

December 3, 2025

Infrastructure and Environment Committee
City of Toronto
100 Queen St W
Toronto, ON

Re: IE26.3 - TransformTO Net Zero Strategy: Action Plan (2026-2030)

The Advocacy Centre for Tenants Ontario (“ACTO”), the Canadian Environmental Law Association (“CELA”), and the Low-Income Energy Network (“LIEN”) are writing to urge the Infrastructure and Environment Committee to pass a by-law to establish mandatory building emissions performance standards.

Climate change is an equity, fairness, and health crisis. Although low-income and vulnerable people are not responsible for climate change, they are disproportionately burdened by its impacts. It is urgent that the City of Toronto reduce greenhouse gas emissions and make commercial and residential buildings more resilient to climate change.

A. Legal Authority for Mandatory Building Emissions Performance Standards

City of Toronto Act

The *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A (“*City of Toronto Act*”) sets out a broad and deferential approach to municipal powers in section 6:

6(1) The powers of the City under this or any other Act shall be interpreted broadly so as to confer broad authority on the City to enable the City to govern its affairs as it considers appropriate and to enhance the City’s ability to respond to municipal issues.¹

Any ambiguity about whether or not a municipality has legal authority under the Act to make by-laws or take other action is to be resolved in favour of the municipality.² By-laws may be passed respecting the following subject matters:

8(2) The City may pass by-laws respecting the following matters:

...

5. Economic, social and environmental well-being of the City, including respecting climate change.

6. Health, safety and well-being of persons.

¹ *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A (“*City of Toronto Act*”), s 6(1)

² *City of Toronto Act*, s 6(2)

...

8. Protection of persons and property, including consumer protection.³

Section 105.3(1) provides that the City may provide for or participate in long-term energy planning in the City.⁴ In particular, long-term energy planning may include consideration of “energy conservation, climate change, and green energy”.⁵

The *Building Code Act* and the Ontario Building Code

Construction, renovation, demolition and change of use of buildings in Ontario are governed by the *Ontario Building Code Act, 1992*, SO 1992, c 23 (“*Building Code Act*”) and O. Reg 203/24 (“Building Code”).⁶

The Building Code sets out technical requirements for construction (including renovation) of buildings, change of use of existing buildings where the change would result in an increase in a hazard, and for maintenance and operation of on-site sewage systems.⁷ Municipalities are responsible for enforcing the *Building Code Act* and the Building Code within their jurisdiction.⁸

Division B, Part 12 (Resource Conservation) within the Building Code “regulates the mandatory and enabling energy efficiency requirements, and insulation in residential buildings.” Sentence 12.2.1.2 of the Building Code calls for the energy efficiency of all buildings to be designed to exceed by not less than 13% the energy efficiency levels required by Sentence 12.2.1.1(2) of the previous Building Code (O. Reg 332/12 as it read on December 31, 2024).⁹

For buildings of residential occupancy, the energy efficiency levels shall exceed at least 15% of the energy efficiency levels required by Sentence 12.2.1.1(3) of the previous Building Code as it read on December 31, 2024.¹⁰

Furthermore, section 12.3 of the Building Code provides parameters for energy efficiency specifically in buildings of residential occupancy, and section 12.4.1 calls for stronger water conservation requirements for plumbing systems.¹¹

Conflict provision in the *Building Code Act*

There is a conflict provision within the *Building Code Act*, but relating only to municipal by-laws respecting the construction or demolition of buildings:

³ *City of Toronto Act*, s 8(2)

⁴ *City of Toronto Act*, s 105.3(1)

⁵ *City of Toronto Act*, s 105.3(2)

⁶ *Building Code Act, 1992*, S.O. 1992, c. 23 (“*Building Code Act*”); O. Reg 163/24: Building Code (“Building Code”)

⁷ Building Code, Preface: Introduction, emphasis added.

⁸ *Building Code Act*, s 3(1)

⁹ Building Code, Sentence 12.2.1.2(2)(a)

¹⁰ Building Code, Sentence 12.2.1.2(3)(a)

¹¹ Building Code, Sentence 12.3 and 12.4.1.

35 (1) This Act and the building code supersede all municipal by-laws respecting the construction or demolition of buildings.

