Inclusionary Zoning Experience and Evidence:

Brief for the CHBA Urban Council Meeting of May 3, 2016

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The Province of Ontario has announced in their updated Long Term Affordable Housing Strategy (March 2016) that they plan to introduce legislation to enable municipalities to adopt bylaws to establish inclusionary zoning policies. This brief has been developed to assist CHBA in responding to the proposed consultation by the Ministry.

This brief first reviews the meaning and purpose of inclusionary zoning (IZ); it then reviews the international and US experience, where there is a broader base of use and evidence. Finally, it summarizes the limited experience to date with this approach in Canada.

The concept of inclusionary zoning

IZ is a land use policy that may require or incentivize a developer to include some specified number (per cent) of units in a new residential development as "affordable housing". It is typically used on larger site developments where a rezoning has been requested. The inclusionary requirement is used as a condition of the municipality approving the rezoning. A critical component of these policies is the definition of what constitutes affordable housing, whether it is voluntary or mandatory as well as whether an explicit offset or compensation is provided to the developer. These are discussed further below.

There are differing perspectives on this policy instrument:

- Proponents suggest that when a municipality grants a change in zoning this relates to a change in use or increase in density that adds value to the land and creates an opportunity for a developer to generate a higher profit from the development. In the UK this is labeled a public gain: a public decision has created or added value to a property asset. Acceptable and effective inclusion involves a process in which this publicly created benefit is shared. There must be both a community benefit (in this case, some affordable housing) and some increase in profitability to the developer (to at minimum offset the cost of inclusion and ideally exceed that cost).

- Opponents don't accept the public gain argument. It is perceived that any increase in value is due to effort and risk taken by the developer and that any policy that seeks to expropriate some of the gain is a form of tax, and is unfair. It is also suggested that IZ policies cause housing prices (rents) to increase and as such the policy is counter-productive to the objective of improving affordability.

A review of the experience as well as empirical evidence helps to shed some light on these respective positions.

Brief review of international experience

Planning policies in many EU countries have enacted legislation to require inclusion, more often than not on a mandatory basis (i.e. as a pre-condition of receiving planning permission for development). In the UK this is enacted under Sec 106 of the Planning Act and can require that up to 25% of the land be set aside for social housing. In Ireland, the Planning and Development Acts requires that up to 20% of the sites or units in a new private housing development be also made available to the local authority for social rented and affordable ownership dwellings. In both England and Ireland, the developer is not required to cover the cost of the affordable housing; this is funded under a state social housing program, and delivered in partnership with social housing association. In France, the Solidarity and Urban Renewal Law (SRU) sets the obligation to have at least 20% of social housing in every municipality over 3,500 inhabitants. Then it is up to the municipality to decide how to implement this percentage and to set the rules in its urban plan. [i]

The US is often cited in discussion about this policy in Canada. These are reasonably comparable because the planning systems in many states are similar to Canadian provinces. Almost 500 jurisdictions in the US have enacted some form of IZ, although these tend to be in coastal states and especially California, New Jersey and Massachusetts.[ii]

Most ordinances create mandatory requirements in case of an up zoning, but also include a range of offsets to compensate the developer. When voluntary it is the developer's choice to enter into an IZ agreement, and s/he will pursue this option, only if there is a sound business case (i.e. retain a fair share of the development gain from rezoning).

New York had a voluntary inclusionary incentive between 2005 and 2013 and under this almost 3,000 affordable homes were created, representing 19% of approved units in the designated areas. Offsets in New York City include a property tax exemption up to 25 years in exchange for 20% affordable units with rents priced relative to the 60% of Area Median Income). In addition, the additional profits from the market units also compensate the developer.

In the high growth area of Tysons Corner, Virginia (Washington suburb) a new development plan for Transit Oriented Development offers unlimited density if developers include 20 percent low-and moderate-income housing at sites within a half-mile of the new Metro transit stations. Santa Monica has a modest mandatory IZ requirement (15%-20) but in addition, since 2010 has added optional IZ as part of its a "performance zoning" framework. This allows developments along the city's commercial corridors to access greater heights and densities in exchange for additional affordable housing beyond what the city's inclusionary policy requires.

