



**November 8, 2021**

Mayor and Councillors,

**Re: PH28.1 Inclusionary Zoning Official Plan Amendment, Zoning By-law Amendment and Draft Implementation Guidelines**

We are writing to you today **to share an important legal opinion** with you that we have secured from Goldblatt Partners LLP regarding PH28.1 - on Inclusionary Zoning.

Alongside Toronto ACORN, Parkdale People's Economy, and Social Planning Toronto, Progress Toronto has been calling for a strong inclusionary zoning policy that would see a minimum of 20-30% of all new residential developments with 60 or more units set-aside for permanently affordable rental housing. See our open letter signed by dozens of organizations across the city detailing the inclusionary zoning policy we believe Toronto City Council should vote for:

<https://www.progresstoronto.ca/open-letter-inclusionary-zoning>.

As Toronto's housing crisis deepens, thousands of people have taken action to demand that this tool be used to build as much affordable housing as possible. Thousands have sent emails to members of City Council and hundreds have deputed on the issue since City Council began discussions on it. At the same time, we are very aware that dozens of registered lobbyists have been reaching out to Councillors and the Mayor on behalf of very wealthy developers in our city to weaken this policy and protect developer profits.

On October 28, 2021 City Councillor Gord Perks moved an important motion at the Planning and Housing Committee meeting on behalf of City Councillor Mike Layton. This motion was for a much stronger inclusionary zoning policy that would have seen many more units of affordable housing built in our city. **And importantly, the numbers in this motion were from a City report that demonstrated it is possible.**

Rather than vote on this vital motion, Deputy Mayor Ana Bailão who chairs the Planning and Housing Committee, referred it to the City's legal team asking for a report on the "legal implications of the motion". The Committee then voted to recommend a weaker inclusionary zoning policy that won't build as much affordable housing.

We knew that this report from the City Solicitor would be submitted to City Council as a confidential document and that the public wouldn't be able to hear the debate on the motion for greater affordability or know where their City Councillor sits on the issue.

So we secured our own legal opinion.

**Progress Toronto and Toronto ACORN received a legal opinion from Goldblatt Partners LLP, a highly respected law firm. We have made it public here [\[PDF\]](#).**

**The legal opinion makes it clear: there is nothing standing in the way of Toronto City Council voting on the stronger affordable housing policy.**

From the legal opinion:

1. *There is no necessary legal requirement for the City Solicitor to review the Motion for compliance with section 2(1).6 and 2(1).7 of O. Reg 232/18.*
2. *On the basis of the facts and assumptions set out below, the Motion is in compliance with the requirements of section 2(1) of O Reg 232/18 and section 16(4) of the Planning Act (Ontario).*
3. *Further, the Supreme Court of Canada has found that councils have broad discretion to determine the social, economic and political interests of a council and residents it represents. In the case of inclusive zoning policy, such decisions may only be appealed by the Minister of Municipal Affairs and Housing. While it is possible to seek judicial review of administrative actions or challenge the constitutionality of government actions, no grounds for either form of review were raised at the Planning and Housing Committee.*

We are writing to ask that City Councillors and the Mayor vote in support of the motion for a stronger inclusionary zoning policy as was moved by Councillor Perks:

1. *City Council amend policies 13, 15 and 16 in the proposed Official Plan Amendment included as Attachment 1 to this report from the Chief Planner and Executive Director, City Planning, and reflect the same changes in the proposed Zoning By-law Amendment included as Attachment 2 to this report, so that the Official Plan Amendment now reads:*

*"13.a) ii. if a purpose-built rental development is proposed, a minimum requirement of 6% of the total new residential gross floor area shall be secured as affordable rental housing;*

13.b) ii. if a purpose-built rental development is proposed, a minimum requirement of 3% of the total new residential gross floor area shall be secured as affordable rental housing;

15. The affordable rental housing required in Policy 3.2.1.13 a) i. will increase by 3.5%, b) i. will increase by 1.5%, and c) i. will increase by 0.5% per year beginning January 1, 2023 and until January 1, 2026. Affordable ownership housing requirements will be set at one point four times the affordable rental housing requirements.

16. Beginning January 1, 2022, the minimum affordable rental housing required in Policy 3.2.1.13 a) ii. will increase by 1% per year beginning January 1, 2023 until January 1, 2026”

Sincerely,

Michal Hay & Saman Tabasinejad  
Progress Toronto



November 8, 2021

**CONFIDENTIAL**

**Via E-mail (michal@progresstoronto.ca)**

ACORN Toronto and Progress Toronto  
c/o Michal Hay  
436-401 Richmond Street West  
Toronto, ON  
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Dear ACORN Progress Toronto:

**RE: COUNCILLOR MOTION TO AMEND OFFICIAL PLAN POLICIES –  
INCLUSIVE ZONING**

1. You asked us whether a motion (the “**Motion**”) made by a member of Toronto City Council (“**Council**”) to amend the proposed Official Plan policies is required to be reviewed by the City Solicitor for compliance with sections 2(1).6 and 2(1).7 of Ontario Regulation 232/18 (“**O. Reg 232/18**”).<sup>1</sup>

**CONCLUSIONS**

2. There is no necessary legal requirement for the City Solicitor to review the Motion for compliance with section 2(1).6 and 2(1).7 of O. Reg 232/18.
3. On the basis of the facts and assumptions set out below, the Motion is in compliance with the requirements of section 2(1) of O Reg 232/18 and section 16(4) of the *Planning Act* (Ontario).
4. Further, the Supreme Court of Canada has found that councils have broad discretion to determine the social, economic and political interests of a council and residents it

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<sup>1</sup> See background set out in proceedings of the Planning and Housing Committee, October 28, 2021. Available online: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH28.1>.

represents. In the case of inclusive zoning policy, such decisions may only be appealed by the Minister of Municipal Affairs and Housing. While it is possible to seek judicial review of administrative actions or challenge the constitutionality of government actions, no grounds for either form of review were raised at the Planning and Housing Committee.

