

Report to Planning and Environment Committee

To: Chair and Members
Planning and Environment Committee
From: Scott Mathers, MPA, P.Eng.
Deputy City Manager, Planning and Economic Development
Subject: Inclusionary Zoning Review Update
Date: December 4, 2023

Recommendation

That, on the recommendation of the Director, Planning and Development, the following actions be taken with respect to Inclusionary Zoning review:

- (a) That **NO FURTHER ACTION** be taken with respect to the Inclusionary Zoning review.

IT BEING NOTED THAT Civic Administration will consider the findings of the Inclusionary Zoning feasibility analysis in related policy and program reviews to support the development of new affordable housing units, including but not limited to the review of incentive programs, policy reviews in support of the Housing Accelerator Fund (HAF) initiatives, and updates to the programs included in the Roadmap to 3,000 Affordable Units.

FURTHER, IT BEING NOTED THAT Inclusionary Zoning is one potential tool to encourage the development of new affordable housing units; however, the financial feasibility analysis demonstrates that IZ is not a consistently viable mechanism to achieve this goal for all tenures of housing or for all market areas of the city.

Executive Summary

Inclusionary Zoning (IZ) is a tool by which the City of London could require affordable units to be included in certain new market-rate housing developments. Provincial legislation states that IZ may only be permitted within areas of a city designated as a “Protected Major Transit Station Area” (PMTSA) unless the Minister prescribes an alternative application of the IZ regulations.

Prior to introducing IZ regulations, the City must undertake an Assessment Report consistent with Provincial regulations. The Assessment Report identifies the need for affordable housing units and evaluates the impact of IZ regulations on the housing market, costs, and land. The Provincial regulations are to ensure that financial feasibility is maintained for the private land developer.

Previous reporting to Council in February 2022 identified significant limitations in the Provincial legislation that restrict the potential effectiveness of IZ under the current regulations. Through Council direction in 2022, the Inclusionary Zoning review has been updated to a municipality-wide analysis, including lands outside of the Protected Major Transit Station Areas (PMTSA). The following is an update to the 2022 feasibility analysis. The updated analysis is a city-wide review and also incorporates recent changes to Provincial legislation regarding development charges and the planning policy framework, such as More Homes Built Faster Act, 2022 (Bill 23).

Under the updated policy framework, the financial feasibility of Inclusionary Zoning remains generally consistent with previous reporting. Financial incentives and other “offsets” would be required to maintain financial feasibility of market development in the majority of the city’s market areas if an Inclusionary Zoning regulation is introduced to require affordable housing units.

Linkage to the Corporate Strategic Plan

The Review of Inclusionary Zoning policy is consistent with Council's Strategic Plan 2023-2027, including Expected Result 1.1 of the Housing and Homelessness Strategic Area of Focus, which is: "Increased access to a range of quality, affordable, and supportive housing options that meet the unique needs of Londoners."

Analysis

1.0 Background Information

1.1 Introduction

Access to stable and affordable housing for all individuals and families is an important issue for the London community. Rising housing costs relative to incomes and the ability for the community to find adequate housing is the reason the City of London is looking to various legislation and tools to support the creation of new affordable housing units.

Previously, through Provincial legislation, the City was permitted to enter into "Bonus Zoning" agreements for creation of affordable units in some new market developments. The agreement was that for Zoning amendments to add additional height and density, a certain portion of that additional residential density would be delivered as affordable units. However, Bonus Zoning agreements can no longer be entered into after September 2022, based on changes to Provincial legislation.

Inclusionary Zoning is one of the potential new tools being evaluated to support the creation of new affordable housing units in the city.

1.2 What is Inclusionary Zoning?

Inclusionary Zoning (IZ) is a regulatory tool the City of London may consider as a means of supporting the provision of affordable housing within new development.

Inclusionary Zoning refers to zoning regulations that would require certain types of new residential development to include affordable housing units as part of the proposal.

Inclusionary Zoning is not meant to replace publicly provided housing, nor is it a municipal incentive program with financial support. It may, however, be complementary to those programs.

