

# Thinking Beyond the Market:

Innovative Housing Examples Based on People, Not Profit



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## Executive Summary

Housing is both a human right and a speculative commodity from which to extract wealth. Therein lies the crux of the housing problem. Until we fully reconcile these contradictory roles that housing plays, we will be in a perpetual state of crisis. This report articulates why we cannot simply build our way out of this problem and why thinking beyond the market is necessary. This does not mean eliminating the market entirely. Instead, *thinking beyond the market* can come in a variety of ways:

- building new housing without the market (public land is central to this approach)
- building new housing by shaping, or regulating the market (rules and regulations that ensure some of what private developers build is affordable to communities who need it. Inclusionary zoning policies are one approach to this)
- preserving and protecting existing housing stock without the market (this often involves decommodifying existing housing, through acquisition by government or non-profits)
- preserving and protecting existing housing stock by shaping, or regulating the market (this requires strong rules around rent control and tenant protections which are more about finding the right political vision than the biggest budget)

This report outlines a number of key examples of policies, programs and projects that are already doing all of these things. They are often small, or confined to one community. But they all help to shift the housing pendulum away from speculation and towards housing as a human right. The report is not meant to be an exhaustive look at every project, nor does it always focus on the biggest examples. Instead, it is a collection of approaches that operate differently than conventional, profit-driven housing developments. Some key examples include:

***Whistler Housing Authority***: an independent, municipally owned corporation that was established to oversee the development, administration, and management of price-controlled real estate and employee-restricted housing in Whistler.

**Community Land Trusts:** Community land trusts are grassroots non-profit organizations operating at a region, city, or community level. They acquire and bank land with the purpose of permanently removing that land from the market in order to maintain affordability.

**Rental Use Zoning Policy, Burnaby, British Columbia:** adopted in 2019, it has the stated goal of providing rental options to low- and moderate-income households, while also securing a long-term supply of rental housing for the city. Multi-family residential zoning in Burnaby now requires the inclusion of affordable rental units. Importantly, existing purpose-built rental housing has been rezoned to rental zoning, which protects these sites (either existing buildings or future developments) from being redeveloped to strata housing. There are four pillars to the RUZP: replacement rental, inclusionary rental, voluntary rental in commercial districts and protection of existing rental.

**Montreal's Bylaw for a diverse metropolis (20-20-20 bylaw):** The most ambitious rules in Canada that produce targets for how much affordable housing should be included in new private-sector developments. The aim is to deliver a mix of housing types within the city. It was originally envisioned as 20% social housing, 20% affordable housing and 20% family-sized units. It has evolved over time and in different parts of the city, and in some instances, developers can provide a combination of turn-key units, land, or cash to contribute to the policy.

**Montreal's pre-emptive right policy:** In 2016, the City of Montreal was given the pre-emptive right to acquire property. This power was part of Quebec's Bill 121, which gave the city much more control over its economic, social, and cultural development. The city has identified 350 properties where it can exercise this right. If one of these properties is sold on the open market, the city has 60 days to match that offer and buy the site for the same price agreed by the private buyer. This is part of a broader acquisition strategy in the city and elsewhere.

**Rent control:** most of the examples up until now cost a lot of money (either to build new housing or acquire existing properties). However, some solutions do not take vast sums of money. Instead, they require strong visions and leadership. Rent control is one of a suite of such measures that do not cost governments much (if any money) but are highly effective in helping to keep existing properties affordable. While most provinces have some form of rent control, across most of Canada, they are predominantly tied to the tenant, not the unit. This means that when a tenant leaves, the unit can be rented at whatever the market will bear. This not only leads to big jumps in rent, but creates an incentive for landlords to evict sitting tenants, often under the guise of renovations, a process known as renoviction. A few places in Canada have rent control that is tied to the unit, the clearest example being on Prince Edward Island.

**City of Toronto's Rental Property Demolition and Conversion Control Bylaw:** The City of Toronto's Rental Property Demolition and Conversion Control Bylaw was enacted in 2007, and is designed to ensure that if apartment buildings are demolished to make way for new, denser developments, the residents of those units will have homes within the new development. This is a very important piece of the puzzle that helps maintain existing housing affordable to those on lower incomes by incorporating the same types of units into new projects. It is one of several jurisdictions that have a rental replacement bylaw which works to replace demolished units within new developments. In Toronto, tenants can obtain a similar-sized unit in the new development at roughly the same rent for a period of ten years.

**Tenant Assistance Policy, Burnaby, British Columbia:** Burnaby, just outside Vancouver, has arguably the best tenant protection policies in Canada. There are four key elements to its Tenant Assistance Policy. The first is the right to return to the new building in a unit with the same number of bedrooms, at the same rent (adjusted for any provincially-regulated rent increases). This means that if a building with 10 units is demolished to make way for a new one with 100 units, 10 of those units need to be for the households living in the original building. The second element (and one that sets Burnaby's rules apart from other jurisdictions, especially

in Ontario) is that developers, landlords, or rezoning applicants are obliged to help tenants find interim housing if they request that kind of assistance. Tenants are also able to find their own accommodation during the redevelopment, but if they want assistance from the developer, every effort will be made to find a temporary unit in the same part of the city. Under the third pillar of the Tenant Assistance Policy, the rezoning applicants must bear these increased rental costs. They will pay a rent top-up to cover the difference between the tenant's old rent and what they are paying in the interim housing. There is a maximum top-up that developers must pay: 15% of the tenant's existing rent, or 30% above median rents for a similar unit, whichever is greater. If the tenant chooses to live in a unit made available to them by the developer, they will pay the same rent as before. The final piece of the puzzle is financial assistance for moving costs (which can be incurred twice if tenants exercise their right to return once the redevelopment has taken place).

***Anti-renoviction bylaw, New Westminster, British Columbia:*** the city passed an anti-renoviction bylaw in 2019 where landlords who evicted tenants only to increase the rents for their former units were fined up to \$1,000 per day and they could also lose their business licences. First, the landlord needed to demonstrate that a unit would become uninhabitable during the renovations, meaning that minor repairs or cosmetic changes were no longer permissible reasons to evict tenants. Additionally, the onus was also on the landlord to assist with finding temporary accommodation for tenants, an approach similar to Burnaby's Tenant Assistance Policy. Landlords also needed to provide a written offer to return to the unit at the same price. This combination of approaches within the bylaw was remarkably effective. There were 333 renovictions in New Westminster in the three years prior to the bylaw coming into effect; within its first two years in place, this number had gone down to zero.

We don't always operate in this way in Canada. But it is inspiring to learn that there are policies, measures, programs and developments that help shift housing away from speculation and towards a human right. This also means that we do not need to look for new ideas, technical solutions or even to other countries. We need to learn about the examples that are already



working in Canada and understand how we can improve them, scale them up and replicate them in other places. And rather than focusing on why they cannot grow, transfer to another place, or get better, we need to think about the kind of socially just future that we want, use these and other examples of progressive housing as a start, and then find a way to make them happen. Thinking beyond the market, either to regulate what the market does, or to operate entirely outside it, is required if we are going to seriously address the housing issues facing Canadians. While housing is one of the country's biggest challenges, we are hopeful that what we have presented in this report offers pathways of how to move forward to create socially just, fair, and equitable communities that everyone can call home.

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## 1. Introduction

### ***Shifting the Housing Pendulum Away from Speculation***

Everyone is talking about housing these days, and there is no shortage of ideas about how to solve the housing crisis. In Ontario, and elsewhere, the most common solutions revolve around enabling the private sector to build more homes. The Ontario government has recently passed legislation calling for 1.5 million new homes over the coming decade, something its own task force recommended. Ideas about where to build these new homes, and what they should look like, vary from new subdivisions on the edges of cities to tall apartments or condominiums near transit stations, or by allowing duplexes, triplexes, or small apartments within the large swaths of our cities that are exclusively zoned for detached, single-family dwellings.

What these ideas all have in common, however, is the belief that the vast majority of new houses should be built by the private sector—which, of course, will build what is most profitable. In turn, these new housing units will be sold or rented at market rates (possibly with a few of these units available at rates slightly below market prices for a limited amount of time). Low-income households will have their costs subsidized by the federal or provincial government, rather than governments finding ways to make rent more affordable. These are the dominant approaches to the housing challenges facing Canada today. However, this is not the only way to do things.

Before delving into details about housing politics, planning, and policy, it is worth reminding ourselves that while most political, planning, and public debates frame housing as being in a state of ‘crisis,’ there are many others who celebrate a market that is doing what it should be doing: making money. In his new book *The Tenant Class*, Ricardo Tranjan (2023), a researcher at the Canadian Centre for Policy Alternatives, poignantly asks: ‘What if there is no housing crisis, but instead a housing market working exactly as intended? What if rent hikes and eviction notices aren’t the work of the invisible hand of the market, but of a parasitic elite systematically funneling wealth away from working-class families?’

Rarely acknowledged in mainstream debates are the dual and contradictory roles that housing plays within our society. On the one hand, housing is shelter and a basic human right,

something that the federal government recognized in 2019. On the other hand, housing is an investment and speculative commodity from which to extract wealth (see Slater, 2021; Stein, 2019; Madden and Marcuse, 2016). Most housing debates ignore these contradictions. Instead, they focus on questions such as how many new houses should be built, without asking the follow-up question: for whom should these houses be built?

The Ontario Housing Affordability Task Force Report (2022) has called for 150,000 new homes to be built each year, but it made no mention of what kinds of homes were needed: how many one-bedroom units; how many three-bedroom units; how many units affordable to people earning minimum wage. Nor did it ask questions about governance: who should own these houses; if owners should live in the houses they buy; if we need to restrict the number of houses one individual can own; how we construct more purpose-built rental housing. None of these questions was addressed, nor was there any discussion of how to build housing that is genuinely affordable for people on very low, low, or moderate incomes, whether that be traditional social housing or other forms of non-market housing. Also absent was any discussion about how to maintain, through mechanisms such as rent control, housing that is already affordable. In this and similar government reports, it is assumed, both implicitly and explicitly, that private, for-profit developers will be in charge of building these new homes; if we simply ‘unleashed the cranes,’ the housing crisis would be solved (Glaeser, 2013).

The problem with this is that when we move beyond the question of ‘how much housing to build’ and instead focus on the question of ‘housing for whom,’ it becomes clear that simply building more market-driven housing is not enough. Yes, there is a lot of talk about a shortage of housing. But again, when we frame that question in terms of ‘shortage for whom,’ it becomes clear that new supply does not address housing needs for many communities. For example, Canada has a shortage of 1.7 million homes that are affordable to households earning median incomes or below (Daniels and August, 2023). To make matters worse, the 2016 census found that 80% of households in core housing need were in the lowest income quintile, meaning they could afford only \$650/month in rent (CMHC, 2021).

A big problem with relying on a market-based approach to address long-standing and structural housing challenges is that private developers tend to build what is most profitable,

not what is most needed. This is a highly problematic way of addressing the housing crisis for two reasons. First, it is very rare for private developers to build housing that is affordable to low- and moderate-income households on the scale that is needed unless there are regulatory measures in place, which several countries and jurisdictions have. While there is an assumption, particularly among economists, that new housing causes older stock to filter down to lower-income communities, there is little evidence of this actually occurring—especially given high rates of both renoviction (when tenants are evicted in order to renovate units and lease them out at much higher rents) and demoviction (when tenants are evicted as older buildings, generally with more affordable units, are demolished to make way for new development). Between 2011 and 2016, an estimated 322,600 units of housing affordable to households earning less than \$30,000/year were lost, according to research by Steve Pomeroy, a housing research consultant and lecturer at Carleton and McMaster Universities. At the same time, less than 20,000 new units of affordable housing were created (Pomeroy, 2020). This means that for every new unit of social or otherwise affordable housing built, fifteen private sector units affordable to low-income households were lost. In some cities, such as Hamilton, this ratio is even higher.

Second, much of the demand for new housing is from people who already own other properties in which they live. New condominiums—the housing tenure and ownership structure with the greatest percentage of new construction starts in many cities—are primarily bought by investors and speculators (Grisdale and Walks, 2022). In Ontario, a quarter of all homebuyers are investors (Merali, 2021a). And while there is much talk about how young people are locked out of the housing market, 18% of homebuyers under the age of 35 in the Greater Toronto Area (GTA) own multiple properties (Lavery, 2021).

In order to provide some clarity on the role investors play in the housing market, Statistics Canada released its Canadian Housing Statistics Program in early 2023, which, for the first time, published data on investor-owned properties.<sup>1</sup> In Ontario, 20.2% of all properties were owned by investors in 2020 ('investor' being defined as an owner who owns at least one property that is not their primary place of residence). Nova Scotia had the highest rates of

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<sup>1</sup> 'Residential real estate investors and investment properties in 2020,' <https://www150.statcan.gc.ca/n1/pub/46-28-0001/2023001/article/00001-eng.htm>.

investor-owned properties at 31.5%. However, these numbers rise considerably when looking only at condominiums; in Ontario, 41.9% of condos were owned by investors. Across the five provinces examined in this report (British Columbia, Manitoba, Ontario, New Brunswick, and Nova Scotia), 39.4% of condos were owned by people who did not live in them.

For new condominium construction (since 2016), these figures are even higher (see *Better Dwelling*, 2022). Across Ontario, of the 58,100 condominium units built between 2016 and 2020, 59.8% were bought by non-occupying owners, meaning that only 40.2% were purchased by households who resided in them. In some regional markets, such as Norfolk and Woodstock, Ontario (as well as Fort St. John in BC), 100% of the new condo units were bought by investors! In Hamilton, this figure was 57.5%, around the middle of the pack for the province and very close to the provincial average. But this also means that the majority of new condos that have sprouted up around the city are not lived in by the people who bought them. We should stress that most of these units are rented out by their owners, and therefore occupied, though some do sit empty for much or all of the year. And many others have been bought by investors who rent them on the short-term rental market on sites such as Airbnb, meaning that while they add to the housing 'supply,' they do not provide dwellings for local residents. As a result of all this investment and speculation in the condominium market in particular, households wishing to purchase a unit to live in must compete (and are regularly outbid) by a range of speculators who use those properties as part of their investment portfolio, not as homes for themselves and their families. The same patterns are true in BC and Atlantic Canada: most new condos are investor-owned.

It is not just so-called 'mom and pop' landlords who own an extra property or two that they rent out. Increasingly, large financialized landlords, including real estate investment trusts (REITs), are acquiring apartment buildings across Canada. Institutional investors own between 20 and 30% of the purpose-built rental stock across the country. As August (2020) and August and Walks (2018) have shown, REITs are motivated by maximizing their profits and dividends for their shareholders (and in Canada, they even receive tax breaks if they pay regular dividends). Their business model, particularly in gentrifying neighbourhoods, is based on displacing low-income tenants, renovating units, and subsequently renting them out at higher

rates to more affluent tenants. Where this kind of gentrification is not possible, such as in many ageing apartment buildings within inner suburban neighbourhoods constructed in the decades after World War II, the approach is to squeeze as much profit as possible from a building through deferred maintenance and cutbacks.

### ***Aims of this Report***

As can be seen from our introductory discussion, debates about affordable housing cannot focus solely on adding new supply, and we cannot rely on the market to make housing more affordable. What is being built is rarely affordable to households who need it, and much of the existing affordable rental stock within our cities is being actively eroded. Equitable solutions to the housing problem require thinking ‘beyond the market’ to deliver new housing, as well as creative and proactive ways to prevent housing that is already affordable to low- and moderate-income households from being lost either through renovation or demolition.

If we want to have housing programs, policies, and projects that directly address the needs of households, especially those on below-average incomes, *we need to examine ways of building the kinds of housing that the market is unwilling or unable to build, as well as enacting policies and programs to protect the rental housing stock that is already affordable to low- and moderate-income households.* Doing this requires two important starting points:

1. A strong role for non-profits and non-market players in the development, ownership, and maintenance of housing;
2. A proactive role for all levels of government, especially cities and provinces, to build, support, and enable the kind of housing the market does not deliver, as well as to enact bylaws and legislation that protect tenants and regulate the market.

If we think about the dual roles of housing within our society, this requires proactively shifting the pendulum away from treating housing as a commodity and toward projects, policies, programs, bylaws, and regulations that enshrine and ensure housing’s role as a fundamental human right.

Fortunately, there are already many examples from across Canada, and beyond, that are doing just that. The problem is that we often hear very little about them; they tend to be one-off examples, or small-scale policies, and there are very few reports, media stories, or academic articles that assemble a large collection of these examples in one place.

The aim of this report, therefore, is to provide an overview of some of the already existing examples that either work beyond the market, or actively shape the market for both building new affordable housing and maintaining existing stock. There are many types of different, and often overlapping, examples that are centred on housing as a human right rather than as a speculative commodity. These include policies that proactively shape the kinds of housing that private developers construct; rules and regulations to ensure that existing affordable housing remains accessible to people on low and moderate incomes, even when repairs and renovations are undertaken; and a variety of forms, tenures, and approaches to building non-market housing.

This is the second of two reports that focus on housing issues. The first examined the types of changes already taking place along Hamilton's Light Rail Transit Corridor (Mayers et al., 2023). It identified many pressing challenges, particularly for tenants and low-income communities. In this second report, we present some solutions. Instead of developing new ideas, or looking to foreign countries, we instead focus on policies, programs and projects that already exist within Canada, and are already making a difference.

Many of the examples discussed in this report come from two provinces: British Columbia and Quebec. These jurisdictions have long been at the forefront of rules, regulations, and developments that both protect and grow affordable housing stock. Between 2001 and 2016, it is estimated that around 77% of all new social housing in Canada was built in those two provinces (Pomeroy et al., 2019). Importantly, they continued to invest in social housing after the federal government stopped funding new construction in 1993. They were able to do this both by creating new provincial programs and by investing in the non-profit sector. Between 1994 and 2001, when virtually no new social housing was built in Ontario, Quebec was averaging 538 units per year—and it has since risen to an average of 2,154 per year in the post-2001 era, when varying degrees of federal funding returned (Pomeroy et al., 2019). Quebec



also developed a strong partnership approach between provincial, municipal, non-profit, community, and business sectors.

### ***Conceptualizing 'Thinking Beyond the Market'***

We have conceptualized the different types of housing *beyond the market* in Figure 1. The X-axis deals with the roles played by different actors. At one end, we focus on ways to shape the market. Thinking beyond the market does not necessarily have to exclude private, for-profit developers and builders entirely; there are many ways in which proactive governments at all levels can work with private sector actors to shape new and existing housing supply, such as by requiring certain housing to be included in a development (i.e., inclusionary zoning), or by prohibiting certain uses (such as taxing second or vacant houses, or restricting owners' abilities to rent their properties on short-term holiday rental sites such as Airbnb).

The other end of the X-axis considers operation entirely without the private sector. There are many important examples of building housing without involving the market. As we discuss, publicly owned land is key to operating outside the private housing market. Therefore, an important first step would be to retain in public ownership any land that is suitable for housing development, rather than selling this off to developers in the hopes of getting a few crumbs of affordable housing out of the deal.

