

Inclusionary Zoning: US Evidence and Implications for Ontario

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1. Introduction

In December 2016, the Province of Ontario introduced legislation that will allow municipalities to enact inclusionary zoning (IZ) as part of a broader plan to increase the stock of affordable housing. This was welcome news for many who have called for inclusionary zoning as part of the solution to Ontario's affordable housing crisis.

At the same time, the impact of IZ will depend on how it is implemented at the provincial and municipal levels. The legislation, regulations and bylaws must respond to the evidence on what is effective and what is not for generating a significant volume of affordable housing.

Drawing upon US evidence, this paper provides an overview of IZ and the key ingredients to ensure its success in Ontario.

2. Inclusionary zoning: Key considerations for the Ontario context

Inclusionary zoning (IZ) refers to programs requiring developers to provide affordable units as part of residential development. According to a comprehensive database of US programs¹, there are more than 500 IZ programs in 482 jurisdictions in the US; almost two-thirds of these have been implemented since 2000, though some began as far back as the 1970s. These programs have directly produced an estimated 150,000 affordable units, and have indirectly supported the production of many more via alternative options such as in-lieu payments.²

US analysts agree that the key requirement for a successful IZ program is a strong, active housing market with significant new development.³ Evidence from a scan of jurisdictions shows that mandatory IZ programs with clear guidelines and consistent, predictable administration are most successful.⁴ Under these conditions, IZ programs can produce

¹ Stromberg & Sturtevant, 2016.

² Williams et al, 2016.

³ Sturtevant, 2016; Williams et al.

⁴ Sturtevant.

significant numbers of long-term affordable housing units, and help to maintain economically- and socially-integrated neighbourhoods.

In order to realize these benefits, though, implementation of IZ policy must be done right. There are a range of risks if IZ regulations and bylaws are implemented incorrectly:

- municipalities may simply opt not to implement IZ;
- implementation may produce few new affordable units;
- IZ might fail to produce housing priced below what the market is already providing;
- IZ might not help to address the needs of lower-income residents; and
- units produced through IZ programs might revert to full market price over time.

Below, we examine key considerations for IZ policy in Ontario:

- What volume of affordable units is realistic?
- How should IZ programs serve those facing affordability challenges?
- Is it necessary to compensate developers for IZ units?
- How can IZ increase the supply of rental and deeply affordable units?
- How can jurisdictions preserve the affordability of IZ units over the long term?

a. What volume of affordable units is realistic?

Lessons from best practice

A key question to be determined in setting targets for IZ programs is the “set-aside” – that is, the proportion of units or floor area that must be provided for affordable housing in each development. Programs aim to achieve the maximum possible affordable housing without negatively impacting the rate of development or cost of market-priced units.

Most US programs require set-asides over 10%; twenty percent require set-asides over 20%.⁵ Evidence suggests that there is no single, optimal set-aside requirement for IZ programs; instead, local set aside targets should be defined with reference to the area’s market context and housing needs.⁶ Further, offering a range of set-aside and depth of affordability requirements is recommended by some analysts as an effective way to tailor programs to local sub-markets⁷, and keep development feasible while promoting mixed-income neighbourhoods.⁸ An example of this flexible approach is New York City’s recent Mandatory Inclusionary Housing program (MIH). Under that program, new developments in designated areas must set aside 25 percent of their floor area for units priced below 60% of Area Median Income, or 30 percent of floor area for units priced below 80% of AMI.⁹

How does Ontario compare?

⁵ Stromberg & Sturtevant.

⁶ Sturtevant.

⁷ Williams et al.

⁸ Hickey, 2015.

⁹ Housing New York, 2016.

Ontario's draft regulations for IZ¹⁰ limit set-asides to just 5%, with the exception of high-density transit hubs where set-asides can be up to 10%. These set-asides are far below those in the majority of US programs, and will not yield the maximum possible affordable housing to address the crisis. This province-wide limitation deprives local jurisdictions of the opportunity to establish IZ requirements that respond to market context and local need.

b. How should IZ programs serve those facing affordability challenges?

