ACORN CANADA

Inclusionary Zoning:
Best Practice

Executive Summary

A review of inclusionary zoning policies around the world provides valuable insight into the options available as Ontario implements these policies, and the best practices to follow. This study looks at the use of inclusionary zoning to provide affordable rental units, and the lessons learned in the implementation of those programs.

The provincial legislation and regulations on inclusionary zoning give considerable latitude to municipalities as they craft inclusionary zoning bylaws. The evidence drawn from other jurisdictions implementing inclusionary zoning ordinances offers a valuable guide for crafting those bylaws.

The best practices listed here should shape inclusionary zoning bylaws in cities across Ontario, helping to optimize the creation of affordable rental housing, minimize public expense, respond more effectively to the real needs of people facing the housing crisis, and preserve the benefits of inclusionary zoning in future.

This report was produced for ACORN Canada by Sean Meagher at Convene Toronto

Contents

Overview of Inclusionary Zoning

1) Context

Inclusionary zoning is a planning tool used to create affordable housing, by requiring new residential developments to include a predetermined amount of affordable housing among the new homes that are built.

Inclusionary zoning policies have been in place in US jurisdictions for over 40 years[1] with the first program emerging in Fairfax County Virginia in 1971, and the second in Newton Massachusetts in 1972[2]. Since then, almost 500 programs have been established, serving nearly 482 municipal jurisdictions[3] creating over 150,000 homes in the United States alone[4]. This model for providing affordable housing is increasingly popular in the United States, with the number of programs roughly doubled each decade, and over 70 percent of programs being adopted since 2000[5].

Similar programs have been established in England and Australia[6]. Though these programs differ from the classic inclusionary zoning models in a variety of ways, they have helped to deliver tens of thousands of new affordable homes in those jurisdictions[7].

Ontario passed legislation enabling municipalities to establish inclusionary zoning policies in 2016, and passed the regulations that enable it to come into force in 2018[8]. The legislation and regulations leave almost all aspects of inclusionary zoning policies to the municipality to design in a way that reflects their local housing markets[9].

2) Elements of Inclusionary Zoning

Inclusionary zoning policies are made up of several specific components that define the requirements developers are obliged to meet:

a) "Set Aside Rates" determine what proportion of a new development has to be affordable

1 Furman Center for Real Estate & Urban Policy (2008).
2 Drdla, R. (2016b).
3 Stromberg, B. & Sturtevant, L. (2016).
4 Williams, S., Carlton, I., Juntunen, L., Picha, E. & Wilkerson, M. (2016).
5 Thaden, E., Wang, R. (2017).
6 Drdla, R. (2016b).
7 Gurran, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A. and Phibbs, P. (2018).
8 Barth, B. (2018).
9 Ministry of Municipal Affairs and Housing, (2018).

b) “Affordability Periods” determine how long the affordable units need to remain affordable

c) “Affordability Levels” determines the rents on the affordable homes for tenants

d) “Affordability Levels” determines the rents on the affordable homes for tenants

e) “Thresholds” determine the minimum size of the developments that are required to meet inclusionary zoning requirements

f) “Incentives” outline any direct or indirect compensation offered to developers to help them meet inclusionary zoning requirements while still ensuring the project is economically viable

Policies on the ownership and stewardship of inclusionary zoning units are part of some inclusionary zoning programs as well

These policies cumulatively determine how many affordable units will be built in a new development, at what level of affordability, and set out other characteristics of these units. The way each component is designed has an impact on the effectiveness of affordable housing provision, and for each of these components, there are jurisdictions that have modeled best practices.

This paper provides an overview of common practices for creating rental units through inclusionary zoning programs in each of these areas, and suggests an approach for implementing inclusionary zoning in Ontario that reflects international best practices.

Set Aside Rates

Set aside rates determine what proportion of a building has to be set aside for the affordable units required. There is variation both in the set aside rate and in the methods for calculating rates.

Rates vary widely across jurisdictions. Davis, California, one of the United States' most established inclusionary zoning programs, requires a set aside rate of 35%, as does Salinas, California[10]. Many large cities, like Boulder, Colorado; and Portland, Oregon[11]; require 20% set aside rates, while New York and Vancouver require 30% in some cases[12 13]. An extensive review of US programs in 2017 showed that set asides of 10%-20% are the most common, but over 20% of all the programs that required set asides used a rate over 15%[14]. Fewer than one in 10 inclusionary zoning programs required a set aside rate of 5% of units or less[15].