## **BACKGROUND**

5. Our opinion is based on the following facts and assumptions.

6. The text of the Motion is as follows:

1. City Council amend policies 13, 15 and 16 in the proposed Official Plan Amendment included as Attachment 1 to this report from the Chief Planner and Executive Director, City Planning, and reflect the same changes in the proposed Zoning By-law Amendment included as Attachment 2 to this report, so that the Official Plan Amendment now reads:

13. a) ii. if a purpose-built rental development is proposed, a minimum requirement of 6% of the total new residential gross floor area shall be secured as affordable rental housing;

13. b) ii. if a purpose-built rental development is proposed, a minimum requirement of 3% of the total new residential gross floor area shall be secured as affordable rental housing;

15. The affordable rental housing required in Policy 3.2.1.13 a) i. will increase by 3.5%, b) i. will increase by 1.5%, and c) i. will increase by 0.5% per year beginning January 1, 2023 and until January 1, 2026. Affordable ownership housing requirements will be set at one point four times the affordable rental housing requirements.

16. Beginning January 1, 2022, the minimum affordable rental housing required in Policy 3.2.1.13 a) ii. will increase by 1% per year beginning January 1, 2023 until January 1, 2026.

7. O. Reg 232/18 states:

2. (1) An assessment report required by subsection 16 (9) of the Act shall include information to be considered in the development of official plan policies described in subsection 16 (4) of the Act, including the following:

1. An analysis of demographics and population in the municipality.

2. An analysis of household incomes in the municipality.

3. An analysis of housing supply by housing type currently in the municipality and planned for in the official plan.

4. An analysis of housing types and sizes of units that may be needed to meet anticipated demand for affordable housing.

5. An analysis of the current average market price and the current average market rent for each housing type, taking into account location in the municipality.
  6. An analysis of potential impacts on the housing market and on the financial viability of development or redevelopment in the municipality from inclusionary zoning by-laws, including requirements in the by-laws related to the matters mentioned in clauses 35.2 (2) (a), (b), (e) and (g) of the Act, taking into account:
    - i. value of land,
    - ii. cost of construction,
    - iii. market price,
    - iv. market rent, and
    - v. housing demand and supply.
  7. A written opinion on the analysis described in paragraph 6 from a person independent of the municipality and who, in the opinion of the council of the municipality, is qualified to review the analysis.
8. We are advised and assume for the purposes of this opinion that:
- a. The requirements of sections 2(1).6 and 2(1).7 of O. Reg. 232/18 are satisfied by the report of N. Barry Lyon Consultants Limited #18-3180 dated May, 2021 and revised October, 2021 (the “**Consultant Assessment Report**”) provided for the Planning and Housing Committee pursuant to section 16(9) of the *Planning Act* (Ontario).
  - b. The basis for the amendments contained in the Motion are set out in and consistent with the Consultant Assessment Report.

## DISCUSSION

9. O. Reg 232/18 sets out required elements of an assessment report required to be made pursuant to section 16(9) of the *Planning Act* (Ontario) which report includes information to be considered in the development of official plan policies.<sup>2</sup>
10. The Motion contains targets for quantities of affordable housing and timelines for the implementation of the targets in Official Plan policies. The targets and timelines are based on recommendations of the Consultant Assessment Report.
11. No provision of O. Reg 232/18 expressly requires legal review or opinion of a motion to make amendments proposed Official Plan policies.

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<sup>2</sup> *Planning Act*, RSO 1990, c P.13, s. 16(9) and 16(12); O. Reg 232/18. Section 16(4) of the *Planning Act* (Ontario) enables inclusive zoning policies in official plans. There is very limited judicial consideration of this clause and none on point: *Go-To Glendale Avenue Inc. v St. Catharines* (City, 2019 CanLII 50295 (ON LPAT)).

12. Where there is more than one assessment report prepared pursuant to O. Reg 232/18 and each of which meets the requirements of the regulation, there is no requirement under the regulation to employ one report over another. This is a discretionary matter for a council.
13. Section 16(6) of the *Planning Act* (Ontario) states that:
- The policies described in subsection (4) [inclusive zoning policies] shall include goals and objectives and a description of the measures and procedures proposed to attain those goals and objectives.
14. A council has broad discretion to determine the social, economic and political matters relevant to it and its residents: *Catalyst Paper Corp v North Cowichan* 2012 SCC 2.
15. Council has authority to determine zoning bylaws and official plan policies, and amendments to proposed Official Plan policies made through Council decision-making procedures are relatively common.
16. We also note that inclusionary zoning decisions of Council may only be appealed by the Minister.<sup>3</sup> While administrative actions may be subject to judicial review or constitutionality, there were no facts made available to us in respect of the Motion that would justify a consideration of either.
17. We trust the forgoing is of assistance. Please contact us with any questions.

Yours truly,



**GOLDBLATT PARTNERS LLP**

SA/vs

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<sup>3</sup> *Planning Act* (Ontario), ss. 24.1.2, 24.1.3.