

**City of Hamilton Response to the
Ministry of Municipal Affairs and Ministry of Housing
Regarding the Inclusionary Zoning Consultation Discussion Guide and *The
Promoting Affordable Housing Act, 2016, Bill 204***

The Promoting Affordable Housing Act, 2016, Bill 204

Enabling

The discussion guide characterizes the legislation as enabling, such that individual municipalities will have ultimate discretion as to whether to adopt an inclusionary zoning framework. However, the legislation suggests that it may be prescribed for certain municipalities. The position and comments to the province would be significantly different if the decision were to mandate certain municipalities to adopt inclusionary zoning while allowing flexibility to others. One identified concern with the enabling approach is the potential issue of disparity in development opportunities between municipalities of those which have adopted, and those which have not adopted, inclusionary zoning. The possibility of mandating some while offering flexibility to others would significantly increase this concern over the potential for a competitive disadvantage. In this regard, greater clarity is requested on this matter.

Planning Act Application Fees

It is noted that the Minister will be prescribed powers to determine application fees. It is noted that the City of Hamilton has already provided fee waivers for certain development applications that are providing affordable housing. However, there would be concern over the decision to further modify the approach for application fees currently in operation within Hamilton. Application fees are based on cost recovery, understanding the staff time and subsequent costs to the municipality to review development applications. Additional fee reductions mandated from the province would have implications with respect to the review costs and budgetary operation of the City.

Suitability

A number of the amendments seek to provide the approval authority with greater powers to assess ‘suitability’ of the affordable units created. However, clear criteria needs to be established in which to determine what makes a unit ‘suitable’.

Parking

Bill 204 will provide the Minister the authority to determine parking and loading requirements for affordable units. A number of issues determine parking demand requirements. Affordability is one such issue, but access to transit, size of household and specific locational attributes also need consideration. Given

Hamilton’s varied communities, it is the position of the City of Hamilton that such provisions be determined at the municipal level.

Condominium fees

Given the inability of municipalities to use cash-in-lieu in the implementation of inclusionary zoning, buildings with comparatively high condominium fees may be required to provide affordable units. There is an outstanding question of how these fees would be applied to affordable units. Limited access or restrictions to shared facilities may be counter to the intent to create inclusive communities, whereas reduction or elimination of fees for occupants of the affordable units could lead to higher fees and tensions between those in the affordable units and owners of the market units.

Cash-in-lieu

In consultations staff heard repeatedly that while inclusion is an important component of inclusionary zoning, there are some limited circumstances in which providing units in a particular development is not practical. For example, an expensive condominium building for which the condominium fees would be high or a suburban or rural subdivision that is not readily accessible by transit or to services. Additionally, not allowing cash-in-lieu in some circumstances could create some unreasonable situations. Examples of these unreasonable situations could fuel the argument against a municipality adopting inclusionary zoning at all. While cash-in-lieu should not be permitted broadly, municipalities should have the ability to employ it in certain select situations.

Conclusion

The City of Hamilton would emphasize the need for a greater understanding of the local impacts of the proposed legislative changes and caution against any changes that may result in outcomes that may otherwise prejudice either the adoption or overall success of an Inclusionary Framework within Hamilton.

Inclusionary Zoning Consultation Discussion Guide

- 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”?

Comment:

As each municipality has unique affordable housing needs that may differ significantly from the needs in other municipalities, municipalities should determine the income groups targeted by their inclusionary zoning by-laws. The City’s 10 year Housing & Homelessness Action Plan provides a framework and direction to determine any targeting.

With respect to the definition of affordable, the intent of an inclusionary zoning framework is to increase the number of affordable units throughout Ontario. Many existing inclusionary zoning programs in other jurisdictions seek to target families

and individuals that earn too little to afford market rate housing and too much to qualify for social assistance. In some programs, income is not the sole determinant as units can be targeted to specific groups such as those in need of supports.

