

# Toronto ON: *Draft Inclusionary Zoning Proposals*

## BACKGROUND

The City's current draft inclusionary zoning (IZ) proposals are set out in a report to its Planning and Housing Committee, entitled "Inclusionary Zoning Draft Official Plan Amendment and Zoning By-Law Amendment" and dated 4 September 2020. These proposals will be the subject of public and stakeholder consultations in the latter part of 2020. The final recommended policies are expected to be released in the first half of 2021.

Implementation guidelines also will be developed and released along with the final recommended policies.

Earlier proposed "policy directions" were presented in a report dated 13 May 2019 to the Committee. These were the basis for an extensive round of consultations that led to the current draft proposals.

The City hired N. Barry Lyon Consultants Ltd. to undertake a financial impact analysis, entitled "Evaluation of Potential Impacts of an Inclusionary Zoning Policy", released first in May 2019, and then updated in May 2020. The City also conducted in-house a housing need and demand analysis, made available in draft in September 2020.

## Provincial Legislative Framework

Provincial legislation, implemented through amendments to Ontario's *Planning Act* and associated regulations, governs how the City and other municipalities are able to use IZ.

Legislation – Promoting Affordable Housing Act (formerly Bill 7) – enabling municipalities to adopt IZ was passed in December 2016. The implementation of IZ was made subject to regulations, which were issued in April 2018 in Ontario Regulation 232/18. This latter date represents the first time that municipalities in Ontario were actually able to use IZ.

This legislation itself places one notable constraint on the use of IZ. It prohibits the use of cash payments by developers in lieu of providing the affordable housing.

The associated regulations subsequently added the requirement that municipalities analyse the housing conditions and assess the impact of their IZ proposals on the housing market and financial viability of development.

The regulations also prohibit the application of IZ to developments of fewer than 10 units.

More recent legislation – *More Homes, More Choices Act* (formerly Bill 108) – passed in June 2019 has limited the application of IZ to two types of areas: 1) 'protected major transit station areas', and 2) to areas where a 'development permit system' has been ordered by the province.

## **PROVISIONS**

The following sets out the main components of the City's current draft IZ provisions.

### **Geographic Location**

Under these provisions, IZ will be applied only to new developments located in both of these two areas:

- 'protected major transit station areas' (PMTSAs) and
- strong or moderate growth areas.

As noted, limiting IZ to PMTSAs is prescribed by provincial legislation.

### MTSAs and PMTSAs

'Major transit station areas' (MTSAs) are defined as areas within approximately 500-800m of a planned or existing station serving higher-order transit. Higher-order transit are systems operating within a partially or completely dedicated right-of-way; and can include subways, inter-city rail, light rail and buses.

The City is required by the province to delineate the boundaries for each MTSA, identify development sites in them, and set density targets matching or exceeding prescribed provincial minimums.

The City will have 180 or more MTSAs when the current alignment and station locations are finalized for various planned lines.

'Protected major transit station areas' (PMTSAs) are a subset of MTSAs. The later must be designated as such before IZ can be applied in these areas. The designation requires more detailed studies and additional commitments. Not all MTSAs will be necessarily designated by the City as PMTSAs .

### Growth Areas

IZ will be applied only to certain market areas within the City – specifically, those that have experienced substantial growth, and where development economics can support the inclusion of affordable housing without financial incentives and while not jeopardizing development viability.

The proposals distinguish two types of growth areas where IZ will be applied:

- Strong market areas are areas that have experienced high levels of new housing development accompanied by significant escalation in prices or rents. 11 such areas have been identified.
- Moderate market areas are those where significant new development is occurring but without the price and rent growth seen in the strong market areas. There are two such areas, both smaller in size than the strong market areas.

## **Housing Set-Asides**

New condominium developments in strong growth areas will be required to provide 10% of the gross residential floor area for affordable housing, and those in moderate growth areas will be required to provide 5%.

New purpose-built rental will be required to provide 5% and 3% respectively for these areas.

The mix of the type and size of the inclusionary units also will be required to reflect that of the market units. So, in effect, the unit set-aside will match the area set-asides.

The inclusionary obligation will be applied to the total residential space of the development, and not just to the additional density resulting from a zoning increase.

At the direction of the P&H Committee on 4 September 2020, the potential will be explored for increasing the set-asides to a range up to 30% for new condos and 20% for new purpose-built rental.

The provisions require new developments to provide the same mix of family units in both the market and affordable units. The IZ provisions do not contain any specific additional requirements for family units.

