



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 6, 2016
SUBJECT/REPORT NO:	Response to the Ministry of Municipal Affairs and Ministry of Housing Consultation Guide on Inclusionary Zoning (PED16176) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council reiterate support of Inclusionary Zoning as a tool to assist with the creation of affordable units within Hamilton, as detailed under previous adopted City Report CES15032 and in the responses to Bill 73 provided to the Province through Report PED15093;
- (b) That Council endorse the comments and recommendations contained in Report PED16176 and that the City Clerk be directed to forward Report PED16176 and Appendix "B" to Report PED16176 to the Ministry of Municipal Affairs and the Ministry of Housing as formal comments in response to the "Inclusionary Zoning – Consultation Discussion Guide, May 2016" and Bill 204, an Act to amend or repeal various Acts with respect to housing and planning related matters;
- (c) That following the proclamation of Bill 204, the *Promoting Affordable Housing Act*, staff be directed to engage with the Province on regulations considered within Appendix "B" to Report PED16176;
- (d) That following the proclamation of Bill 204, the *Promoting Affordable Housing Act*, staff be directed to consult with the community and report back to Planning Committee with a proposed framework for inclusionary zoning in Hamilton.

EXECUTIVE SUMMARY

This Report responds to the request for comments sought through the 'Long-term Affordable Housing Strategy Update – Inclusionary Zoning Consultation Discussion Guide' received from the Ministry of Municipal Affairs and Housing on May 18, 2016 and on Bill 204 "Promoting Affordable Housing Act". The deadline for comments was August 16, 2016. Draft comments which were comprised of Appendix "B" to Report PED16176 were submitted to the Province on August 16, 2016. Once endorsed by Council, this Report including Appendix "B" to Report PED16176 will be forwarded to the Province as the City's final comments.

This Report has been completed in collaboration with the Housing Services Division.

Inclusionary zoning refers to policies, by-laws and programs that increase the number of affordable units created through requiring development proposals with residential units to include affordable housing units and provide for those units to be maintained as affordable over a period of time. This approach uses the land-use planning approvals process to require private-market development to provide below market-rate rental and/or ownership housing. Programmatic aspects ensure that the units are affordable for a period of time. That length of time and what constitutes "affordable housing" are two of several elements of inclusionary zoning that must be determined for each specific inclusionary zoning program. While inclusionary zoning can be targeted to varying parts of the housing spectrum, most successful programs are able to create housing, both rental and ownership housing, as raised in the discussion guide, that target households that earn too little to afford market-rate housing and too much to be eligible for social assistance (also referred to as "shallow need").

Inclusionary zoning is different from density bonusing in that the affordable housing is a standard mandatory requirement for all developments of a chosen size, while with density bonusing the community benefit provided is negotiated and can include benefits other than affordable housing. Additionally, with inclusionary zoning an increase of height or density is not necessarily given to the developer, while with density bonusing allowing additional height or density is the starting point for the negotiation.

Inclusionary zoning may assist with, but it will not resolve Hamilton's affordable housing issue. If the City of Hamilton elects to implement inclusionary zoning, given the current local market and financial realities of development and the parameters of Inclusionary Zoning as outlined in Bill 204, the City could expect it to only moderately increase Hamilton's supply of units priced at just below market. Generally, these would be ownership units as multi-dwelling rental projects face greater difficulty achieving financial viability, with most new rental projects requiring incentives in order to be viable. To get deeper affordability and more rental units, it would be necessary for the City to provide additional subsidies and incentives. In depth discussion of options for a

Hamilton inclusionary zoning program, including the possibility of any additional subsidies and incentives, will be provided in subsequent reports to Council.

The Ministry's consultation document presents several questions that seek to determine matters that may be considered by the Minister. Should Bill 204 be passed, it would amend six provincial acts (*Development Charges Act, Planning Act, Residential Tenancies Act, Housing Services Act, Elderly Persons Housing Aid Act and the Smart Growth For Our Communities Act*).

The proposed legislative changes to the *Planning Act* will:

- Require, by regulation, that municipalities identified by the Province must include in their Official Plan policies authorizing inclusionary zoning;
- Require that Official Plan inclusionary zoning policies must provide for the affordability of housing units, set out goals and objectives and procedures to obtain those goals and objectives;
- Require by regulation that municipalities identified by the Province pass an inclusionary zoning by-law to give effect to the applicable inclusionary zoning Official Plan policies;
- Prohibit appeals of inclusionary zoning policies and by-laws except by the Minister;
- Prohibit the Committee of Adjustment from granting relief from an inclusionary zoning by-law;
- Prohibit the use of Section 37 (Bonusing) where an inclusionary zoning by-law is in force and effect;
- Establish, by regulation, parking and loading standards for affordable housing units within an Inclusionary Zoning development, and where the Provincial standards conflicts with the local municipality's zoning standards, the Provincial standards prevail;
- Establish, by regulation, site plan standards for buildings subject to an inclusionary zoning by-law with respect to standards for exterior access to buildings containing affordable units;
- Set, through regulation, the application fee for *Planning Act* applications that include affordable housing units; and,

- Establish reporting and monitoring requirement on the implementation and maintenance of inclusionary zoning units.

It is staff's position that within a Provincial framework, individual program and implementation, elements should primarily be determined at the local level. A Provincial framework would ensure that there is a level of consistency between municipalities and that, should the City of Hamilton choose to adopt the inclusionary zoning framework, it would be based on a framework that is meaningful and responsive to the specific housing challenges in Hamilton.

