

More affordable housing for whom?

Putting people first in Ontario's housing policy decisions

Written submission to the Standing Committee on Heritage,
Infrastructure and Cultural Policy regarding proposals to
strengthen Bill 23, *More Homes Built Faster Act*, 2022

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Purpose

This submission provides Maytree's analysis of Bill 23: An Act to amend various statutes, to revoke various regulations and to enact the Supporting Growth and Housing in York and Durham Regions Act, known as the *More Homes Built Faster Act, 2022*.

Although the bill contains various legislative amendments that affect a broad range of housing policy issues in Ontario, given Maytree's focus on people in greatest need, our submission examines the proposed amendments in the following Schedules:

- Schedule 1—*City of Toronto Act, 2006*;
- Schedule 3—*Development Charges Act, 1997*;
- Schedule 4—*Municipal Act, 2001*; and
- Schedule 9—*Planning Act*.

Executive Summary

Ontario is facing a housing affordability crisis. Over the past decade, growth in average housing costs has far outpaced growth in average incomes.

Bill 23 recognizes that having enough housing supply to meet demand is an important piece of the puzzle. In this respect, we're pleased to see the government commit to building more homes across Ontario. Yet the bill falls short in proposing changes that would build more affordable housing and could end up having serious consequences for Ontarians—particularly for renters with the lowest incomes.

First, the bill fails to address the full range of factors that are making housing unaffordable. Ontario's housing supply shortage alone is not causing the affordability

crisis. Rather, it's real estate speculation, the rise of financialized actors in the housing market, and inadequate income supports and rent controls that, when left unchecked, **could end up exacerbating, rather than improving, housing affordability challenges**. The government is also consulting on its proposed changes through the provincial online regulatory registry, rather than through a meaningful stakeholder engagement process, preventing people with technical and lived expertise from being heard.

To this end, in this submission, we outline the impacts of Bill 23's focus on reducing development fees, challenges with its definition of affordable housing, and the lack of meaningful engagement with stakeholders on the creation and regulation of local housing policy goals. Using a human rights-based approach, we conclude by providing recommendations for how the government could amend aspects of Bill 23 to prioritize the needs of people—not developers—in its housing policy decisions.

Key concerns with Bill 23

We urge the government to consider how four main aspects of Bill 23 could adversely impact people:

1. The bill is guided by the belief that support to developers will be passed on to people.

Schedules 3 and 9 of Bill 23 make various amendments to the *Development Charges Act, 1997* and the *Planning Act*. These amendments would eliminate developer fees when creating housing that meets the Province's criteria for

affordable housing, attainable housing, and inclusionary zoning. The Schedules also propose eliminating development fees for non-profit housing developments.

The theory underpinning these changes is that lower fees will encourage developers to build more housing. By increasing the supply of housing available, then the cost of housing would eventually decline—as there would be enough supply to meet demand. While this logic seems like it would work in theory, in practice, it ignores the realities of Ontario’s housing landscape.

First, with such high demand for housing, it’s unlikely that savings from lower developer fees will result in savings to consumers. This is because the high demand for housing, facilitated by the previous low interest rate environment, is coming from both individuals and investors who speculate on the value of real estate and land. And while the elimination of development charges will help non-profit developers with the cost of development, lowering development charges for other developers may not lead to lower housing prices if there is general price acceptance in the market.

Bill 23’s overall approach to developer fees will also have significant consequences on the ability of municipalities to fund housing services for people, especially for those with lower incomes. Development fees are collected by municipalities to help pay for services such as transit, water, and infrastructure related to the development. By lowering or eliminating development fees, Bill 23 also reduces the fiscal capacity of local governments, and could lead them to either pass on costs to residents or reduce these services altogether.