The Y-axis focuses on the type of housing. Here, we are less concerned about density, zoning, or design. Instead, this axis is focused on either building new housing or preserving and maintaining existing stock. As we have stressed, mainstream political, planning, and public debates about housing tend to focus primarily on the former. However, there are several important examples from across Canada of policies that proactively work to protect important rental stock so that it can remain affordable for current and future tenants.

Each quadrant in Figure 1 has a different context:

- building new housing without the market;
- building new housing by shaping the market;
- preserving existing housing without the market;
- preserving existing housing through shaping or regulating the market.

Throughout this report, we will highlight examples from each quadrant. These are not wish lists or visions that have yet to be implemented; each example exists in Canada today. It may not always be possible to copy and paste these policies from one jurisdiction to another, but by assembling them together in this report, we can learn from them, raise their profile across the country, and help inform planners, policymakers, advocates, politicians, and the general public of what is already happening to shift the housing pendulum.

Nowhere is this more important than Hamilton. Long a bastion of affordability within the Greater Toronto and Hamilton Area (GTHA) (see Harris, 2020), the city is now among the top five most expensive places to live in North America, with surging housing costs and growing rates of eviction and displacement. In addition to migration from the Toronto region (see Doucet and Wilson, 2022), the city is also about to embark on a new light rail transit (LRT) line, which will shape development patterns and trajectories for decades (see Mayers et al., 2023; Doucet 2021).

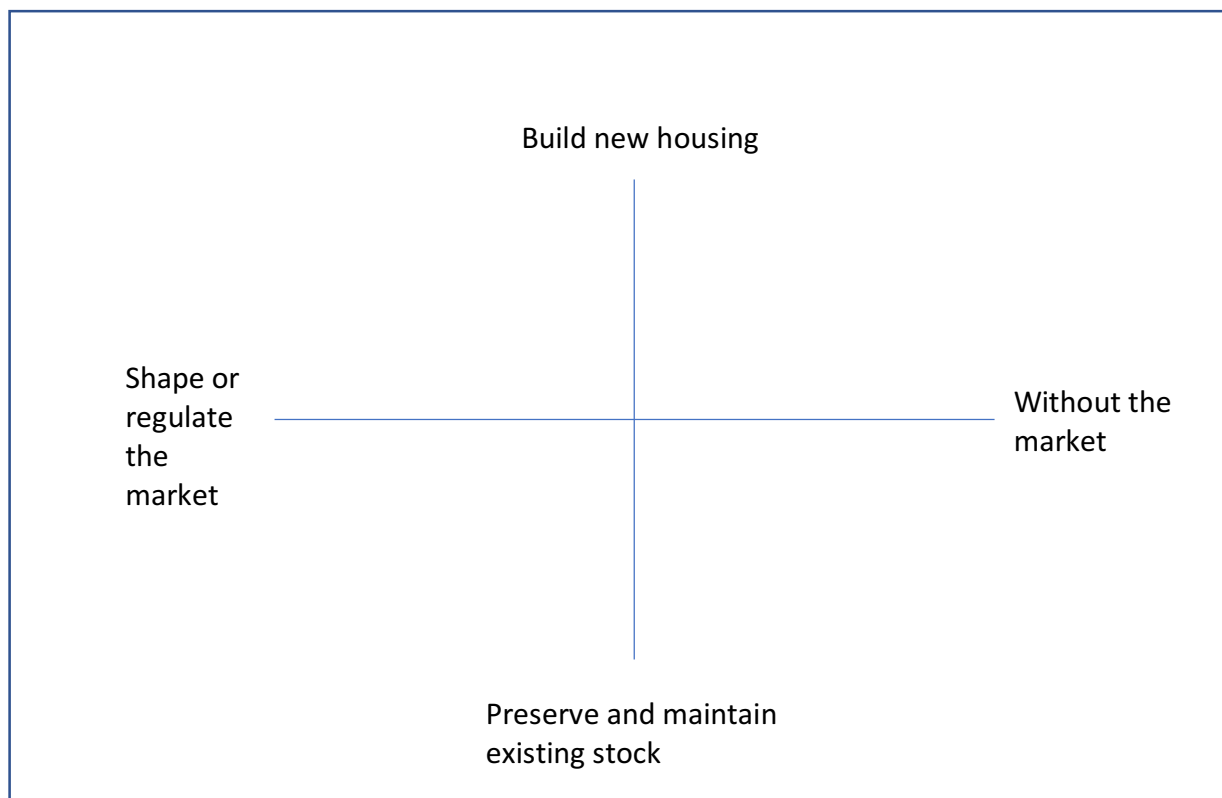
We argue that addressing these housing challenges requires a proactive approach by local governments to work with a variety of partners and develop a number of policies to build and maintain the kinds of housing that the private market is unable to provide. While cities are creatures of the province, local governments must—in the absence of provincial rules and regulations that promote housing’s role as shelter and as a human right—use the limited powers they have even more effectively and strategically. Cities can also leverage their own land (or are able to acquire it from other public entities within their jurisdiction), and ensure that any developments that take place on it directly address the city’s housing challenges, particularly for low-income households.

### ***Defining Non-Market and Affordable Housing***

Before turning to the different examples of housing projects, bylaws, and policies that have shifted the pendulum toward treating housing as shelter, we must first outline some key terms. Throughout this report, we talk a lot about non-market housing. What is non-market housing? In short, it is housing that exists outside traditional market mechanisms. This can include ‘any housing protected from market forces, thus offering affordable rents and

ownership in perpetuity' (Condon, 2018a). Sometimes this is referred to as social housing, particularly in European countries, and can include a range of ownerships, governance, and finance models. This includes government-owned public housing, as well as community housing, which is owned by non-profits and often, but not always, includes other wraparound services (see Ballantyne, 2022). Non-market housing can be provided by charities, non-profit organizations, religious organizations, community groups, and branches of government. The key unifier is that this housing is outside the influence of market forces, thereby offering security and affordability to new and existing owners and tenants alike. It is also important to stress that these models reduce the cost of housing, both to build and to live in. As Whitzman and Goldstein (2023, p. 11) state: 'eliminating the profit motive for housing saves money.'

**Figure 1**



One thing is clear: Canada does not do well at building non-market or social housing when compared to other countries around the world. A recent Scotiabank report noted that

even if Canada doubled its percentage of social housing, we would only be at the Organisation for Economic Co-operation and Development (OECD) and G7 averages (Young, 2023).

‘Non-market housing’ is different from ‘affordable housing,’ which has taken on a variety of very different meanings as a greater share of the population now struggles to find adequate, safe, and appropriate shelter. The traditional way of defining affordable housing is based on a tenant’s (or owner’s) ability to pay. The Canada Mortgage and Housing Corporation (CMHC) considers housing to be affordable if it costs less than 30% of a household’s before-tax income.<sup>2</sup> In Quebec, this proportion is 25%. This formula, or ratio, is often referred to as a ‘rent-gear-to-income’ (RGI) definition, and is the one used to determine rents in most public housing. This is also the metric used by Statistics Canada to measure how many households are in ‘core housing need,’ which primarily occurs when they pay more than this ratio on housing.<sup>3</sup> While this definition of affordable housing applies to all households, a far greater percentage of renters—almost half in 2020—are in core housing need than are homeowners. Renters are therefore three times as likely to be in core housing need than owners. This definition also means that private market housing can be considered to be affordable if tenants pay less than this ratio of their income on rent. It is important to stress that because Canada has such low rates of non-market housing, many low-income households rent within the private market.

There is, however, another way of measuring affordable housing. As explained by Carolyn Whitzman (2022), a housing researcher and adjunct professor at the University of Ottawa, this market-based definition is popular with both developers and federal and provincial programs aimed at funding new housing. Rather than basing affordable housing around a household’s ability to pay, the market-based definition considers housing to be affordable if it is priced at a ratio (usually around 80%) of full market rates. When developers make note of the fact that a certain number of new units are ‘affordable,’ it is generally this definition of affordable housing that they use. It is also used in inclusionary zoning policies—for example, in

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<sup>2</sup> ‘The National Housing Strategy Glossary of Common Terms,’ <https://www.cmhc-schl.gc.ca/en/nhs/guidepage-strategy/glossary>.

<sup>3</sup> Also included within the definition of ‘core housing need’ are overcrowding and poor repair, which are particularly pressing problems in Canada’s North.

the Ontario government's new guidelines implemented under Bill 23 (the *More Homes Built Faster Act*).

The federal government's National Housing Strategy (NHS) uses this market-based definition when providing funding for new housing. One of its flagship policies is the Rental Construction Financing Initiative (RCFI), which aims to stimulate the construction of new rental units across the country. This may provide some relief to middle-class households, which are increasingly struggling with a housing crisis (see Tolfo and Doucet, 2020) and may now have some slightly cheaper options (though the market-based definition of affordable housing is not based on the size of the units, so many units considered to be 'affordable' under this definition are also very small).

According to recent research, however, a mere 4% of these new RCFI units are affordable to the most common type of household in core housing need: a low-income single mother (see Blueprint, 2022). As CMHC (2021) reported, in 2016, the average income of households in core housing need was \$23,227, meaning a maximum monthly rent of \$580 under a rent-geared-to-income threshold. In 2016, average shelter costs for rented dwellings in the City of Hamilton was \$947 (and while we do not yet know the average household incomes for those in core housing need from the 2021 census, the average shelter cost for rented dwellings in Hamilton has risen to \$1,233, an increase of 27.3% in five years).

As we noted at the outset, the way we talk about housing in general, and affordable housing in particular, matters. Just as there are many individual and institutional investors who celebrate a market of rising rents and steadily increasing home prices, there are also many developers, homebuilders, and government programs that consider housing to be affordable if it is priced a small percentage below market rates. Developers are even suing the City of Toronto for recently adopting the 30% RGI definition of affordable housing, rather than a market-based approach (Jeffords, 2022).

As housing researchers, we firmly believe that for housing to be defined as 'affordable,' it actually needs to be affordable for the households who are living in it. Therefore, a definition of affordable housing has to be based on a household's ability to pay and remain out of core

housing need, necessitating a definition based on a ratio of income rather than a ratio of market rents.

### ***Outline of the Report***

The remainder of this report will focus on a variety of existing examples from across the country that think beyond the market and shift the housing pendulum away from speculation. We will discuss examples from each quadrant in Figure 1 in turn, providing ideas and initiatives that we hope will inspire and challenge people in other parts of the country to think differently about how we build and maintain housing. Importantly, instead of just thinking about the question of 'how we can build more housing,' we encourage everyone to focus on the question of 'housing for whom?'

## 2. Building New Housing – Without the Market

There are a number of ways in which new housing can be built, and new supply can be added, without the need to rely on private, for-profit developers. Traditionally this has involved building blocks of public or supportive housing that are rented to people on a social housing waiting list at rents based around their incomes. This model is still very important, and many examples we cite in this chapter also feed into this model. One of these is the supportive housing built and managed by Indwell, a faith-based non-profit that currently provides homes to more than 1,100 households throughout southern Ontario. They operate a range of housing options, including residential care facilities with 24-hour on-site services, high support housing, and independent apartments with supports.<sup>4</sup>

There are, however, many other innovative and inspiring examples that build all sorts of non-market housing for a variety of audiences. These range from co-operative housing models (co-ops) and land banks, which have long-standing histories in Canada and the United States, to municipality-specific policies, developed in response to unaffordability in their communities. While these approaches offer individual challenges, the common roadblock to successful integration for many is reliable funding to acquire and maintain properties and land. This chapter will explore a number of models, approaches, and examples in building non-market housing across Canada.

### **Publicly Owned Land**

In early 2023, Prime Minister Justin Trudeau was in Hamilton, Ontario, pledging to ensure that affordable housing would be built along the city's proposed LRT route (Van Dongen, 2023). This is no easy task: building and maintaining affordable housing near good transit is one of the biggest challenges cities face (Chapple and Loukaitou-Sideris, 2019; Doucet, 2021). While the Prime Minister did not give details of how this pledge would be realized, using publicly owned

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<sup>4</sup> See Indwell's 'Our Vision' page at <https://indwell.ca/about-us/>.

land to build the kind of housing that private developers are unwilling or unable to build is essential along transit lines and elsewhere.

All sorts of public entities own land in cities: municipal governments, school boards, transit agencies, provincial governments and ministries, the federal government, universities, colleges, provincial liquor boards, and so on. As circumstances change, some of this land becomes surplus to the needs of the public agency that owns it. For example, changing demographics can lead to a school closure, and to the site becoming surplus to the local school board.

Typically, this surplus land is sold on the open market. If housing is built on these sites, it is constructed by private developers who build what is most profitable. Occasionally there are a few units of affordable housing negotiated into the mix, but there are no rules mandating any affordable housing on formerly public land. The Ontario government's Housing Affordability Task Force (2022) recommended that all future government land sales have a 20% affordable housing requirement, but this recommendation has not been adopted. Even though this percentage seems generous, it was not stated which definition of affordable housing should be employed. As we discussed in the previous chapter, whether an income- or market-based definition is used has significant impacts on the type of 'affordable housing' that would be built.

This context can lead to situations in which formerly public land close to excellent transit is sold for new condos, or other entirely for-profit developments that are identical to developments on privately-owned land. In 2021, Metrolinx—the provincial government agency tasked with building new transit lines—sold part of a former parking lot at the Port Credit GO station in Mississauga to Edenshaw Queen Developments Ltd, a private developer, for \$64.5 million, with no provision for affordable housing. Matti Siemiatycki, Professor of Geography at the University of Toronto, noted how the provincial government is trying to pay for new transit projects partially through the sale of provincial lands in order to 'maximize how much ... bidders will pay for it, and that means having the fewest number of restrictions or encumbrances on it' (as quoted in Smee, 2022).

While this is typically how publicly owned land gets developed, it is not the only way. In Ontario, all provincially owned land is subject to the Ontario Realty Directive. This directive



gives other public entities, like the federal government or municipalities, the right to acquire surplus provincial properties before they are sold on the open market. Cities rarely exercise their option to buy surplus provincial land, partly because it takes time (and money) to do so, but also because of a culture that emphasizes the role of the private sector, rather than the public, in developing housing (Doucet, 2023). The federal government could also acquire land under the directive and build housing on it, funded by the National Housing Strategy. As previously noted, very little of the money invested by the NHS has gone to build housing units for households in core housing need.

Unfortunately, since the 1990s, the dominant model of how to build housing has shifted away from direct government construction. This was also the decade when both the federal and provincial governments (in Ontario and many other provinces) stopped funding the construction of new social housing—much of which took place on public land. Recently, however, there has been growing attention toward reviving (and updating) the model in which cities build housing themselves on land they already own, rather than giving or selling land for someone else to build on for profit (Keenan, 2023). The Toronto Community Housing Corporation (TCHC) regularly constructed more than 2,000 units of non-market, social housing per year between the 1960s and 1980s, averaging more than 4,000 units a year in the early 1970s! After upper levels of government withdrew funding for new social housing, there was virtually no new social housing stock added. From 1997 to 2002 and 2004 to 2007, no new units were added at all. Since 2008, TCHC has averaged about 160 new dwellings per year (see Keenan, 2023).

One of the best examples of the public sector directly building new non-market housing is Toronto's St. Lawrence neighbourhood. Developed in the 1970s and 1980s (the high point for public involvement in housing), it constituted an entirely new neighbourhood built on formerly industrial and railway lands, largely owned by CN, a crown corporation at the time. It was a concerted effort by all three levels of government to build an affordable, mixed-income, and mixed-tenure neighbourhood featuring good urban design in the heart of the city. From the start, it was not intended to be exclusively social or non-market housing, but it was a public sector-led project and remains one of the best examples of urban renewal in Canada.

The development was spearheaded by Toronto mayor David Crombie, who sought to redress some of the earlier planning failures of previous public housing projects, such as Regent Park, which swept away all the older area buildings and created neighbourhoods composed exclusively of public housing. Of the five elements of St. Lawrence that made it stand out from previous housing and urban renewal projects, four were related to its design and architecture: an extension of the grid pattern of city streets; houses which faced directly onto streets; a human scale of predominantly mid-rises and townhouses; and mixed uses. The final unique element was the mix of housing tenures: condominiums, social housing, co-ops, and private rentals.

St. Lawrence was the largest but by no means the only development of the time that followed these principles. It has remained a popular and desirable place to live for decades. From a political and planning perspective, it used public investment and public land to redistribute resources and iron out the social and spatial unevenness of capitalism by focusing directly on the provision of social and affordable housing for local residents.

While St. Lawrence remains the gold standard in Canada of how government intervention can directly address housing affordability, nothing like it on that scale has been constructed in more than 30 years. Despite this, there are some examples of more recent developments that use a similar approach, framework, or model that directly builds a range of new housing options without reliance on the private market. In the early 2000s, the City of Montreal launched 'Opération Solidarité 5,000 logements' in response to a growing housing crisis. The strategy involved providing land to social housing providers at below market cost. The result: within a few years, 5,000 new social housing units were constructed. The project was deemed to be so successful that a second round was launched in 2006 (Pomeroy et al., 2019).

One of the key advantages of using public land to develop non-market housing is that the land acquisition costs are far lower than if a similar project were to be constructed on private land. The benefits for this are so great that a recent report about scaling up non-profit housing in Ottawa concluded: 'If the City of Ottawa prioritizes non-profit housing development on government owned or otherwise provided free leased land, along with a suite of tax

exemptions and fee waivers, it can enable moderate income rents for one to two bedroom homes, and potentially low-income rents for studios, without further subsidy' (Whitzman and Goldstein, 2023, p. 34).

As the University of British Columbia's Patrick Condon (2023) notes, the rising cost of urban land is one of the key drivers of high housing costs. He notes how allowing for greater density on a plot of land pushes up the value of that land, the benefits of which are reaped by landowners, not taxpayers. In cities such as Vancouver, land costs have increased by more than 300% over the past 15 years, in line with other major cities around the world. Along the city's planned new subway line under Broadway, some parcels have seen 1000% jumps in value, even when the value of the buildings that sit on top of that land has declined. Developing non-market housing on land that is already in public ownership means that costs of a project are much less expensive, thereby enabling the kinds of units, tenures, and prices that are not possible on privately-held land.

Marc Lee (2021) of the Canadian Centre for Policy Alternatives British Columbia office calculated that when a non-profit builder uses the most cost effective materials (wood frame) on free leased land, the costs are substantially less than when a for-profit developer builds using concrete on land purchased on the open market. In his analysis, private developers would need to charge \$2,970 for a one-bedroom unit and \$3,869 for a two-bedroom unit to cover all the operating costs, mortgage payments, capital costs, and developer profits in the most expensive scenario. On the other hand, a non-profit developer using public land would only need to charge \$1,357 and \$1,765, respectively. Lee also notes how using cross-subsidies within a building can lead to much lower rents for some units, thereby enabling the construction of housing for very low- and low-income households. The long and short of it is that much more is possible on land in public ownership, especially if new housing is built by non-profit developers.

