

Goodmans^{LLP} Update

Toronto Releases Draft Instruments to Implement Inclusionary Zoning

On Friday October 8, 2021, City of Toronto staff released draft official plan and zoning by-law amendments they intend to recommend to City Council to implement inclusionary zoning. The proposed amendments would impose a requirement to deliver affordable housing on residential developments that (i) contain at least 100 units or 8,000 square metres of residential gross floor area (GFA), (ii) are located within a protected major transit station area (PMTSA), and (iii) are located within areas of the City identified as “Inclusionary Zoning Market Areas” (IZ Market Areas).

For most projects meeting these eligibility criteria, the proposed amendments would initially require 5%-10% of the total residential GFA of a development to be provided as affordable housing for 99 years, depending on the project’s location and the tenure of the affordable units (rental vs. ownership), with these rates increasing over time. However, no affordable housing would be required for purpose-built rental projects anywhere in the City at least until 2025.

Among other exemptions, development projects for which certain types of planning applications have been submitted on or before September 18, 2022 would not be subject to inclusionary zoning requirements.

The draft amendments will be presented to the Planning and Housing Committee on October 28, 2021 and are expected to be considered by Council on November 9, 2021. While Council has the authority to modify the proposed amendments, the recently released drafts provide insight into what City staff intend to recommend. If approved, the amendments will not be subject to appeal, except by the Minister of Municipal Affairs and Housing (the Minister).

The key aspects of the draft amendments are summarized further below.

Eligibility and Exemptions

Geographic Application

As explained in our May 1, 2018 Update, *Ontario Enacts Overhauled Inclusionary Zoning Regulations* and our September 23, 2020 Update, *Toronto Unveils Proposed Approach to Inclusionary Zoning*, 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. Through its municipal comprehensive review, the City is currently studying approximately 180 major transit stations to determine which will be identified as PMTSAs – and therefore potentially be subject to inclusionary zoning. So far, City staff have proposed to identify the area around a number of downtown subway stations as PMTSAs, as well as a handful of others. The ultimate outcome of this municipal comprehensive review process will play a large role in determining where inclusionary zoning applies.

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Under the proposed official plan and zoning amendments, inclusionary zoning would apply within areas of the City identified as IZ Market Areas. Three IZ Market Areas have been identified, each with their own affordable housing requirements (outlined below). The IZ Market Areas have been refined since City staff shared an initial proposal for inclusionary zoning, with some geographic areas removed and others added.

Commencement Date

As noted above, the *Planning Act* provides that inclusionary zoning can only apply within PMTSAs. While the City is responsible for identifying PMTSAs at first instance, its decisions in regard to PMTSAs are subject to the Minister's approval. Accordingly, until such time as the Minister approves a PMTSA that encompasses a particular site, inclusionary zoning cannot apply to that site. The City's proposed amendments recognize this link and accordingly provide that the City will not apply inclusionary zoning until the later of September 18, 2022 or approval of a PMTSA. These key dates are also reflected in the City's proposed approach to exempting in-progress applications, as outlined in the next section.

Exemptions and Transition

Under the proposed amendments, inclusionary zoning would not apply to developments anywhere in the City that contain fewer than 100 dwelling units and less than 8,000 square metres of residential GFA. Non-profit developments, student residences, retirement homes, nursing homes, and residential care homes would also be exempt.

City staff are also proposing to exempt in-pipeline projects for which certain development applications have been filed. Specifically, under the proposed amendments, inclusionary zoning would not apply to projects for which:

- complete applications for a zoning by-law amendment and site plan approval were filed on or before September 18, 2022;
- a complete application for a zoning by-law amendment was filed, the by-law amendment has come into force before the passage of a community benefits charge by-law (anticipated to be summer 2022), and a section 37 agreement is executed on or before the later of September 18, 2022 and the date of approval of the relevant PMTSA;
- a complete site plan approval application is filed on or before September 18, 2022; or
- a building permit application is filed on or before September 18, 2022.

Similar transition provisions would apply to minor variance applications. Collectively, these transition provisions go beyond the minimum transition standards required under provincial regulations.

Quantity of Affordable Housing

As noted above, the quantity of affordable housing required in connection with a project subject to inclusionary zoning depends on the IZ Market Area in which the development is located. IZ Market Area 1 would be subject to the most onerous requirements; IZ Market Areas 2 and 3 would be subject to progressively less onerous requirements.

The requirements for eligible projects that obtain a building permit between the date inclusionary zoning takes effect and December 31, 2024 can be summarized as follows:

IZ Market Area	Purpose-Built Rental	Ownership Housing (Condo)	
	Affordable GFA Requirement	Affordable GFA Requirement for Affordable Rental Units	Affordable GFA Requirement for Affordable Ownership Units
1	0%	7%	10%
2	0%	6%	8%
3	0%	5%	7%

The quantities noted above are proposed to increase annually between 0.5% and 1.5%, depending on the IZ Market Area, beginning in 2025.

Notably, the draft instruments do not impose any affordable housing requirements on purpose-built rental projects, regardless of the IZ Market Area, at any time before 2026. At that time, purpose-built rental projects within IZ Market Area 1 would be required to provide 5% of the total residential GFA as affordable rental units and those within IZ Market Area 2 would be required to provide 3% of the total residential GFA as affordable rental units. Purpose-built rental projects within IZ Market Area 3 are proposed to remain free of affordable housing requirements at least until 2031.

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 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 pre-tax monthly income for households earning between 50th 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 pre-tax monthly income for households within the 30th to 60th percentile of household incomes (depending on unit type).

Given their reliance on relative household incomes, these income-based measures may result in affordability thresholds that are not as easy to ascertain as those based on average rent (which is a figure that is publicly reported on an annual basis).

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 not proposing to provide any financial incentives in conjunction with the application of inclusionary zoning. However, parking spaces would not be required for affordable housing units delivered in fulfillment of inclusionary zoning requirements.

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 affordable housing units may be provided off-site if the off-site affordable units provide for an improved housing outcome, the off-site units are ready for occupancy on a timely basis commensurate with the completion of residential units in the proposed development, and the off-site units are located in close proximity to the proposed development (such as within the same IZ Market Area).

Implementation Guidelines

In conjunction with the release of the proposed official plan and zoning amendments, City staff also released draft Inclusionary Zoning Implementation Guidelines (the Guidelines). The Guidelines provide guidance regarding the design of affordable units, including minimum unit sizes, unit mix, unit amenities, and related matters. The Guidelines also outline expectations regarding the administration of affordable units, including the process of selecting eligible tenants and owners of affordable units.

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Next Steps

As noted above, the proposed amendments to implement inclusionary zoning will be presented to the Planning and Housing Committee on October 28, 2021 and are expected to be considered at City Council on November 9, 2021. Council has the authority to modify the draft amendments, so the final version of the City's inclusionary zoning program may ultimately differ from the program summarized above. The ultimate form of the instruments as approved will not be subject to appeal, except by the Minister.

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

All Updates are available at www.goodmans.ca. This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our Municipal, Planning and Property Tax Group.

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