

## **Bill 97 - Recommended Response to Proposed Provincial Regulatory Framework on Rental Replacement**

**Date:** May 8, 2023

**To:** City Council

**From:** Chief Planner and Executive Director, City Planning

**Wards:** All

### **SUMMARY**

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On April 6, 2023 the Province introduced Bill 97, the Helping Homebuyers, Protecting Tenants Act, 2023 and posted a proposed regulatory framework for municipal rental replacement by-laws on the Ontario Regulatory Registry for a 45-day consultation. Comments on the proposed regulatory framework are due by May 21, 2023. On April 27, 2023, Planning and Housing Committee requested City staff to report directly to City Council on a response to the proposed regulatory framework.

City staff have provided a submission to the Province on the proposed *Planning Act* and *City of Toronto Act* ('COTA') changes in Bill 97 (Attachment 2) which were due on May 5, 2023. Among other changes, Bill 97 proposes amendments to COTA to provide the Minister of Municipal Affairs and Housing ('the Minister') with enhanced regulatory powers to limit the City's ability to require replacement rental housing and tenant relocation and assistance when existing rental homes are proposed to be demolished.

The City's existing Official Plan rental replacement policies have been in effect since 2006 and the implementing municipal by-law since 2007. This policy framework has successfully secured the replacement of approximately 5,000 existing rental units and ensured tenants are provided with compensation to allow them to find alternative housing during redevelopment. Without this critical policy framework, it is likely that significantly more rental units would have been demolished and not replaced due to new developments. This would have negatively impacted both the supply of rental units and availability of affordable rental units

The proposed regulatory framework for municipal rental replacement by-laws provides few details surrounding the Minister's intended application of these new regulatory powers. As currently drafted, these changes could purport to enable the Minister to fundamentally change the City's current rental replacement practices. Potential regulations could seek to allow replacement rental units to be significantly smaller than the units they are replacing, limit the City's ability to restrict the rents for replacement

units, reduce tenant compensation, allow owners to provide cash-in-lieu of replacement units, and/or create new definitions of affordable rental housing that do not reflect the Official Plan's in-force income-based definitions.

These new provisions create uncertainty around the future implementation of Toronto's existing rental demolition by-law and rental replacement policy, including for applications currently under review. There are 73 active Rental Housing Demolition applications that propose to demolish over 3,440 existing rental units and which are subject to the City's rental replacement policy. The Minister could determine transitional matters for these mid-stream applications, which could result in different processes and protections for tenants compared to what has already been communicated to them and which reflects a long established and known practice.

This report and Attachment 1 to this report highlight some of the major changes proposed affecting rental replacement in Toronto, the potential impacts on the City and tenants, and recommendations to the Province related to Bill 97 and any resulting regulations. City staff have continued to engage and request meetings with appropriate Ministry staff to relay the City's feedback and comments.

## RECOMMENDATIONS

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The Chief Planner and Executive Director recommends that

1. City Council request the Province of Ontario to:

- a. not advance a regulation for municipal rental replacement by-laws until meaningful consultation with the City and stakeholders has taken place, including consultation on all draft regulations;
- b. provide transition provisions on municipal rental replacement by-laws to ensure that any Rental Housing Demolition Applications submitted to the City prior to the regulation coming into force will continue to be reviewed under the City's existing by-law and policies;
- c. continue to allow for municipal decision making on minimum size requirements for replacement rental units;
- d. ensure that a consistent approach to tenant compensation is reflective of local housing market conditions and supports tenants in continuing to access and afford housing within their neighbourhood;
- e. amend Bill 97 by removing proposed subsection 111(7)(d) of the *City of Toronto Act*, which would require the City to meet pre-conditions before passing a rental replacement by-law;
- f. amend Bill 97 by removing proposed subsection 111(8) of the *City of Toronto Act*, which would enable a Minister's regulation on rental replacement to supersede other Acts or regulations; and

g. amend Section 111 of the *City of Toronto Act* to enable the City to pass a by-law to prohibit and regulate the demolition and conversion of dwelling rooms.

2. City Council forward this report and attachments to the Premier of Ontario and the Minister of Municipal Affairs and Housing for their consideration and provide this report and attachment in response to Ontario Regulatory Registry proposal #23-MMAH005 before the commenting period ends on May 21, 2023.

## **FINANCIAL IMPACT**

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There are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

The proposed provincial changes could result in additional costs to the City to support de-housed tenants and address increased demand for homeless services if the City is no longer able to require owners to provide displaced tenants with appropriate compensation.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications.

## **EQUITY IMPACT STATEMENT**

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The City of Toronto's quality of life, economic competitiveness, social cohesion, and diversity depend on current and future residents being able to access and maintain adequate, affordable and appropriate housing along with equitable access to community services and facilities that support the needs of all residents.

## **DECISION HISTORY**

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At its meeting on June 18 and 19, 2019, City Council requested the Province of Ontario to amend Subsection 111(3) of the *City of Toronto Act, 2006*, to permit the regulation of residential rental properties that contain six or more dwelling rooms in a similar manner as the City of Toronto is permitted to regulate properties that contain six or more dwelling units.