Definitions of "affordable"

The purpose of IZ is to leverage new development to create affordable housing – but how "affordable" is defined will have a major impact on the ability of IZ to mitigate the housing crisis many Ontario jurisdictions are facing.

Ontario's Inclusionary Zoning provisions define housing affordability with reference to the Provincial Policy Statement,¹¹ which defines "affordable housing" in relationship to both market prices and average incomes. Section 6 of the PPS defines "affordable" as follows:

"a) in the case of ownership housing, the least expensive of:

1. housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income for low and moderate income households; or
2. housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the regional market area;

b) in the case of rental housing, the least expensive of:

1. a unit for which the rent does not exceed 30 percent of gross annual household income for low and moderate income households; or
2. a unit for which the rent is at or below the average market rent of a unit in the regional market area."¹²

Low and moderate income households are defined as:

"a) in the case of ownership housing, households with incomes in the lowest 60 percent of the income distribution for the regional market area; or

b) in the case of rental housing, households with incomes in the lowest 60 percent of the income distribution for renter households for the regional market area."

With its reliance on both income and market-based definitions, this definition is cumbersome and ambiguous; to function well, IZ programs require a consistent, absolute,

¹⁰ Ontario, 2017.

¹¹ Ontario, 2016.

¹² Ontario, 2014.

legally-verifiable affordability requirement. Long-standing policy in the US suggests that IZ programs function best with a uniform, income-based definition of affordable housing.¹³

Types of housing and their relative affordability

In order to have an impact on the market, IZ must produce housing that is accessible to people not currently able to afford appropriate housing. Housing type has an impact on that affordability level.

In most US jurisdictions, the “below-market” definition is expressed as an income threshold, based on a standardized calculation of housing affordability. A review of US IZ programs finds that just over half target households with incomes between 50% and 80% of Area Median Income (AMI); fewer than two percent exclusively target very low-income households with incomes below 50% of AMI.¹⁴

To be affordable to these income groups, many programs focus on rental housing rather than ownership housing. Among IZ programs focused on homeownership, 28 percent target households with incomes between 80% and 140% of AMI.¹⁵

AMI is calculated annually by the Department of Housing and Urban Development (HUD) for each county and metropolitan area, using data from the American Community Survey, and incorporating a Consumer Price Index forecast to estimate anticipated income growth. Jurisdictions determine the affordability requirements for their IZ programs, and use the AMIs provided by HUD to define the locally-relevant income thresholds.

There are few Ontario examples of calculating a below-market housing affordability threshold. Research conducted in 2006 on the Toronto housing market showed that an annual household income of \$72,000 would be required to afford the minimum price for a new-built ownership home suitable for a family of four (defined as a two- or three-bedroom condominium or townhouse).¹⁶ This is about 84 percent of Toronto’s 2006 median income for a family of four.¹⁷ Because house prices have increased steeply in the years since this research was conducted, the affordability threshold would be much higher in today’s market – while median incomes have barely increased.

In order to meet the needs of households who are priced out of the market, the affordability requirement for IZ programs in Toronto would need to be set substantially below this threshold, making ownership housing a limited tool for creating homes affordable to lower income residents and reinforcing the need for a focus on affordable rental housing.

¹³ Drdla, 2016a.

¹⁴ Stromberg & Sturtevant, 2016.

¹⁵ Ibid.

¹⁶ Drdla, 2006.

¹⁷ Calculated using Statistics Canada data table [98-400-X2016105](#) for Census Family Total Income Groups by Census Family Structure & Size. Constant 2015 dollars from this table converted using Bank of Canada inflation calculator at <https://www.bankofcanada.ca/rates/related/inflation-calculator/>.

How does Ontario compare?

Ontario's draft IZ regulations allow local jurisdictions to determine the income target for households housed through their IZ programs. In order to ensure that their IZ programs produce housing accessible to those unable to afford what the market already provides, regions and municipalities will require regularly-updated data on area incomes and the cost of new-built housing, as well as a formula for calculating the target income threshold for below-market housing to be produced by IZ. These targets must be responsive to differences in geographic area and household type. They must also deliver the housing type most likely to be affordable to lower income residents. The current regulations exempt rental housing development from IZ and set short affordability limits on the IZ units, contexts that make ownership housing the more likely housing form generated by the regulations, despite there being a pervasive need for below market rental housing in Ontario.

c. Should jurisdictions be required to compensate developers for IZ units?

