

INCLUSIONARY ZONING:

Six insights from international experience

By Martine August and Giuseppe Tolfo



SUMMARY

Inclusionary zoning (IZ) is increasingly viewed as a best practice in planning, and a potential solution to crises in housing affordability. For jurisdictions considering this approach, we offer six insights into IZ from the international experience. IZ was originally conceived as a suburban policy, and is far from monolithic, with a vast range of potential designs that influence its effectiveness. European adaptations of IZ are based on different conceptions of property that may inspire Canadian planners. As a market-driven policy, IZ is limited in its potential to produce affordable housing and, in areas with hot property markets, IZ has the paradoxical potential to be exclusionary, generating gentrification and displacement.

RÉSUMÉ

Le zonage inclusif (ZI) est de plus en plus considéré comme une pratique exemplaire en matière de planification et une solution potentielle aux crises de l'abordabilité du logement. Pour les territoires qui envisagent cette approche, nous offrons six points de vue sur le ZI à partir de l'expérience internationale. Conçu à l'origine comme une politique suburbaine, le ZI est loin d'être monolithique, avec une vaste gamme de conceptions potentielles qui en influencent l'efficacité. Les adaptations européennes du ZI sont fondées sur différentes conceptions de la propriété susceptibles d'inspirer les urbanistes canadiens. En tant que politique axée sur le marché, le ZI présente un potentiel limité de production de logements abordables et, dans les régions où les marchés immobiliers sont très actifs, le ZI peut paradoxalement avoir un effet exclusif, entraînant embourgeoisement et déplacements.

In April 2018, the Province of Ontario passed legislation enabling municipalities to craft inclusionary zoning (IZ) policies. Ontario now joins British Columbia, Quebec, and Manitoba in having authorized some form of IZ. In Ontario, IZ is viewed with hope as a potential solution to affordable housing crisis. While increasingly viewed as a best practice in planning, enthusiasm for IZ often draws on limited research-based evidence, which can easily be misinterpreted or misunderstood. With this article, we share insights into IZ that will guide planners and policy makers in making better sense of this policy.

To begin, what is IZ? It is a tool used in planning to require that affordable housing be provided in new residential developments, and it can be implemented in various ways. IZ can be voluntary or mandatory. Policies differ in the quantity and type of affordable units required, the depth and duration of affordability, and in the thresholds that trigger IZ requirements (e.g., 10 or more units in Ontario). In addition, they may include incentives, cost offsets, in-lieu payments, and off-site provision of affordable units. While the expected outcomes of IZ policies will differ depending on local

priorities (as we will describe), one measure of "success" is that IZ produces affordable housing that would not otherwise be built.

IZ is a market-based affordable housing program, which accounts for its popularity in a context of declining government funds for housing. It works by tapping into real estate inflation and leveraging market pressure to promote affordability goals. In practice, this means linking the construction of affordable housing to market-rate development, and shifting the responsibility for affordable housing to private market developers. Because it mandates developers to produce affordable units, IZ is a polarizing policy. Housing advocates point to its potential to produce affordable units, detractors fear it will suppress the market, and researchers argue that both its effects on delivering affordability and cooling down markets have been grossly over-stated.¹

For this article we share insights from scholarly literature on IZ with readers of *Plan Canada*. Rather than reproducing excellent work on recommendations and best practices,^{2,3,4} we have pulled out six insights into IZ learned from international experiences, for planners to consider as municipalities in Ontario craft their own policies, and as jurisdictions across the country consider this approach.

(1) IT'S A SOLUTION BUILT IN THE SUBURBS

IZ is a policy designed in the American suburbs to provide moderately-priced workforce housing in the face of 'exclusionary' practices and policies. It may not easily transfer to urban contexts or produce deeply-affordable housing.

Canadian planners can better understand IZ with some knowledge of its history. IZ is often seen as a big-city policy tool used to harness development pressure in heated markets to create affordable housing. In fact, IZ was originally designed in the US in the 1970s as a suburban policy. It has largely been adopted in smaller places and suburbs, with a goal to overcome *exclusionary* suburban practices like large-lot zoning, NIMBY-ism, and restrictive ordinances barring lower-income and often racialized residents.