Publicly owned land is an important part of building the kind of housing that the market is unable or unwilling to do, but it is also an essential piece of reconciliation with Indigenous communities. Across the country, there are many proposals for how public land can be part of this process. In Kitchener, Ontario, an Indigenous-led group, Land Back Camp, has developed its own proposal for an Indigenous community hub on the site of the former Charles Street Bus

Terminal, a site primarily owned by the Region of Waterloo, with a small part owned by the City of Kitchener. The bus station closed in 2019 when Waterloo's new LRT line opened, and the Region has been working on engagement with the wider community to help determine what to do with the land. There are many ideas about what to do with this 2.6-acre site situated in the heart of downtown Kitchener, and many follow the typical ideas of what has been done with other large pieces of publicly owned land: condos, arts centres, and even a new hockey arena. The Region's consultation process stressed the need to advance four key priority areas: affordable housing; climate action; equity, diversity and inclusion; and a thriving economy. Land Back Camp's plan—developed by the group's founders, Amy Smoke and Bangishimo, in conjunction with two local architecture students—would include a daycare, meeting rooms, a gathering space, space for mental health and domestic violence services, healing gardens, and transitional and emergency housing (Monteiro, 2022; Thompson, 2021). Their plans were presented to Regional Council in late 2021, along with an online petition of support that had garnered more than 5,000 signatures.<sup>5</sup>

At the other end of the country, the ʔəyálməxw/Iyálməxw/Jericho Lands project in Vancouver represents a partnership between three Indigenous Nations and the federal government. The site was formerly owned by the Department of National Defence and is situated in the West Point Grey neighbourhood, near the University of British Columbia. Canada Lands Corporation (CLC) acquired the site in 2014 and entered into a joint venture with the Musqueam, Squamish, and Tsleil-Waututh (MST) Nations, who have formed their own development corporation (MSTDC). MSTDC owns 52 of the 90 acres and co-owns an additional 38 acres with CLC. The project is still in an early planning phase, and the build out will take at least twenty years. In total, the project envisions 13,000 homes for around 24,000 residents. This is not a social, or affordable housing project, but given Vancouver's planning rules, around 20% of these units will be social housing, with an additional 10% being affordable to those on moderate incomes.

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<sup>5</sup> For more, see <https://www.landbackcamp.com/>.

***Housing Assessment Resource Tools (HART)***

While the Charles Street Bus Terminal in Kitchener is a very prominent site within the city, many other pieces of publicly owned land are more obscure, or not necessarily what you would initially think of as a potential site for housing. Many municipalities do not have a complete picture of the publicly owned land that is within their jurisdictions, as well as the possibilities and challenges of using these sites to develop genuinely affordable housing. Fortunately, there is a new set of resources—available for use by all levels of government, the housing sector, and the public—that helps identify land already in public ownership that could become future sites of housing. It was developed by the Housing Assessment Resource Tools (HART) project at the University of British Columbia (UBC), led by co-principal investigators Alexandra Flynn, Associate Professor of Law, and Penny Gurstein, Professor Emeritus of Planning. Three different tools make up this set of resources: a housing assessment needs tool, which uses census data to measure core housing need and develop the appropriate housing policy responses; a property acquisition tool, which sets out best practices and global examples of how to bring property into public or non-profit ownership; and a land assessment tool.

The land assessment tool addresses the question of ‘where can we build it?’, the ‘it’ being deeply affordable and non-market housing. This tool assesses the feasibility of public land for non-profit affordable housing based on proximity to amenities and services. It focuses not only on vacant parcels (such as the example we will discuss shortly at 1470 Block Line Road in Kitchener), but also where deeply affordable housing can be developed on top of libraries, or in conjunction with other public sites. As stated on the project website: ‘The HART Land Assessment Tool assists communities to use land holdings for social benefit. It also identifies strong candidate sites for the co-location of services and non-profit housing, and empowers communities to advocate for better land use to meet affordable housing targets.’<sup>6</sup>

To start, the Land Assessment Tool was available for only three communities: Ottawa, Whitehorse (Yukon), and Victoria County (Nova Scotia). In July 2023, they added Calgary and Edmonton, as well as Toronto, Hamilton, and the Ontario Regions of Halton, Peel, York, and Durham. The current use and zoning of each parcel is described, with a satellite image providing

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<sup>6</sup> See the HART Land Assessment Tool page at <https://hart.ubc.ca/land-assessment-tool/>.

some context. Each site is also given a score out of 20, based on its proximity to child care, education, health care, pharmacies, parks, grocery stores, transit, libraries, and community and recreation centres. In Ottawa, HART has evaluated more than 500 publicly owned properties thus far.

The project will continue to expand into other communities across Canada. It offers not only a clearer picture of the scale of publicly owned land that is available to develop non-market housing, but it also provides a key assessment as to which sites will be most suited to housing situated in close proximity to the key services and amenities that are essential to daily life.

### ***YWCA Supportive Housing on Block Line Road, Kitchener***

A short walk from a new light rail transit station there was a small and unused one-acre parcel of land owned by the City of Kitchener. Situated at 1470 Block Line Road, it is a good example of the kind of site where developing non-market housing is not immediately obvious, in this case being between a four-lane road and a high school. The site was just a barren strip of grass for many years; for much of this time, the city was unsure of what to do with this small piece of land it owned.

That changed with the development of the city's award-winning affordable housing strategy, *Housing for All: A Blueprint for a More Caring Community*. Released in December 2020, one of its six priority areas was to identify city lands suitable for partners to develop into affordable housing. The aim was to incorporate community housing, below-market rentals, and below-market ownership units into city-owned land while keeping land in public ownership. It is worth stressing that the City of Kitchener operates under a two-tiered municipal structure, with the Region of Waterloo as the upper-tier municipality primarily tasked with social and community housing. However, city councillors and City of Kitchener staff saw the need to be proactive in a variety of ways, including by strategically using their assets, such as land. The strategy also called for piloting two city-owned sites close to transit into new community housing. To develop this affordable housing strategy, the city convened a diverse advisory committee, including the lead author of this report, Brian Doucet; representatives from a

number of non-profit housing and social services providers; members from the local development industry; and several individuals with lived experiences of housing precarity, homelessness, and displacement. One of the key messages that this committee stressed was the need to use city-owned land to directly address the housing crisis facing very low- and low-income households.

In 2021, the City of Kitchener partnered with the YWCA of Kitchener-Waterloo to turn 1470 Block Line Road into a new supportive housing project for women. The city's contribution of land was valued at \$2.57 million. Importantly, the City of Kitchener retains ownership of this parcel; it has entered into a lease with the YW for a nominal annual fee for a period of 50 years less a day. This was done to defer land transfer tax to a later date in order to maximize affordability; in Ontario, leases of 50 years or longer are subject to a land transfer tax. The YW and the Region of Waterloo were able to work toward obtaining funding from the government of Canada through the Rapid Housing Initiative, which is part of the National Housing Strategy. Combined with another affordable housing project within the Region, the value of this investment was \$8.2 million. As Elizabeth Clarke, CEO of the YW Kitchener-Waterloo, stated:

People who are 'chronically homeless' have been staying in shelters or on the street for at least six months of the past year, or at least eighteen months of the past three years. And that's the minimum. In many cases, the women who will be moving into YW Block Line Supportive Housing have been homeless for years. Our new program will end their homelessness, and the homelessness of almost half the women on Waterloo Region's supportive housing waitlist, giving them apartments to call their own and a community in which they can stabilize and flourish.<sup>7</sup>

The decision to lease the land to the YW received unanimous support from Kitchener City Council in March 2021. A councillor for a nearby ward, Paul Singh, stated: 'I think this is a phenomenal day for us as a community. We have assets, we have land and we have the ability to create these opportunities. And now, because of that partnership with the region, the YWCA and higher orders of government, we're creating 41 supportive housing units. Kudos to everyone — that's the value' (quoted in Schultz, 2021). Residents began moving into the Block

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<sup>7</sup> City of Kitchener press release: <https://www.kitchener.ca/en/news/more-supportive-affordable-housing-units-for-women-coming-to-waterloo-region.aspx>.

Line Road development a year later, in the spring of 2022; in addition to the 41 apartments, mental health and addiction support workers are regularly on site, and a branch of the Kitchener Public Library situated behind the building offers other supports and access to services. The YWCA was able to add a second phase to this project, and in June 2023 a second building opened that houses single mothers and their families.

The success of 1470 Block Line Road is one small example of how cities and other public agencies can use the land that they own toward directly addressing the housing crisis. Instead of selling it off and trying to negotiate some inclusionary zoning or otherwise affordable units from private developers, the city was able to retain this land and partner with other governments and non-profits to directly build the kind of housing the market does not deliver. This is also why it is not just about how much housing gets built, but what kind of housing and for whom.

One of the remarkable things about this project is how quickly it all happened. Four years ago, the idea of using city-owned land this way was not front and centre with planners or politicians within the City of Kitchener (or in most other cities, for that matter). But once this idea gained traction, an appropriate partner was found to lease the land, and funding from higher levels of government was secured, the project developed incredibly quickly. This is the kind of example that needs to be rolled out in communities across the country if we are to build the kind of housing—en masse—that Canadians need. Fortunately, our final example in this section offers an important pathway to achieve that.

### ***Whistler Housing Authority (WHA)***

In 1997 the Resort Municipality of Whistler, British Columbia, identified a need to provide, protect, and oversee the growth of residential development to ensure that residents and local employees were able to access affordable housing. Whistler's approach is pioneering, and stems from the municipality's long-term affordability crisis with market housing, which is directly related to its resort community status. Whistler has both high housing costs and a large, low-wage workforce employed in tourism. It is also a popular place to invest in real estate.



The result was the creation of the Whistler Housing Authority (WHA), an independent, municipally owned corporation that was established to oversee the development, administration, and management of price-controlled real estate and employee-restricted housing in Whistler. Employee-restricted housing is available only to Canadian citizens or permanent residents who work for a qualified Whistler employer. These businesses must have a valid licence from the municipality, an office or premises physically located in Whistler or the Whistler Olympic Park, operate under the municipal zoning bylaw, and primarily and directly serve Whistler local residents, homeowners, businesses, or tourists.

The WHA offers both affordable rental and home ownership options, both of which require occupants to be employed by a qualified Whistler employer. For renters, there is an inventory of 327 long-term units that are rented at 30% of a tenant's gross household income (with minimums and maximums for each building). Unit selection is based around household size, meaning that a couple with three children is unlikely to be given a one-bedroom unit.

For homeowners, the WHA has a stock of almost 1,000 units in its inventory, as well as an additional 202 across the city with similar employee occupancy restrictions. The main condition for home ownership is a primary residence requirement. Their guidelines define 'primary residence' as '[t]he residence which is the place the applicant(s) continually occupy as a resident on a full-time basis. Each household will only have one primary residence.'<sup>8</sup> This means that it is prohibited to purchase a WHA property as an investment, for speculative purposes, or to rent out to someone else.

Another key condition is that purchasers must comply with the WHA's resale policies, which include housing covenants that set the maximum resale values. This decouples WHA prices from the local real estate market. Owners who make capital improvements can apply to have the value of these improvements added to the maximum resale value of their home. Another condition of any resale is the requirement to sell to households on the ownership waitlist. Interestingly, 20% of applicants on the WHA waitlist are current owners in the program, looking to either upsize or downsize.

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<sup>8</sup> WHA Employee Housing Ownership Program guidelines, accessed through a link at <https://whistlerhousing.ca/pages/purchase-overview>.

These restrictions and covenants are designed to keep housing permanently affordable, rather than to start out building affordable housing only for the units to revert to market prices. Affordability passes from tenant to tenant and from owner to owner, meaning future occupants will enjoy the same affordability as initial or current ones. This is in contrast to many 'affordable' housing policies that put time limits on how long a unit must be rented at below market rents (in Ontario's new inclusionary zoning rules, this is only for a period of 25 years).

The Whistler Housing Authority has successfully decoupled both its rental and ownership prices from the housing market. In 2019, smaller units in this restricted WHA market were 49% of the cost of a comparable unit on the open market. For townhouses, this was 45%, and for single-family units, the WHA prices were only 36% of what buyers paid for comparable units on the open market (McElroy, 2019).

Supply cannot keep pace with demand from households that want to live in this kind of regulated market. In 2022, eight three-bedroom units were completed and sold for between \$500,000 and \$535,000; 68 two-bedrooms sold for between \$405,000 and \$460,000; and 24 one-bedroom units sold for between \$310,000 and \$340,000. But the WHA can't keep building these houses fast enough; in 2018, there were 650 households on the WHA waitlist. Leveraging local relationships with non-profits, the municipality, the private sector, and financial partnerships with BC Housing and CMHC, the WHA set a goal at the end of 2021 of constructing 758 new affordable units, which would add to the 315 new units that had been created over the last five years (Whistler Housing Authority, 2022).

What's the catch? It's simple: owners are not going to get rich purchasing a WHA property. But controlling a maximum resale value means that these properties are not going to dramatically increase in price because the WHA has decoupled buying, selling, and rental prices from the market. Importantly, this is not a one-time move. Compared to right-to-buy initiatives of social housing stock in the UK (where tenants had the opportunity to purchase their social housing units at deeply discounted prices and were subsequently able to resell them at market values, often at multiple times their initial purchase price), resale of these units is also controlled and regulated.

Rather than a means by which to accrue capital through real estate price increases, WHA properties provide security of ownership and tenure at a reasonable and affordable price. They provide houses, not investment opportunities, and therefore shift the pendulum significantly toward housing as a human right. While the websites of many private sector developers quote the investment opportunities their properties offer, the WHA site features a prominent quotation from an owner, who says: 'The WHA has meant that I can afford to live, work and play in Whistler.'<sup>9</sup>

Over the past two years the WHA has solicited substantial feedback from the community on current approaches, and has worked to implement relative measures of affordability and smoother processes for residents overall (Barrett, 2022). It is currently working toward the creation of a self-sufficient system in which the WHA can play a less hands-on role.

This model, the first of its kind in Canada, represents a people-first mentality that prioritizes residents who live and work in one community (in the case of Whistler, you cannot own property anywhere else in the world), allowing them to enter a regulated housing market of its own creation. Unlike other forms of subsidized housing, the creation of affordable units and buildings on what was previously municipally owned land has enabled Whistler to effectively facilitate a market free from key factors that drive unaffordability and inaccessibility, such as speculation. As a result, both tenants and owners have homes that are affordable and appropriate regardless of their income, and have access to safe and reliable affordable housing options that allow them to continue to contribute to a community they may otherwise not afford to stay in (McElroy, 2019).

One of the challenges with this model is that there is very little incentive to move out of the WHA market, especially as housing costs in the private market continue to escalate. This necessitates the construction of much more housing, as existing WHA residents are unlikely to see their incomes grow to such an extent that they can afford to move to a non-WHA property.

The Whistler model has centred around their resort community status, and the mismatch between employment wages and housing market that this creates. However, it offers

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<sup>9</sup> Quoted on the WHA New Buyer Information page, <https://whistlerhousing.ca/pages/new-buyers>.

any municipality struggling with affordability with a roadmap to increase genuinely affordable housing options, decoupled from market speculation, at very little cost to the local government. WHA housing is significantly less expensive to develop than private market housing because one of the biggest costs of new housing construction is the high price of land (Condon, 2023). But if it is already owned, the cost of acquiring sites for developing new housing become much less expensive. This makes possible a lot more creativity and flexibility—and this can only happen when land is retained in public ownership, as is the case with the Whistler Housing Authority.

Another important lesson from the WHA was stressed by Waterloo Region's Union Co-operative (see below); they note how it is important that low-income residents have access to stable long-term rental options as a response to the growing inaccessibility of home ownership. The Whistler model illustrates the value of government controlled or banked land, which can be owned and operated by a branch of the government or be allocated through community partnerships. Importantly, there is nothing in existing rules that would prohibit other jurisdictions from implementing a similar model on land that is within their control. Cities such as Hamilton could develop a publicly-run housing authority to develop and operate housing on city-owned land that is detached from market forces.

### ***Other Examples Using the WHA Model***

This model is used not only in Whistler, but in other resort cities such as Banff, Alberta, through the Banff Housing Corporation, a non-profit housing organization owned by the Town of Banff, which is located in Banff National Park. Two others, the Blue Mountains Attainable Housing Corporation in Ontario and the Canmore Community Housing Corporation in Alberta, will be briefly discussed below.

### ***Canmore Community Housing Corporation (CCHC) and the Perpetually Affordable Housing (PAH) Policy***

Canmore, located southeast of Banff and west of Calgary, has what is called a Perpetually Affordable Housing Policy, which provides an internal directive for providing attainable housing

through the Canmore Community Housing Corporation (CCHC). As in Whistler, the policy follows the principles of regulating sale prices and rental rates for CCHC units, as well as restricting residence to those with local employment ties to the community. They also have housing options that cater to a range of incomes and household structures, and employ a needs-based approach to housing, as well as a diversity of locations and unit types. The requirements, as well as the supply of homes for ownership and rental, are administered through the 'Vital Homes' program. As in Whistler, potential owners and renters must first register and join the waitlist.

The policy also has regulations and intentions with regard to a reserve fund, which is intended exclusively for Perpetually Affordable Housing (PAH) units (owned or rented). Essentially, any income collected is reserved for recirculation in purchasing and developing new units, similar to a non-profit housing provider or a land trust. Specifically, the fund is solely intended for land purchases, capital expenditures, equity, the subsidizing of housing sales in its portfolio, and other aspects of affordable housing delivery.

### ***The Blue Mountains Attainable Housing Corporation (BMAHC)***

In Ontario, another tourism and resort-oriented community is the Town of Blue Mountain, 150 kilometres northwest of Toronto. The Blue Mountains Attainable Housing Corporation (BMAHC) is owned by the town, but is run autonomously. It has two programs: a Down Payment Assistance Program and an Attainable Rental Program. The latter is most comparable to the Whistler model.

Currently, the attainable rental program consists only of a single three-bedroom house on Napier Street.<sup>10</sup> The property is rented for \$1,475/month, which is around half of what three-bedroom properties in the private market rent for. Eligibility requirements include a gross household income of between \$40,000 and \$100,000. For employees, it is also required that they work at least 30 hours per week in the Town of Blue Mountain; self-employed individuals must operate a business based out of the town, and retirees need to have worked three of the last five years in the Town of Blue Mountain.

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<sup>10</sup> See [https://www.thebluemountainshousing.ca/napier\\_street](https://www.thebluemountainshousing.ca/napier_street).

