

# LONG-TERM AFFORDABLE HOUSING STRATEGY UPDATE

## **Inclusionary Zoning**

### Consultation Discussion Guide

Ministry of Municipal Affairs and Housing

May 2016

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**INCLUSIONARY ZONING**

CONSULTATION DISCUSSION GUIDE

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## INTRODUCTION

Ontario's economic health depends on, and is supported by, a robust supply of housing, including affordable housing, that meets the needs of all. Our communities and neighbourhoods are stronger and more vital when they include a mix of people who are able to choose from a range of available housing that meets their needs. Having an affordable home is an important first step to moving out of poverty. When a person has a stable, affordable place they can call home, it opens up possibilities for better education, health and work.

### Ontario's Vision

Every person has an affordable, suitable and adequate home to provide the foundation to secure employment, raise a family and build strong communities

Ontario's Long-Term Affordable Housing Strategy (LTAHS) is a plan that focuses on increasing the supply of affordable housing, supporting people and working in partnership with our cities and towns. In March 2016 the government announced its commitment to further transform Ontario's housing system through an updated Strategy that focuses on increasing the supply of affordable housing, supporting people and ending chronic homelessness.

Our transformations to increase the supply of housing are based on a system built on partnerships with and shared responsibility between the private, non-profit sectors and government – and will mean that people will be better supported. The vast majority of Ontarians live in private market housing. As part of the update, the government recognizes that the private sector has an important role to play in increasing the supply of a wide range and mix of housing that includes affordable housing.

### Do you know that...

Almost 95 percent of Ontario families and individuals obtain housing through the private market

Source: National Household Survey 2011; Internal MAH data on social housing

Our continued challenge in meeting Ontario's growing and changing demands for affordable housing choices requires creativity, innovation and effort. We all have a role to play.

To address the need for better affordable housing choices, the Promoting Affordable Housing Act, 2016 (the Act) proposes amendments to the *Planning Act* that, if passed, would enable municipalities to use inclusionary zoning through the land-use planning system.

## WE WANT TO HEAR FROM YOU

**Note to Reader:** Please take note that any references in this Guide to “Schedule 4 of the Act is passed”, to “Promoting Affordable Housing Act, 2016”, or to “the Act” means “Schedule 4 of the Promoting Affordable Housing Act, 2016 is passed by the Legislature as read at First Reading and comes into force on a date to be named by the Lieutenant Governor”.

## **BACKGROUND**

### **Land Use Planning and Affordable Housing**

Land use planning is about how land is used and managed – whether for business, industry, recreation, transportation or housing. Land use planning plays a fundamental role in the location, mix, type and density of housing. Planning for compact and mixed forms of development, including multi-residential buildings, can result in the creation of more affordable housing that is close to schools, jobs, services and community supports. It also supports the use of transit and active transportation.

The province has already provided municipalities with a range of planning tools that they can use to facilitate or stimulate the development of affordable housing in the private market. However, the shortage of affordable housing continues and the need for it keeps growing. For more and more families and individuals, it is hard to find housing that they can afford.

### **What is Inclusionary Zoning?**

Inclusionary zoning refers to policies, by-laws and programs that require 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 combines housing policy and land-use planning approvals to require private-market development to include below market-rate rental and/or ownership housing.

The proposed Promoting Affordable Housing Act, 2016, was introduced on May 18, 2016. Schedule 4 of the Act proposes amendments to the *Planning Act* that, if passed as read at First Reading, would allow municipalities to pass inclusionary zoning by-laws, subject to certain requirements in the proposed legislation, as well as by potential additional requirements that may be set out by regulation.

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

While the bulk of the proposed amendments to the *Planning Act* relate to inclusionary zoning, several others would address affordable housing more generally. The proposed amendments, if passed, would provide the Minister of Municipal Affairs and Housing with the authority to make regulations relating to the proposed provisions.

## **WE WANT YOUR INPUT**

This Discussion Guide identifies matters that may be considered by the Minister for future possible regulatory proposals to support the proposed legislative framework, if the Promoting Affordable Housing Act, 2016 is passed by the Legislature as read at First Reading and comes into force on a date to be named.

The Discussion Guide also provides some background information on these proposals, and key questions that we would like you to consider.

## 1. AN INCLUSIONARY ZONING FRAMEWORK FOR ONTARIO

The proposed Promoting Affordable Housing Act, 2016 (the Act), if passed, would set out an enabling framework for inclusionary zoning in Ontario.

Key elements of the proposed legislative framework would include:

- allowing municipalities to determine where and how inclusionary zoning applies through official plan policies and zoning by-laws, subject to the requirements of the proposed legislation and potential regulations
- prohibiting appeals to the Ontario Municipal Board from municipal inclusionary zoning policies and zoning by-laws, except appeals made by the Minister of Municipal Affairs and Housing
- not authorizing municipalities to accept money in lieu of inclusionary zoning units or allow the units to be built on off-site lands
- requiring municipalities to establish a procedure for ensuring that inclusionary zoning units remain affordable over time
- requiring owners of inclusionary zoning units to enter into agreements with the municipality, which may be registered against the land and can be enforced against subsequent owners to keep the unit affordable
- restricting municipalities from using section 37 (density bonusing) in addition to inclusionary zoning requirements, except in circumstances outlined by regulations

**Our purpose:** To seek input on potential matters that may be considered by the Minister for possible future inclusionary zoning regulations.