(1.1) For greater certainty, sections 9, 10 and 11 of the *Municipal Act, 2001* and sections 7 and 8 of the *City of Toronto Act, 2006* do not authorize a municipality to pass by-laws respecting the construction or demolition of buildings.

(2) In the event that this Act or the building code and a municipal by-law treat the same subject-matter in different ways in respect to standards for the use of a building described in section 10 or standards for the maintenance or operation of a sewage system, this Act or the building code prevails and the by-law is inoperative to the extent that it differs from this Act or the building code.¹²

Although the definition of “construct” is broad in the *Building Code Act*, the conflict provision in s.35 of the *Building Code Act* does not render inoperative all of the broad powers of the City of Toronto in relation to property standards and to address economic, social and environmental well-being in the municipality, including respecting climate change.¹³

Jurisprudence

Municipalities Have Broad Authority to Address Climate Change

The Supreme Court of Canada and subsequent case law has made it clear that municipalities have broad powers to address environmental issues. In *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 SCR 241 (“Spraytech”), the Supreme Court of Canada determined that a Quebec municipality was entitled to pass a by-law restricting the non-essential use of pesticides, as municipalities have the general authority to enact by-laws aimed at advancing objectives like public health and safety.¹⁴ The SCC also emphasized that because protecting the environment is a major task requiring action from all levels of government, municipalities have a legitimate role in enhancing environmental protection provided by other levels of government.¹⁵

The Ontario Court of Appeal confirmed the Supreme Court of Canada’s finding in Ontario in *Croplife Canada v Toronto (City)*, [2005] OJ No 1896 (“*Croplife*”). The Court of Appeal found that “...municipal powers, general welfare powers, are to be interpreted broadly and generously within their context and statutory limits, to achieve the legitimate interests of the municipality and its inhabitants.”¹⁶ The Court noted that the goal of modernizing the *Municipal Act* “...was to give municipalities in Ontario “the tools they need to tackle the challenges of governing in the

¹² *Building Code Act*, s 35

¹³ *Building Code Act*, s 1

¹⁴ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 SCR 241 (“Spraytech”), paras 10, 21

¹⁵ *Spraytech*, para 3

¹⁶ *Croplife Canada v Toronto (City)*, [2005] OJ No 1896 (“*Croplife*”), para 37

21st century.”¹⁷ With climate change being a such a dire challenge in the 21st century, a municipality’s broad powers become key in protecting the welfare of its inhabitants.

In *R v Drain*, 2006 ONCJ 186, the Ontario Court of Justice determined that the unregulated accumulation of waste and debris in neighbouring yards was negatively impacting the well-being of the local community. The Court held that the term “well-being” in the Municipal Act should be interpreted to encompass concerns related to health, living conditions, and prosperity of the municipality’s residents.¹⁸

Municipal By-Laws may Apply to Existing Buildings

Municipalities may apply new standards to pre-existing buildings. In *Rexlington Heights Ltd v Ontario*, [2005] OJ 4223, a property standard by-law requiring guards and handrails to comply with the Ontario Building Code was challenged. The Court clarified that municipalities may legislate so that new property standards apply to existing buildings.¹⁹ However, municipalities must use very clear language. In *Rexlington Heights*, the Court emphasized that in instances where a municipality aims to require all buildings, regardless of their construction date, to adhere to specific standards outlined in the Building Code, the language used in the by-law should be explicit and clear in referring to those standards.²⁰

In *A-Major Homes (Ontario) Inc. v Caledon (Town)*, [2017] OMBD No 519, the Ontario Municipal Board included the following settlement language relating to the *Building Code Act* and the Official Plan Amendment for the Town of Caledon:

“7.14.18.1.1 All residential homes in the Plan Area shall be designed and constructed with water and energy conservation, efficiency, and re-use systems and/or features that will reduce the rate of water consumption and exceed energy efficiency standards in the Building Code Act, 1992, S.O. 1992, c. 23.”²¹

Tay Valley (Township) Zoning By-law No. 02-121 (Re), [2004] OMBD No. 501 concerned a conflict with the setback from the water of a sewage disposal site, with the Township requiring a 15m setback, while the Building Code recommended a setback of 0m. To avoid conflict with the Ontario Building Code, the Ontario Municipal Board determined that the water setback should be the greater of the two options (15m). By considering the environmental implications in this case, the higher standards set out by the municipality were justified.²²

