

Does Inclusionary Zoning work?

Investigating the Efficacy of Inclusionary Zoning
as a Housing Supply Tool



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Executive Summary/Issue Brief

Analysis:

New Ontario Inclusionary Zoning requirements provide only shallow affordability benefits while creating an inconsistent regulatory framework that leaves the municipalities in charge.

Context:

- Inclusionary Zoning ("IZ") requires a set aside of new units for lower-income residents.
- Lack of well-defined legislation may render IZ regulations largely toothless.
- Inconsistent and ad-hoc IZ systems pick winning and losing areas and influences growth.
- Instead of addressing the broader issues of exclusionary zoning practices and reducing building costs, the Province has eroded private property rights further, by requiring that the private markets produce free or subsidized housing.

New municipal IZ permissions introduce inconsistent policy and fail to establish a proper IZ framework. As a tool, it is only capable of providing limited relief and makes fractional contributions towards improving housing affordability in Ontario. IZ only functions when government and the building industry can work together.

When the Government of Ontario enacted O.Reg 232/18 in January 2018, many industry stakeholders were surprised by the drastic changes that the originally proposed regulation under the Promoting Affordable Housing Act had undergone. Changes from the circulated draft regulation effectively download authority to the municipalities and undermined the partnership balance shared between government and the industry.

Recommendations

To be successful, Inclusionary Zoning must be accompanied by a comprehensive review of regulations impacting the cost of home ownership in Ontario. Viable affordable housing initiatives need to collectively address regulatory and market barriers to initiating a market-wide reduction in costs.

- *Market Adaptability:* Defining Inclusionary Zoning requirements and thresholds at the provincial level creates a more stable, consistent, and predictable development climate. The enacted version of O.Reg 232/18 carries with it the propensity to create vastly different IZ deliverables between different municipalities and even within different neighborhoods in the same municipality.
- *Ownership Viability:* By enabling homebuyers to build equity and sell their units at a profit, potential owners should be able to exit 'affordability' oriented ranges of housing and upgrade to market-rate housing. Many of the controls that municipalities have been given permission to put in place would see homebuyers trapped in the inclusionary zoning market.
- *Unit Decontrol:* Maintaining control over the unit can severely impact an owner's upward mobility and the financial feasibility of them leaving the 'affordability' oriented spectrum of the housing market. Maintaining an 'affordability' overlay on units for a lengthy time period after their sale to the homeowner carries with it the threat of stigmatizing the unit and shows a severe lack of faith in the longevity and efficacy of the IZ policy.
- *Amend Exclusionary Policy:* Inclusionary Zoning advances a regulatory solution without addressing the crux of the problem it is attempting to solve. Currently more than 66% of Toronto's zoning allows for exclusively detached or semi-detached residential uses. Updating zoning bylaws to reflect the policy goals of the Growth Plan for the Greater Golden Horseshoe and allow for higher density would meaningfully contribute to improving market-wide housing affordability.

About REALPAC

The Real Property Association of Canada ("REALPAC") is Canada's senior national industry association for owners and managers of investment real estate. Our members include publicly traded real estate companies, real estate investment trusts (REITs), private companies, pension funds, banks and life insurance companies. The association is further supported by large owner/occupiers and pension fund advisors as well as individually selected investment dealers and real estate brokerages.

REALPAC recognizes the exemplary contribution of Graeme Kennedy on the crafting of this whitepaper. This document was created as part of his internship with REALPAC during the May-August 2018 period.

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1. Issues

1.1 Housing Affordability

Affordable housing is an intractable problem in Ontario's municipalities. A societal preference for, and market demand for, home-ownership over renting has further complicated the issue. There has been, however, detrimental political intervention in the land use and development processes and municipal protectionism that values the priorities of existing residents over new ones. As inflation and the cost-of-living increases have outpaced wages, the dream of owning property has become out of reach for many middle and lower-income earners in Ontario. As such, residents have become increasingly reliant on housing subsidies, alternative financing, and social services to attain appropriate accommodations.

The most pertinent example of where social housing is failing to meet demand is in Ontario's largest municipality. The City of Toronto's existing affordable housing programs are struggling to keep pace with economic and population growth. Toronto Community Housing Corporation (the "TCHC"), the City's pre-eminent social housing provider, has a \$2.6 billion repair backlog, as of this writing, and an ever-increasing waitlist numbering in the tens of thousands.

The Toronto Foundation's Vital Signs Report paints a compelling portrait of the need for macro-affordability in Toronto. It found that despite Toronto City Council's 2009 pledge to create 2,000 new affordable homes by the year 2020, the City has failed to meet the required yearly average of 200 new homes, bringing just 41 of the promised homes online in 2016. Since 2002, TCHC has managed to create only 277 net new units due to the closure of existing housing stock as a result of severe disrepair.

In a similar period, the waitlist for TCHC social housing units has ballooned from under 70,000 people in 2007 to almost 100,000 in 2016, with a projected waitlist of around 106,000 by 2020. The demand represented by the housing waitlist cannot be addressed without considerable new housing stock coming online or by a market-wide adjustment (down) in pricing. Toronto is building affordable housing stock at a pace that only meets a fraction of the demand. A rapid price reduction in housing seems unlikely, and in many cases would trigger disruption in the broader housing market. Government, non-profits, and the development community need to collectively explore creative solutions and interventions to address housing affordability in Ontario.

1.2 Government's Inclusionary Zoning Policy Issues

REALPAC and its members have been actively involved in the debate concerning Ontario's Inclusionary Zoning ("IZ") policy as part of the province's Long-Term Affordable Housing Strategy. As many of our constituent members are involved in the development of multi-family and apartment real estate, they have a vested interest in ensuring that any IZ policies are designed fairly, applied consistently, and encourage the economic competitiveness of the real estate industry in Ontario.

It is generally recognized that Ontario municipalities and the Province of Ontario operate under financial constraints which affect their ability to provide vital housing for low-income residents. These same municipal governments frequently point to a need for further powers to provide affordable housing and related supports. Ontario's Long-Term Affordable Housing Strategy (the "LTAHS") update document released in March 2016, indicates that the Province would consult with stakeholders on amendments to the Planning Act, the Building Code, the Development Charges Act, the Residential Tenancies Act, the Housing Services Act, and regulations under the City of Toronto Act and the Municipal Act, in order to create an enabling

framework to allow municipalities to implement inclusionary zoning by-laws.

REALPAC was generally supportive of Ontario's affordable housing objectives as clarified under Environmental Bill of Rights (EBR) registry number 013-1977, the first draft of the IZ policy circulated by the Ministry of Municipal Affairs. REALPAC felt that the Province of Ontario had been responsive to comments from stakeholders since the initial inception of the policy in December 2016 and had looked forward to continued Provincial efforts to engage interested stakeholders from the housing and development sectors.

REALPAC generally shares in Ontario's goal to provide much-needed new affordable housing province-wide while ensuring the overall viability of housing development. REALPAC and its membership believed that a true partnership between the province of Ontario and the private sector was at the foundation of not just the IZ proposal, but a cornerstone of wider affordable housing goals.

This 'partnership model' had been at the heart of recent advocacy from the real property and development industries and would have been key to the success of the IZ program. REALPAC asserts that with the appropriate incentives, offsets, and progressive changes to the land use planning regulatory system, IZ would have been a success story for both the government and the private sector.

The enactment of O.Reg 232/18, under the Planning Act, on April 11, 2018 was not in line with the draft regulation made available for review in December 2017. The regulation removed many of the mandates that REALPAC and industry stakeholders supported. The latest version of the regulation gives municipalities free reign to make their own definitions, thresholds, and expectations for new housing developments.