2.0 Provincial IZ Legislation and Previous Findings

2.1 Provincial Legislation for IZ

As identified in previous reports, the *More Homes, More Choice Act, 2019* included a number of requirements and criteria for municipalities to satisfy in order to introduce Inclusionary Zoning policies and regulations, including identification of: minimum development size, geographic areas of eligibility, affordability levels for non-market units, types/sizes of units to be provided, and the length of time units must be maintained as affordable (i.e. the "affordability period"). Additionally, through regulation, it is identified that IZ can only be approved after an assessment report is completed. The assessment report must include a financial feasibility analysis. The financial analysis must demonstrate the impact of the IZ requirement on the financial feasibility of the overall market development.

The purpose of the feasibility analysis is to demonstrate that market developers would still choose to proceed with projects even if required to include delivery of affordable units. If financial feasibility cannot be achieved with IZ requirements for affordable units, then either a smaller building would be built below the IZ threshold, or developers would choose to not build at all. The result of either scenario would be a reduced supply of

affordable housing units constructed as well as a reduced supply of new housing units overall.

2.2 Previous Findings

The approach to the Inclusionary Zoning Review has been to apply The London Plan's framework of heights and include Inclusionary Zoning requirements where "Bonus Zoning" would previously have been required. As such, new development up to the "Standard Maximum" Height (in storeys) of a Place Type would not require affordable units, whereas developments above the Standard Maximum Height and up to the "Upper Maximum Height" of the Place Type would require a certain portion of the additional units to be set aside as affordable through the IZ regulations. This analysis was previously applied to the "PMTSA" area, which includes the Downtown, Rapid Transit Corridor, and Transit Village Place Types only.

Some key findings from the previous feasibility analysis conducted by N. Barry Lyons Consulting (NBLC) on behalf of the City of London included the following:

- In most cases the analysis indicated the additional density is not sufficient on its own to offset impacts of IZ for a wide range of outcomes (i.e. some projects may be feasible, but others may not). Additional offsets, such as incentives, may be necessary to support a viable IZ policy and encourage transit-oriented development.
- An IZ policy that only applies to the PMTSA will likely limit the development interest in the strategic growth nodes and corridors associated with rapid transit, potentially limiting number of units in this area.
- Additional density over the "Standard Maximum Height" of The London Plan permissions may only provide limited value in certain market areas.
- Additional density increases the demand for automobile parking, which typically must be underground or in parking structures for larger buildings in the PMTSA. The delivery of additional parking for larger buildings, regardless of City parking regulations reductions, means that the cost of the additional parking can erode the value of adding the additional density.
- The downtown presents some viability for IZ because it is supported by a combined Development Charges and Tax Increment Grant incentive program offered through the Downtown Community Improvement Plan.
- London's rapid transit system is not yet fully constructed. Higher land values are not reflected relative to other areas of the city without immediate access to the rapid transit system.

Some factors which impacted these initial findings included:

- Market interest in higher-density development has been demonstrated across the city, not just within the PMTSA area.
- Private automobiles are the predominant mode of travel in London, which in part results in similar land values across the city (inside and outside the PMTSA).
- The cost of underground and structured parking is included in the feasibility analysis because it is assumed that the market will demand parking spaces with most residential units. The cost of parking is included regardless of whether a site is required by City regulation to have parking or whether the parking is because of developer's assumptions about market expectations.
- Inclusionary Zoning is an inflexible regulatory tool. Financial feasibility must be demonstrated for all lands across a broad geographic area where IZ is being applied. Since IZ policies apply to wide areas, the financial test of feasibility must be based on assumptions that can apply to all properties, not a site-by-site assessment of unique characteristics of a specific property or a specific development application.
- Standardized assumptions are made for cost input factors such as parking rates, parking formats, and timing of land sales at current market value.

3.0 Legislation Changes

Since the February 2022 report to Council, a city-wide update to the feasibility analysis was prepared by NBLC in order to add additional market areas to be considered by a new IZ policy. This was prepared for the City to initiate discussions with the Provincial Ministry regarding city-wide eligibility for London's IZ regulation rather than eligibility limited to the PMTSA. However, in fall 2022 a number of legislative changes were introduced by the Province which impact Development Charges and Planning policy frameworks, including the introduction of Bill 23 (the *More Homes Built Faster Act, 2022*).

