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Can Inclusionary Zoning Help Address the Shortage of Affordable Housing in Toronto?

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Abstract

Inclusionary zoning is a tool to help create mixed-income communities, and it has been used in the United States as a method to increase the affordable housing stock. Since the early 1970s, a growing number of US jurisdictions have exercised their regulatory powers to compel private developers to produce a set percentage of affordable housing units in their new market housing developments. In this regard, inclusionary zoning appears to work in prosperous communities with high growth housing markets. But how affordable is the housing, and which income groups are targeted? How has inclusionary zoning worked in Canada? What is the economic feasibility of this policy tool? Case study research was conducted in an attempt to answer these questions and to document current inclusionary practices in Canada's three largest cities. This research report evaluates the effectiveness of inclusionary zoning as a policy tool to produce affordable housing.

Executive Summary

Inclusionary zoning has emerged in recent years in Toronto as a potential policy tool to help improve housing affordability. Its attractiveness to many proponents is its ability to leverage high growth housing markets and use the private sector to build affordable housing.

This research report examines the effectiveness of inclusionary zoning as a policy tool to produce more affordable housing in Toronto. Case study research was conducted in Vancouver and Montréal to document how inclusionary programs have been implemented within a Canadian context. Inclusionary practices in Toronto were also researched to test the assumption that very little new affordable housing has been generated through *Planning Act* section 37 agreements. (Section 37 enables Ontario municipalities to pass a zoning by-law authorizing increases in the height and/or density of a development in exchange for the provision of "facilities, services or matters.") Section 37 community benefit data and a brief survey of councillors show that assumption to be correct and demonstrate the need for a more effective system.

Findings in Vancouver detail how the end of federal funding in 1993 and the end of the Homes BC program in 2002 have severely compromised the success of Vancouver's 20 percent affordable housing policy. Senior government funding is a key element for the successful implementation of this inclusionary policy. If the funding is not available, then the units will not be built. The City of Vancouver has proven very adept at adapting the policy to cope with the withdrawal of the two key funding sources, but the depth of affordability that can be reached is limited as a result.

The success of Montréal's voluntary inclusionary housing program varies from borough to borough and is dependent on the local context. In the Sud-Ouest, the strategy has shifted from being a voluntary one on paper to being almost a requirement in practice. In other boroughs, the policy is not as aggressively pursued and promoted.

Studying the inclusionary programs in Montréal and Vancouver presented an opportunity to examine and compare a voluntary approach versus a mandatory one. A comparative analysis showed that the effectiveness of both programs greatly depends on the availability of senior government funding. Both cities have effectively employed planning tools to secure sites for affordable housing, but then must rely on federal and/or provincial financial support to develop the sites. Montréal has the added challenge of enticing developers to participate in the program.

In the end, could inclusionary zoning be an effective policy tool to create more affordable housing in Toronto? The evaluation criteria (given the data limitations in the field the term "evaluation" is used loosely here; this is not a formal policy evaluation study) are based on measurable outcomes, such as the number of units produced and the depth and length of affordability. Given data constraints, it is difficult to make concrete conclusions. However, input from housing experts and outcomes from the United States suggest that inclusionary zoning has the potential to create more affordable housing in Toronto provided that it is used to build affordable homeownership units for the shallow subsidy group; it is properly designed in consultation with all relevant stakeholders, especially the development community; affordability is rigorously controlled through price and occupancy restrictions that run with the land; and inclusionary zoning is part of a more comprehensive housing strategy. If all those elements are in place in a supportive political and collaborative environment, then the reality might match up with the promise.

Can Inclusionary Zoning Help Address the Shortage of Affordable Housing in Toronto?

1. Introduction

Housing is a complex, multi-dimensional issue, which makes developing effective housing policy challenging. It is embedded within larger institutions, such as capital markets, and can be conceptualized as a commodity, an asset, a sector of the economy, or, simply, a physical structure that offers shelter (Bourne, 1981). This complexity adds to the challenges involved with addressing the issue of housing affordability and might help explain why the affordable housing problem persists despite being a policy concern for decades in Canada's three largest cities, and why it continues to prove resistant to the policy responses that have been generated.

The provision of adequate affordable housing for low-income households requires substantial commitments, both politically and financially; however, federal and provincial resources have been constrained for some years. Nevertheless, in recent years, the two senior levels of government have re-established funding for affordable housing with the Canada-Ontario Affordable Housing Program and other initiatives. But given the unpredictable nature of sustained funding for housing programs, housing advocates are increasingly looking for alternative methods to build affordable housing.

Inclusionary zoning has emerged in recent years in Toronto as a potential policy tool to help improve housing affordability, and its attractiveness to many proponents is its ability to leverage high growth housing markets and harness private sector expertise and resources. The popularity of this inclusionary tool was recently exemplified in the Affordable Housing Action Plan by the City of Toronto (2009), which calls on the provincial government to "provide Toronto with new powers to implement an inclusionary housing program."

The lack of affordable housing in Toronto is a pressing issue as there are more than 52,257 households on social housing waiting lists and over 100,000 tenant households in the City who pay more than 50 percent of their income on rent (ONPHA 2009a; ONPHA, 2009b). Additionally, the housing market within the central city is mostly inaccessible to low-income households (Hulchanski, 2007), and the promise of inclusionary programs to create equal housing opportunities for all income groups in every neighbourhood carries a powerful appeal (it should be noted that the aim in the United States is toward workforce housing and not "core housing need"). But do inclusionary policies realize their promise in reality? Inclusionary opponents would answer that question in the negative. Their argument is that inclusionary practices help to discourage housing production and increase housing prices, resulting in decreased housing affordability.

Therefore, it is important to conduct research that properly evaluates the intended and unintended outcomes of inclusionary programs and their ability to produce affordable housing. This research comes at a time when the Ontario government is nearing completion (target December 2009) of its community consultations on a long-term affordable housing strategy and has mentioned inclusionary zoning as a possibility in its consultation paper.

1.1 What Is Inclusionary Zoning?

It is difficult to properly define inclusionary zoning as it is defined both broadly and narrowly in the literature, with some authors using the terms "inclusionary zoning" and "inclusionary housing" interchangeably (Schwartz, 2006; Kautz, 2002). Other authors argue that, while the two concepts are related, their meanings are very different (Mallach, 1984).

Inclusionary housing encompasses various housing strategies that seek to produce affordable housing, but "may include case-by-case negotiated agreements and other 'informal' understandings promoted through policy determinations rather than adopted ordinances" (Porter, 2004b). Inclusionary zoning is a form of inclusionary housing that refers to a zoning regulation or land use ordinance that requires developers of projects of a certain size to produce a set amount of affordable housing in their market-rate residential developments as a condition of development approval (Porter, 2008; Mallach, 1984). These inclusionary zoning programs can be either mandatory or voluntary. Generally, the mandated approach features density bonuses or other cost offsets to help developers defray the costs of providing affordable housing units (Schwartz, 2006; Gladki and Pomeroy, 2007). The voluntary approach attempts to entice developers to participate in the program by offering certain incentives.

The above definitions reflect the standard explanations that are cited in the literature; however, the policy mechanism is far more nebulous and difficult to grasp due to its broad and varying nature across jurisdictions (PL1[1]). As well, in regard to nomenclature, the term "zoning" is a bit misleading because zoning is not even the mechanism that achieves income mix and affordability in some cases (PL1). It could be a local law, statute, or mayor's executive order that imposes an inclusionary measure and not a zoning ordinance. In many ways, "inclusionary housing" might be a better term, as it's a broader administrative program that involves multiple processes, which also include a land use planning component (PL1). This reflects the trend in inclusionary literature and in housing advocacy circles to use "inclusionary housing" rather than "inclusionary zoning."

In this study, the inclusionary policy tool will be seen generically as a mechanism to build affordable housing through the development process. In this paper, the term "inclusionary zoning" will continue to be used, though it will be used interchangeably with "inclusionary housing" and "inclusionary policies."

1.2 Measuring and Defining Housing Affordability

There is no general agreement in the housing literature about the method by which housing affordability should be defined (Hancock, 1993), though the traditional practice has been to use the ratio of housing costs to income to determine and measure affordability. Under this measure, households spending more than 30 percent of their gross income on housing are considered to have affordability concerns (Luffman, 2006). The use of the housing expenditure-to-income ratio has come under attack by housing researchers like J. David Hulchanski (1995), who question the oversimplifications, generalizations, and arbitrariness of the 30 percent "rule of thumb." The method in which the ratio measures income and ignores factors such as household size and

[1] This is a reference to a key informant interview. The interview reference codes are explained in section 2.5.

relative prices of other expenditures may not truly reflect a household's ability to pay the rent or mortgage (Hulchanski, 2005). Having an arbitrary ratio standard assumes that all households choose and consume housing in the same way. But some households may opt to spend more of their income on decent housing, while others may choose to consume less, and some may have no other alternative but to devote a larger portion to shelter costs (Luffman, 2006).

To address that issue of overconsumption or underconsumption, the Canada Mortgage and Housing Corporation (CMHC) uses a core housing need measure that rules out households who could afford the median rent in the same area (Luffman, 2006). The measure also takes into account the adequacy of housing conditions and the suitability of the size of housing to accommodate households, in addition to the 30 percent rent-to-income affordability measure (CMHC, 2008a). By considering all these factors, the core housing need measure seems to be a better indicator of households who are truly experiencing housing affordability issues. This measure will be referenced throughout the research report, and "core need households" or "households in core need" will be used to refer to this measure. (It bears repeating again that inclusionary zoning is not aimed specifically at core housing need; only that this is a standard Canadian measure of housing need that helps to frame the present discussion.)

In addition to the core need measure, this study will also define housing affordability using the "affordable" definition from section 6 of the 2005 Ontario Provincial Policy Statement (PPS):

Affordable means

a) in the case of ownership housing, the least expensive of:

1. housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income for *low and moderate income households*[2]; or
2. housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the *regional market area*;

b) in the case of rental housing, the least expensive of:

1. a unit for which the rent does not exceed 30 percent of gross annual household income for *low and moderate income households*; or
2. a unit for which the rent is at or below the average market rent of a unit in the *regional market area*.

Social housing will be defined in this study as "housing managed by a public agency, private non-profit organization or co-operative that provides subsidized rental accommodation for low- and moderate-income households (City of Toronto, 2006a)."

[2] Section 6 in the 2005 PPS goes on to define low- and moderate-income households in the following manner:

1. in the case of ownership housing, households with incomes in the lowest 60 percent of the income distribution for the regional market area; or
2. in the case of rental housing, households with incomes in the lowest 60 percent of the income distribution for renter households for the regional market area.

1.3 Setting the Context: Toronto, Ontario

1.3.1 A Snapshot of Toronto's Housing Affordability Landscape

To provide some context for the study, a brief snapshot of the current housing affordability landscape in Toronto and its historical background will be presented.

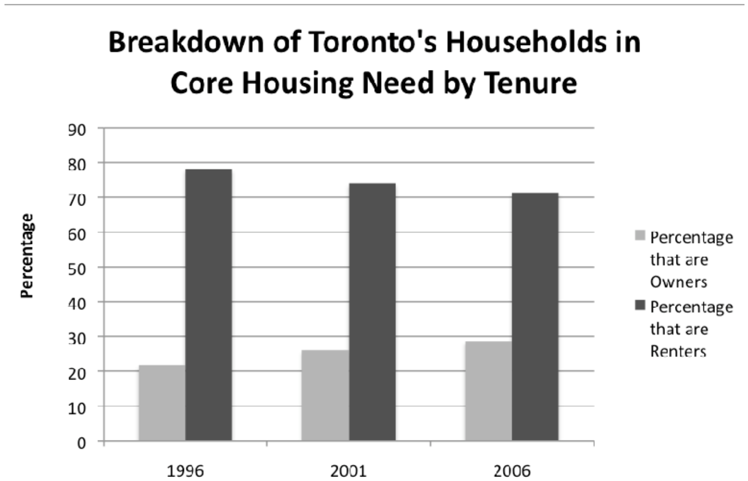
Table 1. Affordability Picture in Toronto

		Percentage of Total Households in Core Housing Need			Breakdown of Households in Core Housing Need				
Year	Total Toronto Households	Total	Owners	Renters	Total	Percent that Are Owners	Owners	Percent that Are Renters	Renters
2006	911,415	23.7	12.2	38.2	216,070	28.64	61,875	71.36	154,190
2001	883,315	23.9	11.9	37.1	210,910	26.06	54,955	73.94	155,955
1996	841,295	23.8	10.6	36.7	200,480	21.79	43,690	78.21	156,795

Source: CMHC (census-based housing indicators and data).

For over three decades, Toronto's tenure situation was evenly split between renters and owners (City of Toronto, 2006b). But in 2001, the split went to 51 percent in favour of owners, and, in 2006, the scale continued to tip in favour of owner households, with 54 percent of Toronto's households made up of owners (City of Toronto, 2006b; Statistics Canada, 2006). The data in Figure 1 and Table 1 show that, from 1996 to 2006, the number of owner households who were in core housing need also grew, though renters continued to make up over 70 percent of core need households in 2006.

Figure 1. Core Housing Need by Tenure



Source: CMHC (census-based housing indicators and data).

In a city with such a large presence of renters, it is also distressing to note a growing income gap between tenants and owners. The median income for renters was less than half that of homeowners in 2005 – $32,700 compared with $68,300 (Toronto Community Foundation, 2008). Given the fact that median incomes in Toronto decreased by 11.7 percent over the past 15 years and average rents more than doubled, it is not surprising that over 100,000 tenant households in Toronto paid 50 percent or more of their income on rent in 2005 (Toronto Community Foundation, 2008; ONPHA, 2009b).

Adding to the dismal housing affordability picture for tenants is the fact that the rental housing sector has not added many new units to the stock since the 1990s, even while housing starts have been at high levels in recent years. In fact, there were only 2,962 rental housing starts in Ontario in 2007, "representing fewer than 5% of the 62,775 housing units started that year" (ONPHA, 2009b). The vacancy rate in 2008 for Toronto Central was 1.5 percent (CMHC, 2008d).

1.3.2 Historical Background to the Affordable Housing Problem

Serious federal and provincial government retrenchment in the 1980s and 1990s helped contribute to the decrease in public and private rental housing production. Most affordable rental housing built in Canada has been constructed with government subsidies, and the reduced spending severely affected the new supply of affordable rental housing and social housing.

In 1993, the federal government stopped funding new social housing development altogether, and devolved responsibility for social housing onto the provinces without the concomitant subsidies (Hackworth, 2008). Ontario then downloaded responsibility for housing to the municipalities without corresponding funds. Consequently, almost no new non-profit housing was built in Ontario from 1996 to 2000. Then in 2000, the federal government started funding the Supporting Community Partnerships Initiative (SCPI), which was created under the National Homelessness Initiative. SCPI is the predecessor to the current Homelessness Partnership Initiative (HPI) that funds the building of transitional housing for the homeless population. In 2001, the federal government fully re-entered the housing arena and announced funding for the Affordable Housing Program. An agreement was signed with Ontario in 2002, in which the province would match federal funds for the program.

Given the history of government funding for affordable housing production, some advocates are now looking to alternative solutions in order to create new supply instead of relying on government programs whose funding support might be transient (C1; IZE1). "Seems that some people still cling to the old paradigm that public housing will be built through public funds, but in the last 10 years or so, we're still waiting for the funds" (C1). Inclusionary housing might be an alternative way to build new affordable housing in a climate of limited public funding.

1.3.3 Current Inclusionary Practices: Section 37 and the Large Sites Policy

Inclusionary practices in Toronto employ an incentive-based approach. This approach uses density bonusing – authorized through section 37 of the Ontario *Planning Act* (see Section 37 sidebar) – to encourage affordable housing development. There appears to be no formal inclusionary program except for the large sites policy set out in Toronto's Official Plan (section 3.2.1) (City of Toronto, 2007a). The research intent in the case of Toronto was to investigate how effective section 37 has been in generating affordable housing and to test the assumption that section 37 agreements have yielded very little new affordable housing.

Section 37 enables municipalities, with related Official Plan provisions in place, to pass a zoning by-law authorizing increases in the height and/or density of a development in exchange for the provision of "facilities, services or matters" also known collectively as community benefits. The section 37 agreements run with the land and are binding on subsequent owners. Community benefits must be specified in the by-law and can include additional parkland, public art, community centres, childcare facilities, streetscape improvements, or new affordable rental housing (City of Toronto, 2007a: section 5.1.1; City of Toronto, 2007b). Community benefits should be specific capital facilities or cash contributions that go toward capital facilities. Additionally, if the City and developers consent, cash contributions could also go into special funds, such as the Capital Revolving Fund for Affordable Housing, which would go toward building capital facilities in the larger community. However, ideally, community benefits should be located either on-site or in the surrounding local area (City of Toronto, 2007b).

Section 37 – *Planning Act*

(1) The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.

Condition
(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

Agreements
(3) Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.

Registration of agreement
(4) Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the Registry Act and the Land Titles Act, any and all subsequent owners of the land (R.S.O. 1990, c. P.13, s.37).

History

Section 37 of the *Planning Act* was enacted in 1983, but was initially known as section 36 and then shifted to section 37 when the legislation was revised in 1989 (Drdla, 1999). In its early years, section 36 was used in a commercial bonusing program as a mechanism to secure funds to build non-profit housing in exchange for increases in height and/or density in high-rise commercial developments in Toronto's downtown (Drdla, 1999; LEG1).

The program proved fairly successful at securing land for non-profit development and at obtaining money for the City's Social Housing Reserve Fund, which was used to build non-profit housing.

> Development agreements were negotiated for 21 downtown commercial projects mainly between 1982 and 1988. The single exception was one project approved in 1991. Through this process, increased density was used to obtain sites capable of accommodating approximately 2,000 non-profit units, cash-in-lieu of nearly $19 million and 49 units conveyed at prices within the government cost ceilings for non-profit housing (Drdla, 1999: 67).

However, the program was short-lived as large-scale commercial development activity came to an end during the economic recession in the late 1980s. There was also public backlash against density bonusing, which was seen as undermining community-approved planning policies and guidelines.

