

Planning Tools to Secure Affordable Housing and Deliver Community Infrastructure

Date: April 11, 2023

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

SUMMARY

This report responds to a request from Planning and Housing Committee on a new approach to securing affordable housing units within new developments. The report highlights the range of tools to deliver complete communities through securing new affordable housing and community infrastructure.

Provincial legislation, as well as the City's Official Plan policies, encourage and support the development of complete communities with a full range of housing options and adequate community infrastructure. The City currently implements a suite of policies and programs to secure new affordable housing, to maintain and preserve the existing affordable housing stock, and secure needed community infrastructure.

The City is currently leveraging all available land use planning tools under the Planning Act and City of Toronto Act to secure new affordable housing and community infrastructure. Changes to provincial legislation have limited the City's ability to make full use of existing policies and approaches including those advanced by the Province such as Inclusionary Zoning. Provincial changes have also changed the opportunity for the City to secure successful negotiated outcomes.

Other potential tools are laid out in this report that could help to advance the delivery of these matters, however action is required from the Province to introduce new legislation and/or regulations. These include enabling zoning with conditions, aligning community benefits charge (CBC) rates with growth-related costs, and providing the legislative policies for Inclusionary Zoning to be implemented city-wide. City Council has previously requested the Province to enable zoning with conditions ([2022.PH33.11](#)), ensure the community benefits charge sufficiently pays for growth related infrastructure ([PH33.11](#)), and allow for implementation of Inclusionary Zoning city-wide ([2023.CC1.2](#)).

RECOMMENDATIONS

The Chief Planner and Executive Director recommends that:

1. Planning and Housing Committee receive this report for information.

FINANCIAL IMPACT

There are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

EQUITY IMPACT STATEMENT

The City of Toronto's quality of life, economic competitiveness, social cohesion, and diversity depend on current and future residents being able to access and maintain adequate, affordable and appropriate housing along with equitable access to community services and facilities that support the needs of all residents.

DECISION HISTORY

At its January 19, 2023 meeting, the Planning and Housing Committee requested the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor and any other relevant divisions, to report to Planning and Housing Committee on April 27, 2023 on a new approach to securing affordable housing units within new developments, and other critical infrastructure needed to support new housing and create complete communities.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH1.8>

COMMENTS

Legislative Context

Planning Act

The Planning Act governs land use planning in Ontario and establishes the means by which a municipality must implement land use planning decisions. In particular, Section 2 (j) of the Planning Act requires that municipalities have regard for matters of provincial interest including "the adequate provision of a full range of housing, including affordable housing", and "the adequate provision and distribution of educational, health, social, cultural and recreational facilities".

Recent provincial legislation introduced changes to the Planning Act as outlined below.

Provincial Legislation	Changes Introduced
<p>More Homes, More Choice Act, 2019 (Bill 108)</p>	<ul style="list-style-type: none"> • Limited implementation of Inclusionary Zoning to Protected Major Transit Station Areas (PMTSAs) approved by the Minister or areas subject to a Community Planning Permit System (CPPS); • Introduced the Community Benefits Charge (CBC), which is limited to 4% of the value of land, to pay for community infrastructure and services required due to development; • Removed the former Section 37 Density Bonusing tool.
<p>More Homes Built Faster Act, 2022 (Bill 23)</p>	<ul style="list-style-type: none"> • Removed housing as a development charge service, discounted development charges for rental housing units, and exempted certain housing types; • Introduced caps on the alternative parkland dedication rate and on the maximum parkland dedication (10% of land for sites under 5 hectares and 15% for sites greater than 5 hectares); • Introduced subsection 37 (7.1) which permits municipalities to register an agreement on title to secure in-kind contributions to satisfy a CBC; • Provided the Minister the authority to enact regulations imposing limits and conditions on what municipalities can require through rental replacement by-laws; and, • Proposed regulatory changes to how Inclusionary Zoning is implemented, with a 5% cap on affordable housing requirements, a maximum 25-year affordability period, and affordable housing defined as being priced at no greater than 80% of the average resale purchase price or rent.

Provincial Policy Statement, 2020

The Provincial Policy Statement (2020) (the "PPS") provides province-wide policy direction on land use planning and development matters to promote strong communities, a strong economy, and a clean and healthy environment. It includes policies on housing matters and complete communities, such as:

- providing for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents of the regional market area by establishing and implementing minimum targets for the provision of housing which is affordable to low and moderate income households and which aligns with housing and homelessness plans;

- identifying that public service facilities be coordinated and integrated with land use planning so that they are financially viable and available to meet current and projected needs. The PPS supports the optimization and adaptive re-use of existing facilities.

