

UPDATE RE: ADOPTION & PASSING OF CITY OF TORONTO INCLUSIONARY ZONING POLICY

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Categories: [Insights](#), [Publications](#)

This bulletin provides an update to our June 25, 2021 bulletin “ [Impending Implementation of Ontario's Inclusionary Zoning Regime in Toronto and the GTA](#) ”, which update specifically relates to the City of Toronto.

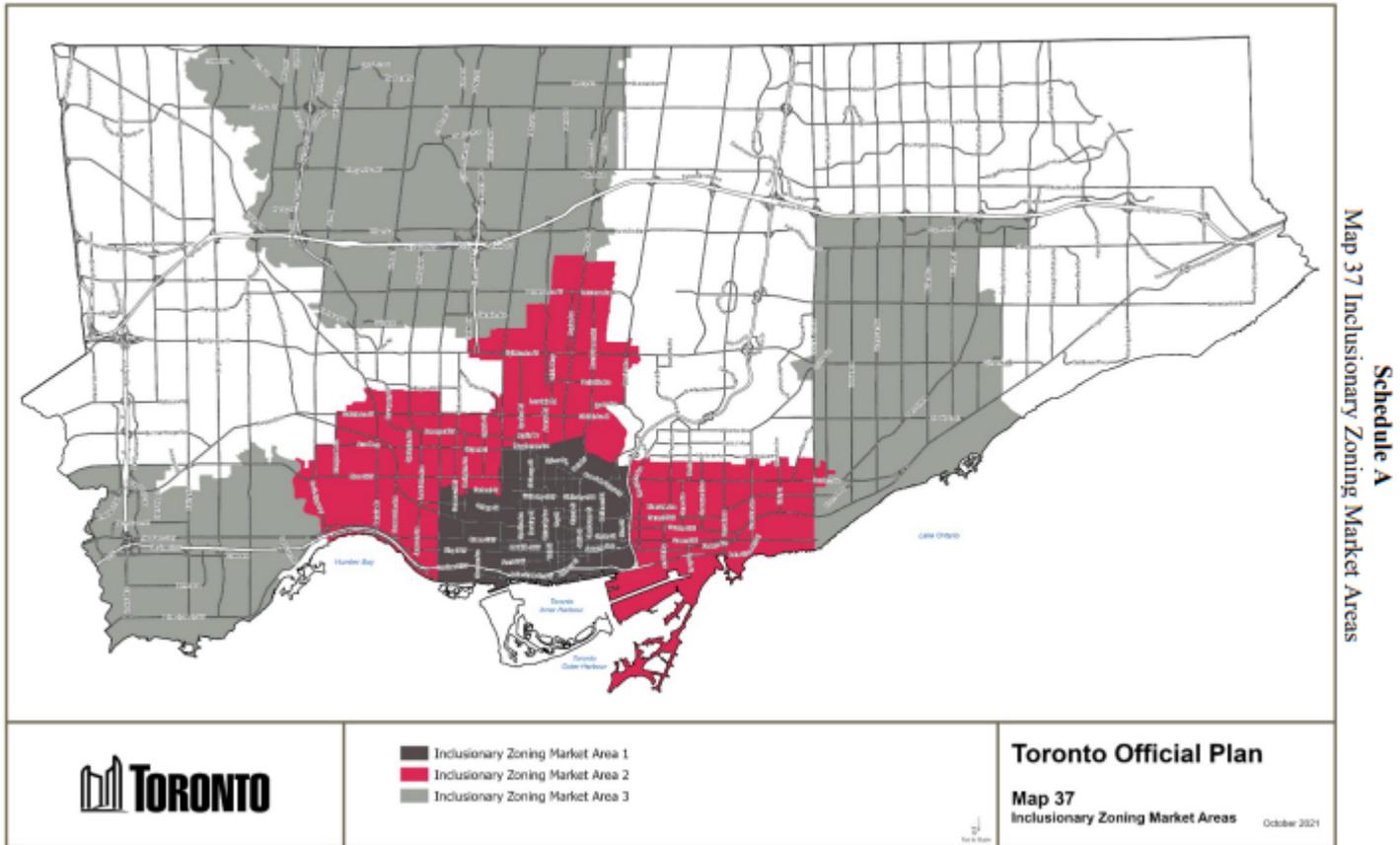
On November 12, 2021, the Council of the City of Toronto (the “ **City** ”) adopted Official Plan Amendment 557 (“ **OPA 557** ”) by [By-law 940-2021](#) , and corresponding [Zoning By-law 941-2021](#) (the “ **IZ By-law** ”), which have now formally brought inclusionary zoning policies and standards to the City. Only the Minister of Municipal Affairs and Housing may file an appeal of OPA 557 and IZ By-law. The *Planning Act* does not otherwise permit appeals of official plan policies or parts of a by-law that give effect to inclusionary zoning policies.

The adoption and passing of the City's inclusionary zoning policies come after an engaged public consultation process, which included revisions in October of 2021 to drafts circulated earlier this summer, a virtual Open House held on October 21, 2021, and a Planning and Housing Committee Meeting held on October 28, 2021. At the statutory public meeting, 66 oral and 87 written submissions were considered. The City has also published draft [Inclusionary Zoning Implementation Guidelines](#) . All information and reports related to the City's inclusionary zoning (“ **IZ** ”) policy can be found on the City's website [here](#) .