For example, in analyzing Bill 23, staff from the City of Ottawa have reportedly stated that they have concerns that "...the burden of supporting infrastructure necessitated by growth could be significantly delayed, levels of service degraded, and/or the costs passed on to existing municipal rate payers."¹ Staff from the City of Toronto have similarly estimated that the elimination of housing development charges could mean up to \$130 million annually in lost revenue, which could lower housing development and services. Further, exemptions from community benefits charges would reduce the capacity of cities to provide benefits where affordable housing units are built, "...disproportionally impacting low-income residents."²

Despite the impact that revenue losses could have on the delivery of local services, Bill 23 doesn't provide any mechanisms for which local governments can recover the costs. Rather, the government has suggested that the new Housing Accelerator Fund proposed in the federal government's 2022 budget could be used to help support municipalities.³ Yet, the federal government hasn't announced the criteria for funding provided through the Housing Accelerator Fund, and it's unclear if buildings created through Bill 23 would be eligible. In effect, this implies that the Province is expecting federal and local governments to pay for its decisions. On top of this,

¹ Blewett, Taylor. (2022). "City of Ottawa staff have analyzed the local impacts of the province's new housing bill, and their conclusions are grim." *Ottawa Citizen*. Accessed at: <https://ottawacitizen.com/news/local-news/city-of-ottawa-staff-have-analyzed-the-local-impacts-of-the-provinces-new-housing-bill-and-their-conclusions-are-grim>

² Ibid

³ Chiannelo, Joanne. (2022). 4 ways the PC government's new housing bill could override city powers." *CBC News*. Accessed at: <https://www.cbc.ca/news/canada/ottawa/ontario-housing-bill-override-city-powers-1.6633897>

these changes could end up further increasing rents if municipalities recover costs through property taxes, since significant increases in property taxes are one of the reasons that landlords can apply for above guideline rent increases.

2. The bill does not acknowledge, let alone address, the inability of people to afford their monthly rents today.

As the housing crisis is not a supply-side issue alone, the Ontario government's approach should also comprehensively address the inability of tenants to keep up with rising rents.

Fortunately, there are immediate steps the government can take to help support people with their monthly rental costs—by focusing on ways to reduce the incidence of core housing need. Core housing need is a national definition of housing need, where households are in need if they are unable to find housing that is adequate, suitable, or affordable (i.e., housing costs don't exceed 30 per cent or more of before-tax income).

Data from the 2021 Census of Canada shows that the incidence of core housing need declined in 2021 relative to 2016—both for Canada (10.1 per cent vs. 12.7 per cent) and Ontario (12.1 per cent vs. 15.3 per cent). This is likely because of the increased financial support provided to help with the impacts of the COVID-19 pandemic during the reporting period, which boosted incomes at a time when low rent increase regulations and eviction moratoria were in place.

This means that to support people who rent today, policy measures should examine how to improve incomes so that even in cases when housing costs are high, people have the ability to pay for what they need. Ontario has oversight over many programs that provide direct financial support to people—particularly those with the lowest incomes—including social assistance benefits and various income-tested tax credits that could be leveraged to achieve this goal.

3. The definitions of affordable housing and inclusionary zoning are unlikely to make housing more affordable for people in need.

Schedule 3 proposes various amendments to the *Development Charges Act, 1997* that would mandate province-wide definitions of affordable housing, since these types of developments would be exempt from developer fees. That is, Bill 23 defines affordable housing as a residential unit for which **rent is 80 per cent or less of the average market rent, or the price is 80 per cent or less of the average purchase price**. Regulatory changes are also being proposed that limit the number of units that can be set aside for inclusionary zoning by **up to 5 per cent for 25 years**. In other words, developer fees are exempt as long as up to 5 per cent of units are maintained at affordable rates for 25 years.

While it's encouraging to see the Province push for the development of more affordable housing options, Bill 23 is unlikely to target those who actually need more affordable housing options—those in core housing need. Households in Ontario are

more likely to be in core housing need if they have lower incomes and are renters.⁴ In fact, Ontario has one of the highest rates of unaffordable housing (24.2 per cent) in Canada—particularly in Toronto (30.5 per cent) where the population is renter-heavy.⁵ This means that affordable housing, if it's meant to truly be affordable, would need to focus on reducing housing costs for lower-income renters. Yet Bill 23 largely focuses on easing the costs of current and future homeownership, rather than challenges faced by renters today.

