

EMERGING DEVELOPMENTS IN MUNICIPAL AND PLANNING LAW

MUNICIPAL LAW

The Ins and Outs of Inclusionary Zoning

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What Is Inclusionary Zoning and Why Does It Matter?

Inclusionary zoning (“IZ”) is a term that is still relatively new to many Canadian municipalities. As a general principle, municipalities are not allowed to pass zoning by-laws that zone for the user as opposed to the use. IZ is an exception to the rule; it specifically allows municipalities to require affordable housing units (“AHUs”) to be provided in new residential development projects.

Perhaps as a result of the housing crisis in Canada, and particularly in red-hot markets such as Toronto, Vancouver, Edmonton and even Barrie, the Ontario government has recently attempted to respond to the affordable housing issue by enabling municipalities to implement IZ. Prominent municipal officials and housing advocates have stated that early implementation of IZ would have created numerous AHUs due to the high demand for housing in urban centers.²

However, the successful implementation of IZ is not so simple. In the first part of this paper, the authors examine Ontario’s recent passing of Bill 7, *Promoting Affordable Housing Act, 2016* and its potential implications given that most of the substance of the Bill is left to regulations. In the second part of this paper, the authors focus on the City of Vancouver’s experience with IZ since the late 1980’s and lessons learned from that experience.

PART 1: Ontario’s *Promoting Affordable Housing Act, 2016* and Inclusionary Zoning

On December 8, 2016, the Ontario Legislature passed Bill 7, *Promoting Affordable Housing Act, 2016*.³ Bill 7 proposes amendments to the *Planning Act*, along with other legislation, and is intended to help address affordable housing issues by enabling municipalities to use IZ.

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² For example, the City of Toronto’s Chief Planner, Jennifer Keesmaat, has stated that the implementation of IZ would have created 12,000 AHUs from 2010-2015 based on a 10% set-aside in developments of over 300 units.

³ Bill 7 went through 10 sessions of parliamentary debate and was also considered by the Standing Committee on Social Policy. All of the changes recommended by the Standing Committee were adopted in the final version of the Bill that received Royal Assent, although the majority of amendments proposed by the minority governments were not adopted.

Part 1 of this paper is not intended to identify each and every change brought by Bill 7.⁴ Instead, the authors identify a few key topics that may (or may not) be addressed through the Minister’s regulations under the *Planning Act* that in our view will shape the implementation of IZ. Unless all of these topics are rigorously prescribed by the Minister, it is likely that some, if not most, of these issues will fall back onto municipalities to consider through their public consultation processes. Such topics include:

1. Measures and incentives to support IZ;
2. Contents of assessment reports;
3. Maintaining affordability of AHUs;
4. Setting parameters for AHUs;
5. Locating AHUs off-site;
6. Use of Section 37; and
7. Transition provisions.

Rather than identifying the ideal or “best-in-class” solution to the above issues, we attempt to provide a spectrum of options that municipalities may choose to consider when determining how to implement IZ. We also hope that this paper serves as a springboard to engage further discussions between municipalities and key stakeholders such as the development industry, non-profit housing advocates and other public interest groups.

The authors do not take credit for many of the ideas proposed in this paper and in particular thank the insightful and comprehensive submissions made by various stakeholders during the Province’s consultation process.⁵ More often than not, the issues raised by both the public and private sectors shared a common theme: more direction and certainty is required from the Province regarding the implementation of IZ. However, sufficient flexibility must be maintained to recognize the unique circumstances faced by each municipality in dealing with affordable housing issues, the diversity of development projects and ever-changing local conditions. Consistent with this theme, there appears to be a general consensus that a prescriptive approach to IZ is to be avoided, whether regulations appear to be municipal or developer-friendly.

⁴ For ease of reference, see Appendix “A” for a summary of the changes to the *Planning Act* under Bill 7.

⁵ See Appendix “B” for a list of references.

1. Measures and Incentives to Support Inclusionary Zoning

Few, if any, supporters of IZ assert that the private sector should solely bear the burden of providing affordable housing. Instead, many stakeholders recognize IZ as an additional planning tool for municipalities to broaden their options to provide for AHUs, as opposed to acting as a stand-alone solution.