Higher Set Asides with Added Density

In some jurisdictions, inclusionary zoning set asides apply at different rates to different components of a development, with one rate for as-of-right density and another rate for any additional density. Montgomery County in Maryland requires a 12.5% set aside for developments but that rises to 15% if there is added density[16]. Washington DC requires an 8-10% of set aside for the building as a whole, or 50-75% of added density[17.] In California, set asides rise with the amount of density added[18].

Gross Floor Area or Units of Housing

Set asides can be calculated as a percentage of the units in a development or as a percentage of gross floor area. Jurisdictions in British Columbia, for example, vary, with some defining the required set aside rates using a percentage of number of units in a new building, while others use a percentage of the gross floor area of the building[19].

10 Innovative Housing Institute. (2010).
11 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
12 Drdla, R. (2016a).
13 Housing Vancouver. (2017).
14 Thaden, E., Wang, R. (2017).
15 Thaden, E., Wang, R. (2017).
16 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
17 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
18 Thaden, E., Wang, R. (2017).
19 City of New Westminster, (2018).

Overall, US programs most typically opt for a percentage of the total units in the building. Recent studies show only 7% use another measure[20]. However, the choice has significant implications. A building with 100 units could be required to set aside 10 units if the set aside rate was 10%. However, the application for this policy could lead to the affordable units tending to be smaller ones, as the developer seeks to deliver on the inclusionary zoning requirement as economically as possible. This may result in less than 10% of the building's total area being affordable.

Some researchers also see alternate measures as providing greater flexibility to develop affordable units in the sizes and configurations that best reflect the needs of the intended households[21]. San Mateo, California, which calculated set asides as a percentage of units, has taken to providing an incentive for larger, family-sized units by allowing developers to count one three-bedroom affordable unit as equivalent to two smaller units, to promote the creation of units that better reflect the needs of low income families there[22].

Jurisdictions like Washington DC address both of those challenges by requiring that the inclusionary zoning set aside be calculated as a percentage of space, to ensure that a 10% set aside translates into fully 10% of the residential floor area[23].

Location

Set aside rates can vary by geography under an individual inclusionary zoning policy. Set aside rates can be higher in areas of the municipality that offer more profitability, as the income from those properties can sustain the larger overhead costs related to higher inclusionary zoning obligations.

About 71% of inclusionary zoning programs in the United States cover the entire jurisdiction, while 22% cover only certain areas or neighbourhoods, and 7% vary by neighbourhood but have policies for all neighbourhoods in the jurisdiction[24]. In the United Kingdom, local authorities vary in setting community wide and site specific housing targets but again, most adopt community wide targets[25].

20 Thaden, E., Wang, R. (2017).
21 Thaden, E., Wang, R. (2017).
22 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
23 Department of Housing and Community Development. (2017).
24 Thaden, E., Wang, R. (2017).
25 Drdla, R. (2016b).

These different approaches reflect the significant variations in the types of municipalities inclusionary zoning occurs in. Many inclusionary zoning programs are in smaller communities that have relatively consistent housing markets across the jurisdiction. Larger cities tend to have wider variations in their local housing markets and some have opted for more locally specific targets. In New York City, for example, the inclusionary zoning policy varies depending on geography and on whether specific locations are designated growth neighbourhoods[26].

Changes Over Time

Rates also vary over time. Some jurisdictions started with low rates and then gradually raised them. San Mateo California established its inclusionary zoning program in 1992 but raised its set aside rates about a decade later. San Francisco raised its set aside rates in both 2006 and 2008[27]. Municipalities have made these adjustments in part because they are finding there was room in the market that they had underestimated.