Legal Issues

The legislation deliberately does not list what the "facilities, services or matters" should entail so that each local municipality could have latitude in adapting the section to fit its own local context and needs (PL1). However, this lack of specificity has also brought up the issue of whether section 37 benefits must be related to the proposed development (Devine, 2008). "There are arguments that agreements under section 37 for facilities, services or matters really should relate to the development of that site. That's the purpose of that provision" (LEG1). A number of Ontario Municipal Board (OMB) decisions also appear to support that nexus requirement, and it "seems clear that a 'real and demonstrable connection' is required" (Devine, 2008). Therefore, any request for affordable housing contributions in the form of cash or the provision of units should relate to the development, which might be a difficult connection to make unless the site already had some affordable housing (LEG1).

In the case of the earlier section 36 agreements, the City conducted a study that showed that increases in commercial development caused an increase in housing costs, which resulted in a need for affordable housing. So, in this way, the affordable housing requirement was linked to the development (LEG1). This nexus principle upheld by the OMB appears to have influenced the City's Official Plan (Devine, 2008) as Policy 1 in section 5.1.1 states: "The capital facilities must bear a reasonable planning relationship to the increase in the height and/or density of a proposed development including, at a minimum, having an appropriate geographic relationship to the development and addressing planning issues associated with the development."

Large Sites Policy

The large sites policy (see section 3.2.1 sidebar) is a form of inclusionary housing program that applies to large residential developments on sites greater than five hectares. In cases where an increase in height and/or density is being sought, "the first priority community benefit will be the provision of 20 percent of the additional residential units as affordable housing," which may be built on-site, or the developer may give land to the City for the purposes of affordable housing development. With consent from the City, the developer may also pay cash in lieu of constructing the units or may build the units off-site or convey another piece of land near the proposed development for affordable housing purposes. The large sites policy appears to have been

Section 3.2.1 – Toronto's Official Plan

Policy 9:

Large residential developments provide an opportunity to achieve a mix of housing in terms of types and affordability. On large sites, generally greater than 5 hectares in size:

a) a minimum of 30 percent of the new housing units will be in forms other than single-detached and semi-detached houses, such as row housing, triplexes and multi-unit residential buildings; and

b) in accordance with and subject to Section 5.1.1 of this Plan where an increase in height and/or density is sought, the first priority community benefit will be the provision of 20 percent of the additional residential units as affordable housing. This affordable housing contribution may take the form of affordable housing constructed on-site or the conveyance of land in the development to the City for the purpose of affordable housing, or, at the discretion of the City:

> i) with the agreement of the developer, affordable housing units constructed near the development site or elsewhere in the City;
>
> ii) the conveyance of land to the City for the purpose of affordable housing near the proposed development site; or
>
> iii) cash in lieu for the purpose of constructing affordable housing in or near the proposed development site.

implemented with regard to the East Bayfront-West Precinct, a mixed-use development in Toronto's Central Waterfront area. In zoning by-law no. 1049-2006, the section 37 agreement secures "the provision of not less than 20% of the total number of *dwelling units* as new *affordable rental housing."*

It should be noted that section b of the large sites policy was appealed to the OMB, and the City made modifications that "[clarify] the circumstances where the policy will be applied, [provide] alternatives to having the developer construct the affordable units on-site, and [give] the City choice in how to achieve the affordable housing that may fit a particular financial and locational situation" (City of Toronto, 2007c).

1.3.4 Planning and Legislative Framework

Municipalities are granted the power to pass zoning by-laws under section 34 of the *Planning Act*, which directly regulates the use of land. But future by-laws must be consistent with Provincial Policy Statements (PPS) and must conform with provincial plans (*Planning Act*, R.S.O. 1990, c. P.13, s. 3(5)). The 1989 PPS called for a 25 percent target of affordable housing in new developments (Gladki and Pomeroy, 2007). However, the most recent PPS, issued in 2005, makes no mention of specific targets in its general direction to municipalities to establish and implement minimum "targets for the provision of housing which is *affordable* to *low and moderate income households"* (Ontario, 2005: section 1.4.3). In addition, under section 3.2.6 of the Growth Plan for the Greater Golden Horseshoe (Ontario, 2006), municipalities are directed to develop a housing strategy that will "meet the needs of all residents, including the need for affordable housing – both homeownership and rental housing."

The legislative framework governing the planning system would seem conducive to the establishment of inclusionary housing policies, especially with section 37 of the *Planning Act* permitting density increases in exchange for "the provision of such facilities, services or matters as are set out in the by-law" (*Planning Act*, R.S.O. 1990, c. P.13, s. 37(1)).

Ontario Municipal Board (OMB)

Other provinces have provincial planning boards that hear appeals of municipal planning decisions, but their jurisdiction over planning matters is not as extensive as the OMB (Makuch, Craik, and Leisk, 2004). When there is a legal challenge before the OMB, it acts to limit the authority of municipalities as the Board makes final determinations concerning local planning decisions. Ontario has more of a litigious environment than other provinces, and municipalities are reluctant to test the boundaries of their planning powers by implementing inclusionary requirements that would then be appealed to the OMB by developers (LE1; HA2). The threat of potential legal challenges has prompted municipalities to call on the province to give them explicit authority to carry out inclusionary housing programs.

1.3.5 Analysis and Findings

Section 37 agreements are negotiated with developers on an ad hoc basis, and the types of community benefits that are extracted largely depend on the priorities of the local councillor in each ward. Efforts to include the provision of affordable housing in the form of cash contributions or physical units vary from ward to ward. As one staff member in a councillor's office put it, "If the councillor doesn't push for affordable housing as a community benefit, it doesn't happen" (C1).

Section 37 community benefit data and a brief survey of councillors show that the City's voluntary, incentive-based programs are not effective tools at generating affordable housing. The section 37 agreement process is ad hoc and fragmented. Affordable housing is just one of the community benefits that could be negotiated with developers, and the decision to include affordable housing in section 37 agreements is left up to each individual councillor. "Here's the problem: each councillor has his own priorities. What you find is that a lot of section 37 benefits go into parks, because parks are not appropriately funded, so councillors try to use section 37 when they can" (C2).

Politically speaking, it is more advantageous for a councillor to try to push for a community facility that benefits the entire community rather than negotiate for a few affordable housing units that benefit only a small number of households. In fact, under the section 37 protocol guidelines, affordable homeownership is forbidden because it is seen as something that only benefits the homeowner and not the community as a whole (C1). There is no concerted effort city-wide to make affordable housing the first priority community benefit, and wards that do advocate for affordable housing meet resistance from City Planning staff (C1).

The section 37 data obtained from the City shows that the amount of community benefits secured for affordable housing is only a small percentage of the total number of section 37 agreements. Of the total 413[3] section 37 agreements since 1983, 18.9 percent have involved affordable housing in some form or another – replacement units, size restrictions, contributions to the Capital Revolving Fund (CRF) for Affordable Housing, or social housing capital improvements, etc. Upon closer scrutiny, if you excluded those agreements that dealt with replacement units and size restrictions, that percentage would be much lower. There were very few situations in which new affordable homeownership units were actually created through section 37, but those did not include any resale controls. Section 37 has also generated very few affordable rental units in the 26 years since it was first introduced, though 20 percent of the total number of units in East Bayfront-West Precinct has been secured as affordable rental housing, presumably through the large sites policy.

The data also corroborate the findings from the qualitative interviews, as only four of the 44 wards have been active in securing affordable housing as a community benefit. A ward was considered active if it contained five or more agreements that involved affordable housing in some way.

[3] Estimated number given by a City of Toronto staff member.

1.4 The Potential of Inclusionary Zoning

A review of inclusionary literature shows that the number of affordable housing units that are produced through the inclusionary mechanism varies from program to program (from 11,000 units in Montgomery County, Maryland, to 1,655 in Fairfax County, Virginia). Therefore, any discussion about the amount of housing that could be created greatly depends on the strength of inclusionary requirements, the frequency in which the in-lieu option is exercised, and the actual set-aside percentages. It also bears noting that while some jurisdictions report only units delivered under inclusionary zoning/housing programming, others may report these along with numbers delivered under additional affordable housing programs. That said, we could get a general sense of how many affordable housing units might be created in Toronto by performing a crude analysis using 2007 and 2008 dwelling completions data from CMHC.

Based upon a high and low scenario, the number of inclusionary units that could be generated in Toronto range from **556 to 1,840** depending on the set-aside requirements (see Table 2). These numbers were calculated based upon the dwelling completions for row housing and apartments, as these housing forms are assumed to be more affordable than single-detached and semi-detached housing in Toronto (see Table 3).

Table 2. The Potential Number of Affordable Units in Toronto

	Number of units based on high amount of completions*	Number of units based on low amount of completions**
10% set aside	1,226	556
15% set aside	1,840	834

* The high number is based on actual 2008 Toronto completions data.
** The low number is based on actual 2007 Toronto completions data (see Table 3).

Table 3. Toronto Completions by Dwelling Type (2007 and 2008)

	Single	Semi	Row	Apt. and Other	Total
Completions – 2008	1,008	178	944	11,320	13,450
Completions – 2007	1,085	142	552	5,007	6,786
Potential annual number of affordable units at 10 percent using 2008 completions			94.4	1132	1,226
Potential annual number of affordable units at 15 percent using 2008 completions			142	1,698	1,840
Potential annual number of affordable units at 10 percent using 2007 completions			55	501	556
Potential annual number of affordable units at 15 percent using 2007 completions			83	751	834

Source: CMHC, *Housing Now – Greater Toronto Area* – Date Released: January 2009.

2. Methodology

2.1 Research Objectives

The purpose of this research report is to evaluate the effectiveness of inclusionary zoning to produce affordable housing for low- and moderate-income households. To achieve this goal, the report reviewed how inclusionary practices have operated in Canada and the United States, with a particular focus on the Canadian context through the use of a case study method. A secondary research objective was to document current inclusionary practices in Canada's three largest cities – Vancouver, Toronto, and Montréal. The study also briefly explored how the development community in Toronto would receive this policy tool, and whether the existing planning and legislative framework is permissive for the implementation of an inclusionary housing program.

To pursue the research purpose, evaluation research was undertaken that focused on:

- examining and comparing measurable outcomes using the evaluation criteria (shown in Table 13);
- assessing unintended and intended policy outcomes, such as potential negative economic impacts; and
- evaluating whether policy goals and objectives were met.

Given the four-month time frame allotted for this research study, the ability to conduct an exhaustive evaluation of the policy option was limited. Therefore, the goal was to create a general picture of inclusionary practices by detailing the necessary components and then narrowing the research down by focusing on two case studies to see how it has worked in a Canadian context.

2.2 Research Questions

1. Could inclusionary zoning be an effective policy tool to create more affordable housing in Toronto? How affordable could the housing be? Which income groups would benefit?
2. What are the economic impacts of inclusionary zoning? Who bears the costs? How receptive are developers to inclusionary zoning?
3. What are current inclusionary practices in Vancouver, Toronto, and Montréal? How many and what type of affordable units have been generated through these programs?

2.3 General Approach and Case Studies

To answer the research questions, a qualitative approach was employed and used the following methods: a literature review, key informant interviews, and case study research of inclusionary programs in Vancouver and Montréal.

The literature review focused on the following themes: strengths and weaknesses of inclusionary zoning, inclusionary components and models, current inclusionary practices in Canada, and the economic impacts of inclusionary zoning. Semi-structured interviews were conducted with 19 key informants: planners, inclusionary zoning experts, legal experts, land economists, developers, and housing advocates. The exact breakdown is shown in section 2.5.

Case study research was done on the inclusionary housing programs in Vancouver and Montréal. Vancouver's mandatory approach was compared with Montréal's voluntary policy in order to evaluate how effective both approaches have been (see section 6.1). In addition to key informant interviews, the research in Vancouver also involved an extensive review of council reports that documented how the 20 percent affordable housing policy adapted to the changes in the funding stream. The research in Montréal mostly relied on key informant interviews and a couple of follow-up interviews with the main contact, though a review of relevant planning and legislative documents was also done. It should be noted that the Vancouver and Montréal sections were sent to the respective primary contacts for review and data clarification. Toronto is the focus area for the research, but some case study research was also conducted to test the assumption that current inclusionary practices in Toronto are fragmented and relatively ineffective.

The three largest cities in Canada were chosen due to similar geographic scales, development appeal, and housing affordability issues, so that any lessons derived from one city could be potentially applicable to the other two, and, in particular, for Toronto. Additional descriptive statistics, such as housing starts, core housing need data, and other housing-related data, were also gathered and analyzed to complement the qualitative research.

2.4 Research Limitations and Assumptions

Inclusionary housing is a multi-faceted, extremely complex research topic that has generated hundreds of journal articles, books, government reports, and studies. Considering the time constraints of this study, an exhaustive literature review and policy evaluation of all inclusionary models was not feasible. Further, the design and construction of a manageable research plan of action that would properly answer the research question was challenging. Ideally, an economic feasibility analysis of different models of inclusionary zoning for different levels of affordability would be performed, but this analysis could be the subject of a research study on its own. It is hoped that a literature review on the economics of inclusionary zoning will be sufficient to address the economic feasibility question.

Additionally, inclusionary zoning is usually embedded within larger affordable housing programs (Porter, 2004b), so it may be challenging to accurately determine how many units were generated through this tool alone. Further, it would be difficult to properly evaluate the effectiveness of inclusionary zoning since it would also require a comparison with what would have been built in the absence of an inclusionary program (Been et al., 2007).

As well, choosing Montréal as a case study created its own limitations in the form of language barriers. A number of relevant reports and papers were only available in French and some key informants knew English as a second language, which has the potential of creating misinterpretations. The legal strike by City of Toronto workers, which started on June 22, 2009, also created some constraints during the data gathering stage. As a result, a major limitation has been the lack of details on the large sites policy and the potential inclusionary housing program Toronto would like to implement.

2.5 Key Informant Interviews

Nineteen key informant interviews were conducted with:

- 2 land economists (LE)
- 4 planners (PL)
- 4 housing advocates (HA)
- 4 development community (DC)
- 2 inclusionary zoning experts (IZE)
- 1 legal expert (LEG)
- 2 Toronto councillors or councillor's staff (C)

Quotations from informants are cited using the initials of the professional designation plus a number, such as PL1.

3. The Basics of Inclusionary Zoning

3.1 Brief History

The concept of inclusionary zoning began in the 1960s and 70s in the United States as a reaction against exclusionary zoning and reduced federal housing subsidies amid an environment of declining housing affordability and need for workforce housing (Mallach, 1984; Porter, 2004b; Kautz, 2002; Drdla, 1999). Historically, zoning developed as a way to separate incompatible land uses and then was used in many suburban communities as a banal exclusionary tool against certain socio-economic and racial groups. The minimum lot sizes and restrictions on certain types of housing forms, such as multi-family housing, worked to keep those at the lower end of the income spectrum from gaining entry into America's suburbs. The first initial inclusionary laws that were adopted arose from the need to force open the doors to suburbia and increase the production of affordable housing (Porter, 2004b). Other factors also contributed to the development of early inclusionary programs: "the rise of the environmental movement that spurred growth management programs; the use of exactions to make development pay for the costs of growth; and sharp housing cost increases" (Calavita and Mallach, 2009).

Fairfax County, Virginia, has the distinction of being the first jurisdiction in the United States to adopt an inclusionary zoning ordinance in 1971, only to have it nullified by the Supreme Court of Virginia in 1973. The court ruled that the "ordinance's attempt to 'control compensation' for property not only exceeded the authority granted by the zoning enabling act but also constituted a taking of property" (Kautz, 2002). This court ruling was not repeated in other jurisdictions, though it did spur the creation of a design template for future programs, which included compensations to developers in the form of cost offsets to preclude the "takings" challenge (Gladki and Pomeroy, 2007). In 1973, Montgomery County, Maryland, established its Moderately Priced Dwelling Unit (MPDU) program, which is often cited in the literature as being one of the most successful inclusionary models in the United States.

Massive cuts to federal housing programs in the 1980s forced "states and localities to take a more pro-active role in the affordable housing arena," and inclusionary housing became an important tool in this respect (Calavita and Mallach, 2009). A national count of inclusionary programs has never been done, but estimates range from 350 to 400, with most programs located in New Jersey, Massachusetts, and California due to state-legislated and court-imposed mandates (Porter, 2004a; Kautz, 2002).

The practice has only come to large US cities relatively late, as the earlier programs were used as tools to create mixed-income communities in the suburbs. Starting in the late 1980s, urban centres, such as Denver, Boston, Chicago, and New York, began to adopt inclusionary policies. Urban issues obviously differ from suburban ones, and challenges include the higher development costs in prime downtown locations and the potential displacement of lower-income residents.

3.2 Components of Inclusionary Practices

Inclusionary programs vary from jurisdiction to jurisdiction in the United States and Canada in terms of scope and specific requirements, as each municipality tailors the design of the program to reflect local housing conditions and affordable housing needs (Rusk, 2006). The key elements of any inclusionary program are outlined below.

3.2.1 How the Mechanism Is Triggered (Threshold Size and Type of Development)

Inclusionary policies and regulations are generally applied to new residential development projects – typically both ownership and rental – of a particular size and type. Some policies could apply only to multi-family developments or could also include the rehabilitation of existing buildings. The inclusionary mechanism could be triggered by a rezoning application or development in a specific zoning district. Threshold size or minimum project size that would force the requirement typically varies from 10 units to over 200 units, though in some US jurisdictions, such as Boulder, Colorado, the program applies to all residential developments (Porter, 2004b).

3.2.2 Set-Aside Requirements and Allocation Process

Set-aside requirements refer to the percentage of units a developer is required to set aside in his development as affordable housing. A large majority of US communities with inclusionary programs typically require 10 to 15 percent of total units in an affected development to be affordable (Rusk, 2006). In Canada, the set-aside percentage is typically higher. For example, Vancouver's inclusionary program requires that the capacity for 20 percent of units in a major residential project be set aside for the building of social housing. Determining the "set-aside" percentage is a key decision since it impacts on the economics of the tool and ultimately affects the number of affordable housing units that will be generated (Anderson, 2003). The "set-aside" amount will determine the type and strength of incentives that will be used as cost offsets and will influence the amount of in-lieu payments. Another key issue affecting the economics of inclusionary developments is the income level of the targeted households.

