

An Update on the City of Toronto's Inclusionary Zoning Policies

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On Friday, August 15th, Ontario's Minister of Municipal Affairs and Housing (the "Minister") approved, with modifications, the City of Toronto (the "City")'s Official Plan Amendments 524, 537, 540, 544, 570, and 575 (each, an "OPA", collectively, the "OPAs").

As we [discussed in a separate article](#), the OPAs delineate and create policies for 120 Major Transit Station Areas ("MTSAs") and Protected Major Transit Station Areas ("PMTSAs") in the City. With the Minister's approval and recent regulatory changes to Inclusionary Zoning ("IZ") requirements, it is anticipated the City will be updating its IZ Policies (defined below) shortly. The City's current IZ Policies contain transition provisions which, among other things state the IZ Policies do not apply to zoning by-law amendments and/or site plan applications where a complete application was filed on or prior to the date the Minister approved the PMTSAs.

Inclusionary Zoning – a Brief Overview

Inclusionary Zoning is a planning tool granted under subsection 16(4) and section 35.2 of the *Planning Act*, which authorizes municipalities to include IZ policies within their Official Plans, and to pass implementing by-laws.

IZ allows municipalities to require that a portion of new residential development be dedicated to affordable housing, and that those units remain affordable over a period of time. Pursuant to subsection 16(5.1) of the *Planning Act*, IZ can only be applied within delineated PMTSAs, as approved by the Minister, or within areas where a "development permit system" applies.

IZ policies within an Official Plan are not subject to appeal. Similarly, there is no appeal in respect of the portion of an application for a zoning by-law amendment that proposes to amend or repeal the IZ requirements implemented through the by-law.

IZ units are excluded from development charges, parkland levies, and community benefit charges because these units would qualify as "affordable units" which are exempted from these levies and charges under the *Development Charges Act, 1997* and the *Planning Act*.

The City's Previously Adopted Inclusionary Zoning Policies

The City passed its IZ policies on November 12 2021, *via* the adoption of [OPA 557](#) and passage of [By-law 941-2021](#) (together, the "IZ Policies"). At the time, the IZ Policies did not come into effect because these policies only apply within an approved PMTSA. These policies:

1. Define "affordable housing" based on both unit type and detailed income thresholds specific to Toronto households;

2. Require minimum percentages of gross floor area within new developments, to be provided as affordable housing. The requirements range from 5-10% varying by location (as identified in Map 37 of the Official Plan,) and tenure type (ownership vs rental);
3. Mandate affordable housing units to be secured at affordable rents or affordable ownership prices for a period of "at least 99 years" from the date of first residential occupancy;
4. Excludes affordable housing from parking requirements; and
5. Exclude certain developments from IZ requirements, specifically:
 - a. development or redevelopment containing less than 100 new residential units and less than 8,000 square metres of new residential gross floor area; or
 - b. the portions of a development or redevelopment containing residential care homes, retirement homes, nursing homes or student residences.

Provincial Updates and Next Steps for the City's IZ Policies

In May of this year, the province issued [O. Reg. 54/25](#) (the "Regulation"). The Regulation places a "cap" on the number of units or the gross floor area to be occupied by the affordable housing units sought in connection with a development or redevelopment, and the time over which this housing can be secured. Specifically:

- a municipality shall not require affordable housing that exceeds 5% of the total number of residential units or 5% of the total residential gross floor area (excluding common areas) in a development or redevelopment; and
- all affordable housing units delivered under the IZ Policy can only be required to remain affordable for a maximum of 25 years from the date of first occupancy.

Currently, the City's IZ Policies exceed these caps. The City has not updated their IZ Policies to comply with the Regulation. It is anticipated that the City will do so shortly.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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