Ontario
Home Builders'
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December 9, 2022

Ministry of Public and Business Service Delivery
56 Wellesley St. W., 6th Floor, Toronto ON, M7A 1C1

Proposal Number: ERO # 019-6173

RE: Proposed Amendment to O. Reg 232/18: Inclusionary Zoning

The Ontario Home Builders' Association (OHBA)

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario. OHBA represents over 4,000 members including builders, developers, professional renovators, trade contractors and many others within the residential construction sector.

The OHBA is coordinating our public policy response with regards to Bill 23, the *More Homes Built Faster Act, 2022* with input from members across Ontario. OHBA is proudly affiliated with the Building Industry and Land Development Association (BILD), the West End Home Builders' Association (WEHBA) and the Greater Ottawa Home Builders' Association (GOHBA).

Feedback

For more than two years, OHBA members through BILD were heavily engaged in the review and consultation of the City of Toronto's Inclusionary Zoning (IZ) work. Following an extensive period of discussion and research, BILD released a compendium report of IZ information and data. This report is entitled "Affordable Housing in the City of Toronto – A Responsibility We All Share – Summary of Study Findings of Inclusionary Zoning Reports and Studies June 2021." While the report focused on the City of Toronto, OHBA believes that it sets the right framework for a workable and flexible IZ model across the province.

This report consolidates the results of three (3) separate and independent studies examining existing IZ programs across North America, as well as the impacts of the City of Toronto's September 2020 proposal. The report also includes a high-level summary of the city's consultant's conclusions on the underpinning feasibility and policy analysis for IZ. Three are industry-funded reports and one was funded by the City of Toronto.

Part of the report includes a jurisdictional scan of IZ practices in 10 cities. With the purpose of understanding what are the most typical and effective elements of their respective approaches. The cities in the study include Montreal, Vancouver, New York City, Portland, Boston, San Francisco, Chicago, Seattle, Los Angeles and Washington.

Based on the study, below are the common elements of an IZ program:

- Of the jurisdictions reviewed, all have IZ policies that apply to a broad range of development activity in their communities. IZ requirements increase gradually over time, on average in five-year intervals.

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- Cities with a long history of IZ are moving towards mandatory policies that apply to all development. They may still apply differing approaches by district.
- The cities with lower project size thresholds that trigger the requirements for inclusionary units all have cash-in-lieu (CIL) policies that provide an opt-in/opt-out ability for developers *(we will revisit this concept of CIL in the enhancements section of this ERO submission).*
- Minimum set-aside rates generally are in the 10%-15% range accompanied by offsets and incentives. Variable rates across a jurisdiction are common based upon market strength of area. Rates increase in central districts. The rates may be variable based upon the level of affordability tied to the units.
- Cities with mandatory policies may have density bonuses for all housing that includes affordable units.
- Affordability levels are tied to area median incomes, or family median incomes. Most IZ policies target providing housing for moderate-income and lower-income households, both rental and ownership.
- Cities that also require units available to low-income households have mechanisms in place to support those deeper affordability levels. Property tax exemptions, tax increment financing, and capital grants are typical measures that are deployed. Toronto's current proposal has no additional mechanisms proposed to support deeper affordability levels.
- Cities offer a range of offsets to reduce the cost of housing, including development charge waivers, reduced development standards, and streamlined permitting processes.

By contrast, the City of Toronto's proposal include only one of the common features of an IZ program, as Toronto's proposal is currently tied to income, but it does not consider other variables that have the effect of deepening the level of subsidy in our market, such as condo fees, Harmonized Sales Tax, Municipal Land Transfer Tax. Using Average Market Rents (AMR) is the preferred industry approach.

The report found that in a severely constrained housing market, like that of the city of Toronto, the IZ approach proposed in Toronto (with its lack of offsets or incentives) will only achieve affordable units at the expense of the costs of market units.

In other words, in a situation of constrained market supply, giving off a portion of that supply to be sold or rented at below-market rates will merely transfer those costs to the market units. The most important lens through which a municipality's should considered the impact it will have on the consumer, namely those citizens or residents looking to buy a new home. In the case of Toronto, in the absence of offsets or incentives to defray the cost of building inclusionary zoning units create the following effects:

1. To cover the costs of building the required number of IZ units, based on economic modeling developed by the Altus Group, the price of market units in designated developments will have to rise by an average of $116,000. Put another way, the new home buyers at market rate will have to subsidize below-market units by over $100,000.
2. Despite the fact that the City already collects funds for affordable housing through Development Charges and a Community Benefit Charge, the city is abdicating its responsibility for providing these services, artificially keeping property taxes low and placing the financial responsibility solely on the

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backs of new home owners, instead of the broad property tax base. The social responsibility to provide below market rate housing should be shared across the City's entire tax base, and not limited solely to new home buyers in certain development areas.

3. Because of market distortions introduced by the City's proposal, many projects will become financially non-viable. This will limit supply and choice of new homes available for new home buyers, again impacting availability and affordability. Based on economic modelling, the cost added to a market unit to subsidize an affordable unit will be an additional $116,000 or more.