Inclusionary zoning rates may also be rising because the inclusionary zoning requirements themselves may have shifted the markets. As inclusionary zoning requirements changed the cost of development, developers are less willing to pay higher prices for land, which, appears to gradually lower land cost, making it reasonable to increase inclusionary zoning requirements over time. [28,29,30]

Depth of Affordability

The cost of providing inclusionary zoning units is highly dependent on the rental rates at which those “affordable” units are provided. It is less costly for developers to provide an “affordable” unit if it is rented out at 100% of the average market rent, than if it has to be rented out at a cost that would be affordable to very low-income renters, as a smaller subsidy would be involved. As a result, some jurisdictions vary the set aside rate requirements depending on how “deep” the affordability is. For example, New York’s new inclusionary housing policy requires a set aside rate of 30% for units that are affordable at incomes averaging 80% area median income (AMI), but also allow for a mixed model with set asides of 15% for units that are affordable at incomes averaging 60% of the AMI, and 10% for units that are affordable at 40% AMI, for a total of 25%[31].

26 Drdla, R. (2016a).
27 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
28 Gurran, N., Ruming, K., and Randolph , B. (2009).
29 Mallach, A. (1984).
30 Calavita, N. and Grimes, K. (2007).
31 Drdla, R. (2016).

Richmond, California, requires a set aside of 17% or more for units that are affordable to people living on moderate incomes, or 15% or more for people living on low incomes, or 10% or more for people on very low incomes[32]. Several California jurisdictions also vary the set aside rates based on depth of affordability[33]. In fact, in a recent comprehensive study of inclusionary zoning programs in the United States, 35% of programs identified used set aside rates that varied according to level of affordability, project size, tenure and geographic location[34].

Mandatory Programs

Some jurisdictions have created programs that offer added density as an option, providing incentives to developers if they agree to set aside units for affordable housing. Others have made the programs mandatory, requiring the set aside as a condition of development. The evidence strongly supports the use of mandatory programs as the most effective tool for creating affordable housing[35 36 37]. Several jurisdictions have abandoned their voluntary programs in favour of mandatory ones due the poor performance of voluntary programs[38].

32 City of Richmond, California. (2012).
33 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
34 Thaden, E., Wang, R. (2017).
35 Paradis, E. (2018).
36 Brunick, N. (Undated).
37 Mukhija, V., Regus, L., Slovin, S. and Das, A. (2010).
38 Hickey, R., Sturtevant, L., and Thaden, E. (2014).

Best Practice

Best practice for set aside rates appears to favour defining set aside rates by gross floor area, ensuring that the contributions from developers fully meet the goals of the municipality and give municipalities the flexibility to use the inclusionary zoning contribution to create housing that is appropriate to the needs of the target population.

Programs should be mandatory.

Set aside rates should be targeted at levels that reflect the rates used in similar housing markets in North America. In large Ontario cities with strong housing markets, the rates should reflect what strong housing markets such as New York and Vancouver use, making a set aside of at least 20% a reasonable target, with higher levels applying where markets are particularly good. In weaker markets the rates should also reflect local conditions, and lower set aside rates are appropriate, though rates of 10% or less are uncommon in North America, even in weaker housing markets.

However, the evidence indicates that a single set aside rate is not suitable to an inclusionary zoning program in a large city with a differentiated housing market and complex housing issues. While 20%, and in some cases 30%, are appropriate set aside rates in a larger city, set aside rates should vary to accommodate the variations in the housing markets in different areas of a larger city, with lower set asides where the market is weakest and higher rates where development demand is very strong.

Set aside rates should also vary by the income group the units are designed to house, with fewer units required if the units are more deeply affordable housing, and more required for housing people closer to the median income.

Set asides should be phased in to allow the market to adjust and for the cost of the inclusionary zoning program to be absorbed into the market or “passed back” by reducing land prices.

Definition of affordability

Inclusionary zoning policies require the developers to create a number of "affordable" homes as part of developments under the policy. The definition of "affordability" has a significant impact to the effectiveness of the policy. Jurisdictions have used different levels of affordability and different mechanisms for measuring it.

Market Rents as a Measure of Affordability

Some jurisdictions consider homes that rent for a specified percentage of the "average market rent" (AMR) to be affordable. For example, the program in Sydney, Australia, considers units that rent for 80% of AMR affordable[39] and Toronto's Open Door program considered units that rented for 100% of AMR affordable[40]. Defining affordability as a percentage of AMR can be an ineffective tool for ensuring rents are actually affordable for people living on low incomes. The use of market rents as a measure of affordability means that increasing rent levels make the average rent higher, and in the process, raises the "affordable" rent level, even if incomes do not rise, and fewer people are actually able to afford that level of rent. Definitions of affordability based on AMR have no connection to what low income households can pay, they only indicate where in the spectrum of current rents the new units happen to fall.

