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HOUSING AS A HUMAN RIGHT: UNDERSTANDING THE NEED TO ALIGN TORONTO'S LEGAL PLANNING FRAMEWORK WITH CITY COUNCIL'S VISION TO END HOMELESSNESS & THE AFFORDABLE HOUSING CRISIS

Caroline Cormier

ABSTRACT

While international law defines housing as a basic human right, many Torontonians are being denied access to secure, adequate and affordable housing. The primary objective of this article is to examine the interplay between city policy statements on ending homelessness through the maintenance and creation of affordable housing stock, and the legal mechanisms required to execute these policies. This article will begin with an examination of the goals of the *Streets to Homes* program implemented in 2005 and the most recent policy recommendations outlined in the 2008 report from city council entitled, *Housing Opportunities Toronto: A framework for affordable housing*. Following a brief introduction to these two government initiatives, it will be determined whether the existing legal planning framework coincides with the Toronto City Council's vision to end the homelessness and affordable housing crisis by 2018. The legal mechanisms examined in this paper will include the Municipal Shelter by-law (2003), Section 37 of Ontario's *Planning Act*, and the need to implement inclusionary zoning to facilitate the ability of the city and developers to respond to the homelessness crises in the long-term. When combined, these legal tools have the ability to support the creation of new, secure, adequate and affordable housing stock in the City of Toronto in both short- and long-term.

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Introduction

With an inextricable link existing between the growing homeless population and the severe shortage of affordable housing, the City of Toronto is facing an unprecedented challenge. While there is no viable method of measuring Toronto's homeless population, in the last year nearly 30,000 different people were reported as users of Toronto's shelter system (Wellesley 2008:2). Between 1996 and 2001, it is estimated that Ontario lost 44,780 rental units of which 17,515 were in Toronto – a region in which the population increased by 9.6% over the same five-year period (CBC 2004). The City of Toronto's Urban Development Services Policy & Research department predicts that the population of the Greater Toronto Area (GTA) is expected to reach 7.45 million by 2031, with Toronto's population exceeding 3 million by this time (City of Toronto 2003). With nearly 71,000 individuals and families currently on the waiting list for social housing and a 200% increase in the number of families visiting homeless shelters over the last decade, it is apparent that as the city's population continues to expand the situation of homelessness in Toronto is more likely to become untenable (CBC 2004).

Once touted for its exemplary progressive housing policies, Canada's commitment to end homelessness and rejuvenate affordable housing programs has essentially been abandoned since the mid-1980s, an action that has had a dramatic impact on the current homelessness and affordable housing crisis occurring in Toronto. With municipalities now shouldering the bulk of the responsibility for the creation of new affordable housing stock, city council must seek to alter the current limits of its political powers and financial resources to refurbish Toronto's outdated legal planning context to include more effective and efficient mechanisms to create the affordability and diversity that municipal policies are hoping to achieve. By and large, the improvement of the situation of the homeless and poorly housed population in Toronto is dependent upon City Council's commitment to engage in both preventive, short-term strategies, as well as investing in long-term solutions to the problem.

After establishing a brief overview of the magnitude of the homelessness and affordable housing crisis in Toronto, this essay will examine the interplay between city policy statements on ending homelessness through the maintenance and creation of affordable housing stock and the legal instruments required to execute these policies. Specifically, this paper will begin by examining the goals of the Streets to Homes program initiated in 2005 and the most recent policy recommendations outlined in the 2008 report from City Council entitled, Housing Opportunities Toronto: A Framework for Affordable Housing. In comparing the vision outlined in these two government initiatives, it will be possible to determine whether the existing legal planning instruments coincide with city council's vision to end homelessness and the affordable housing crisis by 2018. While the Municipal Shelter By-law (2003) may be able to provide a viable solution to homelessness in the interim, this paper will underscore the need for the City of Toronto to expand beyond the constraints of Section 37 of the Ontario Planning Act and look at inclusionary zoning as a feasible and practical legal mechanism that will support the creation of new secure, adequate and affordable housing stock that will be accessible to