In REALPAC's view these modifications to the IZ regulations are not in keeping with the partnership model required to make this provincial venture successful. By downloading much of the responsibility for IZ to the municipal level, REALPAC is concerned that these provisions will become politicized, ineffective, and constrain much needed affordable development.

2. Analysis

2.1 Solution(s) to Affordability

Members of the public rely on social programs to meet some of their basic needs. It is a fundamental expectation of government to address social and affordability needs where there is little incentive for the market to do so. Multiple policy options for addressing affordability exist, each with their own costs and benefits. Ranging from options that cost the city and taxpayer the most to the least, solutions that have been put forward in literature and discourse are as follows:

1. Social Housing - The province or municipality develops their own public housing projects for rent or for sale to qualifying residents. The TCHC (as the prime example of this strategy) has been severely underfunded for quite some time, having been passed down to Toronto from the provincial government. Recently, there has been friction between the municipal and federal levels of government regarding outstanding deferred maintenance costs of around \$2.6 billion in the TCHC portfolio. Despite that, the federal government has recently unveiled the National Housing Strategy which it says will help fund development of new public housing stock across Canada.

2. Public Private Partnerships - The re-use and redevelopment of existing municipal assets occurs through public-private partnerships. The Regent Park Redevelopment, currently underway, is a good example of a partnership between the TCHC and the Daniels Corporation which added new market-rate, affordable, and purpose-built rental properties to the neighbourhood.

3. RFP for Private Management - The city can engage in an RFP process like the Greenwin Rental building at Church Street and Carlton Street or the Waterfront Toronto & Sidewalk Labs 'Sidewalk Toronto' initiative.

4. Inclusionary Zoning - Municipalities can require developers to include affordable housing units as part of their private developments through Inclusionary Zoning policy. Inclusionary housing facilitates the provision of affordable housing through tying its production to new market-rate developments with the goal of promoting social and economic integration.

2.2 Why is Inclusionary Zoning a Solution?

Options that cost the taxpayer the least and which make the promise of delivering the highest amount of supply across the broadest geographic region will always be the most politically salient option. Inclusionary Zoning (IZ), as a far-reaching policy, is viewed as being one of the easiest affordable housing 'wins' that could be enacted in legislation. As a solution enshrined in the Planning Act and municipal zoning by-laws, IZ policies place the majority of the financial burden and responsibility for providing affordable housing units onto private residential developers.

A more fulsome definition and history of IZ has been included in Appendix 1, including the nine definitions required to create an enforceable IZ framework. In brief, IZ legislation inscribes the onus to provide subsidized housing units into housing policy in one of two ways; mandatory or incentivized inclusion.

Mandatory IZ policy will define the requirement for real estate developers to include subsidized housing units as party of any development application that exceeds certain metrics. Generally, this option uses a specific unit count as the threshold and will mandate a certain percentage of the total proposed units be offered at below market rates. This vector provides no additional benefit to developers for including IZ units in their building. As such, the cost of providing such units tends to be included in the unit prices of the remaining market rate units, and is inflationary generally of housing costs.

Incentivized IZ provides incentives to developers for offering below market rate units. Incentives may include height and density bonusing agreements, municipal partnership models, or relief from specific costs or development encumbrances. An incentive based IZ regime allows for developers to exceed as-of-right zoning if a portion of the additional captured value is dedicated towards housing affordability through IZ units. This differs from the mandatory IZ option in that it is more easily included in a development proforma without increasing the prices of other units in the building.

Both IZ policy options must be carefully considered and implemented in a fair and predictable manner to ensure that the policy framework can make meaningful contributions towards providing housing for low-income residents.

The Centre for Urban Research and Land Development, a research lab at Ryerson University, explored why IZ is so highly desired as part of an analysis on the appropriateness of IZ policies in the context of Ontario. IZ policy is a highly desired mechanism for municipalities as;

“It is generally recognized that the provision of affordable housing to meet the needs of lower income households is an income redistribution program most appropriately funded by the senior levels of government, not municipalities or the homebuilding industry. Municipalities are being forced to search for less satisfactory, locally based approaches due to a marked shortfall in funding from the Ontario and federal governments.”¹

The implementation of IZ policy displays an effort, on the part of government, to force the public markets to deliver social housing supply. In proclaiming IZ as a primary solution to affordability government is offloading one of their basic social responsibilities onto the private markets. In REALPAC’s view, IZ should be used as a last resort for providing new affordable housing stock.

By including requirements for affordable housing in by-laws governing new developments, municipalities are hoping to make up for a lack of higher level government support in the private markets. In doing so, the Provincial government is displaying a fundamental misunderstanding of why housing is unaffordable in the first place. Changes in affordability and housing ‘inclusion’ cannot occur without addressing developing and planning policies contributing towards situations in which housing is made unaffordable for lower income households.

The crux of the issue with IZ policy is in the notion of ‘affordable’. Similar businesses that provide basic needs, such as grocery stores, are not required, compelled, or incentivized to set aside goods and services to be sold at below market rates. Rather, private markets are free to provide lower cost, lower quality options. Restrictive regulations on the quality and detailing required in new residential construction, as dictated by the Ontario Building Code, make this avenue unviable for most homebuilders. Housing must remain at a certain level of quality to be approved for residence. As such, the cost of new homes, with required high efficiency furnaces, appliances, and windows, is generally more expensive than existing housing stock. Much new construction has the appearance of being considered ‘luxury’, and out of reach for many prospective homebuyers.

IZ policy supports both rental and ownership housing models but is more popular as a route to homeownership. Canadians are very tied to the idea of homeownership as a vector for wealth creation. The cultural norm of owning one’s home stands as an entrenched symbol of success and socio-economic clout. To that end, IZ stands as a powerful symbol for those who feel left out of the housing markets, and for many represents a rebalancing of inequity in our municipalities.

IZ is popular as a political solution because of the perception that it creates affordable, high quality housing ‘for free’. While popular terminology, IZ policy may not even be required in Ontario, as municipalities are already equipped with the tools needed to bring significant affordable supply online. Analysis by the Centre for Urban Research and Land Development found that much of inclusionary legislation, “effectively duplicates the provisions of section 37”.² Further, their research found that only 9% of Section 37 funds and contributions had

¹ (Centre for Urban Research and Land Development, 2015)

² (Centre for Urban Research and Land Development, 2015)

been directed towards affordable housing initiatives. Despite that, the notion of affordable homeownership has proven to be popular with voters and social housing advocates.

2.3 A Tale of Two Regulations

When the Government of Ontario enacted O.Reg 232/18, many industry stakeholders were surprised by the drastic changes that the originally proposed regulation under the *Promoting Affordable Housing Act* had undergone. Industry stakeholders such as The Building Industry and Land Development Association of the Greater Toronto Area (BILD GTA) and the Ontario Home Builders' Association (OHBA) have asserted that the changes download authority and responsibility to the municipalities and undermine the partnership balance originally inscribed into the Long-Term Affordable Housing Strategy Update.³ The fear is that, in revising legislation to give municipalities more agency, the process has become more political rather than ensuring the establishment of a partnership model that can deliver government-mandated affordable housing to market in an expedient manner.

2.3.1 May 2016 – Inclusionary Zoning Consultation Discussion Guide

Released in May 2016, the proposed policy framework for updates to the *Planning Act* through the Long-Term Affordable Housing Strategy (the "LTAHS") recognized the role of the private sector in increasing the supply of a wide range and mix of housing that includes affordable options.

The proposed amendments to the *Planning Act* were designed to allow municipalities to pass IZ by-laws, but were subject to certain requirements, to increase the supply of affordable housing in order to meet objectives and targets set out in housing and official plans.