Incomes as a Measure of Affordability

Market rent based definitions of affordability are not used in most of North America. Most jurisdictions define affordability based on income.

Most U.S. jurisdictions use the "area median income" (AMI) as their measure of income, and set rents to serve people at a particular percentage of that income. San Francisco, for example, seeks to create housing that is affordable to people earing 55% of the median income, while Chicago's program aims at tenants earning 60% of AMI[41].

39 Gurran, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A. and Phibbs, P. (2018).
40 City of Toronto. (2018).
41 Hickey, R., Sturtevant, L., and Thaden, E. (2014).

Rents that are at or below 30% of income are considered affordable. So, if the AMI in an area is $6,000 per month, an affordable rent for the average household would be $2,000 per month. However, for housing targeted at people earning 50% of AMI, incomes would be half as high and so an affordable rent would be set at $1,000 per month. (Because family incomes differ by the number of people in the household, a formula is used to adjust the AMI for families of different sizes.)[42]

There are, however, criticisms of AMI as an income measure. It is highly dependent on the area used. In Washington DC, for example, there have been complaints that the area used includes affluent suburbs which results in an AMI that is higher than the average within DC itself. [43]

AMI is a common U.S. measure because it is calculated for each jurisdiction annually by the Department of Housing and Urban Development and readily available for municipal use. Other tools have been used to measure income in Canada, and provided by Statistics Canada. The Market Basket Measure (MBM) and the Low Income Cut Off (LICO) attempt to assess income levels based on the cost of necessities. The Low Income Measure (LIM), now the most commonly used measure of low income in Canada, is similar to AMI.[44]

Regardless of the tool used, income based calculations can provide a more accurate picture of what households can afford than rents set based on what the market averages are.

Affordability Levels

Successful inclusionary zoning programs are specifically designed to create housing that adds to what the market will do on its own. Overall, according to recent studies assessing the broad scope of inclusionary zoning programs, about one quarter of all inclusionary zoning programs that set a single income target fall in the same range as Chicago and San Francisco, serving households earning 50-60% of AMI[45] and over 70% of programs serving a single income level were affordable to households earning less than 80% of AMI.[46] [47] Fewer than one in six served income groups higher than 80% of AMI. South Australia requires new developments to meet a range of needs including 5% of the units that must serve “high need” groups including those in need of social housing, and New York includes households earning 40% of AMI as one element of a multi-tiered program[48], but few other programs attempt to reach this level of affordability without additional programs adding to the capacity to reach these income levels.[49]

42 McCabe, B. (2016).
43 McCabe, B. (2016).
44 Statistics Canada. (2010-2011).
45 Thaden, E., Wang, R. (2017).
46 Thaden, E., Wang, R. (2017).
47 Innovative Housing Institute. (2010).
48 Drdla, R. (2016b).
49 Thaden, E., Wang, R. (2017).

However, the most common practice is to have tiered targets, with the program designed to set aside some units at each of several different income levels. For example, the inclusionary zoning programs in Denver, Colorado and in Cambridge, Massachusetts are both designed to serve a variety of household incomes, between 50% and 80% of AMI. In fact, a recent survey of inclusionary zoning programs across the US showed that 42% of the programs served multiple AMI tiers[50]. Across all types of programs, most inclusionary zoning policies serve households earning 50%-80% of AMI.[51]

Condo Fees

Efforts to ensure units are affordable have run into challenges where units are located in condominiums. Rising condo fees have created challenges for Chicago's efforts to ensure that inclusionary zoning units remain affordable.[52] Cambridge, Massachusetts adds municipal constraints on condo fees to ensure that their "affordable" units remain so. [53]

Best Practice

The best, and most common, practice for determining affordability is to use income, rather than market rents.

With the complexity of housing needs in most jurisdictions, multiple income levels should be served by the program. Past practice indicates that programs serving people earning between 50%-80% of AMI are most common and programs serving populations earning more than 80% of AMI are rare.

The examples of Chicago and Cambridge suggest that a strategy for managing the impact of condo fees is a necessary component of inclusionary zoning wherever an active condo market is a part of local development.

