



REPORT FOR ACTION

Bill 7 - Response to the Proposed Inclusionary Zoning Regulation

Date: January 24, 2018

To: Planning and Growth Management Committee

From: Acting Chief Planner and Executive Director, City Planning Division and the Director, Affordable Housing Office

Wards: All

SUMMARY

This report summarizes, comments on and provides recommendations for Council's consideration on the proposed provincial inclusionary zoning regulation released under *Bill 7: Promoting Affordable Housing Act, 2016*.

Bill 7 and the proposed regulation released on December 18, 2017 provide an inclusionary zoning framework for municipalities to enact inclusionary zoning policies and by-laws. Inclusionary zoning is a land use planning tool that enables municipalities to secure the provision of affordable housing as part of the development approval process.

Over many years, the City has made repeated requests to the Province to provide the authorities needed to implement inclusionary zoning. It is for this reason the City welcomed in 2016 the introduction and passing by the Ontario legislature of Bill 7.

However, the recently released inclusionary zoning framework outlined in the proposed regulation falls short in providing municipal flexibility and in delivering the affordable housing outcomes necessary to provide a full range of affordable housing. The provision of purpose-built new affordable rental housing is a strategic objective of the City's Official Plan and Housing Opportunities Toronto Action Plan. While the proposed regulation provides the opportunity to create affordable ownership housing in condominiums, it fails to provide the opportunity to create much needed affordable rental housing.

To respond to the provincial deadline for comments of February 1, 2018, this report recommends City Council request the Province to amend the proposed inclusionary zoning regulation as proposed in this report and forward its decision on this report to the Province as the City of Toronto's response to the proposed regulation.

This report was prepared in consultation with staff from the City's Legal Services, City Manager's Office, and Corporate Finance divisions.

RECOMMENDATIONS

The Acting Chief Planner and Executive Director, City Planning Division and the Director of the Affordable Housing Office recommends that:

1. City Council forward this report to the Province as the City of Toronto's response to the proposed inclusionary zoning regulation.
2. City Council request the Province to amend the proposed inclusionary zoning regulations as proposed in this report.
3. City Council request the Province to further consult municipalities and stakeholders on an appropriate and flexible implementation framework for inclusionary zoning prior to proclaiming the regulation.

FINANCIAL IMPACT

The proposed regulation identifies a number of potential measures and incentives that would have a significant financial impact for the City, should the province not amend the regulation and the City choose to implement inclusionary zoning outside of Community Planning Permit System areas. The potential impact of these measures are described below.

The proposed regulation identify that City incentives could take the form of:

- waivers or reductions in planning application fees;
- reductions in parking requirements;
- exemptions for parkland contribution requirements;
- exemptions from development charges, and/or;
- capital contributions.

Should the provincial inclusionary zoning framework be implemented as proposed, staff estimate the City contributions required would range, on average, from \$110,000 to \$158,000 per unit, based on 2017 market conditions. This magnitude of incentives would far exceed the City's current fees and charges incentives for new affordable rental housing, which are approximately \$28,000 per unit. For example, should these contributions be provided for 1,000 affordable ownership or rental units, the estimated impact on the City would be between \$110 million and \$158 million.

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Over the past twenty years City Council has made repeated requests to the Province to provide the City with powers to implement inclusionary zoning. These requests include:

(1999) "The Mayor's Homelessness Action Task Force Final Report: Recommendations and Policy Directions related to the Housing Policies of the Official Plan"

<https://www.toronto.ca/legdocs/1999/agendas/committees/cn/cn990503/it001.htm>

(2004) "Provincial Planning Reform Initiatives: Consultation Papers on OMB Reform, Planning Act Reform and Implementation Tools and Provincial Policy Statement Draft Policies"

<https://www.toronto.ca/legdocs/2004/agendas/council/cc040720/plt5rpt/cl014.pdf>

(2006) "The Proposed Growth Plan for the Greater Golden Horseshoe"