One aspect that all of these examples have in common is a local employment requirement, though there are exceptions for retirees. However, employment requirements may not always be suitable or desirable in every situation. They also limit opportunities for households that are unemployed or on social assistance, or for students. But focusing on the individual rules and requirements ignores the bigger picture: local jurisdictions can set regulations that result in properties being owned and rented by individuals with regular and meaningful ties to a community (i.e., not a summer cottage or vacation home), as well as rules that require properties to be the primary residence of their occupiers (i.e., not an investment property). They can also implement their own rent controls if provincial rules are weak or non-existent. This, combined with price regulations, removes much of the speculative demand for housing and reorients it toward local households that need it. Current planning rules would make this impossible on privately-owned land. However, on land which is in public ownership, rules such as this can easily be enacted and enforced in order to reorient housing away from a speculative commodity and toward shelter and a basic human right.

### **Co-operative Housing Models**

Co-operative housing is a not-for-profit housing model ranging in scale from small multi-family dwellings or townhouse complexes to high-rise apartments of 100+ units (CMHC, 2018; Housing Alternatives Inc., 2020). This model differs from market housing in that stakeholders (residents and in some cases other community members) become equal shareholders in the corporation that owns the property.<sup>11</sup> Often initiated by non-profits such as community land trusts (CLTs), members contribute financially to the corporation, form a board of directors, and self-operate. This effectively removes the need for an external landlord or property management firm. Canada first saw an expansion of co-operative housing in the 1970s and 1980s, including the Bain-Co-op in Toronto, formed in 1977, to increase social housing opportunities for low-income tenants. We are once again seeing community organizations across Canada turn to co-operative housing models because they offer a means to maintain low-cost reliable housing that can

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<sup>11</sup> Co-operatives can exist in market and non-market housing. Market co-operatives assess the value of a unit when ownership is changed, whereas non-market co-operatives offer membership that new tenants pay into, and housing costs are maintained at a fixed rate.

protect tenants from market forces and corporate landlords (Lee, 2016). The federal government announced \$1.5 billion in funding for new co-op housing in the 2022 budget.

Co-operative models (co-ops) are present in both rental and ownership housing, but under non-profit organizations are positioned as viable options to address unaffordability by maintaining affordable long-term rental units for vulnerable tenants (Lee, 2016). Importantly, co-ops differ from traditional market housing in process and regulatory policy. Tenants do not sign formal leases, and units that are vacated are protected from rent increases; prospective tenants are selected from a vacancy waitlist. While policies and standards are provincially mandated, Ontario co-ops are governed under the *Co-operative Corporations Act* rather than any landlord/tenant legislation (CMHC, 2018). It is expected that co-ops create their own bylaws and standards (as guided by the Co-op Act) while ensuring that a democratic process is maintained. Every member has one vote, any excess funds are used for community welfare, and the co-op is expected to be organized and operational. To ensure the just implementation of a co-op as per the Co-op Act, all members and the co-op as a corporation can face up to \$10,000 and \$100,000 in fines, respectively (CMHC, 2018). A number of cities across North America are currently seeing the expansion of their affordable non-market housing options through the co-op model, many of which have tailored the model to suit their needs.

### ***La Communauté Milton Parc (Montreal)***

The co-operative housing community Milton Parc, in Montreal, is one of the most successful examples of this type of housing model in Canada. It is a unique network of housing co-operatives established in December 1987, emerging in the late 1960s out of the rejection of modernist development and the struggle to preserve both affordable housing and architectural heritage. Milton Parc is situated just east of McGill University in the Golden Square Mile, which was home to many of Montreal's elite at the turn of the twentieth century and featured many architecturally significant and historic buildings. By the mid-1960s, however, the area was no longer so prestigious; many buildings had been divided up into smaller apartments, and the neighbourhood was under threat of demolition and redevelopment. Most of the properties in the six square blocks bounded by Hutchison, Pine, Sainte-Famille, and Milton Streets were

acquired by a large developer intent on demolishing the old buildings and erecting new, modern complexes. One phase of this development was realized before the economic crisis of the 1970s halted the plans. At the same time, the Milton Parc Citizens Committee was formed to protest the plans and propose alternatives that would involve keeping residents and buildings in place. By the late 1970s, the developer was looking to sell the site, as it was no longer profitable to redevelop. In 1979, CMHC bought the property for \$5.5 million, utilizing a program implemented by Prime Minister Pierre Trudeau's government that was designed to help residents of rental properties form co-ops. CMHC sold the site to Société d'Amélioration Milton-Parc (SAMP), which was put in place by Heritage Montréal; its board was made up of residents and experts in law, architecture, urban planning, business, and community development. Financing was complex and involved.

Eventually, ownership would pass to individual co-ops formed throughout the community, all governed by the Communauté Milton Parc (CMP). The CMP does not own the land, and is made up of members of all the non-profits and co-ops; its role is to preserve the properties and ensure that all parties adhere to the agreements within the Declaration of Co-ownership that was signed in 1987. This Declaration stipulated that each co-op would own its buildings and the land underneath it, while adjacent land would be held as common property. In some ways, this model is similar to that of a condominium, although, unlike in a condo, individual units within each co-op cannot be subdivided in their ownership. Additionally, the Declaration also includes provisions that available units should be allocated to very low- and low-income households, as well as clauses dealing with the protection of architectural heritage. Today, there are 15 co-ops and six low-income housing buildings—a total of 146 residential buildings with 616 apartments housing approximately 1,500 people<sup>12</sup>. In the context of a rapidly gentrifying city, CMP has maintained its ability to provide below-market rental units to very low- and low-income households right in downtown Montreal.

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<sup>12</sup> See also: <https://externalaffairs.ssmu.ca/milton-parc/>



***Unified Saint John Housing Co-operative (Saint John, New Brunswick)***

In Saint John, New Brunswick, the Unified Saint John Housing Co-operative has made important strides in using the co-op model to maintain affordability and secure housing in the city. This is important, because New Brunswick has some of the weakest tenants' rights legislation in Canada. Renovictions are also a growing concern for tenants residing in private-sector apartments. A report by Julia Woodhall-Melnik, Canada Research Chair at the University of New Brunswick, found that 8,625 units of affordable housing were lost throughout the province between 2016 and 2021 (see Leger, 2023).

Working with a local non-profit, Housing Alternatives Inc., and the Saint John Land Bank, the Unified Saint John Housing Co-operative owns 280 units across the city, supported by \$1.8 million in funding from both the federal and provincial governments (Perry, 2021). In 2021, they added a newly constructed 14-unit building to their portfolio (Housing Alternatives Inc., n.d.). As the building was introduced during Canada's COVID-19 shelter in place policy, the initial rent for these units was approximately \$256, with plans for federal funding to maintain this level of affordability for at least 20 years (Perry, 2021). While New Brunswick's overarching housing costs may appear affordable in comparison to other provinces, from March 2020 to March 2021 they experienced a rent increase of 4.8%. This represents the largest increase in Canada at the time (New Brunswick, 2021), and this has motivated the government, non-profits, and community interest groups to seek affordable housing options for residents.

***Union Sustainable Development Co-operative (Region of Waterloo)***

On a smaller scale, Union Sustainable Development Co-operative (Union) is a non-profit organization that is prioritizing community ownership through the acquisition of residential and commercial spaces across the Region of Waterloo, Ontario. This organization offers members and tenants a share in affordable housing options, creating a community dedicated to preserving affordability in the Region while offering a small investment opportunity. Union separates itself from other co-operative approaches through its community partnership model, which offers members the opportunity to invest and collect dividends from their investment. Union is a new organization that has just finalized the purchase of 58 homes in the region to be

transformed into affordable co-operative housing (Union Sustainable Development Co-operative, n.d.).

### **Community Land Trusts (CLTs)**

Community land trusts are grassroots non-profit organizations operating at a region, city, or community level. They acquire and bank land with the purpose of permanently removing that land from the market in order to maintain affordability (Canadian Network Community Land Trust, n.d.; Davis, 2006; Ngan, 2022).<sup>13</sup> A CLT manages the land, then allocates it for housing or other social purposes. As mentioned, CLTs often support co-operative models that allow for community ownership and security for tenants in need of affordable housing. Where possible, CLTs seek to shift ownership of land to community partners or charities that support mutual community goals (Agha & Czechowski, 2018). We are also seeing the growth of the 'portfolio approach' in which one organization collects and operates a number of buildings or properties, but this is much less common, especially in North America (Patten, 2015).

Community land trusts first emerged in the United States in the 1960s. The first CLT, New Communities Land Trust, was established in 1969 in southwest Georgia in conjunction with the civil rights movement (DeFilippis et al., 2018). This original CLT began as a collective farm, but continues to operate today to support community empowerment (New Communities Inc., n.d.). In many ways, community land trusts were built on the ideology of radical change, and 'were intended to represent the common good of the current and future place-based population' (DeFilippis et al., 2018, p. 758). Beyond contributing to affordable housing stock and supporting non-market housing models like co-ops, CLTs have played an important role in advocacy work, research, and the advancement of progressive policies to address ongoing issues for tenants facing the impacts of neighbourhood change (Ngan, 2022).

Researchers argue, however, that current attempts to integrate the CLT model have resulted in a loss of the community control aspect, which has been central to the historical evolution of CLTs (DeFilippis et al., 2018; Thaden & Lowe, 2014), stressing that community empowerment is an authoritative tool that should be preserved as CLTs continue to be adopted

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<sup>13</sup> As CLT models have become widespread, there remains some contestability about a clear definition as different approaches to CLTs alter their structure.

as a viable non-market approach. For cities looking to support their local CLTs or navigate the creation of their own, this means ensuring that the regulatory framework surrounding their operations ensures agency that prioritizes community needs. This also means that maintaining this aspect of CLTs is likely to become more difficult the larger the trust grows, and as it becomes further disconnected from a specific community (DeFilippis et al., 2018).

### ***Parkdale Neighbourhood Land Trust (PNLT)***

Parkdale, a neighbourhood in downtown Toronto, has turned to the CLT model to identify and combat gentrification and the overwhelming growth of REITs and corporate landlords, which own a large share of the rental housing stock in the area. Forming the Parkdale Neighbourhood Land Trust (PNLT), local residents have worked to protect their neighbourhood, its people, and its culture, even establishing a designated charity, the Neighbourhood Land Trust (NLT). In conjunction, PNLT and NLT have engaged in research to highlight the uneven power dynamics of Parkdale's rental market to accentuate the necessity of non-market housing options. In 2020, 72% of apartments in the community were operated by corporate or financial landlords, who had driven rent increases and implemented tactics to push original residents out. At the time of their study, four out of five tenants reported paying more than 30% of their income on rent, while half paid over 50% (Parkdale Neighbourhood Land Trust & Neighbourhood Land Trust, 2022). Furthermore, between 2006 and 2016, at least 28 rooming houses within the neighbourhood were converted back to single-family dwellings or renovated into luxury units, thereby displacing many low-income tenants.

The aim of the PNLT is to acquire both land and existing properties within Parkdale, then lease them to non-profit partners who can then work toward meeting the needs of local residents that the market is unable to accommodate. This includes not only housing, but communal gardens, social enterprises, other non-profits, and open spaces. To continue to effectively bank land, PNLT proposed intervention at all levels of government. While the City of Toronto had just implemented the Multi-Unit Residential Acquisition (MURA) program in 2021, it lacked adequate funding. PNLT has suggested an increase of at least \$50 million per annum, which would translate to about 500 units. It has further suggested the creation of funding at

the provincial and federal levels to support the acquisition of property through CLTs. PNLT and others argue that the most effective means of addressing the lack of affordability is through the acquisition of land via alternative channels (Pomeroy, 2020; Parkdale Neighbourhood Land Trust & Neighbourhood Land Trust, 2022). At present, however, neither the federal nor the provincial government has any such strategy either to bring more land and housing into public ownership or to use existing public land in this way.

As of 2022, the Neighbourhood Land Trust has taken ownership of 81 small multi-family dwellings and single-family homes. The PNLT owns two buildings with 51 units in total, as well as 7,000 square feet of vacant property currently being used as a community garden.

### ***Saint John Land Bank***

Saint John, New Brunswick, presents a particularly interesting case. Research in 2010 argued that the city should consider forming a land bank authority as a tool to address its ongoing degradation. Land banks are also used to mitigate decline, mainly in American cities. In this context, they are used to collect neglected buildings and to prevent decay and foreclosure (Alexander, 2008; Agha & Czechowski, 2018) in deteriorating cities.

In 2010, Saint John was heading down this path, with many buildings nearing abandonment. Kliffer's (2010) research argued that the city needed to create its own land bank to protect the many buildings that were near foreclosure and would likely become condemned if a plan were not in place. This recommendation would follow the actions of cities in similar situations at the time, including Flint, Michigan, and Baltimore, Maryland, both of which implemented land banks. While the city did not opt to implement a land trust at the time, one has since been created, and as discussed above has worked closely with the Unified Saint John Housing Co-operative (Perry, 2021). While the state of Saint John housing has transformed dramatically, it's safe to assume that had the city implemented a land bank during its era of degradation, it would have a far larger stock of buildings that could be transformed into affordable housing.

Supporting the formation and expansion of a CLT is an effective means of allocating the control of housing to non-profits and community groups that are aware of their community needs and can either collectively manage a number of properties or reallocate property to

other non-profit or community groups. This includes co-ops, but can be used for more traditional housing models as well. By supporting CLTs in acquiring property, municipalities, provinces, and the federal government can produce and maintain more affordable housing through policy and funding outlets.

### 3. Building New Housing – Shaping the Market

#### **Burnaby, British Columbia’s Rental Use Zoning Policy (RUZP)**

In one of the most innovative and exciting measures to help shape the supply of housing within a community, the City of Burnaby, British Columbia, situated immediately to the east of Vancouver, has taken a variety of proactive approaches to increase rental housing stock. These are guided by three pillars: using city-owned land to develop non-market housing; facilitating the development of non-profit-led housing on both private and public land; and implementing the Rental Use Zoning Policy (RUZP), which also applies to private developments, and is therefore a good example with which to begin this chapter on shaping what kind of housing the private market builds.<sup>14</sup>

To start, the provincial government in British Columbia permits local governments within the province to establish the category of ‘rental housing’ as a specific land use in multi-family residential areas. This type of zoning—for governance, rather than for purpose—is the first of its kind in Canada. In general, areas are zoned for ‘commercial,’ ‘residential,’ or ‘mixed’ uses. However, what developers and property owners do with their real estate has not typically been controlled by land use planning. Instead, aspects such as height, density, setbacks, parking, and other aesthetic features are the main concerns of zoning rules. A developer might propose a 15-storey residential building, and if it adheres to zoning rules and building codes, it is likely to get approved, regardless of whether or not the units inside are condominiums or rental apartments. Cities can encourage or provide some incentives to entice developers to build much-needed purpose-built rental, but very few places have usage, or tenure, as specific zoning types.

Burnaby became the first city to take advantage of BC’s new rules permitting rental housing as a specific land use. This has led to a surge in the construction of new purpose-built rental housing, both market and non-market. Specifically, the city’s Rental Use Zoning Policy (RUZP) guides the type of rental housing that is built, while also providing rules that protect tenants and provide incentives to maximize the amount of housing built.

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<sup>14</sup> See <https://www.burnaby.ca/our-city/programs-and-policies/housing/rental-use-zoning-policy>.

The RUZP was adopted in 2019 and has the stated goal of providing rental options to low- and moderate-income households, while also securing a long-term supply of rental housing for the city. Multi-family residential zoning in Burnaby now requires the inclusion of affordable rental units. Importantly, existing purpose-built rental housing has been rezoned to rental zoning, which protects these sites (either existing buildings or future developments) from being redeveloped to strata housing—that is, a model, such as that of a condominium, in which each lot or unit is owned by an individual, with all individuals together owning all the common elements, assets, and property under a strata corporation.<sup>15</sup>

There are four streams to the Rental Use Zoning Policy:

1. **Replacement rental.** This ensures that any rental units lost to redevelopment must be replaced on a 1:1 basis. The replacement units must have the same number of bedrooms as the existing units, and the city's zoning bylaw also stipulates minimum size requirements. If the number of replacement units is less than 20% of the total market unit count, then inclusionary rental units need to be added to make up the difference. For returning tenants, rents must be set at previous rates, plus any annual increases that are allowed under provincial guidelines. If no tenant is returning, then rents are set to 20% below the CMHC median market levels; this also happens if a returning tenant leaves and the unit becomes vacant.
2. **Inclusionary rental.** Unlike Ontario's relatively modest requirements for affordable units within its inclusionary zoning policy (as discussed later, this is 5% of the units, for a time period of 25 years, and only in certain areas), Burnaby has stipulated that new multi-family developments must include 20% of the total market unit count rented at below-market rates. These can include rental replacement units if the new development resulted in the demolition of existing rental housing. If there is unused density, additional rental units may be added; for every market unit, an equivalent affordable unit is required.

The regulations under the inclusionary zoning stream apply to any new residential or mixed-use developments that are proposed in any of the city's Community Plan Areas

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<sup>15</sup> For an explanation of strata housing, see <https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/understanding-stratas>.

(in the Ontario context, this would be the same as Secondary Plans), of which there are 35 (4 town centres, 11 urban villages, 7 suburban multi-family areas, 8 mixed-use areas, and 5 park and conservation areas). Rental rates are capped at 20% below the CMHC market median rent. Originally, the cap was 20% below the market average, but this was amended to its current metric to improve affordability—again, reflecting on the different definitions of what constitutes ‘affordable’ housing; during the consultation process, it was evident that the average rent was higher than the median rent in multiple parts of the city.

3. ***Voluntary rental in commercial districts.*** This stream acts as a relaxing of commercial zoning rules by allowing rental uses in unused commercial space. Rents for these voluntary units can be market rate, rather than non-market, providing that the 20% affordable threshold has been met. This stream allows businesses in most of Burnaby’s commercial zones to allocate unused commercial space as a residential unit without the need for a zoning amendment. There are certain conditions: the allocated space must not exceed the amount of remaining commercial space; the conversion must be on an upper floor, and a separate entrance must be provided if the unit is not owned by the occupant; and, in the case of mixed-use developments, all other residential densification options under all other streams must be satisfied.
4. ***Protection of existing rental.*** There are also elements of the RUZP that focus on maintaining existing housing stock. The key, as mentioned above, is that all non-stratified rental buildings are rezoned to the new ‘rental zone’ (for example, RM3 to RM3r). This applies to all sites city-wide with five or more purpose-built rental units, and ensures that these areas will remain the sites of rental housing.

Within new developments, the affordable units can be mixed with market units, allocated to a separate podium within the same structure, or built on its own structure (subject to Community Plans, the zoning bylaw, and the BC Building Code). There must be a mix of one-, two-, and three-bedroom units reflecting either the needs and balance of the development, or



the needs of user groups in the case of non-profit or government entities. Since they are intended as rentals, the units cannot be owner-occupied.

Developments that adhere to these requirements may take advantage of a density offset (BC's equivalent of a density bonus), which can be used toward providing additional market units (either strata or rental) to help offset the costs of the affordable units. Developers must obtain funding through BC Housing and CMHC programs, and non-profit partnerships to support the affordable housing are recommended but not mandatory.