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all Torontonians. While the City of Toronto has implemented a series of policy initiatives and economic incentives to help initiate the repair and development of Toronto's affordable housing stock, this paper will focus solely on three of the legal mechanisms that City Council can work to improve in order to secure the supply of affordable housing in Toronto. Since the nature of the city's homelessness and affordable housing crisis requires both a short- and long-term response, it will be necessary for the legal planning mechanisms to operate within the same time frame. Facing such a critical shortage in affordable housing, there is a need for the City of Toronto to provide a short-term response to homelessness and it can be argued that the Municipal Shelter By-Law provides the legal framework necessary to improve the immediate reality of individuals living on the streets. To eliminate the crisis entirely, it will be necessary for the City of Toronto to provide permanent, affordable housing options for individuals in need. The two legal mechanisms that offer a more long-term and sustainable approach in terms of developing affordable housing in Toronto are the application of Section 37 and the ability of the municipality to implement a process of inclusionary zoning. The ability of these three legal instruments to address the homelessness and affordable housing crisis in Toronto, within the short- and long-term, is the reason they have been selected as the subject of analysis.

Toronto's Homelessness & Affordable Housing Crisis

The growing homelessness and affordable housing crisis in Toronto has been triggered by a series of government decisions at both the provincial and federal levels. By examining the devolution of responsibility for housing policy from senior levels of governments to the municipalities, this section will provide the backdrop necessary for understanding homelessness and the lack of affordable housing within the context of Toronto. At the federal level, the decline in affordable housing began in 1984 when the government cut almost $2 billion from housing programs (Begin 1999). While this cut signified the first substantial slash to the housing programs budget, the following decade witnessed a constant decline in funding until 1993 when the Conservative Party officially cut all funding for social housing programs - equivalent to approximately $20 million (Shapcott 2006). Within this time period, the average annual supply of affordable housing went from 25,000 units in 1983 to zero units by 1993 (Humanize Toronto official website). When the Liberal Party came to power in 1993, Finance Minister Paul Martin maintained this policy and effectively removed the federal government from the housing sector altogether. In 1995, Ontario's Harris-Eves government cancelled 17,000 units of affordable housing approved for development, which would have housed 40,000 people (Shapcott 2006). At this point, the province also slashed welfare rates by 21.6%, meaning that an individual living on welfare would earn just over $520 per month (City of Toronto 2003b:19). Meanwhile, between 1997 and 2002 rents in Toronto increased by almost 31% (Ibid). In the same year, the provincial government cut nearly one-quarter of the shelter allowance payments to welfare recipients, leaving many people with little to no money to pay for food, utilities, rent and other necessities (City of Toronto 2003b:20). By 1996, the federal government had cancelled all new affordable housing spending and was beginning to execute its plan to transfer existing federal housing programs to the provinces and territories, making Canada one of the only developed countries in the world without a national housing program.

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It is also important to note that until 1996 there existed a clear provincial mandate with respect to affordable housing requirements in new developments. The 1989 Provincial Policy Statement encouraged all municipalities to create legislation ensuring that a minimum of 25% of the units created through either new development or intensification processes were affordable (Layton 2000:99). In 1996, a new Provincial Policy Statement enacted under Section 3 of the Ontario Planning Act led to the removal of the 25% minimum for affordable housing (Ibid). As a result of this omission, there was no longer a directive from the provincial government to ensure that any fixed proportion of housing units were to be affordable. Since the mid-1990s, senior levels of government have effectively offloaded the political and fiscal responsibility for affordable housing to municipalities. The rationale behind this decision was that the government operating closest to the people had the greatest capacity to meet local needs; however, the addition of social housing to municipal government agendas in Canada was problematic in a number of ways. In offloading costs, the provincial and federal governments did not provide either a legislative or practical framework in which municipal governments could easily sustain the pre-existing housing supply or procure revenue to establish new units (Wellesley Institute 2006:27). The lack of framework provided to municipalities placed a significant amount of pressure on non-residential property taxes and development charges, ultimately increasing the costs for developers of building new affordable social housing (Ibid). While the municipal government inherited a new set of responsibilities, the legal framework in which municipalities were working within (both local and provincial) remained static, causing a number of difficulties in replenishing or generating affordable housing stock in Toronto.