<https://www.toronto.ca/legdocs/2006/agendas/council/cc060131/plt1rpt/cl004.pdf>

(2009) "Housing Opportunities Toronto: An Affordable Housing Action Plan 2010-2020"

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX33.47>

City Council on July 11, 12 and 13, 2012, endorsed in principle the Private Sector Housing Roundtable report, titled, "Housing Makes Economic Sense" and the strategic directions for action on opportunities to create new affordable homeownership, help meet affordable rental housing demand, and reinvest in private rental housing communities.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX21.30>

(2015) "Affordable Housing *Open Door Program*"

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX10.18>

On December 8, 2016, *Bill 7: Promoting Affordable Housing Act, 2016* received Royal Assent from the Ontario Legislature. Among other changes, the Act amended the *Planning Act* to create a framework for inclusionary zoning in Ontario. The Act will come into force and effect once it is proclaimed by the Lieutenant Governor.

The Act, as passed, can be found on the Legislative Assembly of Ontario website at:

http://ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4118

The City provided comments on the legislation and inclusionary zoning framework in August 2016. At the June 7, 8 & 9, 2016 meeting of City Council, Council requested Deputy Mayor Ana Bailão lead the City's response on the draft legislation and the Province's Inclusionary Zoning Consultation Guide:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.27>

A copy of the City of Toronto Response to the Provincial Inclusionary Zoning Consultation is attached as Attachment 1.

COMMENTS

Key features of the proposed inclusionary zoning regulation include:

- Enables municipalities to enact policies and by-laws that would require the provision of affordable housing in identified areas of the City. The requirement would only apply to condominium developments as purpose-built rental housing developments are excluded.
- A cap on the amount of affordable housing that may be secured is proposed as 10% of the residential gross floor area in high density transit-station areas and 5% in all other areas.
- The affordable housing would be secured for at least 20 years but no more than 30 years, plus a subsequent 10-year phase-out period.
- Municipalities may either require the affordable housing units as part of a Community Planning Permit System (CPPS) or provide for significant incentives for the affordable housing. Incentives outside of a CPPS area require a contribution of 40 percent of the difference between the average market price and the affordable price. Incentives can be provided through waivers of planning fees, development charges, parking and/or parkland dedication.
- Limits municipalities to apply inclusionary zoning to only condominium registered developments. As a result, in order to secure rental housing, municipalities would either be required to purchase the units at the affordable ownership price (in addition to providing for incentives) or have the condominium-registered units rented out during the affordability period and sold as market ownership housing at the end of the affordability period.

Overview

Despite continued strong growth of new residential construction, Toronto has not kept pace in providing a sufficient supply of affordable rental and ownership housing. The City's vacancy rate for purpose-built rental housing is 1 percent, the lowest level in the past 16 years, and 0.7 percent for rented condominium units.

In the absence of planning tools and sufficient program funding over the past decades, the City faces significant challenges in meeting the increasing demand for affordable, adequate and appropriate housing.

The City currently uses its existing planning tools to protect the existing supply of rental housing and secure new affordable housing as part of site-specific applications and within Secondary Plan areas. The City also participates with the Federal and Provincial governments in delivering new affordable rental and ownership homes through a variety of housing programs, including Toronto's Open Door Program initiative.

City Council has repeatedly requested the authority from the Province to ensure affordable housing is a required condition of new developments and applied on a consistent basis rather than being negotiated on a site-by-site basis.

The City has a strong track record of utilizing Federal and Provincial housing funding programs to create new affordable rental housing, however funding programs have not kept pace with the demand for affordable housing or the pace of growth in the residential sector.

The Federal and Provincial governments are currently investing in market and affordable rental housing efforts through initiatives such as: the new National Housing Co-Investment Fund under the National Housing Strategy; the Provincial Affordable Housing Lands Program and Development Charges Rebate Program under Ontario's Fair Housing Plan; and by providing security and affordability for tenants through the expansion of rent controls to all rental units, including those in new condominiums.