<https://secure.toronto.ca/council/agenda-item.do?item=2019.PH6.1>

At its meeting on November 23, 2022, City Council considered a report on the City's response to Bill 23, More Homes Built Faster Act, 2022. Among other requests to the Province of Ontario, City Council requested the Minister of Municipal Affairs and Housing to postpone enacting regulations related to rental replacement by-laws, until such time as there had been focused consultations with municipalities as part of the development of Minister's regulations to ensure municipalities can continue to require

replacement rental housing and support impacted tenants. To date, staff have not been invited to participate in any form of consultation on the development of a regulation.  
<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC1.2>

At its meeting of March 29, 30 and 31, 2023, City Council considered a report from the City Solicitor on Bill 23 and Section 111 of the *City of Toronto Act*. The report and confidential attachment were prepared by the City Solicitor in consultation with the Chief Planner and Executive Director, City Planning in response to City Council's direction.  
<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH2.10>

At its meeting on April 27, 2023, Planning and Housing Committee requested staff report directly to the May 10, 11, 12, 2023 City Council meeting on a response to the Ontario Regulatory Registry posting on Future Regulations to Create A Balanced Framework Around Municipal Rental Replacement By-Laws.  
<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH3.21>

## COMMENTS

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Existing rental housing in Toronto is a core part of the City's housing supply, often providing housing for more vulnerable population groups and importantly, providing stability for hundreds of thousands of people contributing to the economic and social health of the City. The City has extensive experience in implementing rental replacement policies over the past 15 years in a balanced way that facilitates the delivery of more housing, maintains the existing stock of rental housing, and supports tenants impacted by redevelopment. Toronto's rental demolition by-law has been in force since 2007 and the Official Plan rental replacement policy has been in effect since 2006. Since 2007, the City has secured the replacement of nearly 5,000 replacement units that would have otherwise been lost to redevelopment. Toronto's Official Plan rental replacement policy requires developments proposing to demolish six or more existing rental units with affordable and/or mid-range rents to replace the same number, size and type of rental units at similar rents for a minimum ten-year period.

More recently, the City has seen an increase in the number of rental housing demolition applications submitted, with applications ranging from six to over 250 existing rental homes proposing to be demolished and replaced. The continued number of applications submitted each year and scale of buildings proposed to be demolished demonstrate the City's rental replacement practices have not acted as a barrier to the renewal of the existing stock.

Under Bill 97 and the accompanying proposed regulatory framework, the Minister could seek to fundamentally change Toronto's current rental replacement practices. While very few details surrounding the Minister's intended application of these new regulatory powers have been provided, the changes signal reduced support for tenants, a shift away from 'like-for-like' replacement of rental housing, and an erosion to the affordability of rental housing. A summary of major changes is outlined below. City staff's detailed comments are included in Attachment 1 to this report.

## **Size of Replacement Rental Units**

The proposed regulatory framework intends to remove the ability of municipalities to secure minimum square footage requirements for replacement units. The City currently requires that 100% of the total gross floor area of the existing rental units is replaced and that tenants can return to a similar size unit. Many renter families would be affected by the proposed regulatory change, as their homes could become unsuitable to their needs if replacement units are not reflective of their existing unit size. For example, the Minister's regulation would allow the home of a family of four living in a 2-bedroom 900 square foot unit to be demolished and replaced with a 2-bedroom 650 square foot unit with smaller bedrooms and living areas. This loss in square footage could result in the family no longer having enough space to move their existing furniture back into or a bedroom big enough for their two children. Staff recommend the Minister's regulation continue to allow the City to require 'like-for-like' replacement housing.

## **Affordability of Replacement Units**

The proposed regulatory framework suggests that the Minister could limit the City from regulating rent for replacement units. Toronto's rental replacement policy requires rent for replacement units to be secured at affordable or mid-range rent for at least 10 years. The rent classification is determined based on the rent of the existing units when the development application is submitted. From 2018 to 2022, the City approved nearly 2,500 replacement units at below-market rents (i.e., meeting the City's definition of affordable or mid-range rents). Without the ability to regulate replacement rents, this existing stock of housing affordable to low- and moderate-income households would have been lost.

The 2021 Census reported that 220,490 renter households (or 40% of all renter households) in Toronto experienced affordability issues. The majority of rental units proposed to be demolished are rented at below-market rents, in part because they often represent an older portion of the housing stock and older units are inherently more affordable. Existing rental apartments provide a good source of affordable units; maintaining rents for replacement units for a 10-year period protects against the erosion of these affordable units. The City's Official Plan policy provides for exemptions to rental replacement once the supply and availability of rental housing meets the housing needs of residents. Until then, it is critical for the City to continue to maintain this stock of housing to meet housing affordability needs particularly in light of the housing and affordability crisis.