Understanding the City's Vision for a Solution

Even with a strong economy, Toronto has not adequately addressed the root causes of homelessness: poverty and the lack of affordable housing. While it is important to note that the provision of social housing alone will not eliminate homelessness, shelter is recognized as a primary determinant of a healthy community as it is able to provide the physical, social and psychological well-being necessary for individuals to become self-sufficient (Drummond et al. 2004:15). To this end, the provision of adequate, secure and affordable housing to all Torontonians will ensure that the city is able to maintain a prosperous economy and the supportive social infrastructure to be a competitive global city. Within this context, it will be necessary for the City of Toronto to move beyond band-aid solutions to the issues of homelessness and the affordable housing crisis. Instead of responding to the individual instances of homelessness, such as mental illness, substance abuse, personal trauma or crisis, the municipal government needs to focus on the broader social and structural causes of the crisis, specifically the provision of affordable housing. Michael Shapcott, renowned social activist and the current Director of Community Engagement at the Wellesley Institute, describes the effects of focusing on the smaller picture as simply making "homeless people more comfortable being homeless, but no less homeless" (Shapcott as quoted in Crowe 2005)

In 2005, City Council began to address the issue of homelessness with the Streets to Homes program, a more long-term vision that emphasized the council's new "housing first policy" (De Jong 2007:3-4). By putting housing first, it was believed that the City of Toronto could take steps in eliminating homelessness, as opposed to simply managing it

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(City of Toronto 2008). In 2003-2004 City Council engaged in extensive debates over what would constitute the most effective means to curb the homelessness situation in Toronto. Concerns were raised regarding the large sum of money that was being spent on homelessness and, more specifically, on "treatment first"[1] options (Falvo 2008:32). While spending on short-term solutions was rising, the number of homeless continued to grow and Toronto's City Council was forced to seek alternative solutions (Falvo 2008:33). With nearly 100 people sleeping in Nathan Philips Square every night, the removal of the residents of Toronto's former Tent City in 2002, and the eviction of thirty individuals from underneath the Bathurst Street Bridge in 2004, City Council was poised to implement the Streets to Home program to end what they defined as "street homelessness" (Falvo 2008:32-33; CBC 2004). Individuals who were considered to be homeless, according to the program's official mandate, included "…people who live outdoors, including individuals living in parks, ravines, under bridges, on sidewalks, laneways, alleys, stairwells, building alcoves, squats and living in vehicles" (City of Toronto 2008). With an initial budget of $2.4 million in 2005, the annual funding for the program grew to be closer to $11.3 million in 2008 (De Jong 2008:3). To date, this program has successfully provided nearly 2,000 households and 90% of the individuals who have been participants have remained in their Streets to Homes housing options (Falvo 2008:34). City officials claim that the overall number of homeless people in Toronto has decreased since the launch of this program, indicating that the program has yielded success in getting people off the streets and into permanent, affordable housing arrangements (City of Toronto 2008). Moreover, the alleged success of this program suggests that there is a significant need for the City of Toronto to invest in long-term affordable housing options for Torontonians who are either currently homeless or poorly housed.

In 2008, Toronto's City Council released another policy document, Housing Opportunities Toronto: A Framework for Affordable Housing (HOT), which was meant to be the basis for the next decade of social housing policy. While still a draft document, it proposes that the City of Toronto take a leading role in "…planning and facilitating action and engaging the private sector, non-profits, co-operatives and other orders of government" in order to "assist some 200,000 households in need from 2008-2018" (HOT 2008:1). Beginning in 2008, the report offers an extensive range of options and priorities to encourage debate amongst Torontonians and between city councillors on how to best achieve these goals. The strategies underlying this forward-looking framework include a focus on creating housing opportunities in all neighbourhoods and working with all levels of government and the non-profit and private sectors to facilitate growth (HOT 2008:10). The conclusion of the report identifies a number of impending challenges, including the fact that there are more than 200,000 households in Toronto that are

[1] 1 In his article, Nick Falvo refers to "treatment first" or "continuum of care" models where there is a "lengthy and arduous audition, wherein the provider or team of providers of services to the homeless judges a homeless person"s „housing readiness"". To reach this goal, generally, a person needs to be able to abstain from drugs and alcohol and, in some cases, take physician-prescribed psychotropic medication. Non-compliance with any of these conditions results in a delay in the transition to permanent housing options or complete expulsion. Out of this model has grown the Housing First model described above which provides homeless people with immediate access to permanent housing.

