

PH16.7 Attachment 3

Attachment 3 – Description of Draft Inclusionary Zoning Framework

1. Affordability Period

The draft official plan amendment and zoning by-law amendment propose a 99 year affordability period, commencing from the date the affordable housing unit is first occupied.

Previously, in the emerging policy directions report to Planning and Housing Committee on May 28, 2019, a 25 year affordability period was proposed. Throughout consultations undertaken in 2019, the majority of comments stated that 25 years was not long enough to ensure a sustainable stock of affordable units. Many stakeholders and members of the public suggested a 99 year or permanent affordability period, given there will be continued need for affordable housing over time.

Experience from other jurisdictions who have implemented inclusionary zoning has also supported a longer affordability term, with most generally ranging between 30-99 years and about a quarter of these jurisdictions securing affordability for 99 years or in perpetuity. At the speaker's consultation event held in November 2019, municipal representatives from New York City and Boston's inclusionary zoning programs recommended securing long term affordability.

The updated Financial Impact Analysis confirmed that securing affordable housing units for a 99 year period could support development viability with the trade-off being a lower set aside requirement.

2. Affordable Rents and Prices

The draft official plan and zoning by-law amendments propose that inclusionary zoning units be secured at affordable rents or affordable ownership prices. Affordable rents and prices would be determined based on the definitions in the City's Official Plan. Where funding is available, the framework would allow housing benefits or other incentives to be layered with inclusionary zoning to provide units to households in need of more deeply affordable housing.

A proposed updated definition of affordable rental housing and affordable rents is anticipated to be advanced in a report to the September meeting of the Planning and Housing Committee. A proposed revised definition of affordable ownership housing was consulted on in 2019 as part of the consultations on the draft inclusionary zoning policy directions. These definitions are proposed to replace the existing definitions in the City's Official Plan and could result in a wider range of affordable rents being secured through inclusionary zoning.

The draft OPA and zoning would also require 10% of the affordable rental gross floor area to be secured at 80% of affordable rents. Requiring a portion of the

affordable rental gross floor area to be secured at more deeply affordable rents would ensure a wider range of affordability is achieved through inclusionary zoning. This requirement would not apply to affordable ownership units, since it is proposed that these units would be conveyed to a non-profit housing provider.

During the inclusionary zoning consultations undertaken in 2019, stakeholders and the public agreed that inclusionary zoning should address the affordability needs of low to moderate income households, recognizing there is a need for deeper affordability in the city that must be addressed through other housing programs. However, many suggested that the definition for what is considered “affordable” be revised to better reflect residents’ incomes.

Across other jurisdictions, inclusionary zoning is a tool primarily used to address the needs of low to moderate income households. Some jurisdictions require a certain percentage of the units to achieve deeper levels of affordability. New York City’s inclusionary housing program offers a menu of options for delivering units at different levels of affordability.

The City's Housing Need and Demand Analysis determined there continues to be a strong need in the City for low and moderate income renter households to access affordably priced housing. However, a trade-off exists between the depth of affordability that can be reached and the percentage of affordable housing that can be required while ensuring viable developments.

3. Geographic Application

The draft official plan and zoning by-law amendments propose that inclusionary zoning apply to developments in Protected Major Transit Station Areas located within strong or moderate market areas.

A city-wide inclusionary zoning policy is not permitted under provincial legislation, as Bill 108 has restricted municipal implementation of inclusionary zoning to Protected Major Transit Station Areas (PMTSAs) or Development Permit System areas ordered by the Minister. PMTSAs are generally areas within 500m to 800m of subway or light rail stations on dedicated right-of-ways and subject to a detailed implementation framework set out in Section 16(15) of the *Planning Act*. This required framework includes identifying planned minimum number of residents and jobs per hectare, authorized uses of land, and minimum densities with respect to buildings and structures in the area. A report was presented to Planning and Housing Committee in June 2020, which outlined a work plan and estimated timelines for delineating MTSA's and undertaking any additional work required to meet the requirements of the *Planning Act* for PMTSAs.

In addition to PMTSAs, it is proposed that inclusionary zoning apply within strong and moderate market areas of the city. These are areas that have experienced the greatest amount of new housing supply, significant price escalation and growth in rental prices, and are generally areas with the highest number of renter

households paying 50% or more of their income towards rent. This approach would help create inclusive and complete communities where the market has not provided for a mix of housing prices on its own. Strong Market Areas include much of the former City of Toronto, North Toronto, Southwest Scarborough and Scarborough City Centre, Don Mills and York Mills, and South Etobicoke. Moderate Market Areas include Etobicoke Centre and North York Centre, areas where the planning frameworks provide for significant new development yet price growth is not strong compared to the city as a whole. Inclusionary zoning is not proposed to be implemented in areas of the city experiencing little growth and where development economics cannot support the inclusion of affordable housing units without financial incentives.