Is there a need for incentives?

A third consideration when framing IZ policy is whether municipalities should offer incentives, or compensate developers for meeting program requirements. That is to say, should IZ focus on the contribution from the developer or should it be, in whole or in part, a mechanism through which governments fund new affordable housing using incentives and payments?

Evidence from the US is clear that consistent, reliable and mandatory IZ programs are most effective.¹⁸ More than 80 percent of US programs are mandatory, with affordable units required for project approval; in addition, a small number of the most productive big-city programs are formally voluntary, but are treated as though they are mandatory.¹⁹ Mandatory programs are more predictable and establish a level playing field for development. Evidence suggests that where program requirements are inconsistent or unpredictable, developers will opt to do business in other, more predictable jurisdictions.²⁰ In fact, voluntary programs have been tried in some jurisdictions and found to be ineffective and subsequently been made mandatory.²¹

Evidence from the US also does not support compensation or incentives. While most US programs offer some mechanisms for mitigating costs associated with IZ,²² these typically do not aim to compensate developers for a fixed portion of costs associated with the provision of affordable units, as the Ontario regulations would require. Instead, they facilitate the development process (e.g. expedited approvals), lower costs (e.g. modified parking requirements), and / or allow for higher-yield development (e.g. density bonuses). Density bonuses are by far the most common mechanism, and are associated with very

¹⁸ Sturtevant.

¹⁹ Stromberg & Sturtevant.

²⁰ Sturtevant.

²¹ Drdla, 2017.

²² Sturtevant; Williams et al.

successful IZ programs that yield significant numbers of affordable units²³ (though, they may have negative impacts for quality of life and services in a neighbourhood unless planned carefully).²⁴

Other mechanisms such as direct construction subsidies and tax abatements are less widely used as they are costly to the jurisdiction, reducing the overall benefit of the program because they limit the development of affordable units to what the jurisdiction can afford to subsidize.²⁵

Impact on pace or price of new housing

While some suggest that compensation is required to prevent IZ from slowing the overall rate of development and raising housing costs across the market²⁶, a comprehensive review of empirical research demonstrates that IZ programs have “generally no impacts on supply and no or modest impacts on prices.”²⁷ Claims that IZ will make housing less affordable for everyone—as Ontario’s development industry has suggested²⁸—are not supported by the evidence.

Instead, US evidence shows that over time, IZ programs’ main market impact is to moderate land prices, as developers incorporate program requirements into the cost of doing business, and modify land purchase prices accordingly.²⁹ In fact, IZ is coming to be understood as a mechanism to harness inflated land value for creating affordable housing.³⁰ Further, increases in land value are, in large part, a product of public investment and public policy. Jurisdictions directly enable development through land servicing, infrastructure investments and investments that improve the local quality of life; they also unlock enormous potential value through policy decisions, as when they re-zone industrial land as residential, or increase an area’s allowable density.³¹

As spiraling, growth-driven land costs precipitate housing affordability crises in pressured markets around the globe, cities and regions are adopting mechanisms to lay claim to the growth they enable, for public benefit. IZ works particularly well for this purpose when it is integrated into the land use planning and development process.³² Vancouver, for example, now holds on to 75 percent of the increased value it creates when re-zoning for higher density.³³ And New York City’s new Mandatory Inclusionary Housing program targets areas where new housing capacity is approved through land-use actions.³⁴ One analysis of the

²³ Calavita & Mallach, 2009; Sturtevant; Williams et al.

²⁴ Calavita & Mallach.

²⁵ Williams et al.

²⁶ BILD, 2016; Williams et al.

²⁷ Sturtevant.

²⁸ BILD.

²⁹ Mock, 2016; Sturtevant.

³⁰ Drdla, 2017.

³¹ Calavita & Mallach.

³² Calavita & Mallach.

³³ Drdla, 2016c, p.31.