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considered to be in core housing need,[2] of which more than 100,000 paying more than 50% of their income in rent (HOT 2008:13; CMCH as quoted by Gadon 2007). Additionally, the report states that there are 3,900 families and individuals sleeping in emergency shelters on any given night – and more than 800 people living outside (HOT 2008:13-14). Within this context, it is clear that City Council recognizes the magnitude of the homelessness in Toronto and has set into motion a framework to assuage the city's crisis. The report specifically identifies the need for the City of Toronto to increase the affordable housing stock in order to move individuals living on the streets or in poor housing conditions into permanent housing. While the City of Toronto has attempted to outline a strategy that will establish an affordable housing program, the vision in their most recent projects and policy documents neglects to address the legal mechanisms required to tailor the planning framework to achieve the long-term safe, adequate and affordable housing desired for Torontonians. The next section of the paper will be dedicated to understanding the legal tools that are currently available to municipalities and how they can be effectively achieve the goal of adequate and affordable housing for those currently in need.

Looking Inside the City of Toronto's Legal Tool Kit

While there are a number of ways to approach the legal context of planning for affordable housing, the three components of planning law that will be discussed in this essay are the Municipal Shelter By-law, the implementation of Section 37 of the Ontario Planning Act and the practicality of implementing inclusionary zoning as a means of enhancing the affordable housing stock available in Toronto. After discussing the evolution of each particular legal mechanism, it will be determined whether these mechanisms are compatible with the policy ideals set out by City Council in the last three years. THE MUNICIPAL SHELTER BY-LAW Enacted on February 4th, 2003 this new by-law allowed homeless shelters to be established on major streets across Toronto, subject to an approval process that includes consultation with local residents. According to the by-law, shelters must be located on major or minor arterial roads (as indicated by the City of Toronto's Road Classification System) and each shelter should not exceed 80 singles or 80 families (S. 2.2: By-law No.138-2003). Each site designated as an "emergency shelter, hostel or crisis care facility" has to be located, at minimum, 250 meters apart from other sites with the same designation (S.2.3: By-law No.138-2003). Additionally, City Council approved a moratorium on the location of new municipal shelters, so that no new municipal shelter sites could be approved in wards that already contained 500 or more municipal shelter beds (City of Toronto Minutes 2003).

The hope for this new by-law was that it would be able to provide a consistent set of rules for the entire city, making it possible to build shelters outside the downtown core. Under this pretense, the by-law is effective in providing short-term emergency accommodation and associated support services to Toronto's homeless population. In essence, the by-law eliminated the lengthy zoning amendment process that was involved in instances where new shelters were being proposed, allowing City Council to

[2] 2 Here the Canadian Housing and Mortgage Corporation definition of "Core Housing Need" can be applied, which considers a household to be in need if its housing falls below at least one of the standards of adequacy, suitability or affordability (e.g. costs more than 30% of before-tax household income).

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respond more effectively to the growing problem of homelessness by increasing the number of shelters located outside the downtown core. One common critique of this by-law was that it did not address homelessness; instead it simply relocated the problem to another part of the city (Pierre 2007). While there may be some truth to this concern, the provision of more municipal shelters will certainly assist in providing a temporary solution to Toronto's homelessness crisis. Ensuring that shelters are placed in different wards will allow for individuals to access the services they require, regardless of their location in the city. Additionally, it will help thwart the all-too-common public opposition to having shelters built in city neighbourhoods by ensuring that no specific ward has to assume the entire responsibility of these shelters.