Bill 204, which passed first reading in on May 18, 2016, drafted by Minister of Municipal Affairs and Housing, expressly detailed the IZ requirements, as outlined in Appendix 2. These stipulations were put out to the industry for comment and feedback, which REALPAC participated in, alongside many other industry stakeholders.

In December 2017, the proposed regulation was further clarified in the definition of inclusionary policies proposed under EBR registry number 013-1977.

The province proposed that zoning bylaws authorizing IZ could apply to developments with at least 20 units. At the time REALPAC's suggestion was raising this threshold to 50 or 100 so as not to disperse IZ units too sporadically across the city.

Use of Municipal Assessment Reports to be used as a data-driven policy development tool was supported by REALPAC as it doubled as an accountability tool for municipalities to ensure that the bylaws enabled through legislation were being used responsibly and appropriately through municipalities.

A well-defined 5% 'set-aside' of units, with 10% required in high-density transit station areas was well supported by REALPAC if this was defined as the maximum set aside. At the time REALPAC cautioned that should the maximum required contribution of units be raised; the economic viability of the housing market could be at risk if municipalities did not consequently provide height and density bonuses.

The Province's proposal included a draft proposed 40/60 cost sharing model for paying for IZ units. This model would have made municipalities responsible for 40% of the cost and private

³ (Vaccaro, J., & Provenzano, J., 2018)

developers responsible for the remaining 60%. At the time REALPAC advocated for a 50/50 sharing of the burden, so as to represent an even split and partnership between the two sectors.

Mandatory reporting by council of the success of IZ initiatives was supported by REALPAC, which cautioned that use of IZ should be considered as a last option policy when municipalities found themselves unable to provide appropriate affordable housing within their existing policy toolkit.

REALPAC also cautioned the province on the use of implementing both IZ policy and Section 37 exactions simultaneously due to the fact that both policies create a dual burden on developers and carry the potential of impacting project viability. It was emphasized that municipalities should not be permitted to exact housing through IZ and section 37 from the same development. This would decrease economic viability and reduce the number of IZ units realized in the housing market.

After receiving feedback from both the development community and municipal councils, the province drafted and released their finalized amendments to the *Planning Act*.

2.3.2 January 2018 – Introduction of O.Reg 232/18

In January 2018, the government of Ontario released the updated version of their Inclusionary Zoning policy. Despite industry input on the EBR draft in support of well-defined IZ requirements, O.Reg 232/18 effectively removed all definitions, giving municipalities explicit permission to design their own requirements. The circulated EBR draft was amended for final enactment to require outlined in Appendix 2.

In removing all clarity from the regulation, the Province has given municipalities carte blanche to interpret the tenets of IZ policy as they please. Allowing municipalities to self-define their IZ requirements is not necessarily in the public interest, may lead to severe inconsistencies in its applications, and is furthermore not reflective of industry feedback, nor prior drafts of the legislation that were generally supported by REALPAC. Given a lack of opportunity for input on the regulation's final draft, it should be stated that there are two related but opposite concerns with how this legislation was implemented.

The first is that O.Reg 232/18 may end up being entirely toothless. By not mandating adoption or defining requirements in any meaningful way, the sum result of the legislation may be that no municipality adopts it. This would be similar to the case in New York, in which council consensus did not lead to individual district adoption.

As documented by City Lab, when New York's Mandatory Inclusionary Housing program was enacted, neighborhoods designated for IZ units met development up-zoning incentives with resistance. Neighborhood organizations actively advocated against the additional density. Despite a council majority in approving the citywide program, individual councillors in Queens and Manhattan withdrew their support for the first two proposals to capitalize on the program, due to neighborhood opposition.⁴ Similarly, Ontario's municipalities may not see any political merit in actually using the IZ policies implemented into their official plans.

REALPAC's position is that IZ should be a last resort for providing affordable housing, but there is still value in exploring it as an option, if it is standardized across the province and designed to actively promote a partnership model where it is being implemented.

⁴ (Cortright, J., 2018)

Second, and more concerning, is that the province has given municipalities far too much power in determining IZ regulations. Lack of provincial oversight and well-defined legislation may cause many of the scenarios REALPAC cautioned against in comments submitted to the minister prior to the O.Reg 232/18 being enacted.

The introduction of IZ through O.Reg 232/18, as an amendment to the *Planning Act* downloads much of the responsibility for defining and implementing IZ tenets to Ontario's municipalities through their official plans and zoning bylaws. Outside of a few explicit criteria, the new regulation leaves the door wide open to interpretation by Council. This new set of changes is unexpected and leads to the possibility of inconsistent and ad-hoc systems for acquiring inclusionary housing stock. The concern becomes that, at a macro scale, the application of an inconsistent regime across the province, or even amongst different municipalities within the Greater Golden Horseshoe area will create advantageous and disadvantageous planning climates that influence growth. At the local scale, the guidance for council to determine areas 'appropriate' for inclusive bylaw requirements, as opposed to a city-wide strategy carries with it the real possibility of concentrating new IZ stock in specific areas of the city or leading to a lack of growth.

Without required changes to the municipality's Official Plans and zoning bylaws to make the densities required for viable 'as-of-right' IZ projects, development of higher density projects may become concentrated in lower-income neighborhoods. According to Cortright, higher income neighborhoods tend to fight any amendments to single household zoning designations, diverting development activity towards lower income neighborhoods or communities with much higher 'prevailing' densities.⁵ This is an important point, given that this 'exclusionary zoning' is the very concept IZ policies were designed to address.

Toronto's unique land-use planning regime would further contribute to this exclusionary trend. With almost two thirds⁶ of its land mass dedicated to 'stable neighborhoods' via Official Plan Maps 13-23⁷ there are few undeveloped areas in the city where even a ten-unit IZ development would be maximally productive, financially feasible, and legally permissible. This is coupled with resident opposition against high-density (and even mid-rise) towers along avenues or at the boundaries of their established neighborhoods. Echoing Cortright, to avoid the weaponization of development proposals by councillors at large, the Province needed to inscribe a province-wide pre-emption of 'local control' in order to open up detached housing strongholds for 'missing middle' affordable housing development.⁸

The regulation's guidance for municipal councils to amend their official plans introduces ambiguity and a lack of consistency for how these amendments will be inscribed into the plans. It also introduces concerns with regard to who will be served best to ensure that those the legislation is designed to benefit actually receive these entitlements.

IZ is a policy approach that stands in contrast to the newly introduced rent control policies, which disproportionately affect existing rental buildings and tenancies. IZ exclusively impacts new construction, and as such continues to place the bulk of the financial burden and increased costs on those already dealing with the increasing hard costs of new construction and soft development costs of occupying in-demand housing. With increased lending requirements and a growing gap between housing cost increases and wages it is unclear where additional funds will be coming from. First time homebuyers likely cannot solely bear

⁵ (Cortright, 2018)

⁶ (Dingman, 2018)

⁷ (Keesmaat, 2015)

⁸ (Cortright, 2018)

the burden of subsidizing their peers. By abandoning the partnership model, and required funding split, government is assuming that developers will cover the difference and not pass it on to already cash-strapped homebuyers.

The minimum size to which legislation applies is detailed under O.Reg 232/18 3(1) which defines the minimum size of development to which IZ policy can be applied as ten units. This seems incongruent with the long-term goals of this regulation; to bring significant housing stock online such that,

“Every person has an affordable, suitable and adequate home to provide the foundation to secure employment, raise a family and build strong communities.”⁹

On a supply side, the original guidance from the EBR, would have required that 5% of units constructed should be designated affordable and in transit-oriented developments 10%. On a 10 unit development this would achieve, in an optimal location, one affordable unit. A minimum size of 20 units would net 1-2 affordable units and spread additional costs across 18-19 units as opposed to 9 units covering the costs of 1 under the currently proposed ratios. The economies of scale gained by increasing the applicable minimum unit would relieve upward pressure on market-rate unit prices and provide for a larger stable community within which to place IZ units.