50 Thaden, E., Wang, R. (2017).
51 Stromberg, B. & Sturtevant, L. (2016).
52 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
53 Hickey, R., Sturtevant, L., and Thaden, E. (2014).

Term of affordability

IZ programs require developers to ensure that a specific number of homes are available, but they may only be available at an affordable level for a limited period, after which they are rented at market rates. The period during which they are required to remain affordable varies widely. In Montgomery County, Maryland the inclusionary zoning program initially required affordability periods as low as 5 years. Conversely, Boulder, Colorado requires the units to be affordable in perpetuity[54]. Other jurisdictions use slightly modified versions of perpetual affordability. Burlington, Vermont uses the "life of the building" as the requirement, while Chicago requires homes to stay affordable for 99 years.

Jurisdictions that initially required shorter affordability periods have found a need to extend them, as the expiration of those affordability periods have produced sudden shortages of affordable housing. Montgomery County, for example, increased its 5-year affordability period to 10 years in 1981, and then increased it again, to 99 years, two decades later[55]. They are not alone. Many jurisdictions, including Chicago, San Francisco, Davidson, North Carolina56 and Edmonton, Alberta[57] have increased their affordability periods, often in the face of pressures resulting from the expiration of affordability periods during times when housing needs remained high[58]

As a result, in current inclusionary zoning programs, affordability periods of 99 years or longer are the most common policies, and only a minority of programs have affordability periods under 50 years[59]. Barely 7% of programs allow affordability periods of 30 years of less[60].

Best Practice

Perpetual affordability is clearly both the most common and the most effective tool for addressing housing needs. Shorter terms simply defer the housing crisis and have had to be abandoned in favour of longer terms in other jurisdictions.

54 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
55 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
56 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
57 Drdla, R. (2016b).
58 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
59 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
60 Thaden, E., Wang, R. (2017).

Thresholds

Project Size

Inclusionary zoning programs do not apply to all developments. Jurisdictions often set a minimum size for a development to be included in its inclusionary zoning program. In some cases that minimum is very low, as it is in Boulder, Colorado, where the minimum development size is one unit of housing[61]. In fact, the vast majority of inclusionary zoning programs surveyed in studies in 2010 and 2017 had minimum requirement of 10 units or less[62 63]. No programs were found that had thresholds over 50 units[64].

Alternatives to Construction

These thresholds are constrained in some programs as the application of a 10% set aside is difficult to achieve on buildings under 10 units unless some form of contribution, other than the construction of affordable units, is provided. These alternatives can take a variety of forms, including paying a fee equivalent to the cost of developing the required amount of affordable housing, providing land equal to the value of the required contribution, or subsidizing rents in market units to create equivalent amounts of affordable housing[65]. The inclusionary zoning program in Irvine, California also allows a "credit transfer" option, that allows contributions to be transferred between multiple developments to collectively fulfill the requirement across more than one project[66].

Since fee-in-lieu options are prohibited under the Ontario inclusionary zoning legislation[67], the range of options for meeting inclusionary zoning obligations is more restricted than it is in other jurisdictions. Either complete housing units must be provided (making a 10% set aside impossible to achieve for a development under 10 units), a credit transfer option used, or land dedications at the value of the required contribution.

61 Innovative Housing Institute. (2010).
62 Thaden, E., Wang, R. (2017).
63 Innovative Housing Institute. (2010).
64 Thaden, E., Wang, R. (2017).
65 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
66 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
67 Advocacy Centre for Tenants Ontario. (2017).

Best Practice

International best practice does not support a threshold higher than five units if any threshold is applied at all.

Applying set asides to small projects in the absence of fee-in-lieu options will require the development of some type of credit transfer system or a land dedication option.

Incentives

The Case for Incentives

The debate about inclusionary zoning has often involved intense discussions around incentives developers would need to offset the costs of developing affordable units under an inclusionary zoning policy[68].