In relation to City Council's recent vision for ending the homelessness and affordable housing crisis, this by-law provides no more than a short-term approach to a problem that requires a long-term solution. While the growing homeless population suggests that there is currently a need for more shelter space, it will be more beneficial in the future if the City of Toronto begins to look ahead and establish a process by which to generate more affordable housing. By providing individuals in need with permanent housing options, the City of Toronto will be able to effectively shift some of the costs of affordable housing to the development industry rather than continuing to provide temporary solutions that have proven to be quite costly for Toronto taxpayers (Gadon 2007; Wellesley 2006:4). Although this by-law attempts to address the immediate needs of the homeless population, it is also susceptible to being arbitrarily vetoed by the City Council because it does not consider the wards on a need-by-need basis. For example, there may be a greater requirement for shelters in a certain area of the city versus in the more suburban, outlying areas and if the number of municipal beds total more than 500 it is then, according to this by-law, impossible for the City to implement more shelters in this particular area. Within this context, there is a definite need for the City of Toronto to work toward establishing a long-term solution to the problem of homelessness and the affordable housing crisis in Toronto.

Section 37 of the Planning Act

It is necessary to recognize that the ability to provide additional height and density in established communities can only be facilitated with adequate enabling legislation. Under the Planning Act, Section 37 and its subsections 1 through 4 outline the procedures necessary to allow density and height increases through a bonus by-law (Ontario Planning Act, R.S.O. 1990: S. 37). Essentially, this section of the Planning Act permits the City to authorize increases in the permitted height and/or density, beyond what the zoning by-law would otherwise permit, in return for community benefits that are related to the policies outlined in Toronto's Official Plan. Section 3.2.1 of the Official Plan states that, "adequate and affordable housing is a basic need for everyone…" (Official Plan 2007:3-12), indicating that specific policies are required when "…a particular kind of housing whether it be type, tenure or level of affordability, is not sufficiently supplied by the market to meet demand or maintain diversity in the housing stock" (Ibid). Under this section of the Official Plan, governments are required to work toward stimulating production of new private sector rental supply: "All levels of government need to do all they can to create a business environment in which private

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rental housing, especially at affordable and mid-range rents, is an attractive investment. This includes federal and provincial tax reform as well as the provision of municipal incentives" (Official Plan 2007:3-13). Through this framework, it is possible to explore both the height and/or density allowances permitted by Section 37 of the Planning Act.
Section 5.1.1 of Toronto's Official Plan discusses the use of Section 37 as one measure through which the City can achieve "responsible, balanced growth" (Official Plan 2007:5-1). Among the list of community benefits outlined in the Official Plan that can be accrued through the application of Section 37 is affordable housing; however, it is explicitly stated that any application for extra height and density must be evaluated on the basis of all of the policies in the Official Plan, specifically any existing development criteria for the respective designation area (Official Plan 2007:5-2). As such, developments must constitute "good planning" by remaining "consistent with the objectives and policies of the Official Plan" and "complying with the built form policies and all applicable neighbourhood protection policies" (Official Plan 2007:5-3). These policy provisions provide the framework by which City Council may authorize these trade-offs in order to secure benefits which preserve the continual growth of Toronto as a prosperous and livable global city. Prior to the existence of a concrete list of community benefits, City Council made the executive decision regarding the facilities that could qualify as "public benefits". Therefore, the creation of such a list, although still broad, provides a means in which Section 37 can facilitate a more uniform growth pattern within Toronto's urban landscape. Within the Implementation Guidelines & Negotiating Protocol adopted in November 2007, the City sets out numerous principles that must be followed when applying Section 37 of the Planning Act. First of all, the proposed development must represent good planning. For example, an owner or developer requesting an amendment to the by-law should not expect inappropriately high density or height increases, regardless of the community benefits being offered. On the other hand, City Council should not approve bad development merely to accrue community benefits (City Council 2007: 2.1). Secondly, community benefits and the increase in height and/or density must be set out in the zoning by-law. Therefore, it is expected that Section 37 be implemented through the creation of a zoning by-law. Generally, this is a site-specific zoning by-law amendment that permits a height or density increase for a specific development only. The Official Plan specifically dictates that an owner can make the choice to either develop at an increased height and/or density that is permitted by existing zoning by-laws in return for providing specified capital facilities for the community or be constrained to developing in accordance to the height and density permitted by the zoning by-law in the absence of such community benefits (City Council 2007: 5.7). The community benefits generated by the use of Section 37 should be specific capital facilities, or cash contributions to achieve specific capital facilities. With this in mind, the Official Plan states that Section 37 may be used for development,

