

December 9, 2022

Ministry of Municipal Affairs and Housing  
777 Bay Street, 17th Floor  
Toronto, ON, M7A 2J3  
[PlanningConsultation@ontario.ca](mailto:PlanningConsultation@ontario.ca)

**Re: Proposed Amendment to O. Reg 232/18: Inclusionary Zoning  
Consultations on More Homes Built Faster: Ontario's Housing Supply Action Plan 2022-2023**

We, the undersigned at the Centre for Urban Research and Land Development at Toronto Metropolitan University have reviewed the Proposal Summary for Inclusionary Zoning prepared by the Ministry of Municipal Affairs and Housing.

We do have some recommendations to consider in amending these policies as inclusionary zoning is a complex policy and it can be applied under several different policy regimes, i.e., as an exaction, or as a land value capture/sharing policy, and have many potential variations in its application and implementation.

We present recommendations for the Ministry to consider in amending these policies where the Province is recommending that the contribution be capped at 5 % of the units or area and that the affordability period for the units be limited to 25 years.

**What is Inclusionary Zoning?**

Inclusionary zoning is the requirement to provide a specified number of affordable housing units when developers/builders build new residential units. It is important to be aware that the policy of inclusionary zoning is applied in a wide variety of ways based on the underlying policy approach. There are over 800 jurisdictions that apply inclusionary zoning in a variety of ways.

Inclusionary zoning is a complex policy, and it can be applied under several different policy regimes, i.e., as an exaction (like a development charge), or as a land value capture/sharing (like a density bonus) policy and have many potential variations in its application and implementation. Generally, the 'carrot' approach, using incentives like increased density, has been much more effective in generating affordable units than the 'stick' (mandatory approach).

What we have seen to date in Ontario is the policy decided on by the City of Toronto which is an exaction-based policy with mandatory affordable housing contributions with the contribution requirements increasing over time.

**The 5% Cap on Affordable Units**

It would appear that the proposals to amend the application of inclusionary zoning, i.e., the capping of the units or area at 5% and limiting the affordable period for the units to 25 years, is in part a response to

the policy on inclusionary zoning recently approved by the City of Toronto. The Toronto policy begins with a 10% requirement which increases over time. It would appear that the province's 5% cap presumes the policy approach and framework to be applied to other municipalities will be similar to the Toronto 'mandatory approach' where that policy is applied like an exaction, i.e., development charge or parkland dedication.

However, it is important to recognize that inclusionary zoning policies around the world are applied in a variety of ways and which include using density bonuses or simply up-zoning an area where this policy is applied in order to create additional value which can be shared to provide for the cost of the affordable units. In these types of applications, the increase in the value of the property provides an offset that may make it possible to have the number of units or (area) greater than 5% to generate additional affordable housing units. In fact, under the old Section 37 density bonus regime, this type of application existed in Toronto concerning the Waterfront Area. The secondary plan for this area required all of the Section 37 density bonuses to be used for affordable housing. [A CUR study](#) made the argument that Section 37, when used for affordable housing, was already an application of inclusionary zoning in Toronto.

Given this type of increased density application, which some Ontario municipalities seem to be pursuing in the current policy development of inclusionary zoning, more study may be required before changing Provincial policy. This would require a better understanding of the policy under this type of land value capture or sharing policy approach as compared to the 'exaction' policy framework approach currently approved by the City of Toronto. Consideration may also have to be given to the use of other types of offsets that can be used in the application of inclusionary zoning, such as the reduction in other exactions like development charges, and/or reductions in parking requirements. These types of offsets are used in policies applying inclusionary zoning across North America.

Where the exaction policy is mandatory and it is applied like an exaction, the 5% cap appears to be reasonable. However, if higher affordable housing contributions are possible without burdening the development via increased density or other offsets, the Provincial policy should consider and permit higher contributions.

### **Recommendation:**

We support the 5% cap on units where the policy is designed as mandatory and is effectively an exaction. However, where offsets are provided especially where increased density is provided and land value increases are shared, there can be provisions for higher contributions for affordable housing depending on the value of the offsets

### **The 25-Year Affordability Period**

There may be a need to fine-tune this policy to reflect different approaches depending on whether the affordable units are owner-occupied or purpose-built rentals. Having a 25-year period for rental gives the purpose-built rental/property owner certainty in terms of when units can return to market rates, and it provides some financial incentive to build purpose-built rentals as compared to the affordability as set by the City of Toronto, currently set at 99 years. However, some additional analysis needs to be undertaken to assess how much financial incentive this actually provides. The 99-year period appears to be a statement that the units are to be perpetually affordable. There is a need perhaps to fine-tune and extend this time period for rental units. We suggest looking at best practices as applied across a number of North American cities.

The 25-year period for ownership units creates a different issue. If these units are subject to this time period, it means whoever owns the unit at the end of the 25-year period obtains a windfall gain at the end

of the period as the value of their unit moves from controlled as affordable for resale to an open market price. All of the accumulated gains would be realized. This sets up an incentive for people to acquire units near the end of the 25-year period and can lead to a series of issues around side payments for acquisitions, etc. Therefore, keeping the owner-occupied unit affordable for a longer period, perhaps 50 years, may be appropriate. This longer period does not burden the developer/builder of the building as the time frame for affordability on owner-occupied units does not impact on the pro forma or cash flow of the developer/builder.

**Recommendation:**

The 25-year affordability period is support for purpose-built rental projects. However, it should be longer for owner-occupied units that a process or regulation for maintaining the units as affordable when they are sold has to be established.

**Provincial Transit Oriented Communities (TOC) Policy and Inclusionary Zoning**

The Province has the opportunity to facilitate additional 'affordable housing' units without burdening the cost of development by facilitating housing units to be built through inclusionary zoning policy in areas designated for Transit Oriented Communities (TOC). This also ensures that affordable units will be available in close proximity to transit. As the Province plans to increase that permitted density in TOC areas and set the zoning as-of-right, this provides an opportunity to utilize an inclusionary zoning policy based on land value capture, where the values created by the increase in permitted density will be shared or utilized to finance the subsidy provided to the affordable housing units.

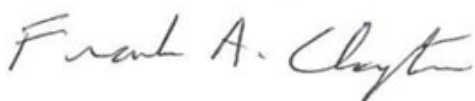
In order for this to occur, the Province will have to impose the inclusionary zoning policy at the same time that they designate the increased densities for the areas designated for TOC. In this way, any developer purchasing land to develop in these areas will pay a price that reflects the increased densities and the contribution that will be required for affordable housing via the inclusionary zoning policy. Thus, the inclusionary zoning contributions will be capitalized in the land purchase price, and it will not burden the financing for the development. If developers already own the land prior to it being designated for TOC and therefore increased density, they will simply share the windfall gain that they obtain from the rezoning as the meat of it will be required to subsidize the affordable units developed under the inclusionary zoning policy.

**Recommendation:**

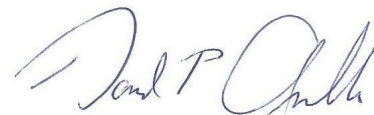
The Province should impose an inclusionary zoning housing policy in its TOC districts at the same time as the areas are identified and the zoning densities for the as-of-right zoning are established.

If you have any questions about our submission, don't hesitate to get in touch with us.

Sincerely,



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