As mentioned previously, lower-income renters need more support to pay for housing costs today. They also need policies to protect their housing costs from growing out of reach—such as rent control—and to protect the value of income supports over time. In Ontario, this would mean rent control policies that apply to all buildings, regardless of the year they're built or occupied, and control over the amount that landlords can charge between tenants. Unfortunately, these types of policies are not explored in Bill 23.

Rather, the bill focuses on creating a province-wide definition of affordable rent that is unlikely to be affordable for renters with lower incomes. This is because rents would be set at 80 per cent of the average market rent or less—which is a poor tool

⁴ Financial Accountability Office of Ontario. (2021). "Housing and Homelessness Programs in Ontario." Accessed at <http://surl.li/dstgw>

⁵ Statistics Canada. (2022). "To buy or to rent: The housing market continues to be reshaped by several factors as Canadians search for an affordable place to call home." Accessed at: <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921b-eng.htm>

for creating deeply affordable housing.⁶ In addition, this definition ignores best practices at the federal and municipal levels to provide affordable housing, some of which take into account other factors that affect people's ability to pay.

For example, the federal government's Rental Construction Financing Initiative—which provides low-cost loans to developers—asks them to build a certain proportion of affordable units that must be made affordable for 40 years. At the municipal level, the City of Toronto's affordable housing definition varies by unit size and annual income. The City's inclusionary zoning by-law has also been adopted as part of its Official Plan, and it sets aside a higher proportion of units that are affordable than is currently the case in Bill 23. By exempting developer fees, Bill 23 would lead to its definition of affordable housing and inclusionary zoning superseding others that have already been created based on expertise and with local interests in mind.

In addition to the issues with Bill 23's affordable housing definition, it's unclear what the Province is trying to achieve through the creation of its **new, never used before term, "attainable housing."** According to Bill 23, attainable housing will refer to residential units that are not deemed affordable, used for rented purposes, or sold by a person at arm's length from the seller. This general description implies that attainable housing is meant to ease the costs of higher-income renters who intend to be homeowners, ignoring the fact that there are many existing home saving-incentive programs that already target this group. The government should make it

⁶ Blueprint. (2022). "Analysis of Affordable Housing Supply Created by Unilateral National Housing Strategy Programs." *Research Report Prepared for the National Housing Council Working Group on Improving the National Housing Strategy*. Accessed at: <https://assets.cmhc-schl.gc.ca/sites/place-to-call-home/pdfs/analysis-affordable-housing-supply-created-unilateral-nhs-programs-en.pdf>

clear why this definition is being introduced and how it will help lower housing costs for those who need support.

4. Amendments are being made to limit the role of municipalities in regulating the replacement of rental housing with little consultation.

Schedule 1 amends Section 111 of the *City of Toronto Act, 2006* by giving the Minister of Housing and Municipal Affairs the power to impose limits or conditions on the City's powers to regulate the demolition and conversion of residential rental properties. Schedule 4 amends Section 99.1 of the *Municipal Act, 2001* in a similar way to give the Minister this type of power across all Ontario municipalities. The Province is seeking feedback on these proposed amendments through a series of broad questions about the impact of municipal rental replacement laws on housing supply and renter protections through its online Regulatory Registry. The Registry also notes that future legislative amendments will not impact renter protections under the *Residential Tenancies Act, 2006* (RTA).

These proposed amendments are deeply concerning—they give the Minister new powers over the regulation of rental replacement policies, without clearly stipulating what those powers will look like. Even in explaining the need for this change, the government cites streamlining rental replacement approaches across municipalities, yet the bill focuses on **limiting or imposing conditions** on municipal powers.

Although only few rental replacement policies currently exist, they provide important rules that help to preserve Ontario's rental housing stock. For example, the City of Toronto's rental replacement by-law requires that housing with six or more rental

units is replaced with housing that offers the same number, size, and type of rental units; that existing tenants have the right to return; and that replacement units are charged at similar rents to preserve affordability. It's estimated that from the City's policy, over 4,000 rental units have been protected from being replaced over the past 15 years. While the Province has stated that Bill 23 would not eliminate tenant rights as defined through the RTA, it's clear that municipal rental replacement policies go further by ensuring the preservation of affordable rental housing stock. If the Minister intervenes in this area, some residents could be vulnerable to displacement.