Each municipality chooses its own target population to benefit from the inclusionary program. US inclusionary programs target low- and moderate-income groups based on the area median income (AMI). In New Jersey moderate-income households are defined as being in the 50 to 80 percent AMI range, and in California the moderate group is between 80 percent and 120 percent AMI (Calavita, Grimes, and Mallach, 1997). Low-income groups are generally recognized as being below 50 percent AMI (Rusk, 2006). Many inclusionary programs also divide the affordable housing units into portions that are assigned to different income levels. For example, half of the affordable units in Boston have to be geared for households making less than 80 percent AMI, with the rest targeted to those in the 80 to 120 percent category. In Canada, municipalities generally do not use the AMI measure when determining eligibility for housing programs. In Vancouver, the Core Need Income Threshold is used, and income percentiles are used in Ontario for certain housing programs.

The selection process is based on the targeted income levels of eligibility and on other criteria such as household size and residency or employment in the community. In most programs, the actual selection occurs through either a waiting list or a lottery system.

3.2.3 Length of Affordability and Affordability Controls

Most programs control the duration of affordability of the inclusionary units in order to preserve affordability. The "control period" generally ranges from 10 to 30 years, with some programs requiring the units to remain affordable for 99 years or in perpetuity (Porter, 2004b). Affordability controls on rental buildings generally last longer than those of ownership units. Short control periods can result in a considerable loss of affordable housing units and undermine the goal of preserving long-term affordability.

Resale restrictions on ownership units can come in the form of housing agreements or covenants that are registered on title, which include provisions for setting resale prices and the municipality's right of first refusal to purchase the unit. The formula for setting resale prices greatly varies from program to program and might be based on the consumer price index and renovation costs. Agreements also generally require that windfalls in resale prices be shared between the owner and the municipality.

> In all cases, the municipalities attempt to find a balance between giving the homeowner a reasonable equity stake in the property and keeping the unit affordable for subsequent owners. Providing a reasonable equity stake is considered necessary to encourage purchase in the first place, ensure the property is well maintained and enable homeowners to move up in the market if they want (Drdla, 1999).

3.2.4 Developer Incentives

Cost offsets in the form of compensatory incentives are encouraged in the design of US inclusionary programs to avoid legal challenges based on the “takings” issue (Kautz, 2002; Porter, 2004b). The use of density bonuses is the most popular incentive commonly employed in US programs. Toronto has also made use of section 37 of the *Planning Act* – which provides for increases in height and density – in order to extract affordable housing contributions. Aside from density bonuses, jurisdictions could also use the following incentives:

- fast track approval process
- reduced parking requirements
- flexible design standards
- waiver or reduction of permit and/or impact fees
- subsidies such as tax increment financing (TIF)

These incentives can work to either offset part or all of the inclusionary requirement and, in some cases, can result in a profit for developers (Gladki and Pomeroy, 2007), although there are public costs involved with density bonuses, which are discussed in section 4.1 below.

3.2.5 Off-Site Construction and In-Lieu Payments

Most inclusionary programs offer alternatives to providing the inclusionary requirements and allow developers to make in-lieu payments or construct the affordable housing off-site. This kind of flexibility is usually granted only in specific circumstances. Some projects may not be suitable for inclusionary units due to their inaccessible location and lack of transit services or due to issues with economic feasibility (Porter, 2004b). But most municipalities attempt to limit these options because the main objective of inclusion is not met in the case of off-site construction, and the in-lieu payment provision may not achieve the goal of building new affordable units. In the case of Vancouver, the City included the in-lieu option when the federal government cut funding for social housing in the mid-1990s.

Developers would prefer to pay cash in lieu because they’re worried about the uncertainty around the marketing of mixed-income projects (LEG1; Mallach, 1984; Porter, 2004b). The Vancouver experience has reinforced that view, as developers prefer the in-lieu option because cash payments preclude any chances that costs will escalate as the project progresses, so that option is less risky and more desirable. “What developers hate is risk and uncertainty” (PL2).

In-lieu fees generally go into affordable housing trust funds and are used for rental subsidy programs, new affordable housing construction, special needs housing, and social housing rehabilitation (Calavita, Grimes and Mallach, 1997).

3.2.6 Administration and Monitoring

At the heart of any successful inclusionary program is proper administration and oversight. Without an efficient and adequately funded administrative system in place, the affordable housing units that are generated through the inclusionary mechanism might be lost through illegal sales, foreclosures, or the inability of overworked staff to manage resales.

Vancouver and Montréal have different types of inclusionary programs than the norm in the United States. Their main task revolves around the production of the new affordable units. In Vancouver, there are minimal administrative requirements as the management of the social housing units is passed on to the non-profit sponsors, but “once the rezoning is in place, it requires some administration to ensure the development planners at the next stage who will be issuing development and building permits are following up. It’s all part of the existing regulatory structure. It’s just a matter of building some practices to ensure it’s carried forward through the process” (PL2; it should be noted that the planning process in Vancouver/BC is very different to that in Ontario. In the latter in particular, it should not be understood that planners issue building permits which are a function of the *Building Code Act* and issued by building officials).

A PolicyLink 2007 report conducted research on the staffing requirements of US inclusionary programs and found that “a surprising number of programs have been developed without adequate thought to the ongoing cost of administration” (Jacobus, 2007). Funding administrative costs is a major challenge, especially as the program grows and the staffing requirements grow with it as the number of units that require monitoring increases.

A few key administrative tasks of any inclusionary program are highlighted in Table 4.

Table 4. Some Common Administrative Requirements of Inclusionary Programs[4]

A Few Key Administrative Tasks	Description
Production	During the development phase, attention should be paid to the design, integration, and timing of the construction of inclusionary units. Program administrators should ensure that interior and exterior standards are met. Vancouver's program has high design standards requiring that social housing projects are well integrated with their surroundings and virtually indistinguishable from the high-end market housing (PL2). In the United States, a "common practice is to require developers to create an affordable housing plan that details how affordable units will be integrated into a project and how they will be controlled over time."
Pricing	Programs need to provide developers with clear guidelines on how to determine the affordable rents and purchase prices. To ensure consistent and affordable pricing, a schedule of affordable rents and prices should be prepared. For resale pricing of homeownership units, a resale formula should be established. Most programs give homeowners some credit for home improvements, but there is usually a cap on how much an owner can improve a unit, which would require additional administrative oversight.
Marketing	Once the inclusionary units are built, a marketing plan is important to ensure that all eligible households have fair access to these units. The marketing of affordable rental units usually is done by the property management companies. Marketing affordable homeownership has its own challenges, and many US programs take on the marketing responsibility in order to safeguard against abuses such as side payments being made by buyers to secure the housing.
Selection Process	In the United States, every program must collect and review appropriate documentation that verifies a buyer's or renter's eligibility to access the unit. The selection process should be fair and transparent.
Financing	Many US programs need to approve any financing products used to purchase homeownership units and generally consult with lenders to develop an appropriate agreement that satisfies the lender's interests and the program's policies. In Langford, British Columbia, the city has developed partnerships with mortgage insurance companies and local credit unions, who provide special financing packages.
Monitoring	Most programs have strict occupancy rules, which disallow the renting out of units and the presence of boarders. Most households abide by the rules, but monitoring is required to prevent abuses. A common practice is to contact each household annually requesting proof of owner occupancy.
Resale Management	Managing resales requires a considerable amount of staff time, which is necessary to "ensure that every home is transferred to another income-eligible household for no more than the formula-determined price." Each resale takes about 20 hours of staff time.
Enforcement	Most inclusionary households will not commit program abuses, but a small minority may take advantage through illegal subletting and illegal sales of units. Also, some homeowners may go into foreclosure, which would require a lot of staff resources and legal costs. Enforcement might be necessary in order to protect a public good.

Source: PolicyLink report *Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring* (Jacobus, 2007).

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[4] For a detailed discussion of the administrative tasks required in a typical inclusionary program, please see the PolicyLink report *Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring* (www.policylink.org/).

3.3 Mandatory versus Voluntary Debate

A major decision for municipalities designing an inclusionary housing program has to do with determining the strength of the requirements. Inclusionary programs can be mandatory, requiring developers to contribute toward the provision of affordable housing as a condition for development approval, or a program could be voluntary, enticing builders to develop affordable housing in order to take advantage of the proffered incentives. Incentive-based or voluntary approaches are alluring for municipalities because "they are less likely to generate developer opposition and legal challenges than mandatory programs" (Drdla, 1999). But it is generally acknowledged in the literature that mandatory programs have been more successful than voluntary approaches in producing new affordable housing (NPH, 2007; Brunick, 2004; Lerman, 2006; Drdla, 1999).

> When given the choice, few private developers seem to take the opportunity to build affordable housing for various possible reasons. In some programs, the housing brings additional administrative burdens. In any case, the housing is less profitable and riskier to build than market-rate housing. For most developers, it also raises concerns about the potential for marketing problems with the other units in the project (Drdla, 1999).

However, not all voluntary programs are unproductive, though it appears that other factors related to an area's particular local context have played a significant part in making a program successful. In the case of New York City's voluntary program, developer participation has been high, with 1,770 units of affordable housing built or in the process of being built since the inclusionary housing program was expanded in 2005. In areas rezoned for medium or high density residential districts, developers can receive a 33 percent floor area bonus in exchange for setting aside a minimum of 20 percent of units affordable to households at or below 80 percent AMI. Deeper affordability is reachable through the use of a variety of housing subsidy programs (New York City Department of City Planning, 2009). New York's program is successful because of the development appeal of its unique housing market and the high value placed on density bonuses. Montréal's voluntary program is also proving to be fairly productive as its 30 percent affordable housing targets were exceeded in 2006 and 2007. The success of the program could also be attributed to local factors relating to the rezoning process, which is discussed in more detail in section 5.2.

3.3.1 Hybrid Approach

There is also a third approach, which combines elements of a mandated policy and an incentive-based policy. This hybrid approach means that affordability requirements are triggered only in specific circumstances such as rezoning or a conditional use permit (HousingPolicy.org). The City of Chicago uses this approach, and the Affordable Requirements Ordinance only comes into effect in the following cases: any purchase of City land; zoning change that involves increased density or a change in land use; and situations when financial assistance is given by the City (HousingPolicy.org).

> The hybrid approach is one that is permissive, and municipalities are not vulnerable to challenges if they implement the inclusionary program. This tries to replicate the Vancouver two-tier system. If you don't require rezoning and want to build to the allowable density, then go ahead, but if you want an increase in

> density, you will have to negotiate something. In this way a developer is not forced to participate in inclusionary zoning unless they choose to go down this path (LE1).

4. The Economics of Inclusionary Zoning

When contemplating the adoption of any policy tool, it is important to consider the possibility of negative externalities. In the case of an inclusionary policy, an unintended outcome could involve adverse effects on local housing markets and on housing production, which would essentially thwart the main policy objective of increasing housing affordability. Detractors often argue that inclusionary zoning is a tax that discourages development, raises housing prices, and decreases housing affordability. This section will examine these economic concerns.

4.1 Who Bears the Costs of an Inclusionary Requirement?

> The costs of an inclusionary housing program can be borne in three ways. First, the costs can be absorbed by the developer from the profits that he would otherwise presumably make. Second, the costs can be passed forward to the buyers of the market-rate units in the development. Third, they can be passed backward, in that the developer of a project subject to an inclusionary housing program will not be willing to spend as much for land (Mallach, 1984).

The issue of who bears the burden of the costs of inclusionary zoning is a controversial and political subject in any discussion on the economics of the tool. One argument might be that it is unfair to force developers and market-rate homebuyers to bear the costs of providing affordable housing, when it should be borne by society as a whole. Another concern is that developers will just pass on the costs to market-rate consumers, which would raise housing costs and effectively counteract the attempt to improve housing affordability. But a number of housing experts question the merits of this argument and dispute the extent to which the costs can be passed forward to buyers (Mallach, 1984; Brunick, 2004; Gladki and Pomeroy, 2007).

Gladki and Pomeroy (2007) contend that housing prices are driven by the market and that the market effects of “an inclusionary requirement will be felt in the land market, in the form of lower (or less excessive) bids on property.” In his detailed examination of the “who pays?” issue, Mallach (1984) also agrees that a developer’s ability to pass on costs to prospective buyers is limited, and, in most cases, the costs will be passed backward to landowners, since developers will factor in the costs of the inclusionary program and will not pay as much for land. This is perhaps the fairest situation, as taking the value from a landowner who did nothing to enhance the value of the land is not really taking anything away (LE1).

It is widely acknowledged that land has no intrinsic value and that the value for land is generally created through public actions, rather than through any private efforts of landowners (Mallach, 1984; Gladki and Pomeroy, 2007; Calavita and Mallach, 2009; LE1). “An existing land owner does not do anything to enhance the land value, it is the anticipation of the public decision approval authority that causes these expectations, so muting speculative capitalized valuations does not take away any ‘earned’ value” (Gladki and Pomeroy, 2007). Therefore, the gains in profit that are accrued by the landowner are partly or wholly unearned, and some of that windfall should be recaptured for the public's benefit since the increments in value resulted from public investment and decision. This is an argument that has been operationalized in the form of regulations in many European countries, such as Great Britain (Calavita and Mallach, 2009; Mallach, 1984). However, the argument gets cloudy in cases where the developer has taken a deliberate risk and bought land anticipating a public decision and has invested money in lawyers and rezoning applications (LE1).

In a classic article arguing against inclusionary zoning, Ellickson's (1981) economic analysis drew similar conclusions: "To summarize, in the long run, the owners of underdeveloped land bear *all* of the burden of unusual construction taxes imposed by fungible cities, *and part* of the burden when the taxing city is unique." In highly desirable or "unique" communities, buyers will pay a premium to live in that area, so developers will have more ability to pass some of the costs forward. In less desirable locales with no unique attributes, the demand for housing is more elastic, and developers would be unable to pass on the cost burden to consumers, but "would not bear the tax either" (Ellickson, 1981). Ellickson also goes on to argue that, in these premium communities, not only will the price of new housing go up, the price of resale housing will go up as well "because used housing is a perfect substitute for new housing, and owners selling used housing would face less competition from homebuilders."

In the above simple scenarios where there is an absence of cost offsets, such as density bonuses, the burden is borne by "some combination of builders, landowners, and market-rate home buyers" (Powell and Stringham, 2005), as was discussed above. But when cost offsets are brought into the mix, which is usually the norm in most inclusionary programs, the allocation of costs is further complicated. When fees that would normally be used for service improvements are waived, then the costs of providing those services are borne by the residents of the municipality (Mallach, 1984). Density bonuses also constitute a cost that is passed onto the public, as it essentially undoes the land use planning and zoning regulations that were enacted through public consultations and effectively undermines a community's efforts to plan their own community (Calavita and Mallach, 2009). As well, the increased density might lower the quality of public services, facilities, and infrastructure in that area (Calavita and Mallach, 2009).

4.2 Economic Impacts on Local Housing Markets

Inclusionary critics charge that inclusionary zoning is a tax that will act to discourage housing development and raise housing prices in the long term. The rationale behind the statement is this: some see inclusionary requirements as a type of price and rent control because it creates two markets for new homes – the price-controlled homes, which are the below-market homes, and the market-rate homes (Powell and Stringham, 2005). These critics argue that inclusionary policies will have "many of the same negative effects as rent control" and that economic theory predicts that price controls will lead to decreases in the supply of new housing and, ultimately, discourage housing production (Powell and Stringham, 2005). "By acting like a tax on new development, it will raise the prices of non-price-controlled housing and decrease the amount of new housing" (Powell and Stringham, 2005). Detractors and standard economic analysis view inclusionary requirements, like other impact fees, as a tax, but the US courts do not see it as an exaction (Kautz, 2002; Been, Meltzer, and Schuetz, 2007).

This argument that inclusionary programs work to slow the pace of development should be seriously examined because a decrease in development activity has a number of negative outcomes, chief among which could be the loss of property tax revenue for municipalities. But development activity does not depend solely on whether an inclusionary program is in existence or not:

> As a general rule, larger market forces (interest rates, the unemployment rate, levels of aggregate demand, consumer confidence, overall economic growth rates, etc.) will determine whether development in any particular community will rise or fall; the presence or absence of inclusionary zoning is not the primary determinant (Brunick, 2003: 4).

There has been little empirical research done on the effects of inclusionary requirements on housing production and housing prices, but there have been a couple of recent studies that have tried to fill that research gap. A 2004 report that looked at building permit and housing starts data from 1981 to 2001 in 28 California jurisdictions found that the "adoption of an inclusionary housing program is not associated with a negative effect on housing production" and that the unemployment rate more clearly influenced housing production (Rosen, 2004). Another study undertaken by the Furman Center used regression analysis to ascertain the impact of inclusionary programs on housing production and prices in San Francisco, Washington DC, and suburban Boston areas (Been, Meltzer, and Schuetz, 2007). The findings showed some evidence that inclusionary programs have decreased production and increased prices of single-family homes in Boston-area suburbs, but there was no "statistically significant" evidence that inclusionary requirements had an impact on prices or production rates of single-family houses in the San Francisco area or in the Washington DC area. However, these findings should be treated with caution given the data limitations (Been et al., 2007).

4.3 Economic Feasibility for Developers

A common recurring theme in the literature and in key informant interviews is that a successful program hinges on collaborative efforts with developers. Planners should work with developers to ensure the economic viability of their projects and help them implement the inclusionary requirements to achieve the social policy objectives. Municipalities offer incentives to help offset the costs of developing the inclusionary units. Density bonuses are most commonly used in US inclusionary programs, which allow developers to build a larger number of units on a site than would be permitted under regular zoning (see sidebar). "The bonus essentially lowers the average development costs by allowing developers to spread a constant amount of land costs over a larger number of units. It also allows the developer to sell, and potentially earn profit on, a larger number of units" (Been, Meltzer, and Schuetz, 2007).

How Density Bonuses Work

Example: **15 percent set-aside** requirement on all units with **20 percent density bonus**

Site: normally zoned for a maximum of 100 units

Given the 20 percent density bonus, the developer is permitted to build **120 units** instead of 100:

- **18 units** must be set aside as affordable
- **102 units** will be market-rate, so the developer gets 2 bonus units

Source: Rusk (2006).

However, inclusionary opponents argue that the cost offsets offered by localities do not really offset the costs. “In many cases, the land is already being developed to the maximum economically feasible density, which makes a density bonus worthless” (Powell and Stringham, 2005). For example, in the case of high-rise developments where building above a certain threshold would be too costly, density bonuses would have little value: “Political constraints may also restrict the application of various incentives or alternative compliance provisions for an inclusionary housing program. For example, while a density bonus may be offered, if limits on height, floor area ratio or setbacks render such a density bonus unusable, it will prove of little value to developers” (Rosen, 2004).