Alternatives for Consideration – See Page 24

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There are no financial implications as a direct result of this Report, but if Council elects to pursue Inclusionary Zoning, then determining individual program elements of an inclusionary zoning framework at the local level, and preparing an Inclusionary Zoning By-Law, will require a number of studies and resources. The source of the required funding to finalize these matters has not been determined, but may require Capital funding for the necessary staff and consulting resources to conduct the research, implementation and on-going monitoring.

Implementation of an inclusionary zoning framework will also require administration resources to establish necessary agreements to enforce the inclusionary zoning, and to monitor, track and enforce the agreements to ensure affordability over the long term.

Staffing: There are no staffing implications as a direct result of this Report, but if Council elected to implement inclusionary zoning, staff resources would be required to undertake detailed evaluation of growth forecasts, detailed market studies, and modelling of various development scenarios, as well as to implement, and administer the program. Implementation would include drafting agreements, monitoring affordability and eligibility over the length of the affordability period, reporting, etc. The amount of staff resources required is unknown at this time.

Legal: There are no legal implications as a direct result of this Report, but if Council elected to implement inclusionary zoning there would be legal implications related to developing agreements, administration, registering instruments on title, and enforcing legal agreements.

HISTORICAL BACKGROUND

On March 14, 2016, the Ontario Government provided an update to the Long-Term Affordable Housing Strategy. Part of the update included proposed legislation for inclusionary zoning. This legislation was in response to numerous requests received during the consultation on the strategy update, including a request from the City through Report CES15032 and the responses to Bill 73 provided in Report PED15093.

Further support by the City of Hamilton for an Inclusionary Zoning framework has been given in The Housing and Homelessness Action Plan, particularly Strategy 1.4 to “Explore the feasibility of inclusionary zoning and seek necessary provincial legislative changes that would facilitate the implementation of inclusionary zoning in Hamilton.” In addition, Council Motions have been made, identifying the need to examine and determine the role and feasibility of Inclusionary Zoning (as well as Section 37) in increasing the supply of affordable units.

The proposed legislation would allow municipalities to mandate that affordable housing units be provided by development proponents as part of residential development projects. Report CES15032(a) summarizes the Long Term Affordable Housing Strategy Update, including the financial commitments.

On May 18, 2016, Ontario introduced Bill 204, which will be called the *Promoting Affordable Housing Act* if enacted. The bill, expected to be passed in the fall, proposes to amend six provincial acts: the *Development Charges Act, 1997*; *Housing Services Act, 2011*; *Planning Act 1990*, *Residential Tenancies Act, 2006*; *Smart Growth For Our Communities Act, 2015* and *Elderly Persons Housing Aid Act, 1990*. One element of the changes is to increase the availability of affordable housing through Inclusionary Zoning. There are other elements as well, such as modernization of the social housing system, but these are beyond the scope of Report PED16176.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Bill 204 Proposed Changes

Bill 204 proposes to amend six provincial acts. Those acts with an impact on land use planning are the *Development Charges Act, 1997*; *Planning Act 1990*; and *Smart Growth For Our Communities Act, 2015*. The proposed changes to each act are detailed below.

Proposed Changes to the *Development Charges Act, 1997*

Bill 204 proposes a change to the *Development Charges Act*, which would prohibit municipalities from imposing development charges for the creation of second dwelling units in new single detached, semi-detached, and row house dwelling units. There is

already a development charge prohibition for the creation of second dwelling units in existing single detached, semi-detached, and row house dwelling units. The intent of this change is to increase the supply of secondary dwelling units, which contribute significantly to the supply of affordable housing.

Whereas the role of this Report is to focus on the changes to the *Planning Act*, initial consultation with our Corporate Services indicates that the impact of the above proposed changes would be minimal with the Development Charges pricing policies currently in place.

Proposed Changes to the *Housing Services Act, 2011* and *Residential Tenancies Act, 2006*

Bill 204 also proposes significant changes to the *Housing Services Act, 2011* and *Residential Tenancies Act, 2006*, but these will be addressed in future reports to the Emergency and Community Services Committee.

Proposed Changes to the *Planning Act*

Inclusionary zoning is not currently permitted under the *Planning Act*. As a general principle, municipalities are not permitted to pass zoning by-laws that regulate the user, as opposed to the use. This general principle also precludes municipalities from requiring developers to provide affordable housing as a condition of development approvals.

Bill 204 proposes to grant an exception to this principle for the limited purpose of providing affordable housing. Significant changes to the *Planning Act* are required to implement inclusionary zoning. Key amendments proposed in Bill 204 include:

1. Under the proposed legislation certain municipalities prescribed by regulation will be **required** to implement inclusionary zoning through their Official Plan policies and by passing an inclusionary zoning by-law. Other municipalities, those not prescribed by regulation, **may** choose whether or not to implement inclusionary zoning. The Ministry has been clear through the consultation materials and discussions with staff, that there is no intention to require any municipalities to implement inclusionary zoning. Municipalities will only be enabled to do so. The “required” language is in the legislation only in case the Ministry finds that it is necessary to require inclusionary zoning at some undefined point in the future;
2. Official Plan policies and by-laws to authorize inclusionary zoning, including “any condition, requirement or standard relating” to inclusionary zoning are only appealable by the Minister;