Relative to the claims of proponents and opponents, the evidence on outcomes of IZ suggest that reality is far from the extremes suggested by both perspectives.

In an empirical analysis examining IZ effects and outcomes in San Francisco and Boston, Schulz et al. (2010) opined that "our empirical analysis suggests that the ideological debate over IZ has greatly exaggerated both the benefits and the dangers of IZ: any negative effects on housing prices and production have been relatively slight, but only modest amounts of affordable housing have been produced through IZ programs.[iii] They also noted that IZ has different impacts on local housing markets, depending on the condition of regional housing prices and the form of the IZ policy adopted.

Limited Experience in Canada to Date

While many municipalities have discussed the concept in Canada, and advocates have encouraged adoption, the actual experience to date is very limited. In preparing this brief the researchers contacted all provincial planning institutes as well as undertaking an online search. Where existing policies and programs were identified, follow up interviews were conducted with local officials. Appendix A presents the results of the review. The review sought to identify the form of policy in place, the impact on the developer, the nature of any compensation or offset and the effect of the policy in generating affordable housing alone with the definition of affordability used.

Only a handful of active policies were found, most in BC, although the single largest program exists in Montreal.

Ucluelet, BC, is a small town, but faces severe affordability issues due to tourism, so is somewhat of an anomaly, and to date the impact has been marginal.

One previous award winning policy in Langford BC (a Victoria suburb) is now inactive due to weaker housing market conditions in recent years and declining developer interest – confirming international evidence that IZ less effective is weak/slow markets.

Richmond BC adopted its IZ policy in 2007 and has produced a significant number of units relative to its size (and requires inclusion at only 5%).

While the Province of Manitoba has enacted legislation in 2013 enabling municipalities to adopt mandatory IZ bylaws, to date there has been no take up of this option at the municipal level.

Other cities are currently examining this policy option. Mayor Nenshi in Calgary has come out strongly in favour of mandatory inclusionary zoning. Regina and Saskatoon both identify IZ as an attractive tool, but have yet to adopt a policy (without provincial legislation in place).

Last year, the City of Mississauga announced that it was considering the adoption of an IZ policy as part of its transit-oriented development plans along the new Hurontario LRT line.

All policies in place are voluntary in nature and are applied in a negotiated process during a request to up-zone an area. There is a threshold project size at which the policy is triggered and this generally impacts larger sites. Montreal recently reduced this from 200 units down to 100 units. In Richmond BC, the threshold is 80 units, however developments less than 80 units in size are required to provide cash-in-lieu contributions.

In Montreal, Vancouver and its suburbs, the policy effectively requires developers to set aside land on which affordable housing can be built, but this depends on the availability of provincial affordable housing programs to fund the cost of the development. Developers do not have to absorb the cost; they do however have an opportunity cost in not generating the full market value for the affordable units. This may be partly offset, by those units creating guaranteed presales.

The exception appears to be Richmond, which requires the build out of units at the developer's cost (5% of total FAR, minimum of 4 units) as part of all new developments of 80 units or more.

The inclusionary proportion ranges from 5% in Richmond to 30% in Montreal. Montreal's policy includes both social rents where the social housing partner manages and administers traditional RGI type subsidy (15%, of floor area, converted to units); as well as affordable ownership (further 15% of area, then converted into units). All others target 20% inclusion.

Outcomes have been relatively modest. Montreal has secured commitments to create 7,000 affordable units in developments totaling 44,000 units – some are still in planning stage or under construction. Vancouver has achieved 2,500 units. Most per capita is in Richmond BC where a combination of strong growth and a relatively low inclusion rate (5%) have generated 1,370 affordable units.

Framing a Position

The international and limited Canadian experience suggests that IZ policy is not necessarily bad for developers or bad for the market, provided it is well designed and fairly balanced.

It has been more effective in higher cost strong markets (where additional market rate units more than offset cost of inclusion).