As noted by the development industry, if the measures and incentives provided by the public sector do not offset the cost to developers of providing AHUs, the cost may simply be passed along to new homeowners and renters as a hidden tax. In other cases, the development will never be built.⁶ Studies in jurisdictions that have implemented IZ have concluded that IZ policies depend on market-rate development to be successful.⁷

The authors speculate that it is unlikely that the Province will prescribe specific measures and incentives, as the risk of dictating “top-down” benefits may result in financial burden on municipalities or insufficient benefit for the development industry. Municipalities have clearly indicated that they are not keen to implement provincially-regulated measures and incentives. Accordingly, the question that needs to be answered is how the public sector can successfully motivate the private sector to provide for AHUs in new development projects. A laundry list of measures and incentives include:

- Reduced parking or design requirements;
- Reduced parkland dedication requirements;
- Tax deferrals, freezes or reductions;
- Density bonuses;
- Grants or direct subsidies;
- Waivers or caps on building and planning application fees;⁸
- Development charge deferrals;

⁶ Since IZ policies have the effect of reducing the valuation for a given parcel of land, in the best case scenario, the highest and best use of the land is still redevelopment after IZ policies have been applied. For further discussion, see Williams, Stockton, et al., *The Economics of Inclusionary Development*, Washington, DC: Urban Land Institute, 2016 at 19 (“Economics”).

⁷ *Ibid.*

⁸ Note that certain municipalities, such as Halton Region, have identified capping application fees as a disincentive for implementing IZ as fees are minimal and municipalities rely on fees to process applications.

- Expedited planning approval processes;
- Province-led initiatives, including HST rebates and waivers, LTT rebates and waivers and direct subsidies;
- Development of existing public assets and surplus lands;
- Provision of low interest loans through Provincial agencies, such as Infrastructure Ontario; or
- Some combination of the above.

Other factors that need to be considered include correlating the measures and incentives provided with the affordability period (e.g. any property tax abatements should only be off-set during this period). It is also generally accepted that IZ is most successful in strong and sustained housing markets, where the cost of providing AHUs will be shared among many and the impact of measures and incentives is high.⁹ Conversely, there is arguably little value for IZ in areas where, due to the lack of market demand, significant measures and incentives are required to attract development. In these circumstances, more direct measures, such as funding construction of AHUs through non-profit organizations (e.g. Habitat for Humanity), may be more efficient at addressing affordable housing needs.

Finally, one of the key principles for IZ is that it should be based on a partnership model. In other words, the additional costs of establishing AHUs, either financial or otherwise, should be shared among the Province, municipalities, the development industry, non-profit housing sector, housing advocates and the public. It is also important to recognize that it is not only the private sector that would benefit from financial incentives and support. As the cost of administering and maintaining affordability for AHUs is anticipated to be significant, municipalities will likely require resources and guidance from the Province to carry these responsibilities going forward.

2. Contents of Assessment Reports

Municipalities must prepare an “assessment report” prior to adopting IZ policies in their official plans. This assessment report must be made available to the public. Furthermore, as long as the official plan contains IZ policies, the assessment report must be updated every five years from the date the policies come into effect. In our view this requirement is an appropriate

⁹ See *Economics*, *supra* note 6, at ix: “The single most important factor for an IZ policy to achieve its goals is a significant and sustained level of market-rate housing in the local market. If a community is not currently experiencing a material amount of new development, an IZ policy will not generate a meaningful number of new workforce housing units.”

precautionary procedure as IZ policies, and by-laws that give effect to such policies, can only be appealed by the Minister once adopted.

However, the question remains – what should assessment reports address? Assessment reports must include information as prescribed by regulation, but it is likely that municipalities will be permitted to go above and beyond what is prescribed to provide a more comprehensive basis for including IZ policies in their official plans.