Gladki and Pomeroy (2007) performed a pro forma analysis for a hypothetical 50-unit development that included assumptions applicable in mid to higher cost housing markets such as Ottawa or Toronto, and found that inclusionary developments can be economically feasible for households close to the 40th income percentile with an inclusion rate of 15 percent and a density bonus of 25 percent. However, their analysis also showed that targeting the traditional core need households is not economically realistic without providing subsidies.

Rosen (2004) came to similar conclusions within the California context. Employing land residual analysis to measure the extent to which the cost of inclusionary requirements can be offset through compensatory incentive options, his findings showed that policy-makers could design incentives that respect the economic feasibility of inclusionary projects (Rosen, 2004).

A 2008 report by Altus Clayton used a cost model to estimate construction costs in Toronto and Edmonton and came up with different findings than the two studies above. The feasibility of a typical 200-unit condominium project was assessed and showed that the margin of economic return falls below the minimum acceptable level of 10 percent (four percent in Toronto and seven percent in Edmonton). Given these margins, developers likely would not proceed with the development. However, it should be noted that this analysis did not factor in cost offsets.

4.4 Urban Filtering

A discussion on the efficacy of inclusionary housing eventually stirs up the debate over the filtering process. Filtering can be broadly conceptualized as a trickle-down process in which new high-quality housing units filter down over time and become available to lower-income households. As higher-income households move into the newly constructed units, their used housing then becomes available for the lower-income strata, so lower-income households are moving up the quality hierarchy as the units filter down (Bourne, 1981; Skaburskis, 2006).

Therefore, inclusionary critics argue that it is inefficient to construct new housing for low- and even moderate-income households when the filtering mechanism will provide affordable housing for these groups in a much more cost-effective manner (Padilla, 1995). This position has influenced housing policy decisions surrounding policy insertion points, as it is argued that housing should be produced at the high-quality point because it will maintain its quality long enough to filter down and become available to lower-income households.

But does filtering actually work and provide adequate housing for low-income groups? It takes time for housing to filter down, and by the time it has worked itself down to the core need households, the housing might be substandard and require financially burdensome repairs (Bourne, 1981). Skaburskis (2006) concludes that the filtering process is too slow and doesn't help lower-income households. In fact, his findings show a reverse filtering that has been occurring in all Canadian metropolitan areas since 1981. The forces of gentrification act to eliminate filtering to the less affluent (Skaburskis, 2006; Dietderich, 1996).

But how would filtering work if there were inclusionary housing policies in place to help create affordable homeownership opportunities for moderate-income households? Theoretically, it might free up units for those at the lower end of the income spectrum and relieve some of their housing stress, assuming that these moderate-income households were occupying housing at the lower end of the housing continuum and not residing in more expensive units. Though for some housing advocates, any movement along the housing continuum is a good thing.

5. Case Studies

5.1 Vancouver, British Columbia

5.1.1 Overview of Inclusionary Practices

Since 1988, Vancouver has required that 20 percent of the units in new neighbourhoods be designated for non-market housing, with at least 50 percent of these units geared toward families. "The purpose was to ensure that low and modest-income households, especially families with children, could live in the new neighbourhoods" (City of Vancouver, 2008a). The developer is required to set aside the capacity for 20 percent of the units to be affordable housing.[5] It is important to note that the developer only makes the land available and is not obligated to build the social housing units. The next stage is then to negotiate with the provincial government and build partnerships with non-profit organizations to make the projects happen (PL2).

Two events have greatly influenced the inclusionary policy in its 21-year history. The first occurred in 1993 when the federal government ceased funding for new social housing. The second

Definitions*

Non-market housing (also known as social housing) provides housing mainly for those who cannot afford to pay market rents. It is housing owned by government or a non-profit or co-operative society. Rents are determined not by the market but by the residents' ability to pay. Non-market housing is designed for independent living.

Affordable housing means dwelling units designed to be affordable to persons who make up a core need household where such persons pay more than 30 percent of their combined gross annual income to rent an adequate and suitable rental unit, including utilities, to meet the basic housing needs of the household at an average market rent.

Modest market housing means dwelling units designed to be affordable to persons who make up a household, and whose combined gross annual incomes fall within the middle third of income distribution for the Greater Vancouver region published by Statistics Canada in the then current Canada Census at the time of any applicable CD-1 rezoning.

** The definition for non-market housing was taken from the City of Vancouver's Housing Centre website. The definitions for affordable housing and modest market housing are Southeast False Creek Official Development Plan (ODP) definitions.*

[5] In 2003, Vancouver's City Council approved replacing the term "non-market housing" with "affordable housing" in Official Development Plans (ODPs) and Comprehensive Development By-laws (CD-1) that required the provision of non-market housing sites. The revisions do not change the purpose of the 20 percent policy or the City's priority of providing housing for core need households (City of Vancouver, 2003a).

was in 2002, when the Province terminated its Homes BC Affordable Housing Program, which helped develop most of the affordable housing sites in the new neighbourhoods (City of Vancouver, 2008a).

The 20 percent policy was designed to work with the old federal and provincial housing programs (PL2), and developers were required to provide sites at a below-market rate that enabled the development of non-market housing "within the maximum budgets permitted by the senior government housing programs" (City of Vancouver, 2003a).

Figure 2. Vacancy Rates

Source: *Canadian Housing Observer 2008* (CMHC, 2008a).

The sites were either vacant land or air space parcels over a parking garage or other structure. When a non-profit housing provider – called a sponsor – succeeded in securing funding, the City would then purchase the site and lease it to the non-profit housing provider for 60 years (Drdla, 1999). The non-profit group would then take over responsibility for the units upon completion. Ideally, this is still the current process if funding is forthcoming, but the City has explored other alternatives in response to the limited availability of funding, which will be discussed in more detail in section 5.1.3.

5.1.2 Background

Table 5. Social Housing Stock – City of Vancouver (as of August 17, 2009)

Program	Projects	Units
Co-op	110	5,662
Non-Profit	268	16,333
Urban Native	32	642
Other	6	166
Total	**416**	**22,803**

Source: City of Vancouver, http://vancouver.ca/nmi_wac/nmi.exe/CurrentProj?pcSort=year.

The City of Vancouver has a long history of low vacancy rates, and 2008 was no exception as the City posted a vacancy rate of 0.3 percent, down from 0.5 percent the year before (CMHC, 2008b). This is a disturbing percentage because renters make up 52 percent of the City's population but earn almost half the income of that of owner households. In 2006, the median tenant household income was $34,532, while owner households made $66,087 (Metro Vancouver, 2009). In forecasts by CMHC, vacancy rates for the Vancouver census metropolitan area (CMA) will remain below one percent in 2009, and rents will increase three to five percent (CMHC, 2008b). Additionally, the average value of a house increased by 75 percent from 2001 to 2006, making it more unaffordable for renters to buy (Statistics Canada, 2001 and 2006 Community Profiles). Low vacancy rates, high rents, unaffordable house prices, and a growing income gap between owners and tenants help shape an unaffordable housing landscape for Vancouver's renters.

According to the CMHC Rental Market Report (CMHC, 2008b), the extremely low vacancy rate is a product of high rental demand and a decline in purpose-built rental units. The high costs of homeownership and a large influx of new residents have contributed to the strong demand for rental housing. Further, new rental housing starts continue to remain low, as builders focus on the more lucrative construction of condominiums. But one positive sign has been the increase in the secondary rental stock (rental condos, single-detached, and row/duplex dwellings) in 2008. Another piece of good news is the fact that 3,813 units will be added to the non-market housing stock from 2005 to 2010 (City of Vancouver, 2008c). These will be a welcome addition to the City's social housing stock of over 22,000 units, which represents about nine percent of Vancouver's total housing stock.

Affordable Housing Policies

The 20 percent policy is not the only inclusionary policy in Vancouver, though it is what the City would most strictly classify as its inclusionary housing policy (PL2). Financing growth tools such as Development Cost Levies (DCLs) and Community Amenity Contributions (CACs) are also used to generate funds for affordable housing production. Some of the funds from the CAC program, as well as payment-in-lieu funds, go into the Affordable Housing Fund, which provides support for non-profit sponsors and aids in the development of social housing. The 2007 City/Province Social and Supportive Housing Partnership should also be mentioned. It is an agreement between the City and the Province that will help facilitate the delivery of about 1,200 social and supportive housing units. This agreement and other related initiatives and policies are summarized below in Table 6.

Table 6. Summary of Selected Affordable Housing Policies in Vancouver

Program	Summary
Development Cost Levies (DCLs)	Governed under section 523D of the *Vancouver Charter*, DCLs are charges levied on new development to help finance growth-related facilities such as parks, child care facilities, and replacement housing (social/non-profit housing). In the draft 2009-2011 Capital Plan, City staff note that the "provision of affordable housing is a 'growth' related expenditure that was anticipated to be funded primarily from DCLs" and that "housing currently attracts 32 percent of all City-wide DCL funding and a considerable portion of area specific DCL funding" (City of Vancouver, 2008b: 12).
Community Amenity Contribution (CAC)	CAC policies apply in rezoning situations and can secure a wider range of amenities than DCLs. CAC contributions can be monetary or come in the form of an amenity provided in-kind, and help address growth-related costs or other community needs. Standard rezonings have a flat rate on additional density, and the CAC for non-standard rezonings (downtown or large sites) are negotiated. Affordable housing has been one of the primary beneficiaries of the CAC program (City of Vancouver, 2008b, 2006).
Affordable Housing Fund	Established in 1981, the Affordable Housing Fund has provided project development grants and money for specific housing initiatives. In the 2006-2008 Capital Plan, $12.2M was allocated (City of Vancouver, 2005b, 2008b).
City/Province Social and Supportive Housing Partnership	In 2007, a memorandum of understanding (MOU) between the Province and the City of Vancouver was ratified. This MOU covers 12 City-owned sites and details provincial funding commitments for development costs. Vancouver will lease the 12 sites to non-profit housing sponsors. Up to 1,200 new social and supportive housing units will be built through this partnership (City of Vancouver, 2007).

Planning and Legislative Framework

The City of Vancouver derives regulatory authority for inclusionary zoning from section 565.1 of the *Vancouver Charter* (see sidebar). The City is governed by this charter and not by the *Local Government Act* (LGA), although section 565.1 is similar to section 904 of the LGA, which enables municipalities in British Columbia to permit higher density in exchange for amenities and affordable housing (Metro Vancouver Policy and Planning Department, 2007). Sections 561(3) and 565.2 of the *Vancouver Charter* also make reference to affordable housing and, combined with section 565.1, "empower City Council to negotiate the provision of affordable housing with developers seeking rezoning" (City of Vancouver, 2003a).

However, it appears that subsection 565.1(3) may act to temper the strength of any inclusionary requirements. The section only allows for an area within a zone to be designated for affordable or special needs housing "if the owners of the property covered by the designation consent to the designation." This caveat would seem to limit a strict mandatory inclusionary approach, as consent is first required from the landowners.

In discussion with a Toronto legal expert about subsection 3, his opinion is that it does seem to set some limits, as consent is required, but owners/ developers know that, if they don't agree, they won't get the necessary development approvals: "Maybe they are willing to accept it because they want to get the increase in height and density" (LEG1).

Vancouver Charter
Zoning for Amenities and Affordable Housing

Section 565.1
(1) A zoning by-law may
(a) establish different density regulations for a district or zone, one generally applicable for the district or zone and the other or others to apply if the applicable conditions under paragraph (b) are met, and
(b) establish conditions in accordance with subsection (2) that will entitle an owner to a higher density under paragraph (a).

(2) The following are conditions that may be included under subsection (1) (b):
(a) conditions relating to the conservation or provision of amenities, including the number, kind and extent of amenities;
(b) conditions relating to the provision of affordable and special needs housing, as such housing is defined in the by-law, including the number, kind and extent of the housing;
(c) a condition that the owner enter into a housing agreement under section 565.2 before a building permit is issued in relation to property to which the condition applies.

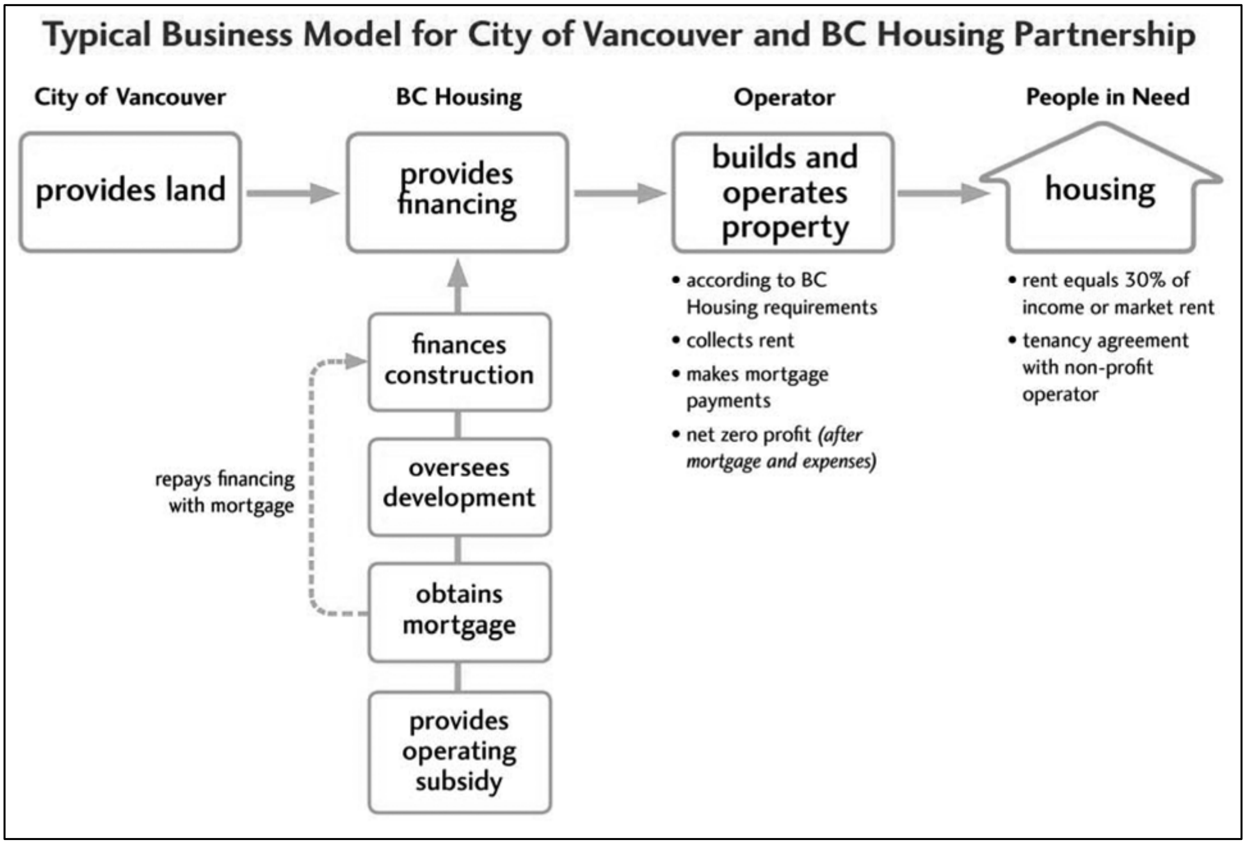
(3) A zoning by-law under section 565 (1) (f) may designate an area within a zone for affordable or special needs housing, as such housing is defined in the by-law, if the owners of the property covered by the designation consent to the designation.

Further, there is no appeal to a provincial planning board, such as the OMB, in British Columbia. "If they [developer] don't agree with the City, then they don't get anything" (LEG1). Developers can potentially appeal the City's decision to the courts, but it is much tougher:

> The court's review is much narrower than the OMB's, I think. The court review is to see if the decisions are within the authority, basically, of the municipality, and they would be. They don't review it on its merits the way the OMB does (LEG1).

5.1.3 How the Inclusionary Policy Works

Figure 3. Business Model for Affordable Housing



Source: *Council Report (February 17, 2009): The Cost and Affordability of the City's Affordable Housing: Southeast False Creek Area 2A (Olympic Village)* (City of Vancouver, 2009b)

Affordable housing obligations are written in the Official Development Plans (ODPs) for new neighbourhoods, which are implemented through Comprehensive Development district (CD-1) rezonings (City of Vancouver, 2008a). The Comprehensive Development district is the "zoning tool that is used to implement the 20 percent policy" (PL2). Comprehensive Development zoning is generally used when rezoning large sites and helps facilitate complex mixed-used development: "For larger developments and more complex developments, the Comprehensive Development district approach is what allows us to be flexible and what allows us to essentially negotiate a completely new urban form and write up the zoning with the developer as we go" (PL2). Behind that process are usually intense negotiations with developers.

Securing the affordable housing sites for social housing development is the first step. The City would obtain 80-year Options to Purchase on the designated affordable housing sites. Securing funding and the necessary partnerships is the next and most crucial stage. When things go according to plan, the process of how social housing typically gets built works like the diagram in Figure 3. The City partners with BC Housing and contributes to the development process by purchasing the sites and then leasing them to non-profit sponsors for 60 years, originally at 75 percent of freehold market value. “This reduces the cost of projects so that social housing can be built in the City of Vancouver where land is more expensive than elsewhere in the region” (City of Vancouver, 2001a). However, in recent years, in an environment of reduced funding, the City has provided land at no cost, and, in the case of the 12 sites covered under the City/Province Social and Supportive Housing Partnership, the projects were also exempted from paying property taxes (City of Vancouver, 2007).

As Figure 3 demonstrates, senior government plays a huge role in the process by providing financing for construction and funding for operating subsidies. But what happens when the funding is not forthcoming, and how has Vancouver adapted the 20 percent policy to respond to the withdrawal of federal funds in 1993 and the end of the Homes BC program in 2002?