Key Changes from the Draft OPA and IZ By-law

While OPA 557 and the IZ By-law remain largely the same in substance as the revised drafts published in October of 2021, there are a number of notable changes from the drafts previously published earlier this summer, as reviewed in our [June 25, 2021 bulletin](#) . The following is a highlight of the key changes (wherein reference to “ **development** ” below also includes “ **redevelopments** ”).

While the draft documents previously made reference to “strong” and “moderate” market areas, these concepts have been replaced with three “IZ Market Areas” which are depicted on Map 37 attached to OPA 557 (excerpted below), such that the policies will apply to development located both (i) in an IZ Market Area and (ii) in an approved Protected Major Transit Station Area (“ **PMTSA** ”).



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Requirements for affordable housing vary depending which IZ Market Area the subject development is located in, and these minimum requirements will now increase annually between 2025 and 2030 by set percentages. There is not, however, a minimum requirement for affordable housing in purpose-built rental developments, no matter which IZ Market Area the development is in, and, per the IZ By-law, “Rental Replacement Units” are excluded from gross floor area for residential uses and unit counts.

The final form of OPA 557 has been revised from the earlier draft to add a requirement for the owners of a development to enter into and register agreements on title, including for the ongoing administration, reporting and monitoring of affordable units. Council is to adopt a procedure for this administration and monitoring as outlined in implementation guidelines, which will also include regular reporting requirements.

Notably, OPA 557 sets out that the affordable housing requirements in Policy 3.2.1.13 will not apply until the later of **September 18, 2022 or approval of a PMTSA** by the Minister pursuant to the *Planning Act*. We also note that the application of the IZ By-law no longer refers to “development permit systems”.

The exceptions set out in both OPA 557 and IZ By-law were revised, including to make the thresholds that initially only applied to the Downtown Secondary Plan / Central Waterfront Secondary Plan applicable to **all developments**, such that the IZ By-law does not apply to development containing less than 100 new residential units and less than 8,000 m² of new residential gross floor area. In addition to the foregoing, at the discretion of the City and subject to conditions, some or all of the requirement to provide affordable housing may be provided offsite.

OPA 557 is now clear that financial incentives will not be provided by the City to meet the IZ By-law requirements, but may be considered where a development exceeds the requirements.

The definition of affordable housing had previously been based on market rents / prices, however, OPA 557 contains new definitions. The new definitions of *affordable rental housing and affordable rents and affordable ownership housing and affordable ownership prices* can be found at section 2 of OPA 557, which amends section 3.2.1 of the City's Official Plan. The new definitions do not apply to developments with complete applications filed by November 10, 2021 or development projects with an affordable housing component that have been approved in principle by Council or the Ontario Land Tribunal by November 10, 2021.

As expected, the transition provisions in the IZ By-law were specifically amended from the earlier draft (see section 600.30.15). Key to note about each transition provision is that they provide a grace period of until **September 18, 2022 or notice of approval of a PMTSA** and, importantly, are satisfied by the filing of such complete applications, not their passing or approval.

The following provides the amended transition provisions found in section 600.30.15.1 (1):

Nothing will prevent the use of a building or structure for which:

- A. Complete **applications for a zoning by-law amendment and site plan approval** were filed on or prior to the later of September 18, 2022 or notice of approval of a PMTSA; **gold**
- B. A **zoning by-law amendment** came into force prior to the passing of a Community Benefits Charge by-law and an agreement was executed in accordance with Section 37 of the Planning Act on or prior to the later of September 18, 2022 or notice of approval of a PMTSA; **gold**
- C. A complete **application for site plan approval** was filed on or prior to the later of September 18, 2022 or notice of approval of a PMTSA.

Similar transition provisions are provided in respect of **minor variance applications** in section 600.30.15.2 (1):

- A. A complete application for a minor variance under Section 45 of the *Planning Act* was filed on or prior to the later of September 18, 2022 or notice of approval of a PMTSA; **gold**
- B. A complete application for a minor variance under Section 45 of the *Planning Act* was filed after

September 18, 2022 or notice of approval of a PMTSA in respect of a building permit referred to in regulation 600.30.15.3 (1).

And with respect to **building permit applications** :

- A. an application for a building permit was filed on or prior to the later of September 18, 2022 or notice of approval of a PMTSA; **gold**
- B. an application for a building permit was filed after September 18, 2022 or notice of approval of a PMTSA, in respect of a zoning by-law amendment or site plan referred to in regulation 600.30.15.1 (1) or a minor variance referred to in regulation 600.30.15.2 (1).

The IZ By-law provides clarification of what constitutes a “complete zoning by-law amendment”, a “complete application for a minor variance”, an “application for a building permit”, and has now added a definition of a “complete application for site plan approval”.

Pursuant to the above transition provisions, it is clear that the known key date is September 18, 2022, with a possible further grace period where a PMTSA has not yet been approved within a particular IZ Market Area. Conversely, the IZ By-law will not apply to a development that is located in a PMTSA but is outside of an IZ Market Area.

Notwithstanding this transition period, it is well-known that achieving a complete application (s), let alone approval, can take many months. As such, it is wise for those contemplating development in an area identified as an IZ Market Area and PMTSA, or possible future location of a PMTSA, to seriously consider undertaking these processes as soon as possible in order to benefit from the above-outlined transition provisions.

Should you have any questions respecting inclusionary zoning and how your project may be impacted, please reach out to the authors of this bulletin.

by [Mary Flynn-Guglietti](#) and [Kailey Sutton](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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