

Montreal QB: *By-Law for a Diverse Metropolis*

INTRODUCTION

Montreal's new inclusionary housing program was established through the *by-law to improve the supply of social, affordable and family housing* (or *by-law for a diverse metropolis* in short). The by-law was adopted on 26 January 2021, and is slated to come into force on 1 April 2021.

The objective of the proposed policy is to preserve the diverse character of the city's neighbourhoods and to promote access to suitable housing for all residents, while also sustaining the vitality of the private residential market.

These objectives, which have a long-standing and broad consensus, were first set out in Montreal's Urban Plan in 2004. They also underpinned the city's first inclusionary program -- the *strategy for inclusion of affordable housing in new residential projects* (or *inclusion strategy* in short) adopted in August 2005.

The first draft of the by-law was released on 17 June 2019. The regulations were later revised following extensive consultations with the general public, constituent municipalities, development industry, housing advocates and others. The city also commissioned CIRANO (*Centre interuniversitaire de recherche en analyse des organization*) to undertake an economic analysis that examined the impact of the proposed regulations on the market, and including particularly housing starts and prices.

The by-law has been implemented under provincial legislation that amended Quebec's Land Use Planning and Development Act (*Loi sur l'aménagement et l'urbanisme*) in late 2017. Under this legislation, as a condition of issuing a residential building permit, Montreal and the other provincial municipalities are now able to enter into a development agreement with private developers requiring them to provide social housing, affordable housing and family housing in their new residential developments.

PROVISIONS

The following summarizes the main regulations of the city's new inclusionary by-law that effectively requires new residential developments to provide for social, affordable and family housing.

Subject Developments

The regulations apply generally to all residential developments of more than 450m², which is considered to be the equivalent of approximately 5 housing units. (The requirements are formally expressed in terms of m², but units are also used because it is easier for most to understand for most.) There is one exception: the family housing obligations apply to developments of more than 4500 m² (50 units).

The regulations apply to all developments adding residential units, including those going ahead under the approved as-of-right zoning, and conversions from non-residential to residential use.

Exemptions are made for the following:

- social or community housing;
- student residences belonging to an educational institution, and a non-profit or cooperative;
- affordable housing provided under various identified City, provincial and federal programs; and
- residential developments built on land sold by the City and protected by a housing agreement.

Developments subject to agreements under the current inclusionary strategy are also exempt.

Housing Types

There are different regulations for each of the three types of housing.

Social housing

This is housing provided through subsidies from a social or community housing program of the city or province. At the present time, this includes programs run by AccèsLogis Québec and AccèsLogis Montreal as well as the Municipal Office of Habitation de Montréal (OMHM). These subsidy programs, not the by-law, define the characteristics of the housing that must be provided.

The top priority of the by-law is to support the provision of social housing by securing developable land, either by itself or as part of a turnkey social housing development. The developers are responsible for contributing the land at 60% of its value, or the equivalent in fees-in-lieu. The housing can be constructed by the private developer or a non-profit organization, but in both cases construction will be funded by government programs.

Affordable housing

This is defined by the by-law as essentially housing provided by the private sector at a price or rent 10% less than their market value. It can be rental or ownership.

This housing is must be realized either through a recognized housing program or in partnership with a housing non-profit organization that will be responsible for controlling the affordability and occupancy of the units. At the present time, there are three recognized existing programs:

- 1 Affordable ownership housing benefiting from downpayment assistance through programs run by Accès Condos and the Société d'habitation et de développement de Montréal (SHDM).
- 2 Affordable rental housing supported by programs run by the Housing Co-Investment Fund and the Rental Housing Construction Financing.
- 3 Affordable rental housing sold by the developers to the city, and then transferred to a non-profit organization that will own and operate the unit.

The city is currently developing its own affordable ownership housing program. It is expected that other new programs will be introduced, possibly with different eligibility rules and income limits.

At the present time, the regulations call for the construction of affordable housing only in two affordable housing zones. These zones are located at major transit nodes where a substantial increase in the permitted density is expected to pay for the affordable housing. Other zones will be added in time where there is an opportunity to take advantage of density increases.

