

**THE POTENTIAL FOR PARTNERSHIPS IN COMMUNITY
REINVESTMENT AND AFFORDABLE HOUSING IN HRM**

Prepared for Halifax Regional Municipality

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Introduction

Housing affordability has become an increasingly pressing issue in Canadian municipalities. In the wake of federal and provincial cuts to non-profit housing programs in the 1990's, municipal involvement in partnerships to build affordable housing have become increasingly relevant in Canada in the past decade. Partnerships have emerged as a means to extend limited resources and achieving strategic municipal objectives.

Currently in Nova Scotia, the Municipal Government Act (MGA) does not permit municipalities in Nova Scotia to offer public subsidies to private businesses and therefore prevents HRM from working cooperatively with for-profit developers to create affordable housing for mutual benefit. The MGA permits indirect financial incentives to private sector developers through bonusing, which reduces costs to developers via features such as lower parking standards. Restrictions are in place in order to prevent "cut-throat" competition among municipalities in the effort to attract private investment and to eliminate situations that might lead to conflicts of interest or corruption of municipal officials. However, some other provinces have found ways of allowing greater levels of cooperation with few problems reported. Municipalities in British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, and Prince Edward Island are permitted to provide incentives to private developers in exchange for the provision of affordable housing.

Interview sources within Service Nova Scotia and Municipal Relations have indicated the Province would be ready to discuss changes to the MGA in order to loosen restrictions on municipal subsidies to the private sector or remove other impediments to the creation of affordable housing that might have been inadvertently introduced.

The purpose of this research is therefore to advise Halifax Regional Municipality (HRM) as to the range of legislative and program arrangements in place in other Canadian provinces where municipalities are permitted to provide incentives to private housing developers. The ultimate goal of the report is to help inform discussion on the potential for amendments to the Nova Scotia Municipal Government Act that would allow greater cooperation between HRM and private sector developers in the provision of affordable housing.

Method

This research was conducted according to the following steps:

Step 1 – Literature review

Literature from a diversity of sources including academic journals, CMHC research reports, and municipal documents were reviewed.

Step 2 – Identification of provinces allowing municipal incentives to provide businesses and review of provincial legislation

Provinces that allow municipalities to provide financial incentives or subsidies to private developers in exchange for undertakings to build affordable housing were identified. This was accomplished by researching websites of provincial ministries responsible for municipal affairs, and interviewing provincial and municipal officials.

Step 3 – Interviews

Telephone interviews were conducted with provincial and municipal officials to gain insight into whether provincial legislation allows municipalities to provide benefits to private businesses which agree to provide goods and services that meet municipal objectives. Once it was determined that a province could do this, it was verified whether such benefits apply either implicitly or explicitly to private land developers, and if so, whether the benefits could be offered in exchange for the provision of affordable housing by these developers. Officials in municipalities that have provided incentives to private developer to build affordable housing were interviewed. Municipal interviews focus on the range of incentives that can be/have been offered to private developers, and the conditions (i.e., legal requirements) under which these benefits could be presented. Details including the number of affordable housing projects and when the developments were built are also included. Please see Appendix 2 for the interview questions.

Step 4 – Summaries of provincial legislation and brief municipal case studies

The legislation from each province was summarized. Legislative sections that implicitly and explicitly refer to housing are briefly outlined. The provisions related to municipalities providing benefits to private developers in exchange for goods or services that benefit the municipality are outlined in each such section, with a focus on affordable housing. Limitations and prohibitions to providing benefits to private businesses (including developers) are also reviewed. One or two municipalities from each province permitting municipalities to provide benefits to private developers in exchange for affordable housing were selected, and are used to demonstrate how the legislative provisions are being implemented “on the ground” (i.e., linking benefits municipalities give to the applicable provincial legislation). Case studies also illustrate the different ways in which partnerships function from province to province, and reveal both the strengths and shortcomings as mechanisms for encouraging the provision of affordable housing. Please refer to Appendix 1 for summaries of the provincial legislation.

Plan of Report to Follow

This report is organized as follows:

Results of literature review – The literature review discusses the advantages of municipalities providing incentives to developers in exchange for affordable housing, and the range of incentives that municipalities can potentially provide to private sector developers to promote housing affordability. Potential shortcomings are also discussed.

Case studies – The legislation from provinces permitting municipalities to provide incentives to private developers building affordable housing are analyzed according to the following steps:

- The summary for each provincial legislation discusses whether the legislation implicitly or explicitly allows municipalities to provide benefits to private developers building affordable housing.

- Each section allowing municipalities to provide benefits to private business is outlined. Incentives that apply to developers building affordable housing, and conditions and limitations are summarized.
- Any sections that pertain explicitly to affordable housing are outlined, and conditions and limitation are reviewed.
- The extent to which sections permitting municipalities to provide incentives to the private sector have been exercised for the provision of affordable housing are briefly discussed.
- One or two municipalities from each province was selected to illustrate how incentives in the provincial legislation have been implemented.

Table 1: Provincial legislation for each province, and the case study municipalities

Province	Provincial legislation related to provision of incentives to private businesses	Case study municipality
British Columbia	Local Government Act	GVRD (Burnaby and New West Minister)
	Community Charter	
Alberta	Alberta Municipal Government Act	Calgary
Saskatchewan	Urban Municipalities Act	Saskatoon
	Cities Act	
Manitoba	Municipal Act	Winnipeg
	Winnipeg Charter	
Ontario	Municipal Act	Ottawa
	Planning Act	Region of Waterloo
Quebec	Act respecting the Société d'habitation du Québec	Montreal
	Charter of the Ville de Montreal	
New Brunswick	Municipalities Act	Not permitted
Newfoundland	Municipalities Act	Not permitted
	City of St. John's Act	
Prince Edward Island	Municipalities Act	Charlottetown
	Charlottetown Area Municipalities Act	
	City of Summerside Act	

Conclusion

The conclusion summarizes the research findings and results. Recommendations are made for specific legislative changes to the Municipal Government Act that would broaden the scope of the provision of municipal incentives to private developers in Nova Scotia (and HRM). Limitations and lack of transferability are also examined.

Appendices

Appendices include summary tables of the provincial legislation allowing municipalities to provide benefits to private developers. Appendix 1 summarizes all provinces that permit municipalities to provide incentives to the private sector. Separate tables for each province provide more detail on the sections that allow municipalities to provide benefits to developers. Sections prohibiting municipal assistance to the private sector and

sections specific to the non-profit sector are also outlined. Appendix 2 contains the questionnaires for provincial and municipal officials. Examples of provincial legislation, bylaws and public-private agreements are also provided.