Since 2022 there have also been changes to the residential construction cost benchmark (cost of materials, construction labour), and market conditions have also changed, including carrying costs of land with higher interest rates, supply chain constraints, and a decrease in average sales price for average market units.

New provincial legislation includes the following:

- Inclusionary Zoning policies can have a maximum “set aside rate” of 5% of a development's units; and
- Purpose-built rental developments must have their Development Charges reduced, based on a unit's number of bedrooms, as follows:
 - o 3 bedrooms: a 25% DC reduction;
 - o 2 bedrooms: a 20% DC reduction; and
 - o 1 bedroom / bachelor units: a 15% DC reduction.

In September 2023 the Federal Government also announced that it would waive the GST portion of the HST on new purpose-built rental developments. The Province has since announced with the same waiver.

The changes in project costs and unit costs associated with changes in government policy and market conditions, have resulted in several updates to key findings of the IZ financial feasibility analysis.

4.0 Updated Feasibility Findings

The financial feasibility review updated the analysis of the various market areas across the city with updated costs. For each market area, condominium ownership and rental tenures were modelled, based on land use permissions and heights of The London Plan Place Types.

The analysis tested whether there was an increase in land value associated with the increase in units for all scenarios. It tested whether a positive residual land value results based on current prices/rents for units, and potential profit expected after all developer costs and inputs into the development.

Table 1, below, summarizes which market areas demonstrate positive land values for the scenarios where 5% of units are delivered as affordable housing units under an Inclusionary Zoning regulation.

The results of all scenarios are included in Appendix A, attached to this report.

| Market Area | Scenario | | |
|---------------------------|------------------------------------|----------------------------------|-----------------------------|
| | Condominium Affordable Ownersip IZ | Condominium Affordable Rental IZ | Rental Affordable Rental IZ |
| Downtown | No | No | Yes |
| North RTC Richmond | Yes | Yes | Yes |
| East RTC King-Dundas | No | No | No |
| South RTC Wellington | No | No | No |
| West RTC Oxford W | No | No | No |
| North TV Masonville | No | No | Yes |
| East TV Oxford/Highbury | No | No | No |
| South TV White Oaks | No | No | No |
| West TV Oxford/Wonderland | No | No | No |
| Inside PTA, Large Site | No | No | No |
| Inside PTA, Small Site | No | No | No |
| Outside PTA, Large Site | No | No | No |
| Outside PTA, Small Site | No | No | No |

Table 1: Summary of land value for scenarios including IZ (Source: NBLC).

In some market areas and scenarios, a positive land value resulted but a larger building did not demonstrate an increase in profitability. If a positive land value resulted but was not considered sufficient to compel a developer to build the larger building with the IZ requirement, the financial incentive to return a project to status quo financial feasibility was also identified.

No increase in residual land value despite increased development density can be a result of various costs, including changes to the automobile parking format. For example, this may result from moving from the relatively inexpensive delivery of surface parking to the relatively expensive cost of building structured/underground parking in a higher density building. Changes in construction materials, such as a move from wood-framed construction to concrete construction is also another possible cause of no increase in value despite a larger building being proposed.

If there is no increase in residual land value, then the expectation is a market developer would not be compelled to build the larger building with the affordable unit requirement through the IZ policy. Instead, a smaller building which does not require the IZ units would be built, or the development proposal would not proceed until a change in market conditions.

The analysis also found that in most scenarios, even where positive land values were attained, developers would not be incentivized to take up the additional density without additional financial incentives to offset the costs associated with the IZ units. The financial incentive offset required to maintain the status quo of financial feasibility relative to development without the IZ requirements ranges from \$30,000 to \$100,000 per affordable unit.

Overall, many of the key findings from the previous analyses hold true under the updated feasibility analysis which includes the Province of Ontario's updated development charges and planning policy framework. Findings of NBLC include that:

- Additional density is not anticipated to be a significant driver of land value.
- There are few scenarios where the additional density generated enough value to offset IZ requirements to compel developers to build a larger building that includes the affordable IZ units.
- Reduced parking may be a solution to add value to the land and reduce construction costs; however, despite any changes in City regulations requiring parking, it is market demands that drive the amount of parking a building includes. So, the

market demand for parking must change (i.e. be reduced) before this value could potentially be realized.