Developers often claim that affordable units cannot be built under an inclusionary zoning policy without the developers being compensated or the consumers paying more and that failing to do either or both will mean projects get cancelled. [69]

The Evidence on Incentives

These claims do not reflect the evidence. Studies have shown that inclusionary zoning programs do not result in reductions in development activity nor in significant comparative increases in housing prices.[70 71 72 73] As outlined by a number of studies,[74 75 76 77] developers experiencing costs associated with inclusionary zoning progressively integrate these costs into their development plans, absorbing those costs by lowering the amount they will pay for land,[78] a practice often called "passing back" the costs to the land. Collectively, these studies clearly show the case for incentives is, at least over the long term, a weak one[79]. As a result, of the inclusionary zoning programs covered in the most recent survey of policies, 25% offer no incentive of any kind to developers[80]. Larger centers with strong housing markets are the least likely to offer incentives to developers[81] because studies show that the economics of development in strong housing markets are able to support inclusionary zoning without them.[82]

68 Wilkes, D. (2018). d
69 Tuckey, B. (2016).
70 Sturtevant, L. (2016).
71 Bento, A, Lowe, S., Knaap, G., and Chakraborty, A. (2009).
72 Mukhija, V., Regus, L., Slovin, S. and Das, A. (2010)..
73 Schuetz, J., Metzler, R. and Been, Rachel. (2010).
74 Mallach, A. (1984).
75 Gurran, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A. and Phibbs, P. (2018).
76 Calavita, N. and Mallach. A. (200
77 Paradis, E. (2018).
78 Mock, B. (2016).
79 Williams, S., Carlton, I., Juntunen, L., Picha, E. & Wilkerson, M. (2016).
80 Thaden, E., Wang, R. (2017).
81 Brunick, N., Goldberg, L. and Levine, S. (2003).
82 Williams, S., Carlton, I., Juntunen, L., Picha, E. & Wilkerson, M. (2016).

However, the ability to pass costs back to the land will evolve over time, rather than occurring instantly, making progressive introduction of costs (or progressive removal of incentives) a logical strategy.

Types of Incentives

Of the programs that do offer incentives, very few (only 8%) offer any direct compensation to developers for costs. Some jurisdictions do offer tools to increase the ability of new developments to optimize the affordable housing they can produce, by providing zoning variances that reduce costs (such as reduced parking requirements), fast tracking for applications, and waivers on fees and permits, to varying degrees, in roughly 20%-25% of programs.

However, the most common of these incentives involves allowing developers to build added density, above that allowed under the current zoning. Most surveys of inclusionary zoning policies show added density is used in the majority of programs. [83] [84] However, those surveys combine statistics on a variety of programs that use density in very different ways, including bonusing, up-zoning and incentives in voluntary programs, making the calculation of actual prevalence difficult.[85]

The application of each of the incentives themselves vary as well. For example, Vancouver, which allows density bonusing, captures 75% of the net value of the added density for the creation of affordable housing and other community amenities. New York develops planning rationales for up-zoning in specific neighbourhoods but makes the new zoning accessible only where affordable housing is provided at the higher level of their inclusionary housing standard.

Best Practice

There is no international evidence that supports payments to developers to offset costs associated with inclusionary zoning.

Maximizing the ability to create units has been facilitated through fast tracking of applications, fee waivers and reduction of some zoning constraints such as parking. These can be valuable contributions to increasing the supply of affordable housing.

83 Thaden, E., Wang, R. (2017).
84 Innovative Housing Institute. (2010).
85 Drdla, R., (2016)

Applying inclusionary zoning to as of right development as is done in San Francisco would optimize the number affordable of homes created. Allowing increased density can also be a tool for increasing the ability of a development to create affordable units (as long as it is consistent with good planning guided by the municipality) but added density should be subject to high rates of value capture, similar to Vancouver's 75% rate.

To facilitate the ability of development to pass the cost of inclusionary zoning back to the land, rates of set asides should rise, and incentives should fall over time, in predictable and foreseeable ways.