Literature Review

There is very little literature specifically addressing the topic of municipalities providing private developers incentives in exchange for affordable housing. The majority of the literature consulted related to the larger issue of partnerships involving municipalities for meeting affordable housing needs, including partnerships with other levels of government, community organizations, non-profit land developers and so on. Literature addressing public-private partnerships for the provision of infrastructure was also briefly consulted to illuminate issues associated with partnering with the private sector in the provision of municipal goods or services. This section also discusses potential issues related to municipalities providing benefits to private developers.

What are partnerships in housing?

A partnership in housing is an arrangement between two or more parties who agree to work together to achieve shared or complementary housing objectives. A partnership is a relationship that has at least one of the following characteristics:

- Joint investment of resources (time, work, funding and expertise);
- Shared liability or risk-taking (and sharing of benefits); and
- Shared authority and responsibility.

The primary appeal of partnerships is that they are mutually beneficial. Public bodies (e.g., a municipality) can provide incentives (e.g., facilitating the development approvals process, providing tax incentives), while private developers contribute elements such as knowledge and insight on local markets, entrepreneurial orientation, vision and creativity, development and management skills, and risk capital. Other benefits associated with partnerships include the reduction of development costs, enhancement of cash flows, and access to new sources of capital. Municipalities have the power to streamline the design and development approval process, thereby saving developers substantial time and effort. Partnerships can be structured to ensure a fair and reasonable sharing of costs, risks, and responsibilities (CMHC, 1998; Stainback, 1997).

Municipalities must have the authority under provincial legislation to provide benefits or enter into partnering agreements with developers for the provision of affordable housing. Legislation allowing municipalities to provide incentives to private developers is either implicit or explicit. Implicit powers pertain generally to the private sector or businesses in general (e.g., tax breaks for businesses in a defined area of the municipality, or reduced planning and development fees for projects that benefit the municipality). Implicit power can also refer to legislation that does not explicitly forbid providing assistance to the private sector (i.e., if legislation is silent on the issue, municipalities can provide incentives because it is not explicitly prohibited) in provinces with enabling legislation. With enabling legislation, municipalities have the freedom to make their own decisions unless the legislation clearly prohibits the activity or undertaking. Most provinces in Canada have enabling legislation. Disabling legislation prohibits all activities or undertakings if they are not explicitly itemized in the legislation (i.e., if it is not listed, the municipality cannot do it). Explicit powers concerning affordable housing clearly state that municipalities can provide incentives for the provision of affordable housing (e.g.,

density bonusing in the central area of a municipality in exchange for building affordable housing).

Potential benefits of partnerships

The literature surveyed listed several potential advantages of municipalities entering into partnerships to promote housing affordability; CMHC (1998) provides a comprehensive summary:

- **Help groups achieve common goals** – Partnerships enable participating groups to achieve common or complementary goals through joint efforts. Such goals may be limited to housing or may encompass broader community goals such as community revitalization (e.g., a Community Improvement Plan that provides incentives for affordable rental housing in the city center can also contribute to the overall revitalization of the neighborhood).
- **Maximize limited resources** – Developers can provide elements such as knowledge and insight on local markets, entrepreneurial orientation, vision and creativity, development and management skills, and risk capital, while municipalities provide incentives.
- **Leverage Investment** – Partnerships are often formed to bring together sufficient financial resources to make a project economically feasible. Partnerships can provide parties with an opportunity to leverage funds to attract partners with further funds.
- **Minimize risks** – Partnerships can help minimize capital and financial risks by sharing them among different parties.
- **Respond to community needs** – housing developed through partnerships has the potential to be oriented to consumer or community needs (CMHC, 1998).

Benefits municipalities can provide private developers in exchange for affordable housing

This section summarizes the various benefits municipalities (provincial legislation permitting of course) can provide private developers in exchange for affordable housing, or to promote housing affordability:

- **Bonus Zoning** – In exchange for amenities or public goods such as affordable housing, municipalities can allow increased allowable density on a site, or relax other zoning requirements. The affordable housing is usually provided on a volunteer basis in exchange for increased developable floor space.
- **Comprehensive development (CD) Zoning** – CD zoning creates a custom development zone, where a municipality has the flexibility to negotiate with developers in relation to large, complex, multi-use sites. Affordable housing or site amenities can be ensured through this process by local governments allowing a relaxation of the building envelope or an increase in density of development on the site in exchange for these public goods.
- **Streamlined/expedited approvals** – The municipal development approval process may be streamlined to cut costs to the developer. For instance zoning and development permit applications may be reviewed simultaneously. Another tool that can be available to municipalities is to give priority to proposals that include affordable rental or ownership housing. By accelerating the approval of one project over another, municipalities can reward developers who include these housing types.

- **Municipal land** – A municipality may lower the cost of a housing development by leasing or selling municipal land at below market value, or donating land to a private developer (through a Partnering Agreement). One issue related to this benefit is that municipalities often do not have free land, especially in built-up or inner city locations (Eichler, 1999; Drdla Associates, 1999).
- **Development charges and planning fees** – A municipality could encourage developers to build more affordable housing through reducing or waiving development charges and planning fees. Waiving or reducing these costs results in savings for the developer, which are then translated into lower selling prices.
- **Property taxes** – The municipality could choose to waive or reduce property taxes on all or a portion of the assessed value of the affordable housing project, over a period of time. Often taxes are waived (or granted back) on the increased value of the assessment due to the proposed private investment).
- **Parkland dedication fees** – A municipality could reward developers for building affordable housing by reducing or waiving the amount paid in parkland dedication fees. Parkland dedication fees are normally calculated according to the area of a new development. The amount paid can be reduced if the developer provides an amenity, such as affordable market housing, which benefits the municipality.
- **Grants and loans** – A direct grant, low-interest or forgivable loan could be offered to developers in order to make the creation or preservation of affordable housing more financially feasible.

Potential issues of municipalities providing benefits to private developers

Municipal incentives to private businesses in exchange for a municipal good or service raises several issues, most notably public transparency. In fact, several provincial legislations prohibit municipalities from dealing with private businesses.¹ Ensuring long-term is an issue specific to affordable housing.

The following factors fuel the debate on whether municipalities should have the authority to give private developers benefits in exchange for affordable housing:

- **Public transparency** – Whenever a municipality provides a benefit to a private business for the provision of a good or service, including affordable housing, transparency is a critical issue. Residents have the right to know the benefits that the municipality is providing the developer. Ways in which public transparency can be addressed include:
 - Providing the opportunity for resident input, especially when the incentive to be provided involves a long time period;
 - Giving the public the opportunity to bid on municipal land that is to be sold to a developer at below market value; and
 - Advertising benefits to be provided to developers in a newspaper.
- **Long-term affordability** – Loss of affordability in the long-term is not a risk for housing owned by a non-profit corporation. In most cases, non-profit corporations have full control over rents, resale prices, and the qualification of tenants and have legally binding agreements with external funding agencies that require rents to be kept at affordable levels. For private sector housing, however, the issue of long-term affordability is complex because the land developer is oriented towards

¹ Very often there are exceptions to this prohibition (e.g., if the good or services is to the benefit of the municipality, or if the business has entered into a partnering agreement with the municipality).

maximizing prices in order to increase profits and because the developer rarely has an interest in long-term monitoring of prices after a development is sold. The following mechanisms are available to address long-term affordability issues. They can be used alone or in combination.