The Response to Reduced Government Funding

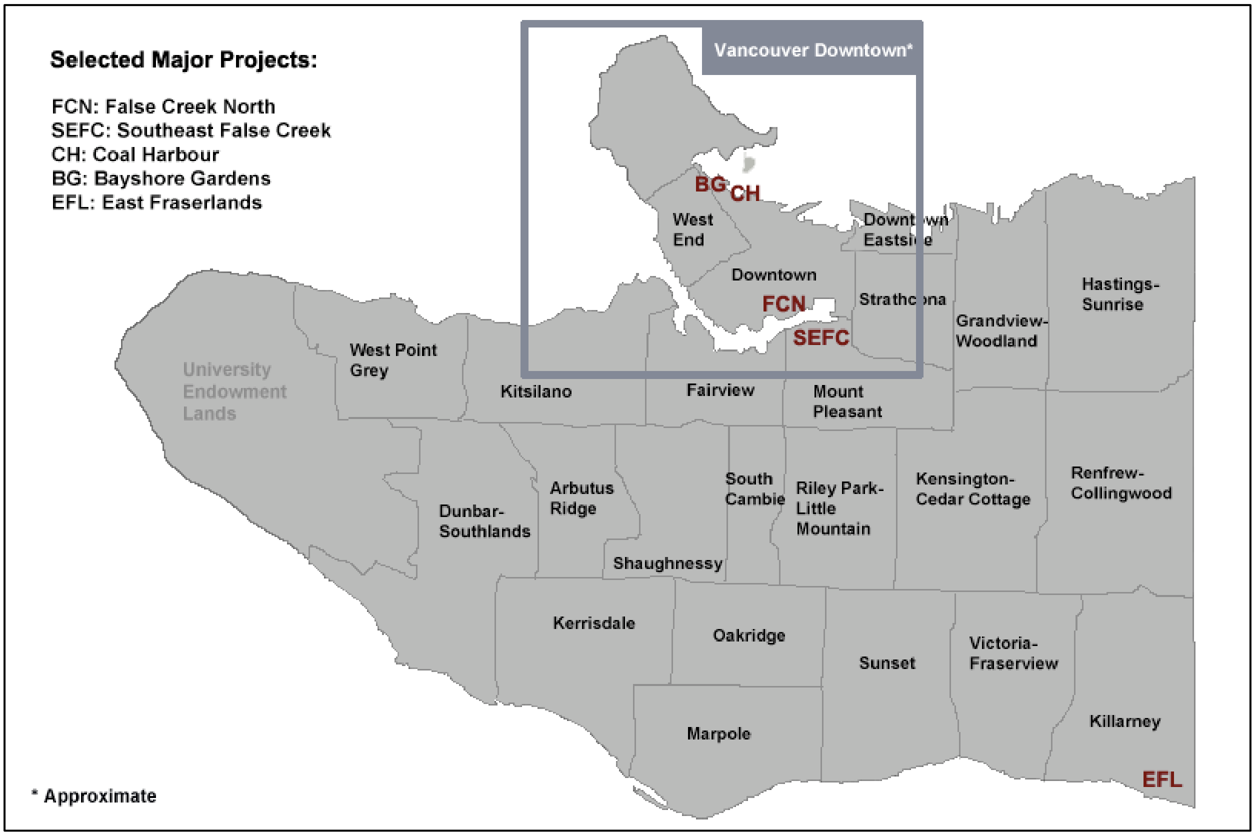
> The policy is entirely dependent on federal and provincial housing programs to actually deliver the housing. When the federal government stopped funding the program, we had to rethink how the program worked because it was essentially designed to work with the old federal/provincial housing programs (PL2).

In 1993, when the federal government withdrew funding for new social housing development, the City had to adjust the 20 percent policy and develop a more flexible approach. The City holds 80-year Options to Purchase on the sites and can retain the land in the hope of securing funding in the future. But in response to the reduced funding, the City loosened the 20 percent requirement and began to consider other options. In 1994, Vancouver’s City Council amended the ODPs and CD-1s for the major projects to provide Council with the necessary flexibility to define non-market housing “as it chose, including having a market rental component” (City of Vancouver, 2001b). The Council also had the option to consider other alternative forms of affordable housing not subsidized through senior government programs (City of Vancouver, 2000).

The payment-in-lieu option was also introduced at that time (PL2), which allows for a site designated for affordable housing to be converted to market housing in exchange for in-lieu payment (City of Vancouver, 2008a):

> When the provincial funding is not forthcoming, we offer developers the cash-in-lieu option. Nobody wants to see a whole bunch of sites in a major project in the middle of Vancouver remain undeveloped – [leaving] massive holes in the urban fabric (PL2).

Figure 4. Approximate Location of Major Projects with Significant Contributions to the 20 Percent Policy



The payment-in-lieu amounts for conversions of affordable housing sites are determined in the Options to Purchase and are calculated as "the difference between the market value of the site post-conversion and the option price" (City of Vancouver, 2008a). The City tries to limit these conversions, as its first preference is to see the sites developed for affordable housing, but a total of six conversions have occurred as of 2008 (City of Vancouver, 2008a). In all of those cases, the payments in lieu were used to purchase another affordable housing site in the same neighbourhood or in an adjacent neighbourhood for affordable housing development (City of Vancouver, 2008a). Five of those six conversions have occurred in Concord Pacific Place and International Village, all major developments in False Creek North (see Figure 4 for location). These conversions have resulted in the inclusionary requirements in False Creek North being lessened to 12.94 percent instead of the original 20 percent (City of Vancouver, 1990).

After the federal government vacated funding responsibilities for new social housing development, the British Columbia government introduced its Homes BC program in 1994. From 1994 to 2001, the Province funded the development of 3,800 units in Vancouver (City of Vancouver, 2001a). In 2002, the provincial government cancelled the Homes BC Affordable Housing Program, the implications of which are still felt today:

> Most of the Affordable Housing sites in the city's new neighbourhoods were developed under this Program. The Province introduced a new housing program targeted to frail seniors, which would not achieve the City's social inclusion

objectives, especially as related to families with children, for the new neighbourhoods. Only one Affordable Housing project has been developed in a new neighbourhood since Homes BC was cancelled, and the City provided 90% of the subsidy required for that project to be viable (City of Vancouver, 2008a).

C-Side (Coal Harbour)

The City has also explored other alternatives to producing housing, as in the case of C-Side in Coal Harbour, which might prove to be an interesting potential model given reduced funding availability (PL2). In 2000, when the C-Side (1299 W. Hastings St.) building was in development, provincial funding priorities focused on families and the homeless or those at risk of becoming homeless, and Homes BC funding was approved for a 113-unit project for families (City of Vancouver, 2000). But the City also wanted to include a singles and couples component (PL2). So, on top of the non-market family units built on the lower levels of the building, the City built 171 market rental units for singles and couples, with BC Housing providing low-cost financing and the City raising the needed equity from DCLs from a nearby area. In the first 10 years of occupancy, there would be little opportunity to reduce market rents given the mortgage costs. But after 10 years, the building will start to turn a substantial profit, and the City could use that money to convert some of the market housing into subsidized units within the building or use the funds to develop other projects (PL2; City of Vancouver, 2000). This is just one example of how the City has tried to cope with a diminished funding source.

Challenges: PAL (Performing Arts Lodge) – Bayshore Gardens

In addition to the enormous funding challenges, Vancouver also has to deal with the difficulties of building inclusion into larger developments. Some affordable housing sites are physically integrated within larger projects, and must be built at the same time as the market component even if public funding is not in place. This was the case with the Bayshore Gardens affordable housing component (see Figure 4 for approximate location), which consists of an air space parcel that would occupy floors 2 to 7 of a larger project that included underground parking, retail on the first floor, and condominium units on the upper levels. The Option to Purchase required the builder to "develop the non-market housing at 93% of the maximum budget that would be allowed under senior government housing programs" (City of Vancouver, 2002), resulting in substantial equity. But additional funding was needed. In 2002, when the City was notified of the developer's intent to begin construction within a year, Homes BC had just been cancelled, and the City needed to select a non-profit sponsor "who either had equity to invest in the project or had the capacity to raise the necessary equity, so that the project could proceed without public funding" (City of Vancouver, 2002). PAL Vancouver was chosen on the condition that it would raise $5M in equity for a proposed 111-unit project for seniors from the performing arts industry.

To raise the necessary funds, PAL carried out massive fundraising, but achieved a major portion of the equity by pre-renting 12 two-bedroom life-lease units at market value. At the date of the 2004 council report, PAL had only raised $4M, which would impact on the level of affordability that was originally proposed – only 45 percent of the 111 units could now accommodate shallow core need tenants – but greater affordability in the long-term was possible. The City and BC Housing provided capital grants of $500,000, with the City agreeing to provide an additional $500,000 if

PAL could raise matching funds (City of Vancouver, 2004). This case shows the extent of commitment on the part of the City and a non-profit sponsor that is required to make a project viable. That said, it still resulted in a compromise on the depth of affordability, at least initially.

5.1.4 Analysis

The results of the 20 percent affordable housing policy can be seen in Table 7.[6] Most of the capacity has been created in False Creek North, with Concord Pacific Place and the International Village contributing 1,500 units. The total number of units secured through the inclusionary tool is 2,533. After reviewing the literature on Vancouver's program, it appears that this number has not changed much in the last decade or so, as various sources from different time periods put the total capacity in the 2,500 to 2,700 range (Drdla, 1999; City of Vancouver, 2003a, 2005a). Considering that the inclusionary policy only applies to major projects[7] and that there are only so many opportunities to build large developments in Vancouver given the restricted land supply, it is expected that the total number of secured units will not vary greatly over time. However, as mentioned in footnote 6, a lot more capacity will be created as East Fraserlands and Southeast False Creek come online (PL2).

Table 7. The Number of Units Created through the 20 Percent Inclusion Policy in Vancouver – 1988 to April 2008

Project Name	Number of Built Units	Number of Funded Units	Number of Unfunded Units	Capacity Created through 20 Percent Inclusion Policy
Bayshore	111	0	0	111
Coal Harbour	383	0	40	423
Int. Village	0	120	0	120
Concord Pacific	434	100	846	1380
City Gate	176	0	0	176
Arbutus Lands	53	0	0	53
Pacific GMC	34	0	0	34
Tugboat Ldg.	42	0	0	42
Fraser Lands	194	0	0	194
Total	**1,427**	220	886	**2,533**

Source: City of Vancouver Housing Centre website, retrieved June 9, 2009, from http://vancouver.ca/commsvcs/housing/MajorQA.htm.

6 Two major projects, Southeast False Creek and East Fraserlands, are under way and will add significantly to the numbers in Table 7 (PL2).

7 There is no strict definition of "major projects," but the term generally refers to fairly large projects (PL2).

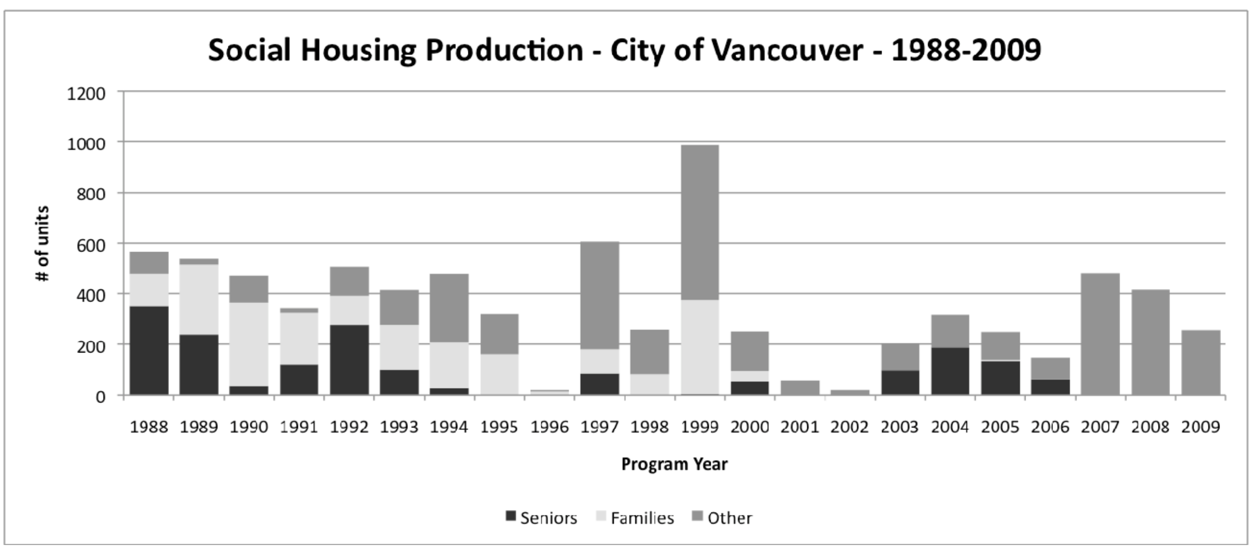
Regardless of what the total capacity actually amounts to, the issue is the fact that only 1,427 units have been built (with 220 having funding) in the 21 years of the program's existence. These numbers show just how difficult it has been to obtain appropriate funding. This challenge is also illustrated in the history of Concord Pacific Place, a comprehensive development that occupies much of the False Creek North ODP area (City of Vancouver, 2008a). The 20 percent policy was applied to False Creek North in its inaugural year. Twelve affordable housing sites were allocated to Concord Pacific Place, and only five of the sites have been developed. Just recently, one site at 651 Expo Boulevard was allowed to be converted to market housing for a payment in lieu of over $5M, with part of those funds going toward the purchase of another affordable housing site in Concord Pacific Place (City of Vancouver, 2008a) – a tactic the City has regularly employed to raise the necessary funds.

To add to the funding woes, the Province also shifted its provincial housing priorities, which has also impacted upon the inclusionary program. In 2007, it seemed clear that the focus of provincial social housing investment was on more vulnerable populations:

> The Province's priorities for the development of new affordable housing, as set out in its 2007 "Housing Matters BC" strategy, are the vulnerable populations which need supports in addition to housing, e.g., the frail elderly, the mentally ill, physically disabled, persons with a substance abuse problem, the homeless and those at risk of homelessness (City of Vancouver, 2007).

Low-income families are being helped through demand-side initiatives, such as a rent supplement program that subsidizes units in the private rental market, but no supply-side initiatives were introduced to address their housing needs. This shift in provincial housing priorities can be seen in Figure 5. The production or conversion of units to households other than families or seniors ("Other") dominated social housing production from 2007 to August 2009. "Other" refers to supportive housing units and housing for low-income singles, women who are chronically homeless, people with mental illness, low-income singles from Downtown Eastside SROs (Single Room Occupancy), etc.

Figure 5. Social Housing Production



Source: City of Vancouver, Non-Market Housing Inventory. Data retrieved Aug. 17, 2009, from http://vancouver.ca/nmi_wac/nmi.exe/CurrentProj?pcSort=year.

Conclusion

The 20 percent affordable housing policy was designed in 1988 to work with existing federal/provincial programs. The end of federal funding in 1993 and the end of the Homes BC program in 2002 have severely compromised the success of the program. Senior government funding is a key element for the successful implementation of this inclusionary policy. If the funding is not available, then the units will not be built. The City of Vancouver has proven very adept at adapting the policy to cope with the withdrawal of the two key funding sources, but the depth of affordability that can be reached might be compromised. In the case of PAL and the Bayshore Gardens site, the original plan was for 60 percent of the units to house core need households (50 percent shallow core and 10 percent deep core need). As of the 2004 Council Report, the shortfall in expected funding meant that the initial mix would only allow 45 percent of the units to accommodate shallow core need households (City of Vancouver, 2004). According to one City planner, "when you don't involve the provincial government, the extent of affordability you can achieve is very limited."

Core need households are the stated priority of the 20 percent policy. However, with the added flexibility that was incorporated into the policy due to the reduced funding, the affordability requirements have been lessened, which means that these core need households may not be accommodated within certain sites. Without a reliable funding stream, Vancouver's inclusionary program appears to be severely limited in its ability to produce social housing.

It has, however, proven adept at procuring sites for the provision of non-market housing. Siting is a huge issue for social housing providers, as they must compete with private developers to obtain land and Nimbyism (not in my backyard) is always a worry. Could inclusionary zoning be a tool to access land that might not otherwise be obtainable for the development of social housing?

5.2 Montréal, Quebec

5.2.1 Overview of Inclusionary Practices

Montréal is an interesting case study due to the apparent success of its voluntary approach to inclusionary housing, which conflicts with US literature that questions the effectiveness of voluntary programs. Quebec law does not currently permit municipalities to establish mandatory inclusionary programs, so the City of Montréal decided to create a voluntary incentive-based program that leveraged existing powers. The Strategy for the Inclusion of Affordable Housing in New Residential Projects was adopted in 2005, and it seeks to achieve the increased production of social and community housing units, encourage housing mix in large developments, and help stimulate the construction of affordable housing for first-time homeowners (City of Montréal, 2005). Another explicit objective is the promotion of social mix.

Definitions

Social and community housing is defined as those dwellings made available under the two government programs currently in operation: AccèsLogis and Affordable Housing Québec (social and community component) (City of Montréal, 2005). Community housing is equivalent to co-operative housing (PL3).

Affordable private ownership is 80 to 120 percent of area median income (AMI). Private ownership program: limit for one- or two-person household without a child under 18 is $180,000; for a household with a child under 18, it's $235,000 (PL3).

Specifically, the strategy calls for 30 percent of all new residential housing to be affordable, which echoes the objective stated in the Montréal Master Plan (s. 2.1). To that end, the inclusionary strategy has two specific targets:

- 15 percent of new housing units should be social and community housing units;
- 15 percent of new housing units should be affordable rental or ownership units.

The strategy focuses on large projects that have more than 200 housing units, but it is not restricted to that threshold size, as some projects under 200 units are currently being negotiated. The policy has been mostly implemented in cases where a major zoning change or master plan amendment is required, or on municipally and publicly owned land.

5.2.2 Background

Figure 6. Housing Starts Data

Source: Mises en chantier résidentielles par arrondissements et villes (http://ville.Montreal.qc.ca/pls/portal/docs/page/habiter_v2_fr/media/documents/MEC-1996-2006.pdf) and CMHC, *Housing Now – Montréal* – January 2009.

Montréal is a city of renters. Two-thirds of households consist of tenants – a fact that is reflected in the housing stock, as low-rise and high-rise apartments make up more than 70 percent of the housing landscape (Statistics Canada, 2006 Community Profile). Compared with Toronto and Vancouver, Montréal’s housing market appears to be slightly more affordable: a smaller percentage of households are in core housing need, and housing prices are lower.

