

Summary of the Proposed Regulations for Inclusionary Zoning

The following summarizes the proposed regulations released by Ministry of Municipal Affairs & Housing on 18 December for the *Promoting Affordable Housing Act, 2016* (the Ontario legislation authorizing the use of inclusionary zoning in the province). It deals with the provisions affecting the production of affordable housing, but not the associated planning and administrative procedures. Where the intent was not clear, the original wording has been kept and put in quotation marks.

Permitted Incomes and Prices

The municipalities are required to pass zoning by-laws that:

- identify the range of household incomes for which the affordable housing “could provide” (1.c)).
- identify “an approach to setting an average market price for each proposed unit type that may be required” as affordable housing (1.d)).

The average market price(s) can vary across different locations within the municipality (1.d)).

The average market price(s) must be updated annually (1.d)).

Precluded Developments

The inclusionary housing provisions cannot be applied to developments or redevelopments

- of less than 20 units (1.a));
- for rental housing (8.a));
- for a non-profit provider (8.b)); or
- subject of an development application made before the passage of the zoning by-law (8.c)).

Housing Setaside

The affordable housing setaside cannot exceed 5% of the total units or the gross floor area of the subject development (3.a) i.), unless it is in a “high density transit-station” area, where it cannot exceed 10% (3.a) ii.).

Municipal Contributions

The municipalities are required to provide a financial contribution equal to 40% of the price difference between the average of the market price and the affordable price of the affordable housing (3.c) iii).

That financial contribution can be satisfied by a waiver or reduction of one or more of the following:

- the planning application fees;

- the parking requirements;
- the parkland cash-in-lieu payments; and/or
- the development charges (3.c) iv).

The financial contribution cannot be provided through an increase in height or density of the development (3.c) v).

Off-Site Restrictions

When providing the affordable housing off-site, the units must be

- located in “proximity” to the originating development (6.a));;
- on lands zoned for inclusionary housing unless the off-site development is by a non-profit housing provider (6.b)); and
- ready for occupancy with 36 months after the “transfer” of the affordable units from the originating development (6.c)).

The off-site affordable housing cannot be used to satisfy the inclusionary requirement for that site (6.d)).

The affordable housing in total cannot exceed 50% of the housing on that site (6. e)).

Relation to s.37

The affordable housing provided under these provisions cannot be used to determine community benefit under section 37 (7.a)).

S.37 will not apply to developments where inclusionary zoning is used as part of the community permit system.

Affordability Period and Controls

The municipalities must control the affordability of the affordable housing for a period of at least 20 years, and not more than 30 years, from the date of first occupancy (3.b)i).

During this time, the permitted sales price of the affordable housing, and the share of the net sales proceeds going to the homeowner, will be as determined by the municipality and set out in its zoning by-law (3.d)i & 4.i).

After that period, the affordable housing can be sold at its market price on the open market (3.d)ii).

When the affordable housing is sold within the 10-year period following the above period, the net sales proceeds will be shared by the homeowner and the municipality according to the schedule set out in the provincial regulations (4.iii).

In brief, the share of the sales proceeds during this time will change according to the duration of the ownership – starting at 10% to the owner and 90% to the municipality for a

unit owned 2-5 years, and rising incrementally to 90% owner and 10% municipality for a unit owned 20 or more years. Owners of less than 2 years will receive none of the net sales proceeds (4.ii 1-6)).

Community Planning Permits

Inclusion zoning will be allowed through community planning permits (9.).

The municipalities will not be required to provide financial contributions where community planning permits are used (3.c)i).

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