- **Covenants/deed restrictions** – Restrictions can be placed on a deed to control the future uses of the property and govern the rights or obligations of current and future owners. An affordable housing covenant contains clauses that require the affected units to be sold or rented at or below a specific price (which may be allowed to change over time) and only to persons or families that meet certain eligibility requirements (e.g., whose income is less than or equal to 50% of the city’s median income). Deed restrictions normally “run with the land,” meaning they transfer from one owner to the next, although a sunset date may be prescribed. If a deed restriction is breached, there can be a suit for money damages or injunctive relief. Restrictions can be placed on cooperative, non-profit, condominium or fee simple properties. If applied to private developments, to be effective, a non-profit or local public agency must have the task of enforcing resale price and eligibility restrictions.
- **Pre-emptive option to purchase** – A pre-emptive option allows an outside agency (such as a non-profit housing organization or municipality) with an interest in preserving affordability to purchase the house and/or the property according to a formula that is set by legal agreement between the provider of the unit and the original purchaser. If the outside agency does not exercise its option to purchase, the occupant may sell the house on the open market and affordability may be lost. This mechanism may be used by non-profits that are involved in developing freehold housing or by the private sector, in which case an outside agency would be required for long-term administration.
- **Contractual agreements** – A property developer can be required to enter into a contractual agreement with a municipality to maintain affordable rents in the long term in exchange for public subsidies, such as cash, donated land, a density bonus, or waived development charges. The agreement may be registered on title to the land and require the first owner to bind future owners by the conditions of the agreement. The agreement can stipulate starting rents, rent increases, renter eligibility requirements, and number of affordable units in a building. If the terms of the agreement are broken, the owner is required to reimburse the municipality for the public benefits (plus interest, sometimes) that allowed the property to be developed at below-market cost (e.g., waived development charges).
- **Second mortgages** – A second mortgage can be placed on the purchaser of a new affordable unit that is payable only if the purchaser resells the unit within a specific time frame. The mortgage typically does not accrue interest and is incrementally forgiven over time as long as the purchaser does not sell the unit. It is usually set at the difference between the purchase price of the home and the market value at the time of sale, a difference that arises due to benefits provided by government (such as city-owned land at reduced

rates) or community (such as donated construction materials) to the developer. If the unit is sold before the designated time, the outstanding balance of the mortgage is paid to the municipal housing authority in the case of private development, or the developer in the case of non-profit development. It is designed to curb speculation, prevent property flips by buyers of new affordable units or to capture at least part of any windfall gains resulting from property flips that do take place. This mechanism can work with either a private or non-profit developer.

- **Land leasing** – Land leases provide the developer with the right to develop and use the land for a specified period of time. Municipalities or community land trusts (a non-profit community-based organization that owns the land) can make land available for long-term lease at discounted rates in order to help reduce the cost of the housing produced and to obtain long-term control over affordability. The lease agreement can specify affordability conditions such as rental levels, resale prices (usually set according to a time-based formula) and eligibility requirements. The leaser (the municipality or the land trust) may also retain an option to repurchase the houses and resell them to new homeowners at affordable prices. Land leasing can provide low-income homebuyers with limited returns on their equity in exchange for having received substantial public subsidies (Tomalty, 2004).
- **Request for proposals** – In instances where developers must go through a RFP (request for proposals), the process can be long and drawn out; developers could thus be deterred from applying to projects that require a RFP. Another potential problem associated with RFP's is that developers may be chosen for political reasons instead of on the merits of the proposal. In some cases, the selection of the developer is predetermined (Stainback, 1997).
- **Length of time required** – In cases where partners come from different backgrounds (i.e., the City, private developer, and a non-profit organization – this arrangement is seen quite often), a lot of time is often needed to ensure that the expectations and goals of each party is clear.

Natural person powers

Recent amendments to legislation governing municipal powers and responsibilities in several Canadian provinces have given natural person powers to municipalities within those provinces, i.e., the municipality is constituted as a corporation that has the capacity, rights and powers of a natural person. Natural person powers allow local governments to meet local needs and emerging issues in more flexible ways than under the traditional municipal acts, which granted conditional corporate powers. First introduced in Alberta, and now established in other provinces such as British Columbia, Ontario, Quebec and Saskatchewan (and City Charters, including the Winnipeg Charter and the Charter of the Ville de Montreal), this method of drafting municipal legislation does away with itemizing specific corporate or administrative powers. Instead, natural person powers provide municipalities with essentially the same legal powers as other corporations or persons to conduct their day-to-day business without the need for specific administrative authority to be spelled out in the Act for every activity. This enables the courts to construe municipal corporate powers on the basis of court precedents respecting natural person powers. The courts have held that natural person powers include the powers to purchase,

own and use property, sue and be sued, enter into contracts, and enter into contracts of indemnity (Lidstone, 2004; Liteplo, 1994).

Generally, natural person powers do not give municipalities more jurisdiction than they already possess: such powers merely amplify the corporate capacity in relation to already delegated powers including powers acquiring property, entering agreements, opening accounts, depositing money, establishing a benefits plan and purchasing insurance. Under natural person powers, all of these activities can be done without the need for specific provisions authorizing these undertakings. From a policy perspective, greater corporate powers are generally balanced by a greater concern for citizen oversight of municipal decision-making (i.e., increased opportunities for public participation and consultation, accountability measures, and enhanced transparency of municipal deliberations and decisions). For example, the new British Columbia legislation provides that if a local government intends to incur liability through entering a public-private partnering agreement for longer than five years, an opportunity for electors to approve the agreement must be provided.

Natural person powers do not confer or expand any law-making, bylaw, or taxing powers since natural persons do not have any such authority. In addition, other powers including the power to loan money, incur debt, delegate certain matters, move capital funds to operating accounts or sell land below market value continue to be regulated despite the natural person powers. What does change is the 'default' authority and flexibility for municipalities regarding administrative or corporate matters. Essentially, a municipality can take any action that a natural person or business could carry out, unless or until legislation prohibits or places limitations or conditions on an action (Lidstone, 2004).