The Growth Plan for the Greater Golden Horseshoe, 2020

The Growth Plan (2020) builds upon the policy foundation provided by the PPS (2020) and provides more specific land use planning policies to address issues facing the Greater Golden Horseshoe region. The Growth Plan provides a strategic framework for supporting the achievement of complete communities, with access to a diverse range of housing options, and supporting a range and mix of housing options, to serve all sizes, incomes and ages of households. The Growth Plan also identifies that public service facilities form part of the achievement of complete communities and improve social equity and overall quality of life. The Growth Plan calls for facilities to be co-located where possible with preference given to locations in or near strategic growth areas easily accessible by active transportation and transit.

Official Plan

The Official Plan includes directions on increasing the supply of affordable housing and improving and creating new community and neighbourhood facilities. The Official Plan identifies the need to provide a full range of housing in terms of form, tenure and affordability across the City and within neighbourhoods. While the city has created considerable new supply of market condominium, high-rise housing, development has not kept pace with providing a diverse array of new housing types and tenures to support the needs of current and future residents, including housing for low to moderate income and renter households.

The Official Plan also calls for adequate and equitable access to community services and local institutions, and sets out a policy framework that, among other things, encourages the inclusion of community service facilities as part of private development.

Existing Policy Tools

The City is leveraging all land use planning tools available under the Planning Act and City of Toronto Act to maintain and secure new affordable housing and community services and facilities. In addition, initiatives such as the Open Door Affordable Housing Program, Housing Now, and Multi-Unit Residential Acquisition (MURA) provide for various incentive based programs to create and maintain new affordable housing. In addition, programs such as the City's Community Space Tenancy program, which leases City-owned or City-managed spaces to eligible non-profit organizations at Below Market Rent, help to support the provision of community infrastructure.

Rental Replacement Policies

The City of Toronto's Official Plan has several policies (Policies 3.2.1.6, 3.2.1.7, 3.2.1.11,) to maintain and preserve the supply of existing rental housing, including social housing and dwelling rooms, from demolition and/or conversion. Developments

that propose to demolish six or more existing rental dwellings with affordable and/or mid-range rents must replace the same number, size and type of rental dwellings and provide similar rents for a minimum 10 year period. The rental unit replacement policy works in tandem with Chapter 667 of the Toronto Municipal Code, which prohibits the demolition or conversion of rental housing units in buildings containing six or more residential units without obtaining a permit from the City. While the More Homes Built Faster Act enabled the Minister to make regulations imposing limitations and conditions on the City's ability to implement these policies, no provincial regulations have been introduced to date.

Definitions of 'affordable housing'

On November 12, 2021, Council adopted new affordable housing definitions through OPA 558. The definitions determine affordable rents based on a set income percentile paying no more than 30% of income towards shelter costs (inclusive of utilities). Affordable rental housing will be based on the least expensive of average market rent by unit type or rent which is affordable to low and moderate income households. OPA 558 was appealed and a decision issued by the Ontario Land Tribunal on February 10, 2023 brought the definitions into full force and effect, save and except for outstanding site-specific appeals.

Affordable Housing on Large Sites

The Official Plan 'large site' policy (Policy 3.2.1.9) requires the provision of affordable housing as the first priority community benefit on sites larger than 5 hectares. The policy has been implemented by varying the amount of affordable housing required depending on the delivery mechanism. For example, land sufficient to provide 20% of the units as affordable housing, 10% of the units as affordable for a limited affordability term or 5% of the units where units will be conveyed to the City or to a non-profit housing provider. Through this policy, affordable housing has been delivered as part of creating new communities across the city.

Inclusionary Zoning Policy

On November 12, 2021, the City adopted an Inclusionary Zoning policy that requires new development around transit stations to include 5-10% of the development as affordable housing secured for 99 years. The policy applies to new development applications that are located in an approved a Protected Major Transit Station (PMTSAs) Area. The current provincial framework requires provincial approval of PMTSAs, which is currently outstanding, before inclusionary zoning can be implemented. To date, City Council has adopted 105 PMTSAs.

The More Homes Built Faster Act proposed changes to how Inclusionary Zoning can be implemented. Should the Province issue a new Inclusionary Zoning Regulation with these proposed changes, the City's Inclusionary Zoning policy and by-law will have to be amended to conform to the Provincial regulation.