In addition, the manner in which the Province's consultations are taking place is not conducive to meaningful stakeholder engagement, since they are being held exclusively on the online Ontario Regulatory Registry. Typically, postings to this database focus on gathering feedback on explicit regulatory proposals. In the case of the amendments being made through Schedules 1 and 4, the government appears to be using the Registry for an open-ended consultation with broad questions about how municipalities currently use this power, rather than the planned provincial role in rental replacement policies. This type of consultation is also likely to only solicit feedback from those who already know about the Registry, rather than the broad range of stakeholders who could be impacted.

Maytree's recommended approach

Guiding principles

In line with Canada's *National Housing Strategy Act, 2019*, the right to adequate housing is a **fundamental human right** for everyone in Canada and, by extension, Ontario. It is the responsibility of all governments to use their maximum available resources, including legislative power, to help realize this human right. Realizing the right to housing means **putting the needs of people first** in housing policy decisions—particularly, those who are in greatest housing need.

To this end, Maytree recommends that the government review Bill 23 with the following principles in mind:

Principle	From a policy perspective, this means:
Accountability	Those impacted by policy decisions—such as people and other governments—should be given an opportunity to meaningfully engage in the development of such decisions.
Transparency	Policy decisions, and the rationale for such decisions, should be clearly and openly communicated to the public.
Equity	Various tools should be explored that recognize how circumstances can differ for different people and help to support those who may be facing greater challenges than others. These tools can include targeting supports and expanding or refining eligibility criteria.
Simplicity	Policy decisions should be both easy to understand and operationalize, where possible.

Recommendations

Guided by these human rights-based principles, Maytree recommends that the government of Ontario:

1. Consider how the areas for which the Province has direct purview—both fiscally and in regulation—could have the greatest impact on improving housing affordability, while also encouraging development.

This means:

- A.** Removing the amendments in Schedules 3 and 9 related to the exemption of developer fees, except for the exemption for fees charged to non-profit housing developers. Rather, Ontario should actively work with the federal government to ensure that non-profit housing developers are able to access loans and grants for affordable housing offered through the National Housing Strategy.
- B.** Improving peoples' ability to pay for housing by increasing the adequacy and reach of income supports for renters with lower incomes. As a start, the Province could enhance benefits provided to people who receive Ontario Works and Ontario Disability Support Program benefits. This would increase their capacity to pay for housing costs, rather than relying on market housing policy interventions to eventually trickle down to those who need the most support. This work could also involve collaborating with the federal government on options to improve the Canada-Ontario Housing Benefit and the recently introduced \$500 rental assistance benefit.
- C.** Strengthening rent control policy by removing vacancy decontrol (e.g., limiting new rents to be raised in line with general rent control guidelines) and the

exemption for rent control for newer residential buildings (i.e., those built or occupied after 2018) in the *Residential Tenancies Act*, 2006. This would help to bring down housing costs for renters in the more immediate term while improving equity.

2. Work with other governments to develop a minimum standard of affordable housing that could be used to evaluate housing programs.

This means:

- A.** Removing all sections of the bill that create a province-wide definition of affordable housing.
- B.** Consulting with the federal government and municipalities on what a minimum standard of affordable housing should look like based on best practices and local interests. This minimum standard should include income considerations and should differ by geographic area.
- C.** Removing all sections of the bill related to attainable housing until a meaningful consultation involving various stakeholders, such as other levels of government, academics, and people with lived expertise, has taken place on its purpose and definition.

3. Be clear about the purpose and scope of the Minister's new powers related to rental replacement policies.

This means:

- A.** Removing the words “imposing limits and conditions” from the amendments to the *City of Toronto Act*, 2006 and the *Municipal Act*, 2001 regarding the municipal role in the regulation of rental replacement policy.
- B.** Publicly explaining why these changes are needed, the objectives of these changes, and the timeline for which they plan on being implemented.
- C.** Extending the time allotted for feedback provided through the Ontario Regulatory Registry and engaging in a meaningful consultation with a broader group of people who could be impacted by the proposed changes.