



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 20, 2018
SUBJECT/REPORT NO:	Response to the Ministry of Municipal Affairs and Ministry of Housing Consultation on the Regulatory Content of Bill 7 (Inclusionary Zoning) (City Wide) (PED18063)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning Division
SIGNATURE:	

RECOMMENDATION

- (a) That Council endorse the comments and recommendations contained in Report PED18063 and that the City Clerk be directed to forward Report PED18063 and Appendix "A" to the Ministry of Municipal Affairs and the Ministry of Housing as formal comments in response to the proposed regulatory content concerning Inclusionary Zoning; and,
- (b) That following the proclamation of Bill 7, 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 regarding the proposed regulatory content related to inclusionary zoning placed upon the Environmental Registry (EBR) by the Ministry of Municipal Affairs and the Ministry of Housing. The regulation was posted on the EBR December 18, 2017 and a 45 day submission requirement was provided, with the deadline for comments being February 1, 2018. Draft comments which are detailed within Appendix "A" to Report PED18063 were submitted to the Province on January 22, 2018. Once endorsed by Council, this Report including Appendix "A" to Report PED18063 will be forwarded to the Province as the City's final comments.

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

Alternatives for Consideration – See Page 10

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 resources and a number of studies. The source of the funding required to finalize these matters has not been determined, but capital funding for the necessary staff to conduct the research, implementation and monitoring may be required.

Depending on the specifics of the regulation ultimately established by the Province, implementation of an inclusionary zoning framework could require financial offsets, including exemptions of Development Charges and parkland dedication fees. Resources would also be required to establish 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 (IZ). This legislation was in response to numerous requests received during the consultation on the strategy update, including a request from the City for the Province to establish an Inclusionary Zoning framework through Report CES15032 and the responses to Bill 73 provided in Report PED15093.

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The proposed legislation and associated regulations would allow municipalities to mandate that affordable housing units be provided by development proponents as part of residential development projects.

On May 18, 2016, Ontario introduced Bill 204, which is now referred to as the *Promoting Affordable Housing Act, 2016 (Bill 7)*. The bill, proposed amendment to 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*.

The *Promoting Affordable Housing Act, 2016 (Bill 7)* was introduced on September 14, 2016 and received Royal Assent on December 8, 2016.

The current matters under consideration concern the proposed regulatory content related to inclusionary zoning should the proposed legislation be proclaimed.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Bill 204 Changes

Bill 204 proposed to amend six provincial acts. Those acts with an impact on land use planning were the *Development Charges Act, 1997*; *Planning Act, 1990*; and *Smart Growth For Our Communities Act, 2015*.

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:

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- 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 any 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 the proposed content of which is the subject of this Report. Official Plan policies and zoning by-laws will be required to comply with the regulations.

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 1.4: 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.

RELEVANT CONSULTATION

Housing and Homelessness Planning Group

The Housing and Homelessness Planning Group reviewed the regulatory content and were in support of the position of staff articulated within Appendix "A" to Report PED18063.

Development Industry Liaison Group

The Development Industry Liaison Group (DILG) was provided a brief overview of the proposed regulatory content. Given the significant and complex implications raised within the proposed regulations, separate and more detailed responses are expected to be provided by DILG directly to the Ministry. The high-level responses included the following comments:

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- Geographical areas within Hamilton offer varying levels of services. A city wide application would need to identify need and suitability of the location of IZ units.
- Incentives currently exist within certain areas of Hamilton, whether it is Development Charges, Parkland Dedication or parking requirements. Clarification would be required to determine if incentives are to be above and beyond that which currently exists.
- Incentives are needed otherwise costs associated with an IZ framework will be transferred to the market purchasers.
- Similarly ongoing tax and condominium fees require discussion concerning who pays and if this will again be a cost born by market owners only.
- The required assessment report should be completed in conjunction with Municipal Comprehensive Review process.

Staff will investigate the issues raised at DILG as part of the IZ study that is required to be prepared.

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 CES15032(a) 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.

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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.

