

Goodmans^{LLP} Update

Toronto Unveils Proposed Approach to Inclusionary Zoning

On September 22, 2020, the City of Toronto's Planning and Housing Committee endorsed for consultation purposes draft amendments to the City's official plan and zoning by-law that would represent the City's first foray into inclusionary zoning. Inclusionary zoning generally requires the construction of affordable housing as part of new residential developments. Under the proposed amendments as recommended by City staff, Toronto's version of such a program would require 3%-10% of the total residential gross floor area (GFA) of a development to be provided as affordable housing for 99 years. While the Planning and Housing Committee directed staff to seek stakeholder feedback on this basis, it also directed staff to explore requiring as much as 30% of total residential GFA as affordable housing.

Regardless of quantum, the requirement to deliver affordable housing would apply to developments that (i) meet certain size thresholds, (ii) are located within a protected major transit station area (PMTSA) or development permit system area, and (iii) are located within areas of the City identified as strong or moderate market areas. Development projects already in the pipeline would not be subject to inclusionary zoning requirements, provided a complete rezoning, site plan, minor variance or building permit application has been filed before January 1, 2022.

The draft amendments the Planning and Housing Committee endorsed will now form the basis of a public consultation exercise. Staff were directed to return to the Planning and Housing Committee with a final recommendation on the amendments in the first half of 2021.

The key aspects of the draft amendments are summarized below.

Geographic Application

As explained in our May 1, 2018 Update, [Ontario Enacts Overhauled Inclusionary Zoning Regulations, the Planning Act](#) only permits municipalities to implement inclusionary zoning in PMTSAs or areas where a development permit system has been established. Since there are no development permit systems currently in force in Toronto, the City has focused its inclusionary zoning efforts on PMTSAs.

PMTSAs are areas surrounding higher-order transit stations for which the municipality has adopted official plan policies identifying minimum densities, minimum residents and jobs per hectare, and permitted uses. While there are currently approximately 180 major transit stations across the City, staff are currently in the early stages of studying those stations that will be identified as PMTSAs – and therefore potentially be subject to inclusionary zoning – through its municipal comprehensive review. The outcome of that municipal comprehensive review process will therefore play a large role in determining where inclusionary zoning applies.

Under the proposed official plan and zoning amendments, inclusionary zoning would apply within any PMTSA that is located within a “strong” or “moderate” market area. These market areas, which were identified through an analysis of market rents and prices, are proposed to include much of the City, from Etobicoke in the west to Scarborough in the east, and central areas in between. The areas of the City that are not currently considered strong or moderate market areas are primarily north of Highway 401 and certain portions of northern Etobicoke.

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Notably, the studies underlying the City's proposed approach to inclusionary zoning were prepared before COVID-19 and therefore without regard to its impact on the housing market. City staff indicated that the coming consultation period will provide an opportunity to review 2020 market data in light of COVID-19 and consider corresponding modifications to the inclusionary zoning program.

Quantity of Affordable Housing

As noted above, two different approaches to the quantity of affordable housing required under inclusionary zoning emerged from the Planning and Housing Committee meeting.

The approach which staff recommended would require the delivery of between 3% and 10% of total residential GFA as affordable housing units, depending on the type of project and its location. Specifically:

- For condominium projects, 10% of the total residential GFA would be required to be provided as affordable if the project is located in a strong market area; 5% would be required if it is in a moderate market area.
- For rental projects, 5% of the total residential GFA would be required if the project is located in a strong market area; 3% would be required if it is in a moderate market area.

The differences in the quantity of affordable housing required are intended to reflect the different capacity of each type of project to absorb the financial impact associated with providing units at below market rates.

However, in addition to consulting with stakeholders on staff's recommended approach, the Planning and Housing Committee directed staff to explore significantly higher affordable housing requirements. Specifically:

- For condominium projects, staff are to explore options that would involve the provision of 10%-30% of the total residential GFA as affordable housing.
- For rental projects, staff are to explore options that would involve the provision of 5%-20% of the total residential GFA as affordable housing.

The staff report before the Planning and Housing Committee indicated that developments' capacity to absorb affordable housing obligations was an important consideration in developing the staff-recommended percentages of 3%-10%. Staff will now need to grapple with how more significant affordable housing obligations along the lines the Planning and Housing Committee outlined could be absorbed, if at all, perhaps through regulatory, financial or other incentives.

Depth and Duration of Affordability

Under current policies in the City's official plan, affordable units are those for which total monthly housing costs are at or below one times average market rent across the City, by unit type. The City proposes to modify this standard of affordability to incorporate income-based measures. Specifically:

- For rental units, affordability would be based on the lesser of (i) 100% of average market rents across the City, and (ii) rents that are no greater than 30% of gross income for households earning between 20th and 60th percentile of household incomes (depending on unit type and household size).
- For ownership units, affordability would be based on monthly shelter costs not exceeding 30% of gross income for households within the 30th to 60th percentile of household incomes (depending on unit type).

Under the proposed amendments, units would need to be maintained as affordable in accordance with the above standards for 99 years beginning on the date the unit is first occupied.

Incentives

Unlike some inclusionary zoning regimes in other jurisdictions, the City is currently not proposing to provide any financial or regulatory incentives in conjunction with the application of inclusionary zoning. Such relief may be made available only where the minimum inclusionary zoning requirements are exceeded.

Off-Site Units

The inclusionary zoning program is generally intended to require the provision of affordable units on the same site as the proposed development. However, the proposed amendments provide that the provision of units off-site may be accepted at the City's discretion, provided the off-site affordable units are located within a PMTSA and within the same market area category (strong or moderate) as the development site, and provided the off-site units are ready for occupancy before occupancy of the units in the market development.

Exemptions and Transition

Under the proposed amendments, inclusionary zoning would not apply to developments that fall below certain size thresholds. Specifically:

- For sites in the Downtown and Central Waterfront, developments with less than 100 residential units and less than 8,000 square metres of residential GFA would be exempt; and
- In all other areas, developments with less than 140 residential units and less than 10,000 square metres of residential GFA would be exempt.

In addition, the City proposed broader transition provisions than required under provincial regulations. Specifically, as noted above, transition provisions are proposed that would exempt developments for which a complete application for a zoning amendment, site plan approval, minor variance or building permit has been submitted before January 1, 2022.

Next Steps

The proposed inclusionary zoning program outlined above will form the basis of consultation over the coming months. In addition to informing the ultimate form of official plan and zoning amendments to be recommended to City Council, City staff indicated these consultations will also be used to develop a series of guidelines relating to the implementation of inclusionary zoning.

We will continue to monitor as the City's consideration of inclusionary zoning continues. In the meantime, for more information, please contact any member of our [Municipal, Planning and Property Tax Group](#).

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