British Columbia

Summary

In British Columbia, the Local Government Act (1996) was the only legislation outlining municipal powers. Previously entitled the Municipal Act, the Local Government Act implicitly and explicitly gives municipalities the authority to provide subsidies to private businesses. In 2004, the Community Charter was added to the provincial legislation pertaining to municipal powers, and broadened municipal rights. Both legislations are currently in effect. The Local Government Act addresses planning and elections issues, while the Community Charter outlines municipal operations including broad corporate and regulatory powers, and financing. Both legislations contain sections that explicitly permit municipalities to give benefits to private businesses in exchange for products or services that benefit the municipality. The Local Government Act includes sections that pertain explicitly to affordable housing and include the provision of municipal incentives to private developers for this municipal good. Other sections in the Act that implicitly allowed municipalities to provide incentives to private developers in exchange for affordable housing were moved to the Community Charter, and the municipal rights involved in these sections were broadened. The Local Government Act explicitly permits density bonusing in exchange for affordable housing. The Community Charter allows municipalities to provide several benefits to private businesses, including entering into partnering agreements, tax exemptions, and selling municipal land at below market value, all of which implicitly apply to developers building affordable housing.

The Local Government Act

Sections 904 and 905 explicitly address affordable housing and have not been affected by the implementation of the Community Charter. Section 904 of the Local Government Act is explicitly related to municipalities providing both non-profit and private developers incentives to build affordable housing. Entitled “Zoning Amenities for Affordable Housing”, section 904 states that a zoning bylaw may establish different density regulations for a zone: The bylaw establishes a general density regulation for a zone, but higher densities can be built in the zone if certain conditions are met, including the provision of affordable housing. In this case, the owner is required to enter into a housing agreement (under section 905) with the municipality before a building permit is issued for the property to which the condition applies.

Section 905, “Housing agreements for affordable and special needs housing” explicitly states that “A local government may, by bylaw, enter into a housing agreement...” According to one of the provincial officials interviewed, section 905 was initially geared the non-profit sector. The section is however also applicable to the private sector. Section 905 specifies that a “...housing agreement may include terms and conditions agreed to by the local government and the owner...” These conditions may include one or more of the conditions outlined in section 905. Conditions include the tenure of the housing units; the availability of the housing units to classes of persons identified in the agreement or the bylaw; and rents and lease, sale or share prices that may be charged and the rates at which these may be increased over time. This section also allows the municipality to develop conditions other than those listed in section 905. A developer must enter into a housing agreement in order to qualify for the density bonusing permitted under section 904 subsection 1(b). Entering into a housing agreement also

allows developers to take advantage of some of the benefits that will be discussed below.

Section 933 deals with development cost charges. Subsection 12 explicitly allows municipalities to waive or reduce development cost charges for non-profit housing. Municipalities are not permitted to provide these concessions to private developers.

Sections 176, 182, 183, 185, and 186 contained statements that outline benefits that local governments can provide to private businesses in general in exchange for products or services that help achieve municipal objectives. The powers under these sections were transferred to the Community Charter, and broadened. These sections are nonetheless outlined.

Entitled “Prohibition Against Assistance to Business”, section 182 explicitly forbids municipalities to “provide assistance to an industrial, commercial or business undertaking.” There are however exceptions to this prohibition, such as section 176, which is addressed below. And, section 183 goes on to state that despite the restrictions in section 182, a local government may provide assistance under a partnering agreement, also discussed below.

Division 2 of the Local Government Act, General Corporate Powers, section 176 contains statements that allow local governments to provide benefits to private businesses. As outlined in subsection iii (c), corporate powers of a local government include providing assistance for the purpose of benefiting the community or any aspect of the community.

Part 5, Division 4, entitled Assistance, allows local governments to provide a grant, benefit, advantage or other form of assistance, including an exemption from a tax, fee or charge to the non-profit sector. According to one of the provincial contacts however, there are exceptions to this, including that of when a partnering agreement under section 183 was entered into by the municipality and a business, meaning that municipalities could provide these forms of assistance to the private sector. In addition, the following benefits under the same circumstances outlined above (i.e., generally applies to the non-profit sector, but exceptions could be made if there a partnering agreement was involved are permitted, but must first be published in a newspaper:

- Disposing of land or improvements, or any interest or right in or with respect to them, for less than market value;
- Lending money;
- Guaranteeing repayment of borrowing or providing security for borrowing;
- Assistance under a partnering agreement.

Division 5, Disposing of Land and Improvements, section 186 states that if a local government intends to dispose of land, it must make the land available to the public for acquisition. In other words, the public must have the opportunity to bid on the land. The exceptions to section 186 include giving the land to a not-for-profit corporation or a person or company with which the municipality has entering into a partnering agreement that has been the subject of a process involving the solicitation of competitive proposals. This section implicitly included a housing agreement.

The Community Charter

The Community Charter changed the Local Government Act's "municipal corporate powers" to "natural person powers". In so doing, municipalities in BC have been given a wider range of authorities that were not available through the Act. The sections that permit municipalities to provide incentives to private business, implicitly including developers building affordable housing are: 21, 26 175, 225, and 226.

Section 25 contains the general statement prohibiting municipalities from giving incentives to business: "Council must not provide a grant, benefit, advantage or other form of assistance [including a tax exemption] to a business." According to one of the provincial officials this statement is "Good public policy", and all incentives discussed below are exempt from the prohibition in Section 25.

Section 21, Partnering Agreements, explicitly states that if a municipality "enters into a partnering agreement for the provision of a service on behalf of the municipality, the Council may:

- Provide assistance, other than tax exemptions, to a business in accordance with the agreement, and
- Provide assistance by way of a tax exemption (in accordance with other provincial legislation that addresses taxes and municipal revenue).

Implicitly allowing municipalities to sell land at below market values, section 26 replaces section 186 of the Local Government Act. Before Council disposes of land, it must publish notice of the proposed disposition. In the case of property that is available to the public for acquisition, notice under this section must include the following:

- A description of the land or improvements;
- The nature and, if applicable, the term of the proposed disposition and
- The process by which the land or improvements may be acquired.

In the instance that a property is not available to the public for acquisition, notice under this section must include the following:

- A description of the land or improvements;
- The person or public authority who is to acquire the property under the proposed disposition;
- The nature and, if applicable, the term of the proposed disposition; and
- The consideration to be received by the municipality for the disposition.

Section 175, Liabilities under agreements, explicitly states that municipalities can enter into partnering agreements with anyone, including companies. Section 175 expands the options for municipalities entering into partnering agreements (these were formerly contained in 183 of the Act). Certain conditions apply to section 175. For example under subsections (2) and (3), the matter to which the agreement pertains must be put before and endorsed by electors if the agreement is for five or more years. Under subsection (5), the municipality must enter into a partnering agreement for a concept that was approved by electors within five years of the concept being endorsed by electors. Subsection 6 states that the concept for the agreement to be put before the electors must identify the following:

- The nature of the activity, work or facility to be provided under the partnering agreement;

- The maximum term of the agreement;
- The maximum liability that may be incurred by the municipality under the agreement; and
- Any other information required by regulation.