What have the results been of these policies? In short, a 'historic surge' in non-market rental construction, where non-market units now outpace market-priced ones (*Burnaby Now*, 2021). As of June 2022, a total of 12,181 rental units were built, approved, under construction or in the rezoning process. Of these, 7,636 were non-market units, or 63% of the total new supply! For these non-market units, 64% were achieved through the RUZP rules and incentives, 25% were on city-owned land, and the remainder were realized through non-profit led projects.<sup>16</sup> For reference, according to the 2021 census, Burnaby had a population of 249,125 with 101,135 households, 40% of which were renters.

### **Inclusionary Zoning**

Inclusionary zoning is a market-based planning tool that requires a certain percentage of units within a new development to be affordable. It is a relatively new planning tool in many parts of the country; in 2018, the Ontario government permitted municipalities to develop their own inclusionary zoning policies (British Columbia, Quebec, and Manitoba already had rules guiding the practice). As August and Tolfo (2018) note, inclusionary zoning is increasingly popular with governments that are facing declining funding for affordable housing; the costs of new affordable housing are borne (to some extent) by private developers who are also benefiting from overall market appreciation. Because this is a way of delivering affordable or non-market housing that works with the market, the addition of new affordable housing supply is intertwined with the development of new, market-based supply.

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<sup>16</sup> As per a report to the City of Burnaby planning and development committee; see <https://pub-burnaby.escribemeetings.com/filestream.ashx?DocumentId=62677>.

While some policymakers have seen inclusionary zoning as a magic bullet, August and Tolfo (2018) sound a more cautious note in their review of the scholarly literature on the impact of inclusionary zoning policies. They note that, as a market-based approach, it has produced rather modest gains in the supply of affordable housing. They, and others (see Sturtevant, 2016), note that it works only in strong real estate and property markets, leading to uneven results in both time and space (i.e., it is less effective in weaker markets, and when property markets soften). They also find that inclusionary zoning policies simply cannot deliver the scale of affordable housing that direct, public interventions can.

Another surprising drawback is that inclusionary zoning policies can actually be exclusionary and lead to gentrification and displacement. This can occur when rezoning coincides with a redevelopment that includes some affordable units. Without other protections, such as a right to return and rental replacement bylaws (see the discussion of Burnaby's Tenant Assistance Policy in section 5 below), new developments can trigger the erosion of existing affordable housing; this occurs through demolition of low- or mid-rise apartments that house low-income tenants, which are subsequently replaced with high-density units where only a small percentage of the new units are deemed to be affordable. With inclusionary zoning, most affordable units use a market-based definition, typically around 80% of full market rates (see Whitzman, 2022), which, as we noted earlier, is still prohibitively expensive for very low- and low-income households, particularly in cities with strong real estate markets.

It is also important to stress that there is no one formula for inclusionary zoning. It can be a voluntary or mandatory program (and evidence suggests that mandatory programs lead to stronger results); there can be requirements for actual residential units on or off site, cash, land, or any combination of the above; they can include incentives for developers; and the percentage of affordable units also varies, as does their price and the length of time that they must be affordable (Sturtevant, 2016; August and Tolfo, 2018).

In November 2021, Toronto became the first city in Ontario to adopt an inclusionary zoning policy, which mandated 5 to 10% of new units in condominium developments over a minimum threshold as affordable. Importantly, this percentage was planned to increase

gradually to between 8% and 22% by 2030, with affordable requirements varying according to different parts of the city and whether developments were rental or ownership. The city also set out rules that maintained affordability for 99 years, and the policy was aimed at households earning between \$32,486 and \$91,611 per year.<sup>17</sup>

Rules in Ontario, however, have shifted as governments have changed and new policies have been introduced. In July 2022, the Progressive Conservative government led by Doug Ford restricted the municipal use of inclusionary zoning policies to Major Transit Station Areas (MTSAs), which are also areas slated for the greatest levels of intensification. In Toronto, there are at least 180 MTSAs, most of which will be eligible for inclusionary zoning and extend 500 to 800 metres from a transit station.

Provincial rules around inclusionary zoning in Ontario were further restricted with the passing of Bill 23, the *More Homes Built Faster Act*, in November 2022. Bill 23 has effectively made Toronto's more ambitious inclusionary zoning rules no longer applicable. Inclusionary zoning will now be limited to 5% of the units within a development, for a period of only 25 years. And rather than opting for income-based rents, units will be rented at 80% of market rates. This may seem very timid, especially by international standards, but there are other jurisdictions across Canada that have set much higher targets. While inclusionary zoning is no panacea, it is worth exploring how other areas are using the policy to help deliver new affordable housing by enacting much more stringent rules aimed at shaping the kind of housing that gets built.

### ***Montreal's Bylaw for a Diverse Metropolis (20-20-20 Model)***

The most ambitious rules that produce targets for how much affordable housing should be included in new private-sector developments can be found in Montreal. Inspired by policies in France, which has established targets of 20% non-market housing in every municipality (35% in Paris), the city enacted the Bylaw for a Diverse Metropolis on April 1, 2021. Informally known as the 20-20-20 bylaw, it sets rules around the kinds of units constructed in most new developments of more than 450 square metres (roughly five dwellings). The original intent was

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<sup>17</sup> See the City of Toronto press release at <https://www.toronto.ca/news/toronto-city-council-adopts-new-inclusionary-zoning-policy-to-get-more-affordable-housing-built/>.

to stipulate that 20% of units in a development were social housing, 20% were affordable (at least 10% below market rates), and 20% were family-sized units of at least 86 square metres (925.7 square feet) (Raymer, 2021). One of the aims is to deliver a mix of housing types (and therefore a mix of household types) within the city.

The rules were modified during consultation for the bylaw to reduce the requirements for the affordable housing category. This was due to developer concerns about the costs of building such units, as well as issues of who would benefit in the long term from these units, again referring back to the somewhat vague definition of what constitutes 'affordable.' The final version of the bylaw included only three areas—two of which were adjacent to new Réseau express métropolitain (REM) transit stations—that would require 20% of the units to be affordable. In the rest of the city, developers building any project larger than 48,437 square feet (roughly 50 units) will be required to contribute to an affordable housing fund (McKenna, 2021).

On the social housing front, the city estimates that around 600 new units will be constructed annually because of the bylaw. Social housing units receive or require a subsidy from either a level of government or a co-operative or community-based program. Developers are not required to construct the unit within the actual development; they can provide an additional unit elsewhere, land, and/or cash. The requirements for family-sized units have also been modified from the initial proposal; for projects of at least 50 units, 5% must meet the minimum size for family units in the downtown core and 10% elsewhere in the city. There are no possibilities to provide cash in lieu of these units (Raymer, 2021).

When this bylaw came into effect, campaigners and politicians considered it to be the most powerful rule of its kind in North America (McKenna, 2021). In the 2021 mayoral election, Denis Coderre (a former mayor of the city) stated that he would review the bylaw if elected. However, Valérie Plante, leader of the party Projet Montréal, was re-elected as mayor, and the bylaw remains in effect. Bringing in such a bylaw was also central to her 2017 election victory. The bylaw has received some criticism from developers (see McKenna, 2021; Moreira, 2023), and as Faber (2021) noted, developers were adamant that any extra costs would not come out of their profit margins. However, there is not yet any concrete evidence to show what the

specific impact of this bylaw is on new construction costs and private market prices. The city's own modelling suggested modest price increases of between 0.8% and 1.9% due to the new rules, though some of this would be mitigated by subsidies for land decontamination and tax relief (Faber, 2021).

One of key goals of the 20-20-20 bylaw was to set standard rules for development that also included a significant component of new housing that was directly addressing the city's needs. It moves away from non-binding, incentive-based approaches between the city and developers and toward a binding and regulatory framework (Faber, 2021). Prior to this, social or community gains (such as park space, community space, or affordable/family units of housing) were negotiated with developers in exchange for greater density or reductions of other requirements (such as parking). Across the country, this is the typical way in which municipalities engage with developers, trading off extra height or more units for some of those units being affordable. There were also fines, for example, if a developer pledged to build affordable housing but then reneged; this was often cheaper than building the affordable housing (McKenna, 2021). This was not unique to Montreal; Gilead Rosen and Alan Walks (2015) refer to this as 'let's make a deal urbanism,' where zoning regulations are merely a starting point for negotiations rather than a set of rules to which all parties adhere. Montreal's *Bylaw for a Diverse Metropolis* represents an attempt to remove these back-and-forth negotiations by clearly stating the expectations and contributions that are part of any major development within the city.

While this is the most extensive attempt in Canada to shape the kind of housing the private sector builds, it still has some of the same shortcomings of an approach that relies on the private sector to produce new affordable housing units. The bylaw puts greater emphasis on private developers to deliver the city's essential affordable housing. One concern is that development will move elsewhere in Greater Montreal, to other jurisdictions on or off the island that do not have these requirements. In Faber's (2021, p. 30) research on the bylaw, one former municipal employee summed this up by stating that 'if there is no new development of private units, there [will] be no new development of social units either.' This is one of the key shortcomings of inclusionary zoning: it relies on the private sector to deliver affordable housing.

Faber (2021, p. i) introduces his research by noting how ‘the bylaw’s rootedness in the market prevents the City from fully addressing the deeper factors of financialization that contribute to housing unaffordability.’ If we think back to the pendulum of housing oscillating between a speculative commodity and a human right, Montreal’s Bylaw for a Diverse Metropolis has a complicated relationship with these two opposing roles that housing plays: it is a market-based tool used to develop new social and non-market housing. This is the contradiction inherent in all inclusionary zoning policies, though Montreal’s rules are far more ambitious, and also non-negotiable (developers must contribute to social housing in one way or another)—meaning that, among examples that work with the market to deliver non-market housing, it remains the most ambitious policy in Canada.

Other examples of a similar approach exist within Canada. In Edmonton, the city’s affordable housing strategy sets a target of 16% non-market units within each neighbourhood. Passed in 2018, the goal is meant to ensure that affordable housing is distributed across the city, so that everyone has housing opportunities close to where they need to live or work. The target of 16% stems from 2016 census data which showed that 48,550 renter households spent more than 30% of their income on housing. Forty-six per cent of those households spent more than half their income on shelter. While the plan can draw on funds from higher levels of government, the city also intends to repurpose 14 surplus school sites across the city (Riebe, 2018). Unlike Montreal’s Bylaw for a Diverse Metropolis, Edmonton’s plan is aspirational; it is a long-term guideline and framework for ensuring that there is both an adequate supply of affordable housing and that it is dispersed throughout the city, rather than being concentrated in a small number of areas (Theobald, 2018).

## 4. Existing Housing – Maintaining Without the Market

Most of our mainstream discussions about housing focus on adding new supply. While this is important, especially as populations grow, we also need to pay attention to what happens to the existing supply of housing. Two big issues threatening the affordability of existing housing, particularly for low- and moderate-income households. The first is when existing stock is demolished to make way for new buildings, a process known as ‘demoviction.’ The second is when existing tenants are evicted in order to renovate their units and subsequently lease them at much higher rates, a process known as ‘renoviction’

As the next two chapters will discuss, there are a variety of ways in which existing housing can remain affordable. Some of these approaches require significant funding, such as bringing existing properties into public ownership. However, other approaches, such as rent control and tenant protection rules, require more vision than cash, and can actually be very inexpensive to implement.

Maintaining existing housing without the market is perhaps the most challenging quadrant we explore in this report. We are not talking about how to maintain, refurbish, or upgrade existing social, public, or otherwise non-market housing, although this is a very important and often underfunded goal. Instead, we are focusing on how to bring existing housing into public ownership. In other words, how can we grow the supply of non-market housing through changing ownership of buildings from private to non-profit or public?

UBC’s Housing Assessment Resource Tools (HART) also have an area of focus on property acquisitions. While this quadrant of thinking beyond the market has its challenges, the HART website states why it is essential: ‘One of the most effective ways to address housing unaffordability is by preventing the loss of thousands of affordable units every year. An acquisitions strategy can help.’<sup>18</sup>

A HART report defines a program to acquire existing private market houses as ‘one that supports the purchase of existing multi-family rental housing to preserve its affordability or

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<sup>18</sup> See the HART Property Acquisitions Tool page at <https://hart.ubc.ca/property-acquisitions-tool/>.

transform it into affordable housing. Typically, this involves funding (from government and other sources) to enable the acquisition of privately-owned buildings by non-market owners, such as non-profits, land trusts, co-ops, charities, or governments' (Daniels and August, 2023, p. 3). Such a strategy is common in many other countries, including the United States, France, Sweden, and South Korea. Canada does not have such a policy, although the Federation of Canadian Municipalities has recently called for federal funding to support this. Daniels and August (2023) identify four significant examples in Canada: Nova Scotia's Community Housing Acquisition Program (CHAP), Toronto's Multi-Unit Residential Acquisition (MURA) Program, rooming house acquisition programs in Vancouver and British Columbia, and Montreal's pre-emptive right to acquire existing properties. It is this latter example we will look at in more detail.

### **City of Montreal's 'Pre-emptive Right' Policy**

In 2016, the City of Montreal was given the pre-emptive right to acquire property. This power was part of Quebec's Bill 121, which gave the city much more control over its economic, social, and cultural development. The pre-emptive right, or right of first refusal, is different from expropriation, under which a public entity such as a municipality can acquire properties that are not for sale for the purposes of public sector projects (such as land required to build a new transit line).

This new power given to the City of Montreal builds on a long-standing tradition of social housing providers working to acquire private sector assets. In the 1980s, with a steady stream of funding available from the provincial and federal governments, many community housing providers established acquisition corporations for the purposes of preserving existing affordable rental housing (often smaller buildings) through purchasing them and then converting them into co-ops. The City of Montreal was also involved in this strategy, through its Montreal Housing Development Corporation (Société d'habitation et de développement de Montréal, SHDM); between 1988 and 1995, it acquired and renovated 3,478 units (Pomeroy et al., 2019). The SHDM continues to acquire existing properties from a variety of owners, in order to preserve their affordability over the long term. Interestingly, they have also begun upzoning



some of their properties; demolishing smaller structures and replacing them with many more units. In two cases in downtown Montreal, these new houses are being built for people currently experiencing homelessness.

These earlier acquisition strategies, however, had no legal powers stipulating that private owners had to sell to a non-profit, or municipal government, and non-profits generally had to outbid any private buyer in order to acquire a new property. That changed in Montreal with Bill 121. The city now has the pre-emptive right to acquire property, though this applies only to properties that the city has pre-identified, and can only occur once they are for sale on the open market. In order for the city to exercise its pre-emptive right, the seller must already have an interested buyer willing to purchase the property at a specific price.

Initially, the pre-emptive right was not focused primarily on housing. The idea to bring more properties into public ownership was initially intended for the purposes of enhancing quality of life through acquiring land to create parks, libraries, community centres, and so on. In 2020, however, the city shifted its use of this power to acquire existing private-market residential properties with the aim of turning them into social housing, as well as to prevent them from falling into the hands of real estate investment trusts (REITs).

In 2020, the Montreal Agglomeration Council (which includes the City of Montreal and the additional 14 municipalities on the Island of Montreal) identified around 350 properties where the right of first refusal had been imposed (Daniels and August, 2023). Notices were sent to property owners that their properties would be subject to the city's pre-emptive rights for a period of 10 years. This does not restrict what owners can do with their properties. However, if an owner of one of these properties decides to sell, they must inform the city of the proposed sale and terms of the sale; the city then has 60 days to decide whether it will exercise its right of first refusal. If it chooses to do so, the city will have the power to purchase the property for the same price and conditions agreed upon by the original buyer. The city then has a further 60 days to purchase the property; it must also reimburse the seller for any reasonable costs incurred during the initial negotiation with the private buyer (Olson, 2020). The City of Montreal has allocated \$10 million per year for the acquisition of properties under its pre-

emptive right, which limits the potential to scale up this powerful tool to prevent the continued loss of affordable housing (Daniels and August, 2023).

Most of the properties where the pre-emptive right has been enacted are in traditionally low-rent neighbourhoods, such as Villeray–Saint-Michel–Parc-Extension, where gentrification and rising rents have put significant pressure on low- and moderate-income households. In September 2020, the City of Montreal exercised its pre-emptive right for the first time, purchasing Plaza Hutchison, in Parc-Extension, for \$6.5 million. It was one of the buildings identified by the city for pre-emptive rights earlier that year (Harris, 2020). When the owners of the building decided to sell the property on the open market, the city chose to enact its pre-emptive right and acquire the properties. The two buildings on this site have recent histories similar to many others in gentrifying neighbourhoods. In 2017, they were purchased by BSR Group, which promptly served eviction notices to the building’s low-income tenants and independent businesses. BSR intended to renovate the complex and turn it into higher end apartments, rented at market rents. Local community groups raised concerns over gentrification and the loss of affordable housing, citing similar trends in the rapidly gentrifying Mile End neighbourhood nearby (Marchand, 2017).

The City of Montreal plans to redevelop the building into 40 social housing units, something that requires funding from both the provincial and federal governments (Morris, 2021). The site of Plaza Hutchison is also of particular importance. It is directly opposite the Parc metro and commuter train station and adjacent to a new campus of the Université de Montréal, which is also fueling evictions and gentrification in the district (Henriquez, 2020).

In June 2023, the city used its pre-emptive powers to acquire a three-storey, 99-unit apartment building in Verdun for \$8.1 million. The plan is to subsequently resell this property to a non-profit, which will develop and manage affordable housing on the site. When announcing the acquisition of the site, Montréal mayor Valérie Plante stated that ‘we are very proactive in finding solutions and providing the population with quality housing that respects their ability to pay. The right of pre-emption that we are using today to acquire the building on Gordon Street demonstrates our ability to innovate to accelerate the development of social and affordable

housing in Montreal. This acquisition will allow us to offer a better supply of affordable housing in a sector that is facing significant pressure' (quoted in CityNews, 2023).

Montreal is the only city in Canada to have been given these pre-emptive rights to acquire pre-selected properties. However, other jurisdictions across the country are beginning to examine this approach as a way to deal directly with the high cost of housing and increase the stock of non-market housing. The municipality of Gatineau asked the Quebec government for similar powers in 2021 in order to deal with a growing housing crisis and bring more properties into public ownership (Blewett, 2021). In Vancouver, the city council unanimously approved a \$1 billion purchasing strategy to acquire single-room occupancy hotels (SROs), as well as to explore possibilities for stricter rent controls and tenant protections for residents in these dwellings. Most of the city's SROs are found in the Downtown Eastside, and they house around 5,000 low-income individuals in very small rooms with shared bathroom and kitchen facilities. Most buildings are old, and many are in need of repair. But a growing trend in recent years has been to renovate and redevelop these buildings and subsequently charge much higher rents. The City of Vancouver's plan is dependent on higher levels of government providing funding for acquisition of properties when they come up for sale (St Denis, 2020). BC Housing, the provincial agency tasked with a range of initiatives and programs across the housing continuum, has also been buying or leasing SROs since 2007 (Pomeroy et al., 2019).