Recognizing the findings of the report and its applicability in our proposed IZ regime, OHBA and its members continue to seek a true partnership model for IZ.

A Partnership Model

OHBA supports the use of IZ that includes a partnership model (i.e. offsets or incentives) as a planning tool to help enable municipalities to secure affordable housing in new developments. This is in keeping with the basic premise of IZ, namely that it is a partnership between developers, builders and municipalities to encourage the building of affordable housing units that would not otherwise be built.

In this partnership model, an equitable agreement or policy framework is put in place between the building industry and municipalities. In exchange for building these units to sell or rent for below-market rates, builders and developers are provided with incentives or concessions that help offset the costs.

If there are no offsets provided, then the additional cost is simply layered onto the project, either driving up the costs of the market rate units or rendering the entire project not economically viable, effectively halting or hindering the addition of much-needed housing supply.

To minimize the negative impact of a lack of offsets or incentives, an IZ program would have to be very modestly introduced with low set aside rates and requirements, and even then we are unsure if the policies could be feasible over a variety of projects. Continuous monitoring would be required to allow the opportunity for course corrections that may be needed to maintain a workable IZ program.

Comments on the Proposed Provincial Amendments

The provincial government has proposed some essential amendments that we will discuss further in this section. We acknowledge that the proposed amendments to O. Reg 232/18 would establish an upper limit on the number of units that would be required to be set aside as affordable, set at 5% of the total number of units (or 5% of the total gross floor area of the total residential units, not including common areas).

We also acknowledge that the proposed amendments would establish a maximum period of twenty-five (25) years over which the affordable housing units would be required to remain affordable. Finally, the amendments would also prescribe the approach to determining the lowest price/rent that can be required for inclusionary zoning units, set at 80% of the average resale purchase price of ownerships units or 80% of the average market rent for rental units. These proposed amendments would only apply on lands within PMTSAs.

We support the set aside rate of a 5% upper limit, especially in the absence of municipal off-sets or incentives. However, we seek confirmation for the approach to the 5% upper limit, as 5% of the total number of units has a

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very different application versus 5% of the total Gross Floor Area. For example, if the building contains a commercial component then 5% of the units will likely be less than 5% of the total GFA (not equal to). It would help to clarify the policy if the upper limit was based on total "residential" GFA.

Additionally, OHBA believes that the maximum period of twenty-five (25) years over which the affordable housing units would be required to remain affordable is more appropriate as it ensures that the sunset date of the units can be planning for within a projectable market context.

Overall, OHBA believes that a 5% set aside rate coupled with the maximum affordability period of 25 years – represents a major positive change, making it much more feasible to develop across the province. Moreover, it is an appropriate change to support the government's commitment to build 1.5 million homes over the next ten years. OHBA believes that with these amendments the province has proposed adequate change to make inclusionary zoning more attainable.

Enhancing the Proposed Regulation

To further enhance the policy framework for inclusionary zoning, the final regulations could include a mechanism to credit applicants for additional supply of these units. For example, if a developer builds more than 5% in one development, they should be able to off-set the over contribution to a lower requirement in a second (future) project.

A developer should also be able to contribute cash-in-lieu or land to a non-profit and use a calculation to determine an equivalent cash credit amount. For example, if a developer donates 2 acres to a non-profit (could be a government entity) they should be able to attach a market value to that land, and then use that value as a credit for another development in the same municipality. This could even apply to giving cash to a non-profit (if it is used for a real project in that same municipality).

Our members felt that in most cases non-profit organizations have the ability to deliver a much better (and targeted) housing project then doing it piecemeal in every building. It would also create a sustainable model for operating and maintenance of these units that might be too onerous for a typical condo board.

As a final and closing remark, while it is not under the purview of the provincial government, the single largest government-imposed fee – and effectively a prime deterrent to the delivery of affordable housing – is HST. HST costs new homeowners more than the combined government-imposed taxes, fees and charges at the municipal level. Greater HST credits or indexing the threshold price amount would support the provincial government's goals and objectives for the delivery of new housing supply. In the absence of indexing the threshold price amount, the federal government should provide a piece of the inflated HST funding they'll continue to get by not indexing the threshold price amount, to municipalities. This should be our collective message to the federal government in support of housing affordability and increasing supply.

Furthermore, OHBA notes from the outset of a broader discussion on IZ that if a municipality is going to propose IZ units, that they allocate that lost revenue accordingly and these losses are not rolled into the next development charge study and bylaw. Furthermore, we reinforce the current restriction of IZ of being within a rapid transit corridor or a community permit system with a Minister's Order.

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We thank the Ministry for the opportunity to comment on these proposals. We also recognize that there is still more work to do and OHBA as a critical housing stakeholder in the housing sector may provide further comments at a later date. We look forward to continuing engaging with the Ministry in order to ensure these proposals are aligned with the goals of improving housing attainability.