Relating this framework to Hamilton’s own goals and targets, the Urban Hamilton Official Plan (UHOP) provides a definition of affordable as detailed below:

“**Affordable** means:

a) in the case of ownership housing, the least expensive of:

- i) housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income for *low and moderate income households*; or
- ii) housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the City of Hamilton; and,

b) in the case of rental housing, the least expensive of:

- i) a unit for which the rent does not exceed 30 percent of gross annual household income for *low and moderate income households*; or
- ii) a unit for which the rent is at or below the average market rent of a unit in the City of Hamilton (PPS, 2005 amended); and,

c) in the case of housing developments, at least 25 percent of either *affordable* ownership or *affordable* rental housing. For the purposes of the policies of this Plan, *affordable* housing developments may include a mix of *affordable* and market rate units, both ownership and rental.”

The UHOP definition – which is based on that in the PPS, provides criteria that would enable housing for both shallow and deep affordability. However, when applying this to an inclusionary zoning framework, which will be applicable only to new units, the definition may be too broad and in some instances too restrictive. For instance, it is unlikely that newly constructed rental units can achieve rents below average market rents. The form inclusionary zoning may take in Hamilton must therefore be determined through a thorough analysis of local conditions including both housing need and market realities.

As such, should the City of Hamilton elect to adopt an inclusionary zoning framework, the determination of the target group should be predicated on a definition specific to inclusionary zoning requirements and which is formulated through additional review and assessment of policy goals and targets in combination with current market realities. It should be noted, however that most successful inclusionary zoning programs target affordability of just below market rates, which would meet the needs of households with moderate incomes. It is much more difficult to meet the deeper

affordability needs of households with low incomes, and would require additional programs such as rent subsidies.

Recommendation:

Municipalities should be responsible for determining the target groups applicable within an inclusionary zoning framework. The definition of affordable should be specifically related to the determined target groups to ensure it is implementable and successful.

- 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?

Comment:

Municipalities are the most knowledgeable about their unique housing market and submarkets and are thus best equipped to determine how price and rent would be determined in their inclusionary zoning by-laws. Once the target groups have been determined, review of housing need and market conditions particular to the identified groups will be required at a localized geographical level to ensure the intent of the framework is being delivered.

The City's 10 year Housing & Homelessness Action Plan provides a framework and direction to inform price and rent levels. However, a guideline, prepared by the Province that sets out various options for methods of determining price and rent would be helpful to municipalities.

Recommendation:

The Province should provide a general guideline with respect to the various options for determining price and rent; however, final determination should rest with the municipalities.

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

Comment:

The Province could set very broad minimum and maximum set asides, but municipalities should determine the specifics within that range based on local conditions. Provincially set minimum and maximum set asides would give both the development industry and the housing sector assurances that municipally determined set asides will be reasonable. Preliminarily, we would suggest that a minimum and maximum that would give both the housing sector and development industry some level of comfort would be in the range of 5% to 25%. Based on existing targets in the Urban Hamilton Official Plan and Housing and Homelessness Action Plan and the most recent growth projections produced for the Growth Plan,

25% of all new residential would need to be affordable to meet growth projections; 10% of rental development and 15% of ownership development. The determination of actual set asides would require a much more in depth analysis, particularly market analysis and public consultation, but this provides a reasonable top limit.

Consideration of different forms of housing within the Hamilton market will be required, specifically as related to the need of the identified target group and observed growth and distribution of existing and future development.

Ultimately, given the unique and varied nature of the Hamilton housing market, the determination of the set aside should be a matter for the municipality, in consultation with the local community. Set asides need to carefully and sensitively respond to municipally specific housing markets and growth projections, and apply only once the municipality has assessed the locations for growth. The creation of a toolkit would assist staff in making these decisions at a local level, and would be a more beneficial response from the Province. The Province should not make specific decisions on program elements.

Further, it is difficult to consider specific set aside provisions without understanding the threshold of development in which the set aside provisions would be applied. The two are inextricably linked. Similarly, both of these program elements need to be considered in conjunction with the intended target groups as the level of affordability also affects the consideration of appropriate set aside and threshold values.