Historically, Montréal's real estate development and employment growth has not kept pace with that of Toronto and Vancouver since the 1970s, but the economic upturn in the late 1990s injected new life into the city's housing market (Poitras, 2009). As can be seen in Figure 6, housing starts in the City of Montréal more than doubled from 1998 to 2003 before reaching a peak in 2004. But with the increased employment opportunities and the arrival of more than 107,000 immigrants in Montréal between 1999 and 2003 (City of Montréal, 2005), the predictable increase in housing demand placed considerable pressure on the rental housing market. Vacancy rates for the Montréal CMA dropped from 4.5 percent in 1998 to 0.6 percent in 2001, but edged back up as housing activity went into high gear in the early 2000s (see Figure 7). On the Island of Montréal, the vacancy rate dropped from 3.1 percent in 2007 to 2.5 percent in 2008, and housing prices in the City of Montréal also jumped 84 percent from 2001 to 2006 – from $153,736 to $283,831 (Statistics Canada, 2001 and 2006 Community Profiles).

Figure 7. Vacancy Rates

Source: CMHC, 2008 Canadian Housing Observer

During the housing boom of the last few years, few rental properties have been constructed except for some specific projects in the downtown area. This can be attributed to the cost of construction and Montréal's housing market, which does not support the rents landlords require to be profitable. Montréal has a market for affordable homeownership, so households are less likely to pay $1,000 for a two-bedroom rental unit, especially if they could purchase a dwelling for that amount (PL3).

Table 8. Affordability Picture on the Island of Montréal

		Percentage of Total Households in Core Housing Need			Breakdown of Households in Core Housing Need				
Year	Total Montréal Households	Total	Owners	Renters	Total	Owners (%)	Owners	Renters (%)	Renters
2006	785,575	16.5	4.5	24.2	129,800	10.6	13,780	89.4	116,020
2001	754,850	17.8	5.2	25.2	134,260	10.9	14,650	89.1	119,610
1996	711,320	23.8	7.4	33.0	169,080	11.1	18,840	88.9	150,240

Source: CMHC (census-based housing indicators and data)

As mentioned, the incidence of core housing need in Montréal is less than in Toronto (16.5 percent versus 23.7 percent), but renter households are in greater need. Among households who were experiencing core housing need in 2006, 89.4 percent were renters. This is a troubling trend, as tenant households constitute 66 percent of all households in the City.

Affordable Housing Players

Table 9. Social and Community Housing Stock – City of Montréal (As of December 31, 2008)	
Type	**Number of units**
Low-rent public housing (HLM) – Families, under 60 years	9,704
Low-rent public housing (HLM) – Seniors, 60 years and over	10,151
Low-rent public housing (HLM) – Special needs	941
Private non-profit housing	13,537
Co-op housing	11,901
Other non-HLM housing	6,647
Total	**52,881**
Source: PL3.	

There are several players from the private, public, and non-profit sector who are involved in the delivery of social and affordable housing in Montréal. An important public sector player is the Société d'habitation du Québec (SHQ), which is the provincial agency responsible for housing in the province. It funds key programs, such as AccèsLogis and Affordable Housing Quebec (AHQ), which is managed by the City of Montréal within its boundaries. The Office municipal d'habitation de Montréal (OMHM) is a paramunicipal organization responsible for the administration of over 20,000 subsidized public housing units – or HLMs (Habitations à loyer modique) (see Table 9). The OMHM also manages Montréal's official social housing waiting list (which stands at about 24,000 households) and oversees over 7,300 units in rent supplement programs and over 1,100 homes built under the AHQ. Another public sector actor is the Communauté métropolitaine de Montréal (CMM), a regional organization that serves 82 municipalities and helps fund AccèsLogis and AHQ.

Key players engaged in the actual development work include for-profit private developers and non-profit development organizations such as the Société d'habitation et de développement de Montréal (SHDM) and technical resource groups (TRGs).

Private developers might contribute to affordable housing production by building a "turnkey" project for the city. A turnkey development is a project built to specific guidelines, and when the developer is compensated by the city at a rate that would be paid to the market, the keys are then given in return. Developers like these kinds of projects because they are given the financial compensation up front and don't have to wait for each unit to be sold (PL3). The SHDM is a privileged partner of the City of Montréal and is used at times by OMHM to develop new affordable housing. It also manages the Accès Condos program, which helps first-time homebuyers access housing. There are four technical resource groups operating in Montréal who are recognized partners of the City and the SHQ in implementing the AccèsLogis program: Bâtir son quartier, R.O.M.E.L, Atelier Habitation Montréal, and Groupe CDH. Bâtir son quartier is the largest one, and housing co-operatives or non-profit groups would approach it or one of the other TRGs to request assistance in developing a project (PL3). Bâtir would then act as an intermediary between the group and the City to facilitate the production of social or community housing.

Affordable Housing Programs

Similar to the 20 percent income mix policy in Vancouver, Montréal does not ask developers to actually build the social and community housing units, though some may choose to develop turnkey developments. Most of the funding for construction of new housing or conversion of existing units comes from the Province and CMHC in the form of supply-side initiatives such as AccèsLogis and the Affordable Housing Quebec program (social and community component). In the private affordable component of the inclusionary strategy, first-time homebuyers benefit from the Accès Condos program run by the SHDM and the City's Home Ownership Program. Additionally, an important housing action plan that should be mentioned is Opération 15,000 Logements. The programs and action plan are briefly summarized in Table 10 below.

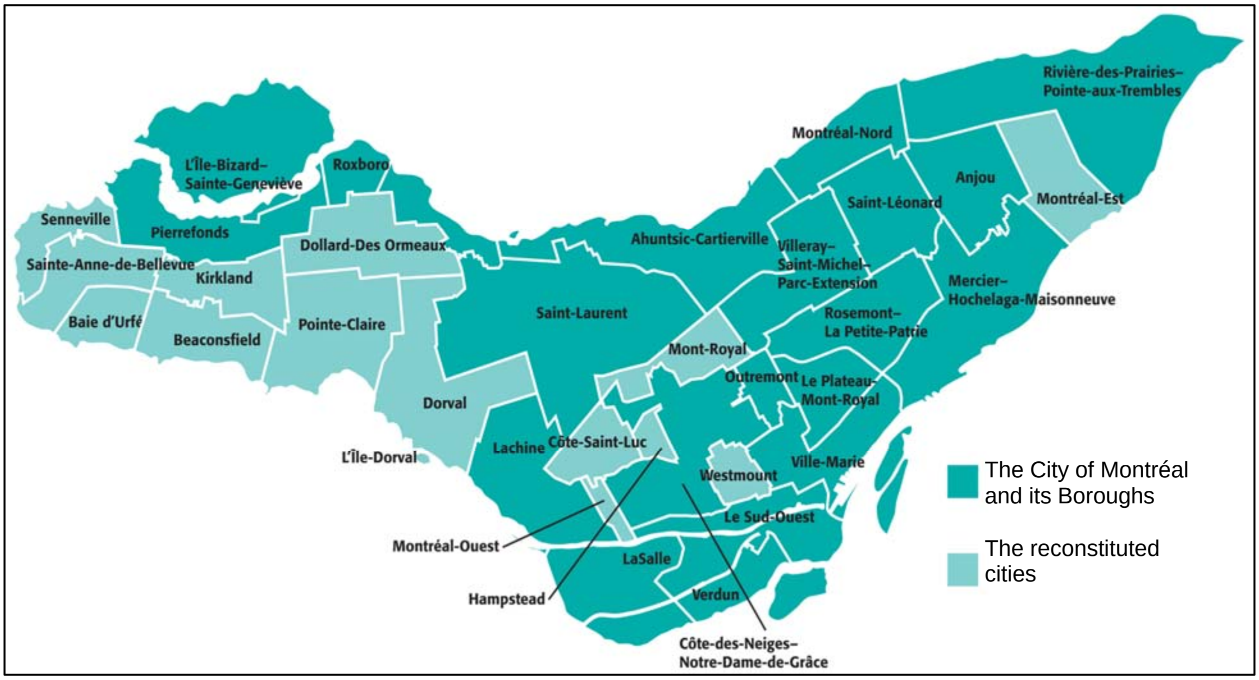
Table 10. Summary of Affordable Housing Programs in Montréal

Program	Brief Summary
AccèsLogis	A provincial program administered by the City of Montréal that funds the production of social and community housing for low- and moderate-income households and special needs households. Non-profit housing organizations and co-operatives receive a loan that becomes a subsidy once the groups have met certain conditions of an operational agreement. Once the project is completed, between 20 and 50 percent of the households receive rent supplements, and the rest pay below-market rent. (Source: OMHM website; AccèsLogis program flyer)
Affordable Housing Quebec (AHQ)	Launched in 2002, the social and community housing component of the AHQ funds non-profit housing groups, housing corporations, and co-operatives to build social and community housing for low-income households or frail seniors. No rent supplements are provided, but units must be rented at below-market rates. Rent increases are controlled by the SHQ for 15 years. (Source: AHQ website)
Accès Condos	Based on the Options for Homes model, this program helps first-time homebuyers by advancing them a 10 percent down payment to purchase a condo unit from one of the Accès Condos projects. The purchase credit plus a portion of the increase in value is payable when the owners sell the condo unit. (Source: Accès Condos website)
Home Ownership Program	This program offers financial assistance to first-time homebuyers to purchase a home in Montréal. Maximum eligible purchase prices for new dwellings are $180,000 for a household without a child under 18 and $235,000 for a household with a child under 18. In the above cases, households would receive $6,500 and $10,000, respectively. (Source: Ville de Montréal website)
Opération 15,000 Logements	This three-year action plan was implemented by the City of Montréal for 2006 to 2009. Its objectives are to build 5,000 social and community housing units for low- to moderate-income households and to undertake 10,000 "interventions" by building affordable housing and by offering financial aid to first-time homebuyers and those wishing to perform major repairs on existing units. (Source: Ville de Montréal website)

Planning and Legislative Framework

The municipal governance of the City of Montréal has undergone tremendous change since its provincially mandated merger of 28 local municipalities in 2002 (PL4). On January 1, 2006, the City's organizational structure was again redefined after 15 boroughs voted in the demerger referendums to reconstitute their former municipal identities (see Figure 8).

Figure 8. The City of Montréal and Its Boroughs (January 1, 2006)



Source: Ville de Montréal website [translated legend text] (http://ville.Montreal.qc.ca/pls/portal/docs/page/prt_vdm_fr/media/documents/Cartejanvier2006_mairie.pdf).

After the merger and demerger, the City of Montréal now comprises 19 boroughs, each with its own local council and mayor. The Montréal city council, in turn, is made up of the 19 borough mayors and 45 city councillors, plus the mayor of Montréal. An agglomeration council oversees shared services on the island of Montréal, such as social housing, police and fire departments, public transit, economic development, and property assessment, but the boroughs have local control over planning (see http://ville.montreal.qc.ca/portal/page?_pageid=5977,42239652&_dad=portal&_schema=PORTAL).

Montréal's land use planning authority and its ability to adopt zoning by-laws are governed by the Loi sur l'aménagement et l'urbanisme (LAU). Planning is also directed by the Montréal Charter. The complex planning and legislative framework is not permissive of a mandatory inclusionary program, but the LAU helps facilitate the implementation of the voluntary policy. Articles 123 and 130 to 136 of the LAU are helpful in certain circumstances, as are the SCAOPI (Specific Construction, Alteration or Occupancy Proposals for an Immovable) sections – starting with article 145.36.

Under article 123 of the LAU, if a project requires a zoning change, the resulting draft by-law is subject to approval by way of referendum. Public notices must then be sent out advising residents of a public consultation. After the public meeting, the council adopts a second draft by-law with or without changes, and qualified voters residing in the "concerned zone" and adjacent zones may express their opposition to the project by signing a register that is opened by the borough. If there are enough signatures – a calculation that is made under the Loi sur les élections et les référendums (LRQ, chapter E-2.2) – then a referendum will be held and the by-law will pass only if it wins a majority of votes. The SCAOPI sections of the LAU are also effective tools in developer negotiations. Essentially, they enable the adoption of by-laws with specific zoning for a particular project and allow planners to superimpose new zoning on top of the existing structure.

5.2.3 How the Inclusionary Program Works[8]

Montréal's 19 boroughs each have autonomous planning powers.[9] If developers do not require a major zoning change or a master plan amendment in order to proceed with their development, they can still build even if they are over 200 units because it's a voluntary program. But most large redevelopment projects within cities require a change in land use designation – from industrial to residential, for example. In those cases, a developer would approach the respective borough's planning department to request a major zoning change, and the inclusion of social and private affordable housing would be negotiated on a case-by-case basis (PL3).

The benchmark formula of 15/15 (15 percent social or community housing/15 percent affordable) is meant as a guideline but varies depending on the project. An evaluation of local needs and project specifics is made. In some situations where the project's location is far from the city centre, the social housing component might be lowered to 10/20 or 7/23 (social and community housing/affordable housing). On the other hand, in large developments on municipally owned land, the proportion of social housing is always more than 15 percent and can end up being 45/20 (PL3).

There are two ways in which the production of social housing is initiated. The first involves a group forming itself into a co-operative or non-profit group and then approaching a TRG or the City to build a project. The second involves the OMHM, which can use the SHDM as the developer. In the first scenario, the City carefully selects strong groups who have demonstrated that they will be self-sufficient once construction is completed. The City will support the groups during the development and construction phase with the help of the TRGs. Upon completion of the development phase, the groups assume responsibility for the management of the units and the tenant selection process (PL3). See Figure 9 for a simplified illustration of the process.

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8 Please note that Montréal's inclusionary program involves a complex process run under an extremely complex planning structure, and the attempt to distill it into a more simplified form here may result in some complexity being lost.

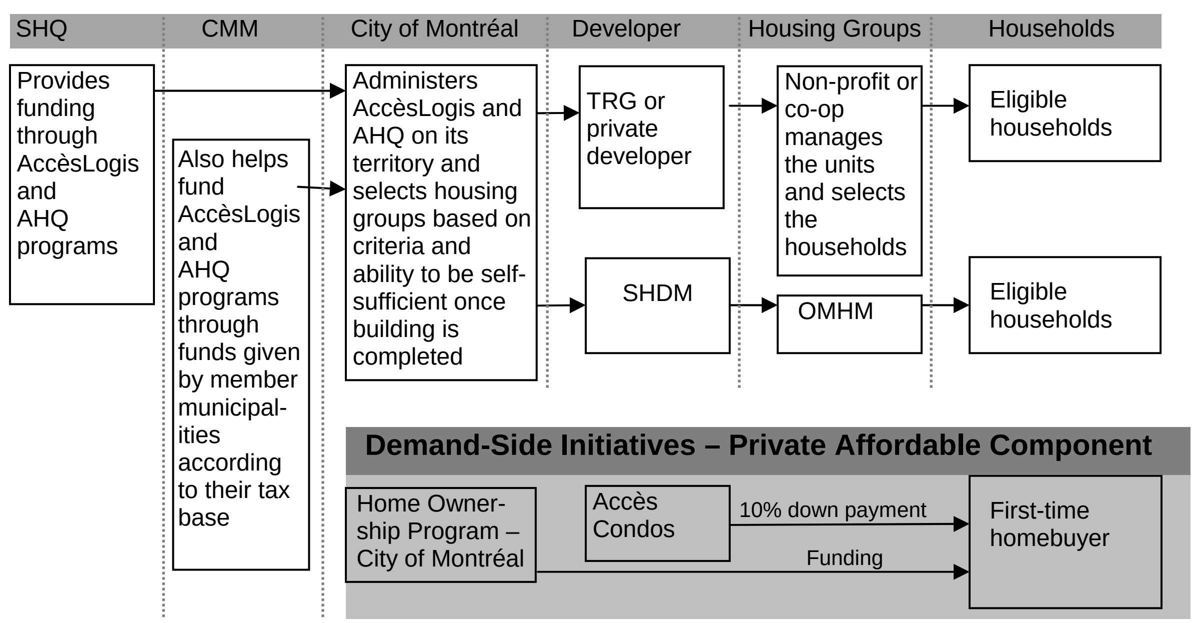
9 Those powers may be superseded in certain cases, such as social housing projects, by the Montréal city council. See article 89 of the Montréal City Charter for more details.

Obviously, the TRGs and the groups also develop social and community housing outside of inclusionary projects. At the end of negotiations, contracts are signed between the developer and the non-profit housing or co-op group(s) detailing which benefits will be provided. Developer contributions vary and can be a piece of land, a building, a part of a building, a piece of decontaminated land, or a combination of all of those elements (PL3).

Administration and Resale Controls

Unlike US inclusionary programs, the administrative responsibilities for the City of Montréal mostly focus on housing production. Resale control is managed by the City only in specific cases where private affordable homeownership units were sponsored through Montréal's private ownership program. Units under the Accès Condos program are rigidly controlled by the SHDM. No new administrative structure was put in place to support the inclusionary program, though part of the strategy was to adapt the City's service delivery model in order to improve coordination with the boroughs and help facilitate developments through a complex process.

Figure 9. Social and Affordable Housing Production Process in Montréal



Easing the process was very important because the complexity of the process added to the length of development time, which might mean the difference between success and failure for a developer. In the Service de la mise en valeur du territoire et du patrimoine, a new structure was developed, which gave rise to a new department called "gestion des grands projets." This new department is responsible for very large projects and helps to facilitate development by coordinating the efforts of all key players. The impetus for its genesis was due to existing need and cannot be specifically attributed just to the inclusionary strategy.

Sud-Ouest

In some areas of Montréal, the voluntary program has evolved so that it's almost a requirement. For example, in the Sud-Ouest borough – which is located next to the downtown area – the inclusionary policy has shifted from being voluntary to being almost mandatory. When developers want to build a large project in that borough, they know they will have to provide at least 15 percent social housing and 15 percent private affordable housing (PL3). They are compelled not by the borough planners or the strategy but by active local groups and the borough's residents, who make use of a regulatory mechanism to vote against the proposed project.

As mentioned above, projects that involve zoning changes come under article 123 of the LAU, and if there is enough opposition to the proposed by-law, it may prompt a referendum. However, in practice, it rarely goes to the referendum stage. The required resources and cost of a referendum are prohibitive, and the local borough council would remove the project and ask the developer to go back to the drawing board or negotiate a revised project with local groups (PL3).

Developers are reluctant to go to the referendum stage as well because it's a costly and time-consuming process that might take several months. Additionally, they know they will probably lose the vote because if there are enough signatures to prompt a referendum, that generally means the opposition will have enough support to win the referendum (PL3). So, developers hoping to build in the Sud-Ouest know that they will have to give something in return in order to get the zoning change approved, due to the organizing activities of a number of active local groups.