B. Mitigating Costs Being Passed to Tenants

It is crucial to minimize the costs to tenants for mandatory building emissions performance standards. ACTO, CELA and LIEN urge the provincial government to amend the *Residential*

¹⁷ *Croplife*, para 34

¹⁸ *R v Drain*, 2006 ONCJ 186, para 29

¹⁹ *Rexlington Heights Ltd v Ontario*, [2005] OJ 4223, paras 12, 15 (“*Rexlington Heights*”)

²⁰ *Rexlington Heights*, para 36

²¹ *A-Major Homes (Ontario) Inc. v Caledon (Town)*, [2017] OMBD No, 519.

²² *Tay Valley (Township) Zoning By-law No. 02-121 (Re)*, [2004] OMBD No. 501.

Tenancies Act, 2006, SO 2006, c.17 (“RTA”), section 126, to prevent tenants from bearing a further burden from climate change by imposing costs on tenants for necessary climate resiliency upgrades to their buildings.

The RTA allows landlords to apply to the Landlord and Tenant Board (LTB) for “an order permitting the rent charged to be increased by more than the guideline for any or all of the rental units in a residential complex:

2. Eligible capital expenditures incurred respecting the residential complex or one or more of the rental units in it.²³

While not every renovation, repair, replacement or new addition is a capital expenditure, maintaining the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system, and promoting energy or water conservation are eligible capital expenditures.

However, landlords must disclose any grants or other financial assistance received and cannot claim those costs in an application for an above the guideline rent increase:

22. (1) An application under section 126 of the Act must be accompanied by the following material:

...

2. If the application is based on capital expenditures incurred,
 - i. evidence of all costs and payments for the amounts claimed for capital work, including any information regarding grants and assistance from any level of government and insurance, resale, salvage and trade-in proceeds,

24. (1) In determining the amount of any capital expenditures or the amount of operating costs in an application under section 126 of the Act, the Board shall,

..

- (d) subtract the amount of all grants, other forms of financial assistance, rebates and refunds received by the landlord that effectively reduce the operating costs.²⁴

We urge the City of Toronto to target financial assistance for landlords to those with low-income tenants. Financial assistance programs must be put in place so that compliance by landlords with building emissions performance standards does not impose further climate costs on low-income tenants.

C. Use Federal and Provincial Funding Available for Low-Income Tenants

²³ *Residential Tenancies Act, 2006*, S.O. 2006, c.17 (“RTA”), s 126

²⁴ O. Reg 516/06 GENERAL, ss 22(1)2i, 24(1)(d)

The report on the TransformTO Net Zero Strategy: Action Plan (2026 2030) suggests that federal or other funding for climate-friendly retrofits has been cut. We are not aware of program funding cuts at the federal level which would impact the larger buildings which are subject to mandatory building emissions performance standards.

There are federal and provincial programs available to the City of Toronto or to landlords and tenants which should be used for upgrades to buildings with low-income tenants. For instance, the Canada Greener Homes Affordability Program is a new federal program to upgrade energy efficiency of rental units for low-income tenants and which is slated to be available in Ontario once an agreement is signed.²⁵ The provincial Energy Affordability Program has long provided free energy efficient upgrades for low-income tenants.²⁶

D. The City of Toronto should Pass a By-Law Mandating Building Emissions Performance Standards

It will not be possible for the City of Toronto to meet its goal to reduce greenhouse gas emissions without addressing emissions from buildings. There are also helpful co-benefits from mandatory building emissions performance standards for the health and safety of tenants, including cooling in homes and better insulation and resilience to flooding and mould.

We urge the City of Toronto to ensure that a by-law creating mandatory building emissions performance standards is passed without delay, along with complementary measures to ensure that costs are not passed along to low-income tenants.

The IE26.3 - TransformTO Net Zero Strategy: Action Plan (2026-2030) should be amended to include the passage of mandatory building emissions performance standards.

Sincerely,



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²⁵ Canada Greener Homes Affordability Program, Online at: <[Canada Greener Homes Affordability Program - Natural Resources Canada](#)>

²⁶ Energy Affordability Program, Online at: <[Energy Affordability Program | Save on Energy](#)>



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