CANADA'S MUNICIPAL MAGAZINE SINCE 1891

Municipal World

www.municipalworld.com

ISSN 0027-3589

Understanding Ontario's inclusionary zoning

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In Ontario, inclusionary zoning is governed by a comprehensive statutory framework designed to mandate the provision of affordable housing within new residential developments or redevelopments. This mechanism requires developers to include a certain percentage of affordable housing units in their projects, with the aim of addressing housing affordability challenges across the province.

The legal basis for inclusionary zoning is established within the Planning Act, R.S.O. 1990, c. P.13, and is further detailed by regulations that prescribe its implementation.

Ontario's Planning Act

The primary legislative authority for inclusionary zoning is found in sections 16(4) and 35.2 of the act. These sections outline the requirements for municipalities to adopt and implement inclusionary zoning policies and bylaws.

Section 16(4) of the act mandates that an official plan of a prescribed municipality must contain policies authorizing inclusionary zoning. Currently, no municipality in Ontario is formally "prescribed" for the purposes of this subsection. However, Subsection 16(5) allows municipalities that are not prescribed to still include inclusionary zoning policies in their official plans, but only in specific areas. These areas typically include protected major transit station areas (PMTSAs), where inclusionary zoning policies can support transit-oriented development, or areas where a development permit system has been adopted or established in response to a minister's order under Subsection 70.2.2(1) of the act.

Before any municipality can enact an inclusionary zoning bylaw, its official plan must first contain policies that authorize and enable it, as contained in Subsection 16(5.1) of the act. These official plan policies are required to specify details such as the minimum size of development to which inclusionary zoning would apply (which cannot be less than 10 residential units), the locations and areas where inclusionary zoning bylaws would be in effect, the range of household incomes targeted for affordable housing, and the types and sizes of units to be authorized as affordable housing.

Section 35.2 of the act governs the bylaws passed to give effect to the inclusionary zoning policies described in subsection 16(4). If a municipality is prescribed for the purpose of Subsection 16(4), its council shall pass one or more bylaws under Section 34 of the act to implement these official plan policies. If the municipality is not prescribed, its council may pass such bylaws.

Subsection 35.2(2) of the act sets out the required contents of such bylaws. These include provisions requiring developments or redevelopments to include a specified number of affordable housing units or a defined portion of residential gross floor area, to meet applicable regulatory standards, and to require property owners to enter into agreements with the municipality addressing these obligations.

Regulatory framework for inclusionary zoning

Beyond the act, several regulations provide the framework for implementing inclusionary zoning, ensuring consistent and controlled implementation.

O. Reg 232/18, the principal regulation that governs inclusionary zoning, establishes a framework for how municipalities may impose mandatory affordable housing requirements. Section 3 of O. Reg 232/18 prescribes the mandatory content for official plan policies authorizing inclusionary zoning.

While O. Reg. 232/18 directly governs inclusionary zoning, O. Reg. 173/16 establishes the community planning permit system (CPPS) and operates as a land use planning framework that consolidates zoning, site plan, and minor variance approvals into a streamlined process. A CPPS bylaw permits municipalities to impose conditions on development approvals, including requiring specified "facilities, services, and matters" in exchange for increased height or density.

Although O. Reg. 173/16 does not expressly govern inclusionary zoning or mandate affordable housing, it leaves open the possibility for municipalities to impose such requirements indirectly. The reference to "facilities, services and matters" within the regulation, is undefined and broad, creating a risk that municipalities could effectively introduce mandatory affordable housing obligations through a backdoor mechanism outside the statutory framework.

While municipalities may seek to impose affordable housing requirements outside the inclusionary zoning framework, the legislature has closed this gap through O. Reg. 234/18. This amending regulation clarifies that, although a CPPS bylaw may implement inclusionary zoning-related official plan policies, it may do so only where the municipality has first established a compliant inclusionary zoning regime under the act (O. Reg. 234/18, ss. 1(3)). Read together, O. Reg 232/18, O. Reg 173/16, and O. Reg 234/18 confirm there is no alternative mechanism for imposing mandatory affordable housing requirements outside the statutory inclusionary zoning regime.

Ontario Land Tribunal

Beyond the legislative framework establishing inclusionary zoning, at least one dispute has arisen over how far municipalities can go in imposing affordable housing requirements. Guidance on this issue comes from the Ontario Land Tribunal's decision in *Calloway REIT (Mississauga) Inc. v. Mississauga (City), 2023* CanLII 83079 (ON LT).

The tribunal's decision in *Calloway REIT,* suggests that municipalities cannot circumvent the legislature by imposing mandatory affordable housing requirements outside the statutory inclusionary zoning regime. The tribunal found certain prescriptive housing requirements ultra vires because they imposed obligations without adhering to the statutory inclusionary zoning framework.

The appeal concerned the city's redevelopment of six mall-based community nodes and a major node, where Official Plan Amendment 115 included policies requiring developments of 50 or more units to provide 10 per cent as "below-market" housing. Appellants argued that these affordable housing requirements exceeded the city's authority under the act.

The tribunal distinguished between policies that encourage or incentivize affordable housing and those that mandate it as a condition of development. Mandatory requirements must strictly comply with the statutory inclusionary zoning framework and attempts to impose them through alternative mechanisms risk being ultra vires, particularly where they bypass provincial limits.

The decision suggests that, in the face of current economic uncertainty and growing housing demand, municipalities may be more likely to pursue mandatory affordable housing requirements outside the inclusionary zoning framework. However, attempts to rely on undefined provisions or vague official plan policies for this purpose will likely be unsuccessful and risk being found ultra vires unless and until the legislature provides otherwise.

Recent developments and Ontario Regulation 15/26

Inclusionary zoning in Ontario has evolved since it was first introduced in 2018. The original proposal required between five and 10 per cent of units in new developments to be affordable. However, this minimum was removed, and the policy was later limited to developments within PMTSAs. Later, in May 2025, the regime shifted again through amendments to O. Reg. 232/18. These changes introduced caps, limiting affordable housing requirements to no more than five per cent of units or total residential floor area, and setting affordability terms at a maximum of 25 years (O. Reg 232/18, s. 3(1)(5)(i-ii)).

In addition to the above noted amendments, O. Reg. 15/26 came into force in January 2026, introducing a temporary pause on inclusionary zoning requirements in municipalities where inclusionary zoning is currently in effect. Under this amendment, inclusionary zoning bylaws do not apply to certain developments or redevelopments in the City of Kitchener, the City of Mississauga, or the City of Toronto if specified applications are made before July 1, 2027.

Ontario's inclusionary zoning framework has undergone several changes in a relatively short period, with the changes appearing to respond to shifting market conditions. Rising construction costs, higher borrowing rates, and generally low development activity have raised concerns about the viability of projects subject to inclusionary zoning requirements, particularly in municipalities facing increased housing demand. Against this backdrop, the current pause on inclusionary zoning requirements can be understood as an effort to increase housing supply and support continued development.

The implementation of inclusionary zoning in Ontario is governed by a comprehensive statutory and regulatory regime. Rooted primarily in Subsection 16(4) and 35.2 of the Planning Act and detailed through regulations, the framework sets clear parameters for mandating affordable housing in new residential development or redevelopment.

Recent changes to provincial policy suggest a deliberate narrowing of municipal authority to impose mandatory affordable housing requirements onto developers, including caps on the percentage of affordable units, making the regime highly prescriptive. The recent pause of inclusionary zoning in Toronto, Mississauga, and Kitchener further underscores this, reflecting the province's response to uncertain market conditions and concerns about development viability.

as published in MUNICIPAL WORLD
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