³⁴ Housing New York.

principle of land value recapture recommends a two-tiered IZ program in places with very strong growth: tier one would “impose modest inclusionary requirements within an existing zoning framework, incorporating those incentives which can be offered without undue cost to the public,” while tier two would apply to areas that are being significantly up-zoned, and would require deeper affordability and / or higher set-asides.³⁵ Such a system could extend IZ programs’ ability to meet the needs of lower-income households – as discussed next.

How does Ontario compare?

Ontario’s draft regulations would require municipalities to compensate developers for 40 percent of the cost of making units affordable. This requirement is framed as “measures and incentives,” implying that IZ programs may vary dependent upon municipalities’ willingness and ability to meet the cost of this contribution. This measure risks limiting the provision of new units, as the cost to cash-strapped municipalities will become a factor in jurisdictions’ willingness to generate new homes through IZ.

In fact, in very active markets such as Toronto, even token compensatory measures are unnecessary. A recent analysis of the economics of inclusionary development concludes, “In very strong development environments (substantial amounts of new construction and rehabilitation, steady rent and price growth, low vacancy rates), IZ policies can yield development of new workforce housing units *without subsidy or other development incentive from the local jurisdiction*.”³⁶ In recognition of this, jurisdictions such as New York City have revamped their IZ programs to eliminate costly subsidies, instead using city resources to increase the number of affordable units or deepen affordability beyond their standard IZ program requirements.³⁷

d. How can IZ increase the supply of rental and deeply affordable units?

Best practices in creating affordability

US evidence cited here has clearly shown that, where market conditions are appropriate for IZ, mandatory programs can create affordable housing without undue cost to developers, purchasers, or jurisdictions. But the depth and share of affordability that can be achieved is limited. Most US programs target households earning 50% to 80% of the area median income; for ownership housing, a significant share target up to 140%.³⁸ In addition, units produced through regular IZ requirements are often of the same form and tenure as other units in a development. In markets where condominiums account for the vast majority of new development, IZ programs only yield ownership housing unless provisions allowing for cash in lieu or offsite development are employed.

As discussed above, in jurisdictions experiencing rapid growth and high rates of development, greater affordability can be achieved when IZ is paired with increased density. For example, in designated re-zoned areas under New York’s MIH program, in

³⁵ Calavita & Mallach, p.21.

³⁶ Williams et al., p.19, emphasis added

³⁷ Drdla, 2016.

³⁸ Stromberg & Sturtevant.

addition to the standard IZ requirements, the City can opt to apply a requirement for deep affordability (20% set-aside for 40% AMI).³⁹

Alternative options for fulfilling IZ requirements can sometimes also promote deeper affordability. Some US jurisdictions, for example, allow developers to provide fees in lieu of affordable units, and use these funds to subsidize or produce housing for lower-income residents. Off-site development, too, can sometimes yield housing that is more affordable, particularly if the alternative site has lower land costs. Similarly, in some US cities, developers can meet IZ requirements through rehabilitation of, or subsidies to, existing low-income housing (though in New York City, this mechanism was too popular and has since been moderated.)⁴⁰

Generally, though, IZ programs will require additional resources and mechanisms to meet the needs of lower-income households.⁴¹ This is where incentives and subsidies can come into play. In the case of New York City, for example, City subsidies may be used alongside the deep affordability requirement, to further extend the amount and affordability of inclusionary housing. Ontario can use other forms of “stacking” or combining IZ units with other programs to bring rents low enough to serve very low-income households, as the units from IZ alone tend not to achieve rents accessible to that population. Finally, many IZ programs extend affordability and enable creation of rental housing through partnerships with non-profit housing providers whose mission is to provide housing for very low-income tenants.⁴²

How does Ontario compare?

As currently framed, Ontario’s IZ regulations do not promote the creation of rental and deeply affordable units; in fact, they inhibit it. First, they will not permit the application of IZ requirements to purpose-built rental housing, thus eliminating the most direct mechanism for creating rental housing through IZ. Secondly, they limit the alternative mechanisms that have enabled the creation of deeply affordable housing in the US: for example, they do not allow municipalities to accept fees in lieu of units. The regulations also place restrictions on off-site units that would reduce potential cost savings from building off-site, and limit the capacity of non-profit housing providers to benefit from this option. For example, the regulations require that IZ units make up only half of any off-site development, which would exclude most non-profits whose mission is to provide affordable housing only.