However, there is a regulatory loophole that can preclude the holding of a referendum. Article 532(3) of the Loi sur les élections et les référendums allows for the referendum poll to be waived if a majority of qualified voters sign their names on a notice stating that intention. The developer of the Lofts Impérial in the Sud-Ouest used this article to counteract the local opposition and went door-to-door explaining the project and soliciting signatures. In the end, the mix in the Lofts Impérial is 16 percent social and community housing and 30 percent private affordable housing.

Profile of Sud-Ouest

The Sud-Ouest (see Figure 10 for exact location) is a former industrial area with strong working-class roots. Its growth as a major manufacturing centre is due to the presence of the Lachine Canal, which bifurcates the borough (Poitras, 2009). When the Lachine Canal closed in 1970, a period of economic disinvestment occurred as the manufacturing firms began to relocate en masse, resulting in massive job losses and out-migration (Poitras, 2009).

There are 8,092 social and community housing units in the Sud-Ouest, one of the largest concentrations of social and community housing in the city (PL3). A number of organized local groups are also active in the area and are very vocal in advocating for more social housing (PL3). These groups have greatly contributed to the success of the inclusionary strategy in the Sud-Ouest.

Since the revitalization of the Lachine Canal in the mid-1980s, the Sud-Ouest has been an attractive area to develop given its propinquity to the downtown area, its waterfront location, and the redevelopment potential of its industrial areas (Poitras, 2009).

Incentives/Subsidies

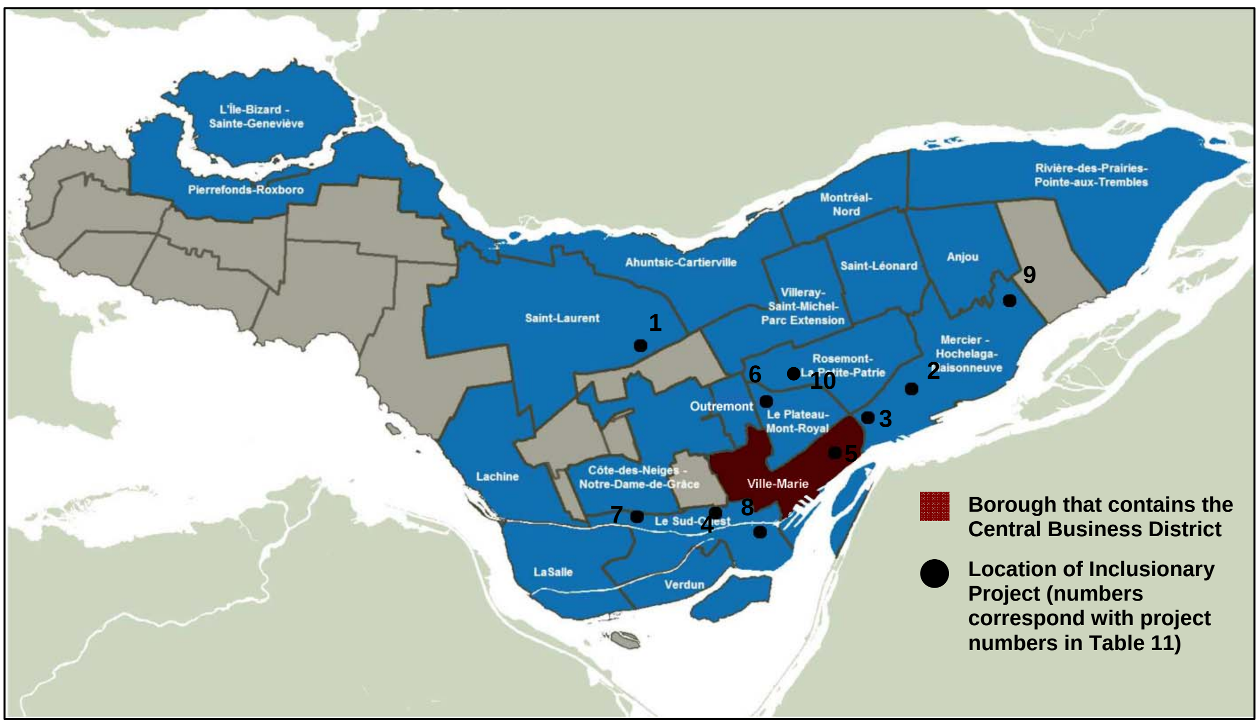
In some cases, incentives for developers are not written down in any formal document. Within the framework of Montréal's voluntary and flexible strategy, planning tools are used in a discretionary manner when negotiating with developers. For example, in the Sud-Ouest, it is known informally that, if developers participate in the inclusionary program, they will receive fast-tracking for their project, which translates into large savings for the developer as several weeks to a couple of months might potentially be saved. This incentive would involve fast-tracking the entire project in terms of permitting and zoning changes. "Studying the project in order to have the permit can go at the same time we start the process of changing the master plan or changing the zoning" (PL3).

Another potential incentive that was mentioned in the 2005 Strategy for the Inclusion of Affordable Housing in New Residential Projects was a reduction in parking requirements (City of Montréal, 2005). Indoor and outdoor parking could be extremely costly, and reduced parking requirements might help ease the financial burden, especially since low-income households are less likely to have an automobile.

Some of the earlier inclusionary projects were also helped with funds from Rénovation Quebec. The City used this money in situations when the upgrading of underground sewers was necessary or in cases of heritage preservation. Those discretionary funds are no longer available.

5.2.4 Analysis

Figure 10. Map of Montréal's Inclusionary Projects in Relation to the Central Business District



Source: Adapted from 2008 presentation – *Montréal's Inclusionary Housing Strategy: A Progress Report* (City of Montréal, 2008).

Table 11. Inclusionary Projects in Montreal (as of September 2007)[10]							
Project Name	**Borough**	**Estimated Period of Construction**	**Principal Developers of Social and/or Affordable Housing**	**Land-owner (City or Private)[11]**	**Total Units (est.)**	**No. (and %) of Social & Community-Based Units) (est.)**	**Number (and %) of Affordable Units[12] (est.)**
1. Secteur Saint-Louis	Saint-Laurent	2006-2008	Groupe Marton, SOLIM, OMHM	Private owner	436	83 (19%)	231 (53%)
2. Biscuiterie Viau	Mercier-Hochelaga-Maisonneuve	2006-2008	SHDM, Société en commandite Viau-Ontario, Bâtir son quartier, Les Habitations Loge-Accès Inc.	Private owner	260+	78 (30%)	182 (58%)
3. Site Raymond-Prefontaine	Mercier-Hochelaga-Maisonneuve	2006+	SHDM, Bâtir son quartier, Loggia	City-owned	300	122 (40%)	NA
4. Lofts Impérial	Sud-Ouest	2007-2009	Groupe Preval-Alliance, Bâtir son quartier, coop d'habitation Manoir Bourget	Private owner	486	78 (16%)	122 (30%)
5. Square Cartier	Ville-Marie	2007+	SHDM, Construction Beau-Design, Atelier Habitation Montréal, Inter-Loge Centre Sud	Private owner	395	53 (13%)	342 (87%)
6. Secteur Maguire	Plateau Mont-Royal	2007+	Habitations Laurendeau, Atelier Habitation Montréal, OMHM	Private owners	250+	181	NA (No private affordable planned)
7. Site Côte-Saint-Paul	Sud-Ouest	2007-2010	SHDM, OMHM, 91584623 Quebec Inc.	City and private owner	486	138 (28%)	162 (33%)
8. Nordelec	Sud-Ouest	2008-2014	El-Ad, Bâtir son quartier, coop d’habitation le Chalutier, OBNL le conseil des Aînés de Pointe-St-Charles	Private owner	1,180	174 (15%)	175 (15%)
9. Contrecoeur	Mercier-Hochelaga-Maisonneuve	2008+	SHDM, Bâtir son Quartier, Frank Catania and assoc.	City-owned	1,658	330 (20%)	660 (40%)
10. Ateliers Rosemont	Rosemont-La Petite Patrie	2008-2010	Bâtir son Quartier, coop le Coteau Vert, OBNL Un Toit pour tous	City-owned	569	255 (45%)	NA
Total					**6,020+**	**1,492 (25%)**	**1,874 (31%)**
Source: Ville de Montréal, 2007; City of Montréal, 2008.							

10 One project was excluded from this list –Site Outremont. Approval and millions of dollars in funding is pending (PL3).

11 Source: PL3.

12 A housing unit is considered affordable if the monthly rent or mortgage (including property taxes and heating fees) does not exceed 30 percent of the household’s gross monthly income (Ville de Montréal, 2007).

In 2007, the City published a progress report to gauge the impact of the strategy after two years of implementation, and the results are very positive. The report shows that the City's overall targets have been exceeded, as 39.4 percent of all housing starts in 2006 were affordable, with 11 inclusionary projects under construction or at advanced planning stages (see Table 11). The aggregate number of 39.4 percent cannot be broken down further because data are not available to isolate what percentage of that number refers to inclusionary projects. We can see from the cross-sectional data in Table 11 that a total of 3,366 affordable housing units have been secured through the program as of September 2007. Of that number, 1,492 units are designated for social and community housing, accounting for 25 percent of new units in major projects.

Currently, there are 40 major projects (over 200 units) that are being built or in the planning process since 2005. Of those 40 developments, 15 have agreements and the rest are at the negotiations stage. Three projects will not provide any form of inclusion, and three others are difficult, though negotiations are still under way (PL3).

Challenges

Working within funding and programmatic frameworks is a major challenge when planning inclusion on major residential sites (5,000 to 6,000 units) with multiple developers over a long period of time. Current funding is short-term, usually for one- to two-year (sometimes three-year) cycles, and ensuring funding for the building of social and community housing over the long term presents a huge challenge. The City determines the amount of units that will be built in which housing category (e.g. families, singles) in each program year. The number and types of units are thus reserved for each program year, and City staff needs to work within those funding constraints. Therefore, reserving units for a long-term project that might span 15 years is an issue. While the City waits for funding and adequate human resources to manage the building process, what happens to the piece of land contributed by the developer? Sustained and context-specific funding is an issue that Montréal, like Toronto, grapples with. Funding formulas do not take into account Montréal's particular context – higher land costs and contaminated land – and the extra costs are not reflected in the level of funding (PL3).

As well, there is a challenge of creating inclusion in projects in downtown Montréal, where the land costs are extremely high. In those cases, two developers will give cash in lieu instead of including affordable housing within their development. In-lieu payment is a relatively new option, and it is not the intention of the strategy – mixed city and affordability – but the program needs to remain flexible (PL3).

Why Would a Developer Participate in a Voluntary Program?

As mentioned in the section on the Sud-Ouest, developers are compelled to provide inclusion by active local groups and residents who employ articles 123 and 130 to 136 of the LAU. But this may not be the case in other boroughs. In fact, some developers have brought up the argument of equity as they are requested to include affordable housing in their development in the Sud-Ouest but are not asked to provide it in another borough (PL3). This raises the question of why they don't choose to develop elsewhere if the Sud-Ouest is so demanding, and the simple answer is that they make a profit (PL3). In the 2007 Progress report (Ville de Montréal, 2007: 19), the developer of Lofts Impérial is quoted as saying the following[13]: “With sale prices at $250 per square foot in Montréal, the Montréal market does not offer the same room to manoeuvre as in Toronto or Vancouver, with $450 per square foot and $800 per square foot, respectively. Reflection is required on the implementation of a strategy that supports developers who participate, as ultimately it is the purchaser who absorbs a large portion of the expenses and the impact of the policy.” In fact, to keep the project at Lofts Impérial feasible, the developer reduced the size of the condos to units of about 450 square feet, which might be a new trend in Montréal since residents are used to larger units (PL3). Developers might not be happy with the inclusionary strategy, but they are working with it (PL3).

Conclusion

The success of Montréal’s inclusionary housing program varies from borough to borough and is dependent on the local context. In the Sud-Ouest, the strategy has shifted from being a voluntary one on paper to being almost a requirement in practice. In other boroughs, the policy is not as aggressively pursued and promoted. Raising awareness of the program is a key element of the strategy, and the policy has become known by developers and borough planners, but the decentralized municipal structure limits the effectiveness of the inclusionary policy because boroughs have autonomous planning authority. As one city planner put it, “The power resides in the zoning change at the local level” (PL3). Drawing upon the experience in the Sud-Ouest, it can be argued that the conditions for success require the presence of:

- active local groups who advocate for more social and community housing;
- political will on the part of elected borough officials;
- active local planners; and
- a favourable housing market with great development appeal.

This combination of development appeal, active groups, and Quebec’s regulatory framework concerning zoning changes has helped in the provision of social and affordable housing in major projects.

Another important strength of Montréal’s inclusionary program is the emphasis placed on evaluation and monitoring. This flexible adaptive approach will allow the City to tweak and adapt the policy as circumstances change and will help the program to continue to achieve favourable outcomes.

13 Translated from French to English by the researcher. Attempts to verify the translation were made, though small errors may exist.

6. Evaluation

This section attempts to answer the primary research question "Could inclusionary zoning be an effective policy tool to create more affordable housing in Toronto?" The inclusionary tool will be evaluated based on measurable outcomes and on how well policy objectives have been met. The evaluation will focus on the following areas: the extent of affordability, affordability control, and the total number of affordable housing units produced. A comparative analysis of the two case studies will be performed in section 6.1 to evaluate how well inclusionary housing programs have worked in Canada. The US inclusionary experience will also be analyzed and evaluated in section 6.2.

6.1 Comparative Analysis – Vancouver and Montréal

Table 12. Typology of Inclusionary Programs in Vancouver and Montréal

Inclusionary Typologies	Vancouver	Montréal
Strength of Inclusionary Requirement	Mandatory	Voluntary
Threshold Size	Major projects*	Focus is on projects with 200 units or more, but no strict threshold size
Type of Tenure	Rental	Rental and private ownership
Funding Model	Senior government funding combined with land contribution by the City	Senior government funding

* There is no strict definition of "major projects," but the term generally refers to fairly large projects (PL2). "A Major project creates a new neighbourhood" (City of Vancouver, 2009a).

Studying the inclusionary programs in Montréal and Vancouver presents an opportunity to examine and compare a voluntary approach versus a mandatory one (see Table 12 for a breakdown of the respective programs). As discussed in section 3.3, voluntary programs are generally viewed in the literature as being ineffective at producing affordable housing. However, there are exceptions, and Montréal's program appears to be one of them. This comparative analysis will attempt to determine which type of approach has been more effective and will evaluate the general effectiveness of the two programs in the production of affordable housing.

Table 13 details the relevant program outcomes. The second row shows the total capacity created through the two programs, and it appears that, in its first two years, Montréal has secured close to half of the units that took Vancouver 20 years to secure. This may be misleading, however, as Vancouver's total capacity does not include units from Southeast False Creek or from East Fraserlands. In addition, an undetermined number of units have also been lost through the permitted conversions of six affordable housing sites to market housing, which might not be reflected in Vancouver's total capacity.

Table 13. A Comparison of Affordable Housing Production Generated by Inclusionary Programs – Montréal and Vancouver[14]

Evaluation Criteria	Vancouver	Montréal
1. Time period[15]	1988 to April 2008	August 2005 to September 2007
2. Number of affordable housing units[16]	2,533[17]	1,492 social and community housing units
3. Level of affordability	Typical income mix: 60 percent core need households and 40 percent of households paying market rent (City of Vancouver, 2003a, 2001a)	Depends on the funding program. Housing built under AccèsLogis generally provides rent supplements to 20-50 percent of households, with the rest paying below-market rent. No rent supplements are provided under the AHQ, but the units must be rented at below-market, "which is usually 15 percent under the market price (HA4)." Inclusionary projects now mostly use AccèsLogis (PL3).
4. Length of affordability	Sites are leased to non-profit sponsors for 60 years.	In the social and community housing component of the program, perpetuity is assumed.
5. Target households and selection process	Priority is on core need households with gross incomes below the Core Need Income Threshold (CNIT). Selection is done either by the non-profit provider or by BC Housing through its housing registry, which is the most centralized waiting list in the province – 75 percent of non-profit groups have signed on to the registry (HA3).	Target groups are low- and moderate-income households. In the rent supplement program, rent is 25 percent of last year's income and includes heat (HA4). In terms of selection, each non-profit group or co-operative has its own list and selection criteria (families, seniors, etc.) (PL2). The OMHM manages the waiting list for the City.
6. In-lieu or off-site production allowed	Payment in lieu is allowed, but the City tries to limit this option. For more details, see section 5.1.3.	Accepting cash in lieu is a recent development. It is acknowledged that inclusion may not be achieved, but flexibility is needed (PL2).
7. Affordable housing production in inclusionary projects as a percentage of total affordable housing production	Approximately 19.7 percent[18]	Approximately 20 percent[19]

14 As noted earlier, core housing need is a Canadian-specific measure cited in this table and therefore should not be regarded as a goal of inclusionary housing/zoning in the United States, which aims mainly at "workforce housing."

15 This is the time period for which data were available.

16 This number represents the total number of units that have been secured and not necessarily built or approved for funding. It also includes units rented at market or below-market rates.

17 This does not include the number of units secured through Southeast False Creek (SEFC) or East Fraserlands.

18 This percentage uses the number of built units as the numerator (1,427) and is presented with the following caveats: The number is based on the number of units created from 1988 to 2007 (7,229) according to program year, which is its funding year. This percentage should be treated with caution.

19 This is based on data from 2006 to June 30, 2009. A total of 3,797 units in Montreal had funding approval, and around 20% are part of inclusionary projects (PL2), but the number 3,797 does not represent total affordable

In terms of affordability, both programs have a mix of incomes within their projects and target low- to moderate-income households, as row 5 in Table 13 shows. However, it is unclear whether deep core need households have been well served by Vancouver's policy, especially in the years following the cancellation of Homes BC, which allowed for the inclusion of 30 percent as deep core need households (City of Vancouver, 2004). In the PAL case, the original proposal would accommodate 60 percent as core need households, of which only 10 percent would be in deep core need.[20] In terms of policy objectives, both have stated objectives of social inclusion and income mix, which has been achieved at the project level and at the neighbourhood level. However, attempts to achieve social inclusion might result in higher costs and decrease the number of units that could be built. This is an ongoing debate in Vancouver, as critics argue against building social housing on more expensive land when more units can be built on less expensive sites (PL2). That debate has heated up in recent months with the news that the cost to build 252 affordable housing units in the Olympic Village has almost doubled with the level of affordability at risk (City of Vancouver, 2009b). The guiding principle of inclusionary programs is to create equal housing opportunities for all residents in all areas, but does social mix truly achieve the goals of more socially just and sustainable neighbourhoods? If not, is it worth pursuing in specific cases where the costs of construction are so high?