Increased Densities for Projects with Non-Profit Housing

Section 453.1 of the City of Toronto Act allows the City to provide increased residential densities on sites where social or affordable housing that is owned and/or operated by a non-profit organization is provided. This tool can be used on sites developed by a private developer where the affordable housing units are conveyed to, or operated by, a non-profit housing provider or sites developed and administered by a non-profit organization. The affordable housing would be secured through an agreement registered on title. The City has not relied on this tool in the past, as the Section 37 Density Bonusing framework enabled the City to secure the provision of affordable housing regardless of whether the housing was owned by a non-profit housing provider.

Community Benefits Charge

The CBC, which replaces the previous Density Bonusing framework, came into effect on August 15, 2022. Unlike the former Density Bonusing approach, in which benefits for each development were negotiated based on the increased height or density being requested, the CBC by-law applies a standard city-wide maximum rate of 4% of land value to all developments that are at least five storeys in height and contain at least ten residential units, unless excluded or exempt.

The CBC contribution may be satisfied through either a payment and/or an in-kind contribution. While most developments will provide a payment at the time of the first building permit, the City has set up a framework to accept in-kind contributions for matters such as affordable housing, community agency space, child care facilities, and the over-dedication of parkland. However, as the CBC has a legislated maximum of 4% of the land value, it is anticipated that the City will not be able to secure the same level of affordable housing units and/or community services and facilities compared to what has been secured in the past through the previous Density Bonusing framework.

Securing Community Services and Facilities Space in Zoning By-laws

Community Services and Facilities are matters such as recreation, libraries, childcare, schools, public health, and human and cultural services. This needed community infrastructure may also be facilitated by identifying them as permitted uses and/or requiring minimum gross floor area (GFA) for such uses through site-specific zoning by-laws.

Shared Use of Existing Facilities

Co-location, partnerships, and shared space agreements can allow for the most efficient use of existing resources. The City will continue to encourage partnerships and co-location opportunities between the public, private and non-profit sectors. Non-profit community agencies are encouraged to integrate service delivery and increase collaboration where feasible. The City will also continue to explore potential space partnerships or models to access space between schools and community agencies.

Potential New Tools

Affordable Housing

The advancement of new policy tools to secure affordable housing would require changes to provincial legislation or regulations, as outlined below.

Inclusionary Zoning permissions

An amendment to the Planning Act to allow utilizing Inclusionary Zoning city-wide (i.e. outside of PMTSAs) would increase the opportunities to secure affordable housing units in new residential developments and support the development of complete communities. It would also support predictable and clear affordable housing requirements across the city. The City has previously requested the Province to amend legislation to allow the implementation of Inclusionary Zoning city-wide, through such Council decisions on [Bill 108](#), [Bill 138](#), [Bill 23](#), and the [Housing Action Plan](#).

Zoning with Conditions

Section 34(16) of the Planning Act and Section 113(2) of the City of Toronto Act allow municipalities to pass zoning by-laws with conditions. The ability to utilize this tool is dependent on provincial regulations that set out prescribed conditions. The Province has not yet consulted on or enacted implementing regulations. Zoning with conditions provides for a more flexible process and could allow municipalities to establish a clear framework for achieving more rental and affordable housing as part of additional density permissions where a project aligns with the overall vision for the area.

This tool could allow the City to require that affordable housing and/or market rate rental housing units be provided as a condition for increased height and density or relaxed zoning requirements. For example, the British Columbia Local Government Act allows municipalities to implement a zoning by-law that limits the form of tenure to residential rental within a certain zone or in relation to a specified number, portion or percentage of housing units in a building. Vancouver has implemented this authority as part of their Secured Rental Policy by allowing for increased height and density as-of-right for residential rental tenure developments in specific zones. Condominium developments in these zones are still permitted, but are not provided with the increased height and density permissions. The City has previously requested the Province to release implementing regulations to allow for zoning with conditions through Council's decision on [Bill 109](#).

Affordable Housing in Employment Conversions

Employment conversions represent a unique opportunity to create complete communities. Policy 1.3.2.5 of the PPS and 2.2.5.9 of the Growth Plan require that applications for employment conversions demonstrate a need for the conversion.

Adding a requirement in Provincial legislation to demonstrate how the conversion would address the need for a diversity of housing options, including affordable housing, would support the City's practice of securing affordable housing units in converted employment lands outside of the required community benefits requirements.

Community Infrastructure and Housing Accelerator and Minister's Zoning Orders

The Community Infrastructure and Housing Accelerator (CIHA) tool was introduced by the Province to permit the Minister of Municipal Affairs and Housing to make a zoning order at the request of a municipality. Prior to the introduction of the CIHA, Council had requested minister's zoning orders for time and funding sensitive affordable housing projects. The Minister would continue to have the ability to issue minister's zoning orders, however the CIHA would be used for municipal requests.