To provide further clarity to IZ policies and motivate early public engagement, some issues that municipalities may consider addressing in their assessment reports include:

- Specific areas or districts where IZ is proposed to be implemented to address affordable housing issues and whether IZ should be restricted to such areas or districts;
- Specific housing types targeted for affordable housing;
- Target groups where policy efforts should be focused;
- Empirical data setting out the need for AHUs;
- Potential developments that may be exempt from IZ and reasons for exemption;
- Examples of how IZ would work in practice and how potential measures and incentives may apply to a given development;
- For a municipality designated as a service manager under the *Housing Services Act, 2011*, how monitoring and affordability will be addressed to allow it to meet its role as a service manager; and
- For upper-tier municipalities, direction to its lower-tier municipalities as to the matters that lower-tier IZ policies and IZ by-laws should address in addition to those prescribed by regulation.

Finally, municipalities should consider the timing of when assessment reports should be prepared by staff and provided to the public. Given the potentially broad changes to a municipality's planning policy framework, it may be less costly and more efficient to prepare or review an assessment report as part of a municipal comprehensive review, as opposed to considering IZ through a stand-alone process.

3. Maintaining Affordability for Affordable Housing Units

One of the items that the Province may address through regulation is the period of time during which AHUs must remain affordable for both ownership and rental AHUs. If the regulations do not address this issue, municipalities must set the affordability period in their IZ by-laws.

Many municipalities have advised that it is not appropriate for the Province to prescribe the affordability period. However, should the Province take a prescriptive route, there is general consensus that a 20 year period is appropriate for both rental and ownership housing as being consistent with federal and provincial affordable housing initiatives, although certain municipalities and other groups have suggested longer periods.¹⁰ It is important to note that there may also be a “phase-out” period for both rental and ownership housing, with certain stakeholders suggesting 5 to 10-year periods. In any event, both the public and private sectors recognize that it is important to ensure that investments in AHUs will contribute to the long-term financial stability of such units. This is particularly the case given that many subsidies for social housing arrangements in some municipalities, such as the City of Mississauga, are expiring within the next decade.

Aside from setting the affordability period, there must be mechanisms to ensure that affordability remains after the initial purchase of AHUs. Proposed mechanisms include:

- IZ agreements registered on title, with the contents of such agreements setting out matters such as the purpose of AHUs, relationship of AHUs with development, confirmation of affordability, requirement that the sale of property remains affordable, conditional zoning regulations, administrative monitoring and transition;
- Additional regulatory powers provided to municipalities to bind future owners to IZ obligations, including positive covenants;¹¹
- Broader application of Section 118 of *Land Titles Act* to impose restrictions on transferring the land or charge;¹²

¹⁰ For example, York Region suggests a minimum 30 years for an affordability period if an affordability period is to be applied, but also suggests that for rental units, affordability should be maintained in perpetuity.

¹¹ As noted in the City of Toronto’s submission, “Regulations should provide the authority to bind future owners to inclusionary zoning obligations and secure the long-term affordability of homes. The Province should provide guidance to municipalities on mechanisms, particularly positive covenants, to secure ownership homes during the affordability period … In order for affordability to be maintained on resale, no matter the length of the affordability period, the Province should enable municipalities to impose positive covenants.”

¹² Section 118(1) of the *Land Titles Act* states, “Where the registered owner of freehold or leasehold land or of a charge desires to impose restrictions on transferring or charging the land or charge, the registered owner may apply

- Establishing standardized procedures to ensure that new purchasers and renters qualify for AHUs based on proof of income and net worth; and
- Enforcement mechanisms to minimize and discourage fraudulent use of AHUs.

Unlike other issues raised by IZ, municipalities and other stakeholders have generally sought greater direction from the Province regarding how affordability is to be identified or defined and maintained. Some suggestions where Provincial guidance has been requested include:

- Providing sample agreements to indicate Provincial criteria and expectations;
- Providing a common set of indicators of affordability (e.g. area median income) to establish consistency across municipalities, ensure a level playing field and help track the effectiveness of IZ;
- Providing guidance as to how to address market fluctuations;
- Limiting rent increases of AHUs to the Province’s Rent Increase Guideline; and
- Confirming provincial funding to maintain non-profit and other market-assisted housing programs; IZ cannot be viewed as a replacement for such programs in meeting the needs of low to moderate-income residents.