In the context of Toronto's strong condominium market and limited supply of new affordable rental housing, the proposed inclusionary zoning regulation creates an overly prescriptive framework that provides for only limited local priority setting and decision making. The proposed regulation does not facilitate securing purpose-built rental housing within new condominium developments, sets a very low limit on the amount of affordable ownership housing that can be secured, establishes prohibitively high incentive requirements, and would require significant program administration.

As part of the City's initial response to the Province's Bill 7, a number of key principles were identified for the creation of a successful inclusionary zoning framework. These were that the framework be predictable, clear and consistently applied, flexible, equitable and needs based, and partnership based. The proposed regulation does not create a framework for addressing these principles.

The legislation and proposed regulation identify a number of areas of Provincial oversight that a municipality must abide by in order to bring forward inclusionary zoning policies. These include the creation of Official Plan policies requiring approval by the Minister and City Council approval of a municipal assessment report that would be required to be updated every five years. These measures ensure that there is public, stakeholder, City Council and Provincial engagement and input and, in the case of approval by the Minister, oversight of municipal inclusionary zoning frameworks. The additional prescriptive elements of the proposed regulation in many ways nullify the municipal policy and decision-making process.

Recommendation 1: The proposed regulation should be amended to respect the fact that the City is in the best position to assess its needs and establish an inclusionary zoning framework that takes into consideration the full range of housing needs, market conditions, and aligned policy and program opportunities.

The proposed regulation identifies a number of specific provisions related to securing the inclusionary zoning units. Each of these provisions are summarized below as well as key implications for the City.

Application to Ownership Housing

The proposed inclusionary zoning regulation sets up a framework for securing or delivering the affordable housing as ownership housing or condominium registered rental housing. The proposed regulation does not provide for an implementation framework that would enable securing purpose-built rental housing as a component of ownership developments. Further, the proposed regulation applies only to developments for ownership housing, as purpose-built rental housing projects are exempted from the inclusionary zoning requirements. Further analysis on the impact on these provisions is outlined in the following two sections.

Securing purpose-built rental housing

The City has extensive planning and program experience securing purpose-built rental housing as part of new condominium developments. In comparison to purpose-built rental housing, when securing condominium-registered rental housing there are several factors that need to be taken into consideration to ensure a development is maintained as affordable rental housing, including the impact of escalating condominium fees, and that the rental tenure is maintained beyond the initial affordability period.

The City's current rental market is significantly constrained in terms of availability and affordability. The 2016 census identifies that 46.8% of renter households in Toronto spend more than 30% of their income on housing compared to 27.4% of owner households. The City's vacancy rate for purpose-built rental housing is 1 percent, the lowest level it's been in the past 16 years and 0.7 percent for rented condominium units.

Recommendation 2: The proposed regulation should be amended to explicitly provide for the opportunity to create new affordable purpose-built rental housing.

Exemptions for purpose-built rental housing

Real estate data research firm Urbanation reports that as of Q4-2017, 27,569 purpose-built rental units are proposed and 6,305 units are under construction in the City. This is the highest number of proposed purpose-built rental units the City has seen in a number of years. By way of comparison, in Q4-2015 there were 8,302 rental units proposed and 5,401 units under construction and in Q4-2016 there were 24,880 rental units proposed and 4,098 units under construction.

In considering whether to apply inclusionary zoning to purpose-built rental housing it is important to review current and projected rental housing activity, including consideration of whether the rental building is to meet the luxury market or be more affordable.

Furthermore it will be important to review and monitor new purpose-built rental housing activity and the impact various City, Provincial and Federal regulatory, funding and financing programs have in stimulating new rental housing.

Recommendation 3: The Province should be to work with the City to review current and projected rental housing development, including understanding the market profile of new rental housing projects. Further, the Province should consult with municipalities and other stakeholders on the merits of extending the regulation to any or all of the new purpose-built rental housing market.

Unit Set Aside

The proposed regulation proposes to cap the level of affordable housing that could be secured at:

- 10 percent of the units or gross floor area in a high density transit-station areas; or,
- 5 percent of the units or gross floor area in all other areas where inclusionary zoning Official Plan policies and by-laws apply.