3. A by-law passed by a municipality to give effect to implement inclusionary zoning policies:
 - a. **must** include requirements for the number of affordable housing units to be provided, the period of time affordability must be maintained, and the requirements and standards that affordable housing units must meet;
 - b. **must** require that the owners of the new development enter into an agreement with the municipality to implement the requirements set by the by-law. Such agreements may be registered on title and enforced on subsequent owners;
 - c. **may** include measures and incentives to support inclusionary zoning, unless they are otherwise required by regulation. Measures are planning permissions that can help off-set the cost of building the affordable units, such as increased height and density and reduced parking standards. Incentives are fee waivers, grants, loans, loan guarantees, etc. provided by the municipality;
 - d. **may** determine the price at which affordable housing units are sold or rented. Generally, successful inclusionary zoning programs are able to meet the need for slightly below market housing rather than more deeply affordable housing;
 - e. **may** set requirements and standards regarding exterior access, the shape and dimensions of each affordable housing unit, and the approximate location of the affordable units relative to the market rate units. It is uncertain if the affordable units are required to be exactly like the market units, or if some concessions can be made to increase the affordability of the units, such as reduced size, specific location within the development, lesser quality of finishings, etc.; and,
 - f. **may** require that in the case of condominium projects, any shared facilities agreements are acceptable to the municipality.
4. Other parameters and requirements for implementation of inclusionary zoning include:
 - a. A requirement for municipalities to monitor and ensure that the affordability of the units is maintained for the required period of time;
 - b. Municipalities may not use density bonusing (Section 37) to obtain a community benefit from the developer in addition to the affordable units;

- c. Municipalities may not accept cash-in-lieu of the affordable housing units, or permit affordable housing units be built on a different site. The intent of this requirement is to ensure that there would be affordable units in every development, ensuring a mix of incomes in every neighbourhood;
- d. Minor variances may not be granted to the inclusionary zoning portion of a by-law; and,
- e. Long-term leases of new developments containing affordable housing units are exempt from subdivision and part-lot control.

An additional proposed change to the *Planning Act*; that policies, or parts of by-laws that give effect to policies permitting second dwelling units, including any requirement or standard relating to second dwelling units, are not appealable.

Proposed *Planning Act* Regulations

Many of the details regarding implementation of inclusionary zoning will be addressed by provincial regulation. Official Plan policies and zoning by-laws will be required to comply with the regulations. No proposed regulations have been released by the Province at this time; however, the Ministry has provided a list of matters that will be prescribed by regulation. These matters include:

- 1. the content of inclusionary zoning Official Plan policies;
- 2. the content of inclusionary zoning by-laws;
- 3. the content of agreements required to maintain the affordability of housing units over time;
- 4. the procedures for monitoring and ensuring the affordability of housing units is maintained for the required period of time;
- 5. the circumstances under which Section 37 of the *Planning Act* may be used when an inclusionary zoning by-law is in effect;
- 6. the content, timing and distribution of municipal reports and information on affordable housing units produced by inclusionary zoning;
- 7. minimum loading or parking facilities, including prohibiting minimum parking requirements for specified lands, buildings or structures;
- 8. transitional matters; and,

9. maximum fees for the processing of development applications where affordable housing units are provided.

Inclusionary Zoning Consultation Discussion Guide

On May 18, 2016, the Ministry of Municipal Affairs and Housing issued the Inclusionary Zoning Consultation Discussion Guide. The guide contains a list of questions that are intended to facilitate discussion and elicit input regarding how the implementation details, including the matters noted above, will be addressed in the forthcoming regulations. These implementation details are the focus of Report PED16176.

Should the *Promoting Affordable Housing Act, 2016* (Bill 204) be passed, Hamilton would have the option to introduce Official Plan Policies and Zoning By-law provisions to implement inclusionary zoning once the Provincial regulations are in place. Implementation of inclusionary zoning would satisfy a number of Urban Hamilton and Rural Hamilton Official Plan policies.

The goal of the following Urban and Rural Hamilton Official Plan (UHOP/RHOP) policies is to increase the amount of affordable housing within Hamilton. Inclusionary zoning is one planning tool with the potential to increase the supply of affordable housing:

Urban Hamilton Official Plan (UHOP)

- 3.2.3.1 The City shall endeavour to provide a facilitative land use planning process for development applications for *affordable* housing and *housing with supports*.
- 3.2.3.2 Where appropriate, assistance shall be provided, either by the City and/or by senior governments, to encourage the *development* of *affordable* housing, with priority given to projects in areas of the City that are lacking in *affordable* housing. City assistance may include selling or leasing of surplus City land or financial assistance.
- 3.2.3.4 The City shall identify, promote and, where appropriate, participate in *affordable* housing opportunities funded by senior levels of government.
- 3.2.3.5 The City shall encourage senior levels of government to adopt a 'Housing First' policy whereby *affordable* housing uses are given priority in the disposition of surplus government owned land.
- 3.2.3.6 Investment in new *affordable* housing shall be encouraged by a coordinated effort from all levels of government through implementation of a range of strategies, including effective taxation, regulatory and administrative policies and incentives.

The above policies are also contained within the Rural Hamilton Official Plan.

Housing and Homelessness Action Plan (HHAP)

The goal of the following strategies in the City's ten year Housing & Homelessness Action Plan is to increase the supply of affordable housing and promote a mix of incomes in neighbourhoods. Inclusionary zoning has the potential to further both of these objectives.

Outcome Area 1: There is more affordable rental and ownership housing in Hamilton to meet the need and demand.

Strategy 1.3: Facilitate land use planning approvals for affordable housing developments.

