

Staff Report



Development Services Department

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REPORT TO: Special Council

DATE OF MEETING: March 18, 2024

SUBMITTED BY: Rosa Bustamante, Director of Planning and Housing Policy , 519-741-2200 ext. 7319

PREPARED BY: Tim Donegani, Senior Planner, 519-741-2200 ext. 7067

WARD(S) INVOLVED: Ward(s) 3, 9, 10

DATE OF REPORT: March 8, 2024

REPORT NO.: DSD-2024-111

SUBJECT: Supplemental Report to DSD-2024-029 Inclusionary Zoning

RECOMMENDATION:

That the City-initiated Official Plan Amendment OPA23/015/K/TD for the purposes of introducing Inclusionary Zoning within Protected Major Transit Station Areas be adopted, in the form shown in the Revised Official Plan Amendment attached to Report DSD-2024-111 as Attachment 'A' and accordingly forwarded to the Region of Waterloo for approval; and,

That the City-initiated Zoning By-law Amendment ZBA23/027/K/TD to amend Zoning By-law 2019-051 and Zoning By-law 85-1, be approved in the form shown in the "Revised Proposed By-law Amendment" attached to Report DSD-2024-111 as Attachment 'B' and Attachment 'C' respectively; and,

That staff be directed to enter into a memorandum of understanding with the Region of Waterloo outlining roles and responsibilities in administration of Inclusionary Zoning, to the satisfaction of the Director of Planning and Housing Policy; and,

That staff be directed to monitor local market conditions and engage with community and industry, and report back to Council no later than the end of 2024, 2026, 2028 and 2030, with recommendations on whether inclusionary zoning requirements should continue to be advanced in the timeframe, with the Market Area categorizations, and in manner outlined in this report; and further,

That pursuant to Section 35(17) of the Planning Act, R.S.O. C P.13, as amended further notice is not required to be given in respect of the Zoning By-law Amendment.

REPORT HIGHLIGHTS:

- The purpose of this report is to describe additional dialog between staff and those who provided oral and written submissions at the statutory public meeting on January 29, 2024, as directed by Council.
- The key finding of this report is that minor refinements to the proposed Official Plan and zoning, alongside an enhanced monitoring approach, are recommended by staff in response to these conversations.
- There are no financial implications arising from this report
- This report supports Building a Connected City Together: Focuses on neighbourhoods; housing and ensuring secure, affordable homes; getting around easily, sustainably and safely to the places and spaces that matter.

BACKGROUND:

On January 29, 2024, Council deferred the approval of Official Plan and Zoning By-law amendments to introduce inclusionary zoning via the following motion:

“That the following motion be deferred to the March 18, 2024 Special Council Meeting to allow staff to dialogue further with those who provided oral and written submissions in relation to Inclusionary Zoning – Official Plan Amendment and Zoning By-law Amendment, DSD-2024-029 and how it relates to Growing Together - Protected Major Transit Station Area Land Use and Zoning Framework, as outlined in Development Services Department report DSD-2024-005:

That the City-initiated Official Plan Amendment OPA23/015/K/TD for the purposes of introducing Inclusionary Zoning within Protected Major Transit Station Areas be adopted, in the form shown in the Official Plan Amendment attached to Report DSD-2024-029 as Attachment ‘A’ and accordingly forwarded to the Region of Waterloo for approval; and,

That the City-initiated Zoning By-law Amendment ZBA23/027/K/TD to amend Zoning By-law 2019-051 and Zoning By-law 85-1, be approved in the form shown in the “Proposed By-law Amendment” attached to Report DSD-2024-029 as Attachment ‘B’ and Attachment ‘C’ respectively; and further,

That staff be directed to enter into a memorandum of understanding with the Region of Waterloo outlining roles and responsibilities in administration of Inclusionary Zoning, to the satisfaction of the Director of Planning and Housing Policy.”