In their report about the acquisition of existing rental properties, Daniels and August (2023) develop six best practices based on their detailed analysis of more than 100 acquisition strategies from around the world. They include:

1. Systematically identify buildings based on criteria.
2. Set strong affordability parameters for acquired properties.
3. Create streamlined, sustained, and dedicated funding, prioritizing grants.
4. Build capacity of the non-profit sector.
5. Fund and coordinate programs across all scales of government.
6. Deliver acquisitions programs alongside supportive policies and legal powers.

Montreal's pre-emptive right to acquire properties, which is unique in Canada, includes many of these, though it lacks the large amounts of funding to actually bring the approximately 350 buildings it has identified into public ownership. This is where higher levels of government need to play a role in providing steady and reliable funding to enable policies such as this to protect existing affordable housing. This is far cheaper in the long run than building new affordable housing stock.

## 5. Existing Housing – Regulating the Market

While acquiring existing affordable housing and bringing it into public, or non-profit ownership is far cheaper than building new affordable housing, regulating the market to help keep housing affordable in the first place is the most cost-effective way of dealing with the housing crisis. Unfortunately, it is often the most overlooked solution, even though there is a growing body of evidence to suggest that regulations such as rent control, tenant protections and bylaws and policies that shift the onus of responsibility away from tenants and towards landlords and rezoning applicants are both inexpensive and effective.

If we are to address the housing crisis for very low-, low-, and moderate-income households, it will require doing more than building more housing, even if much of that new stock is outside market forces. It also necessitates ensuring that existing housing is, and remains, affordable. The previous section looked at how cities such as Montreal are trying to acquire existing rental stock and bring it into public ownership. This chapter focuses on a number of important and often misunderstood initiatives that work toward regulating the housing market to stop existing housing from becoming too expensive.

### **Rent Control**

The first and one of the most significant measures to protect the supply of existing affordable housing is rent control. Simply put, rent control is a mechanism in which rules are in place to regulate the rents that landlords charge to tenants. These typically involve caps on the maximum increase in rent that landlords can charge to tenants, for example a certain percentage change once per year. In some jurisdictions, these rent control rules are tied to the unit, meaning that a new tenant should pay a similar rent to the previous one. More common today, however, is that rent control is tied to the tenant, meaning that while they are residing in the unit, rent increases must follow rent control rules, but once the tenant leaves, the landlord can charge the new tenant whatever they want (i.e., ‘whatever the market will bear’). In contexts where market rents are rising rapidly, this can create a gap between what a sitting tenant pays in rent, particularly one who has resided in their apartment for many years, and

what the market rent would be for that type of unit. While this offers protections for tenants, it also creates incentives for landlords to evict long-term tenants so that they can capitalize on the full market rent for the unit, particularly when rent control is based on the tenant and not the unit.

The issue of rent control is one of the most hotly debated housing topics. While housing advocates and many researchers have been calling for better rent controls for years, many commentators deride the concept, questioning (without much evidence) its effectiveness, as well as the overreach of governments into the housing market. Much of this critique, however, is based on either hypothetical models, or older versions of rent control that are not being proposed or implemented today (Slater, 2021). Rent control is also just one of a suite of tools to regulate existing housing to protect tenants and ensure an adequate supply of housing that is affordable to households. While rent controls may create loopholes that landlords can work around (such as converting apartments to condos), other policies can work in conjunction with rent controls to keep rental stocks growing.

In disciplines such as economics, the very idea of rent control is heavily critiqued. A report by the Brookings Institution (Diamond, 2018) stated that while there are some benefits for sitting tenants in the short term, rent control can lead to less supply and decreased affordability in the long run. One common critique is that sitting tenants will be reluctant to move while they are enjoying a rent controlled apartment, leading to a situation in which growing families do not have the space to expand, and empty nesters reside in housing that is too large for their needs. Economists call this market inefficiency, and argue that rent controls lead to a lack of equilibrium in the housing market.

However, as Madden and Marcuse (2016) poignantly state: ‘One person’s inefficiency is another person’s home ... From the perspective of a tenant facing displacement from their longtime home, it is the system of commodified residential development that is inefficient, not to mention cruel and destructive’ (as quoted in Slater, 2021, pp. 101–2). This ‘mismatch’ could also be mitigated if rent controls applied to units, not tenants, and would instead be an argument for stronger and expanded rent controls, not weaker ones. In Canada, most rent control is only in effect as long as the tenant is living there. Once they move, rent controls are

removed, meaning that not only do landlords have huge financial incentives to evict long-term tenants, but those same tenants also have financial incentives to remain in their units, regardless of their changing employment or household situation.

In a similar vein, many economists argue that rent control drives up rents for tenants who live in apartments that are not subject to rent control. But, as the British-American geographer Tom Slater (2021) notes in his book *Shaking Up the City*, this debate is always framed in terms of arguments against rent control, rather than as a reason to regulate landlords.

Likewise, the idea that landlords will simply sell their properties because there are modest regulations on what they can charge, or that supply will evaporate, are not borne out by any major empirical evidence (Slater, 2021). Evidence from New Jersey actually suggests the opposite: that rent control leads to the construction of much more housing, partly because in order to make the same profit, landlords and developers will need many more housing units (see Gilderbloom and Ye, 2016; Ambrosius et al., 2015).

Some studies have found that rent controlled buildings are more likely to be converted into condominiums, or demolished to be redeveloped into either owner-occupied units or rentals that are no longer subject to any rent controls, thereby reducing the affordable rental housing stock (Diamond et al., 2019). However, no studies have yet to examine how this plays out with accompanying rental replacement rules stipulating the 1:1 replacement of rental units lost due to (re)development. And if landlords did decide to exit the market entirely, cities could enact legislation to be able to pre-emptively acquire these properties and bring them into public ownership, as Montreal now has the power to do.

It is important to stress that many critics of rent control do not take these additional proactive measures into account when running their statistical models. Also of note is that much of the criticism toward rent control focuses on early and somewhat crude iterations that were developed during and after World War I (Slater, 2021). These forms of rent control involved long-term periods of rent freezes at well-below market rates. However, Tom Slater notes that while detractors point to this type of rent control as being highly destructive for cities, no academics, advocates, or politicians are calling for these types of blanket rent controls

and rent freezes today. Instead, campaigners are calling for what he refers to as ‘second generation’ rent controls, which are much more varied, complex, and designed to protect tenants from excessive rent increases, while also providing landlords with reasonable returns on their investment. Annual rent adjustments (read: increases) are built into the rent control policies, and conditions are laid out for any increases above these levels that are related to improvements and quality. Arnott (1995) states that economists ‘appreciate the virtues of free markets more than the average citizen’ when advocating against rent control, also arguing that the early versions of rent control cited by critics are ‘modern, second-generation rent controls are so different that they should be judged largely independently of the experience with first-generation controls’ (Arnott, 1995, p. 118; see also Gilderbloom and Ye, 2016). There are also many different iterations of rent control today that set them apart from their early twentieth-century cousins.

It is worth reflecting, as well, that many critics of rent control would also argue for completely unfettered housing markets, where supply is unregulated and developers are free from rules in order to create a housing equilibrium. This approach is similar to the ‘build build build’ mantra that dominates a lot of political discourses, including that of the current Ontario government, and is based on the premise that regulations are the root cause of inhibiting supply and keeping prices high. This narrative articulates that if we only reduced or even eliminated government intervention and regulations, the market would create enough housing for everyone.

The problem with this approach is that it is not borne out in evidence. And examples that we do have from recent and not so recent history of where there are very few regulations on the housing market do not paint a very good picture for tenants. Prior to the early or mid-twentieth century (depending on the national context), housing markets largely functioned like this, *laissez-faire*, with little to no zoning, safety, and social rules. However, as Slater notes, this created absolutely deplorable housing conditions for much of society, particularly the urban working class:

Those arguing that rent controls of any kind will always and everywhere worsen housing quality cannot have it both ways; whenever there has been little or no regulation, rental



housing quality has been truly appalling. For example, Glasgow in 1900 was as close to the conditions of a 'perfect' free market in housing as a neoclassical economist could possibly desire: no public housing, no regulated standards of accommodation, a lack of monopoly in the hands of a single owner, and virtually no protection whatsoever of tenants' rights. But rents were high and conditions were dismal, with slumlords cramming tenants into stairwells, courtyards, and alleys, denying them access to light, water, or dignity (Slater, 2021, p. 98).

This is not just a matter of history; today, in countries such as the UK, the worst housing can be found within the largely unregulated private rental market.

### ***(The Problems with) Rent Control in Ontario***

In Ontario, many renters benefit from rent control. The *Residential Tenancies Act* (RTA) sets maximum limits, also known as guidelines, which cap the annual increases in rent that landlords can charge. In 2023, this is 2.5%, up from 1.2% in 2022. In 2021, rents were frozen to 2020 levels for most tenants, partly in response to the COVID-19 pandemic.

However, there are three important exceptions to rent control in Ontario. First, landlords can easily apply for above-guideline increases (AGIs), which are permitted for major repairs or renovations. Research has shown that there have been dramatic increases in AGI applications by landlords, going from 296 buildings in 2012–13 to 758 in 2019–20, resulting in many tenants paying thousands of dollars more over the course of their tenancies. A major report on the use of AGIs in Ontario found that 84% of the units in Toronto were owned by large, financialized landlords (Zigman and August, 2021). According to a CBC news article, five buildings in Toronto featured five or more AGIs over the past ten years, including one building in Weston, where the landlord asked for an AGI for three consecutive years.

The second loophole is that there is no rent control for new units that were occupied for the first time after November 15, 2018. This was one of the first pieces of legislation enacted by Doug Ford's Progressive Conservative government after they were elected earlier that year. The government claimed that this was done to encourage developers to build more housing, but

this effectively means that any new units completed after November 2018 are leased at full market rates and not subject to any measures to control their rent (Powers, 2018).

The third loophole comes from the previous Progressive Conservative government of Mike Harris, which eliminated rent controls on vacant units. Vacancy decontrol, as it is known, means that landlords can charge whatever rent they want when a unit becomes vacant. These changes were enacted in the 1997 *Tenant Protection Act*, which replaced the 1992 *Rent Control Act*. Harris's *Tenant Protection Act* changed rent control in Ontario from a unit-based system to a tenant-based system. As with the lack of rent control on new units, proponents argue that this stimulates the construction of new housing, but there is little evidence that this has occurred since Ontario eliminated rent control on vacant units (Kassam, 2022).

Instead, there is growing evidence to demonstrate how vacancy decontrol has created the opportunity for landlords to evict sitting tenants in order to dramatically raise the rent on their units (Doucet et al., 2022; August, 2020; August and Walks, 2018). For long-standing tenants, there is a huge (and ever-growing) financial incentive for landlords to evict them, as the gap in rent between a rent controlled unit and one on the open market grows each year. Cole Webber, a legal clinic worker with Parkdale Community Legal Services, explained how these renovations are now firmly within the 'landlord's playbook' so that they can take advantage of this loophole. He went on to note how vacancy decontrol creates 'the financial incentive for landlords to frequently evict tenants, especially long-term tenants who are often paying below market rent. Once a tenant leaves, landlords can charge a new tenant as much as possible for their units. And because the housing market has chronically low supply, rents are soaring' (de Guzman, 2013).

While cities do not have the power to introduce their own rent controls on private developments within their jurisdictions, the executive director of Toronto's Housing Secretariat, Abi Bond, presented a report to city council in July 2022, recommending that the city ask the province to change these rules and tie rent control to the unit rather than the tenant (Gibson, 2022). Bond stated in her report that '[t]he primary objectives of these activities are to preserve the city's affordable and mid-range rental housing supply and help support tenants who are at risk of being evicted' (as quoted in Gibson, 2022).

The lack of rent control on vacant units does not have consequences only for individual tenants. More broadly, it contributes to an erosion of the existing affordable housing, particularly units that are affordable to very low- and low-income tenants. As noted earlier, cities across the country are rapidly losing apartments that are rented at \$750/month or below (Pomeroy, 2020). While some are demolished, many more still exist, but are now no longer subject to rent control once their previous tenants are removed.

This loophole has broader implications for why average rents are rising so fast across the country. In early 2023, CMHC released its rental market report for 2022.<sup>19</sup> One of its main findings was that average rent increases for two-bedroom units that turned over to a new tenant were significantly higher than in units without turnover. Nationally, these figures were 18.2% and 2.8% respectively. This speaks directly to the lack of rent control when a unit becomes vacant, which is the case across much of the country—including in Quebec, where average rents for a two-bedroom apartment in Montreal were \$1,022 in 2022. While this was below the national average, it constituted an increase of 5.4% from 2021. However, for units with the same tenant, this was only a 3.5% increase, compared with units with a new tenant, which saw rental prices increase by 14.5%. In Toronto, the gap between units with the same tenant and units where a new tenant moved in was even greater. The average increase for a two-bedroom unit in 2022 was 6.5% (up from 1.5% in 2021). For units with the same tenant, most rents increased by the provincial increase guideline of 1.2%. However, in units where an old tenant left and a new one moved in, the average rent jumped by 29% (CMHC, 2023). In contrast to these numbers, Winnipeg saw just a 1.5% increase in average rents for a two-bedroom unit in 2022. For vacant units, this was higher, but only 5.2%. Manitoba has strong rent control through provincial rules laid out in its *Residential Tenancies Act* (RTA). This stipulates annual permitted increases in rent (and in 2022 and 2023, rents have been frozen). While the province does not have full unit-based rent control, there are some rules which regulate rents when a tenant leaves. In this instance, landlords can increase the rent to the average rent of a similar unit in the same building, providing that notice is given to the new

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<sup>19</sup> See <https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/market-reports/rental-market-reports-major-centres>.

tenant. This is in contrast to Ontario, British Columbia, and many other provinces where there are no legal limits to what a landlord can charge once a unit is vacant.

### ***Unit-Based Rent Control in Prince Edward Island***

Within Canada, Prince Edward Island has among the strongest rent control rules. Importantly, they apply not only to existing tenants, but to new ones as well. In PEI, rent control is tied to the unit, not the renter, and therefore any unit is subject to the same regulations. Unit-based rent control emerged in 1989. Rules around rent, including the annual permitted increase, are governed by the Island Regulatory and Appeals Commission (IRAC).<sup>20</sup>

Every year, the IRAC invites public input to help determine what the permitted maximum rent increases should be. This has resulted in rather modest increases in rent, often just 1 to 2% per year. Inflation and the cost of heating factors into the equation (there are separate rules for oil-based and electrically heated units, for example).

In 2021, the IRAC determined that the maximum rent increase should be 1%. Let's take an example of a unit that was rented for \$1,000/month in 2020. In 2021, the monthly rent could only increase to \$1,010, regardless of the tenant. For sitting tenants, this is pretty straightforward: the landlords send their tenants a notice of the rent increase and the tenant will immediately know if the rent increase is legal or not since they were there last year.

But these rent control rules also apply to units once a tenant leaves, and PEI is the only province with clear rules on rent control which apply equally to tenanted and vacant units. Where it becomes complicated is that there are no formal mechanisms to inform new tenants of the previous tenant's rent, and to ensure that landlords adhere to the IRAC rules when a new tenant moves in. Landlords are on the honour system to keep rents controlled when a unit is vacant.

Predictably, many landlords have not adhered to this honour system, and still raise rents well above the maximum allotted amounts. Instead of \$1,010 a month from our example above, a landlord might charge \$1,400 in the hopes that no one will notice. In Prince Edward

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<sup>20</sup> For an overview of provincial rules around rent control, see <https://housingrightscanada.com/resources/rent-control-policies-across-canada/>.

Island, that \$390 of additional rent is illegal, but landlords regularly navigate this loophole in what are otherwise exceptionally strong and wide-ranging rent control policies.

This loophole has increasingly come under the microscope, however, not from politicians but from the public. To empower and organize tenants, Darcie Lanthier founded My Old Apartment,<sup>21</sup> a crowdsourcing registry of rents paid by previous tenants. The concept is simple: tenants anonymously record the rent they paid in their previous apartments so that new tenants can easily see if they are paying too much. This can be done either online, where anyone can look up the previous rent of a unit, or in the form of a simple card that Lanthier created on which tenants can fill in the date they left the apartment and the rent they were paying. These are then mailed to their old apartment so that new tenants are directly informed of how their rent compares to that of the previous tenant (and therefore whether they are paying an illegal amount of rent in excess of the province's rent control rules). The cards also contain information on how tenants can fight their illegal rents (CBC News, 2021).

In its first year, My Old Apartment registered 10% of all apartments in Charlottetown, and when it started, it was helping return \$10,000 a week in rent that was illegally charged by landlords. This has resulted in both a windfall payment of several thousand dollars that landlords had illegally collected, as well as an adjustment of the rents, which were automatically lowered to the legally permitted amount. Returning to our example, if the new tenant paid \$1,400/month for six months before their appeal to the IRAC was heard, they would get a lump sum payment of \$2,340 (six months of the extra \$390 that the landlord had illegally charged them); in addition, the rent would be adjusted to \$1,010 for the remainder of the year. In one instance, My Old Apartment helped a tenant get back more than \$20,000 in illegal rent and a reduction of their monthly rent by \$450!

While My Old Apartment has been a success, it is no substitute for the provincial government closing the loophole. In 2019, a Green Party MLA, Hannah Bell, put forward a motion to create a provincial rental registry that would effectively stop landlords from illegally overcharging tenants by creating a public database of what each apartment was rented for. The motion passed unanimously, but no concrete action has yet been taken, meaning that the work

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<sup>21</sup> See their website at <https://myoldapartment.org/>.

of My Old Apartment remains essential to informing tenants whether they are paying illegal rental prices and assisting them in fighting to ensure that they pay only the rents permitted under the province's rent control rules.<sup>22</sup>

Rent control rules are only as strong as their enforcement, and can be weakened by large and small loopholes, as the PEI example has shown. As in other provinces, landlords on PEI can also apply to IRAC for an above-guideline increase. Strong rent control rules do not eliminate speculation in the rental market, but tying rent control to the unit, rather than the tenant, significantly diminishes the financial incentive to evict a long-term sitting tenant from their home in order to dramatically raise rents—a practice which is widespread in provinces such as Ontario, which do not have end of tenancy rent controls.

Prince Edward Island, like many other tourist areas, has suffered from a dramatic rise in Airbnb and other short-term rentals. Lanthier has estimated that in 2019, there were more than 800 houses in Charlottetown alone rented on Airbnb in a rental market with 0.5% vacancy. In 2022, the city voted to enact some of the country's toughest regulations to limit short-term rentals. The changes were proposed to take effect in March 2023, but have been delayed until 2024. They stipulate that these rentals must be part of the owner's primary residence. In addition, an owner cannot own multiple properties listed for short-term rentals, and apartments and houses can only be rented while an owner is away. If an owner has a suite in their own home, it can be rented, but only at a time when the owner is present. The aim is to put most of these Airbnb rentals back into the long-term affordable supply (Meader, 2023). These restrictions will likely result in more properties coming on the rental market in the coming years. Importantly, the rent control rules still apply; if an apartment was rented at \$1,000/month in 2019 and then subsequently converted to an Airbnb, the legal maximum rent that the landlord can charge is \$1,000, plus the annual increases permitted by the IRAC. However, with no formal way of registering this rent, My Old Apartment will need to do a lot of legwork to provide evidence of these rents, often going back several years, which is all the more reason to introduce rental registries that apply to all properties within a jurisdiction.