Finally, the maintenance of AHUs will be a new and demanding responsibility for many municipalities. Some upper-tier municipalities have suggested that they take the lead on maintaining affordability through monitoring programs, as local municipalities do not have the staff and resources to monitor affordability. Other stakeholders have indicated that the Province needs to provide a “clear business model” for identifying the cost of managing and administering AHUs from initial purchase to resale; for example, who is responsible for ensuring that the affordability threshold is met by the purchaser/renter, how can municipalities regulate the resale of AHUs, how this delivery framework is to be funded, etc. The cost of monitoring should not be treated as an afterthought, as the failure to monitor and enforce IZ has been identified as one of the reasons that IZ programs fall short at providing AHUs.

to the land registrar to make an entry on the register that no transfer shall be made or charge created unless the following things, or such of them as the owner determines, are done: [...] 3. Some other matter or thing is done as is required by the registered owner and approved by the land registrar.”

4. Setting Parameters for Affordable Housing Units

Perhaps unsurprisingly, the most controversial topic involves regulations or by-laws that set the parameters for AHUs. Some of the common parameters identified by the Province include:

- **Threshold size:** The private sector has identified specific thresholds based on unit count, development type and density¹³. On the other hand, the public sector has proposed a spectrum of options, ranging from a set threshold (e.g. 20 units for high-rise development), to thresholds depending on the type of development, to a range of thresholds being set by the upper-tier municipality to be carried forward by lower-tier municipalities. Some stakeholders have noted that the characteristics of the proposed development, such as the ratio of land size to the development area, should factor into the threshold size. It may also be appropriate for the threshold size requirement to be coordinated with unit set-asides in certain circumstances.
- **Set-asides:** Set-asides refer to the required AHUs to be provided as a number of units or GFA of units in a given development. The private sector prefers a cap on set-asides based on a percentage of incremental density over as-of-right zoning permissions.¹⁴ Set-aside maximums are also supported by some municipalities; however, the requirement is broadened beyond the incremental density and captures the entire new development. As with threshold size, the public sector has proposed a range of potential options, including requiring a minimum set-aside percentage,¹⁵ to setting a range of minimum and maximum set-asides, to asking the Province to set a minimum set-aside but allowing municipalities go above and beyond such standards as in the PPS 2014 or Growth Plan. Some stakeholders have correctly identified that other factors, such as greenfield development vs. intensification, on-site vs. off-site AHUs, housing forms, development type and the location of AHUs should affect the unit set-aside. There is also the potential for municipalities to adopt a “sliding scale” approach for set-asides depending on the factors identified.
- **Targets:** There is general agreement that identification of the target market for AHUs should be deferred to municipalities. Most stakeholders recognize that the target group is

¹³ OHBA and BILD have identified a 100 unit minimum threshold for multi-family developments and a density threshold of 25 units per acre for low-rise or grade-related residential developments.

¹⁴ OHBA and BILD have identified a 10% maximum set-aside for high rise development and 5% maximum set-aside for low rise development.

¹⁵ Note that the range of minimum set-asides for municipalities may vary; for example, Halton Region recommends a 2% minimum while the City of Toronto recommends a 10% minimum.

not the “deeper affordability” market, such as social or special housing, but rather “gap” or “worker” housing, where the carrying cost of the rent or mortgage is just out of reach.

- **Requirements and Standards:** Requirements and standards include matters such as accessibility, family-friendly AHUs, locations of AHUs within new developments, built form and density. There is a general agreement that requirements and standards of AHUs are more detailed and should be deferred to the municipalities. Municipalities are better positioned to recognize significant deviations due to the local market, although guidance may be provided by the Province to encourage consistency and safety standards among municipalities. Municipalities are also better positioned to identify the profile of households in need that would best benefit from IZ policies.

Should the Province choose to regulate the above parameters, many municipalities have requested that the Province simply set a baseline threshold so that local priorities can be recognized within the framework. In setting a baseline threshold, the Province should consider the 10-year municipal housing and homelessness plans, a municipality’s investment strategies, official plan policies and the assessment reports as guidance for program targets. Finally, the Province should provide municipalities with the flexibility to determine the geographic area and zones where IZ may apply, which is consistent with the implementation of IZ in other jurisdictions.