Voluntary programs leave the developer a choice of negotiating a higher density and sharing part of that planning gain, while also improving profitability.

In locations where mandatory requirements have been enacted, the market has adjusted, however this is a gradual process. Provided that the requirement is transparent and explicit, in the long run the effect of the requirement will be capitalized into land values. An informed potential developer considering a land purchase would adjust the asking price to reflect the cost of absorbing the net IZ impact (i.e. net of offsets such as waived DCC or reduced property taxes).

Municipal official plans should transmit the form and impact of the policy such that developers anticipating an increase in density or change in use are aware of the triggering conditions that would require inclusion and a related cost impact. This should include a clear definition of what constitutes affordable (rent/price and duration). [iv]

When the IZ is voluntary and linked to accessing funding under a federal-provincial funding program, the constraint may be the volume of units funded, which of late have been quite minimal. Establishing a policy that required inclusion only, where such funding is available would avoid the concern of stalling all development.

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[i] Housing Europe Review 2012 The nuts and bolts of European social housing systems Published by CECODHAS Housing Europe's Observatory, Brussels (Belgium) October 2011

[ii] Hickey, Sturtevant and Thaden (2014). Achieving Lasting Affordability through Inclusionary Housing.

[iii] Schultz, Jenny, Rachel Meltzer and Vicki Beem (2010) Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets in the United States

[iv] This can also be transmitted through zoning, such as in Vancouver's two-tier outright and conditional framing – which makes explicit the conditions under which higher density will be accepted.

Appendix A: Overview of Inclusionary Zoning Models in Canada

Location	Policy In Place	Threshold IZ Applies	Trigger	Mandatory/ Voluntary	Set-Aside Obligation	Form Of Developer Obligation	Municipal Cost Offsets Offered	Tenure	Def'n Of Affordable	Units Created
Vancouver, BC	1988	200 units	Large-scale rezoning	voluntary	20%	donation of land at reduced price (60% of market value)		affordable market rental housing		1988-2008: 65 percent of the 2,533 units negotiated had been built (Drdla 2010).*
Richmond, BC	2007	80 units	All multi-family and single family residential rezoning applications.	voluntary	5% of total FAR, minimum of 4 units.	Build out of units on site.	Additional development rights beyond existing permitted density or height limits - through density bonusing.	Low end of market rental.	Targeting households with incomes between $34,000 or less (bachelor unit) and $57,000 or less (3 bdrm unit).	Since 2007: 1,371 units, including 477 subsidized rental units, 311 low end of market rental, and 411 market rental units.*
Burnaby, BC	1988	public lands only		mandatory on public land	20%		Relied on senior government investment for build-out.		non-market rental	390 non-market rental units (2015)
Ucluelet, BC	2004	New multi-family developments	unknown*	voluntary	15-20%	unknown*	density bonusing	entry level home ownership	Targets households earning $52,000 or less	253 units secured, only 2 actually built (as of 2011)
Montreal, QC	2005	100 units*	Projects requiring a regulatory change in use, density or height.	voluntary	30% buildable floor area: 15% social housing and 15% as low-end-of-market affordable home ownership (or cash-in lieu financial contribution**).	Cost to developer is actual cost of land per unit***, less $12,000 provided by AccesLogis.	Partially funded by public investment through AccesLogis (up to $12,000 per unit).	15% social housing (allocated to coop or non-profit); 15% as affordable home ownership	Social housing for low income households earning < $35,000/yr; entry level home ownership for households earning $35-50,000/yr****. Strong focus on families since 2008.	70 projects completed, under construction, or in planning stage (2015). Potential for approximately 7,000 affordable homes from 44,000 developed or planned.