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<sup>22</sup> For more on My Old Apartment, including an interview with Darcie Lanthier, visit <https://mihe.mcmaster.ca/episode-7/>.

Rent control can be an effective counterweight to the business model of large, financialized landlords that is based around tenant churn in order to raise rents well above inflation or rent control guidelines for sitting tenants (August and Walks, 2018). While PEI is one of the few places where rent control is connected to the unit, rather than the tenant, Ontario and other provinces used to provide similar protections for tenants. Vacancy control also counters one of the main critiques of economists who argue that tenants enjoying rent control are less likely to move for better employment opportunities elsewhere because that would mean giving up their rent-controlled unit. If rent control were universal, this argument would no longer be valid, since tenants who moved would also benefit from a regulated rental market rather than choosing between moving for economic, family, or other reasons and paying substantially more in rent, or remaining in a unit that is no longer suitable because it is one of the few that enjoys some degree of protection from market forces.

### **Rental Replacement Bylaws and Other Tenant Protections**

#### ***City of Toronto's Rental Property Demolition and Conversion Control Bylaw***

The City of Toronto is one of two municipalities (along with Mississauga) in Ontario to have a rental replacement bylaw. The City of Toronto's Rental Property Demolition and Conversion Control Bylaw was enacted in 2007, and is designed to ensure that if apartment buildings are demolished to make way for new, denser developments, the residents of those units will have homes within the new development. This is a very important piece of the puzzle that helps maintain existing housing affordable to those on lower incomes by incorporating the same types of units into new projects. In May 2023, there were 73 different development applications under review with the City of Toronto that would result in the loss of 3,440 existing rental units (Warren, 2023). Without policies to ensure their replacement after a redevelopment, these units would be lost and their inhabitants would have to find housing on the open market, where average rents have topped \$3,000 per month.

The rental replacement bylaw applies to any development which involves the demolition or conversion of a property with six or more residential units (where at least one is a

rental unit).<sup>23</sup> After receiving notice of demolition application, tenants have the right to remain in their units. This is important because development applications can take time, and just because a landlord or developer has filed for a demolition application does not mean it will get approved. If a building is demolished to make way for a new development, most tenants in the old building have the right to return to a rental replacement unit within the new development. Specifically, they have the right to return to a unit of a similar size, with the same number of bedrooms and at the same rent (subject to any annual guideline increases) for a period of 10 years. This also means that the tenants enjoy rent control in their new units, one of the few instances in which apartments constructed after 2018 are subject to rent control. In addition, many tenants are eligible for compensation to cover the cost of moving during the demolition/construction. The city estimates that it has preserved more than 5,000 units of rental housing because of the bylaw.

New changes instituted by the Ontario government, however, are of concern to the City of Toronto. While Bill 97—the *Helping Homebuyers, Protecting Tenants Act*—seeks to unify rental replacement policies across the province, there is concern that new provincial rules will be much weaker than those which have been in place in Toronto for more than 15 years. Specifically, the city is concerned about replacement units being significantly smaller than the ones they are replacing. Other concerns focus on hindering the city’s ability to restrict rents for replacement units, lowering levels of tenant compensation, or possibly allowing developers to provide cash instead of replacement rental units. With so many development applications already in review, there is also concern that rules might change and apply differently, leading to delays and confusion among all parties.<sup>24</sup>

Rental replacement bylaws such as those currently in place in Toronto and Mississauga are an essential part of protecting existing affordable housing stock because they ensure that new developments do not result in the loss of this existing housing. It could be argued that Toronto’s rules do not go far enough; as with rent control, rental replacements are tied to the tenant, not the unit, meaning that if a tenant leaves their new replacement unit, it is no longer

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<sup>23</sup> See <https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/housing/>.

<sup>24</sup> For more on the City of Toronto report, see <https://www.toronto.ca/legdocs/mmis/2023/cc/bgrd/backgroundfile-236401.pdf>.



subject to any rent controls. This becomes problematic after 10 years, when the rental replacement rules no longer apply, even for sitting tenants. While it is laudable that the provincial government is looking to implement rental replacement rules across Ontario, this will be problematic if the rules are weaker than the ones that already exist in certain jurisdictions, as Bill 97 proposes. Instead of watering down Toronto's rules, the province should use them as a benchmark, or even strengthen them, to create a stronger level of tenant protections throughout Ontario. Despite its name (*the Helping Homebuyers, Protecting Tenants Act*), Bill 97 offers little in the way of strong tenant protections that shift housing away from a commodity and toward a human right. Adopting strong rental replacement rules province-wide would ensure that, wherever new developments involved the demolition of existing rental properties, existing (and future) tenants would have genuinely affordable housing options within them.

### ***Burnaby, British Columbia's Tenant Assistance Policy***

While Ontario is talking about introducing rental replacement rules that will be weaker than what already exists in Toronto, the City of Burnaby, in British Columbia, has developed the country's strongest rental replacement bylaws. In addition to its Rental Use Zoning Policy (RUZP), discussed earlier, which is designed to stimulate the construction of new market and non-market rental units, Burnaby has some of the best tenant protections in Canada—particularly when existing rental units need to be demolished because buildings are either too old, or the site is to be redeveloped, usually with increased density. In much of the rest of the country and beyond, when this happens, particularly with ageing, low-rise apartment buildings, tenants are given eviction notices and left on their own to find new accommodation. In some cases, as with Toronto and Mississauga's rental replacement bylaws noted above, tenants are given the right of first refusal to return to the new building. But the onus is on the tenant to exercise this right, and the landlord or applicant for the new development or rezoning is under no legal obligation to the tenant between the period when the old building is demolished and the moment when units in the new building are ready for occupation. Tenants must find their own temporary accommodation.

Burnaby's Tenant Assistance Policy flips this responsibility around. The city accepts that as apartment buildings age, or rezoning for higher density takes place (particularly, though not exclusively, around transit stations), many existing apartments will need to be torn down. The policy, approved in 2019, places the onus of responsibility on the rezoning applicant (i.e., the developer) not to sever the relationship with tenants. In essence, it requires developers to rehouse tenants during the redevelopment process, ensuring that they do not pay any additional costs, while also giving them the right to return to a unit in the new development at the same rent as before. These rules apply to tenants residing in purpose-built market rental buildings comprising five or more units, and occur both if a building is being renovated (renoviction) and when a change of zoning leads to a redevelopment involving the demolition (demoviction) of an existing rental building that is replaced with a new one. As discussed earlier, Burnaby already has strong rules in place guiding what kind of rental housing will be constructed through its RUZP, including regulations about replacement rentals.

Four key elements of the Tenant Assistance Policy make it one of the most progressive in Canada, leading the city's mayor, Mike Hurley, to state that Burnaby has 'the best looked after tenants that Canada has ever seen' (Gawley, 2019). The first element is the right to return to the new building in a unit with the same number of bedrooms, at the same rent (adjusted for any provincially-regulated rent increases). This means that if a building with 10 units is demolished to make way for a new one with 100 units, 10 of those units need to be for the households living in the original building (and under the RUZP guidelines, an additional 10 would be required to be non-market as well).

The second element (and one that sets Burnaby's rules apart from other jurisdictions, especially in Ontario) is that developers/landlords are obliged to help tenants find interim housing if they request that kind of assistance. Tenants are also able to find their own accommodation during the redevelopment, but if they want assistance from the developer, every effort will be made to find a temporary unit in the same part of the city.

For long-term tenants, having to move to a new apartment, even temporarily, often results in additional costs. These can include moving costs (discussed below) as well as increased rents, as many tenants lose most if not all of the rent controls they enjoyed on their

previous units. Under the third pillar of the Tenant Assistance Policy, the rezoning applicants must bear these increased rental costs. They will pay a rent top-up to cover the difference between the tenant's old rent and what they are paying in the interim housing. There is a maximum top-up that developers must pay: 15% of the tenant's existing rent, or 30% above median rents for a similar unit, whichever is greater. If the tenant chooses to live in a unit made available to them by the developer, they will pay the same rent as before.

The final piece of the puzzle is financial assistance for moving costs (which can be incurred twice if tenants exercise their right to return once the redevelopment has taken place). Tenants leaving their units have two options: make use of an insured moving company for which the developer arranges, or take a cash payout of between \$900 and \$1,400 (depending on the size of the unit) and arrange the move themselves. The same moving assistance options are provided if they exercise their right to return.

Importantly, these rules, which came into effect in 2020, also applied retroactively to a number of properties purchased in the years prior to the policy coming into effect, including those involving 'bad faith' landlords who used 'unscrupulous tactics' to remove tenants from around 300 units across the city (Gawley, 2019). The city has a list of these properties on its website.<sup>25</sup>

### ***New Westminster, British Columbia's Anti-Renoviction Bylaw***

One of the biggest ways in which existing affordable housing is lost is through renovictions. Renovictions occur when landlords evict tenants, renovate their units, and then lease them out at much higher rates to new tenants. Often, the types of renovations that are done do not necessitate vacant possession of a unit, as they tend to be cosmetic or relatively minor; in other words, they can occur while tenants are living in the units. The lack of rent control on vacant units creates a loophole and financial incentive for landlords to evict long-term tenants, many of whom benefited from rent control and were therefore paying below market rates for their units. There is a large body of evidence to suggest that renovictions are part of a deliberate

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<sup>25</sup> See <https://www.burnaby.ca/our-city/programs-and-policies/housing/tenant-assistance>.

strategy by large, financialized landlords to maximize profits from their buildings at the expense of lower-income tenants (August, 2022; 2020; August and Walks, 2018).

Faced with an erosion of affordable market-based rental housing, the City of New Westminister, British Columbia passed an anti-renoviction bylaw in 2019. Landlords who evicted tenants only to increase the rents for their former units were fined up to \$1,000 per day; they could also lose their business licences. Several components made this bylaw so effective that it virtually eliminated renovictions in New Westminister. As with Burnaby, all of these involved switching the onus from the tenant to the landlord. First, the landlord needed to demonstrate that a unit would become uninhabitable during the renovations, meaning that minor repairs or cosmetic changes were no longer permissible reasons to evict tenants. Additionally, the onus was also on the landlord to assist with finding temporary accommodation for tenants, an approach similar to Burnaby's Tenant Assistance Policy, although New Westminister's rules were not as detailed. Landlords also needed to provide a written offer to return to the unit at the same price (Nuttall, 2021).

This combination of approaches within the bylaw was remarkably effective. There were 333 renovictions in New Westminister in the three years prior to the bylaw coming into effect; within its first two years in place, this number had gone down to zero (Nuttall, 2021).

The bylaw successfully withstood two court challenges, including one by a numbered company, 1193652 B.C. Ltd. In April 2021, the law was upheld by the B.C. Court of Appeal, as Justice Gail Dickson concluded that the city had acted within the rights given to it under British Columbia's community charter to enact the bylaw. It was only repealed after the B.C. government enacted similar legislation province-wide, albeit a more watered-down version of New Westminister's bylaw.

Across Canada, a number of other cities, including Hamilton, have been examining how to implement similar anti-renoviction bylaws within their own jurisdictions. In April 2023, City of Hamilton staff reported back to the city's Emergency and Community Services Committee about the possibilities of implementing similar bylaws. Their consultant's report concluded that this was not within the city's powers, while also arguing that provincial rules already provided tenants with the necessary protections (Enterprise Canada, 2023).

There are significant differences, however, between New Westminster's (and subsequently B.C.'s) rules and Ontario guidelines under the *Residential Tenancies Act* (RTA). In Ontario, very few tenants who leave their units due to renovations end up returning, and even fewer return at the same rent (Webber and Zigman, 2023). In April 2023, the Ontario government also introduced Bill 97, the *Helping Homebuyers, Protecting Tenants Act*, which the consultant's report argues also provides much of the protection afforded to tenants by New Westminster's bylaw. Bill 97 does require landlords to give written updates to tenants as to the progress of the renovations, as well as a 60-day grace period to tenants so that they can exercise their rights to return at the same rent; it also proposes to raise fines to a maximum of \$100,000 for individuals and \$500,000 for corporations. However, landlords still have no responsibility to provide temporary accommodation for tenants who are evicted due to renovations (Casey, 2023). The onus is still on tenants to exercise their right to return, rather than on landlords to provide interim housing while any necessary renovations are being done. That shift in responsibility to the landlord was at the heart of what made New Westminster's bylaw so successful: tenants couldn't simply disappear once they had been evicted. The obligation to provide housing remained with the landlord. Through this shift in responsibility, a landlord's ability to remove tenants in order to raise rents was removed; it is no wonder that the practice of renovictions ground to a halt in New Westminster. Despite the title of Bill 97, it offers no such protections to Ontario tenants, thereby leaving room for municipalities such as Hamilton to develop their own bylaws that provide much greater levels of support and protection for tenants.

In addition to that, the City of Hamilton's consultant's report argued that B.C. municipalities have more authority as a result of their community charters to enact this type of bylaw. This was directly challenged by a legal opinion presented to ACORN Hamilton,<sup>26</sup> a tenant advocacy and organizing group, which suggests that such a bylaw would be within the purview of an Ontario municipality. It is also important to note that prior to the court challenges in B.C., it was not clear whether New Westminster or other municipalities had that authority either (Doucet and Pin, 2023).

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<sup>26</sup> See <https://acorncanada.org/resources/legal-opinion-by-raven-law-on-hamilton-citys-power-to-regulation-renovictions/>.

At the April 2023 Emergency and Community Services Committee, dozens of Hamiltonians with lived experiences of renovictions delegated in front of councillors, staff, and the media (the lead author of this report, Brian Doucet, also delegated in support of ACORN). Those present at city hall, and others following the meeting online, heard story after story of how tenants were evicted from their homes, often for only very modest renovations, as well as the challenges of finding new units at anywhere near their previous rent. None of the delegates were able to return to their units at the original rents once renovations were complete.

It is worth stressing that, according to recent research, the City of Hamilton has lost more than 15,000 affordable rental units (where rent is less than \$750/month) over the past decade, and that for every new unit of affordable housing added to the city's supply, 29 have been lost, many to processes such as renoviction (Beattie, 2023).

This is why discussions about housing must be about more than absolute numbers. They must look at several specific questions. What kind of housing is being added? What kind of housing is being lost? Housing and development for whom? Against whom?

Council members on the city's Emergency and Community Services Committee were sympathetic toward the stories of renoviction. Many expressed frustration at the tone of the staff report, with Councillor Brad Clark stating, 'Council said we're asking you to tell us how to do it; not if we want to do it. And there is a distinct difference in that.' This comment was made in reference to the initial instructions to staff in December 2021, which culminated in the report presented at April's meeting (Moro, 2023a). Staff were apologetic, with the city's General Manager of Healthy and Safe Communities, Angela Burden, apologizing for 'not being able today to bring forward the solutions that were anticipated' (Moro, 2023a).

Councillors on the Emergency and Community Services Committee have made it clear that they are determined to implement an anti-renoviction bylaw similar to the one that eliminated the practice in New Westminster. Given the widespread nature of renovictions in urban, suburban, and rural communities across the country, such a bylaw is one of the best ways to regulate the private rental market to protect and preserve the existing supply of affordable housing.

## 6. Conclusions

### ***Delta Secondary School and 1083 Main Street East***

On Main Street East in Hamilton sits the old Delta Secondary School. The school opened in 1924 and closed in 2019. It is situated along the city's proposed LRT corridor, and a short walk away from Gage Park, one of the largest in the city. When the school closed, the Hamilton-Wentworth District School Board considered the property surplus. Under the Ontario Realty Directive, the City of Hamilton would have had the opportunity to purchase the property at the appraised market rate before any private buyers could bid on the site. However, the city passed on this opportunity, and the school board put the property up for sale on the open market in late 2021. Heritage status meant that much of the original 200,000-square-foot building would need to be preserved in any redevelopment of the six-acre site.

There were three interested parties looking to put in a bid for the high school site. One was from Windmill Developments, a Toronto-based company specializing in adaptive reuse. Another came from New Horizon Development Group, a Hamilton-based developer led by Jeff Paikin. The final bid came from Indwell, a faith-based non-profit developer, which partnered with the Hamilton Community Foundation to help support the bid (Moro, 2021). Indwell envisioned a mix of housing options, including many deeply affordable rentals, which would cost about \$500/month (for comparison, the average market rental in late 2021 was \$1,482 for a one-bedroom apartment).

Indwell's bid for the site reflected the appraised market value of the property of a little over \$5 million. However, the New Horizon bid was nearly three times this amount, and in excess of \$15 million. New Horizon has proposed nearly 1,000 market-rate units on the site, including 87 units in retrofitted classrooms, three- and four storey townhomes on the perimeter, and three 14-storey towers (Moro, 2023a)<sup>27</sup>.

The Delta Secondary School saga is a story of missed opportunities to retain land in public ownership, or to shift it to a non-profit housing provider to develop the kind of housing that the market does not do. It is important to stress that this land was already in public

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<sup>27</sup>See New Horizon's plans for the Delta Secondary School site at <https://1284main.ca/>.

ownership, acquired more than one hundred years ago and long since paid off. The city passed up the opportunity to acquire the site at its appraised market value, a bargain compared to what New Horizon paid for the land. The City of Hamilton could have redeveloped the former high school itself, or could have leased it to a non-profit such as Indwell to deliver genuinely affordable units. In the end, while the New Horizon project will add housing units to the city, they will do little to address the city's long-standing affordability crisis for households on average or below-average incomes. We must critically ask: will the condos that get built here be what is most needed for the city? Or are there alternatives that could better directly address the city's housing challenges?

Down the road from the Delta Secondary School is an old low-rise apartment building at 1083 Main Street East. It will also be along Hamilton's new LRT route. The wedge-shaped building is situated where King and Main Streets intersect, directly across from Gage Park; it is owned by a company called 1083 Main Street Inc., whose president is Dylan Suitor. It was bought in June 2021 for \$10 million. Not long after, tenants started receiving N13 notices of eviction due to renovations (i.e., renovictions). By late 2022, most tenants had been evicted, as part of a pattern of renovictions seen across the city more generally, and along the future LRT line specifically (Mayers et al., 2023). Only seven units were occupied when a pipe burst after being exposed to cold air during the renovations in late December 2022. The landlord subsequently shut off water to the entire building; hot water was removed on December 27 and all water a day later.