Given the diversity of Ontario’s housing markets, where alternative mechanisms for fulfilling IZ requirements are offered, they should be determined by the local jurisdiction, respond to local market conditions and housing needs, and yield a benefit equivalent to, or greater than, the direct production of affordable units on-site.

³⁹ Drdla, 2016.

⁴⁰ Hickey.

⁴¹ Sturtevant.

⁴² Hickey et al.

e. How can jurisdictions preserve affordability of IZ units over the long term?

Best practices in affordability periods

Finally, IZ policy must determine the affordability period of the units created through local programs.

An extensive review of this question in US jurisdictions⁴³ finds that eighty percent require units to remain affordable for at least thirty years; thirty percent require perpetual or 99-year affordability. In many jurisdictions where perpetual affordability requirements are not legally permissible or politically feasible, affordability is made effectively perpetual by re-setting the affordability period each time an IZ unit is sold. In response to substantial losses of affordable IZ units through expiry of affordability periods in jurisdictions with long-standing IZ programs such as Chicago and Montgomery County, Maryland, the trend across the US is now to increase affordability periods for IZ programs or renew them on a unit-by-unit basis. Another legal mechanism for ensuring long-term affordability is a provision allowing the jurisdiction or a non-profit the right of first refusal when units are sold, but this can prove costly if the unit must be purchased at market value.

Maintaining affordability also requires strong legal mechanisms. In the case of ownership housing, almost all US jurisdictions reviewed employ restrictive covenants on the deed, whose provisions are passed on to each new owner. In many cases, deed covenants must be supplemented with additional legal mechanisms in order to protect IZ units from foreclosure or illegal sale. These include requirements that buyers obtain mortgages from designated lenders; provisions for the jurisdiction to receive notice of default or delinquency; a pre-emptive right to “cure” foreclosure and / or to purchase the unit; and deeds of trust in which the jurisdiction holds legal title to the property.

How does Ontario compare?

In Ontario, proposed regulations would limit affordability periods to a twenty-to-thirty-year span. This is out of keeping with best practices developed through decades of IZ implementation in the US.

Ontario’s regulations also limit IZ requirements to ownership buildings, and require that offsite units to be part of larger, market-priced developments, limiting the likelihood that municipalities and non-profit providers will be engaged in the provision of perpetually-affordable housing under IZ. This contrasts sharply with patterns in the United States, where jurisdictions often directly administer tenant selection and income verification for all IZ properties, or partner with non-profits to perform these functions, and where housing produced through off-site development is usually operated by mission-driven housing providers or the local housing authority, with pre-existing procedures for selecting income-qualified tenants.

Ontario’s regulations set out a detailed formula for sharing equity from IZ units after the affordability period ends; municipalities and regions will also require a framework for

⁴³ Hickey et al.

determining sale price while units are still designated affordable. US jurisdictions apply a range of resale formulas for maintaining affordability of ownership housing over the long term, with varying emphasis on allowing owners to accumulate equity versus keeping the price affordable for subsequent purchasers. Many use an index-based formula calculated from the original purchase price plus a set rate of appreciation tied to changes in AMI or Consumer Price Index. This kind of formula keeps the home affordable to the same targeted income group over time. Others use a fixed-percentage formula where the owner keeps a set annual appreciation rate, or an appraisal-based / market-based formula. Most also allow sellers to increase the sale price to reflect cost of repairs and improvements. Some jurisdictions also recapture a designated portion of the sale price and put these funds towards the development of new affordable housing.

3. Considerations for Ontario

Many jurisdictions in Ontario are facing an unprecedented housing crisis. Escalating land prices and increasingly costly private development have pushed ownership out of reach for all but the highest-income households, while low vacancy rates and poor conditions make rental housing inaccessible and inadequate. Unaffordable development in city cores and near transit lines is displacing lower-income households, producing segregation and concentration of wealth and poverty, and deepening divides between neighbourhoods and municipalities. Decades of neglect from higher orders of government have hampered local jurisdictions and non-profit entities from responding to the needs of households shut out of the private market, including lone mother-led families, people with disabilities, women and youth fleeing violence, single older adults, immigrants and refugees, and urban Indigenous people. As a result, homelessness is on the increase among all of these populations, and shelter capacity is insufficient to meet demand in Toronto and other major urban centres.