The downtown Yonge Street corridor has recently been the site of many new condominium towers, each containing hundreds of market-rate units. This high density and amenity rich area would have been a good example of where IZ unit requirements would have been maximally productive. Many of the new developments contain hundreds of units each, in total contributing thousands of units towards Toronto’s housing stock. A 10% IZ requirement would derive, at minimum, hundreds of affordable units in a centrally located neighborhood. In such developments, and with IZ units in close proximity to each other, a true mixed-income climate can be established, with embedded support networks within the towers themselves. Likewise, the cost of subsidizing IZ would be distributed across 895 market rate condos. The current policy threshold of 10 units does not create a planning climate under which the production of affordable units would be feasible or representative of good planning. Requirement for IZ units in a small development would make it difficult for the long-term goals of the policy to be accomplished.

Location specific zoning raises a number of concerns, since provincial guidance could manifest in a municipality’s by-law being structured to pick winners and losers rather than implementing an equitable city-wide regime capable of delivering a range of units in many different neighborhoods. As in the case of New York City’s IZ implementation, consensus on IZ may be obtained by council when adopting this bylaw, yet individual councillors may reject the idea of IZ developments occurring in their neighborhood due to resident opposition.¹⁰

This can lead to two scenarios:

1. IZ is formally adopted by Council but not formally inscribed into the zoning bylaws due to individual councillors not favouring it for their neighbourhoods. The result of this would be that, while IZ policy is in the official plan, no IZ units would be constructed.
2. Council implements IZ bylaws in specific neighbourhoods. This would either be comprised of areas where there is significant development under way, or in places where council would like to see development. The problem with picking and choosing IZ areas is that it assumes desired development will occur. Developers may opt to build and increase the

⁹ (McMeekin, 2016)

¹⁰ (Cortright, J., 2018)

prices of market-rate units, focus on proposals under the IZ unit threshold, or build in neighbourhoods not zoned for inclusionary zoning. This strategy creates a separated land market wherein there is a price discrepancy between lands designated for IZ and those that do not fall under an IZ overlay.

Determination of eligibility creates ethical concerns with regard to who exactly this legislation is designed to serve. This issue is threefold.

First, how does one determine eligibility for IZ units. Due to ambiguity with regard to whom this legislation is designed to serve, there is no guidance on how best to make a determination, on a per-unit basis, for who will be occupying IZ units. A centrally managed waiting list model, similar to the system currently being used by TCHC, can lead to years or even decades long backlogs if production is stagnant or if an increasing number of residents become reliant on subsidized units for housing. Likewise, selection by the developer could lead to a lack of trust or fairness in the system. Determination of eligibility, or who has right of first refusal for units, raises questions that need to be determined by council before development requirements for IZ units start to come into play.

The second issue is in determining financial feasibility for eligible residents. The legislation is designed to provide appropriate housing to residents for whom purchasing a condominium at the market rate would be prohibitive. At the same time, under an owner-occupied model, said resident(s) must still have a stable income and savings for a down payment high enough to support themselves *and* carry a mortgage. Without a new class of mortgage or IZ specific lending system, this initiative will still be out of reach for some potential homeowners.

The third concern is in the established case law promoting zoning for “use” not “users”. The case of *Bell v. R* (1979) was the Supreme Court decision which created the modern land use planning tenet of zoning for “use not users”.¹¹ In determining the “appropriate” income range for residents of IZ units, council will be enacting bylaws that create a class of housing or use constituting a discriminatory and potentially unenforceable restriction on ownership. It is expected that such a bylaw will be challenged in the Superior Court of Ontario, given the lack of provincial oversight (via the OMB) that would otherwise have occurred prior to Bill 139. While ‘financial discrimination’ is not a protected ground under the Ontario Human Rights Code (the “OHRC”), the policy may result in municipalities once again engaging in the practice of “people zoning. The *Bell v. R* decision, as cited above, specifically found that,

“legislature never intended to give authority to make such rules and the device of zoning by reference to the relationship of occupants rather than the use of the building is one which is *ultra vires* [beyond the powers] of the municipality under the *Planning Act*”¹²

To that end, the Ontario Municipal Board (the “OMB”) stated *Bell* was not just about ‘relationships’ but rather all ‘personal qualifications of this type or other personal characteristics or qualities’.¹³ IZ policy is unique in that under any other planning and zoning frameworks there are no restrictions on who units can and cannot be sold to, and in the non-profit rental sector an affordable unit being restricted to one class of persons or another is done so at the landlord’s discretion. **In passing the responsibility for this determination down to the municipalities, a power which the OMB has already stated is inappropriate for cities to administer, the Province is exposing IZ policy to**

¹¹ (*Douglas Bell v. Her Majesty The Queen*, 1979)

¹² *Ibid.*

¹³ (*Kitchener (City) Official Plan Amendment No. 58*, 2010)

justifiable litigation on *Charter* grounds.

How unit mix is specified may lead to issues with what kinds of unit types are made available to those in need of housing. Proportionately offering unit types in line with the unit mix of the building or requiring 'family-oriented' units like two/three-bedroom condos (as per Toronto City Council's OPA 320 TOcore Secondary Plan¹⁴) are both problematic. There is no true means of predicting who will qualify for these units and development will need to be flexible over the initial sales period for the building.

The recent enactment of the TO Core Secondary Plan sheds light on how problematic prescribing unit mix is in a dynamic housing market. As will be discussed further in section 2.4.2 of this paper, dictating specific ratios of units will fundamentally alter how quickly a project can be funded, and the cost of other units. While there is evidence to suggest that, in aggregate, IZ does not raise unit prices¹⁵, this does not take into account having to discount the most expensive and most difficult to sell units in a building.

The Government of Ontario needed to use unit-mix specifications to help clarify who exactly this policy and these units are intended for, whether it be exclusively family-oriented units, or a broader spectrum of households. Toronto City Council has demonstrated that, when given the chance, its focus will exclusively be to demand a disproportionate amount of 'family' units be made available in downtown Toronto. The required 2 and 3-bedroom units are the most expensive units in a condominium tower. Therefore, leaving this stipulation up to municipal councils may lead to decisions being made with regard to what council would 'like' to see to see in a community, not what people can afford, what is appropriate, or what the market can bear.¹⁶

Legislation allows municipalities to define the period of time for which units must be resold at the rate of affordability. Original guidance recommended that this horizon be 30 years, which would be reflective of a tenure or resale freeze of the length of the mortgage plus five years. Looking further afield, select municipalities have extended this horizon in an attempt to maintain the unit as part of affordable stock in perpetuity. This control presupposes two outcomes, both of which have a negative outlook for O.Reg 232/18.

