

The provincial government passed legislation that will allow municipalities to adopt inclusionary housing policies that require a certain percentage of affordable units in any new residential development or redevelopment. The Minister of Housing must first issue regulations setting out how municipalities can implement these policies. A draft regulation was issued on December 18, 2017 for public comment. These submissions will be considered as the regulation is finalized.



January 29, 2018

Laurie Miller
Director, Provincial Planning Policy Branch
Local Government and Planning Policy Division
Ministry of Municipal Affairs and Housing
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Dear Ms. Miller,

**Re: Proposed regulation under the Planning Act related to inclusionary zoning
(EBR Registry Number: 013-1977)**

I am writing on behalf of the Advocacy Centre for Tenants Ontario (ACTO) with comments and recommendations with respect to the above-mentioned proposed inclusionary zoning regulation. ACTO is a community legal clinic, funded by Legal Aid Ontario, with a province-wide mandate. We work for the advancement of human rights and social justice in housing for low-income Ontarians through legal advice and representation, law reform, community organizing, and education and training.

ACTO believes that the province should be encouraging municipalities to adopt inclusionary housing policies and by-laws that will benefit those in greatest need -- low-income and moderate-income tenant households who are financially disadvantaged in the private rental market. Almost half of tenant households in Ontario spend 30% or more of their income on shelter; 21% spend 50% or more of their income on shelter, placing them at higher risk of homelessness. The greatest need in Ontario is for more purpose-built rental housing stock that is affordable over the long-term. The regulation as drafted does not further this goal and we request that you seriously consider making the following changes.

1. Allow municipalities to require affordable units in new purpose-built rental buildings

The proposed regulation specifically excludes residential rental developments from the application of an inclusionary zoning by-law. This prohibition should be removed.

Ontario needs to build at least 10,000 new rental units annually to meet the demand of a growing population. A majority of these new units should be non-profit and with rents geared-to-income for low-income tenants. However, we've seen an average of only 4,731 rental completions annually over the period of 1990 to 2016 – less than half of

what we need. Our province has the highest proportion of renter households in Canada paying over 30% of their income on housing. In 2016, there were 185,179 Ontario households on the waiting lists for rent-geared-to-income social housing units.

The social housing sector cannot build enough rental units to address this need in the near to medium term. The private rental sector should, and would, play a greater role in contributing to the affordable rental housing supply in Ontario if they are subject to inclusionary zoning requirements. Without this requirement, the private sector will continue to only build rental units with luxury features and rents comparable to the higher-end condo rental market. It will be a lost opportunity to provide some much-needed affordable rental units.

2. Unit set-aside should be increased

The proposed regulations limit municipalities to requiring no more than 5% of the housing as affordable housing on most sites, and 10% if located in a high density transit-station area. These caps are too low.

In U.S. jurisdictions, a limit of 20% is widely used and is considered a best practice. Significantly higher set-asides up to 40% or 50% are frequently required around high-density transit stations. Furthermore, higher set-asides are also required for building inclusionary zoning units off-site.

ACTO recommends that the province require that, at an absolute minimum, 10% of the housing units in a new development should be set aside for affordable housing. Guided by their assessment of local housing market conditions, municipalities should be allowed under the regulation to set a higher percentage for unit set-asides if they wish to obtain below-market homeownership units or increase the number of below-market affordable rental housing units.

3. Ensure ongoing, long-term affordability

The proposed regulation limits affordability periods from 20 to 30 years. As has been pointed out by many of our advocacy colleagues, this pushes the affordability crisis down to the next generation. ACTO believes the ongoing affordability of all the inclusionary housing units must be ensured. The length of the affordability period is particularly important in cases where the private sector may own and operate the inclusionary housing units.

Upper limits on affordability periods should be eliminated in the proposed regulation. Instead, the regulation should be amended to encourage affordability in perpetuity.

We believe the best way to achieve lengthy affordability periods for the purpose-built rental housing is for the province to require that priority be given to ownership by municipal non-profit, private non-profit or co-op housing providers that have a public interest in maintaining the tenure and affordability permanently.

4. No obligation on municipalities to provide financial incentives to developers to meet IZ requirements

Inclusionary zoning is a stand-alone program under which developers should be obligated to provide below-market housing without any financial incentives in return for development rights. If a municipality chooses to offer incentives, it should be for additional support to meet the critical local housing needs reflected in the Municipal Assessment Report.

The proposed regulation requires municipalities to compensate developers for 40% of the cost of providing affordable units. This provision is without precedent in inclusionary zoning implementation and should be removed. Municipal funding will be much better used to extend or increase public benefits, such as providing lower rents than required by the IZ agreement or extended periods of rent affordability.

5. IZ program targets should address the needs of households who cannot afford market-priced housing and must include affordability definitions that are tied to household income

ACTO acknowledges that inclusionary zoning is a planning tool which can only be expected to provide a modest addition to the supply of affordable housing in the province.

However, Ontario must make sure that inclusionary zoning is effective in addressing affordable housing need by setting a provincial requirement that all housing produced through inclusionary zoning by-laws must be below-market. The regulation should require that the establishment by a municipality of affordable prices must be related to a robust affordability analysis in the proposed Municipal Assessment Report that emphasizes household incomes over real estate market prices. The province should prescribe in the regulation that rents in inclusionary housing units provided as purpose-built rental must be at or below 80% of the current average CMHC market rents by unit-type in the municipality to provide a minimum guarantee that affordable housing needs are being addressed.

Municipalities can choose to deepen the affordability of the rental housing provided through inclusionary zoning by, for example, providing separately funded rent subsidies. This would allow municipalities to set rents for low-income tenants so that they are not paying more than 30% of their household income. The regulation should clearly authorize municipalities to include requirements in the zoning by-laws for such rent-subsidy agreements for a portion of the affordable rental units if the municipality

chooses to exercise that option. And provincial programs providing rent subsidies should encourage municipalities to use them to support these agreements.

6. Remove limitations on non-profits building rental housing off-site

In general, ACTO supports the principle that the below-market housing provided through inclusionary zoning should be on the same site as the new housing development to further the goal of mixed-income communities. However, municipalities should have some discretion to waive this requirement if it would better serve the affordable housing needs in their community. The current proposal restricts the off-site affordable housing to no more than 50% of the total housing on that site. This limits municipalities' flexibility to maximize the number of below-market affordable housing units achieved under inclusionary zoning and develop creative solutions to the housing pressures they face. ACTO recommends that this proposed prohibition should be removed for non-profit housing providers.

7. Allow municipalities to use Section 37 (height and density bonusing)

Voluntary agreements for additional height and density should be allowed in inclusionary housing buildings and sites under section 37 of the Planning Act. This will allow the municipalities to maximize both these planning tools to increase the supply of affordable housing. Prohibiting the use of Section 37 when inclusionary zoning is applied may pit community needs against affordable housing needs, with possible negative impacts on public support for new affordable housing. It may also leave inclusionary communities without the amenities that make communities strong.

Thank for considering the above recommendations and comments.

Yours very truly,

Advocacy Centre for Tenants Ontario

per:



Kenneth Hale,
Director of Advocacy and Legal Services