## **Development Exemptions**

Developments below certain size thresholds will be exempt from meeting the inclusionary obligation. This exemptions will be applied to developments of less than 100 residential units and less than 8000m<sup>2</sup> of resident gross floor space within the City's downtown and central waterfront area, and 140 units and 10,000m<sup>2</sup> elsewhere.

Non-profit developments, residential care homes, institutional student residences and other developments specified in provincial regulation also will be exempt.

## **Compensation**

No compensation will be provided for developments meeting the inclusionary obligation.

Incentives will be only considered for developments exceeding the obligation by providing additional affordable housing or a deeper level of affordability.

## **Compliance Alternatives**

Under these provisions, the inclusionary units can be built on another site, but only at the discretion of the City, and provided certain (but so far undefined) proximity and occupancy requirements are met. The transfer also must be approved by a zoning amendment.

The off-site units must be located in a PMTSA and the same market area category as the originating site.

Cash-in-lieu will not be offered as a compliance alternative. This has been prohibited by provincial legislation.

## **Affordable Housing Definition**

The City is in the process of revising its definitions of affordable ownership housing and affordable rental housing. Those definitions will be released along with the final IZ recommendations.

The new definitions also will target a portion of the affordable housing for deeper affordability. In advance of determining the rental definition, the IZ proposals commit that at least 10% of the affordable rental housing will be secured at or below 80% of the current definition (which is currently set at 100% of average market rent).

Both of the new definitions will be based on an income-based yardstick rather than the average market rent as presently used..

## **Affordability Protections**

The affordability of the inclusionary units will protected for 99 years, beginning from the date when first occupied.

The affordability of the inclusionary units will be protected by legal agreements are registered on title. Among other things, the agreements will be used secure the timely delivery of the affordable units, ensure their long-term affordability and set out various reporting requirements. These additional measures will be developed and presented as part of the final recommended policies.

## **Transition Period**

New developments will be exempt when they have a complete application for a zoning by-law amendment, minor variance, or site plan approval and building permit application filed on or before 1 January 2022.

## **COMMENTS**

### **Key Provisions**

The draft policies provide the basis for an effective IZ program. Among the most critically important features are these:

- The policies will require the affordability of the inclusionary units to be maintained essentially permanently.
- Compensation will not be offered for the standard default affordable housing obligation. Any incentives will be reserved for developments providing a higher standard.
- The inclusionary obligation will be calculated based on the total residential space of the development (including the existing as-of-right space), and not just the additional density resulting from a zoning increase.
- The new (but still to be determined) definitions for affordable housing will target lower income households than the current definitions.

These particular provisions represent enhancements or clarifications to the initial policy directions of May 2019. They were the result of feedback from the extensive public and stakeholder consultations, which generally called for more demanding policies.

### **Projected Housing Production**

The current IZ provisions will constrain the production of affordable housing in a number of ways:

- by limiting the application of IZ to PMTSAs;
- by limiting the application to growth areas;
- by using relatively low set-aside rates; and
- by exempting smaller developments.

Limiting IZ to PMTSAs has been imposed by the provincial government, while the others come from the City.

The most significant constraints result from the PMTSA limitation and the low set-asides.

Due to these constraints, the City's current provisions when fully operational are most likely to produce less than 1000 affordable units per year, and not much more than 50 affordable rental units.

In comparison, if the City adopted a robust program based on the best practices used widely in the US, it could produce more than 3000 affordable units per year.

These figures also do not compare well with the City's aspirations. According to the report of 4 September, IZ is seen as "a key policy tool to help the City achieve its target of approving 40000 affordable rental homes and 4000 new ownership homes by 2030".

The single most effective action the City could take to boost these numbers is to increase the proposed set-asides. The City will also have to consider measures needed to boost the supply of affordable rental units.

### **Comparison with IZ in the US**

The draft policies for the most part align with the best practices used in IZ programs across the US, but there are still some notable differences:

- 1) In the US, IZ is almost universally applied across the entire jurisdiction, and not specifically to certain areas. Targeting only major transit stations has been imposed by provincial fiat, but the City itself has chosen also to limit IZ to growth areas.
- 2) In most cities in the US, developers are allowed to buy-out their affordable housing obligation – albeit, often at the discretion of the municipality – through the payment of cash-in-lieu. Such practices are prohibited by the province.
- 3) While there is some variation, the inclusionary obligation in the US generally applies to developments of 10 or more units. The City will apply the obligation to developments of 100 or more units in certain areas and 140 in others.

- 4) While there is some variation, most programs in the US impose a set-aside requirement of 20%, if not higher. The City will set the set-asides at 10% for affordable ownership units and 5% for affordable rental.

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