Section 225 permits tax exemptions. Subsection (2) i and ii explicitly say that a municipality can give tax exemptions to anyone with whom the municipality has entered into a partnering agreement (under section 175). A bylaw may be passed to allow the tax exemption under section 225. Such a bylaw:

- Must establish the term of the exemption;
- May only be adopted after notice of the proposed bylaw has been given;
- May only be adopted by an affirmative vote of at least 2/3 of all council members, and;
- Does not apply to taxation in a calendar year unless it comes into force on or before October 31 in the preceding year.

If the property to which the tax exemption was granted no longer conforms to the conditions necessary to qualify for exemption the property is liable to taxation.

Section 226, Revitalization tax exemptions, gives council the power to designate an area of a municipality as revitalization area either in the annual financial plan or the official community plan. Council must list its reasons for the designation and the objectives of the designation. If an area has been designated as a revitalization area, Council may, by bylaw, establish a revitalization tax exemption program that can include the following:

- The kinds of property revitalization that will be eligible for a tax exemption under this section;
- The extent of the revitalization tax exemption available;
- The conditions on which a tax exemption certificate may be issued; and
- Provision for a recapture amount that must be paid by the owner of the property to the municipality if the conditions on which a tax exemption certificate is issued are not met.

Council may also enter into an agreement with an owner of property in the revitalization area respecting the provision of an exemption and the conditions on which it is made. Once the conditions established in the bylaw and the agreement have been met, a revitalization tax exemption certificate must be issued for the property in accordance with the agreement. A revitalization tax exemption certificate may be cancelled by Council either on request of the property owner, or if any of the conditions in the tax exemption certificate are not met.

Implementation

According to the provincial official interviewed, the main benefits of municipalities entering into agreements with private developers for promoting affordable housing are: giving local government the flexibility and opportunity to work with developers to provide for mixed income development, allowing local government to enter into housing agreements. No shortcomings of such agreements were mentioned. The contact could not comment on the success of such agreements in promoting affordable housing in British Columbia.

Documents:

The Local Government Act: http://www.qp.gov.bc.ca/statreg/stat/L/96323_00.htm

The Community Charter: <http://www.mcaaws.gov.bc.ca/charter/index.htm>

Tables showing changes in municipal powers after the implementation of the Community Charter: <http://www.mcaaws.gov.bc.ca/charter/concordance/index.htm>

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Greater Vancouver Regional District

Several municipalities in the Greater Vancouver Regional District (GVRD) have used innovative zoning to promote multi-unit dwellings on smaller lots sizes, thereby enhancing homeownership affordability.

The City of Burnaby uses comprehensive development (CD) zoning to promote building multi-unit dwellings on smaller lots sizes. CD allows the City to define a custom development zone, in which the municipality has the flexibility to increase the density of development. CD reduces costs to the developer by allowing features such as reduced setbacks and higher densities. The Village on The Heights, a 29-unit project with eight single-level units and 21 two-level townhouses was completed in 2003. CD zoning allowed reduced front and rear yard setbacks that created a larger court yard area, and a strong street-front presence with clearly defined public, semi-public and private areas. Prices ranged from \$179,900 to \$240,000, which is considered affordable in the GVRD (prices vary greatly in the GVRD, the average housing price being approximately \$300,000).

The City of New Westminster uses zoning to accommodate a growing population through the redevelopment of existing sites at higher densities. For example the City worked with a developer to accommodate new zoning that permitted the construction of a 17-home project that was completed in 2001. The zoning was specifically designed for small lots, and to increase neighbourhood density and promote affordable home ownership opportunities while maintaining the character and streetscape of the existing a single-family neighbourhood. Live/work spaces above the garage are permitted in units where the garage faces a street.

The contact interviewed claims that some municipalities in the GVRD have had problems with the provision of direct financial incentives (e.g., grants) to developers building market affordable housing. On several occasions, despite the implementation of a legal agreement (i.e., a housing agreement), developers have easily been able to

change the new affordable housing to regular market prices. For this reason, planning tools, namely innovative zoning as discussed above, are being focused on to promote housing affordability.

Documents:

Best practices guide for initiatives of ground-oriented medium density housing in the GVRD: <http://www.gvrd.bc.ca/growth/gomdh2003.htm>

Contacts:

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Alberta

Summary

The Alberta Municipal Government Act (2000) is the provincial legislation that provides the framework for municipal powers. An enabling legislation, the Act does not explicitly prohibit municipalities from giving incentives to private businesses. On the other hand, the Act does not explicitly outline the specific incentives municipalities can give to private businesses with the exception of tax incentives and disposing of land at less than market value, which are explicitly permitted. Housing is not specifically mentioned in the Act.

Alberta Municipal Government Act

Section 347(1) states that if a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- Cancel or reduce tax arrears;
- Cancel or refund all or part of a tax; and
- Defer the collection of a tax.

While Section 347(1) does not explicitly state that these benefits may be given to private developers in exchange for affordable housing (the section is usually applied to commercial uses), the provincial official interviewed stated that this section does implicitly give municipalities the power to give tax breaks to developers building affordable housing projects.

Section 70(1) allows municipalities to dispose of land at below market value to anyone they please. The land does however have to be first advertised so that other members of the public have the opportunity to purchase the land. Advertising the land for sale at below market value to the public adds transparency to the process, subjecting it to public scrutiny (i.e., to ensure that the land is not being sold to a friend of one of the Councilors.)

Municipalities cannot provide financial assistance to developers in the form of borrowing or guaranteed loans. Section 264(2), explicitly states that municipalities can borrow at preferential rates on behalf of a non-profit organization (from the provincial organization, Alberta Municipal Finance Corporation for example). However, the municipality is not permitted to obtain such a loan on the behalf of a private business.

Implementation

According to the provincial officials interviewed, it is too early to determine the impacts of the above legislative provisions on the private provision of affordable housing, as the explicit powers to provide tax breaks and sell or lease land at less than market value have not been used by any municipality in the province for this purpose.

Documents:

Alberta Municipal Government Act

http://www.qp.gov.ab.ca/documents/Acts/M26.cfm?frm_isbn=0779727649

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Calgary

The City of Calgary developed and endorsed an affordable housing strategy in 2002 in response to the need for affordable housing and to public pressure for addressing homelessness. The City defines housing as affordable when it meets the needs of households earning less than \$37,600 per year (based on 65% of Calgary's 2001 median income), and housing costs do not exceed more than 30% of before tax income. Private developers can be involved only if they partner with the non-profit sector, but all housing built is for non-market purposes. Nonetheless, Calgary has implemented benefits that are worth summarizing.