Family housing

This is defined by the by-law essentially as housing having three or more bedrooms, and a gross area of 86m² in the downtown and central neighbourhoods, and 96m² elsewhere. It can be provided as social, affordable or market housing, and rental or ownership.

Housing Set-Asides

The subject developments are essentially required to set-aside a percentage of the residential space for social, affordable and family housing. The general benchmark is 20%, but the requirement is altered in certain cases.

Social Housing

The basic set-aside requirement for social housing is 20% across the city.

That requirement is increased to 22% outside of the downtown when the housing contribution is provided on another site not contiguous to the original site. This increase is intended to encourage the inclusion of social housing on the original site.

Affordable Housing

There are different set-aside requirements in the two affordable housing zones: 10% in zone 1 and 20% in zone 2.

The difference in the set-aside requirements reflects the difference in the value of the permitted density increase in each case.

Family Housing

The set-aside requirements for family housing are these:

- 15% in the downtown, of that at least 1/3 must be in market housing; and
- 20% elsewhere, of that at least 1/4 must be in affordable housing.

The amount of family housing in social housing is governed by the funding programs, and not by the by-law.

Except for these specific limits, the developers are able determine how the family housing is distributed in the social, affordable and market housing.

Compliance Alternatives

The required housing can be made, generally at the developer's choice, through one or more of the following alternatives:

- constructing new housing (social, affordable, and family housing);
- providing vacant developable land (social housing);
- providing an existing building (social, affordable and family housing); and
- making a financial contribution through the payment of fees (social housing and affordable housing).

In the case of social housing, for developments of 4500m² (50 units) or more, the required contribution can be made through all of the compliance alternatives. For smaller developments, the contribution can be made only through the payment of fees.

In the case of affordable housing, for developments in the two affordable housing zones, obligation can be made through new construction, fee payments, or contribution of an existing rental building to a non-profit. Developments outside of the two zones must provide fees.

Family housing must be provided through the provision of units.

Financial Contributions

There are two sets of fees for the financial contributions:

- social housing fees, which are optional for developments of 50 or more units, and obligatory in developments of 5-49 units, and
- affordable housing fees, which are optional inside the affordable housing zones, and obligatory outside.

The social housing fees are based upon recovering the 60% of the value of the land otherwise necessary to meet the set-aside requirement. But those fees have been adjusted in two ways.

First, the fees have been modified to encourage the provision of land where the developments are capable of accommodating a separate minimum-sized building. (That minimum ranges from 30 units for timber-framed construction to 50 units for concrete construction with an elevator. With the 20% set-aside, the corresponding overall minimum development size is 150 to 250 units.) To encourage this provision, the fees for larger developments have been increased; while those below have been reduced.

Second, the fees also have been broken out to reflect the various market conditions across the city.

As a consequence, there are 25 different social housing fees, one for each of 5 geographic sectors and 5 size tiers. In the downtown, they range from \$59/buildable m² for the smallest developments up to \$118/m² for the largest developments. The corresponding rates are \$23/m² to \$46/m² in the most peripheral areas.

The affordable housing fees are based on what the market can absorb without substantially affecting prices/rents and production, as determined by the city's outside economic analysis. These rates fall well below what would be needed to recover the value of the units not delivered.

They also vary by the five sectors, ranging from a high of \$35.30/buildable m² in the downtown to a low of \$18.70/m² in the most peripheral areas.

The value of both sets of fees will be increased annually by 5% at the beginning of each year.

Off-Site Developments

Constructing housing or providing land on another site for social housing is permitted in certain circumstances .

In the downtown, social housing can be provided on another downtown site, but when that site is not contiguous to the original site, 10% more units must be provided.

Outside the downtown, social housing and affordable housing can be built on another site, provided the site is within 2 km of the original site.

Financial Compensation

When providing for social housing, the developers will be financially compensated in part for the land contribution. Separately, they will be also subsidized for the construction, if undertaken.

The compensation will be provided for the land, whether provided by itself or as part of a turnkey development. That compensation is intended to cover 40% of its market value.