"…excepting non-profit developments, with more than 10,000 square metres of gross floor area where the zoning by-law amendment increases the permitted density by at least 1,500 square meters and/or significantly increases the permitted height" (Official Plan 2007: 5.1.1) While these standards are applied to most development projects implemented in the City of Toronto, Section 37 can be used, irrespective of the size of the project or the increase in height and/or density to replace rental housing in accordance

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with the provisions of the Official Plan (Official Plan 2007:5.1.1). As such, Section 37 community benefits must also be "determined by local community need…with priority always given to the provision of on-site or local community benefits" (Ibid). Through Section 37, the City of Toronto will be able to provide density bonusing/incentives to developers in order to increase affordable housing stock. While the Official Plan is limited to general policy and a broad list of community benefits, it provides a framework in which the developer and the city can mutually agree upon community benefits that are applicable to the city as a whole. Currently, to obtain such height or density incentives the City of Toronto requires that an amendment be made to an existing zoning by-law; however, a zoning by-law amendment will not be considered until an agreement can be reached between the City of Toronto and the developer. This agreement is meant to identify the specific community benefits that will be instituted in return for permission to exceed ordinary height/density allowances. If the benefit is to be a facility, such as affordable housing, negotiations between the applicant and City Council would determine what commitments are required of the developer. In discussing the development of affordable housing units as a community benefit, these negotiations must work to determine how the developer will provide for and ensure the operation of the units over a specified period of time. After these community benefits have been solidified in an agreement, it becomes formalized through a registration on title and the guidelines legally require that the community benefits to be provided, in addition to the facilities and services that were required as part of the City of Toronto's standard development approval process.

The application of Section 37 implies that there is a need to quantify the community benefits received. In terms of larger development sites, the Official Plan suggests that in cases where an increase in height or density is applied for, "the first priority community benefit will be the provision of 20% of the additional residential units be affordable housing" (Official Plan 2007:3-16). This affordable housing contribution may be implemented in a number of forms, including either on-site construction of affordable housing units or the conveyance of land elsewhere in the city for this purpose (Ibid). In recent years, there has been discussion regarding whether or not the community benefits received should match the net increase in height/density that the developer receives. Several City Councilors have proposed that the value of community benefits for the purpose of density and height incentives be set at 50% (Wilder 2005 as quoted in Sauer 2005:19). These regulations would necessitate that a contribution of community benefits be either equal to or greater than 50% of the net value increase that results from an increase in height or density (Ibid). For example, if a parcel of land increases in value by $2 million than the City of Toronto would require that a minimum contribution of $1 million be channeled toward the agreed upon community benefits. Given that not all parcels of land are equal, it may be necessary for the City to make some exceptions to this rule and it should be noted that non-profit agencies must continue to be exempt from the community benefits requirement. While this exemption may demonstrate an inconsistency in the City of Toronto's willingness to invoke height and density incentives in order to ensure localized public benefits on all projects, it is important to differentiate between strictly private development ventures and those projects that already provide community benefits. As such, it will be necessary for City Council to

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engage in case-by-case analyses that can be used to set a precedent for future development projects.

While the application of Section 37 of the Ontario Planning Act is only one way that the City can allow for certain areas of development to provide affordable housing, it remains consistent with City Council's vision to end homelessness through the provision of more affordable housing. As the downtown core continues to intensify, it will be possible for the City to make agreements with developers to improve the affordable housing situation in Toronto. The drawback, however, is that there is no formula for predicting the exact amount of affordable housing that will be constructed in the immediate future. Peter Langdon, a Toronto city planner, has suggested that for Toronto and other cities in the province of Ontario, the continued use of Section 37 is important as a proactive and flexible legislative tool for helping to achieve services and facilities which enhance the livability and economic competitiveness of our communities" (Langdon 2001:1-2). He also notes that the use of Section 37 must "…balance the interests of the City with those of the development community fairly, effectively and efficiently" (Ibid).