- Since September 2022 there has been further increases in construction costs and interest rates, resulting in developers postponing, revising, or cancelling some housing projects. All of which directly affect the cost of labour and construction goods. High interest rates have also reduced market demand and resulted in a corresponding reduction in sales prices of units.

Inclusionary Zoning is one potential tool to encourage the development of new affordable housing units; however, the financial feasibility analysis demonstrates that IZ is not a consistently viable mechanism to achieve this goal for all tenures of housing or for all market areas of the city.

Conclusions and Next Steps

A financial feasibility analysis must demonstrate viability in order for the City to enter into negotiations with the Province and seek Provincial approval to expand the scope of the tool beyond the existing area where IZ is currently permitted. The current area where IZ is permitted is limited to the Protected Major Transit Station Areas (PMTSA), which are the Downtown, Rapid Transit Corridor, and Transit Village Place Types of The London Plan.

An unintended consequence may be that Inclusionary Zoning might also result in reduced housing supply through smaller buildings constructed which are under the minimum threshold size that requires the affordable units. The IZ program and its impact on land value may also contribute to delays and/or cancellation of development projects in the PMTSA which is a primary strategic growth area of the City. There may also be pressures to develop on areas not planned for higher intensity development.

It is recommended that no further action be taken at this time with regards to the Inclusionary Zoning Review under the existing Provincial IZ regulations.

As the financial feasibility tests under the current provincial IZ regulations are not met by current housing market conditions, other municipal tools and actions are planned and ongoing to support the delivery of new affordable housing units. Civic Administration will consider the findings of the IZ feasibility analysis in the review and update of incentive programs for affordable housing units.

Civic Administration will additionally consider the findings of the feasibility analysis in the planning policy reviews associated with the Federal Housing Accelerator Fund (HAF) recently awarded to the City. The HAF is to include a forthcoming review of development permissions, heights, and densities permitted on sites in proximity to Rapid Transit stations.

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Appendix A: Financial Analysis Scenario Findings

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| Summary of Financial Analysis Results of Feasibility Tests - Highlighting Land Value Uplift | | | | | | | |
|--|-------------------------|----------------------|----------------------|----------------------|-------------------------|----------------------|----------------------|
| Scenario Matrix | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Principle Building Tenure | Condominium | Condominium | Condominium | Condominium | Rental | Rental | Rental |
| Tenure of IZ Units | Condo Ownership | Condo Ownership | Condo Ownership | Rented Condo | Rental | Rental | Rental |
| Entitlements | Standard Maximum Height | Upper Maximum Height | Upper Maximum Height | Upper Maximum Height | Standard Maximum Height | Upper Maximum Height | Upper Maximum Height |
| IZ Application (% of Bonus Density) | No IZ | No IZ | 5% Ownership | 5% Rented Condo | No IZ | No IZ | 5% Rental |
| Summary of Feasibility Tests | | | | | | | |
| | Positive RLV? | Land Value Uplift? | Offset IZ Req? | Offset IZ Req? | Positive RLV? | Land Value Uplift? | Offset IZ Req? |
| Downtown | No | No | No | No | No | Yes | Yes |
| North RTC Richmond | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| East RTC King-Dundas | No | No | No | No | No | No | No |
| South RTC Wellington | No | No | No | No | No | No | No |
| West RTC Oxford W | Yes | No | No | No | Yes | No | No |
| North TV Masonville | Yes | No | No | No | Yes | Yes | Yes |
| East TV Oxford / Highbury | No | No | No | No | No | No | No |
| South TV White Oaks | No | No | No | No | No | No | No |
| West TV Oxford / Wonderland | No | No | No | No | Yes | No | No |
| Inside PTA, Large Site | Yes | No | No | No | Yes | No | No |
| Inside PTA, Small Site | Yes | No | No | No | Yes | No | No |
| Outside PTA, Large Site | Yes | No | No | No | Yes | No | No |
| Outside PTA, Small Site | Yes | No | No | No | Yes | No | No |