Experience from other jurisdictions suggests that geographic targeting of inclusionary zoning should be based on a financial feasibility analysis and updated regularly to factor in changes to market conditions.

Strong and moderate market areas will be reviewed at least every 5 years, as provincial legislation requires the assessment report to be updated within this timeframe. Staff are proposing a 3 year review and update to the assessment report to recognize ongoing uncertainty around COVID-19's impacts to Toronto's housing market. During consultations in 2019, both stakeholders and the general public supported reviewing market areas every few years to capture emerging areas that become more viable for inclusionary zoning over time.

4. Set Aside

The draft official plan and zoning amendments propose 10% of the total residential gross floor area to be set aside as affordable housing in condominium developments located in strong market areas and 5% in moderate market areas. Lower requirements are proposed to apply for purpose-built rental developments: 5% in strong market areas and 3% in moderate market areas. The requirements would apply to a percentage of the total residential gross floor area, excluding amenity areas.

Both stakeholders and the public suggested that inclusionary zoning requirements should apply to a percentage of the entire development as opposed to a percentage of the density uplift. Many felt this would provide greater certainty around the affordable housing requirement. All stakeholders and the public agreed that the set aside requirement should apply to a percentage of the residential gross floor area instead of a percentage of the total units, as this would provide greater flexibility to secure a range of housing types and sizes. Many agreed that lower requirements should apply to purpose-built rental projects, as inclusionary zoning could further deter rental units from being built.

The Financial Impact Analysis concluded that inclusionary zoning would have different impacts across different market areas. Generally, the updated analysis determined that a 10% inclusionary zoning requirement could continue to support

development viability in condominium developments across the different market areas, but that lower affordable housing requirements should be applied in weaker market locations and for purpose-built rental developments. The analysis demonstrated that a 20% inclusionary zoning requirement could be viable in some market areas but may discourage new development if land values are significantly impacted.

Of note, the Financial Impact Analysis was developed based on pre-COVID-19 market data and did not contemplate further provincial changes introduced through Bill 197 to community benefits charges, development charges and parkland dedication. Given these ongoing uncertainties and their impacts to the housing market, staff have proposed a 5-10% inclusionary zoning requirement, with lower requirements for purpose-built rental developments. As part of a balanced approach that would recognize these potential changes but establish a foundational inclusionary zoning framework, staff have proposed that the Financial Impact Analysis and inclusionary zoning framework be reviewed three years after inclusionary zoning is implemented.

5. Housing Types and Sizes: Family-Sized Units

The draft official plan amendment proposes that the affordable housing units will reflect the unit mix of the market component of the development, as appropriate, to achieve a balanced mix of unit types and sizes and support the creation of affordable housing suitable for families.

Policy direction and guidance currently exists to promote family-sized units in market developments. For example, the Downtown Secondary Plan requires developments containing more than 80 residential units to include a minimum of 15% two-bedroom units, 10% three-bedroom units, and an additional 15% of units as some combination of two- and three-bedroom units or units that can be converted to two- and three-bedroom units through accessible or adaptable design measures. As well, the Council-adopted Growing Up: Planning for Children in New Vertical Communities urban design guidelines provide guidance that 10% of the total residential units should be three-bedroom units and 15% should be two-bedroom units.

Where a Secondary Plan requires the development to include a specific mix of two- and three-bedroom units, the inclusionary zoning units should also include the same breakdown of two- and three-bedroom units. This policy approach promotes the development of family-sized affordable housing units while also providing some flexibility for the units to meet specific needs where appropriate (e.g. affordable housing targeted to seniors would not need to include family-sized units).

Throughout public consultations undertaken in 2019, a number of residents and stakeholders wanted the inclusionary zoning policies to ensure that family-sized affordable units (e.g. two- and three-bedroom units) would be built. It is common

among other jurisdictions who have implemented inclusionary zoning to include specific requirements for family-sized units.

6. Offsite Units

While the intent is that affordable housing would be provided on-site, the draft official plan amendment recognizes there could be some instances where the affordable housing would be best accommodated on another site. The draft framework would allow some or all of the affordable housing units to be located offsite if a zoning by-law amendment were approved by City Council. This would ensure any offsite proposals are approved at the City's discretion. At a minimum, the offsite affordable units must be ready for occupancy before the onsite market units are occupied. The offsite units must also be located in a Protected Major Transit Station Area and in the same market area category as the onsite development. For example, a development located within a strong market area in the Downtown could not propose offsite units in a moderate market area located in Scarborough Centre.

The draft official plan amendment would ensure offsite units are located in transit-accessible areas and secure their timely delivery in comparison to the market units. The proposed amendments would also meet the provincial requirements for offsite units to be located in an inclusionary zoning area and in proximity to the proposed development. Any offsite units could not contribute to the offsite development's own inclusionary zoning requirement.

