

Inclusionary Zoning Regulation Posted

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On April 12, 2018, the Province of Ontario released the inclusionary zoning regulation, O. Reg 232/18 (the Regulation) and proclaimed into force the inclusionary zoning provisions of the *Planning Act*, as amended by the *Promoting Affordable Housing Act, 2016*.

The province has shifted its approach since the release of its draft inclusionary zoning regulation, which was made available for public comment in December 2017. The final Regulation represents a significant loosening on the reins of municipal authority to require affordable housing in new developments. As a result, local inclusionary zoning bylaws have the potential to vary widely and could levy onerous requirements on land development.

Highlights of the Regulation

Application: As there is no mandatory requirement for certain municipalities to adopt inclusionary zoning policies, all municipalities may implement inclusionary zoning policies through their official plans and inclusionary zoning bylaws at their discretion.

Assessment Report: Prior to adopting inclusionary official plan policies, municipalities must prepare and make public an assessment report that contains: an analysis of the demographics and population, household incomes, housing supply, housing types and sizes of units that may be needed to meet anticipated demand for affordable housing; the current average market price and market rent for each housing type; the potential impacts on the housing market; and the financial viability of development from inclusionary zoning bylaws. The assessment report must be prepared and made publicly available every two years if an inclusionary zoning by-law is in place and must contain certain status information regarding affordable housing stock and programs.

Required Official Plan Policies: When establishing its official plan policies, a municipality must include the following criteria in its official plan:

- The minimum size of a development for which inclusionary zoning policies will apply. As further detailed below, while inclusionary zoning will not apply to developments containing less than 10 residential units, a municipality may determine that a higher minimum threshold is preferred;
- Areas of the municipality in which inclusionary zoning policies will apply;
- The range of household incomes for which affordable units will be provided;
- The range of housing types and unit sizes that count as affordable housing units;
- The number of affordable housing units or gross floor area of those units required in a development;
- The period of time for which the units will remain affordable and an approach for monitoring and ensuring that affordable housing units remain affordable for the required time period;
- How incentives will be determined;
- How unit pricing or rental pricing will be determined;
- How proceeds from a sale of an affordable unit will be distributed to a municipality;
- Circumstances and conditions for off-site units; and
- The criteria for establishing “proximity” with respect to off-site units.

Exemptions: Inclusionary zoning policies will not apply to developments containing less than 10 residential units, and a municipality may elect to set a higher threshold at its discretion. Also exempt from inclusionary zoning policies are developments proposed by a non-profit housing provider, applications for approval of an official plan amendment, a zoning bylaw amendment and either a plan of subdivision or a description under s.9 of the *Condominium Act, 1998* accepted by the municipality before the date that the official plan authorizing inclusionary zoning was adopted by council, and applications for building permits, development permits, community planning permits or site plan approval that are made before the date that an inclusionary zoning bylaw is passed.

No Restriction on Number of Units or Off-Site Units: Under the Regulation, municipalities have the flexibility to mandate the total

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number of affordable housing units to be included in residential developments (including rental buildings) and there is no set cap as to the number of affordable units a municipality may require. Flexibility is also given to municipalities to determine the proportion of affordable housing units that can be built off-site, though any off-site units must be located in proximity to the development from which the units are being transferred and cannot count towards the satisfaction of any inclusionary zoning requirements to which the off-site development would otherwise be subject.

Incentives: While measures and incentives for creating affordable housing units may be established in an inclusionary zoning bylaw, the Regulation does not mandate the use of a particular formula to calculate the amount of incentives a municipality must provide and no minimum amount of incentives exist. The Regulation also restricts the authority of a municipality under s.37 of the *Planning Act* in respect of incentives that can be granted for affordable housing units. In particular, the Regulation prescribes that any increase in the height and density of a development permitted in return for community facilities or services under s.37 of the *Planning Act* does not include: the height and density associated with the affordable housing units required in an inclusionary zoning bylaw; and any increase in height and density permitted in an inclusionary zoning bylaw as an incentive. Additionally, any s.37 benefits also are restricted in areas where community planning permits apply.

Municipalities may also set policies by which the net proceeds of an affordable unit are distributed back to a municipality when it is sold. The percentage of net proceeds to be distributed back to the municipality cannot exceed 50% and an agreement between the municipality and developer will be required.

Please contact Melissa Winch, Michael Mahoney or any other member of the Cassels Municipal, Planning & Environmental Group for further information and guidance on how the proposed regulations for inclusionary zoning may apply in your circumstance.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.