5. Locating Affordable Housing Units Off-Site

The opportunity to provide AHUs off-site was initially prohibited in Bill 7. Through the consultation process, many stakeholders opposed this prohibition and amendments were made to the final version of the Bill to permit AHUs to be located off-site. Municipalities may now freely choose, subject to regulation, the criteria that they will require in order to support off-site AHUs. Some examples of such criteria are provided below:

- only in very limited circumstances, where on-site units are not feasible or practical;
- where locating AHUs off-site would be more beneficial to the administration of AHUs within a targeted area;
- where the new development is for a high-end, luxury building with high operating costs that would be difficult for low and moderate income households to carry;
- within the immediate vicinity of the new development;
- within the same neighbourhood or secondary plan area of the new development;
- within a set distance (e.g. 1,000 m) of the new development;

- where the off-site location is more proximate to existing transit or supports the development of a new or planned transit system; and
- other local factors, such as identified community needs and goals.

6. Use of Section 37

The public and private sectors differ significantly in their approach to the use of Section 37 and IZ. The development industry, recognizing that AHUs may already be provided under Section 37, requested that municipalities must choose one tool or the other to avoid “double-charging” the industry to provide for affordable housing. Municipalities preferred to keep both options open. In any event, the debate on the mutual exclusivity between Section 37 and IZ was short-lived, as the Standing Committee’s amendments restored the use of Section 37 as a separate tool, subject to limitations prescribed by regulation.

There are a few reasons cited by municipalities to support the co-existence of Section 37 and IZ. First, the purpose of Section 37 benefits is to provide for additional community facilities, streetscape improvements, public amenities and infrastructure improvements to offset the impacts of additional persons being introduced into a neighbourhood where greater heights and densities are proposed for a development project. Its primary role is not to provide for affordable housing. Second, if AHUs are proposed to be located in areas where increased heights and densities occur, regardless of whether AHUs are provided (e.g. near transit stations or growth areas), the provision of affordable housing should not be forced to compete with other community benefits.

Regardless of the Standing Committee’s amendments, municipalities should strive to clearly articulate when Section 37 or IZ will be relied upon to require AHUs. For example, an approach that minimizes uncertainty may use IZ to provide for the “required” AHUs, while “additional” AHUs above and beyond what is necessary would be secured through Section 37 benefits. Section 37 also provides greater flexibility as cash-in-lieu of providing AHUs is permitted. Municipalities may also choose to limit the application of Section 37 for AHUs where there is a “reasonable” increase in height/density or where securing other forms of affordability such as social and special needs housing. Nonetheless, there are some municipalities, such as the City of Toronto, that vehemently oppose any restriction on the use of Section 37.

Provincial guidance as to how municipalities are expected to align IZ with Section 37, community improvement plans and community planning permits may also provide further transparency as to how AHUs are being provided and from which planning toolbox.

7. Transition Provisions

On a fairness basis, it is understandable that certain applications that have been filed prior to a certain date and are complete should not be subject to Bill 7. As with the other issues identified above, transitional matters are also subject to regulation. It is unclear whether municipalities can impose a different transition period than that set by regulation (likely not, given the wording used in prior *Planning Act* transitional regulations), but in any event, there are a few options for grandfathering or exempting applications that have already been submitted from the impacts of IZ:

- Grandfather applications commenced prior to December 8, 2016, the date when Bill 7 received Royal Assent;
- Grandfather applications commenced prior to the date Bill 7 comes into force (e.g. July 1, 2017);
- Grandfather applications commenced prior to municipal adoption of IZ policies and IZBLs;
- Grandfather applications commenced prior to the approval of IZ policies and IZBLs, where the IZ policies or IZBLs have been appealed by the Minister to the Board;
- Grandfather applications commenced prior to some other set date.¹⁶

Transitional periods may also be affected by the type of application filed, criteria established at the discretion of the municipality and whether the application was before the Board at the time the relevant transition period applies.