REPORT:

In addition to community engagement, and the sharing of information on Engage Kitchener, staff have hosted at least sixteen in person and virtual meetings with members of the development industry including the Waterloo Region Homebuilders Association (WRHBA) and Build Urban since the inclusionary zoning (IZ) project started in 2020. Those conversations were fruitful and are key drivers of important policy and program details including relatively low initial set aside rates that increase slowly over time, moderate affordability focus, a permissive and flexible approach to offsite units, and other

implementation details that work for their business models. The Build Urban membership is responsible for the majority of the residential development in Protected Major Transit Station Areas (PMTSAs) that will be subject to IZ. It is crucial to not only consult with those that may be the potential tenants, or those that work and advocate on their behalf, of IZ units but it is also crucial to consult with those who will be responsible for building the IZ units affected by this policy.

Staff from the cities of Kitchener, Waterloo, Cambridge and the Region of Waterloo met with representatives from the Waterloo Region Homebuilders Association on February 22 and with Build Urban on February 29. All of the development industry representatives that delegated on January 29th were invited to these meetings, and all but one attended. While disagreeing with IZ in principle, some in attendance also recognized the need to provide affordable housing close to ION transit stops. The discussions were constructive and focused on detailed policy and implementation solutions that could both deliver affordable units and market housing in PMTSAs.

What we heard:

Staff spoke with the one community delegate on March 5, to provide clarity on the project, its relationship to the Housing Accelerator Fund, and the land value capture mechanism. The delegate continues to prefer other more fundamental changes to planning frameworks and processes, that in their opinion, would be more impactful to housing affordability than IZ.

The development industry should not bear the burden of solving the community's housing crisis.

Many in the development community questioned why they should bear the burden of needed affordable housing investments. The housing crisis demands an all-of-society response. IZ is one tool among many that are needed from all orders of government, the private and non-profit sectors to address this critical issue. The 2024 Regional housing budget is \$123 million and represents a significant government investment in affordable housing. The City's \$42 million Housing Accelerator Funding, as well as all the initiatives outlined in Housing for All, will also shape the future of affordable housing in Kitchener. In addition to these public investments in housing, IZ provides an opportunity to deliver a modest but meaningful number of affordable units alongside market rate units in PMTSAs. IZ units are exempt from DCs, CBCs and parkland dedication. These offsets, along with increased development permissions and the elimination of parking requirements, are all expected to have positive impacts on development pro formas. City and Regional Staff continue to explore other opportunities to allow for the creation of affordable housing faster and easier.

Reduced Rents for IZ Units will be passed on to market tenants and purchasers

The Assessment Report prepared by land economists at NBLC and peer reviewed by Urban Metrics agreed that IZ works by putting downward pressure on land values. In this way some of the windfall land value arising from our ION transit system, public investment in PMTSAs and Growing Together can be captured and directed towards a public benefit of affordable units. Many in the development community do not agree that a meaningful decrease of land values would result from an IZ program, and instead it will result in higher market unit prices and rents and/or reduced supply. As in all markets, the price of development land is affected by both supply (from land owners) and demand (from developers). Developers have a

responsibility to be part of the solution by avoiding speculation and incorporating realistic revenue expectations into their land purchase decisions. In staff's opinion, land value and market housing will both bear some of the burden of IZ in the short and medium term. Staff have worked to offset the impact to development pro formas and market housing through:

- DC, CBC and Parkland dedication exemptions for each IZ unit that represents approximately \$33,000; and
- A Growing Together planning framework that:
 - increases permitted height and eliminates maximum densities relying on a new and flexible approach of built form regulations;
 - reduces time, risk, application fees and consultant costs by allowing more projects to proceed directly to a site plan control process; and
 - eliminates expensive parking requirements in PMTSAs.

Market conditions are currently very challenging, and it is the wrong time to implement IZ

Staff heard that there are currently challenging economic conditions for the construction of new housing and significant uncertainty in the short and medium term. We also heard that a 2025 start to IZ may be too soon. Staff concur with developers' concerns that an overly onerous IZ requirement introduced at a time of challenging market conditions could unduly curtail new housing supply in PMTSAs, and that this is contrary to the City's objectives. In response to the meetings with delegates, staff recommend a detailed, analytic and data driven review of local housing and development market conditions together with community and industry engagement, just prior to initiating the IZ requirements in 2025, and before increasing set aside rates in 2027, 2029 and 2031. It will consider if any PMTSAs should have their Market Area characterization adjusted (i.e. Prime, Established, Emerging). Further this report will consider factors such as market rents, condominium sale prices, presales and market unit absorption, financing costs, construction costs, building permits, construction starts and lands sales. This monitoring and adjustment approach is included in the recommended Official Plan Amendment.

