



INFORMATION REPORT

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	March 21, 2017
SUBJECT/REPORT NO:	Inclusionary Zoning (City Wide) (PED16176(a))
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

Council Direction:

At the Council meeting of September 14, 2016 the following recommendations were adopted:

- “(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.”

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Information:

As detailed in Report PED16176, inclusionary zoning policies are policies which authorize the inclusion of affordable housing units within buildings or projects containing other residential units and which provide for the affordability of those affordable housing units to be maintained over time.

The Ministry of Municipal Affairs and the Ministry of Housing consulted with municipalities, developers, housing advocates and other interested parties in the spring and summer of 2016 regarding a framework for introducing inclusionary zoning in Ontario. Staff responded to this request for comments and the accompanying consultation guide as detailed within Appendix "B" to Report PED16176.

The Ministry of Municipal Affairs and the Ministry of Housing considered the broad range of comments and suggestions received during the consultation and introduced several amendments to Bill 204 which was subsequently reintroduced into the Legislature as Bill 7, *The Promoting Affordable Housing Act*. On December 8, 2016, Bill 7 was given Royal Assent. *The Promoting Affordable Housing Act, 2016*, amends the *Planning Act*, the *Development Charges Act, 1997*, the *Housing Services Act, 2011* and the *Residential Tenancies Act, 2006*. Many of the elements of Bill 7 are to be implemented through Ontario Regulation that have yet to be issued.

Of central discussion to the *Promoting Affordable Housing Act, 2016* is the implementation of inclusionary zoning. This formed the majority of the views and information presented within previous report PED16176. The resulting changes to the *Planning Act* will give municipalities the option of requiring affordable housing units as part of residential developments.

Legislative Changes:

The City of Hamilton provided responses to the changes to the *Planning Act* and the *Development Charges Act, 1997* proposed by Bill 204, "*Promoting Affordable Housing Act*" on September 14, 2016.

The purpose of this report is to highlight the main changes to Bill 7 (formerly Bill 204) that have occurred since the City of Hamilton were asked to provide comments. In addition, this report provides a general overview of the changes to the *Planning Act* as it pertains to the introduction of an inclusionary zoning framework.

Changes to the *Planning Act* since First Reading

As part of its public consultation process, the Ministry of Municipal Affairs and the Ministry of Housing received a number of comments from the public and private sector in advance of its August 16, 2016 deadline. As raised within the City of Hamilton

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comments, questions included how affordable housing thresholds will be set, the amount of flexibility in where and how affordable housing units are to be provided and the observation that a "top-down, one-size-fits all" approach may not be effective in addressing Hamilton's local affordable housing issues.

In response to these and other comments, the Ministry introduced several key changes to the Bill:

- A municipal assessment report is to be prepared prior to adopting official plan policies for inclusionary zoning and the report must be reviewed every five (5) years. This report will be subject to criteria set out in Provincial Regulation;
- Municipal inclusionary zoning requirements must be outlined in municipal official plan policies;
- While inclusionary zoning by-laws cannot be appealed to the Ontario Municipal Board (except by the minister), appeals of typical zoning matters, such as building height and density, can be appealed even when used as measures and incentives to meet inclusionary zoning needs;
- Municipalities may permit affordable housing units to be located on another site, subject to criteria set out in the regulation;
- Municipalities cannot accept cash in lieu of affordable units;
- Municipalities may use Section 37 of the *Planning Act* (allowing for greater building height and density in exchange for community benefits, such as heritage preservation or improvements to parkland) in combination with inclusionary zoning, subject to criteria set out in the regulation;
- Landowners must enter into agreements with the municipality that may be registered on title and enforceable against subsequent owners, to ensure that the units remain affordable over time;
- The minister is provided with regulatory authority to exempt certain developments from inclusionary zoning; and,
- Municipalities must establish procedures for the administration of affordable housing units so that they remain affordable over the long term and meet reporting requirements.

While these changes respond to some of the comments and concerns raised in respect to the implementation of an inclusionary zoning framework, the implications and effectiveness of inclusionary zoning will not be fully understood until the regulations are released by the Province. At such point, staff will conduct a comprehensive consultation process and provide a full review and report back to Committee and Council.

Overview of *Planning Act* Changes

The following provides an overview of the amendments to the *Planning Act* which will give force and effect to an inclusionary zoning framework. These changes represent

the first step towards providing the authority for inclusionary zoning provisions to be acquired through the development process.

Enabling Framework

Unless specifically prescribed by regulation, the municipality will be able to determine at the local level whether or not they adopt inclusionary zoning policies within their Official Plans and whether or not they pass inclusionary zoning by-laws to give effect to those inclusionary zoning policies.

Official Plan Policies

Inclusionary zoning policies are required to be policies which authorize the inclusion of affordable housing units within buildings or projects containing other residential units and which provide for the affordability of those affordable housing units to be maintained over time. These policies must set out goals and objectives and must describe the measures and procedures proposed to attain those goals and objectives. Inclusionary zoning policies must also include the provisions, if any, that are prescribed by regulation.