Inclusionary Zoning

The existing planning legislation does not explicitly prevent inclusionary zoning, nor does it include it within its practices. To this end, the City of Toronto has successfully implemented variations of inclusionary zoning to rezone sites of major private developments to include a 20 to 25% in the overall level of affordable housing (Sauer 2005:3). The City of Toronto states that inclusionary zoning should be either specifically regulated developments (municipalities prescribe that one of every five units built be affordable) or negotiated (all development must meet the intent of a specific policy). While inclusionary zoning is not exclusively applicable to affordable housing as it could be applied to any additional component that is desired by the community, the duration of this essay will focus on the use of inclusionary zoning solely in reference to the provision of affordable housing.

One of the greatest strengths of inclusionary zoning is that it provides the City of Toronto with a legal mechanism to ensure that affordable housing is provided as a condition of approval on all new development projects. The application of Section 37 of the Planning Act, on the other hand, is implemented only after the development has been approved. With a minimal cost to the city as long as a strong housing market exists, the use of inclusionary zoning allows municipalities to ensure the provision of new affordable housing stock without incurring any significant costs. The effectiveness of inclusionary zoning is dependent on the conditions of the urban framework in which the by-laws are being implemented. The instances where inclusionary zoning will prove most successful are when it is applied to new developments, as re-zoning will be difficult if the development is already established. Therefore, the impact of this tool is wholly dependent on how much growth is taking place both within the downtown core and in Toronto's expanding residential environments. First, smaller projects may not be able to assume the costs of meeting the inclusionary requirements. Second, when operating in a slow growth area, developers who consider the inclusionary zoning

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component too costly can simply postpone the development. Third, this method is best imposed in higher-density districts because in less dense districts, developers face challenges in meeting inclusionary requirements and density bonuses often do not serve as an incentive since the project does not need the density increases. In the context of Toronto, inclusionary zoning would likely be successful in the short- to medium-term. By virtue of the continued intensification of the downtown core and the projected population growth in the GTA in the coming years, Toronto's urban landscape will provide the framework necessary for inclusionary zoning to be fruitful in securing adequate and affordable housing for the future. Case studies show that inclusionary zoning is effective, particularly when it is mandatory because obligatory legislation establishes a predictable amount of affordable housing that can allow more coordination for families on a waiting list and helps to alleviate the presence of so-called urban ghettos within the city landscape. Since 1988, the City of Vancouver has required that all major development projects include 20% social housing and this has had a tremendous impact in producing affordable housing, which is relatively inexpensive for municipalities to implement (Poverty Reduction Coalition 2007: 9) Despite the fact that the province no longer legislates a minimum requirement of new affordable housing units, it has enabled the cities to take on this responsibility. As cities are often considered to be "creatures of the province", the ability to impose inclusionary zoning on the development industry must be permitted, or at least not prevented, by legislation crafted by senior levels of government. Currently, provincial policy in Ontario allows for each city to develop and implement policies that will generate affordable housing. In this context, inclusionary zoning is one tool that, while not necessarily provided, has not been prevented by Ontario's enabling legislation.

By working to establish a process of inclusionary zoning, the municipality will assume only minimal costs and be able to effectively shift some of the responsibility for the provision of affordable housing to the private sector. This form of zoning can be used by the City of Toronto to equalize spending cuts and to serve as a societal benefit for large-scale development projects, while integrating those who are considered to be less affluent into the greater community. Ultimately, this is a proactive way of ensuring that Toronto maintains the progressive housing policies necessary to provide the level of affordable housing required to meet the needs of a growing population.

