

Inclusionary zoning, affordable rents up for consultation in Toronto

October 26, 2020

The City of Toronto Planning and Housing Committee has recently endorsed draft Official Plan and Zoning Bylaw Amendments that would establish a framework for inclusionary zoning in the City. These amendments are not subject to appeal by the public and will have significant implications on development across the City. The Committee directed staff to conduct further analysis, with the amendments expected to return Council consideration in the first half of 2021. This article briefly examines the application of these new proposed inclusionary zoning policies and related definitions.

Background

On Sept. 22, 2020, the City endorsed official plan and zoning bylaw amendments to establish the first inclusionary zoning framework in the City for the purpose of public consultation. In conjunction with the draft framework, the Planning and Housing Committee also endorsed a proposed Official Plan Amendment that would change the definitions of Affordable Rental Housing and Affordable Rents, relating them directly to a household's income.

Inclusionary zoning is a land-use planning tool that aims to increase the supply of affordable housing by requiring a certain percentage of new development to include affordable units. The City of Toronto's draft inclusionary zoning policies would require a percentage of the total residential gross floor area (GFA) in new developments be secured as affordable housing for a minimum of 99 years.

Geographic application

The [introduction of Bill 108](#) by the Ontario government qualifies that municipalities may only implement inclusionary zoning policies in 'Protected Major Transit Station Areas' (PMTSAs) or areas where a Development Permit System (DPS) has been implemented, and therefore restricts the City from implementing a city-wide inclusionary zoning policy. The City of Toronto is proposing to implement inclusionary zoning in PMTSAs in areas it has identified as 'strong market areas' and 'moderate market areas.'

PMTSAs are generally areas within 500 to 800 metres of subway or light rail stations on dedicated right-of-ways. The City has identified approximately 180 Major Transit Station Areas, and is currently studying the stations that will be identified as PMTSAs. Through an analysis of housing need and demand, the City has identified ‘strong market’ and ‘moderate market’ areas. These are areas with the most new housing supply, have experienced significant increases in housing prices and rents, and are generally areas with the highest number of renter households allocating more than half of their income towards rent.

Quantity of affordable housing required

In the ‘strong market area,’ a minimum of 10 per cent of new condominium residential GFA is required to be secured as affordable ownership housing or affordable rental housing. For purpose-built rental, a minimum of five per cent of the total new residential GFA must be secured as affordable rental housing.

In the ‘moderate market area,’ a minimum of five per cent of the total new residential GFA is required to be secured as affordable ownership housing or affordable rental housing. For purpose-built rental, a minimum of three per cent of the total new residential GFA must be secured as affordable rental housing.

In addition to these minimums, the Planning and Housing Committee recommended that staff review options to increase the percentage of housing that would be secured as affordable rental or affordable ownership housing to achieve a range of 10 to 30 per cent of residential GFA for new condominium developments and 5 to 20 per cent of residential GFA for new purpose-built rental developments.

New definition of affordable rent

The City is also proposing to change the definition of Affordable Rental Housing and Affordable Rents in the Official Plan. It proposes that the new affordable housing definition be used to identify maximum rents and eligible income ranges for new units, secured through draft inclusionary zoning policies.

Affordable Rental Housing and Affordable Rents is currently defined in the Official Plan as housing where the total cost of rent and utilities is at, or below the ‘Average Market Rent’ for the City of Toronto.

The proposed definition would set rents and corresponding household income ranges on an annual basis. The new definition would calculate affordability based on a set income percentile so that a household pays no more than 30 per cent of pre-tax income towards rent (including utilities), or the average market rent, whichever is less. This range of income percentiles changes depending on the unit type, and its purpose is to set a range of rents that the City will look to secure.

The City is also proposing to change the definition of Affordable Ownership Housing, which would be housing which is priced at or below an amount where the total monthly shelter cost does not exceed 30 per cent of gross annual income for households within the moderate income range (defined as the 30th to 60th income percentiles), depending on unit size that currently appears to be based on the number of bedrooms.

Exemptions

The proposed amendments also outline the types of developments that would be exempt from inclusionary zoning. The proposed amendments provide exemptions for developments that are located within the City's Downtown and Central Waterfront Secondary Plan if they contain less than 100 residential units, and less than 8,000 square metres of residential GFA. Another exemption applies for developments in all other inclusionary zoning areas, if they contain less than 140 residential units and less than 10,000 square metres of residential GFA.

Additional exemptions apply to residential care homes and institutional student residences.

Incentives and off-site units

Although the *Planning Act* provides that measures and incentives may be included in inclusionary zoning by-laws, incentives are only being provided where a development or redevelopment proposes to exceed the inclusionary zoning requirements.

The intent of the inclusionary zoning program would be that affordable housing is provided onsite. The proposed amendments would allow for some or all affordable units to be provided offsite, at the discretion of the City. These offset units must be ready for occupancy prior to the occupancy of the onsite market units. They must also be located in the same market area category as the onsite development and within an area that is subject to inclusionary zoning (*i.e.*, within PMTSAs in the city as there are no areas where a DPS has been adopted or established).

Transition

As outlined in the City's proposed transition policies, complete applications for a Zoning By-law Amendment, minor variance, site plan approval, and building permit applications filed on or before Jan.1, 2022 would be exempt from the inclusionary zoning requirements.

Assuming that the inclusionary zoning bylaw is passed sometime in 2021, this transition approach appears to be more generous than set out in O. Reg. 232/18 as amended. We can also anticipate a rush of applications prior to that date to take advantage of the deadline.

Timelines

The City is currently undergoing consultations regarding the proposed amendments to implement inclusionary zoning, and the proposed amendments to the City's affordable rent and ownership definitions.

Given the impact of the proposed amendments and increasing challenges related to housing affordability in the city, opinions have ranged from developers suggesting the policies have gone too far and will undermine efforts to increase housing supply, to housing advocate groups that suggest the amendments do not go far enough. It also

remains to be seen how the impact of COVID-19 on market trends and the community benefits charge framework will influence inclusionary zoning policies.

City Council has requested that City Staff bring forward a final recommendation report in the first half of 2021 in order to adopt the proposed amendments.

[BLG's Municipal & Land Use Planning](#) lawyers are available to discuss how these proposed amendments may impact your future development projects. Reach out to any of the key contacts below for assistance.

By

[Adam Shipowick, Isaac Tang](#)

Expertise

[Municipal & Land Use Planning](#), [Land Use Planning](#)

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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