically inclusive communities. Inclusionary zoning would help to improve population health and health equity in communities across Ontario. If we can be of further assistance, please do not hesitate to contact us.

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<sup>1</sup> Richard Drdla Associates (2010) "A Guide to Developing an Inclusionary Housing Program." Wellesley Institute, ACORN Canada, Catherin Donnelly Foundation.

<sup>2</sup> Mahamoud, A. et al. (2012) "Housing and Health: Examining the links." Wellesley Institute.

<sup>3</sup> Calavita, N. & Mallach, A. (2010). *Inclusionary Zoning in International Perspective*. Cambridge, MA. Lincoln Institute of Land Policy.

<sup>4</sup> In 2011 to 2016, Ontario had net reduction in homeowner households at all annual income levels under \$100,000 (calculated from Statistics Canada, 2016 Census cat. 98-400-X2016228 and 2011 NHS cat. 99-014-X2011028). In 2016, 65.1% of Ontario households had incomes under \$100,000. Moreover, only a tiny share of housing production is for rental tenure.

<sup>5</sup> Gladki, J., & Pomeroy, S. (2007). "Implementing Inclusionary Policy to Facilitate Affordable Housing Development in Ontario." Report prepared for the Ontario Non-Profit Housing Association.

<sup>6</sup> Madar, J., & Willis, M. (2015). "Creating Affordable Housing Out of Thin Air: The Economics of Mandatory Inclusionary Zoning in New York City". NYU Furman Center.

<sup>7</sup> Hickey, R., Sturtevant, L., & Thaden, E. (2014). "Achieving Lasting Affordability through Inclusionary Housing". Lincoln Institute of Land Policy.