## **Tenant Compensation**

The Minister has identified their intent to set common rules about the types of compensation required to be provided to displaced tenants. The *Residential Tenancies Act* currently requires landlords to provide tenants whose units will be demolished with three months' rent (or one month's rent if the residential complex contains fewer than five residential units). The City's policy framework recognizes that tenants should not bear the cost of having to move due to redevelopment and, as such, requires additional compensation above and beyond the *Residential Tenancies Act*. This compensation, which includes rent gap payments, moving allowances, and additional support for tenants with special needs, is intended to lessen hardship for affected tenants and

support them in continuing to access and afford housing within their neighbourhood. For example, under the City's practices, a tenant paying \$1200 for a one-bedroom unit in Midtown would receive a rent gap payment of about \$650 for each month they are displaced, to help them bridge the gap to market rents in the area until their replacement rental unit is built. Under the *Residential Tenancies Act*, the tenant would receive a one-time amount of \$3,200, which may only help them afford market area rent for three months out of the potential three-year displacement period.

Staff support a consistent and common approach to tenant compensation, as it provides transparency and certainty to both tenants and developers. The City has in practice provided a transparent approach to compensation as part of the development review process. The Minister's regulation should ensure compensation is reflective of local housing market conditions. Displaced tenants face different housing costs across Ontario municipalities (e.g., average rent of vacant apartment units in Toronto is \$1,971 compared to \$1,152 in Windsor) and tenant compensation should reflect those differences. Inadequate tenant compensation could lead to increased housing instability for renters, demand for housing and homeless services, or appeals of associated planning applications which could delay the construction of the new development.

### **Pre-conditions Before Passing a By-law**

Bill 97 indicates that the Minister may prescribe steps the City must take or conditions that must be met before passing a By-law under Section 111. Staff recommend the pre-condition requirement be deleted from proposed subsection 111(7)(d) of COTA, as Toronto has had an existing by-law in place since 2007.

### **Transition**

Bill 97 enables the Minister to establish transition provisions for the application of new regulatory changes. For the majority of the 73 active Rental Housing Demolition applications, tenant engagement has already taken place, key terms have been discussed and agreed to, and plans have been developed that reflect existing rental replacement requirement. Staff recommend that any future Minister's regulation specifies that Rental Housing Demolition applications submitted prior to the regulation coming into force continue to be reviewed under the City's existing by-law and policies. This will ensure that the processes and tenant protections already communicated to tenants continue to apply.

### **Other Matters**

Any regulation passed that purports to permit development without appropriate replacement rental units (e.g., cash-in-lieu of replacement units) would not address the serious and significant immediate challenges with the stock of rental housing.

Bill 97 would enable a Minister's regulation on rental replacement to supersede existing legislation, such as the *Planning Act* or *Residential Tenancies Act*. It is not appropriate for a Minister's regulation on rental replacement under COTA to be able to override existing statutes as it creates uncertainty with respect to the rental housing regime.

Bill 97 would enable the Minister to define key terms, such as 'rental housing' or 'affordable rent' for the purposes of rental replacement by-laws. The proposed regulatory framework also signals the Minister's intent to exempt certain entities or institutions from rental replacement. As no further details have been provided, staff are concerned that a future Minister's regulation may define affordable rental housing in a manner not reflective of the City's in-force income-based Official Plan definition.

Changes to Section 111 of COTA should be made to enable the City of Toronto to prohibit and regulate the demolition of dwelling rooms through a rental replacement by-law. Dwelling rooms are often the most affordable option in the private rental market, house vulnerable tenants such as seniors on fixed incomes and are increasingly subject to redevelopment in the City. Toronto's Official Plan dwelling room policy, which has been in force since 2021, requires development applications proposing to demolish six or more existing dwelling rooms to provide replacement rental housing secured at similar rents for 15 years and an appropriate tenant relocation and assistance plan.

## **Conclusion**

As we encourage and approve new housing supply in Toronto, we need to ensure this new supply does not come at the expense of existing affordable rental housing. Any dilution of existing rental replacement protections proposed by the Province would limit the City's ability to maintain the existing affordable rental housing stock and reduce protections for renters. Increasing housing supply in Ontario should not result in a net loss of affordable housing or housing instability and homelessness for existing tenants. Staff recommend the Province undertake meaningful consultation with the City, including consulting on a draft regulation that clearly outlines proposed restrictions, limits and conditions, prior to any regulations coming into force and effect.

## **CONTACT**

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Christine Ono, Project Manager, Strategic Initiatives, Policy & Analysis, 416-392-1255, [Christine.Ono@toronto.ca](mailto:Christine.Ono@toronto.ca)

Deanna Chorney, Manager, Policy, Strategic Initiatives, Policy & Analysis, 416-392-0176, [Deanna.Chorney@toronto.ca](mailto:Deanna.Chorney@toronto.ca)

## **SIGNATURE**

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Gregg Lintern, MCIP, RPP  
Chief Planner and Executive Director  
City Planning Division

## **ATTACHMENTS**

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Attachment 1: City of Toronto Comments on the Province's Proposed Regulatory Framework for Municipal Rental Replacement By-laws

Attachment 2: City of Toronto Comments on Proposed *Planning Act* and *City of Toronto Act, 2006*, (Schedules 2, and 6 of Bill 97 - the proposed *Helping Homebuyers, Protecting Tenants Act, 2023*) (ERO number 019-6821)