Items advanced through a CIHA do not have the same public notice and consultation requirements as a typical zoning by-law amendment application. The CIHA tool has the potential to accelerate approvals of affordable and supportive housing projects, as well as projects advancing other important community infrastructure matters. A report on this tool will be considered by the Planning and Housing Committee on April 27, 2023.

Ministerial Approvals and Modifications

The Minister of Municipal Affairs and Housing is the approval authority for municipal comprehensive reviews and Official Plan updates required to conform to provincial policy. As part of this role, the Minister has the ability to amend or introduce conditions to City policy to require affordable housing. For instance, the Minister as the approval authority for both the Downtown and Yonge and Eglinton Secondary Plans, amended the Plans to enable increased height and density frameworks, however there was no condition for affordable housing as part of these amendments.

Life Lease Housing

Life lease housing is where a buyer purchases an interest in a property which gives them the right to occupy a unit for a long period of time, often for their lifetime. The buyer does not own the unit itself but they do pay a lump-sum purchase price, property taxes, and monthly fees for maintenance, similar to condominium owners. Life lease units are usually priced lower than similarly sized condominiums, which may make them a more affordable market based housing type. While life lease housing offers an alternative ownership housing option, this form of housing is not afforded the same legislative protection as condominium tenure housing. For instance, life lease housing is not covered by the Home Construction Regulatory Authority, which regulates new home builders and vendors. Including life lease housing as part of this regime would provide added assurances for purchasers and could potentially help make this form of housing a choice for a wider segment of home buyers.

Community Planning Permit System

A CPPS (also called a Development Permit System) combines zoning, site plan, and minor variance processes into one application and approval process under a 45 day timeline. It also allows municipalities to impose certain conditions for how land can be used to support local priorities. Conditions could include the provision of specified facilities, services, or matters, such as affordable housing and/or community infrastructure, in exchange for a specified height or density and/or requiring the owner of the land to enter into an agreement with the municipality. However, the CPPS by-law has to establish a clear proportional relationship between the quantity or monetary value

of the facilities, services, and matters that may be required and the height and density of development allowed, which may be a challenge if applied city-wide.

Municipalities are permitted to implement Inclusionary Zoning outside of PMTSAs in CPPS areas. A municipality's CPPS Official Plan policies and CPPS by-law may be appealed to the Ontario Land Tribunal. To date, no Ontario municipalities have implemented a CPPS to secure affordable or rental housing.

In 2014, City Council passed an Official Plan Amendment (OPA 258) identifying the entire city as a CPPS area. Various matters were identified as potential community benefits that may be required under a CPPS by-law, including affordable housing and community services and facilities. OPA 258 was appealed and the Ontario Municipal Board issued a decision adjourning the hearing indefinitely until the City enacted a CPPS by-law. The City Planning 2023 work program identifies work on implementing a CPPS by-law as on hold in order to advance other priorities.

Community Infrastructure

Aligning CBC Rates with Growth-related Capital Costs

As described in the Council endorsed Community Benefits Charge Strategy dated April 2022, and Community Benefits Charge Strategy Addendum dated June 2022, the total cost of the CBC-eligible capital program over the 2022-2031 period is \$2.47 billion. However, after applying the legislated 4 per cent cap on the CBC, a high level estimate of potential CBC revenues is approximately \$700 million for the City over the same period, or approximately 28% of the anticipated cost. The identified capital needs cannot be fully funded by potential CBC revenues. Legislative changes allowing the City the ability to set a CBC rate more closely aligned with growth related capital costs would help ensure critical infrastructure needed to support new housing and create complete communities is provided.

Community Infrastructure Replacement Policies

A number of existing Secondary Plans contain policies to ensure that existing non-profit community service facilities are maintained or replaced if displaced through new development, with no net loss of space. There is potential to strengthen and apply such policies more widely, as feasible and appropriate, to minimize the loss of community space through redevelopment.

Conclusion

The City's Official Plan policies encourage and support the development of complete communities with a full range of housing options, including affordable housing, and adequate community infrastructure. The City is already leveraging all available land use planning tools under the Planning Act and City of Toronto Act to secure new affordable housing and community infrastructure. However, recent changes to provincial legislation have limited the City's ability to make full use of existing policies and approaches.

This report lays out potential tools, including implementing Inclusionary Zoning city-wide, zoning with conditions, and aligning community benefits charge rates to growth-

related capital costs that could help to secure new affordable housing units and community infrastructure. City Council has on multiple occasions requested legislative or regulatory changes to allow for effective implementation of these critical tools. However, to date, the Province has not advanced implementation of these tools.

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