Staff worked with Build Urban and can accommodate a policy revision to the Official Plan to more clearly convey that the set aside rates need to be adjusted frequently in response to up-to-date market conditions. Staff continue to place critical importance on communicating the long-term intent of the policy so that the development community and landowners can consider IZ as part of their purchase decision and to minimize impacts on market housing. Staff's revised recommendation includes a set aside range for 2027 to 2030 in the Official Plan (shown in Table 1 in this report). The set aside range would be evaluated biennially and implemented through zoning by-law and, and where necessary, Official Plan amendments approved by Council. Staff have also revised its recommendation to show only the first set aside rate in the Zoning By-law with the intent that future set aside rates and changes to any market areas would be implemented through the above-mentioned biennial review/amendment process. This ensures that a statutory amendment process and Council decision (informed by market data) is required prior to increasing the set aside rate.

Table 1. Revised Set aside Rates proposed in the Official Plan

Market Area	Protected Major Transit Station Area	Minimum Percentage of Gross Leasable Residential Floor Area to be provided as affordable dwelling units by date of building permit issuance			
		2025-2026	2027-2028	2029-2030+	2031+
Prime	<ul style="list-style-type: none"> • Central • Victoria Park and Kitchener City Hall • Queen and Frederick 	2%	2-3%	2-4%	5%
Established	<ul style="list-style-type: none"> • Grand River Hospital • Kitchener Market • Borden • Mill 	1%	1-2%	1-3%	5%
Emerging	<ul style="list-style-type: none"> • Block Line • Fairway • Sportsworld 	0%	0-1%	0-2%	5%

Concern with Mill and Borden Market Area Characterization

Both Build Urban and WRHBA expressed concerns that the Mill and Borden PMTSAs are characterized as Established Market Areas, rather than Emerging as was indicated in the June 2023 discussion paper (see Attachment D regarding the policy evolution from June 2023 to March 2024). They requested that these PMTSAs be returned to the Emerging classification or indicated as “to be determined” until the late 2024 review.

The Market Area characterizations in the June 2023 Discussion Paper were made on the advice of NBLC land economist’s memo dated September 2022. That memo categorized each of the Region’s PMTSAs as Prime, Established, or Emerging. This categorization was driven by market parameters driving the viability of market housing development including:

- achievable condominium unit and parking spot sales prices;
- the pace and volume of new high density apartment sales activity;
- per square foot rents;
- units sizes and suite mix;
- the pricing and volume of residential land acquisition activity; and
- the scale and volume of new high density residential development application activity.

In response to comments received on the June 2023 Directions Report, NBLC was asked to review and confirm or update the Market Areas with current market information. NBLC considered the same market parameters as the previous evaluation. They also considered some additional indicators, where relevant, to characterize the market areas. Market factors that impacted their recommended changes to certain market areas included relatively strong sales activities (Northfield PMTSA), persistent development proposal

activity and strong market position (Uptown Waterloo PMTSAs), and notable recent land transactions and development application activity (Borden and Mill PMTSAs).

Build Urban has expressed concern with the Borden and Mill categorization “on the face of it,” but have not provided any market data to support their recommendation. NBLC did not have capacity to update their market review between January 29 and March 18. Without additional rationale, staff are unable to recommend reclassifying these stations at this time. As Station Area markets evolve and mature, their Market Area characterization is expected to change. Confirming market areas characterizations is in scope for the biennial reviews including the late 2024 market review prior to the IZ by-law requirements coming into force. Build Urban, the WRHBA, other industry representatives, and the community will be engaged in these biennial reviews.

How will this all be implemented?