PART 2: Vancouver's Income Mix Policy and Comprehensive Development Zoning

The City of Vancouver (the “City”) adopted an income mix policy (the “Income Mix Policy”) in the late 1980s as a measure to increase the supply of AHUs when real estate development activity within Vancouver was on the rise. The policy required that larger development projects set aside 20% of the density for non-market rental units in exchange for the City approving the re-zoning of land from non-residential to residential use.¹⁷

¹⁶ For example, the OHBA has proposed a January 1, 2018 date for transition.

¹⁷ This original Income Mix Policy was created in connection with the rezoning of the Expo, Station LaFarge and Coal Harbour lands.

The City's Income Mix Policy operated in the following manner:¹⁸

1. Upon receiving a re-zoning application for a project, the City and developer entered into negotiations to identify sites within the redevelopment area that were suitable for AHUs.
2. The number of sites that were required to be set aside for AHUs usually equaled 20% of the base density of the redevelopment area.
3. Once an agreement was reached between the City and the developer, the City secured the sites by holding options to purchase that could be exercised within a set period of time (usually an 80-year term) at a purchase price below market value.
4. The developer then had to work in partnership with an approved non-profit sponsor to prepare the development proposal for the optioned site and submit the proposal to the Provincial government for senior government funding.
5. If the Province approved funding for the acquisition of the site, the City then exercised its option to purchase and the developer built the AHUs. Typically, the Province would fund 75% (a significant component of the funds was from Federal sources) of the acquisition costs and the remaining 25% came from the City. If the proposal was not approved, the developer and non-profit sponsor were expected to continue to apply to every subsequent proposal call by the Province until funding was granted or the City chose to proceed with an alternate use.
6. The City then leased the site to the non-profit sponsor under a long term lease for 60 years and the developer turned the constructed AHUs over to the non-profit sponsor for management and administration of the AHUs.

Under this policy, the City was able to acquire options to purchase over many sites totaling 2,200 units; approximately 800 units have been constructed.¹⁹ However, this approach largely relied on the availability of funding from senior levels of government. As government funding sources diminished, the creation of new AHUs was severely constrained and as a result, the City's approach to IZ has changed from the original income mix concept.²⁰

¹⁸ Canadian Mortgage and Housing Corporation, *Income Mix Zoning – Vancouver, British Columbia (Case Study #2)*, Retrieved on January 9, 2017.

¹⁹ *Ibid.*

²⁰ The income mix policy leveraged developers to provide land at a reduced cost, whereas the comprehensive development zoning leverages private developers to deliver AHUs in exchange for a density bonus.

Evolution Towards Comprehensive Development Zoning

In 1993, the Vancouver Charter was amended to increase the City's discretion to allow IZ options that would increase the supply of AHUs.²¹ The changes to the Vancouver Charter empowered the City to create comprehensive development ("CD") zoning which gave developers a density bonus for including an amenity contribution or AHUs in development projects. This approach is commonly used for many of the larger projects in Vancouver. Similar changes have been made to the local government legislation of other municipalities in British Columbia to allow them to implement a similar density bonus incentive in exchange for AHUs. As part of the CD zoning approval, the developer enters into a housing agreement with the City to ensure that AHUs will be available to individuals having income levels below a certain threshold.

One advantage of CD zoning is that it does not require the same level of capital investment under the previous Income Mix Policy. However, this approach is not without controversy from critics who feel that the density bonus, which usually results in taller buildings, is inconsistent with the character of the neighbourhood where the project is located. Another concern with CD zoning relates to the potential for the conditions imposed to be too restrictive. For example, AHUs for rental housing have been traditionally administered by non-profit organizations, but conditions requiring AHUs to be administered by a non-profit partner can create challenges for some projects as there are a limited number of non-profit candidates. Many of these non-profit organizations prefer to use their limited resources to manage the projects with a larger AHUs component than those projects with fewer AHUs. Developers should be cautious of the conditions attached to the CD zoning approval.