Moving Forward: A New Integrated Legal Framework

It is clear that the City of Toronto is continuing to experience an affordable housing crisis. As the housing market has increased in value, the availability of affordable rental properties has continued to decline. While Toronto has maintained a relatively strong economy in recent years, it is clear that the poor are being left behind. The waiting list for social housing remains long and names are continually being added – much faster than the increase in supply of new affordable units. In 2000, the amount of time spent on the waiting list for social housing is approximately eighteen years (Layton 2000:99). As the city's population continues to grow, the situation for Toronto's homeless and poorly housed becomes dire. In this context, the City of Toronto must revisit the existing legal mechanisms used to carry out its policies and revamp them where necessary in order to ensure that they are aligned with City Council's vision of ending homelessness and

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ultimately reversing the severe shortage of affordable housing. Without a doubt, there is a tremendous need for the municipality to take responsibility for making Toronto a livable city for everyone. As senior levels of government retreat further from contributing to the affordable housing policy, cities must begin to strategize how they can use the existing legal architecture to mitigate the problem. The latest policy statements released by the City of Toronto, including the "Streets to Homes" program and the Housing Opportunities Toronto framework for affordable housing, demonstrate that City Council recognizes the need to move beyond quick-fix strategies that only temporarily address the homelessness situation and focus on long-term, permanent solutions that include the provision of affordable housing for those in need. While the Municipal Shelter By-law works to provide an interim solution to homelessness in Toronto, it will not fulfill the vision of eliminating homelessness identified in recent City of Toronto policy documents.

To move forward, the City must work within a new integrated legal framework that draws a number of key players into the process, including the non-profit sector, private developers and the municipality. Integrating these measures will require cooperation and partnerships between community actors, such as non-profit and private developers, financial institutions and community agencies. The private sector, in accordance with Section 37 and a new formula for inclusionary zoning, can play significant leadership role in expanding the city's affordable housing stock, provided that private developers are able to generate reasonable returns during the process. Such partnerships should be facilitated by a new legal framework and will play a key role in goal-setting, accumulating resources, obtaining community support and implementing housing policies. While the mechanisms outlined in this paper are not exhaustive, they do serve as a step toward a solid foundation for an integrated approach to a new municipal housing policy for the City of Toronto.

Conclusion

To continue to ignore the problem of homelessness and the affordable housing crisis in Toronto would be detrimental to the future of the city and would only serve to increase the burden on Toronto's taxpayers as the costs for shelters and other interim measures rise. While the municipal government has made some progress in responding to the crisis, there is a need to move beyond the traditional public sector construction of affordable housing and band-aid solutions of programs that focus almost exclusively on individual situations of homelessness. As demonstrated in this paper, Toronto requires a multi-faceted program that includes a strategy to develop a new relationship with both the private and non-governmental sectors playing an active role in providing an adequate and affordable housing supply for Torontonians. The three legal mechanisms examined in this essay are not considered to be flawless, nor should they stand alone in their application, as combined they have the ability to create enticing incentives for the private sector to engage in the repair and development of affordable housing.

Beginning with an understanding of City Council's goals as outlined in the "Streets to Homes" program initiated in 2005 and the most recent policy recommendations in the 2008 report entitled, Housing Opportunities Toronto: A Framework for Affordable

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Housing, this essay demonstrates that in order for these visions to become viable practices there is a need to understand and revitalize the existing legal planning instruments. It can be concluded that the existing legal planning instruments coincide with City Council's vision to end homelessness and the affordable housing crisis by 2018; however, each legal tool plays a different role in achieving this goal and thus should warrant a different level of focus. For instance, the Municipal Shelter By-law works in the short-term to provide a more immediate, but temporary, solution to the problem of homelessness in Toronto. While the Municipal Shelter By-law provides the legal tools necessary to relocate the homeless population from the streets of Toronto, it does not address the other key determinant of the problem: the availability of affordable housing. If the City of Toronto hopes to achieve their 2018 vision of ending homelessness and reversing the severe shortage of affordable housing, there is a need to focus on encouraging the private sector to use Section 37 in future development projects. More importantly, it would be beneficial to implement inclusionary zoning in Toronto as this form of zoning serves as a feasible, practical, and economical method of creating new secure, adequate and affordable housing stock that will be accessible to all Torontonians. In moving forward, it will be important for the City Council to acknowledge that it is only by transforming ideas into action and commitments into policy that the City of Toronto will be able to ensure that every family and individual in has a place that they can afford to call home.

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