Attendees of both the Build Urban and WRHBA meetings had questions and concerns about the implementation details and mechanics of the IZ program. Staff highlighted aspects of the draft IZ [implementation guidelines](#) and committed to ongoing dialogue with the industry to refine and improve the implementation details in response to shared learning. Staff also see a role in facilitating offsite unit agreements and partnerships between market rate developers and among developers and the not-for-profit sector.

Can we ensure that units continue to be occupied by eligible low-income households?

At the statutory public meeting on January 29 questions were raised about the implementation of qualified households in IZ units. Once a household is qualified through the initial occupancy of an IZ unit, the tenancies of IZ units are regulated under the Residential Tenancies Act. In this case IZ units would be reoccupied by another eligible household. There is no legal mechanism to evict tenants due to an increase in income. Some tenants will move out of IZ units for a wide variety of reasons including to seek units more suited to their needs and situation, or homeownership. This is similar to tenancies in Community Housing that are governed by the Housing Services Act where tenant ‘turnover’ cannot be compelled due to an increase in income (however tenants can be required to move into a smaller unit if household composition changes). Nevertheless, both community housing and IZ units continue to be valuable for the tenants that live in them and the housing system overall.

Conclusion

2023 was characterized by extremely challenging conditions for developing housing. Nevertheless, last year Kitchener issued building permits for 3,985 units and saw 2,777 housing starts, the highest and third highest rates respectively in Kitchener’s history. Every strong building permit year that passes without an IZ by-law in force is a missed opportunity to secure affordable housing for those who could not otherwise afford a place to live. The Staff recommended IZ policy and by-law, together with policies and Council direction to frequently monitor and adjust the requirements as market conditions evolve, in consultation with the community and development industry will allow not only Kitchener, but the Region of Waterloo as a whole, to show leadership and a commitment to using the tools within our jurisdiction. City staff will work with the development industry to deliver much needed affordable housing. This provides the development industry and landowners with a level of certainty regarding IZ that they can build into their pro formas and land purchase decision,

while still being responsive to market challenges. The recommended policy supports the development of critically needed market and affordable housing in PMTSAs

STRATEGIC PLAN ALIGNMENT:

This report supports **Building a Connected City Together: Focuses on neighbourhoods; housing and ensuring secure, affordable homes; getting around easily, sustainably and safely to the places and spaces that matter.**

FINANCIAL IMPLICATIONS:

None.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City’s website with the agenda in advance of the Council / Committee meeting.

CONSULT – Staff from the cities of Kitchener, Waterloo, Cambridge, and the Region of Waterloo met with representatives from the Waterloo Region Homebuilders Association on February 22 and with Build Urban on February 29. All of the development industry representatives that delegated on January 29th were invited to these meetings, and all but one attended.

PREVIOUS REPORTS/AUTHORITIES:

- [DSD-20-006](#) Affordable Housing Strategy Phase 2: Housing Needs Assessment
- [DSD-20-150](#) Inclusionary Zoning for Affordable Housing: Background and Fiscal Impact Analysis
- [DSD-2022-281](#) Growth Related Funding Tools – Cumulative Impact Assessment
- [DSD-2022-501](#) Bill 23 More Homes Built Faster Act – Kitchener Comments
- [DSD-2023-071](#) Inclusionary Zoning for Affordable Housing: Status Update
- [DSD-2023-258](#) Inclusionary Zoning – Policy and Implementation Directions
- [DSD-2024-029](#) Official Plan Amendment OPA23/015/K/TD and Zoning Bylaw Amendment ZBA23/027/K/TD – Inclusionary Zoning
- [Provincial Policy Statement, 2020](#)
- [A Place to Grow: Growth plan for the Greater Golden Horseshoe, 2020](#)
- [Regional Official Plan](#)
- [Planning Act](#)
- [Residential Tenancies Act](#)
- [Housing Services Act](#)

REVIEWED BY: Natalie Goss, Manager, Policy and Research

APPROVED BY: Justin Readman, General Manager of Development Services

ATTACHMENTS:

- Attachment A – Revised by-law to amend the Official Plan
- Attachment B – Revised proposed by-law to amend Zoning By-law 2019-51
- Attachment C – Revised proposed by-law to amend Zoning By-law 85-1
- Attachment D – Summary of policy evolution June 2023-March 2024