The City had previously recommended that a minimum of 10 percent of the units or gross floor area be established as the unit set aside rate.

Under the proposed regulation, projects of similar size and scale would be treated differently based on their proximity to high density transit station areas. The City Planning Q2-2017 development pipeline shows there are 113,039 residential units active or under review within large residential developments of 1,000 units or more. This represents approximately 40% of all the residential units active or under review. Of these projects less than half are within high density transit-station areas, with approximately 62,000 units outside of transit-station areas.

The City has precedents for securing affordable housing through Official Plan policies and within Secondary Plans. For example, the Official Plan large sites policy and the Central Waterfront Secondary Plan both set a requirement of 20% of the housing to be provided as affordable. Reduced percentages are permitted depending on the model of delivery. A higher percentage is required where land will be provided versus a much lower percentage where units will be conveyed to the City for long-term affordability.

The prescriptive nature of the unit set aside rate does not allow for innovative policy options, such as setting a lower threshold for housing that would be conveyed to the City or a non-profit housing provider.

Recommendation 4: The regulation should provide for municipal flexibility to set reasonable set aside rates based on the local context, planned environment, and relevant program funding and incentives, with the principle that a minimum of 10 percent of the units or gross floor area be established as the unit set aside rate.

Price

The price of the affordable housing units outlined in the proposed regulation would align with the definition of affordable housing required by the Provincial Policy Statement and Growth Plan for the Greater Golden Horseshoe, 2017. Based on this definition,

affordable ownership housing would be affordable to low and moderate income households, generally those between the 30th to 60th percentiles of income.

While the City's Official Plan definition of affordable ownership housing is currently under review, the proposed revised definition would define affordable housing based on incomes and include a market-check approach which would adhere to provincial policy to ensure the definition stays in line with the actual costs of constructing affordable housing.

The 2018 existing and proposed prices for affordable housing are summarized below:

Unit Type	Affordable Rents (monthly)	Affordable Ownership Price* (Existing definition)	Affordable Ownership Price* (Proposed definition)
Bachelor	\$1,019	\$176,275	\$171,100
1-bedroom	\$1,202	\$207,932	\$223,800
2-bedroom	\$1,426	\$246,682	\$282,700
3-bedroom	\$1,579	\$273,149	\$317,300

*The definition of affordable ownership housing is calculated based on interest rates and the latest available property tax rates for the City of Toronto. As such, these prices are for reference only and are subject to change.

Municipal Incentives

The proposed regulation requires municipalities to provide a financial contribution in the form of measures and incentives. No measures and incentives are required for lands where a Community Planning Permit System (CPPS) is in effect.

Where no CPPS system is in effect, the financial contribution required is calculated using the formula of 40 percent of the difference between the average market price and the affordable price.

The 40 percent cost sharing can be paid for using one or more of four tools:

- waivers or reductions in planning application fees;
- reductions in parking requirements;
- exemptions for parkland contribution requirements; and,
- exemptions from development charges.

For clarity, the proposed regulation specifies that the required financial contribution cannot be satisfied through an increase in height and density (Section 37) for the proposed development.

Staff estimate the required 40 percent City financial contribution ranges, on average, from \$110,000 to \$158,000 per unit, based on 2017 market conditions. The magnitude of incentives required would far exceed the City's current per unit rate of approximately \$28,000 in fees, parkland and development charge waivers for new affordable rental housing and would require applying fee and charge waivers to the market units in the development in order to pay for the affordable housing.

Reductions in parking requirements could potentially address a portion of the contribution shortfall. However affordable housing units already have lowered parking ratios in the City's Zoning By-law 569-2013 and in a number of cases the City already allows for reductions in parking for new developments based on the local context.

The above costs assume an affordable ownership approach whereby a purchaser would buy an affordable unit and the City would administer the on-going affordability of the unit. If the City were to attempt to secure condominium-registered rental housing, the City would need to not only provide the 40 percent City financial contribution above, but also purchase the unit, requiring considerably more financial resources.