Ownership and Stewardship of IZ Units

International experience with the management of inclusionary zoning units indicates that there are a number of challenges in the management and operation of the affordable housing created through inclusionary zoning programs. Most inclusionary zoning programs require homes to be rented to people living in specific income brackets, which means that the operator of the homes must be able to test compliance with those requirements and restrict rentals to qualified candidates. Many jurisdictions have struggled to ensure that the operators run the units in compliance with the law, and often face considerable logistical and economic strains in their efforts to ensure compliance.[86 87]

Jurisdictions have struggled with housing operators who have a poor understanding of the rules, or poor methods of overseeing their application. Education, monitoring and enforcement have proven challenging and costly in a number of these contexts.[88]

A number of jurisdictions, including Chapel Hill, North Carolina[89,] Edmonton, Alberta[90] and Sydney, Australia[91], have chosen to transfer management of units and of the compliance obligations in whole or in part to non-profit organizations dedicated to the provision of affordable housing[92]. Others have opted to have the housing transferred to the municipality, either as finished units or land dedications, to enable better management and also a broader range of affordable housing options, including dedicated housing for seniors, women leaving domestic violence, transitional housing and supportive housing.[93]

Best Practice

Ongoing private ownership of inclusionary zoning units has proven expensive and complicated, due to the need for monitoring and compliance enforcement. Transferring inclusionary zoning units to non-profits with an affordable housing mandate or to the municipality appears to be more manageable as a model.

86 Schwartz, H., Ecola, L., Leuschner, K. and Kofner, A. (2012). .
87 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
88 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
89 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
90 Drdla, R. (2016b)
91 Drdla, R. (2106) National Housing Strategy: Inclusionary Zoning- Domestic & International Practices, CMHC National Office at http://inclusionaryhousing.ca/wp-content/uploads/sites/2/2014/10/CMHC6-FinRep5-20Dec2016.pdf91
92 Hickey, R., Sturtevant, L., and Thaden, E. (2014).
93 Hickey, R., Sturtevant, L., and Thaden, E. (2014).

Summary

Inclusionary zoning has been operating in jurisdictions around the world for almost 50 years. The experience of other jurisdictions has provided good guidance on how Ontario municipalities can and should implement the new inclusionary zoning powers and how they should craft their inclusionary zoning bylaws.

This report outlines those best practices and offers recommendations on what policies should be included in inclusionary zoning programs in Ontario municipalities to optimize the creation of affordable housing.

The evidence shows that inclusionary zoning programs should vary by municipality, to reflect local conditions.

Large urban centres

In large cities with strong housing markets, the evidence supports inclusionary zoning programs that:

- Set a relatively high set aside rate, at least 20%, as the basic set aside level, allowing variation in accordance with the strength of housing sub-markets in the City and with the depth of affordability of the inclusionary zoning units.
- Set asides should be calculated using gross floor area, rather than number of units.
- Set asides should be phased in, in clearly predictable ways, to allow the market to adjust and for the cost of the inclusionary zoning program to progressively reduce land prices.
- Affordability should be defined by the income group for whom the homes should be affordable, with rents set at 30% of that income level, and not be set by average market rents.

- Inclusionary zoning programs should be designed to serve several different income groups and to reflect local needs, serving those earning between 50% and 80% of the median income. Additional programs should be “layered on” to inclusionary zoning programs to reach deeper levels of affordability.

- Inclusionary zoning programs should develop effective strategies to manage the impact condominium fees might have on long term affordability.

- Inclusionary zoning units should be affordable in perpetuity, or for 99 years.

- Inclusionary zoning policies should apply to all developments over 10 units, with credit transfer agreements or land dedication arrangements made to enable small developments to meet set aside requirements that are less than one unit.

- No direct compensation should be made to developers for compliance with inclusionary zoning requirements. inclusionary zoning should apply at an appropriate rate to as of right development and further agreements on increased density, zoning variance, fast tracking and fee waivers should be provided to maximize the amount of affordable housing that a development can provide. These arrangements should be structured to ensure that the municipality capture the majority of the value created by those concessions.

- Affordable rental units created through inclusionary zoning programs should be owned and operated by the municipality or a nonprofit housing provider.

- Programs should be mandatory.

Smaller communities

Inclusionary zoning is widely used in smaller communities around the world, but those contexts affect the implementation. In smaller communities, or those with weaker housing markets, the evidence supports inclusionary zoning programs that vary in the following ways:

- Multiple set aside levels may not need to vary across local neighbourhoods.
- Set aside rates may be lower, though rates lower than 10% would not reflect best practice.
- It may be difficult to serve the full range of income groups that stronger housing markets can provide for.

These practices reflect the most common and most effective models of creating affordable housing through inclusionary zoning, based on international evidence.

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