Tenants immediately contacted bylaw enforcement, and on January 3, 2023, the city gave the owner 19 days to complete the repair work. The order expired on January 24, and the landlord appealed the order, arguing that tenants needed to be removed in order to complete the repair work (Beattie, 2023). In early March, however, the owner removed the eviction applications that were before the Landlord and Tenant Board (LTB); a lack of running water constituted a 'serious breach' of landlord obligations under Ontario law, and the LTB was therefore obliged to refuse eviction applications (Moro, 2023b). In the end, tenants endured 86 days without water; the City of Hamilton delivered 870 jugs of water to the building at a cost of \$22,049.50 (Moro, 2023b). While the majority of the building's low-income tenants—many of



whom had lived in the building for many years, and paid rent controlled rates well below current market—were evicted before the water issue, it is unlikely that they will return when any renovation work is complete. And the fate of the remaining tenants is uncertain. The City of Hamilton and the Province of Ontario do not have any existing rules in place that would give either the remaining tenants, or the ones who were evicted, any meaningful way of returning to their homes at similar rents once construction is finished.

### ***Moving Forward by Learning from What is Already in Place***

As we have seen in this report, however, this does not have to be the case. There are places within Canada that do things differently. They protect tenants, place the onus on landlords to ensure that they have a place to live if repair work necessitates an empty unit or building, and compel landlords to bring the tenants back at the same rents they were previously paying. There are places that would see a large, publicly owned piece of land and do something far more ambitious than sell it to a condo developer. None of these outcomes—good or bad—are inevitable. They are all the products of choices and decisions, framed by existing rules, none of which are set in stone.

There are several key messages that this report is trying to advance. The first is that in order to genuinely address the housing crisis, we will need to seriously invest in building the kind of housing that the market is unwilling or unable to construct. There is broad consensus among housing researchers that housing supply must increase as our population grows. But there is also an understanding that leaving the question of what to build primarily to the market is not going to create the kinds of housing that communities need. This is why we titled our report ‘thinking beyond the market.’ Private developers are good at building large amounts of housing, but they are not so good at building housing that addresses the housing crisis. It does not mean that market-based solutions to the housing crisis should not be implemented, but we also have to be realistic in what market-driven upzoning, laneway housing, and other initiatives to spur market-based supply will achieve when it comes to delivering genuinely affordable housing.

The second relates to the fact that maintaining the existing supply of housing already affordable to low- and moderate-income households is just as important as adding new supply. While this housing stock generally remains, renovations and a lack of strong rent control means that it is becoming much more expensive. And when growth and intensification pressures result in existing apartments being demolished to make way for taller and denser developments, these new projects need to include the same number of units priced at the same rents. Importantly, these rules should remain with the unit, and not the returning tenant.

The third key message is that all the essential components required to fundamentally shift the housing pendulum away from a speculative commodity toward shelter and a basic human right are already in place within our country. The challenge is not thinking of new ideas. Housing researchers know what genuinely moves the needle: rent control, curbs on speculation, tenant protections, and building genuinely affordable social and non-market housing en masse. The challenge is not thinking of new ideas—it is how to implement the existing ones on a scale that is going to make a difference.

Through this report, we have intended to show Canadians—planners, policymakers, advocates, politicians, and the general public—what is already happening in this country. There are many inspiring and important examples that we have profiled in this report, and many others that we were unable to discuss. Not all these bylaws, policies, and developments are immediately implementable in every context. In Ontario, for instance, stronger rent control rules will need to wait for a change of government at Queen’s Park. But we need to start talking about these solutions, even if they do not yet have support from those in power.

In this report, we have only scratched the surface of what is already happening in Canada to shift the housing pendulum away from speculation and toward housing as a human right. There were many other ideas, examples, and initiatives that we could not cover in any great detail, but are important nonetheless. In Cambridge, Massachusetts, zoning rules allow non-market developers to build at double the permitted density, provided that 100% of their units are affordable. In this case, affordability is pegged at a tenant’s ability to pay, rather than a ratio of market prices, as rents are permanently pegged to average household incomes (Condon, 2023). As Condon notes: ‘This approach puts downward pressure on the land price

“residual” value of potential development parcels, making them affordable to the non-profits who would be the preponderant site developers under this policy.’ Without rules such as this, many potential housing builders are priced out of developing affordable units, as they cannot compete with for-profit developers constructing condominiums or luxury apartments.

Cambridge’s policy deals directly with the questions of ‘housing for whom’ and ‘density for whom’ by incentivizing the construction of housing that is actually needed, rather than allowing for greater density in a context where the market builds what is most profitable. Many jurisdictions across North America have eliminated single-family zoning in recent years, which is laudable for many reasons; however, left to the market, there is little evidence to indicate that upzoning, in and of itself, will create the kind of housing communities need en masse (see Doucet, 2021).

While we discussed in detail the need for anti-renoviction bylaws, other rules, such as anti-speculation taxes and rules regulating short-term rentals such as Airbnb, can help to curb speculation, swing the housing pendulum toward housing as a human right, and add extra supply without the need to construct new units. Both the City of Vancouver and British Columbia have vacancy and anti-speculation taxes. Vancouver’s empty home tax, for example, has resulted in a 36% reduction in the number of vacant properties within the city, and CMHC data suggests that over 5,900 condominium units have come back into the long-term rental supply since 2019. The tax has also raised more than \$115 million in revenue to support affordable housing initiatives across the city.<sup>28</sup>

The role of tenant organizing and collective action, such as rent strikes, is also extremely important. As Ricardo Tranjan (2023) highlights in his book *The Tenant Class*, well-organized tenants have the power to push back against landlords working to evict them or to dramatically raise their rents. In the absence of strong rules and regulations to protect tenants (and the proper enforcement of these rules), tenant organizing is essential and can be effective. In many cases, the initial push for implementing progressive and socially just ideas comes not from policymakers or politicians, but from well-organized advocates and community groups. In

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<sup>28</sup> See <https://vancouver.ca/news-calendar/empty-homes-tax-supports-increase-in-housing-availability.aspx>.

Prince Edward Island, PEI Fight For Affordable Housing<sup>29</sup> was one of the key voices advocating for stronger tenant protections and curbs on short-term rentals, the latter of which has been picked up by the city of Charlottetown.

All these ideas exist. They are not wish lists, or visions of a housing utopia. They are not all perfect, but we need to learn from them and understand how they can be scaled up, rolled out, and improved upon. And rather than focusing on why they cannot grow, transfer to another place, or get better, we need to think about the kind of socially just future that we want, use these and other examples of progressive housing as a start, and then find a way to make them happen. Thinking beyond the market, either to regulate what the market does, or to operate entirely outside it, is required if we are going to seriously address the housing issues facing Canadians. While housing is one of the country's biggest challenges, we are hopeful that what we have presented in this report offers pathways of how to move forward to create socially just, fair, and equitable communities that everyone can call home.

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<sup>29</sup> See <https://peifah.ca/>

## Glossary

**ACORN Hamilton:** (Association of Community Organizations for Reform Now) A union of moderate to low-income individuals fighting for community and housing justice.

**Above-Guideline rent Increase (AGIs):** Each year the government evaluates the state of the market and produces a guideline for increasing rents. AGIs occur when a landlord increases rent beyond this rate. They must be applied for and approved by the Landlord Tenant Board (LTB), under the bases of one of the following: large increases of property costs, renovations, or investment in increased security.

**Affordable housing:** There is no agreed upon measure of affordable housing. CMHC defines it as housing >30% of a household's before-tax income. Market approaches compare costs to market rates, considering housing at or under 80% of market rate, affordable. Housing scholarship argues affordable housing should be relative to household income, often positioning it in an RGI context.

**Airbnb:** Beginning as a means for Airbnb's founders to rent out space in their apartment at affordable rates, it has become a billion-dollar intermediary service for private short- or long-term rentals. As of 2023 there are 6.6 million active listings (as per Airbnb's website).

**Attainable Rental Program:** A Blue Mountain program to provide affordable and accessible housing for individuals living and working (or newly retired) in the city.

**Bill 23:** (informally: More Homes Built Faster Act) Passed in November 2022, this piece of Ontario legislation proposed fundamental change to the planning process in the name of residential property development. Of note, this bill allows for the bypassing of the public participation process and removal of many environmental protections.

**Bill 97** (Helping Homeowners, Protecting Tenants Act) A newly introduced piece of Ontario legislation with the goal of encouraging residential development, density and ensuring there is adequate housing stock. This act has been presented as renter focused, by proposing changes to the LTB's current model to protect renters against unjust evictions and ensuring rental replacement policy is unified across the province. Of note, this bill lacks important protections for tenants against renovations and has faced criticism for the potential for developers to bypass rental replacement policy.

**Blue Mountains Attainable Housing Corporation (BMAHC):** A not-for-profit organization that supports moderate income households attain housing through the city's Attainable Rental Program. They currently offer owner and rental units to ensure community members living and working in Blue Mountain have access to affordable housing options in an increasingly unaffordable market.

**By-law for a Diverse Metropolis:** (informally, 20-20-20) A piece of Montreal legislation requiring the development of affordable housing in designated zones, labelled “affordability zones”. This bylaw was created to address shortcomings around affordability noted in the city’s *Strategy for the Inclusion of Affordable Housing in New Residential Projects*. The 20-20-20 refers to 20% social housing, affordable housing and housing geared towards families. The city has since adapted this legislation to lower their requirements after backlash.

**Canada Mortgage and Housing Corporation (CMHC):** A federal crown corporation founded in 1946, the purpose of CMHC is to ensure housing is affordable for all. They work with a variety of stakeholders to provide service and information, with a branch of CMHC dedicated to research.

**Canmore Community Housing Corporation (CCHC):** A non-profit corporation owned and operated by the Town of Canmore. It maintains a portfolio of rental (116) and ownership properties (164)<sup>30</sup> to provide Canmore residents with affordable housing options.

**Community Land Trusts (CLT):** Grassroots non-profit organizations that collect and manage a portfolio of property for affordable housing or community needs. They vary in size but date back to the civil rights movement.

**Co-operative Corporations Act:** Province specific legislation that defines and outlines the operational requirements of co-operative housing.

**Co-operative Housing (housing co-op):** Understood as a form of housing tenure, a corporation or organization that owns residential real estate. Models vary slightly but see members of the co-op take on a shareholder role, rather than outright owning an individual unit. They are responsible for their operations and shareholders hold voting power.

**Deeply affordable housing:** Housing that is less than 30% of an individual’s income. Often, this housing is offer through subsidization to low-income or homeless individuals.

**Demoviction:** When tenants are evicted from a rental property because the property is being demolished to make way for a new build, often a larger building with higher rents.

**Density Bonus:** A bonus granted to a developer from a municipality that allows said developer to construct more units than would normally be allowed under zoning regulations. This can come in the form of height increases that are above regulation and can be used to encourage the construction of affordable units, or public spaces.

**Down Payment Assistance Program:** Often shared equity mortgages that offer buyers between 5-15% of the purchasing price to support a down payment. They can be offered at different

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<sup>30</sup> <https://www.canmorehousing.ca/about-us/>

levels of the government, and range in qualification factors including cost of the property household income and mortgage qualification status.

**Gentrification:** Since its inception by Ruth Glass in the 1960's, many definitions of gentrification have emerged, with debates surrounding its cause and effect. However, now there is relative agreement that gentrification can be understood as the transformation of space to meet the needs of incoming residents often at the cost of original lower income community members.

**Housing Assessment Resource Tool (HART):** A new accessibility tool that uses census data to measure “core housing needs and affordable shelter costs by income category, household size, and priority populations”<sup>31</sup> to inform housing policy.

**Inclusionary zoning:** An approach to planning that requires a percentage of units in a new development are *affordable*. This policy is enacted at the provincial or municipal level applying to new builds that meet criteria set forth by policymakers. Inclusionary zoning has faced criticism from planning scholars as this approach has been praised for offering transformative change, when on the ground conditions suggest they are under performing (see August and Tolfo, 2018 for more).

**Land banks:** Portfolios of land acquired by the government or non-profits/charity organizations. Land banks are increasingly used to provide affordable housing options but have historically been used to collect derelict properties to prevent them from being condemned.

**Major Transit Station Areas (MTSAs):** Refers to the area surrounding a higher order or rapid transit station stop. Typically, this is between 500 and 800 metres from a given stop.

**Market housing:** Housing that is bought and sold through traditional channels, impacted by market forces.

**Mixed-tenure neighbourhoods:** (integrated housing) Refers to neighbourhoods that integrate market housing and different forms of affordable or subsidized housing options. The value of mixed-tenured housing is debated. Some argue that this approach brings diversity and encourages upwards social mobility, while others argue that it drives conflict, isolates low-income groups and is unsustainable.

**Mixed-use:** Zoning policy that allows for the construction or renovation of a building to support both residential and commercial spaces.

**Mom and pop landlords:** (also individual investment landlords) Slang for property owners who manage their own investment properties and rent out their units. Usually, their portfolios are relatively small.

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<sup>31</sup> <https://hart.ubc.ca/our-resources/halton/>

**Montreal Housing Development Corporation (SHDM):** A non-profit organization and property owner that offers affordable residential units and commercial spaces with the goal of contributing diverse housing stock in Montreal.

**Multi-unit residential acquisition (MURA) program:** A City of Toronto program to protect affordable and deeply affordable units in the city. Through MURA, non-profits, charity organizations and co-operative housing providers can receive funding to acquire and maintain affordable units.

**National Housing Strategy (NHS):** A ten year multi-billion dollar plan to transform housing in Canada with the goal of providing safe and accessible housing to stabilize communities and reduce homelessness.

**Non-market housing:** Non-market housing can include ‘any housing protected from market forces, thus offering affordable rents and ownership in perpetuity’ (Condon, 2018a). Non-market housing can be provided by charities, non-profit organizations, community groups and government – any housing that is operating outside of market forces.

**Ontario’s Affordable Housing Taskforce:** A collective of industry experts tasked with developing a report informed by key stakeholders, advocacy groups and government officials to identify core housing issues and propose actionable change.

**Parkdale Neighbourhood Land Trust (PNLT):** A non-profit community land trust located in Parkdale, Toronto, dedicated to the preservation of Parkdale’s culture. It does so by acquiring residential and commercial spaces to ensure residents have access to affordable housing options and social spaces. Their charity arm The Neighbourhood Land Trust (NLT) extends their reach to partner with local charities, housing partners and more.

**Perpetually Affordable housing policy (PAH):** Protective policy ensures that affordable units are available and maintained. This policy protects both rental and owner-occupied housing, offering a non-market means of housing under long-term projection.

**Pre-emptive right policy:** Montreal’s policy surrounding the sale and purchase of buildings in core areas. This policy gives the city the right of first refusal to purchase any impacted buildings when an owner goes to sell. The owner is under no obligation to sell at any time, however if they choose to sell, they must notify the city first. The city will have the first opportunity to purchase said building to transform it into social spaces, affordable housing, or banked land.

**Purpose built rentals:** Buildings constructed and maintained by a property manager with the purpose of offering rental units only.

**Rapid Housing initiative (RHI):** An initiative facilitated by CMHC that offers funding opportunities to non-profits and charities to support the construction or acquisition of property



for affordable housing, rehabilitation, or deeply affordable housing options. The RHI is currently funding it's third round of projects.

**Real Estate Investment Trusts (REITs):** An investment company that owns income producing real estate. Their portfolios include residential and commercial spaces, but recent trends have seen major acquisitions in the residential rental market.

**Renoviction:** Landlords are entitled to evict tenants in the name of renovations to the building or individual unit. Increasingly we are seeing landlords using renovations as a tactic to push tenants out. While tenants have the right of first return, to move back in once renovations are completed, the drawn-out timelines often result in tenants not returning. Landlords are then allowed to charge market rates to incoming tenants (Crosby, 2018). Currently, many cities are exploring *anti-renoviction bylaw*. New Westminster, B.C's bylaw has proven to be successful in nearly eliminating renovictions through fines, accommodation requirements, etc.

**Rent control:** Policy which limits a landlord's ability to increase the rent of a unit they own and operate. Rent control policies vary between provinces, with some provinces opting to remove rent control entirely. Policies address maximum rent increases for current tenants and for incoming tenants in vacant units and vary by housing typology, inhabitancy dates etc.

**Rent Geared to Income (RGI):** A form of subsidized housing that offers units to renters ratioed to their income. This is usually around 30% of household income and is regularly assessed.

**Rental Replacement By-law:** By-law that requires the replacement of any rental unit that is demolished to make way for a new development project (in residential buildings of 6 or more units). Only two Municipalities in Ontario have a rental replacement by-law in effect. Mississauga, *The Rental Housing Protection By-Law*, and Toronto, *Rental Demolition and Conversion Control By-law*.

**Rental Tenancies Act (RTA):** An Ontario act that outlines the roles and responsibilities of landlords and tenants.

**Rental Use Zoning Policy (RUZP):** A City of Burnaby directive focused on rezoning spaces as affordable housing for low to moderate income individuals and households. This can come in the form of market or non-market, rental replacement, or inclusionary zoning and can be used to gain density bonuses.

**St. John Land Bank:** A community landbank operating in St John, NB.

**Strata housing:** (also built strata; Strata corporation) Refers to a building that has been split into additional units. Each unit is owned by an individual, whereas the building itself its collectively owned. Examples include apartment buildings, condos, duplexes and retirement communities.

**Subsidized housing:** (Also supportive housing) Government supported long term rental housing options. In Canada this offer under an RGI system at 30% of total income.

**Tenant Assistance Policy:** A 2019 Burnaby, BC policy that establishes rules and regulations for landlords proposing large renovation projects or development projects that would result in the displacement of tenants. In buildings of five residential units or more, landlords are required to support their tenants acquire new housing AND pay for moving costs AND any disparity between new rent and previous rent AND offer the right of first return at original rental rates.

**Toronto Community Housing Corporation:** A social housing provider owned by the City of Toronto. It functions as a non-profit, maintaining affordable housing to just under 60 000 people living on a low to moderate income. It operates under a board system with 13 members ranging in qualification and responsibility. Jag Sharma is the current President and Chief Executive Officer.

**Unified Saint John Co-operative:** A collective of eight amalgamated co-operatives from Saint John, NB. Unified Saint John Housing Cooperative is Canada's largest co-operative merger to date and now holds the position as one of Canada's largest co-operatives with over 400 members. This organization continues to work as an advocate for the value of co-operative mergers and the role this model could play in maintaining affordable housing for governments and charities alike.

**Union Sustainable Development Co-operative:** A Waterloo Region co-operative dedicated to providing stable affordable housing options to community members.

**Vacancy decontrol:** (informally rent gouging) Policy that allows landlords to increase rents to match market rates. For units that have had long term occupants, this could result in a large increased for incoming tenants, and a financial incentive for landlords to push tenants out.

**Whistler Housing Authority (WHA):** A branch of Whistler's government focused on ensuring housing options for Whistler residents living and working in the community. Currently they oversee 2270 units available for rent or to own.<sup>32</sup>

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<sup>32</sup> <https://www.whistler.ca/services/housing/about-whistler-housing-authority/>

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