Strategy 1.4: Explore the feasibility of **inclusionary zoning** and seek necessary provincial legislative changes that would facilitate the implementation of inclusionary zoning in Hamilton.

Outcome Area 2: There is an increase in people's housing affordability, stability and choice.

Strategy 2.1(a): Encourage mixed housing and mixed income development in all urban neighbourhoods by: increasing opportunities for rental, social and affordable housing in areas that currently offer limited opportunities.

Strategy 2.2: Develop a policy and strategy to ensure the low and moderate income households in neighbourhoods experiencing economic growth and transformation are not displaced or negatively impacted by gentrification.

Finally, implementation of the Housing and Homelessness Action Plan is part of Strategic Priority 1.5 of the current Strategic Plan. "Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

(xi) Implement a ten-year Housing and Homelessness Action Plan with strategies to support:

- Increasing the supply of affordable rental and ownership housing."

RELEVANT CONSULTATION

Housing and Homelessness Planning Group

The Housing and Homelessness Planning Group acted as a community advisory committee for the development of the Housing and Homelessness Action Plan. The committee remains in place to advise on implementation and provide feedback on various housing matters.

A number of members of the committee participated in a consultation on the questions posed in the Inclusionary Zoning Consultation Discussion Guide on June 22, 2016. Their comments were wide ranging, but overall the group supports a mix of provincially and municipally determined inclusionary zoning parameters, with the Province providing a basic framework and toolkit, and municipalities determining the factors that are market based and impacted by local conditions.

Some specific points include:

- the ability of municipalities to employ cash-in-lieu in some limited circumstances is necessary to enable implementation;
- the suggestion that set asides (the number of units in a development that must be affordable) be based on the number of households who live in poverty, such as half the local poverty rate; and,
- grandfathering of development projects that are underway should be limited.

Development Industry Liaison Group

The Development Industry Liaison Group was consulted on the Inclusionary Zoning Discussion Guide on July 6, 2016. Given time limitations and the complexity and interrelated nature of the questions, responses were predominately high level with concerns raised over the more detailed implementation issues that would arise. The following are the common themes provided by the Development Industry Liaison Group.

Provincial Framework

The group generally agreed that the Province should provide a framework in order to ensure consistency, transparency and reasonableness of the process, but noted that decisions regarding details should be made at the local level. It was emphasised that not every project is equal in terms of constraints and opportunities and therefore flexibility would be an important component. Simplicity was raised as a fundamental requirement, to ensure the process is not overly bureaucratic and cumbersome and that it did not cause uncertainty in the development process. It was also suggested that cash-in-lieu and off site allocation of units could assist with flexibility and program delivery. While some members shared this thought, others expressed concern that use of cash-in-lieu could become just another tax upon development.

Housing Issues

The group noted that the existing constraints on development and delay in receiving planning approvals, including the delay and cost due to Ontario Municipal Board appeals, for new market rate units must also be addressed, as these issues significantly impact housing affordability.

Thresholds and Set-asides

It was noted that thresholds (the scale of development that would be applicable to inclusionary zoning) and set-asides (the percentage of units required to be affordable) are interrelated and their determination of key importance. Although not in total agreement, some participants considered that the Province should set a minimum threshold and a maximum set-aside, expressing the concern that municipally set requirements might be unreasonable. The threshold should be sufficient to ensure that the cost of the affordable units can be adequately spread across the development, with smaller projects unlikely to be financially viable. They also noted that an unintended consequence of Bill 204 would be a cost transfer to other units within the development. The set-aside should be small enough that the costs of the affordable units can be absorbed by the market.

Offsets, Measures and Incentives

Offsets, measures and incentives are intended to reduce the costs to the developer providing the affordable units. They include such tools as increased height and density, reduced parking requirements, loans, grants, etc. The group said that measures and incentives are critical to ensure that development projects remain financially viable. If there are not sufficient offsets, measures and incentives, inclusionary zoning could have the effect of deterring development. In particular, participants suggested that the development of rental housing is not financially feasible without the assistance of significant incentives. The Housing Services Division is working on additional incentives to encourage the development of rental housing; however, some participants suggested that imposing inclusionary zoning on rental development could completely deter it. The concern was also expressed that the costs attributed to providing affordable units would be passed onto the new home purchaser or renter, thereby decreasing affordability.

Additionally, participants suggest that the Province should consider tools beyond those currently available to municipalities. Provincial matters such as property tax and Ontario Municipal Board Reform were raised as important factors to address to increase affordability and facilitate the development of affordable units. Locally, broader permissions for increased density for both multiple dwellings and grade oriented units would be a significant incentive.

Transition

With regard to transition provisions, the group said that applications submitted prior to adoption of inclusionary zoning should be grandfathered to acknowledge the development process timelines and to recognize that the financial parameters of a

project are determined early in the development process. To substantially change the requirements in a way that could impact the feasibility of a development would be unfair.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Ontario's Long-Term Affordable Housing Strategy Update (LTAHS-U), released in March 2016, is an ambitious plan to increase the supply of affordable housing, transform the housing system, better support people, work in partnership with municipalities, end chronic homelessness, and more. Report CES15032a provides an overview of the changes put forward in the LTAHS-U. As part of the commitment to increase the supply of affordable housing, the LTAHS Update committed to bring forward legislation to enable municipalities to implement inclusionary zoning.

The proposed inclusionary zoning authority is intended to help municipalities increase the supply of affordable housing to meet the objectives and targets set out in municipal housing and homelessness plans and official plans.