In all of these scenarios, the additional cost of providing affordable housing through inclusionary zoning would be in competition with other important growth related priorities that development charges or other fees currently pay for, such as transit, parks, and community services.

Of additional significance is that the proposed regulation results in a disincentive to municipalities from securing larger units, such as 2- and 3-bedroom units, as the estimated funding gap between the market and affordable price in the Toronto context is significant. For instance, the potential 40 percent City financial contribution could be close to \$300,000 per unit for a 3-bedroom unit. This level of contribution to secure an affordable ownership unit with a 20 to 30 year affordability period is significant and would not provide the best value for that level of government investment.

Recommendation 5: The regulation should provide for municipal decision making for measures and incentives as municipalities are in the best position to respond to local market conditions.

Community Planning Permit System (CPPS)

The proposed regulation proposes that inclusionary zoning can be implemented in Community Planning Permit System (CPPS) areas without requirements for municipal financial contributions or incentives. While this provision presents the potential to use inclusionary zoning without the use of incentives, the City does not currently have the policy or implementation framework in place to use the CPPS.

A Community Planning Permit System (previously referred to as a Development Permit System) aims to act as an alternative to a zoning by-law by establishing an area-based planning framework. The process is intended to result in a predictable planning framework establishing clear height, density, infrastructure, and community contribution parameters and conditions for development.

On July 8, 2014 City Council adopted Official Plan policies to implement a City-wide CPPS/Development Permit System (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG34.4>). The policies are currently under appeal at the Ontario Municipal Board. The Board adjourned its hearing on the policy framework until such time as the City brings forward an implementing Development Permit System by-law. Council has directed that the City Solicitor seek leave to Divisional Court with respect to the Board's decision. At the time of the writing of this report, no decision on the leave application has been received. In the event that the City is able to implement a CPPS system, significant staffing capacity and time would be required in order to bring forward CPPS by-laws, further delaying the time period for the City to implement an inclusionary zoning framework.

One of the objectives of the CPPS is to set minimum and maximum densities for an area. This objective could be realized without the use of CPPS in areas identified for growth and change.

Recommendation 6: The regulation should allow for inclusionary zoning to be used as part of a Community Planning Permit System area or in areas where the zoning has been updated to reflect minimum and maximum densities in accordance with provincial policy.

Affordability Period and Equity Sharing

As proposed, affordable housing units secured through inclusionary zoning must be maintained as affordable for a period of at least 20 years and no more than 30 years. In the case of affordable ownership housing this would provide for ongoing and controlled affordability as part of the re-sale process. This approach is important it ensures the integrity of the program and maintains the ongoing affordability of the housing.

During the affordability period the sale price of the housing is restricted to affordable prices. Implementation of this provision could potentially be staff intensive and challenging as the proposed regulation does not establish a comprehensive framework to allow for positive covenants to ensure the affordable price is maintained from one owner to the next.

After the affordability period, the proposed regulation establishes a 10-year phase-out provision whereby the sale price of the unit can be sold at market rates. An equity sharing formula is established during this phase-out period, however after the 10-year phase-out period equity sharing is not provided for. Equity gains refer to the positive difference between the price at which an affordable unit is sold and the original purchase price.

The City's established practice when securing affordable ownership housing is to ensure that when a unit is sold at the full market price at the end of the affordability period, a proportion of the proceeds is returned to the municipality, ensuring that a single purchaser does not capture an unintended windfall.

In the case where affordable rental housing is secured the affordability period of 20 to 30 years generally aligns with minimum affordability periods the City sets under the Open Door program and when securing new affordable housing as a community benefit. However, when securing affordable rental housing the City would recommend further flexibility to secure longer affordability periods. The City has substantial experience in securing affordability periods that range from twenty years to forty to ninety-nine years. In some cases affordability is in perpetuity.

Recommendation 7: The regulations should enable municipalities to set an equity sharing model that is fair and equitable.