## 2. PROGRAM TARGETS

Identifying who gets served by any proposed inclusionary zoning program is important as it represents a municipality's housing priority and it identifies who would be eligible for any affordable housing units created through such a program.

If the Act is passed, inclusionary zoning planning decisions of municipalities would be required to be consistent with the Provincial Policy Statement, 2014 (PPS, 2014). The PPS, 2014 provides a definition of "affordable" in addressing who might be served through inclusionary zoning. Generally, affordable means households – made up of families and/or individuals – do not pay more than 30 percent of gross income on annual accommodation costs or, the purchase or rental price for housing is at least 10% below average market value.

### Do you know that...

The median Ontario household income was \$76,510 in 2013

Statistics Canada, Median Total Income By Family, 2013, <http://www.statcan.gc.ca/tables-tableaux/sum-som/0101/ks01/famil108a-eng.htm>

Many programs in other jurisdictions have been implemented to serve low- and moderate-income households. In Ontario, this means families and individuals in the lowest 60 percent of the income distribution for the regional market area.

Depending on a community's needs, research indicates that many existing programs target families and individuals that earn too little to afford market-rate housing and too much to be eligible for social assistance. In some programs, income is not the sole determinant as units can also be targeted to groups such as seniors or those with special needs.

### Questions for Discussion

1. Should there be provincial direction to further specify the target groups for inclusionary zoning, or should this be left to each municipality to determine?

If you think direction is needed, who should be addressed based on the PPS definition of "affordable"?



### 3. PRICE AND RENT

If the Act is passed, the price and rent at which units may be sold or leased may need to be regulated to ensure that they remain affordable. There are many ways to approach this but in some jurisdictions, the price and rent of inclusionary zoning units are typically based on:

- the area median income, or
- the average purchase price in the community

#### Questions for Discussion

2. Should there be provincial direction on how price and rent would be determined in an inclusionary zoning by-law when inclusionary zoning units are sold or leased?

If so, what approach would you recommend?

### 4. UNIT SET-ASIDE

Unit set-aside refers to the basic requirement that developers must meet for providing affordable housing units. This is typically expressed as a percentage of units in a building that must be affordable.

Some programs apply the same set-aside requirement across the entire jurisdiction, while others apply the requirements to targeted neighbourhoods experiencing significant growth or affordability pressures. In certain cases, the set aside is higher in and around transit corridors.

Experience in other jurisdictions also shows that unit set-asides may vary depending on the income groups targeted. For example, where units are sold/rented to very low-income households, local governments sometimes require fewer affordable housing units from developers.

#### Questions for Discussion

3. Should minimum and/or maximum unit set asides be specified province-wide or should this be left to each municipality to determine?

If you think that a specified number or percentage of units should be applied province-wide, what would you recommend?

## 5. AFFORDABILITY PERIODS

The Act, if passed, would require municipalities to ensure that units provided through inclusionary zoning by-laws are maintained as affordable over time. Once the affordability period ends, the affordable housing units may shift to market rate.

Affordability periods for American inclusionary zoning programs range from 10 years to 99 years. Over 80 percent of inclusionary zoning programs in American jurisdictions set an affordability period of at least 30 years.<sup>1</sup> For some programs, affordability is for the life of the building, permanent or set with no end date.

### Questions for Discussion

4. Should there be provincial direction for a minimum or maximum affordability period that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine?

If you think a province-wide affordability period should be specified, what would you recommend (e.g., 20 years, 30 years, no time limitation)?

## 6. THRESHOLD SIZE

Threshold size refers to the size of a development at which inclusionary zoning requirements are triggered (e.g., total number of residential units in a proposed building, area/hectares of development).

Threshold sizes vary across inclusionary zoning programs, with examples ranging from buildings with two units to 200 units and hectare size ranging from 2 to 10 hectares and more.

### Questions for Discussion

5. Should there be provincial direction for a minimum and/or maximum threshold size that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine?

If you think the threshold size should be specified province-wide, what would you recommend?

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<sup>1</sup> Rick Jacobus, Inclusionary Housing: Creating and Maintaining Equitable Communities, Lincoln Institute of Land Policy, September 2015

## 7. MEASURES AND INCENTIVES

Inclusionary zoning engages private sector developers to create affordable housing units as part of residential developments. Within this process, as part of the shared responsibility, municipalities may offer measures and/or incentives to support the provision of affordable housing units and to address potential concerns regarding the profitability of development proposals.

In many jurisdictions, height and density are the primary measures used by municipalities to allow for development that can support inclusionary zoning. In other cases, where incentives may allow for specific housing types such as rental and seniors housing, and/or where units are to be made available to very low-income households, municipalities have provided incentives such as: reduced parking or design requirements, application fee waivers, development charge or property tax deferrals, and/or expedited planning approval processes.

### Questions for Discussion

6. Should measures and incentives be required on a province-wide basis through regulation, or should this be left up to municipalities?