Inclusionary Zoning

Inclusionary zoning refers to policies, by-laws and programs that require residential development proposals to include affordable housing units and provide for those units to be maintained as affordable over a period of time. This approach uses the land-use planning approvals process to require private-market development to provide below market-rate rental and/or ownership housing. Programmatic aspects ensure that the units are affordable for a period of time. That length of time and what constitutes "affordable housing" are two of several elements of inclusionary zoning that must be determined for each specific inclusionary zoning program.

While inclusionary zoning can be targeted to varying parts of the housing spectrum, most successful programs are able to create housing, both rental and ownership housing, that is just under market rent or market price. This type of housing is often referred to as `key` or `essential` worker housing; housing for those workers who can't afford a home near their work, but have too high an income to qualify for social housing. In this way, inclusionary zoning has the ability to contribute significantly to reducing affordability programs for those who can afford to pay just under market rates, but will not solve Hamilton's affordable housing program. Additional City incentives such as rent subsidies would be required to create more deeply affordable housing.

Affordable Housing

Affordable Housing is a generic term for the full range of housing types and affordability levels that costs 30% or less, inclusive of rent or mortgage payments, taxes, condominium fees and utilities, of the gross income of low to moderate income households. It includes every form of housing from emergency shelters to residential

care facilities and other housing with supports, single room occupancy / rooming houses, social housing, subsidized rental housing, affordable market rate rental housing and affordable homeownership. Affordable housing includes both rental and ownership tenures.

Affordable housing can also be defined on the basis of costs relative to the private market, such as rents of a certain percentage of average market rent, or ownership units that cost a certain percentage below the median resale price for a similar unit.

The terms 'affordable housing' and 'social housing' are often used interchangeably. However, social housing is a specific sub-component of the broader continuum of affordable housing. Social housing refers to housing projects developed under various government social housing programs primarily from the 1970s to mid-1990s. Social housing is owned and operated by municipal or private non-profit housing corporations and eligible tenants receive rent-geared-to-income subsidy whereby they pay no more than 30% of their income to rent. Some social housing projects also contain market rent units in order to promote mixed income communities.

Ministry of Municipal Affairs and Housing Consultation Regarding the Discussion Guide

In order to consult on the development of the regulations for inclusionary zoning, on May 18, 2016, the Ministry of Municipal Affairs and Housing issued the Inclusionary Zoning Consultation Discussion Guide. The guide contains a list of questions that are intended to facilitate discussion and elicit input regarding how the implementation details of inclusionary zoning will be addressed in the forthcoming Provincial regulations. These questions address the extent to which the Province should determine various individual program elements or leave the details to the discretion of municipalities.

As detailed in the Policy Implications and Legislated Requirements section of this Report PED16176, the proposed legislation has already determined a number of program elements, with many elements still to be determined and informing the basis of the Discussion Guide. Key 'determined' and 'to be determined' elements are addressed below. For a complete review of Bill 204 see the Policy Implications and Legislated Requirements section. Notwithstanding this, any elements beyond the scope of the Discussion Guide, including matters that are considered to be determined, can still be relayed to the Ministry of Municipal Affairs and the Ministry of Housing.

Key Elements of Bill 204

The proposed legislation, if enacted as written, will establish the following:

- **Enabling Framework** - Bill 204 is intended to make the adoption of inclusionary zoning policies optional for municipalities; however, it gives the Minister the option to impose such a framework in the future.
- **Off-Site Provisions** – Bill 204 will not permit the provision of affordable units required through an inclusionary zoning framework to be provided off-site.
- **Cash-In-Lieu** – Bill 204 will not permit the payment of cash-in-lieu in exchange for required affordable units. Staff are requesting that this program element be reconsidered as it would assist in ensuring Hamilton's varied communities are appropriately served.
- **Section 37 Restrictions** – Bill 204 will not permit municipalities to apply Section 37 (density bonusing) in addition to inclusionary zoning requirements.
- **Ontario Municipal Board appeals** – Bill 204 prohibits appeals of municipal inclusionary zoning policies and by-laws to the Ontario Municipal Board with the exception of the Minister of Municipal Affairs.
- **Procedure** - Bill 204 requires municipalities to monitor and establish a procedure for ensuring inclusionary zoning units remain affordable over time.
- **Agreements** - Bill 204 requires owners of inclusionary zoning units to enter into agreements with the municipality to ensure the units remain affordable.
- **Variances** - Bill 204 prohibits variances to the inclusionary zoning portion of a by-law.
- **Development Charges** – Bill 204 prohibits municipalities from imposing development charges for second units in new homes (*Development Charges Act*).
- **Site Plan Approval** – Site plans must detail the exterior access to each building that will contain affordable units, if both the official plan and site plan by-law contain exterior access requirements.
- **Subdivision Approval** – Any development that contains affordable units will be required to show the shape and dimension of each affordable housing unit and the approximate location in relation to other units. Suitability of the affordable units will be a consideration for the approval authority.

- **Condominium Approval** – Approval of shared facilities agreements may be imposed as a condition of approval of new condominium developments.
- **Parking** – The Minister will be authorized to make regulations respecting minimum loading or parking facilities, including prohibiting minimum parking requirements for specified lands, buildings or structures.
- **Fees** – The Minister will be authorized to prescribe in a regulation a maximum fee charged for development projects that include affordable units.

Key Elements for Consideration within an Inclusionary Zoning Framework

Key elements for consideration, as listed below, include the proposed changes to the legislation as well as potential regulations.