As to whether Vancouver's mandatory approach is more effective than Montréal's voluntary approach, it is difficult to draw concrete conclusions given the data limitations expressed in the Table 13 footnotes and the relatively short life of Montréal's program. But what can be concluded from the case study findings is that the effectiveness of both programs greatly depends on the availability of senior government funding. Both cities have effectively employed planning tools to secure sites for affordable housing but then must rely on federal and/or provincial financial support to develop the sites. Alternatives to senior government funding can be pursued, but the depth of affordability is limited, as the experience in Vancouver has shown.

Additionally, after 20 years of operation, only 2,533[21] units have been secured in Vancouver. This number is slightly underwhelming. Vancouver's program design might be limiting as it only applies to very large projects, a condition that presents its own challenges. But the real issue has not been the number of units secured through the 20 percent affordable housing policy. The issue is that just over half of the captured capacity (1,427) has been developed from 1988 to 2008, which, obviously, on its own, is insufficient to meet the housing needs of Vancouver's low-income residents. (It is worth noting that the 20 percent policy is just one part of Vancouver's more comprehensive housing strategy.)

Montréal's effectiveness is also limited by the need for sustained funding from senior government, but it also has the extra challenge of enticing developers to participate. With earlier funding no longer available – Rénovation Quebec and the AHQ private component – the City's ability to develop sites in the future might be constrained. Further, given the voluntary nature of

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housing production in Montreal during that time because some units that were funded in an earlier period may have begun construction after 2006.

20 Deep core need means households with gross income below 70% of the CNIT (City of Vancouver, 2004).

21 If the East Fraserlands and Olympic Village sites were added to this number, the revised number might be crudely approximated at 3,985. Areas 1A and 3A in Southeast False Creek (SEFC), which are designated for affordable housing, were not included.

its program, certain local conditions need to be in place in order to compel developers to participate. In boroughs where these conditions are not present, the objective of a socially mixed city might not be achieved.

6.2 Evaluation of US Experience

The two case studies have shown how inclusionary programs work in a Canadian context, but, as noted, inclusionary zoning is not used in Montréal and Vancouver as an alternative method to build affordable housing. It is used to help facilitate the production of social housing, and, generally, these units have deeper affordability than most of the units created through inclusionary housing in the United States.

After 30 years of inclusionary experience in the United States, estimates put the number of units produced nationwide anywhere from 80,000 to 120,000 (Calavita and Mallach, 2009), with most of the production occurring in California or New Jersey (Porter, 2004a). But how affordable is the housing and how long is it affordable?

A review of the literature suggests that a majority of the housing has been ownership units targeted to moderate-income households:

> An important feature of inclusionary practice in the US is that many of the participating jurisdictions involve development of single-family subdivisions. Since this is the predominant form of housing development, and is captured in these inclusionary requirements, *the outcome in the US tends to be on affordable homes for purchase by moderate-income first-time buyers* (Gladki and Pomeroy, 2007) (emphasis added).

Generally, the needs of the lowest income groups have not been well addressed by inclusionary programs (Gurran et al., 2007; Calavita and Grimes, 1998; Porter 2004a). But it has worked well to produce workforce housing. In California, which is known for soaring housing prices, 47 percent of inclusionary housing built between 1999 and 2006 was affordable for workers, such as teachers, who were priced out of the expensive housing market (50 to 80 percent AMI), and 21 percent of housing was erected for those in the 80 to 120 percent AMI (NPH, 2007). A Canadian example occurred in Whistler, British Columbia, where the town had to deal with a shortage of affordable housing for its workforce – from entry-level to senior management – and used a form of inclusionary zoning to build this workforce housing without public subsidy (IZE2).

To reach lower-income groups in California, private developers can partner with affordable housing developers to meet their inclusionary requirements. The product of that partnership is typically more rental affordable housing built for lower-income households (NPH, 2007). In a key informant interview with an affordable housing developer in California, he explained that, in order to make the project economically feasible, there was a need to "cobble together multiple funding sources" such as the Low-Income Housing Tax Credit (LIHTC) to reach their targets of 30 to 80 percent AMI. The LIHTC is a federal program, started in 1986, that offers substantial tax credits in return for equity for affordable rental housing development (Oakley, 2008). "It has become the most powerful housing production tool in the US" and has been instrumental in helping to build inclusionary units in California (DC2).

Another issue that should be examined is the length of affordability control. In some of the earlier inclusionary housing programs in California, resale management and administrative oversight was underfunded, and a number of units were released from affordability restrictions as a result (Jacobus, 2007). In other programs, such as Montgomery County, affordability controls are only in place for 10 years for ownership units and for 20 years for rental housing (Porter, 2004a). This short control period means that a large proportion of affordable units may be lost during the life of the program, which is what occurred in Montgomery County, where only about 4,000 units have remained affordable out of the 11,000 that were originally produced (Gurran et al., 2007). However, the typical control period in California is at least 55 years (DC2), and in a few other jurisdictions perpetuity is stipulated (Porter, 2004a).

Inclusionary housing has two main objectives: to increase the supply of affordable housing and to "foster greater economic and racial residential integration" (Calavita and Grimes, 1998). Examining the first objective within the California context, the NPH (2007) study shows that a reported 21,942 inclusionary units were built in the state from 1999 to 2006. It is difficult to evaluate this number and pass subjective judgment as to whether it is adequate or not because it is not known how many units might have been produced in the absence of an inclusionary program (Been, Meltzer, and Schuetz, 2007). According to one California affordable housing developer (DC2), inclusionary zoning has helped immensely and has "produced all kinds of housing."

That said, what we can evaluate is the depth of affordability and whether affordability will be preserved for the long term. The preceding paragraphs show that lower-income groups have not been well served by inclusionary programs and that affordability, in some cases, has not been preserved for the long term. However, while inclusionary housing as practised in the United States has not been entirely effective at producing affordable housing for lower-income groups, that does not mean it has been ineffective at producing affordable housing in general. The literature has shown that it has worked to produce affordable housing for moderate-income households.

In terms of the goal of social inclusion or social mix, the ideal of creating inclusive communities that provide equal housing opportunities for all income groups should be pursued. Providing less advantaged households with access to high-quality amenities, schools, and proximity to their workplace is a laudable endeavour, but there are some concerns. A major question is whether these new inclusionary developments have the social services that lower-income households require or whether they will have to travel long distances to access them, especially as some neighbourhoods are located in suburban areas. The other concern is whether inclusionary policies might be considered a form of municipally managed gentrification, especially in cases of inner city developments.

Strengths and Weaknesses

In boom times, the inclusionary tool has the potential to generate much-needed affordable housing because it leverages the productive abilities of the private housing market. However, the success and effectiveness of inclusionary programs depend on the health and vibrancy of the market. The programs require a prospering, strong housing market and, as the case studies show, political will in order to work well (Porter, 2004b). Shifting demand and changes in housing preferences might also affect the willingness of developers to participate. In New Jersey, builders were happy to build inclusionary units when they were building large apartment buildings in the 1980s, but when the market shifted to smaller, more upscale properties, the developers were more recalcitrant (Schwartz, 2006).

Another potential limitation is the fact that outcomes would be variable from year to year since municipalities cannot predict how active the housing market will be (PL1). Another issue is what happens when the market slows. That is a situation that California inclusionary programs are dealing with now. According to the California developer, very little inclusionary housing is being built during this market downturn. His affordable housing development company had six to eight inclusionary projects in the development pipeline and on a fast track to be built, but now they've been put on the back burner waiting for the market to return (DC2).

6.3 Evaluation Conclusions

> Some affordable housing advocates try to promote inclusionary zoning as the panacea that's going to get affordable housing built, and that's exactly why the private development sector pushes back. They're afraid that they're going to have a hugely onerous burden (LE1).

Could inclusionary zoning be an effective policy tool to create more affordable housing in Toronto? Given the data constraints and limitations, it is difficult to make concrete conclusions. However, input from housing experts and outcomes from the United States suggest that inclusionary housing has been effective in some US jurisdictions at producing homeownership[22] units for moderate-income households. So, an inclusionary housing program has the potential to create more affordable housing in Toronto for the shallow subsidy group[23] provided that:

1. It is part of a more comprehensive housing strategy.
2. The program is properly designed through consultations with relevant stakeholders, especially the builder community. (Further research should be done to identify the key elements of a successful inclusionary program that would work within a Toronto context, as any inclusionary program should fit the local context.)
3. The appropriate administrative levers are put in place to ensure proper affordability control and preservation.

The evidence from the United States shows that inclusionary housing has worked in strong housing markets to produce affordable housing for moderate-income households. "It's a myth that you can get down to the lower level … The economics simply does not work to use inclusionary zoning to achieve truly affordable housing for low-income people" (LE1). But, inclusionary housing can be used to "address shallow need and entry-level homeownership, which is one of the areas [where] it has worked quite well" (LE1).

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[22] The focus of this report has been on homeownership because rental housing is produced in the United States with the help of the LIHTC. With the issues surrounding rental provision in Toronto, more in-depth study is required to explore the feasibility of using inclusionary zoning to produce rental units.

[23] The shallow subsidy group is defined in this report as the group in the middle-income strata that may require shallow subsidies to access entry-level homeownership.

If inclusionary housing were to be used in this way, then administrative oversight and management would need to be considered. Resale management, in terms of resale price restrictions and occupancy restrictions, is key to preserving long-term affordability for subsequent owners. “Resale price restrictions are the only way to retain an affordable price on non-market ownership housing over time” (Curran and Wake, 2008). These price restriction covenants can be registered on title and run with the land. As mentioned in section 3.2, proper administration requires adequate funding, but, in the case of Toronto, an existing Affordable Housing Office might be able to take over the administrative duties of an inclusionary program.

But inclusionary programs alone cannot solve the housing affordability crisis. In discussions with Toronto housing advocates, most did not see inclusionary housing as “the” solution to the shortage of affordable housing in the city, but saw it as one tool in a suite of tools: “In any housing strategy, one method is not going to be the panacea for solving the crisis. It’s going to be a combination of many things affecting it” (HA1). Inclusionary zoning working in a larger housing program may help to address the needs of the shallow subsidy group on the supply side as other initiatives work to meet the housing needs of lower-income groups.

In terms of extrapolating lessons from Vancouver and Montréal, the comparative analysis should provide some guidance to Toronto in choosing the type of approach the City would like to adopt. Both approaches have worked well to secure sites, but Montréal has the added challenge of enticing developers and local planners – and councillors, for that matter – to participate in the program. Further, Montréal’s success is also attributable to certain rezoning stipulations in its planning framework – something that Toronto lacks. Therefore, some local elements that are essential to success in the Montréal case study may not be replicable. Another noteworthy consideration is that neither Vancouver nor Montréal has to deal with OMB appeals.

7. Issues with Adapting Inclusionary Zoning to Toronto

Part of the evaluation process is also to look at the legal issues involved with legislative authority around the implementation of inclusionary zoning and at how Toronto builders would react should an inclusionary program be established.

7.1 Legal Issues

A question that arises is whether an effective voluntary program requires “the teeth for a mandatory one” (IZE2). A concern for Ontario municipalities in implementing an inclusionary program is the possibility of legal challenges. If the authority to implement mandatory inclusionary housing requirements is not present, then developers might be more inclined to challenge the voluntary process in court (IZE2). As well, there is a debate about whether Ontario municipalities already have the power to implement inclusionary housing.

In a key informant interview with a Toronto legal expert about this issue, he indicated that there are a number of possibilities in the *Planning Act* that might allow for the provision of affordable housing: section 34 (zoning power), section 51 (subdivision), section 41 (site plan control), section 37, and section 45 (minor variance). Section 34(16) refers to zoning with conditions, which at first glance might appear to permit inclusionary requirements, but you need Official Plan policies in place and not many municipalities will have that unless they know the regulations provide for conditional zoning with respect to affordable housing. Sections 41 and 45 are too limiting, which leaves section 37 and section 51 (subdivision control). "Under the current regime both can be used" (LEG1; as noted elsewhere, the scope of this project limited the number of interviews and future research should obtain further legal perspectives). However, there are some difficulties with both sections.

Section 37 is limited because it only applies in situations where there is an increase in height and/or density, and there is the issue that affordable housing benefits should relate to the development, which was discussed in detail in section 1.3.3. Subdivision control (s. 51) could also be used because municipalities can impose any conditions reasonably related to the development. However, this section is less useful in Toronto, as most of the city is built up and site plan control is used much more than subdivision control (LEG1).

Regulating the users and not the use of land?

Implementing inclusionary zoning in Ontario might raise the issue of whether municipalities would be using zoning power to regulate users, since affordable housing is intended for certain income groups (Gladki and Pomeroy, 2007). After the legal precedent set by the case *Bell v. The Queen*, a well-known planning principle has been that planners can't zone the user – only the use of land – so inclusionary requirements might be in contravention of that rule. However, there was a recent case involving the City of Oshawa[24] that overrides *Bell v. The Queen* and might be a new precedent (LEG1). In that case, the court also chose to ignore section 35 of the *Planning Act* (LEG1; again, future research should solicit further expert advice and opinions on the interpretation of this case). In the Oshawa case, the municipality was trying to "control residential use intensity using a single dwelling unit designed for use as a single housekeeping establishment as the basic planning unit" by defining "single housekeeping establishment" as "a use typical of a single family unit or other similar basic social unit" ([2008] O.J. No. 3298 (Ont Sup Crt)). In effect, the municipality was trying to prevent students from living together and was "trying to zone them out, effectively, and the court upheld the zoning" (LEG1).

7.2 Developer Reactions

A key player in any inclusionary housing program is the private developer, whose co-operation and participation are fundamental to the success of any inclusionary program. Municipalities must be willing to collaborate with builders at the design and implementation stages for the program to be successful (PL1; IZE2). Research limitations only permitted a brief survey of the local development community's view on inclusionary zoning, in general, and of a Toronto program, in particular. However, the Altus Clayton (2008) report for the Canadian Home Builders' Association was obtained, which lays out the development argument (DC4). It should also be noted that the development key informants felt it difficult to give a proper opinion on an inclusionary housing program in Toronto without knowing the program details. In the absence of this information, "the instant reaction is the one that's expressed in the Altus report: it's a false

[24] [2008] O.J. No. 3298 (Ont Sup Crt).

economy; it's shifting societal burden over to become a private burden; it's arbitrary; it ends up making housing more expensive" (DC4).

To summarize, the development community's point of view on inclusionary zoning is not a favourable one. The Altus Clayton group (2008) argues that US research "suggests that inclusionary zoning is an ineffective and inefficient policy" and does not "produce a high volume of affordable housing."

Developers are concerned that inclusionary requirements would just be another layer of fees and bureaucracy that they have to deal with. Further, if it's up to each municipality to design an inclusionary program that is specific to its local context, then that poses potential challenges for developers. "If you have to figure out different rules each place you go to, that, alone, gets frustrating, and contradicts the idea of uniform policy and just makes it harder to do business" (DC4).

Developers are in it to make a profit like any other business. "The bottom line is that, if it doesn't work financially, then we won't build. If the pro forma doesn't show a profit, it won't be done" (DC3). Developers are charged with shaping the urban form, so there is some social responsibility associated with that, but inclusionary housing takes away responsibility from government and puts it at the feet of the development community, which is not a good approach (DC3). "It just strikes us as another example of shifting costs onto the development industry, which actually ends up coming right back onto the homebuyer's side of the equation" (DC4). Developers have enough economic challenges and risk to deal with as it is, in terms of escalating development charges (DC4).

> Government just hammered us with HST (Harmonized Sales Tax). Now they've softened the blow dramatically, but they're still going to collect potentially about $1B out of our industry in incremental sales tax revenue. Now if you're going to do that, why make us pay for the affordable housing piece too? You've just got your $1B, go put that into affordable housing (DC4).

After arguing the points against inclusionary housing, one developer, who works for a private development company known for its social conscience and corporate responsibility, stated that his company would learn to adapt but that it would have to be an incremental approach. In the end, should inclusionary policies come into effect, the developers would embrace them provided that there is a quid pro quo such as density bonuses. As well, if they knew up front that the inclusionary requirements were in place, they would factor them into the land purchase price and could work around them as long as they knew far enough in advance (DC3).

In discussions with planners in Montréal and Vancouver and an affordable housing developer in California, a couple of recurring themes emerged: certainty and flexibility in implementation.

> What we find is that the more certain you can make a process and its outcomes, the more likely a developer will be to accept it, not embrace it, but accept it … So if you offer a developer certainty and they know what they will have to pay, then they are more willing to accept it because they can build it into their pro forma (PL2).

The California developer also concurred with this view: “If there is a cash-in-lieu option and all they have to do is write a cheque, they’ll all go and do that, because that’s certainty. They know exactly what that’s going to cost them. They’re much less equipped to understand what it’s going to cost me if I have to build it, because, typically, they’re not in that business” (DC2).

A Montréal planner and the developer in California also emphasized the importance of flexibility in implementation. Allowing the developer the creativity to interpret the ordinance is important, and cities want to unleash the power of the market if possible.

8. Conclusion

As mentioned in the research limitations section, this research is not an exhaustive evaluation of a policy option. If it were, a housing needs assessment would have been conducted to ascertain whether the shallow subsidy group in Toronto required aid or whether the market was already producing housing for that group. If so, then creating affordable homeownership opportunities for a group like the middle strata may be duplicating efforts that are already occurring in the market. But if inclusionary requirements help this market process along and if filtering does work to free up units and thereby lessen the housing stress on those on the left side of the housing continuum, then it would be a productive use of resources. High house prices certainly add to rental demand and place upward pressure on rents, so affordable homeownership for the shallow subsidy group might relieve some pressure on rental demand, at least in theory.

As well, the research on Toronto’s current incentive-based approach was meant to reveal its limitations and show that a more effective system is needed to generate more affordable housing. Inclusionary housing has the potential to extend the reach of section 37 and help create more new affordable housing. Further research could also be done to see whether the homeownership component of the Affordable Housing Program could be used in combination with inclusionary zoning – as the Accès Condos program is used in Montréal – or whether that would be a duplication of efforts. However, the addition of down payment help from the AHP might help to increase access to homeownership for lower-income groups.

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