In exchange for the provision of affordable housing, Calgary provides the following benefits to land developers:

- Direct capital funding;
- Removing land from a land reserve;
- Land donations and leasing; and
- Grants offsetting development and permit fees.

The legal instrument used depends on which of the above incentives are provided:

- A memorandum of understanding is used for direct capital funding;
- A lease agreement is used when land is taken from the reserve;
- A memorandum of understanding and lease agreement are used for municipal land donations and leasing respectively; and

When development and permit fees are offset, the project must also be the recipient of an Alberta-Canada provincial-federal grant). If the project also receives provincial funding, an agreement between the developer and province must also be signed.

In instances where developers lease municipal land, the City requires that affordability levels be maintained for 60 years. In instances where provincial and federal funding programs are also involved, the affordability period requirement is 20 years.

So far one project has been built with a private developer partnering with the non-profit sector and City. The 68-unit project was occupied in 2002. At the time of writing, another 16-unit project is in the process of being negotiated.

The main benefits of municipal and developer partnerships in the provision of affordable housing is leveraging more resources and drawing on the strengths each party has to offer (i.e., the municipality offers incentives, the non-profit developer/organization is eligible to receive a wide range of municipal incentives, and the for-profit developer provides capital, project management, development expertise, and sometimes the donation of building supplies.

According to the municipal official interviewed, the lengthy process is the most important shortcoming of such partnerships; the more players involved, the more difficult it is to implement a program.

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Saskatchewan

Summary

Saskatchewan has four provincial acts outlining municipal powers: the Urban Municipalities Act, the Rural Municipalities Act, the Cities Act, and the Northern Municipalities Act. Drafted in 2002, the Cities Act is most relevant to this research. The Cities Act made additions to the Urban Municipalities Act (1984) including "natural person powers". The Cities Act does not automatically apply to all cities in the province; a City Council must pass a resolution to bring a municipality under the Act's jurisdiction. And, while "natural persons powers" gives municipalities more freedom to provide incentives relevant to this research, the power also requires municipalities to be more accountable (for financial and legal decisions). The Cities Act allows municipalities to provide benefits to private businesses. Some sections in the Cities Act apply to both private and non-profit organizations, while other benefits pertain only to the non-profit sector, or municipally-controlled corporations (corporations established by the City to carry out their business – e.g., housing corporations to run social housing). The Act does not explicitly mention housing, but the benefits that municipalities are permitted to provide the private sector implicitly apply to developers. The Act does not contain any statements that explicitly or implicitly forbid municipalities from providing incentives to private businesses.

The Cities Act

Section 38 of the Cities Act gives a municipal council the power to sell City land or buildings at below market value. Council's decision to sell land at below market value "is not open to question, review or control by any court, if the purchaser is a person who may lawfully buy", as long as Council "acts in good faith." According to the provincial official interviewed section 38 can be interpreted to apply to private developers.

Section 244 allows Council to cancel, reduce or defer property taxes in instances it deems equitable. Cancellation, reduction, or deferral of the property tax must be approved not only by the municipality, but also by "any other taxing authority" involved in levying or benefiting from the tax, such as the local school board. The Act lists such cases including a "change in the property, to the extent that the council considers it inappropriate to collect the whole or a part of the taxes" and Council and the other taxing authority "agree that the compromise or abatement is in the best interests of the community." Section 244 implicitly applies to private developers.

Sections 151, 152, and 153 deal with loans and guaranteed borrowing. All three sections explicitly apply only to the non-profit sector, City controlled corporations or a Business Improvement District. According to the provincial contacts, all three sections can implicitly pertain to private sector affordable housing due to the natural persons powers that the Cities Act gives municipalities. Section 152 states that the loan must be authorized by bylaw. The Bylaw must contain details about:

- The amount of money to be loaned and, in general terms, the purpose for which the money that is loaned is to be used;
- The minimum rate of interest, the term, and the terms of repayment of the loan; and
- The source or sources of the money to be loaned.

Section 153 guarantees the repayment of a loan between a lender and a non-profit organization or a municipally controlled corporation or a business improvement district established by it the municipality, if the guarantee is authorized by bylaw. The bylaw must contain details regarding:

- The amount of money to be borrowed under the loan to be guaranteed and, in general terms, the purpose for which the money is borrowed;
- The rate of interest under the loan or how the rate of interest is calculated, the term, and the terms of repayment of the loan; and
- The source or sources of money to be used to pay the principal and interest owing under the loan if the city is required to do so under the guarantee.

Implementation

The provincial contacts could not comment on the instances or frequency the above sections have been used for private sector affordable housing.

Documents:

Urban Municipality Act:

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/U11.pdf>

Cities Act: <http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/c11-1.pdf>

Understanding Municipal Governance in Saskatchewan:

<http://www.municipal.gov.sk.ca/mrd/pdfs/undermungov.pdf>

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Saskatoon

When the “Downtown Housing Development Action Program” was introduced in 1999, it provided two incentives:

- A tax abatement phase-in over five-years (100% exemption the first year, 80% year 2, and so on) for new rental housing in the downtown, and
- A 50% rebate of the building permit fees on the residential portion of any new development in the downtown with four or more dwelling units.

The abatement was applied on the condition that supported units were not to be converted to condominiums for a further five years. This was to ensure that new units remain rental for at least that long. The program was targeted to new construction, which includes development of vacant land; redevelopment of existing residential property that

has been vacant for more than one year; or conversion of use from non-residential uses to residential.

At the end of 2001, a report was made to City Council recommending that the incentives program be enhanced to increase the level of incentive; be expanded to encourage all forms of residential development rather than just rental housing; and that support for the renovation of existing housing also be considered.

In August 2002, City Council approved these enhancements to the existing program and renamed it “The Downtown Housing Incentives Program”. The modified program provides for a 100% tax exemption for 5 years on all types of housing, including ownership and rental. The four-unit minimum eligibility requirement for the building permit fee rebate was dropped in the new program.

The development of this program was spearheaded by officials in the City Planning Branch, who worked in concert with the “Partnership” (the Downtown Business Improvement District Partnership) to coordinate the implementation of the program. Since the introduction of the original program in 1999, two housing developments have taken advantage of the incentives, adding a total of 104 units to the downtown area. These two projects are the only housing development that has occurred in the downtown since 1999.

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Manitoba

Summary

Adopted in 1997, the Municipal Act is the provincial legislation outlining municipal powers in Manitoba. Winnipeg has its own Charter, which is discussed in the next section. The Act implicitly allows municipalities to provide some financial benefits to private businesses; these benefits also pertain to private developers building affordable housing. The Act explicitly forbids property tax credits and rebates.