Recommendation:

The Province should provide a toolkit to assist municipalities to determine unit set aside amounts locally, but should not regulate a required set aside.

Alternatively, the Province could set broad maximum and minimum set aside parameters provincially to provide comfort to both the housing sector and development industry, but should not regulate specific set asides. The Province should also provide a toolkit to assist municipalities determine local set aside amounts.

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

Comment:

As stated above, it is suggested that a specified number or percentage should be established by the municipality based on a greater understanding of the need of the identified target group and the market and geographical condition. The Province could consider setting a minimum and maximum threshold in order to provide guidance and clarity to both the development industry and municipalities.

On this matter it is suggested that a range between a minimum of 5% and a maximum of 25% would be reasonable, with individual municipalities determining specific set asides following additional review, consultation and study.

It may also be beneficial to determine a standardized metric that is to be employed by each municipality. While Bill 204 proposes that the set aside be a percentage of unit numbers, basing the set aside on Gross Floor Area should be considered. Using gross floor area takes into account the relative size (and potentially the cost) of units, with larger units contributing more. It also better enables the provision of large affordable units which are much in need.

To assist in determining this program element, further analysis is required, including a needs assessment and full market and submarket analysis. While the ideal from the need perspective is to maximize affordable units, this must be balanced with market considerations to ensure inclusionary zoning doesn't deter development. This is of particular concern regarding rental housing as with current conditions rental housing is only financially viable with substantial incentives and high rents.

Recommendation:

The Province should provide direction on minimum and maximum set aside and consider standardizing the measurement to allow for meaningful benchmarking, but municipalities should ultimately determine set asides based on need and market conditions. Notwithstanding Bill 204, the Province should consider permitting set asides, not just on unit numbers, but on gross floor area.

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?

Comment:

There would be benefit in the Province setting a minimum affordability period, but allowing municipalities to require longer affordability periods. It is important to consider affordability periods for rental and ownership independently, with rental being the most challenging for the development industry. With ownership units, the administration of the affordability maintenance could be onerous for municipalities unless there are legislative changes, but there is no impact of a long affordability period on the developer.

Longer affordability periods mean a greater administrative burden for municipalities. Additional resources will be required to do the ongoing administrative work necessary to ensure that affordability is maintained.

Furthermore, the lifespan of the unit and ongoing maintenance and operational costs need to be factored in, understanding that periods beyond 30 years would experience increasing costs as the units reach the end of their life cycle.

Recommendation:

The Province should provide a minimum affordability period, and provide financial and program assistance to support the administrative requirements.

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

Recommendation:

It is important to set separate set asides for rental and ownership housing as the impacts of each set aside are very different. A minimum affordability period of 20 years for rental units, with municipalities able to set longer affordability periods is appropriate.

With respect to ownership, indefinite affordability should be considered as there is no negative impact on the developer. It should be up to municipalities to determine an appropriate level of equity for the owners of an inclusionary zoning unit.

- 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?

Comment:

Similar to the answer to the set aside question, (Question 3), it would be necessary to ensure the threshold size is responsive to the scale, type and form of current development in Hamilton and is responsive to the identified target groups.

The threshold should be determined on the unit yield of developments. A sliding scale would allow the program to be responsive to smaller and mid-range developments and allow threshold limits that would not unreasonably distort the market. A sliding scale could also eliminate the potential for developments to be sized at immediately below the threshold to avoid triggering the requirement for affordable units.

It is noted that implementation and monitoring of inclusionary zoning would create administrative burdens, with significant impacts on staff time and resultant costs to municipalities. The Province should provide funding to offset these costs.

Finally it is noted that variations exist not only between municipalities, but also between different communities within municipalities. A Province-wide threshold that is not responsive to these differences could make the inclusionary zoning tool less effective.

Recommendation:

Threshold size should be determined at the municipal level.

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?