The challenge will be developing a workable inclusionary zoning framework for Hamilton that makes the most of the opportunity for the development of affordable units, while not deterring development.

- **Program Targets** - Identification of the need to be targeted with the inclusionary zoning program. Generally, successful inclusionary zoning programs target units that are just below market. It is difficult to achieve deeper affordability through inclusionary zoning and would require additional incentives such as rent subsidies to do so.
- **Price and Rent** – Determination of the price and rent at which the units may be sold or leased. In inclusionary zoning programs affordable prices and rents can range from near market rates to deeper affordability, but as noted above, the most common and successful prices and rents are just below market rate.
- **Unit Set Aside** – The percentage of units (or other measurement) in a building that must be affordable. When determining unit set aside it is critical to ensure that significant numbers of affordable units will be produced, but development is not deterred. If an inclusionary zoning program compromises the financial viability of development nothing will be built and, due to reduced supply, Hamilton's housing prices will increase even more than they are increasing now.
- **Affordability Periods** – The period of time the units are to remain affordable. These can range significantly from ten years to indefinitely and can differ based on tenure of rental or ownership.
- **Threshold Size** – The scale / size of development for which inclusionary zoning requirements are triggered, e.g. ten units or more. Again, it is important that the threshold selected balances the need for affordable units with financial feasibility.

- **Measures and Incentives** – Incentives to support and offset the costs of providing affordable housing units. Measures typically include permissions for additional height and density, or reduced parking requirements. Incentives are direct financial incentives such as development charge waivers. The goal of both is to offset some of the costs of the affordable units. It should be noted that many of these are already provided in the City of Hamilton.
- **Requirements and Standards** – To ensure the units created through inclusionary zoning programs are designed with appropriate standards. The ideal is to not differentiate the affordable from the market units, but a reduction in requirements or standards for the affordable units, such as reduced parking requirements, can function as a cost offset.
- **Agreements** – Agreements are needed to secure affordability of the units over time.
- **Administration, Monitoring and Reporting** – How the affordable units should be delivered and monitored to ensure affordability over time.
- **Use with Section 37** – Whether there are circumstances in which the Minister may enable application of both density bonusing and inclusionary zoning on the same site.
- **Transitional Matters** – Whether and at what point projects with planning applications initiated or commenced prior to inclusionary zoning being implemented should be grandfathered.

Hamilton Context

To provide an informed response to the Key Elements under consideration, staff reviewed some of the specific challenges and opportunities facing the Hamilton housing market.

Challenges:

Varied Communities – Hamilton has a rich variety of urban, suburban and rural areas and neighbourhoods, each with different housing markets and housing challenges. Any inclusionary zoning framework needs to be responsive to these different housing markets. In the rural area for instance, there is minimal residential development permitted, so this in turn creates very limited opportunity to produce affordable units. Additionally, as communities have differing levels of affordability, it could be challenging to apply a city-wide standard. One such challenge is therefore whether the various inclusionary zoning parameters, such as threshold and affordability level, should consider the relative affordability of an area or be consistent City-wide.

It is in response to these types of challenges that staff recommend for limited circumstances, an option for cash-in-lieu and off site provision of affordable units. Such an option would provide the flexibility necessary to address situations wherein affordable housing is less necessary in certain communities and certain developments, but where those developments could still contribute to the overall affordable housing supply within the City of Hamilton. Factors where such flexibility in program delivery may be necessary include:

- Areas with reduced availability of public transit;
- The inaccessibility of services, infrastructure, and jobs without the use of a car;
- Small developments where the developer does not have the capacity to undertake the administrative requirements to ensure affordability of inclusionary zoning units over the long term;
- Locations where need for affordable units is high but growth is relatively low, or conversely, locations where need is less critical; and,
- High cost amenity condominium projects where ongoing condominium fees will be unaffordable.

Additionally, a cash-in-lieu and offsite option could help achieve other policy goals such as supporting public transit, brownfield redevelopment, or housing a skilled workforce in proximity to employment opportunities by enabling municipalities to have some control over the location of a portion of the inclusionary zoning units.

Market – The Hamilton ownership housing market has been robust in recent years. An inclusionary zoning program would have to ensure growth is encouraged and not constrained.

New rental development faces challenges with respect to financial viability. While Hamilton has seen some recent rental development activity in the downtown, rents must be at the highest end of the market to make the development of new rental housing financially viable. Even with high rents the financial viability is sensitive to interest changes, operating costs, etc. and is therefore precarious. Even new rental units at high rents are only being developed with the assistance of substantial incentives. Significant incentives as well as rent subsidies are currently needed to achieve even modest affordability.

Density – As identified in the challenge of varied communities, the variation in density of housing developments throughout Hamilton contributes to the complexity of achieving a ‘one size fits all’ inclusionary zoning framework. If thresholds and set asides vary across the City, it would be necessary to ensure competitive advantages are not given

to certain areas. In particular, one such concern is that should inclusionary zoning thresholds be higher or only apply within the downtown areas, an unintended consequence could be additional pressures for greenfield development and less intensification. This could then result in undesirable outcomes such as the inability of the City to meet intensification targets, and increased inequity in access to affordable housing. If Council elects to implement inclusionary zoning, significant analysis and careful planning will be required to ensure there are no unintended negative consequences.

Spectrum of Units – Similar to the Density discussion, Hamilton's new residential developments accommodate the entire built form spectrum from single detached dwellings to high density multiple dwellings. Consideration must be given to the different challenges in providing affordable grade related dwellings in a large subdivision compared to smaller dwelling units in a mid or high-rise building. It is likely that different inclusionary zoning approaches would therefore be required depending on the typology of unit being proposed.