While most of the affordable housing projects tend to focus on rental housing, the City has also explored affordable ownership projects driven by the private sector. These projects typically provide entry-level home ownership at below-market values. One example is 60 West Cordova which was financially viable for the developer partly because the City agreed to relax some of the rezoning conditions, including reduced off-street parking requirements, reduced unit size and limited on-site common amenities. The City granted these exceptions in exchange for restrictions ensuring that the purchasers satisfied the income threshold and to discourage speculative investors from acquiring units. While the project was not necessarily IZ because it was initiated by the developer, it demonstrated that demand for affordable home ownership can be addressed through creative zoning regulation. However, because additional measures securing affordability for future purchasers were not put in place, the resale prices for the units in

²¹ *Vancouver Charter*, SBC 1953, c. 55 is the statute that created the City of Vancouver and enables the City to implement and administer its local zoning and land use policies. In particular, section 565.1 permits the City to establish different density regulations and conditions such as inclusion of amenities or AHUs that will entitle the landowner to a higher density.

this project have climbed dramatically to current market values. The lessons learned through this project have now been incorporated into the City's considerations in creating an affordable home-ownership program.²² The affordable home ownership model has been replicated in other municipalities with additional legal mechanisms being implemented and registered against title to ensure long-term affordability for future purchasers.²³

Cash-in-lieu has also been used by the City after the Income Mix Policy became less effective. Under this approach, the City leverages the value of the option to purchase under the former Income Mix Policy or the value of the AHUs under CD zoning and adds the monies to its affordable housing fund. While cash-in-lieu is not as common as delivering AHUs, it can be appropriate for smaller projects in which the underlying economics may not support the inclusion of AHUs (note the parallel between cash-in-lieu in the City and off-site AHUs in Ontario). The drawback of the cash approach is that it does not add any new AHUs and arguably, the City receives a benefit of lesser value if the funds are used to construct AHUs at market rates.

The above examples highlight only a few of the lessons learned since the original implementation of the Income Mix Policy and are not intended to be an exhaustive review. Many municipalities in British Columbia have implemented similar IZ policies with varying degrees of success which can depend on other market factors. Two of the more proactive local governments that have implemented IZ include the City of Richmond and the Resort Municipality of Whistler. There is no single approach that has proven to be better at creating AHUs. However, the City's evolution from the Income Mix Policy to the current CD zoning and the consideration of future changes to IZ demonstrates the importance of providing greater flexibility for municipalities to determine the best option on a case-by-case basis.

²² The Policy Report Social Development from the Chief Housing Officer to the Standing Committee on City Finances and Services dated April 7, 2016 recommended that City Council approve in principle the goals of an Affordable Home Ownership program which would require changes to the Vancouver Charter to allow the City to implement it more broadly to include freehold and leasehold tenure, along with alternative options such as restricted market, second mortgage, shared ownership and below-market leasehold.

²³ The University of British Columbia (UBC) has a project aimed at providing an affordable housing option for faculty that uses a capped appreciation approach whereby the units may only be purchased by faculty members and must be sold back to approved faculty at a 33% discount below market values at the time of resale. This approach strikes a balance between the interests of the current owner to see his or her investment appreciate over time and the interest of future purchasers of having access to affordable housing. The Whistler Housing Authority, which is an independent subsidiary of the Resort Municipality of Whistler, oversees projects that have similar restrictions on ownerships and resale to ensure the long-term availability of affordable housing for its local workforce. In both cases, the land was owned by either UBC or the Whistler Housing Authority so the restrictions placed on resale did not require legislative changes.

CONCLUSION

Creating and maintaining affordable housing is a complex issue that demands not only legislative change, but a robust IZ framework that depends on strong market-rate development and a partnership model between the public and private sectors. Ontario's recent adoption of IZ and Vancouver's experience with its Income Mix Policy and CD Zoning provides a brief glimpse as to how demand for residential development may lead to greater opportunities to provide AHUs. Although IZ approaches in British Columbia and Ontario have met with limited success or skepticism to date, the authors are optimistic that with sufficient local engagement and an open mind from municipalities and developers alike, IZ will provide planning authorities with an innovative tool to help Canadians obtain affordable housing.