The compensation, which is fixed in advance, varies by the five sectors. It ranges from a high of \$5552/buildable m² in the downtown core down to a low of \$213/m² in the most peripheral areas. These rates also will be increased by 5% at the beginning of each year.

Subsidies will be provided for the construction of social housing, whether built by the private or non-profit developers. This funding will come principally from the existing provincial or federal government programs, but it is expected that the City will have to top-up this funding.

No such compensation or subsidies are available for the affordable and family housing.

Affordability Protections

The by-law itself does not incorporate any affordability protections – specifically, price or rent thresholds and income eligibility limits – on the required housing units because the planning legislation supporting the by-law does not provide a certain authority for using these protections.

Instead, it will rely on the protections associated with the various government and other programs that support the provision of social and affordable housing. As a consequence, the non-profit agencies involved with these programs – and not the City directly – will be responsible for enforcing many of these provisions.

Housing Funds

The collected fees will go to two funds – one dedicated to social housing and the other to affordable housing.

The social housing fund will be used at least initially to pay the compensation for the land contributions from the developers, and to top up the provincial construction funding where needed. Other allocations, such as special housing needs, might be considered at a later date once the City has better understanding of the generated fees.

The affordable housing fund will be used to support the City's new affordable housing program now under development.

Projected Output

The by-law is expected to produce annually 600 social housing units and \$13.7 million in financial contributions. No estimates have been provided for the potential affordable housing.

COMMENTS

Review of Key Provisions

The by-law incorporates a number of important, and sometimes original, provisions.

The by-law obliges developers to provide for a diversity of housing – principally social housing, but also affordable housing and family housing – in new market developments across the City.

The housing generally can be provided through different options that vary by housing type. These generally include constructing the units, providing land and paying fees-in-lieu. The developers are able to choose from the available options.

The obligations generally apply to developments down to 5 units in size, but those under 50 units are able to fulfill their obligation through fees rather than land or construction.

The obligations apply, not only to developments getting a re-zoning, but also those proceeding under the approved as-of-right provisions.

The provincial planning legislation does not provide clear and certain authority for the City to use the by-law in protecting the ongoing affordability of the housing. So, to do this, the by-law will rely upon the regulations set out in existing and new individual programs for social housing and affordable housing. This approach has the merit of allowing for different programs to support various incomes and needs.

The regulations essentially are city-wide, but they have been adjusted to address local conditions and other factors. The set-aside requirements, fees-in-lieu and compliance alternatives all vary to some extent by housing type, development size as well as geographic sector. As a consequence, the regulations are particularly complex.

Social housing

The regulations are directed principally at providing for social housing, specifically by securing land for a separate building at least of 30 units in size, the minimum size for a viable operation.

The construction of the social housing can be undertaken by the private developer or a non-profit agency. In both cases, the construction will be funded by government programs.

When providing land, the developers must contribute it at 60% of its market value. This is the cost burden placed upon the developers by the social housing obligation.

The developers alternatively are able to pay fees-in-lieu of the land. The fees are based on rates that more or less will recover the value of the land. Those fees are also adjusted to discourage developers from providing fees rather than land in developments large enough to accommodate a social housing building.

Affordable housing

The affordable housing provisions are best seen as interim measures. The earlier draft proposals called for a more comprehensive and demanding inclusionary program applying a 20% set-aside across the City for all developments. But this was badly received by both the developers and housing advocates. The former felt it placed excessive demands on them, and latter felt the housing was not properly protected nor targeted to lower income households.

The City has retreated from these proposals, and is now developing a new affordable ownership program. But in the meantime, it is left with tentative measures that are unlikely to produce much lower-income housing.

These provisions are applied so far in only two “affordable housing zones”, centred on major transit nodes where the substantial increase in density is expected to pay for the affordable housing. Other zones will be added over time where advantage can be taken of increased density.

The payment of fees is obligatory in areas outside these two zones, and optional inside the zones. Those fees have been set a nominal rate that does not reflect the value of the lost housing. That means very little housing will be delivered because it is economic advantageous to pay fees.