Early IZ policies had three early goals. The first was to thwart homeowner resistance to new affordable housing proposals by making it a requirement for all developments.

A second goal was to shift the costs of affordable housing onto private developers. A third goal was to "open up the suburbs" to lower-income families and racial minorities, providing access to opportunity in amenity-rich communities, while dispersing poverty away from inner cities.

What did these early policies look like? One of the first in the US was launched in Montgomery County, Maryland, a bedroom community outside of Washington, D.C. with 950,000 residents. Responding to growth pressure and up-market development, the county launched its now-famous Moderately-Priced Dwelling Unit (MPDU) program to produce workforce housing. For developments of 20+ units, the program required 20% be set-aside as ownership and rental housing affordable to people earning 65-70% of the area-median income (AMI). MDUP did not provide incentives or offset developers' costs, but did allow for greater development density in return for extra affordable units.

In California, IZ was first launched in the small city of Palo Alto in 1973. Like many suburban communities, it was experiencing 'spill over' inflationary housing market pressures, and adopted IZ to ensure workforce housing for middle-income residents would be built. Since then, 170 communities in California and 400 communities across the US have followed suit with their own policies. Most of these are small and mid-sized cities or suburban communities, aiming to produce moderately-priced housing.

Because IZ was designed to provide affordable options in the suburbs, early advocates believed it had no role to play in the inner-city. From their perspective, the goal was to get lower-income people out of poor inner city communities into the suburbs. Using IZ in inner cities seemed nonsensical because housing was already cheap.

The urban context today has changed. Affordability crises are ubiquitous across the US and Canada, and gentrification is putting pressure on inner-urban housing in cities of all sizes. These pressures are driving lower-income and racially-marginalized residents from central areas where housing costs are high. At the same time, cuts to social housing programs have left municipalities scrambling for ways to provide affordable accommodation. In this context, municipalities are turning to IZ for

new reasons – to provide deeply affordable housing, and to do so in all areas of the city.

Transferring a policy conceived for the suburbs into an urban context, and expecting it to produce deeply affordable units, may not work; indeed it can have unexpected consequences. In new-build suburbs, displacement is a minor concern. In cities, by contrast, new developments – even with IZ-required affordable units – can remove existing affordable units from the market. Development may also spur property value increases that intensify gentrification and exclude lower-income households.

(2) IT'S A MARKET-BASED PROGRAM THAT PRODUCES LIMITED AFFORDABLE HOUSING
In order to produce affordable units, IZ works best in places with strong real estate markets. Even in hot markets, there are limits to the quantity and depth of affordability it can generate.

Program elimination and reduced funding for social housing has put pressure on affordability in Canadian communities since the mid-1990s. Today, IZ is seen by municipalities as a potential silver bullet – it relies on the private market to deliver affordable housing with little or no public expense. In part, municipal decision makers have come to view IZ with hope because it is the only game in town. As a market-based solution, however, there are limitations on its effectiveness in delivering affordability.

The first limitation is that IZ requires a strong real estate market in order to work, a pattern identified not only in North America, but in Australia, New Zealand, and England.^{5,6,7,8} According to Emily Paradis (2018), the policies that have provided the most affordable housing and at deeper levels of affordability, are in places with rapid growth and strong development pressures, like New York City.

Strong real estate markets, however, are not present everywhere, and cannot be counted on forever. For this reason, IZ delivers affordability unevenly. It favours strong markets over areas with weak markets that may equally need affordable housing. Depending on economic growth in order to deliver affordability is also risky, in that it links the provision of an important social good to volatile real estate markets. If markets soften, planned units can be cancelled and IZ programs can lose their appeal.