Assessment Report

Before adopting the parts of an official plan which contain inclusionary zoning policies, the municipality must prepare an assessment report that includes the information specified in the regulation. The municipality must update the assessment report every five years and must make these assessment reports available to the public.

Provisions

The amendments to the *Planning Act* sets out matters that must be dealt with, and matters that may be dealt with, in an inclusionary zoning by-law. These include:

- the number or the gross floor area of affordable housing units to be provided;
- the period of time for which the affordable housing units must be maintained as affordable housing units;
- the requirements and standards that the affordable housing units must meet;
- the measures and incentives that may be provided to support inclusionary zoning; and,
- the price at which affordable housing units may be sold and the rent at which they may be leased.

The Minister has the authority to make regulations regarding these matters and, if regulations are made, the by-law must reflect the regulations (as previously mentioned, the regulations are expected to be released by the Province for consultation within the first half of 2017).

Securing affordability/unit numbers/size etc.

An inclusionary zoning by-law must require the owners of any lands, buildings or structures that are to be developed or redeveloped under the by-law to enter into agreements with the municipality dealing with the matters mentioned in the preceding paragraph. Agreements may be registered against the land to which it applies and the municipality is entitled to enforce the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, against any and all subsequent owners of the land.

Monitoring and time frames

The municipality will be required to establish a procedure for monitoring and ensuring that the required affordable housing units are maintained as affordable housing units for the required period of time. The procedure must contain the provisions, if any, that are prescribed by regulation. The municipality must also provide reports and information concerning affordable housing units in the municipality (this is separate and distinct from the assessment report).

Cash-in-lieu not permitted / Off-site provisions

The municipality is not permitted to accept cash-in-lieu of the required affordable housing units but the municipality may authorize the location of some or all of the required affordable housing units in or on lands, buildings or structures other than those that are the subject of the development or redevelopment, subject to the prohibitions or restrictions contained in the regulations. This represents a change to the original Bill, which initially precluded the ability to provide off-site unit provisions.

Section 37 (Bonusing)

The municipality may use its authority under section 37 with respect to the development or redevelopment, to include community benefits in addition to affordable units created through the inclusionary Zoning provisions, subject to the prohibitions or restrictions contained in the regulations. This too represents a change from the original Bill, which is now contemplated as a result of the comments received from the consultation process.

Exemptions

The Minister has the authority determine that an inclusionary zoning by-law does not apply to development or classes of development specified in the regulation.

Appeal Rights

Only the Minister may appeal decisions (Official Plan policies giving effect to Inclusionary Zoning, by-laws and conditions (Subdivision etc.)) relating to policies that authorize inclusionary zoning. Appeals based on height, density massing etc. will however be permitted, even if these are provided as incentives to facilitate inclusionary zoning units.

Parking

The Minister is authorized to make regulations respecting minimum parking requirements, including providing that there is no minimum parking requirement for specified lands, buildings or structures. If the Minister makes such a regulation and it conflicts with a by-law passed by a municipality, the regulation prevails.

Site Plan Review

The municipality will have the authority to review the exterior access to each building that will contain affordable housing units, if both the official plan and the by-law designating the site plan control area contain exterior access requirements or standards related to inclusionary zoning.

Committee of Adjustment

A Committee of Adjustment is prohibited from authorizing a minor variance from those provisions of a by-law that give effect to an official plan's inclusionary zoning policies.

Subdivision and Part Lot Control Exemption

The municipality will be allowed to review the shape and dimensions of each proposed affordable housing unit and its approximate location in relation to other proposed residential units. In considering the draft plan of subdivision, the approval authority must have regard to the suitability of the proposed units for affordable housing.

Condominium Review

The municipality will be allowed to review and deem acceptable the range of common elements to be provided to the residents of affordable units.

Applicable Fees

The Ministry will have the authority to prescribe the maximum fee charged for processing an application related to development or redevelopment of affordable housing units within an inclusionary zoning framework.

Transition matters

The legislation confirms that transition matters, such as the ability to apply inclusionary zoning requirements retroactively, will be detailed in the regulation.

Next Steps:

These changes identified above do not provide direction on the individual components of an inclusionary zoning framework, but instead provide the necessary changes to the *Planning Act* to allow a municipality to establish such a framework.

Individual components of a framework will be determined through regulations. It is understood that the Ministry of Municipal Affairs and the Ministry of Housing will consult with municipalities, the development and housing sectors and other interested parties,

on proposed regulations for inclusionary zoning in the spring of 2017. Proposed regulations may address items such as:

- A threshold size for residential development projects that would trigger when to apply inclusionary zoning;
- Specifying that inclusionary zoning units would be maintained as affordable for a certain number of years; and,
- Rules that would set out the percentage of total units in a residential development project required to be affordable under inclusionary zoning.

Matters not specifically addressed by regulation will be determined at the municipal level. In anticipation of the regulations and the potential requirement for municipalities to determine individual components not determined by the regulation, staff will be preparing a consultation strategy to engage the development community, stakeholder groups, social housing advocates, interest groups and the general public.

Additional information and review of the regulations will be presented to Planning Committee and Council following release of the information by the Ministry of Municipal Affairs and the Ministry of Housing.

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