Affordable housing is defined in a peculiar way in the by-law. It is housing provided at 10% below the rent or price for the equivalent market housing. In other words, it will mainly be market units albeit at a somewhat lower price and rent, and not housing necessarily affordable to lower-income households. The by-law will apparently rely on the definitions to control affordability more rigourously, but if so, the purpose and relevance of the by-law definition must be questioned.

Differences with *Inclusion Strategy*

The bylaw revises, while building upon, the City's *inclusion strategy* adopted in 2005.

The legislation passed in 2017 allowed for a fundamental change. It enabled the City to impose mandatory and fixed city-wide regulations. Before then, the 19 constituent boroughs were responsible for planning and development decisions. So, the City was only able to issue guidelines that the boroughs were able to interpret in how they were implemented. This led to many regulatory inconsistencies across the City.

The new by-law is different from the 2005 strategy in various other important ways:

- The new by-law targets 20% of new housing for social, 20% affordable and 20% family housing, while the strategy targeted 15% social housing and 15% affordable.
- The new by-law applies to projects of 5 units or more, while the strategy applied to developments of 200 or more units initially, and then later to 100 or more.
- The new by-law essentially applies to all developments, including those proceeding under the existing as-of-right provisions, while the strategy applied only to developments needing a major change to the zoning or planning provisions.
- The new by-law sets fixed fees for the financial contributions, while the strategy initially had no fees before going to negotiated and then fixed fees.

Some of these provisions were introduced through changes to the strategy.

In 2012, a fund was established to manage the financial contributions collected from developments where housing construction proved to be impractical or undesirable, and alternative off-site locations difficult to find. Although not initially permitted in the regulations, this led to negotiated financial contributions as the best or only means for compliance.

In 2015, various modifications were made to clarify the regulations and simplify its application. These included the following:

- the application threshold was dropped from developments of 200 to 100 units, in order to harmonize the regulations in the strategy with those adopted in some of the boroughs.
- the value of financial contribution was increased from the equivalent of a 15% set-aside up to 20%, in order to provide more funds for the acquisition of land for social housing.
- the value financial contribution was fixed in advance rather than negotiated site-by-site, in order to provide predictability and fairness.

Output

The earlier program produced significant results. As of end of 2018, 101 development agreements had been signed for developments that included roughly 44,000 housing units, or nearly 50% of the units built in Montreal during this time.

Out of this, 6,560 (about 500 per year on average) were social housing units either completed or committed; and more than 5,800 (about 450 per year) were affordable housing units, of which at least 2,700 had been completed. In addition, financial contributions of \$23 million for social housing was raised.

Comparison with IZ

Montreal's new by-law is different from the typical IZ programs in some notable ways:

1) IZ typically does not provide social housing.

The provision of social housing requires deep subsidies. The municipalities in the US have not had the necessary resources, nor been able to depend the state or federal governments for the funding. So IZ programs have focussed on a range of housing that can be provided through the regulatory system without subsidies.

The new by-law is directed at providing social housing in every development capable of accommodating a separate appropriately-sized building. This is achievable because the City has access to adequate provincial funding.

2) IZ typically provides affordable housing that is “below-market” housing”.

“Below-market” housing” is reserved for lower-income households earning below a pegged income level. It targets households that do not earn enough to afford housing provided by new market developments, but too much to be eligible for social housing.

The new by-law uses a peculiar definition of affordable housing. It is housing provided by the developers at a price or rent 10% less than the market equivalent. But taking 10% off the price or rent of a house – especially, an expensive one – does not necessarily make it affordable to lower-income households. It only makes it somewhat more affordable to households already able to afford a new market house.

3) IZ typically applies uniform regulations to all developments across the entire municipality.

This regulations do not generally allow for any changes to the set-asides, fees-in-lieu or other key obligations.

In the new by-law, the housing obligations will vary by type, location and size of the development. These provisions are intended to respond to the different market and other conditions across the City. There is merit in this because certain areas are more capable of supporting inclusionary housing than others. On the other hand, it substantially increases the complexity of the regulations.