The first is predicated on the assumption that supply of IZ units will not be consistent or meaningful over a 30-year period, so therefore the original stock must be protected at all costs. Second, this posits that owners and potential homebuyers will both still be reliant upon the provision of IZ units on a thirty-year horizon. At the height of the affordability crisis in 1988, the average home price (condominiums and freehold) was \$229,635 or \$491,325 when adjusted for inflation.¹⁷ The 2017 average was \$916,567.¹⁸ The ability for an owner to meaningfully participate in the capital appreciation of their real property assets is one of the best ways to ensure that they are not relying upon further subsidization 30 years from now. A cap on resale would represent a trap for these homebuyers in that sale of their unit at the rate of affordability would require them to purchase another IZ unit also for sale at the rate of affordability, rather than trade up into the market rate range of housing. Rather than restrict future sale prices, it would be more fiscally responsible for municipalities to use their portion of the "40/60" split with developers to take an equity position in the unit, similar to the Options For Homes model. In this way, municipalities can "snowball" the funds they have

¹⁴ (Harris, 2018)

¹⁵ (Mock, 2016)

¹⁶ (Harris, 2018)

¹⁷ (Toronto Real Estate Board, 2014)

¹⁸ (Toronto Real Estate Board, 2017)

available for future IZ subsidies through the capital appreciation of previously funded assets.

How the price of IZ units would be determined leaves ambiguity open as to both what the definition of affordable is and how the municipality determines an ownership model versus a rental model as viable avenues for IZ bylaws.

The definition of affordable runs into issues when one compares what a household can afford as opposed to the costs of new construction. Average condominium prices in Toronto, at \$518,879 (averaged to the total market, not just new construction) are out of step with the average household income of \$76,830. If affordability is measured as three times household income, the municipality could find themselves on the hook for 40% of the difference, or \$115,356. At a per unit rate of subsidization, that would quickly become an irresponsible use of taxpayer money.

Rather, if affordability is measured as a percentage of market rates at specified discounts (50-80% below market rate) as is commonly done for Rent-Geared-to-Income (RGI) subsidies, one questions how the average household could possibly access these units. With a 20% down payment of \$87,000, the maximum loan the average household could secure would be for \$347,500, netting a maximum purchase price of \$434,490 with a monthly carrying cost of \$2,049. At a minimum of 5% down (or \$18,000 in savings), the average household qualifies for \$342,000 in financing for a total purchase price of \$360,000, assuming qualified purchasers have adequate savings. Collectively these two sides of affordability raise concerns to how this will be negotiated by municipalities and requires a balancing of supply-side affordability vis-à-vis demand-side affordability definitions.

These simple 'back of the envelope' calculations reveal the crux of the issue with IZ policy; it assumes potential buyers have adequate savings. Regardless of reduction of unit sale price, the responsibility for this legislation is still downloaded onto developers to provide housing to households who do not meet the financial threshold for ownership. Bank of Montreal numbers reported by the Globe & Mail indicate that 56% of Canadian households have less than \$10,000 in savings.¹⁹ The question becomes how this will possibly be rectified. This is a far cry from the funding required to secure a mortgage for even a 'deeply affordable' unit. Either ownership will be solely relegated to middle income owners or become the domain of non-profits setup exclusively to own and manage IZ units.

The provisions of an "offsite units" allowance is again another example of government picking winners and losers. Allowing developers to place their affordable units on other properties is counter to the 'mixed-income' goals of the legislation. The ability to construct off-site units combined with a proximity requirement may be an impossible ask for municipalities and an impossible requirement for developers, unless the point is to allow for an oversupply of affordable units in one building to compensate for a lack of units in ten others. This strategy assumes land supply in proximity to development that could be made available for units despite its *Highest & Best Use* being for something much greater. Second this ignores economies of scale gained by nesting IZ units into larger buildings. The reduction of shared fixed costs is what makes IZ housing feasible in the first place.

Once again this plays to the 'winners and losers' land use scenario. An offsite agreement could be used to relegate affordable units back into lower income neighbourhoods. While there are good cases where offsite units were holistically integrated into a Master Plan, there will be fewer and fewer opportunities like Toronto's Regent Park Redevelopment within which such a strategy is viable. Without government freeing up provincial and municipal assets for

¹⁹ (The Canadian Press, 2018)

development

Properties in the City of Toronto are currently operating under (at least) two Zoning By-Laws. Each of the 40 individual pre-amalgamation zoning by-laws are joined by the comprehensive citywide bylaw, 569-2013. This double-enforcement has led to a litany of issues, especially where the two by-laws contradict each other or the Official Plan. Lack of updates to the by-laws to better reflect the goals of Toronto's Official Plan has incentivized council's liberal use of Section 37 of the *Planning Act* to extract capital and community benefits based on discrepancies in the bylaw. One would think that such a tool would already be used to fund affordable or IZ units. As cited previously, research by CUR found the opposite to be true, with only 9% of all Section 37 contributions being directed towards affordable housing.²⁰

The entire planning regime creates significant uncertainty for how IZ would be implemented in Toronto. Councils will need to implement IZ areas and then update the zoning by-laws to reflect this.

Where Zoning Bylaws are not in line with the Official Plan or the Growth Plan for the Greater Golden Horseshoe developers must pursue a zoning by-law amendment which manifests as a site-specific by-law filed under the old (pre-569-2013) bylaw for the area. The concern with this process, in much the same way that Section 37 contributions are negotiated, is that council will utilize this process to enact IZ in an ad-hoc basis, one which will be subject to the sentiments of the public residing in the subject area. This would introduce uncertainty by creating a planning climate within which IZ is unpredictable and seen by council as negotiable for obtaining development permissions.

To be successful in its long-term goals, IZ needs to be consistently implemented at the provincewide scale and supportive of a partnership model.

2.4 Systemic Affordability Issues

2.4.1 Toronto's Zoning Bylaws

Properties in the City of Toronto are currently operating under two zoning bylaws. Each of the 40 individual pre-amalgamation bylaws are joined by the comprehensive citywide bylaw 569-2013. This double enforcement has led to a litany of issues, especially where two bylaws contradict each other or the Official Plan. Lack of updates to the bylaw to better reflect the goals of Toronto's Official Plan has incentivized Council to make liberal use of Section 37 agreements, as councillors can extract capital and community benefits based on this discrepancy.

2.4.2 Toronto's TO Core Official Plan Amendment

On Wednesday May 23rd the City of Toronto Council passed an Official Plan Amendment requiring at least 40% two and three-bedroom units in new residential developments of more than 80 units. The plan specifically calls for at least 15% of new units to be 936.5 square feet, at least 10% of new units to be 1,076.4 square feet, and the remaining 15% of units to be a combination of 2 or 3 bedrooms of any size. The minimum number of units provided would be 32 units in an 80 unit development.

If we assume an average market rate cost of \$1000 per square foot, these 'family' units would range from \$936,500 to well over a million dollars. Amortized over 25 years the estimated carrying costs of these units to be around \$5900 per month.²¹

²⁰ (Centre for Urban Research and Land Development, 2015)

²¹ ("The TOcore plan could hurt first-time buyers ", 2018)

The problem with such an amendment is when mandatory unit mixes, such as those adopted, are combined with mandatory IZ requirements.

The combination of these two requirements creates a severe cost burden. Either developers will need to offset the costs by raising the prices of smaller units, negotiate for lower land costs, or become reliant on government funding, rebates, and subsidies to build new housing.

2.5 Alternatives & Required Changes

IZ is a policy strategy and planning tool designed to bring below market-rate housing supply online. It is used when there is a discrepancy between the average price of housing and the average household income of a given area. Despite its promises, IZ is only capable of providing limited relief when markets are overheated. In the case of Toronto there is an extreme gap between the cost of construction and the sales price of the unit (the “construction price gap”). IZ cannot possibly address affordability issues when the cost of housing involves rising costs across the board. While IZ provides shelter from the market for those who qualify it does little to provide relief at the citywide scale. In attempting to implement IZ as the primary and most productive means of constructing affordable housing, government is tying a fixed policy outcome to a dynamic and volatile market. There are better alternatives, but these require both government leadership and development partnership.