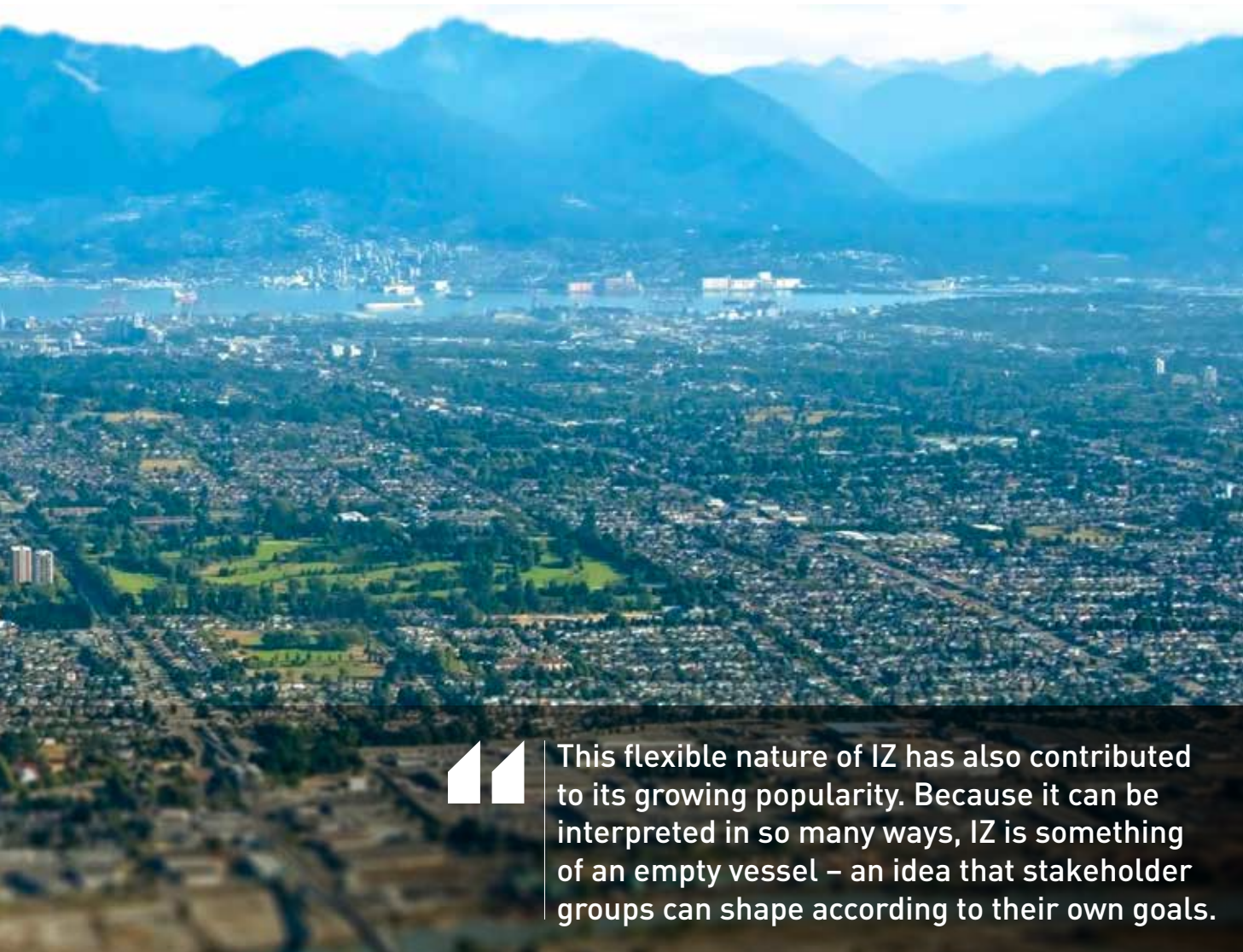
As a case in point, researchers Mukhila and colleagues (2015) found that the market crash in 2008 “dented the zeal” of policy makers to implement IZ in Los Angeles and Orange Counties. Across California, falling real estate values reduced the power of municipalities to negotiate programs with more rigorous affordability requirements.