Program Administration

The proposed regulation contemplates the creation and administration of affordable ownership housing through inclusionary zoning. As a result the regulation would create a significant and costly level of administration to be undertaken by the City to maintain ongoing affordability of ownership units at the time of resale and throughout the affordability period, as well as determining eligibility for future residents.

Alternatively the creation and administration of purpose-built rental housing through inclusionary zoning could be streamlined with existing municipal efforts and aligned with existing programs, access systems and non-profit housing providers. This would ease administration and significantly reduce ongoing municipal costs.

Recommendation 8: The regulations should enable municipalities to set priorities based on local housing need and align program administration with administrative models that are already in place.

Off-Site Restrictions

The proposed regulation allows for developments to provide units on an alternate site, subject to conditions such as: the off-site location being in proximity to the contributing development; off-site units being ready for occupancy within 36 months of the obligation being transferred; and that no more than 50 percent of units in the receiving site are inclusionary zoning units.

Permitting off-site units generally allows implementation flexibility. For example, non-profit housing providers or community land trusts can partner to build off-site inclusionary zoning units. Off-site provisions also ensure that in cases of luxury developments where the public objective of affordable housing may be compromised due to high operating costs, or multiple small developments with small contribution requirements can provide for affordable housing units.

The 50 percent off-site limit may be intended to ensure diverse, mixed-income communities while preventing segregation of low-income households, however, the limit hinders the City's ability to implement a partnership based approach whereby a non-profit housing provider could develop a stand-alone affordable housing project funded

from the inclusionary zoning obligation from other development projects. The success of neighbourhoods like Regent Park and St. Lawrence demonstrate the ability to create complete, mixed-income communities where market and affordable buildings exist side-by-side.

Recommendation 9: Off-site provisions in the regulation should be amended to allow for municipal flexibility in permitting 100 percent inclusionary zoning buildings.

Transition

The proposed regulation also proposes transition requirements to exclude projects that have submitted certain types of applications prior to the day an inclusionary zoning by-law is passed, or prior to the day an Official Plan policy authorizing inclusionary zoning is passed.

The excluded applications during the transition period are summarized below:

Date application submitted	Excluded application type
Prior to the day an inclusionary zoning by-law is passed	Building Permit
	Community Planning Permit
	Site Plan Application
Prior to the day an inclusionary zoning Official Plan policy is passed	Concurrent application for Official Plan amendment, zoning by-law amendment and either, a site plan application, plan of subdivision application, or a plan of Condominium application

Transition provisions allow for a phase-in of the inclusionary zoning requirements, enabling the market to adjust to the affordable requirements. Staff have no concerns with the proposed transition provisions.

Summary

As the City grows, there is a strong need to provide new affordable rental and ownership housing that keeps pace with new development. Inclusionary zoning is one policy and program tool to assist the City in this effort.

The Ontario government's inclusionary zoning legislation provides an important step forward in addressing Toronto's affordable housing needs. However, the proposed regulation falls short in providing the overall affordable housing outcomes the City so desperately needs.

In order for the proposed regulation to be successfully implemented, the following matters will need to be addressed:

- Explicitly enable municipalities to secure purpose-built rental housing as part of condominium developments;
- Allow for municipal priority setting regarding the exemption of purpose-built rental housing projects in the context of government policy and programs to stimulate new purpose built rental housing;
- Provide for municipal flexibility to establish unit set-aside rates, with the principle that a minimum of 10 percent of the units or gross floor area be established as the unit set aside rate;
- Measures and incentives should be determined by the municipality based on the local market and value for public investment; and
- Allow for municipal decision making regarding matters such as the affordability period, equity sharing, and off-site provisions.

In summary, the proposed regulations should be amended to enable municipalities to work with local stakeholders to create an inclusionary zoning framework that addresses Toronto's specific housing and development context and establishes appropriate measures and incentives that respond to local environment and market conditions.

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ATTACHMENTS

Attachment 1: City of Toronto Submission on Ontario's Proposed Inclusionary Zoning Legislation - August 9, 2016

Attachment 2: Overview of the Community Planning Permit System