2.5.1 Market-Wide Reduction in Costs

Both municipalities and the private markets play a role in determining the cost of housing in urban cores. Government regulations may be contributing up to 20% of the cost of housing. A new report by the C.D. Howe Institute illustrates that the cost of developing within the restrictive planning regime of the Greater Golden Horseshoe contributes up to 20% of the total cost of housing, adding about \$220,000 to purchase price of a new home.²² This added cost has a spillover effect on the pricing of existing homes as prices similarly rise to reflect the aggregate pricing of homes. Reducing the overall cost and time required to develop is one of the most effective means of reducing housing prices. In an interview with The Toronto Star, Ted Parker of the Toronto Region Board of Trade advocated for a consolidated approvals process that would condense the paperwork required for development proposals to a single form.²³ To promote a more affordable housing market in Ontario, it falls upon government to work with the development industry to make the approvals processes more efficient.

2.5.2 ‘Cost of doing business’ Policy

A transparent, consistent, and fairly applied IZ policy, as was proposed through the EBR and to which REALPAC communicated its support, would make for a development climate much more reflective of the partnership model originally emphasized as a priority by government. A standard IZ expectation with an enactment date well in advance of the new developments it would allow developers to properly include the units in their proformas. Prior to the adoption of IZ policy industry stakeholders had already been required to absorb the impacts of an ad-hoc Section 37 system in order to receive approvals for additional height and density. A similar expectation of mutual benefit with regard to IZ units could help this new policy to be more broadly accepted. To that end, IZ should be treated similar to Section 37, but the two should not both be enacted on the same projects. Under fair market and policy conditions developers would be able to roll the additional IZ unit requirements into the cost of doing

²² (Dachis & Thivierge, 2018)

²³ (Kalinowsky, 2018)

business.

2.5.3 Unlock the Yellow Belt

The 'Yellow Belt' is the name of the yellow 'neighbourhood' designation that represents almost two thirds of Toronto's land area, as displayed in Official Plan maps 13-23.²⁴ Dingman found that the density in these neighbourhoods is slowly degrading as the number of people living in each detached house reduces over the lifecycle of a family.²⁵ If these neighbourhoods were rezoned to allow for higher densities or multiple dwellings on each property, it would create opportunities for 'missing middle' housing and relieve demand for newly constructed units in already dense areas of the city. This would meet growing housing needs while contributing to increasing the economic utility of neighbourhoods.

2.5.4 Cash-in-Lieu

Cash-in-lieu is already a powerful tool used by municipalities under Section 37 agreements as part of height and density bonusing. In the cash-in-lieu system, a developer can opt to make financial contributions towards a Section 37 account managed by Toronto City Council in lieu of providing specific amenities on-site. This allows for the City Councillor for the ward to direct funds towards projects where improvement is most needed. Allowing for this flexibility in compliance can help developers to bring their projects into compliance with regulation without having to modify the overall intention of their proposal. This is particularly useful for both municipalities and developers under two scenarios:

2.5.4.1 Prior Commitments

Prior to a development application being submitted to the city for review, developers may have been preparing the documentation and making financial commitments years before IZ legislation came into effect.

2.5.4.2 Location Feasibility

Social and economic integration of our neighbourhoods is an important goal that IZ policy seeks to fulfill. New developments, especially in master planned communities with multi-national retailers, make this a viable vector for inclusionary units. Where one runs into trouble is when regulation requires developers to include IZ units in already deeply entrenched high-income neighbourhoods. The vibrant diversity of a mixed income development will fail to occur if the households being included are unable to afford the area where they have purchased a unit.

Affordability is a persistent and multi-faceted issue that requires multiple policy changes to address in a meaningful manner.

3. Refutation

3.1 Does it work?

There is the fear, and supporting evidence from other jurisdictions, that Inclusionary Zoning policy will fail to provide for those most in need of housing. Rather, there are examples of IZ policies furthering socio-economic divides within urban centres rather than achieving the mixed-income neighbourhoods that define success for IZ policy. IZ policy can lead to the provision of discount housing for exclusively middle-income earners if policy does not fully clarify expected policy priorities and outcomes. In others, where IZ units were required on a neighbourhood by neighbourhood basis, the construction of new IZ policy occurred in already

²⁴ (Keesmat, 2015)

²⁵ (Dingman, 2018)

economically, social, or racially segregated neighbourhoods, especially those lacking political agency or advocacy within decision-making bodies.

In a comprehensive analysis of IZ initiatives in the United States, Sturtevant found that well-implemented and properly incentivized IZ programs were capable of producing affordable housing without negatively impacting housing production or raising market rate prices.²⁶ Sturtevant's analysis found that, "in general, mandatory programs in strong housing markets that have predictable rules, well-designed cost offsets, and flexible compliance alternatives tend to be the most effective".²⁷ The caveat to successful use of IZ policies was in the site specific adaption of the eight point IZ framework.²⁸ Due to variability of implementation, regulation, and incentivization there is little conclusive evidence to support the general effectiveness of IZ regulations.

Sturtevant's findings must, however, be highly qualified as the study did not distinguish or explore many of the concerns raised in this paper. Analysis that supported such a finding almost exclusively focused on total unit production. Not considered in the study was the impact of owner-occupied vs rental IZ units, how resident eligibility was determined, how well specific IZ regimes addressed deep need vs shallow housing need, or how satisfied residents of both IZ and market-rate units were with the arrangement. As such, while the study was generally supportive of the argument that IZ policy can be effective, it did not further qualify said effectiveness and failed to illustrate how best to model such policy for addressing deep affordability issues such as those being experienced by residents of Toronto and Vancouver.

3.2 Building affordable housing vs Affordable Housing

There is now a semantic difference between two ideas of affordability in our municipalities. Affordable housing occurs when the average household incomes within an area are in line with the cost of housing. Where Affordable Housing (sometimes referred to a "capital-A affordable housing") is needing to be introduced is when the cost of housing is out of sync with the local labour economy. This distinction between the two types must be considered when implementing policies that impact Toronto, the Greater Golden Horseshoe area, and municipalities throughout Toronto. As part of understanding this distinction between broader affordability and subsidized affordability, government needs to understand the role that they play in making the market unaffordable. Likewise, policy changes based on best practice in affordable markets should be considered for fixing market affordability.

Spencer Gardner of Strong Towns illustrates key points on the role of government in affordable housing initiatives within 'The 5 Immutable Rules of Affordable Housing'.²⁹ As written, these are:

1. Developers do not pay the costs of construction; tenants and buyers do.
2. Housing demand is regional.
3. If zoning and building code mandates expensive housing, housing will be expensive.
4. Affordable housing is not affordable if transportation costs are too high.
5. Today's affordable housing was the last generation's luxury housing.

In lieu of legislative mandate, Gardner proposes alternative policy amendments:

1. Reduce minimum lot frontages and relax density restrictions in single-detached zones.

²⁶ (Sturtevant, 2016)

²⁷ (Sturtevant, 2016, p. 11)

²⁸ (CMAP, 2018)

²⁹ (Gardner, 2012)

2. Fix Zoning: if as-of-right development is economically infeasible, or if zoning is entirely inappropriate for the area, the result is artificial scarcity.
3. Private development needs to be unencumbered when it comes to building affordable housing; government needs to be directly involved in the building of Affordable Housing. The distinction is in their mutual exclusion.

Governments have limited budgets which makes IZ mandates a popular solution, but the tranche of homebuyers that IZ policy helps is not nearly as robust as the demographics that could be served if the development climate was positioned to serve as large a market as possible and government sought to serve those in greatest need least likely to be helped by the private markets.

Affordable housing is a complex problem with no silver bullets. Progress across the market needs to be made through a partnership model, where in the private market and government work in tandem to serve the communities they are best positioned to help.