Comment:

The need for meaningful and appropriate measures and incentives is crucial to the success of inclusionary zoning. This will need to be integrated and supported beyond the tools currently available to municipalities and could include matters such as Ontario Municipal Board reforms, Provincial tax exemptions as well as other provincial tools that should be discussed and developed collaboratively. There is also greater need for wider and potentially more costly incentives in order to address deep affordability.

However, it is requested that municipalities not be mandated to provide specific measures or incentives, but provided the flexibility to review and apply incentives where necessary. Hamilton currently offers numerous incentives, including partial waiver of Development Charges, Parkland dedication reductions and application fee waivers. The ability to determine locally how and where such incentives should be provided, would be necessary to ensure success of any potential inclusionary zoning framework.

Recommendation:

Measures and incentives should not be required through regulation, but be program elements determined and applied at the local level.

The Province should consider systemic and legislative changes to reduce the cost of development, thereby enabling increased housing affordability. Changes could include Ontario Municipal Board reforms and provincial tax exemptions and should be developed in consultation with municipalities and the development industry. The Province should also assist municipalities by providing access to current research, forums for the sharing of information among municipalities, and the development of guidelines that lay out options, the benefits and drawbacks of each, and considerations for implementation.

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?*

Comment:

The Ontario Building Code determines minimum building standards that must be observed. These are sufficient building standards for affordable units, but guidance

from the Province would be helpful in regards to other factors that come under ‘suitability’ in Bill 204.

Recommendation:

The Province should not specify minimum requirements and standards, but should allow municipalities to determine specifics and instead provide guidance in regards to factors that are considered to determine the threshold of ‘suitability’ as raised within Bill 204.

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

Recommendation:

The Province should not specify minimum requirements and standards, including for parking and loading as proposed in Bill 204, but should provide guidance to municipalities in regards to factors that are considered to be ‘suitability’ in Bill 204. These include the relative location of affordable units; relative size of affordable units; treatment of the affordable units through site plan review including external access and, if relevant, exterior design; the relative quality of finishes; access to on-site amenities; reduced parking requirements for affordable units; and review of shared facilities agreements for condominiums. As noted above, this guidance should be in the form of access to current research, presentation of options including the benefits and drawbacks of each, and considerations for implementation.

If the Province does specify minimum requirements and standards, these should balance the principle that affordable units be indistinguishable from market units on the exterior, but allow certain differences to help offset costs, such as lesser quality finishes.

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

Comment:

General direction on the items to be included in inclusionary zoning agreements and a basic template would be helpful for municipalities.

The agreements should be in a form that ensures execution and registration of the legal documents does not create any impact on the development review timelines.

Recommendation:

The Province should provide templates to inform the creation of inclusionary zoning agreements and ensure execution and registration of the legal documents does not create any impact on the development review timelines.

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?

Comment:

The requirements for ongoing administration of affordable units and to ensure affordability of units over time proposed in Bill 204 are appropriate. However, municipalities should determine the most appropriate mechanisms for administration and for ensuring long term affordability and eligibility, particularly if the Province does not provide funding for administration of inclusionary zoning. The provision of best practice information, including a suite of potential program models, by the Province would be helpful. Maintaining affordability and eligibility will be administratively burdensome for municipalities, requiring additional resources. Municipalities should be enabled to use third parties to undertake the administration, but not be required to do so.

Additionally, legislative changes should be adopted to better enable municipalities to secure long term affordability of ownership units.

Recommendation:

The Province should provide best practice information and potential program models regarding ongoing administration of units and monitoring of affordability over time, but should allow municipalities to determine how best to undertake the monitoring. Additionally the Province should make any legislative changes necessary to ensure long term affordability of ownership units.

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

Comment:

There should be basic requirements for ongoing administration of units, and to ensure affordability of units and eligibility of purchasers or new tenants over the control period. Income testing will be required for new purchasers or tenants of the affordable units at turnover, on an ongoing basis, to ensure affordable units are available for the intended target group. Municipalities will be required to take on significantly more administrative responsibilities and will need additional resources for this purpose.