Zoning By-Laws – Hamilton's approach to the new comprehensive zoning by-law is to zone lands to the maximum density considered to be good planning. This limits the need for major planning approvals thereby decreasing delay and promoting good development. The challenge is that this approach limits the City's ability to provide cost offsets for inclusionary zoning in the form of height or density bonuses. This challenge can be mitigated if we consider the City-initiated rezoning as the offset, an approach used in New York City.

Competition – The proposed *Promoting Affordable Housing Act, 2016*, as it is intended to be implemented by the Province, sets out an enabling framework for inclusionary zoning. On this basis, it is possible that should Hamilton choose to adopt inclusionary zoning, Hamilton may by consequence, be at a competitive disadvantage to neighbouring municipalities who may have elected not to adopt such a framework.

Opportunities:

High Growth – Hamilton is seeing the re-emergence of an apartment condominium market. As this market further develops, the ability to employ inclusionary zoning would allow the City to capture some of the property value uplift as a result of planning approvals for the purposes of affordable housing. Given the significant increases in the growth of the Hamilton housing market, it is prudent to consider tools that could leverage this growth to address affordable housing needs and gentrification concerns. Places to Grow – Growth Plan for the Greater Golden Horseshoe emphasizes increased intensification. However, this growth and intensification has not to date resulted in significant changes in the affordability of units or a significant increase in the number of rental units. Strong housing market growth can result in social displacement

due to increasing property values / rents within established markets, but inclusionary zoning could enable the leveraging of this growth to produce affordable units.

Mitigate Negative Consequences of Gentrification – Current growth forecasts for the City of Hamilton between 2011 and 2041 predict significant unit increases, with unit types dominated by single detached dwellings (38,080 units) and apartments (30,740 units). With the continued growth of Hamilton's housing market, and with local, provincial and federal funding directed to significant infrastructure improvements (such as transit and the Waterfront), property values and rents are increasing at such a rate that concerns over displacement are being raised. The ability to capture, through an inclusionary zoning framework, a proportion of this growth and secure it for affordable housing would partially address rising concerns over access to affordable housing. An inclusionary zoning framework that does not permit off-site provision or cash-in-lieu has the potential to partially address these concerns in a meaningful way by introducing new affordable housing in high growth areas. However, inclusionary zoning in and by itself will be unable to completely meet affordable housing needs. As noted in this Report, inclusionary zoning typically addresses the need for housing that is just under market value, leaving deeper affordability needs unmet unless additional subsidy programs are used.

Equitable Provision of Affordable Housing – All neighbourhoods need affordable housing to accommodate those in need and those whose circumstances may change, without necessitating that they leave their familiar neighbourhood and support systems. An effective inclusionary zoning framework may begin to address the rising imbalances.

Currently, many Hamilton neighbourhoods have very little affordable housing. The communities of Ancaster, Glanbrook and Flamborough have a total of 238 two-bedroom rental apartments that rent for an average of \$1,044. The Downtown and Central area of the City has 4,323 two-bedroom rental units that rent for an average of \$960. The Mountain area has 3,649 two-bedroom rental units that rent for an average of \$898. The issue of affordable housing can therefore be one of both supply as well as distribution, an element that a successful inclusionary framework may address in part.

There is also a wide discrepancy in home price across areas of the City. In June 2016 in Flamborough the average sale price was \$735,447 whereas in Hamilton East it was \$296,390, and in Ancaster was \$679,409. Even in areas of the City traditionally considered to be more affordable, such as Hamilton East, the minimum gross household income required to buy an average house is \$65,000.

Hamilton's rental market has tightened in the last several years. Report CES15018 shows a trend of steadily increasing rents. Between 2010 and 2015 the overall average rent for apartments in buildings with six or more units increased from \$702 to \$835, an overall increase of 19%. Between 2014 and 2015 rents increased by 2.5%. Between 2013 and 2014 there was a sharp decrease in the overall vacancy rate from 3.9% to

2.3%. While the overall vacancy rate increased in 2015 to 3.8%, CMHC analysts are predicting a decrease in future years. Putting this in the context of social assistance rates that have increased minimally in the last years, for those on social assistance or fixed incomes, rents have become significantly less affordable.

With regard to home ownership, costs have increased substantially and the trend upwards shows no immediate signs of abating. In June 2016 the average sale price of a freehold (not condominium) home was \$464,497, representing a 18.8% increase over June 2015's average of \$391,004. The average sale price of a home in Hamilton is unaffordable for households with low to moderate incomes. Assuming a 10% down payment and at current retail 5 year closed mortgage rates, a household would have to earn \$93,000 a year to afford the mortgage payments for a house at the average resale price without paying more than 30% of their income on mortgage payments. This is well above the 60th income percentile. (The Provincial Policy Statement 2014 defines low and moderate income households to be those in the lowest 60 percent of the income distribution). Condominiums are also unaffordable to many, with the June 2016 average condominium price of \$243,084, which would require an income of approximately \$55,000, assuming condominium fees of \$300.

Availability of Underutilized Land – Inclusionary zoning has the potential to encourage further intensification and density increases, particularly when developed in conjunction with other supportive planning approaches. This would increasingly encourage the development of underutilized lands which exist throughout Hamilton, and would assist in achieving residential intensification targets, as well as improving tax assessment and revenue for the City.