Before introducing legislation that adds complexity to the planning regime and creates obstacles to building new housing, government needs to ensure that it has reduced negative market interventions so as to ensure that it is not contributing to the problem. Advocates view IZ as a new form of social housing that compels the private markets to 'solve' housing affordability. Whereas homebuyers and purchasers view it as a nexus for discounting access into private homeownership. In attempting to serve both, IZ policies are destined to accomplish neither.

The original partnership model included in the draft policy would have created meaningful advances towards transitioning 'affordable' housing stock in Toronto away from an unsustainable social housing model towards a housing market where ownership is in reach.

The issues with advocating for an exclusively social model to IZ are two-fold:

1. Affordability Gap - The increasing gap between household incomes and the cost of housing means that as time goes on more people will encounter affordability constraints and require access to units provided through IZ provisions. By placing the expectation of 'discount' units into every new development, market-rate units become less affordable for those who do not qualify for IZ units.

IZ units require the sale of market-rate or above market-rate units to exist. As the number of people impacted by affordability issues further increases, one must ask how IZ units will continue to exist if other residents are unable to afford non-IZ units. The crux of the matter is that market-rate housing still needs to be affordable for enough buyers that the provision of IZ units to those in need remains feasible. People need to be able to buy into the properties for the market to buy in to IZ policy.

Across the board people are having to make difficult decisions about housing. Currently, people who wish to access housing but cannot 'fully' afford it, who do not qualify for social housing or housing subsidies, are resorting to riskier mortgage contracts, longer amortization periods, or alternative lenders in order to enter the market. When ownership finally becomes untenable for the majority of would-be purchasers, IZ will fail as well.

2. Unit Decontrol - The 'Affordability Control Period' included in IZ policy should concern all parties involved. Maintaining an 'affordability' overlay on units for a lengthy time period after their sale to the homeowner carries with it the threat of stigmatizing the unit and shows a severe lack of faith in the longevity and efficacy of the IZ policy. Maintaining control over

the unit can severely impact an owner's upward mobility and the financial feasibility of them leaving the 'affordability' oriented spectrum of the housing market.

4. REALPAC's Recommendations

REALPAC remains supportive of affordable home ownership initiatives in Ontario. OREA's "Keeping the Dream Alive" report, published by the Centre for Urban Research, illustrated that the dream of home ownership is still alive and well in the minds of many young Ontarians. Property ownership has proven to be a valuable investment for many of today's retirees. Everything possible should be done to provide similar advantages to current and future generations of homebuyers. REALPAC is hopeful that government can see why similar ownership opportunities would contribute towards the continued prosperity of the GGH region and all municipalities across Ontario.

REALPAC is optimistic that the right policy fit can be found, with regard to IZ and affordable housing in Ontario. To that end, REALPAC would assert that the draft regulations originally circulated in December 2017 should be revisited as the appropriate intervention in Ontario for two reasons:

4.1 Market Adaptability

Definition of IZ requirements and thresholds at the provincial level create a more stable, consistent, and predictable development climate. The enacted version of O.Reg 232/18 carries with it the propensity to create vastly different IZ deliverables between different municipalities and even within different neighbourhoods in the same municipality.

4.2 Ownership Viability

IZ units represents a viable nexus for entering the housing market, especially for first-time homebuyers who have been priced out of other options. The optimal goal of affordable housing policy should be to empower those relying on it to no longer need it in the future. By enabling homebuyers to build equity and sell their units at a profit, potential owners should be able to exit 'affordability' oriented ranges of housing and upgrade to a market-rate resident. Many of the controls that municipalities have been given permission to put in place would see homebuyers trapped in the IZ market. Affordability Housing systems should act as a bridge into a housing market that becomes more affordable over time.

IZ will provide additional 'affordable' units to select qualifying candidates but will not 'solve' affordability issues in Ontario. O.Reg 232/18 does not exist in a vacuum, but rather must exist within a broader umbrella of land use planning projects, development policy reform, and is highly dependent on the long-term construction of market-rate housing within core areas of Ontario's municipalities. To that end, to be successful, REALPAC asserts that IZ reform, as suggested above, must also be accompanied by a comprehensive review of regulations impacting the cost of home ownership in Ontario. Viable affordable housing initiatives need to collectively address systemic, regulatory, and market barriers for entering the housing markets.

REALPAC welcomed the original January 18th draft of the Government of Ontario's Inclusionary Zoning policy. Provincial definition satisfied many of the tenets for policy decisions that have proved successful in other municipalities and states illustrated in industry research. To that end, REALPAC encourages the new administration to revisit the portions of O.Reg 232/18 that were supported by industry stakeholders and take political leadership in implementing them at a province-wide.

About REALPAC

The Real Property Association of Canada ("REALPAC") is Canada's senior national industry association for owners and managers of investment real estate. Our members include publicly traded real estate companies, real estate investment trusts (REITs), private companies, pension funds, banks and life insurance companies. The association is further supported by large owner/occupiers and pension fund advisors as well as individually selected investment dealers and real estate brokerages.

REALPAC delivers value through:

- Acting as a powerful collective champion for policy decisions
- Research-based intelligence and insights
- Best-in-class professional practice
- Exclusive connections and leadership development opportunities

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References

- Centre for Urban Research and Land Development. (2015). *Is Inclusionary Zoning a Needed Tool for Providing Affordable Housing in the Greater Golden Horseshoe?* [Ebook]. Toronto: Faculty of Community Services, Ryerson University. Retrieved from [https://www.ryerson.ca/content/dam/cur/images/projects/CUR%20RR%235 Inclusionary%20Zoning%20Report Updated Oct%2020%2C%202015\(LG\).pdf](https://www.ryerson.ca/content/dam/cur/images/projects/CUR%20RR%235%20Inclusionary%20Zoning%20Report%20Updated%20Oct%2020%2C%202015(LG).pdf)
- CMAP. (2018). Inclusionary Zoning - Background and Examples. Retrieved from <http://www.cmap.illinois.gov/about/2040/supporting-materials/process-archive/strategy-papers/inclusionary-zoning/background-and-examples>
- Cortright, J. (2018). There Will Be No Exit From California's Housing Hell. Retrieved from <https://www.citylab.com/equity/2018/05/there-will-be-no-exit-from-californias-housing-hell/559706/>
- Dachis, B., & Thivierge, V. (2018). *Through the Roof: The High Cost of Barriers to Building New Housing in Canadian Municipalities* [Ebook]. Toronto: C.D. Howe Institute. Retrieved from https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Friday%20Commentary_513.pdf
- Dingman, S. (2018). Toronto's low-rise neighbourhoods losing density as 'overhousing' spreads. *The Globe And Mail*. Retrieved from <https://www.theglobeandmail.com/real-estate/toronto/torontos-low-rise-neighbourhoods-losing-density-as-overhousing-spreads/article38285466/>
- Douglas Bell v. Her Majesty The Queen, [1979] 2 S.C.R Bell v. R 212 (S.C.R. 1979). Retrieved from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/4456/1/document.do>
- Gardner, S. (2012). The 5 Immutable Laws of Affordable Housing. Retrieved from <https://www.strongtowns.org/journal/2017/12/11/immutable-laws-of-affordable-housing>
- Harris, T. (2018). City plan puts focus on two- and three-bedroom residential units | The Star. Retrieved from <https://www.thestar.com/news/gta/2018/05/23/city-plan-puts-focus-on-two-and-three-bedroom-residential-units.html>
- Hickey, R., Sturtevant, L., & Thaden, E. (2014). *Achieving Lasting Affordability through Inclusionary Housing*. Cambridge, MA: Lincoln Institute of Land Policy.
- Kalinowski, T. (2018). How can Doug Ford fix Toronto-area housing? | The Star. Retrieved from https://www.thestar.com/business/real_estate/2018/06/14/how-can-doug-ford-fix-toronto-area-housing.html
- Keesmat, J. (2015). Official Plan Maps. Retrieved from <https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/official-plan/official-plan-maps-copy/>

Kitchener (City) Official Plan Amendment No. 58, [2010] O.M.B.D. No. 666 (O.M.B.).

