



1. **Fair Housing Plan**¹

- 16 measure plan released on April 20, 2017
- Measures intended to address the following policy objectives:
 - Recognize and respond to the increased demand for affordable housing;
 - Increase the supply of affordable housing in Ontario;
 - Provide enhanced protection for renters in Ontario; and
 - Further protections for homebuyers, including an intention to increase the amount of information sharing in the market (i.e. avoid an information asymmetry).
- **Enhanced rent controls** – this policy got a significant amount of praise/blowback in the media
 - *Rental Fairness Act, 2017*, extended rent control measures to all private residential units in Ontario built after 1991;
 - Rent control extends to all present and future tenanted condominium units as well as purpose built rental buildings;
 - Landlords can continue to apply to the Landlord Tenant Board (tribunal) for above guideline rent increases and can set new rates for new tenants.²
 - Rate increase for 2018: 1.8%³

¹ See the provincial government's backgrounder, released April 20, 2017 at <https://news.ontario.ca/mof/en/2017/04/ontarios-fair-housing-plan.html>.

² For information on the rent control changes see the Ministry of Housing's news release, published May 18, 2017 at <https://news.ontario.ca/mho/en/2017/05/ontario-protecting-tenants-from-unfair-rent-increases.html>.

³ See the Ministry of Housing's news release, published on June 23, 2017 at <https://news.ontario.ca/mho/en/2017/06/ontario-capping-rent-increases-for-tenants-in-2018.html>.



2. Ontario Municipal Board Reform

- As of April 3, 2018 the OMB was replaced by the new Local Planning Appeal Tribunal (LPAT).
 - New hearing rules, procedures, and appeal standards for any proceeding commenced after this date.
- LPAT hearings will not be held as *de novo* trials; will not be possible to adduce evidence or call or examine witnesses. Decision will be made based on the written record provided by the municipality, which was used to make their decision. Oral submissions of the municipality and the appellant remain.⁴
- For appeals on decisions to adopt/amend official plans or zoning bylaws (including non-decisions on private applications) the new test before LPAT, the **conformity and consistency test** (replaces good planning decision test):
 - Was the decision consistent with the Provincial Policy Statement;
 - Does the decision conform or conflict with a provincial plan; or
 - Does the decision conform with an applicable Official Plan (i.e. Official Plan of an Upper-Tier Municipality)
- If municipality/approval authority failed to meet the test, the appeal is successful and the LPAT will refer the matter back to the municipality for reconsideration. LPAT may make some recommendations on how to meet the above test.
- Following reconsideration by municipality:
 - If a decision is made, a new appeal can be filed within 20 days of decision by municipality;
 - If no decision is made, new appeal can be filed after 90 days of the LPAT decision.⁵
- On a **second appeal**, LPAT will apply the **conformity and consistency test**
- If LPAT finds that the decision does not meet the test, then LPAT may approve, modify, or deny the application in question based on its consistency and conformity to the

⁴ *Local Planning Appeal Tribunal Act, 2017*, s. 42.

⁵ For the first appeal process, including the conformity and consistency test, please see *Local Planning Appeal Tribunal: Appeal Guide A* published by ELTO at http://elto.gov.on.ca/wp-content/uploads/2018/05/2018_04_23-LPAT-Guide-A.pdf [see page 27]



provincial policies or municipal plans, as well as the public interest mandate (i.e. **SAME POWERS AS OLD OMB**)⁶

3. **Changes to the *Construction Lien Act* [See detailed memorandum attached]**

- As of July 1, 2018 will be known as the *Construction Act*
- **Prompt Payment Provisions⁷**
 - Once a proper invoice is delivered by a contractor to an owner, **the amount must be paid within 28 days of receipt**. Failure to make payment on time will cause interest to accrue based on prejudgement interest rate set out in the *Courts of Justice Act*, or greater if specified in contract.
 - A proper invoice is one which meets this set of legislative requirements:
 - The contractor's name and address;
 - The date of the proper invoice and the period during which the services or materials were supplied;
 - Information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied; A description, including quantity where appropriate, of the services or materials that were supplied;
 - The amount payable for the services or materials that were supplied, and the payment terms;
 - The name, title, telephone number and mailing address of the person to whom the payment is to be sent; and
 - Contains any other information that may be specified in the contract.
 - In the event that an owner disputes the amount contained in the proper invoice, they may refuse all, or a portion of the amount provided that the notice of non-payment is **provided within 14 days of receipt, and:**
 - Notice is given in prescribed form and manner;
 - Notice specifies the amount not being paid and all the reasons for non-payment;
 - Owner pays the undisputed amount with the 28 day period as above.

⁶ See the following commentary by David Tang of Miller Thomson published May 2017 at <http://www.millerthomson.com/en/publications/communiqués-et-mises-à-jour/real-estate-report/may-2017-real-estate/elimination-ontario-municipal-board-mean-preliminary-expectations/>.

⁷ *Construction Act*, ss. 6.1 – 6.9 [In force on October 1, 2019].



- Disputes regarding non-payment must be referred to a qualified adjudicator.
- **Update:** Implementation Tracking for October 1, 2019
- **Surety Bonds⁸**
 - Mandatory for public contracts if the contract price is over \$500,000 (in regulations)
 - Public Contract: Contract between an owner and a contractor respecting an improvement, if the owner is the Crown, a municipality or a broader public sector organization
 - Bonds required to be posted by the contractor (i.e. non-government body):
 - Performance bond worth 50% of the contract
 - Labour and material payment bond worth 50% of the contract (protection extends to subcontractors and persons supplying labour or materials to the improvement).

4. **Inclusionary Zoning Bylaws**

- Inclusionary zoning: Official plan policies and bylaws that will mandate the inclusion of affordable housing units within developments of 10 or more residential units.
- Municipalities are not required to pass policies or bylaws to enact such policies. If they do, however, these policies will be unappeasable to the LPAT.⁹
- Amendments to the *Planning Act*, allow municipalities to set the following with respect to inclusionary zoning policies and bylaws:^{10 11}
 - Targeted areas within municipality where inclusionary zoning will be required;
 - Minimum number of required affordable units in a subject development;
 - The affordability period (i.e. how long the units must be kept as affordable)
 - The price of the affordable units (rental or sale)
 - Incentives to offset the developers costs in making housing units affordable.

⁸ *Construction Act* ss. 85.1, 85.2 [In force on July 1, 2018]

⁹ *Planning Act*, s. 17(24.1.2), (36.1.2); s. 34(11.0.6), (19.3)

¹⁰ Content of IZ policies which can now be passed pursuant to s. 16(4) of the *Planning Act*, set out in s. 3(1) of the regulations being O.Reg 232.18.

¹¹ Contents of IZ bylaws described in the *Planning Act* at s. 35.2.(1 – 2)



- Provision of offsite affordable units, in addition to those required at the development site
- The process by which the above are determined.
- Amendments allow for certain enforcement mechanisms:
 - Agreement regarding the provision of affordable units pursuant to the IZ bylaws can be registered on title to the development property;¹²
 - Municipalities can develop mechanisms for monitoring the maintenance of these units as affordable for the duration of the required period.¹³
- Additionally, extra height/density caused by the inclusion of required affordable units, or allowed as an incentive to include affordable units, is excluded from the height/density calculations for the purposes of s. 37 payments.¹⁴
- Developers are not allowed to provide the municipality with money in lieu of the required units.¹⁵

¹² *Planning Act* s. 35.2 (7)

¹³ *Planning Act* s. 35.2(3)

¹⁴ O.Reg 232/18, s. 6.

¹⁵ *Planning Act*, s. 35.2(6).