Unfortunately, Ontario's proposed regulations will prevent local jurisdictions from using IZ to respond to the housing crisis. As noted above, the program defined by the regulations will not meaningfully increase access to affordable housing for households shut out of the market.

US evidence sets out a number of changes and measures that would enable Ontario's IZ legislation to fulfill its potential.

a. Enable jurisdictions to determine locally-appropriate set-asides.

A majority of US jurisdictions require developers to set aside over 10 percent of units or floor area for affordable housing; a substantial share require over 20 percent. In markets such as New York City where the pace of development and price escalation resemble that in the Greater Toronto and Hamilton Area, set-asides can be as high as 40 to 50 percent in designated zones. Ontario's jurisdictions must be free to establish affordability requirements appropriate to local development trends and with attention to geographic sub-markets.

b. Ensure that IZ produces below-market housing.

IZ programs should fill a market gap, not simply enable the production of more of what the market is already producing. This requires careful assessment of housing costs and household incomes in each jurisdiction, in order to set appropriate affordability thresholds and housing types for the units produced through IZ. Ontario municipalities and regions will require high-quality data at small geographies on prices at the bottom end of local sub-markets (not only average housing prices) in order to define their local IZ targets. They will also need to establish mechanisms to ensure that households benefiting from IZ are those who would be otherwise unable to afford housing in the private market. Regulations that favour the creation of ownership housing over badly needed rental housing will impede that effort.

c. Make IZ affordable for taxpayers.

Revenues from real estate development rely heavily on taxpayer expenditure through municipal and provincial infrastructure provision and other public investments that make municipalities a desirable place to live. In recognition of this, jurisdictions such as Vancouver and New York City have implemented successful measures to share more equitably in gains from development, ensuring that up to 75 percent of the value created through municipal action is recaptured for the benefit of taxpayers. IZ is an important mechanism for recouping a portion of the public investments that enable development. Decades of US experience demonstrate that when implemented without taxpayer-funded incentives, IZ's costs are transferred back to land purchase prices, thereby moderating and stabilizing increases in land value. Where incentives are required, programs are hampered by limited local public resources. No compensation from local jurisdictions should be required under Ontario's regulations.

d. Leverage IZ to produce rental and deeply-affordable units.

Evidence shows that IZ on its own does not produce deeply affordable housing. Off-site development, funds in lieu, incentives, and stacking of public programs can help fill this gap. Ontario's regulations must enable jurisdictions to maximize the potential of IZ by allowing for such measures, and by supporting the capacity of non-profit housing providers to purchase and operate IZ units as deeply affordable rental and supportive housing.

e. Safeguard long-term affordability.

Long-term US experience demonstrates all too clearly the risks of limited affordability periods and the loss of affordable units that can result. By limiting affordability periods to 20 to 30 years, Ontario's proposed regulations pass the affordable housing problem down to the next generation. Instead, the regulations should emulate best practices from the US by allowing for perpetual affordability, and setting out mechanisms to safeguard IZ units in the long term.

4. Conclusion

If implemented creatively and with attention to local needs and context, IZ offers Ontario's cities and regions an opportunity to harness the province's robust real estate market to create affordable housing in a wide range of forms, tenures, and price levels to meet local needs. With the promise of housing investments from higher orders of government, jurisdictions can plan to bundle their IZ programs with federal National Housing Strategy funds and provincial housing and homelessness funds, to make best use of all these resources to rapidly expand supply for those most impacted by the housing crisis.

Best practices from other jurisdictions provide clear guidance on the mechanisms that will ensure IZ policies have a significant, positive impact on access to affordable housing. Most importantly, they show that municipalities need to be able to tailor their IZ programs to local markets and needs. Tight restrictions on that flexibility are unlikely to produce positive benefits for communities, while looser ones place no real risk on the viability, pace or cost of housing development. These best practices should be used to shape the revisions to the current draft regulations on IZ now being reviewed by the Housing Ministry.

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