7. Exemptions

The proposed official plan and zoning amendments outline the types of developments that would be exempt from inclusionary zoning. This includes some exemptions required by the provincial regulation for inclusionary zoning: developments proposed by non-profit housing providers, as defined by the provincial regulation, where a minimum of 51 percent of the units would be affordable. Additional exemptions are proposed in the draft policy and zoning for residential care homes and institutional student residences, as these developments are not subject to the *Residential Tenancies Act*.

The draft official plan and zoning amendments also propose exemptions for developments located within the City's Downtown and Central Waterfront Secondary Plan areas containing less than 100 residential units and less than 8,000 square metres of residential gross floor area and developments in all other inclusionary zoning areas containing less than 140 residential units and less than 10,000 square metres of residential gross floor area.

These size thresholds are intended to exempt most mid-rise developments from inclusionary zoning requirements and were based on an analysis of average mid-rise developments. Across the city, the average size of a mid-rise development ranges from 100 to 132 units. About 81% of mid-rise projects outside the

downtown and central waterfront contain less than 140 units. In the downtown, where lots are typically smaller, 68% of mid-rise development projects have less than 100 units.

In public consultations undertaken in 2019, many supported these exemptions as the development economics for mid-rise developments are challenging even without affordable housing requirements. Some suggested using a lower minimum building size threshold (e.g. developments with 10 or more units) to achieve affordable housing in low-and mid-rise buildings. However, as inclusionary zoning can only be implemented within Protected Major Transit Station Areas, it is unlikely that a significant amount of low-rise buildings would be proposed in these areas. As well, about 8% of the total residential units in the development pipeline between January 1, 2014 and December 31, 2018 were proposed in mid-rise projects. It is not anticipated that the proposed higher minimum unit thresholds would result in exempting a significant proportion of developments and redevelopments from inclusionary zoning.

8. Agreements

The draft official plan and zoning amendments would require each development subject to inclusionary zoning to enter into a legal agreement with the City. This agreement would need to be executed before building permits are issued for the development. This inclusionary zoning agreement would secure the timely delivery of the affordable housing units in phased developments and include requirements for ongoing reporting and monitoring to ensure the affordable units remain affordable over time. These agreements would be registered on title, meaning that subsequent owners of the development would need to uphold the conditions set out in the agreements.

Similar to Section 37 agreements that secure affordable housing as a community benefit, the inclusionary zoning agreements would include, among other matters, requirements to ensure the affordable housing units have access to the same indoor and outdoor amenities as the market units, are functionally equivalent to the market units, and that the rent for a tenant occupying an inclusionary zoning unit could only be increased annually by the provincial rent increase guideline for the length of their tenancy.

9. Measures and Incentives

The provincial regulation requires municipal official plan policies for inclusionary zoning to identify how measures and incentives would be determined. The draft official plan amendment proposes that any financial or regulatory incentives provided by the City will only be considered where a development or redevelopment proposes to exceed the inclusionary zoning requirements.

Where measures and incentives are provided in other jurisdictions, they typically include density bonuses, reduced parking requirements, planning application or development fee waivers, and/or property tax exemptions.

The Financial Impact Analysis found that municipal financial incentives are not required to ensure development feasibility in strong market areas. The draft policy and zoning amendments propose implementing inclusionary zoning in areas where the Financial Impact Analysis findings demonstrate continued development viability with affordable housing requirements. Where no density increases or financial contributions are provided, the impact of inclusionary zoning would be largely absorbed by reduced land values over time.

Where additional affordable units or deeper affordability would be provided, developments subject to inclusionary zoning could be eligible for the suite of incentives offered through the City's Open Door Affordable Housing Program.

10. Net Proceeds

The provincial regulation for inclusionary zoning requires municipal official plan policies to include an approach to determine the net proceeds to be distributed to the municipality from the sale of an affordable housing unit. The regulation permits municipalities to receive up to 50% of the net proceeds of that sale. The draft official plan amendment proposes that the owners of affordable ownership housing units would receive 100% of the net proceeds from selling the unit at market prices after the 99 year affordability period expires.

Where affordable ownership units will be provided, it is proposed that the units would be conveyed to a non-profit housing provider who would assume responsibility for administration and ensuring the ongoing affordability of the units.

Where rental units are sold to a new rental owner after the affordability period, no equity sharing is proposed as the affordability requirements remain on title on the lands. This approach is consistent with how the City manages new affordable rental housing secured as part of Section 37 or through the Open Door program.

11. Other Matters

The draft official plan and zoning amendments clarify that any replacement affordable rental units or dwelling rooms, required to be included in a development in order to conform with the Official Plan's rental replacement or dwelling room policies, could not count towards the inclusionary zoning requirements. As well, developments subject to inclusionary zoning would not be subject to the large sites policy under Policy 3.2.1.9 of the Official Plan.