If you think the province should provide direction, what would you recommend?

## 8. REQUIREMENTS AND STANDARDS

The government wants to ensure that the units created through inclusionary zoning programs are designed with appropriate standards and that they provide future homeowners and renters with suitable affordable housing.

The Act, if passed, would allow municipalities to specify requirements and standards for inclusionary zoning units in their official plans and zoning by-laws. These standards could regulate the number of bedrooms, size of units, location of affordable units on a site or within a building, or the exterior access to units (i.e., regulating separate entrances for affordable units).

#### Questions for Discussion

7. Should there be provincial direction to specify minimum requirements and standards for inclusionary zoning units or should these be left up to each municipality to determine?

If you think requirements or standards should be specified province-wide, what would you recommend?

### 9. AGREEMENTS

The Act, if passed, would require developers and/or owners of inclusionary zoning units or buildings with inclusionary units, to enter into agreements with the municipality to ensure that the units are maintained as affordable over time. These agreements may be registered against the land and the municipality may enforce the agreement with subsequent owners to ensure the unit remains affordable.

The Act, if passed, would authorize the minister to make regulations for additional direction on the matters to be dealt with in these agreements. For example, a potential regulation might consider requiring agreements to provide that rent increases during the term of the agreement must conform to Ontario's Rent Increase Guidelines.

#### Questions for Discussion

8. Should there be provincial direction on inclusionary zoning agreements?

If so, what would you recommend?

### 10. ADMINISTRATION, MONITORING AND REPORTING

Administration, monitoring and performance indicators are essential elements of inclusionary zoning programs to ensure that units remain affordable over time and that the program is meeting the municipality's goals and objectives.

The Act, if passed, would require municipalities who pass an inclusionary zoning by-law to establish a procedure for monitoring the affordable housing units and ensuring their affordability is maintained over the defined control period. The Act does not outline a procedure for ensuring affordability, or who has to undertake it. This allows flexibility for different delivery arrangements. Municipal monitoring efforts could include recertifying

annual incomes of renters and reviewing resales of affordable ownership units to future income-eligible buyers.

The Act would require municipalities to provide reports and information concerning affordable housing units. While the content of these reports and reporting methods is not specified, regulatory authority would be provided to the minister to pass regulations on administration, monitoring and reporting.

#### Questions for Discussion

9. Should there be provincial direction on requirements for ongoing administration of units and ensuring affordability over the control period?

If so, what types of requirements would you recommend?

10. Should there be provincial direction on mandatory requirements for municipal monitoring procedures?

If so, what mandatory requirements would you recommend?

11. Should there be provincial direction on municipal reporting of inclusionary zoning units (e.g., reports must be publicly available; reports must be provided annually to municipal council)?

If so, what would you recommend?

#### 11. USE WITH SECTION 37 (HEIGHT AND DENSITY BONUSING)

Currently, under Section 37 of the *Planning Act*, municipalities may authorize buildings to exceed the height and density otherwise permitted in the zoning by-law in exchange for community benefits, such as public art and community daycare.

The Act, if passed, would prohibit municipalities from using Section 37 if the same land, building or structure were subject to inclusionary zoning. If passed, the Act would also provide the minister with the authority to determine appropriate circumstances (through regulations) where Section 37 may be used in addition to inclusionary zoning requirements.

**Questions for Discussion**

12. In what circumstances would it be appropriate to require inclusionary zoning units as well as community benefits in exchange for additional height and density?
13. Should conditions or restrictions apply to these circumstances, and if so, what would you recommend?

**12. TRANSITIONAL MATTERS**

In some instances where new land use planning changes are enacted, transitional provisions are included to grandfather planning applications that were initiated or commenced before enactment, where municipalities have not finished processing them or made decisions.

In some cases of enabling legislative frameworks, the details of a municipal program would not be known until the municipality adopts its official plan and passes a zoning by-law to enable its use. In such instances, some might say that applications commenced prior to adoption of a municipal inclusionary program should be grandfathered.

**Questions for Discussion**

14. Do you think that planning applications commenced prior to enactment of the proposed legislative process should be grandfathered?
15. Do you think that planning applications commenced prior to municipal adoption of inclusionary zoning official plan policies and/or zoning by-laws should be exempted?

## HOW TO PARTICIPATE

Please send us your written feedback, including responses on the discussion questions included throughout this paper, by August 16, 2016. You can provide your input by:

- e-mailing a submission to [inclusionaryzoning@ontario.ca](mailto:inclusionaryzoning@ontario.ca)
- submitting your comments through our [online feedback form](#)
- submitting your comments through the [Environmental Bill of Rights Registry](#) as set out in EBR Notice Number 012-7616 (Act Proposal Notice) and 012-7617 (Regulation Proposal Notice)
- writing to us at:  
Provincial Planning Policy Branch  
Ministry of Municipal Affairs and Housing  
777 Bay Street, 13<sup>th</sup> Floor,  
Toronto ON M5G 2E5

### Personal information

Personal information you provide is collected under the authority of the *Ministry of Municipal Affairs and Housing Act*.

Thank you for providing comments. Your feedback is very important to us.