McMeekin, T. (2016). *Ontario's Long-Term Affordable Housing Strategy* [PDF]. Toronto: Government of Ontario - Ministry of Municipal Affairs and Housing. Retrieved from <http://www.mah.gov.on.ca/AssetFactory.aspx?did=13683>

Mock, B. (2016). Inclusionary Zoning Does Not Drive Up Housing Costs. Retrieved from <https://www.citylab.com/equity/2016/06/what-we-know-about-inclusionary-zoning-thus-far/485072/>

Sturtevant, L. (2016). *Separating Fact from Fiction to Design Effective Inclusionary Housing Programs*. Center for Housing Policy. Retrieved from <https://www.nhc.org/wp-content/uploads/2017/10/Separating-Fact-from-Fiction-to-Design.pdf>

The Canadian Press. (2018). More than half of Canadians have less than \$10,000 set aside for emergencies: BMO. *The Globe And Mail*. Retrieved from <https://www.theglobeandmail.com/globe-investor/personal-finance/household-finance/more-than-half-of-canadians-have-less-than-10000-set-aside-for-emergencies-bmo/article26172527/>

New In Homes (2018). The TOcore plan could hurt first-time buyers. Retrieved from <http://blog.newinhomes.com/news/the-tocore-plan-could-hurt-first-time-buyers/>

Toronto Foundation. (2018). *Toronto Vital Signs Report* [Ebook] (pp. 38-43). Toronto. Retrieved from <https://torontofoundation.ca/wp-content/uploads/2018/01/TF-VS-web-FINAL-4MB.pdf>

Toronto Real Estate Board. (2014). *Historic Statistics: TorontoMLS Sales and Average Price* [Ebook]. Toronto: Toronto Real Estate Board. Retrieved from http://www.trebhome.com/market_news/market_watch/historic_stats/pdf/TREB_historic_statistics.pdf

Toronto Real Estate Board. (2017). *Market Watch - March 2017* [Ebook]. Toronto: Toronto Real Estate Board. Retrieved from http://www.trebhome.com/market_news/market_watch/2017/mw1703.pdf

Vaccaro, J., & Provenzano, J. (2018). *Province Adds More Politics When We Need Partnerships for More Homes* [Press Release]. Greater Toronto: BILD and Ontario Home Builders' Association.

Van Baaren, N. (2013). The Persistence of Exclusionary Zoning. Retrieved from <http://www.clime.newark.rutgers.edu/publications/article/persistence-exclusionary-zoning>

Appendix 1 - Inclusionary Zoning History & Framework

Born out of American urban planning discourse, IZ is a planning tool that was developed as a direct response to what were perceived as “exclusionary” zoning requirements. These zoning policies restricted housing options to those that were the most expensive. Wide required frontages, large lot sizes, extensive minimum building setbacks, and minimum lot depths created zoning regimes wherein lower cost options such as (stacked) townhomes and condominiums were prohibited.³⁰

IZ was first introduced in 1971 by Fairfax County, Virginia and later in 1974 in Montgomery County, Maryland. Inclusionary Zoning policies require developers to ‘set-aside’ a certain percentage of units to be offered at below-market rates for specific income groups. Generally, this is defined as within 30% of the group’s average income.

Inclusionary Zoning can be effective when applied at both the city and province/state levels, but the consistent thread across all policies is in how it determines key variables for determining inclusive requirements. Policies tend to reflect similar defining factors³¹ that form and shape IZ requirements:

1. Set Aside: The amount of the development that will be affordable.
2. Development Size Threshold: Typically determined by the number of units in a building. This defines the minimum size of building to which IZ will apply.
3. Type of Development: New, rehab, for-rent, for-sale, multi-unit, subdivision. Based on the rigor and requirement of policy, this may require clarification on which building typologies IZ requirements apply to.
4. Income Targeting: Defines the income group or demographic for whom units will be made available.
5. Incentives: Whether compliance is required or whether incentives are needed to accommodate the required IZ unit threshold in order not to impact other unit prices.
6. Alternative Measures: Set aside fee-in-lieu, allowance for offsite development of affordable units.
7. Voluntary vs Mandatory: Whether or not provision of inclusionary units is inscribed in bylaw as a statutory requirement or voluntary initiative with incentive packages.
8. Affordability Control Period: Length of time units must remain affordable.
9. Rental or Ownership Model: Whether requirements for IZ units are specific to rental or owner-occupied (condo) buildings drastically changes the effectiveness of the system. Problems may arise when assessing whether policy is capable of addressing shallow or deep housing need, and how the rest of the system is arranged, and resident satisfaction (of both IZ and market-rate units) with the arrangement.

Collectively these nine factors define the expectations of IZ policies for developers wishing to develop within a specific jurisdiction. Almost all policy examined at city, province, and state levels, between both Canada and the United States, has utilized this framework to draft IZ policies.

³⁰ (Van Baaren, 2013)

³¹ (CMAP, 2018)

Appendix 2 – A Tale of Two Regulations

Appendix 2.1 - May 2016 – Inclusionary Zoning Consultation

Proposed policy components included:

- Every municipality prescribed must amend their Official Plans to include Inclusionary Zoning policies, all other municipalities were permitted to include IZ policy in their Official Plans
- By-laws must be passed to give effect to Official Plan Inclusionary Zoning policies
- Municipalities were required to monitor the number of Inclusionary Zoning units introduced to market
- No Section 37 bylaw could be passed on lands subject to Inclusionary Zoning regulations
- No cash-in-lieu could be required for non-compliance with IZ regulations
- No appeal of IZ bylaws could be sought by anyone other than the Minister of Municipal Housing and Affairs
- No relief could be granted for inclusionary zoning requirements through minor variances via the Committee of Adjustment

Appendix 2.2 - January 2018 – Introduction of O.Reg 232/18

The circulated EBR draft was amended for final enactment to require:

- No mandatory requirement for certain municipalities to adopt inclusionary zoning policies, all municipalities may implement inclusionary zoning policies through official plans and bylaws at their discretion
- Assessment Report: municipalities must prepare and make public an assessment that contains:
 - Analysis of demographics and population
 - Household incomes,
 - Housing supply
 - Housing types and sizes of units needed to meet anticipated demand
 - Current average market price for each housing type
 - Potential impacts on the housing market
 - Financial viability of development from inclusionary zoning bylaws
- Required Official Plan Policies:
 - Minimum size of a development which inclusionary zoning policies will apply
 - Will not apply to developments containing less than 10 residential units
 - A municipality may determine a higher threshold
 - Areas of the municipality in which inclusionary zoning policies apply
 - Range of household incomes for which affordable units will be provided
 - Range of housing types and unit sizes that count as affordable housing units
 - Number of affordable housing units or gross floor area of those units required in a development

- The period of time for which units will remain affordable and an approach for monitoring and ensuring that affordable housing units remain affordable for the required time period
- How incentives will be determined
- How unit pricing or rental pricing will be determined
- How proceeds from a sale of an affordable unit will be distributed to a municipality
- Circumstances and conditions for off-site units
- Criteria for establishing proximity with respect to off-site units