A second issue with market-based programs is that there are natural limits to how much affordable housing they can deliver. IZ cannot rival the output achieved through public provision of subsidies and affordable housing, and will never come close to meeting contemporary demand. In a review of several programs, Schuetz and colleagues (2011) found that “only modest amounts of affordable housing have been produced through IZ programs,” far below the quantities built under the US

government’s Low-Income Housing Tax Credit (LIHTC) program. To take the state of California as an example, only 29,000 units were produced by IZ policies between 1999 and 2006 – just over 4000 units per year in a state of 35 million.⁹ These low numbers cannot be attributed to program design, but to the realities of relying on developer profits to fund social goods. Because profits themselves are finite, there are hard limits on how much can be diverted to affordable housing, keeping output necessarily low.

(3) IT’S NOT A SINGLE POLICY
IZ can mean different things to different people, and it can be designed in a wide variety of ways to achieve different policy goals. This makes it challenging to issue blanket statements on “what works.”

As Canadians consider best practices, it’s important to realize that there is no single IZ policy. There are many different ways to design IZ and to evaluate its success. Policies differ in the **type and tenure** of housing delivered. Montgomery County’s program delivers both homeownership and rental housing, New Jersey’s policy delivers ownership units for the middle class, while New York City’s delivers only affordable rental housing. The **duration of affordability** can differ too: in Montgomery County, ownership units must remain affordable for 30 years and rental units for 99 years, while in New York units must be affordable in perpetuity. Programs differ in what **thresholds** trigger IZ. Toronto’s “large sites” policy is triggered for developments of 5 or more Hectares, while IZ in Vancouver and Montreal is triggered for developments



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with 200+ units. IZ can be either **voluntary** or **mandatory**, with mandatory policies not surprisingly leading to greater levels of affordable housing production. Some policies provide **incentives** to developers, provide subsidies to **offset costs**, or allow for **in-lieu payments** in place of affordable housing production.

There is still more diversity. Required **set asides** also vary from places to place. Most American IZ policies require 10-15% of a development be set aside as affordable. Vancouver and Toronto’s policies require 20%, and New York mandates that 25-30% of floor area be **affordable housing**. Finally and most significantly, affordability requirements vary dramatically, targeting households ranging from very low-income to moderately wealthy. New Jersey’s policies target households earning 80-120% of AMI. Toronto’s policy

aims for units at 80% of average market rent, and New York City targets households earning between 40-120% of AMI.

These variations make it hard to evaluate IZ or issue blanket statements on its “effectiveness.” Part of the challenge is that limited data is available; many municipalities do not monitor program outcomes, or even articulate what those would be. More fundamentally, policy makers with different goals will also view success and failure differently. Policies deemed successful by certain criteria will fail by others. Montgomery County’s MPDU serves again as a good example. The MPDU is often considered America’s most successful IZ policy, having produced about 10,000 units between 1980 and 2000 – the highest volume in the US.¹⁰ While this seems like a clear success, critics note that these units are only

affordable to moderate-income home-buyers and do not ensure long-term affordability. So while this policy succeeds in expanding housing options for certain groups, it fails to provide deeper levels of affordability for lower-income households, and to ensure the long-term affordability of what is built.

This flexible nature of IZ has also contributed to its growing popularity. Because it can be interpreted in so many ways, IZ is something of an empty vessel – an idea that stakeholder groups can shape according to their own goals. Housing advocates may envision IZ as a program that will provide deeply affordable rental housing, while developers may lobby for IZ, envisioning an opportunity to build taller buildings and receive subsidies for market-rate rentals. This leads to broad support for IZ from different stakeholder groups who



may have very different ideas of what they are supporting. Meanwhile, powerful voices often end up shaping the design of IZ to their ends. In Baltimore, for example, local government bowed to pressure and designed a lucrative program for developers that was ineffective in providing affordability.¹¹ In order to get a program that delivered better affordability outcomes in San Francisco, housing activists and their coalitions worked doggedly to overcome developer opposition, and are vigilant in evaluating the policy as it rolls out.

(4) IT CAN BE BASED ON NOVEL CONCEPTS OF PROPERTY AND VALUE
Not all IZ policies rest on American-style assumptions about property, profits, and the need to compensate developers. IZ can be understood alternatively as a way to capture value created through collective efforts and used for social benefit.

IZ policies present planners with an opportunity to re-think how we conceptualize property and value. As Canadian planners craft our own policies, we don't have to implement US-style IZ based on American culture and legislation.