The Municipal Act

The Act does not explicitly outline the benefits that municipalities are permitted to provide private businesses. Rather, under the broad umbrella of “Economic Development”, section 258(2) of the Act enables a municipal council to “encourage economic development in any manner it considers appropriate and, for that purpose, may enter into an agreement with a person...” According to the provincial official interviewed, section 258 applies to developers building affordable housing. Thus, under section 258(2), municipalities are implicitly permitted to provide most of financial incentives and subsidies being considered in this report. Section 258(4), which explicitly states that while a Council may make a grant for economic development purposes, “the grant must not be used to directly or indirectly reduce the amount of municipal...taxes payable to the municipality or to reimburse a person for municipal...taxes that are paid or payable to the municipality.” In other words, municipalities in Manitoba (with the exception of Winnipeg) are explicitly prohibited to reduce or waive property taxes.

Implementation

The contact could not comment on the success of the above provisions in encouraging affordable market housing. It was noted that most private sector market housing is built in Winnipeg, which operates under its own charter (please see below).

Documents:

Municipal Act: <http://web2.gov.mb.ca/laws/statutes/ccsm/m225e.php>

Contacts:

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The Winnipeg Charter

Adopted in 2003, The Winnipeg Charter is stand-alone legislation for Manitoba’s largest city. The Charter gives Winnipeg the powers of a natural person (a power that is currently not afforded to other municipalities in Manitoba). The Charter explicitly allows Council to provide benefits to private businesses, including waiving or reducing property taxes, an incentive forbidden in the Manitoba Municipal Act. In addition to providing financial assistance to charitable or non-profit organizations, Council may also provide financial assistance for the following purposes:

- To support economic and cultural development;
- To improve, preserve, repair, maintain, convert or develop any property in the city; or
- For any other purpose that Council considers may be in the interests or to the advantage of the city or its citizens.

According to the provincial official interviewed, the above implicitly applies to private developers. Thus, the benefits permitted under the following sections of the Charter implicitly apply to developers building affordable housing:

Section 217(3) allows the City to give tax rebates, and section 218(2), explicitly permits the following forms of financial assistance (in the form of one or more of the following):

Grants:

- Tax credits (property taxes);
- Loans;
- Loan guarantee.

Section 219(3) states that before providing financial assistance, Council may require the recipient to enter into an agreement with the City, and the agreement may include any term or condition Council considers appropriate.

Council also has the authority under section 219(1) to pass bylaws establishing programs of grants, loans, tax rebates and tax credits that implicitly apply to private developers building affordable housing. Such bylaws can prescribe conditions including eligibility for assistance, the amount of assistance, and repayment terms.

Section 222 of the Charter allows Council to pass bylaws that establish tax increment financing programs in designated areas of the city for the purpose of encouraging investment of development in those areas. Some or all of the incremental taxes coming from the designated are placed in a reserve fund. The money in the reserve fund is used to:

- Provide financial assistance to persons who invest in developing or constructing property in the area,
- To give financial assistance to persons who invest in developing or constructing property in the area,
- To fund a grant, loan or tax credit program in the area for persons who invest in developing or constructing property, and
- To benefit the area by acquiring, establishing, constructing, improving, maintaining, operating, providing and equipping works, services, facilities and utilities of the city; and
- For any other matter that council considers necessary or advisable.

Again, the provincial official interviewed stated that these benefits could be applied to private developers building affordable housing.

Implementation

The multiple family dwelling grant program

The City of Winnipeg's Multiple Family Dwelling Grant Program has been successful in stimulating multiple family dwelling development. This grant program provides financial incentives to promote private investment in infill multiple family developments, and improve the housing stock in older neighbourhoods. The Multiple Family Dwelling Grant Program bylaw outlines the conditions to be eligible for a grant. The value of a grant for an approved project is equal to the lesser of two criteria: either 1.) 10% of the eligible construction costs to a maximum of \$250,000 plus an additional \$10,000 for each existing boarded (i.e., vacant, derelict building) principal building to a maximum of five

boarded principal buildings (i.e. \$50,000); or 2.) The total value of the accumulated incremental municipal taxes over five years. Total grants are available under this by-law to a maximum of three million dollars; funds are made available from the City's Multiple Family Dwelling Tax Investment Reserve Fund.

When a proposed project has been approved, the applicant shall be required to:

- Enter into a written agreement with the City;
- Submit all costs and work plans;
- Pay all outstanding taxes, utility charges or rates of any nature whatsoever which have become due to the City;
- Complete the project as set out in the application and pay all invoices, bills and costs related thereto to the satisfaction of the Director; and
- Provide any other information as may be required by the Director; prior to the grant or any portion thereof being released to the applicant.

Applications are received on a first-come, first-served basis. All applications must comply with the following:

- The proposed project must conform with all applicable provisions of the City's zoning and building by-laws, and with any applicable design approval process; and
- Construction of the proposed project must not be commenced prior to approval of the grant.

Since January 31, 2004, five private developers have received benefits under the Multiple Family Dwelling Grant Program, for a total of \$810,075 in. Projects include a 42-unit condominium complex that received a \$290,000 grant and a 25-unit condominium development that was awarded \$250,000.

Documents:

Winnipeg Charter: http://web2.gov.mb.ca/laws/statutes/2002/c039_2e.php

Have hard copies for Winnipeg's Multiple Family Dwelling Grant, including the bylaw, status of the program, and the application form.

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Ontario

Summary

Ontario's new Municipal Act (2002) outlines the responsibilities, including regulations concerning the operations and financing of Ontario municipalities. It includes a description of the range of incentives and subsidies that municipalities can provide to private and non-profit businesses in exchange for actions that help achieve municipal objectives. Municipalities in Ontario can enter into a "municipal capital facility" agreement with private developers in order to provide incentives including property tax exemptions, loans (at favourable rates or grants, giving, selling or lease land at less than market value, guaranteed borrowing, services of municipal employees, full or partial exemption from municipal development charges.

The Planning Act (1990) outlines how planning decisions are made. The Planning Act allows municipalities to designate Community Improvement Areas in any region of the municipality that is under the jurisdiction of the Official Plan. Through the use of a Community Improvement Plan, municipalities are permitted to provide assistance to private developers in exchange for goods or services that benefit the municipality.

The Municipal Act

The "Economic Development Services" part of the Municipal Act allows municipalities to provide benefits for the provision of municipal capital facilities. Section 110, "Agreements for municipal capital facilities" is the main section dealing with incentives and subsidies that municipalities can give. Regulation 46/94 is associated with Section 110 of the Act, and lists the services that qualify as municipal capital facilities. Housing is explicitly listed as one such provision (Section 2.(18)). All subsections of 110 discussed below therefore apply to housing.