Based on the identified challenges and opportunities it is clear that Hamilton has specific considerations that would need to be addressed in a responsive and meaningful way if Council elects to implement inclusionary zoning and it is to be successful. Key program elements would need to be carefully determined, taking both the need for affordable housing and the housing market and submarkets into consideration, and through extensive public consultation processes. With this prevailing opinion, staff has prepared responses to the questions presented within the Consultation Guide (attached as Appendix “B” to Report PED16176).

Affordable Housing Targets

The ability to implement inclusionary zoning has the potential to help the City meet some of its targets for both ownership and rental affordable housing as outlined in the UHOP and the HHAP and shown in Table 1.2 below. The rental affordable housing targets have not been met in any year since the UHOP or HHAP were originally approved.

As it is most successful at delivering units just below average market rates, inclusionary zoning on its own will not be able to meet the target of housing for low income

households. To produce units with deeper affordability than moderately below market prices or rents, additional subsidies would be required.

Affordable Rental Housing Targets

Growth forecasts completed by the Province in 2012 for Growth Plan Amendment #2 show an average annual target for new supply of approximately 3,184 residential units a year to 2041.

The UHOP total rental target to meet projected growth is 629 units, 377 of which need to be affordable to low and moderate income households. Low to moderate income households are those below the 60th income percentile. The HHAP affordable rental target is 300 units. The difference between the UHOP and HHAP targets is that the HHAP assumes that the secondary rental market, that traditionally represents about 12% of the market, will take care of 12% of the affordable units needed. The secondary rental market is any rental that is not purpose-built such as rented condominiums, secondary dwelling units, etc. Removing the secondary market units leaves a target of 300 units of affordable purpose-built rental housing. 300 units of affordable rental housing is approximately 10% of the average annualized projected new residential units.

Table 1.2 UHOP and HHAP Affordable Rental Housing Targets (to 2041)

Target Type	Target # of Units Annually
UHOP Total New Rental Units (not all affordable)	629
UHOP Total New Rental Units <i>Affordable to Low & Moderate Income Households</i>	377
HHAP Total New Rental Units <i>Affordable to Low & Moderate Income Households</i>	300

Affordable Ownership Housing Targets

The UHOP target for affordable homeownership is a total of 2239 units, 1291 of which are affordable to low and moderate income households (below the 60th income percentile). People of low income (0 - 40th income percentile) have a challenging time accessing homeownership; however homeownership can be within reach for moderate income households (40th to 60th income percentile). 430 affordable units are needed annually to meet the homeownership needs of only moderate income households. 430 units is 15% of the total projected annualized units per year. Thus, if we consider only households with a moderate income, 15% of all new residential ownership units would need to be affordable.

Whereas, specific recommendations as to set aside levels will require greater review and consultation, the above information highlights how existing established targets could be used to define a percentage of housing to be affordable.

Affordable Housing Targets to 2031

Based on the above targets and growth projections to 2031, to meet the affordable **homeownership** needs for those of **moderate income** (between the 60th and 40th income percentiles), Hamilton would need at least 15% of all new housing to be affordable. As of 2015 the 60th income percentile for Hamilton is \$81,600 and the 40th is \$52,500, which translates to affording a house price between \$195,500 and \$304,500. Hamilton's median house price is currently \$390,000.

Based on the above targets and growth projections to 2031, to meet the affordable **rental** housing needs of **low and moderate income** households, Hamilton would need at least 10% of all new housing to be affordable.

In this context "affordable" means housing that costs 30% or less, inclusive of rent or mortgage payments, taxes, condominium fees and utilities, of the gross income of moderate income households (between the 60th and 40th income percentiles) and low income households (0 – 40th percentile). It is important to note that **these figures simply indicate the affordable housing need of those of moderate and low income based on the above targets and growth projections. They are NOT proposed set aside levels for a potential inclusionary zoning program.** If Bill 204 is enacted, and if Council decides to implement an inclusionary zoning program for Hamilton, set asides and other inclusionary zoning program parameters would be proposed only after significant analysis, including market and need analysis, and substantial public consultation.

Responses to Presented Questions:

The recommended detailed responses to the questions posed by the Province are in Appendix "B" to Report PED16176. In summary, it is the position of staff that within a provincial framework, individual program and implementation elements should primarily be determined at the local level. This would ensure that there is a level of consistency between municipalities and that, should the City of Hamilton choose to adopt inclusionary zoning, it would be based on a framework that is meaningful and responsive to the specific housing challenges in Hamilton.

Additional Considerations:

In addition to the above responses, Council may wish to comment on parameters that have already been set out in Bill 204, *The Promoting Affordable Housing Act, 2016*. While the Bill is before the House, the opportunity still exists to seek modification. For

example, staff heard repeatedly during the consultations that while inclusion is an important component of inclusionary zoning, there are some limited circumstances in which providing units in a particular development may not be a high priority and therefore cash-in-lieu or off-site provisions would be more desirable.

It is staff's recommendation that, while cash-in-lieu should not be permitted broadly, municipalities should have the ability to employ it in certain select situations.

ALTERNATIVES FOR CONSIDERATION

The City could forego the opportunity to provide comments to the Province at this time.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A" Ministry of Municipal Affairs and Ministry of Housing Consultation Guide.
- Appendix "B" City of Hamilton Responses to the Ministry of Municipal Affairs and Ministry of Housing with regard to Bill 204, the *Promoting Affordable Housing Act, 2016* and the specific questions as contained within the Consultation Guide.