In the US, a narrative has emerged around IZ that "powerless" developers who are forced to build affordable housing should be **compensated** for lost profits. This narrative is rooted in the particularities of US constitutional law and histories of early legal challenges brought by landowners against municipalities with IZ policies. The landowners argued that IZ requirements

amounted to an exaction: a taking of private property. Cities, as legal defendants in these cases, had to demonstrate how economic viability of land was affected, and were often forced to compensate landowners for what had 'been taken'.¹²

In other places, government regulation is not legally interpreted as an imposition, and developers are not presumed to have rights to make profit from land. In some European countries, cities are understood to constitute social wealth – they are created and made valuable over many years by public and private investments, the labour of countless people, and the collective social activities of a broad public. With this perspective, the public has a fair claim to a share of the value created through private development, because social investments have made it valuable. Indeed, it's easy to understand how a building on a desirable and vibrant street corner in a Canadian city is valuable not only resulting from investments by its current owner, but also due to the involvement of countless public and private actors over many years.

Based on that style of thinking, many European municipalities use IZ to re-capture windfall profits from landowners. These profits are seen as an unearned benefit that developers don't inherently deserve, and that should rightfully contribute to the social good. In crafting IZ policies, planners in Canada have the opportunity to reflect broadly about what makes land valuable and who should benefit from its development. Canada isn't bound by the

same constitutional restraints as the US, and can join countries like England, the Netherlands, Italy, and Turkey that seek to recapture developer profits for social good.

Philosophical viewpoints aside, researchers do not find that policies that include developer compensation lead to more affordable housing production.^{13, 14} Studies from Canada, the US, Australia, New Zealand, and England report that it is more important for programs to be mandatory, consistently-applied, and predictable.

(5) IT CAN BE EXCLUSIONARY
IZ can be paradoxically exclusionary, by kick-starting price increases that generate displacement and the loss of affordable housing.

A surprising outcome of IZ programs is that they can be exclusionary, by initiating gentrification processes and displacement that exclude low-income families from formerly affordable communities. This is the paradoxical problem facing New York's Mandatory Inclusionary Housing (MIH) policy, billed as the most rigorous IZ program of any major US city. This policy requires developers building in 13 specific areas to provide permanent, affordable housing accounting for 25-30% of residential floor area, and serving families earning between 60-80% of area median income (AMI). The city may also apply a "deeper affordability" (for households in the 40% of AMI income category) or "workforce" housing options (in the 115-125% of AMI income band).



While this appears on its face as a very progressive program, communities targeted for MIH (largely low-income communities of colour) have uniformly protested the program, whether in East Harlem, East New York, the southwest Bronx, or Inwood in northern Manhattan. Meanwhile, developers have lobbied strongly in favour of MIH. The reason for this is that MIH is tied to rezoning in these targeted communities, and is intended to kick-start private development, and then harness a portion of that development to create new affordable housing. Community coalitions fighting these plans argue that rezoning will set off price increases and gentrification that will make their communities un-affordable, and that will push them out. To add insult to displacement, the city's definition of "affordable" is out of reach for the vast majority of residents currently residing in areas targeted by the policy.

(6) IT'S A NECESSARY BUT NOT SUFFICIENT TOOL IN AN AFFORDABLE HOUSING TOOLBOX
All jurisdictions should create IZ policies, but IZ alone will not produce affordable housing at the volumes and depths of affordability that are needed to address contemporary crises.

We suggest that IZ be considered a necessary but far from sufficient tool in an affordable housing toolbox. While there is enthusiasm among policy makers for IZ as a silver bullet for building affordable housing, the research shows that IZ is a modest tool that is incapable of producing the quantities needed at the depths of affordability that are required to make a dent in community need. Canadian municipalities should, however craft mandatory IZ policies, because these will produce some affordable housing as-of-right in all housing developments,¹⁵ which is a good outcome. But municipalities and other orders of government cannot stop there, if there is true interest in building inclusionary communities. IZ will only ever be one small component of larger affordability programs, which must dedicate real resources for building and operating non-market affordable housing. ■

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ENDNOTES

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