If so, what mandatory requirements would you recommend?

Recommendation:

There should be basic requirements for ongoing administration of units and to ensure affordability of units and eligibility of purchasers or new tenants over the control period.

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?

Comment:

There should be requirements for municipalities to annually report the numbers and types of affordable units, and the level of affordability, produced by inclusionary zoning. These reports should be available publicly and received by the Province. The Province should combine the individual reports and publish an annual Provincial report. With time the reports will help determine the relative success of different models and parameters of inclusionary zoning programs.

Recommendation:

The Province should provide direction on the annual reporting of inclusionary zoning units.

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?

Comment:

Municipalities should be permitted to require Section 37 community benefits in addition to inclusionary zoning units in some circumstances. For instance, the City of Hamilton is reviewing its growth related development strategy, and it is likely that areas such as nodes and transit corridors will be planned to achieve significant density increases. It is in these circumstances, that the application of density bonusing in addition to inclusionary zoning, may be both reasonable and advantageous. It would be appropriate to require inclusionary zoning on the units permitted through City initiating rezoning, but also allow Section 37 community benefits should any additional height and density be deemed appropriate on a site by site basis.

Similarly, Hamilton has considerable built heritage resources that are being considered for development and adaptive re-use. The ability to apply Section 37 to increase the height and density of these developments and use the ‘bonus’ to ensure the protection of the heritage resource achieves numerous policy objectives.

To limit the ability of municipalities to apply both legislative options on a single site that has benefitted considerably from either density or built form provisions would unnecessarily hinder the ability to leverage growth in a sustainable and appropriate manner.

A more reasonable approach would be to apply a hybrid approach that applies inclusionary zoning requirements only to the base zoning permissions, and permit Section 37 to apply to the increase in height or density. Allowing the municipalities to adopt this approach, would ensure all community benefits appropriate to a given development application are secured and policy goals are achieved.

Recommendation:

Municipalities should be permitted 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?*

Comment:

It is not considered necessary to apply restrictions at a provincial level, given the unique differences in development activity across the Province. Should the Province determine that restrictions are necessary – such as a hybrid approach, it should provide the flexibility for the municipalities to determine these circumstances, and include them as part of the Official Plan policy changes required to implement an inclusionary zoning framework.

Recommendation:

Municipalities should determine the circumstances in which it may be appropriate to apply Section 37 in addition to inclusionary zoning requirements, and to include conditions and circumstances for such as approach as part of the Official Plan policy changes.

14. *Do you think that planning applications commenced prior to enactment of the proposed legislative process should be grandfathered?*

Comment:

Any development application is the product of extensive planning and significant financial assumptions. The introduction of inclusionary zoning requirements partway through the development approvals process is likely to have a significant impact upon any development projects in the planning stages, impacting the development process itself, development plans, the financial viability of the project, as well as whether the application is approved. For applications commenced prior to the enactment of the proposed legislation, an inclusionary zoning requirement would be unreasonable and punitively affect the development application.

Recommendation:

The Province should provide clear and well defined transition regulations that include the grandfathering of planning applications commenced prior to enactment of the proposed inclusionary zoning legislation in Bill 204.

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?*

Comment:

Similar to the comments presented above, sufficient time should be available within the development process to allow for potential financial impacts to be appropriately

accommodated, particularly as there will be a lag in time between provincial regulation and any adoption of Official Plan policy and Zoning By-law. As such, staff would be supportive of a means to exempt planning applications that have commenced prior to municipal adoption of inclusionary official plan policies and/or zoning by-laws.

Clear and well defined transition regulations are required with specific timeframes and parameters such that any ambiguity is avoided.

Recommendation:

The Province should provide clear and well defined transition regulations that include the grandfathering of planning applications commenced prior to municipal adoption of implementing inclusionary zoning Official Plan policies and / or Zoning By-laws.