APPENDIX “A”

Summary of Changes to the *Planning Act* Proposed By Bill 7

1. **Prescribed municipalities must authorize inclusionary zoning through official plan policies. Other municipalities may choose to adopt this practice:** Municipalities prescribed by regulation must amend their official plan to contain policies that authorize inclusionary zoning. Inclusionary zoning policies are official plan policies that authorize the inclusion of affordable housing units within buildings or projects containing other residential units and provide for such units to be maintained as affordable housing units over time.
2. **Prescribed local municipalities must pass zoning by-laws to give effect to inclusionary zoning policies. Other municipalities may choose to adopt this practice:** Subject to requirements as prescribed by regulation, a by-law passed by a municipality to give effect to inclusionary zoning policies (the “inclusionary zoning by-law”):
 - **must** include requirements as to the number or GFA of affordable housing units to be provided, the period of time affordability must be maintained and the requirements and standards that must be met for affordable housing units;
 - **may** include measures and incentives to support inclusionary zoning;
 - **may** set the price at which affordable housing units are sold or rented; and
 - **must** require that the owners of the new development enter into agreements with the municipality to implement the requirements set by the by-law. Such agreements may be registered on title and enforced on subsequent owners.
3. **Before adopting inclusionary zoning policies in its official plan, a municipality must prepare an assessment report:** The assessment report must be available to the public prior to adoption of the inclusionary zoning policies and must include the information specified in the regulations. As long as the official plan contains inclusionary zoning policies, the assessment report must be updated every 5 years from the date the policies come into effect (and every 5 years thereafter from the date of the most recent updated assessment report) to determine whether the policies should be updated.
4. **If an inclusionary zoning by-law is passed, council must establish procedures to monitor and report on the state of affordable housing units:** The monitoring procedure established must ensure that the affordable housing units are maintained as

affordable housing units for the time period set by the by-law. Council must also provide reports and information on affordable housing units in accordance with the regulations.

5. **Municipalities may locate affordable housing units off-site and may use Section 37 agreements to secure affordable housing units, but are prohibited from requesting cash-in-lieu:** Municipalities that pass inclusionary zoning by-laws may authorize the provision of affordable housing units on lands, buildings or structures other than those that are subject of the development application and may use their powers under Section 37 to require affordable housing units, subject to the limits prescribed by the regulations. However, municipalities are prohibited from authorizing the payment of money in lieu of providing the required affordable housing units.
6. **Only the Minister may appeal second unit policies and inclusionary zoning policies:** Unlike most decisions under the *Planning Act*, there is no right of appeal to the OMB for decisions, by-laws and conditions relating to second unit policies and inclusionary zoning policies, except by the Minister.
7. **Minor variances cannot be granted to an inclusionary zoning by-law:** Committees of adjustment are specifically prohibited from authorizing a minor variance from provisions of an inclusionary zoning by-law.
8. **New developments that are subject to inclusionary zoning may be required to comply with additional requirements:** Depending on the municipality's inclusionary zoning policies, applicants:
 - **must** show on drawings the exterior access to each building containing affordable housing units, if the development is subject to site plan control and both the official plan and by-law designating the site plan control area contain exterior access requirements or standards related to inclusionary zoning;
 - **must** show the shape and dimensions of each proposed affordable housing unit and its approximate location in relation to other residential units, if the units are located in a plan of subdivision; and
 - **may** be required to enter into a shared facilities agreement to the satisfaction of a municipality, if the affordable housing units are located in a condominium.
9. **Maintenance of loading or parking facilities in a zoning by-law must include provisions prescribed by regulation. Affordable housing units may be exempt from minimum parking requirements:** Zoning by-laws may require owners or occupants to provide and maintain loading or parking facilities on land that is not part of a highway.

The Minister is also authorized to make regulations respecting minimum parking requirements, including providing that there is no minimum parking requirement.

10. **Long-term leases of new developments containing affordable housing units are exempt from subdivision and part-lot control:** Lands that are leased between 21 to 99 years for the purpose of constructing or erecting a building or project that will contain affordable housing units are not subject to subdivision or part-lot control under Sections 50(3) and 50(5) of the *Planning Act*.
11. **Regulations may exempt certain development applications from inclusionary zoning by-laws:** The Minister may make regulations that exempt development, or certain classes of development, from being subject to inclusionary zoning by-laws and specify the circumstances in which the bylaws do not apply.

APPENDIX “B”

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