Proposed Inclusionary Zoning Regulations

The inclusionary zoning regulations proposed by Ministry of Municipal Affairs and Ministry of Housing have been summarized below:

1. Prescribed Official Plan Policies

- Inclusionary zoning requirements would only apply to ownership, not rental units.
- Would only apply to development or redevelopments that propose no less than 20 residential units.
- Municipalities would determine applicable locations, range of household incomes eligible and set the average market price for each proposed unit type.

2. Municipal Assessment Report

- Prior to adopting an inclusionary zoning by-law, municipalities must submit a Municipal Assessment Report to the Ministry outlining population and demographic information, municipal housing market trends and projections.

3. Provisions

- Municipalities could require a maximum of 5% of new units/GFA (gross floor area) to be affordable, 10% if located in a high density transit station area.
- Affordability period - minimum 20 years, maximum 30 years.
- For 10 years after the affordability period, the unit is subject to sale price and sale provisions as determined in the regulation.

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- Municipalities would be required to provide financial incentive commensurate to 40% of the difference between the market price and the affordable price.
- These incentives could be direct or indirect including aspects such as Development Charge reductions, Parkland dedication reductions, parking reductions and application fee waivers.
- Density bonusing is not permitted as a means to off-set financial impact.

4. Inclusionary Zoning Agreements

- The municipality shares in the equity of the affordable unit with the owner.
- The balance or share of proceeds related to the equity upon sale of a unit shifts from the municipality to the homeowner over time; whereas, when the owner has owned the home for two years or less, 90% of the proceeds go to the municipality and 10% go to the owner. After 20 years, 10% of proceeds go to the municipality while 90% goes to the owner.
- Sharing of the proceeds of equity limited only to the first sale of the unit, however, provisions are in place to limit the use of this property speculation (i.e. flipping of the property).

5. Reporting

- Municipalities are required to monitor and regularly report back on the number, location and types of affordable units established through the program as well as proceeds related to the sale of affordable units.

6. Off-site provisions

- Affordable units provided off-site must be located within proximity to the proposed development and lands must be zoned (unless a non-profit housing provider). Affordable units must be ready for occupancy within 36 months and may comprise no more than 50% of the project.

7. Restrictions on s.37 (Bonusing)

- Inclusionary zoning units or GFA cannot be used to determine community benefits and would not be applicable within a community planning permit system.

8. Exemptions

- Inclusionary zoning requirements are not applicable to non-profit housing providers, rental developments, where an application for building permit or site plan approval was made before the day that an inclusionary zoning by-law was passed or where concurrent applications were submitted before the day an Official Plan policy was adopted.

9. Community Planning Permit System

- Inclusionary zoning will be permitted to be implemented within a community planning permit system. A community planning permit system allows for review of development applications in a comprehensive fashion, whereby zoning and site plan process are conducted at the same time.

Given the short response time given by the Ministry (responses had a deadline of February 1, 2018), staff prepared responses and submitted these to the Ministry on January 22, 2018. This response is contained in Appendix “A” to Report PED18063 and staff noted that the comments provided were staff comments only to meet the Provincial deadlines and that formal City of Hamilton comments would be forthcoming once Council considered the matter.

Responses to the Proposed Inclusionary Zoning Regulations:

The recommended responses to the draft inclusionary zoning regulations posed by the Province are in Appendix “A” to Report PED18063. In summary, it is the position of staff that the proposed regulatory content successfully balances the individual program and implementation elements that should primarily be determined at the local level with those that should be determined at the Provincial level. However, some elements determined at the Provincial level require additional consideration, in particular the requirement for a financial contribution by the municipality.

Additional Considerations:

In addition to the above responses, staff raised a number of additional considerations including: the absence of provincial incentives and funding, as well as the need for additional planning tools to determine affordable unit suitability. These outstanding matters should be addressed by the Province.

ALTERNATIVES FOR CONSIDERATION

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

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A”: City of Hamilton Responses to the Ministry of Municipal Affairs and Ministry of Housing proposed inclusionary zoning regulation

EJ:mo