Toronto, ON (Large Sites Policy)	2007	5 ha	Large-scale redevelopment (5 ha or more) requiring a major rezoning or other approvals.	voluntary	20%	Donation of land at reduced price or payment of fees-in-lieu	Additional development rights through density bonusing.	affordable rental	Average market rents. Income ceilings established for different units sizes based on market rent data.	No data.
Langford BC	2004-2012	10	Subdivision of 10 homes	mandatory	10%	I in 10 homes must be offered to affordable ownership program at cost net of land	May include density increase and accelerated approval process	affordable ownership	Purchasers who met modest income criteria	total of 40 detached homes and 8 condo's over 6 years of program

Notes:

Location	**Notes**
Vancouver, BC	It is difficult to decouple Vancouver's IZ policies from other policies in place - especially its Community Amenity Contributions. Over the last few years, much of the CoV's reporting (e.g. related to 10 year plan) speaks a great deal about CACs but is not specific about IZ, specifically. Historically, IZ agreements required that developers give land at reduced rate, while the City was responsible for its development. However, since the rapid decline in senior government investment since mid-1990s, IZ builds have dropped off. There are IZ requirements in new neighbourhood plans (eg. Downtown Eastside Plan and Cambie Corridor Plan).
Richmond, BC	Source: Affordable Housing Strategy Update (2015). Contact at the City of Richmond credits success of IZ in Richmond to clear expectations outlined in policy (not negotiated on a case-by-case basis). * IZ policy had also been used to secure some affordable home ownership in 2007 (19 units), however this is no longer the focus of the strategy. Also, some secondary suites were secured through IZ in new subdivisions (153 units since 2007).
Burnaby, BC	Burnaby's IZ Policy requires consideration for the provision of 20% of units in newly developing communities on publicly-owned land be developed for non-market rental housing. This policy was primarily implemented in the 1980's and 1990's when there was more senior government funding for non-market housing. To date the program has resulted in the development of 390 non-market housing units at Oaklands, George Derby, Cariboo Heights, and the former Burnaby South Secondary School Site in the Edmonds Town Centre (City of Burnaby 2015).
Ucluelet, BC	*IZ policy outlined in 2011 Official Community Plan (OCP). Contact from the District of Ucluelet indicated that the policy has been more or less suspended for several years now. Only two home ownership units built since 2004. 2008 recession hit the building industry hard. As a result, many of the details of the former strategy are not known to current staff. A revised IZ policy may still be integrated into and implemented through new Master Development Agreements for very large developments in the future. The aspiration is there in the OCP, but not realized in practice.
Montreal, QC	Montreal's Inclusion Strategy was updated in December 2015. Several changes to the Strategy were made including: *Threshold lowered from 200 to 100 units. ** Under previous strategy, Cash-in-Lieu financial contributions for social housing component calculated at 15%. Under the updated strategy, CIL contributions now 20% of total project, suggesting that the City is trying to encourage developers to include the social housing units on site (rather than provide CIL). *** Market value for land (per unit basis), now calculated and pre-determined for different sectors of the City. Prior to 2015, values were calculated on a case-by-case basis (see 2015 Update, p.7). The updated strategy also provides a method for updating these values with each new assessment roll. **** Updated income figures not provided in 2015 Strategy Update.

Toronto, ON (Large Sites Policy)	Toronto's Large Site policy was designed to make use of the regulatory tools provided by s.37 of the Ontario Planning Act. Policy is directed at providing a mix of housing in terms of type and affordability on sites generally greater than 5 ha in size. A minimum of 30% of the new housing – presumably, all market-rate – must be provided in attached and multiple housing forms. In addition, when an increase in height and/or density is sought, the provision of 20% of the additional residential units as affordable housing will be the city's "first priority community benefit" under s37 policy. The affordable housing may take the form of: ~ the construction of units on or near the site, or elsewhere in the city; ~ the conveyance of land on or near the site; and ~ the provision of cash-in-lieu for developing affordable housing on or near the site (Wellesley Institute 2010). Note: 2012 Report of Toronto's Private Sector Roundtable requested the policy be expanded to include entry level home ownership opportunities.
Langford BC	Program floundered when home prices staller 2011, and the 1:10 IZ requirement was removed. Other aspects of the City's Affordable Housing Parks and Amenity Contribution (AHPAC) policy remains. This includes requirement that units be code ready for secondary units and a contribution of $500 to affordable housing fund (used for rent supplements).