Section 110.(1) states that a municipality may enter into agreements for the provision of municipal capital facilities by any person. While the wording in all of Section 110 does not differentiate between the private and non-profit sector, the provincial official interviewed stated that municipal capital facilities are generally goods or services owned by the municipality (i.e., the public sector). Regulation 46/94, section 5a says that municipal capital facilities are primarily used for local community purposes. According to the provincial official, when municipalities interpret section 110, they must prove that the housing is a municipal capital facility. The provincial legislation does not distinguish between non-profit or for-profit sector projects. A municipal housing facility bylaw must be passed in order for the municipality to give benefits to either the private or non-profit sector. The bylaw must contain at least:

- A definition of "affordable housing".
- Policies regarding who (public eligibility) can occupy for housing units to be provided as part of the municipal capital facilities (e.g., low income households).
- A summary of the provisions that agreements respecting municipal capital facilities.

Section 110.(3) allows municipalities to provide "financial or other assistance at less than fair market value or at no cost to any person who has entered into an agreement to provide facilities", including:

- Giving or lending money and charging interest;
- Giving, lending, leasing or selling property;

- Guaranteeing borrowing; and
- Providing the services of employees of the municipality.

The only constraint in subsection (3) is that the assistance applies to the “provision, lease, operation or maintenance of the facilities” for which the agreement was originally drafted. Subsection (3) can apply to affordable housing built by the private sector, if the municipality proves that the housing is a municipal capital facility.

Section 110.(6) permits municipalities to make tax exemptions for municipal capital facilities including housing. Restrictions to subsection (6) are: the capital facility must be “owned or leased by a person who has entered” the agreement, and the facility and must be “entirely occupied and used or intended for use for a service or function that may be provided by a municipality, including housing. Upon the passing of a bylaw the clerk of the municipality must give written notice of the contents of the bylaw to the assessment corporation.

Section 110. (7), refers to tax exemptions, and states that when a bylaw passed under subsection (6) (above), the municipality may “provide for a full or partial exemption for the facilities from the payment of development charges imposed by the municipality.”

Section 110.(10) allows Municipal Council to establish a reserve fund to be used for the exclusive purpose of renovating, repairing or maintaining facilities that are provided under an agreement under Section 110.

Section 107 also allows municipalities to make grants, on such terms as to security and otherwise as Council considers appropriate, “to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality.” The power to make a grant includes the power:

- To guarantee a loan and to make a grant by way of loan and to charge interest on the loan;
- To sell or lease land for nominal consideration or to make a grant of land;
- To provide for the use by any person of land owned or occupied by the municipality upon such terms as may be fixed by council; and
- To sell, lease or otherwise dispose of at a nominal price, or make a grant of, any personal property of the municipality or to provide for the use of the personal property on such terms as may be fixed by council.

While section 107 does not explicitly differentiate between the private and non-profit sector, the provincial contact noted that this section applies to organizations that have no commercial interests (i.e., non-profit organizations) such as religious institutions and service clubs. Private developers are therefore implicitly excluded from the benefits in section 107.

Section 106 of the Municipal Act explicitly states subsidies and incentives may not be used to “assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose.” While the Municipal Act does not explicitly state that section 110 of the Municipal Act is exempt from section 106, the provincial contact maintained that it was. Section 106 does explicitly exempt section 28 (6) and (7) of the Planning Act (discussed below) from its restrictions.

Planning Act

The provisions of the Municipal Act above outline the conditions under which a municipality in Ontario is permitted to provide incentives to private sector housing developers by passing a specific bylaw for each affected project. The Planning Act, in contrast, allows municipalities to provide certain incentives to private developers operating within a geographical area designated by the municipality as a Community Improvement Area.

Section 28 of the Planning Act allows municipalities to designate community improvement areas. Section 28 explicitly mentions housing as one aspect related to community improvement. Subsection (6)b explicitly permits municipalities to sell land in a community improvement area to any person. The provincial contact interview stated that subsection (6)b can implicitly include selling land for below market value to private developers. Subsection (7) gives municipalities the authority to make grants or loans to property owners within the community improvement area. Again, subsection (7) can apply to private developers. Subsection (10) states that in order to provide these incentives, a bylaw or amending bylaw must be passed (after the adoption of the community improvement plan is in force). If a bylaw has not been passed, the individual or business receiving the benefits must enter into a written agreement with the municipality to ensure that the land and its use will be in conformity with the community improvement plan until a bylaw or amending bylaw is passed.

Implementation

According to one of the provincial officials interviewed, the full range of incentives and subsidies have not been extensively used (i.e., some incentives have been used, but others have not). Municipalities generally partner or complement the incentives in the Municipal Act with other programs such as the Canada Ontario housing program; through such arrangements 2,000 new units were built in Ontario in the past year. Provincial programs require housing to remain affordable for a minimum of 15 years, but Municipal Councils can extend this period to 20 years.

Documents:

Municipal Act: http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/01m25_e.htm

Planning Act: http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90p13_e.htm

Regulation 46/94: <http://www.e-laws.gov.on.ca:81/ISYSquery/IRL1999.tmp/1/doc>

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Ottawa, ON

Ottawa's Municipal Housing Facilities Bylaw allows Council to pass bylaws permitting the City to enter into municipal housing project facilities agreements with private developers for the provision of municipal housing project facilities. For the purposes of this bylaw, affordable housing is defined as municipal housing project facilities in which the average rent for each unit size (inclusive of utilities and exclusive of parking, telephone, cable and other similar fees) is less than or equal to the average CMHC rent for the City of Ottawa for the same unit size. The City cannot enter into a housing agreement unless all the housing units to be built under the agreement meet the definition of affordable housing (as outlined above), and at least 60% of the units are at rents targeted to low income households, which are defined as households on the Social Housing Registry waiting list. The units are first made available to individuals or families on waiting lists (i.e., either the Social Housing Registry of Ottawa-Carlton or another waiting list Council has agreed to in a municipal housing project facilities agreement). Rent Supplement funding covers the difference between rent-geared-to-income payments from a low-income household and average market rents. Rent Supplement funding may be provided by the City of Ottawa or the provincial government; administration of the Rent Supplement program is carried out by the City of Ottawa. Rent Supplements have a five-year funding term with the possibility of extension. If there are no individuals or families on the waiting list, units can then be rented out to the general public.

The bylaw states that a municipal housing project facilities agreement may provide financial or other assistance at less than fair market value or at no cost to the housing provider. Assistance available under Ottawa's Municipal Housing Facilities Bylaw include:

- Giving or lending money;
- Giving, lending, leasing or selling property;
- Guaranteeing borrowing; and
- Providing the services of City employees.

So far one Project Facilities By-law has been passed, and it was with a private developer. The official opening the 16-unit occurred in May 2004, but occupancy began in December 2003. The municipal housing project facilities agreement requires that units are to be affordable for a period of twenty years. If the property is put up for sale, the subsequent purchaser or the housing facility is required to enter into agreement with the City. In other words, new purchasers are obliged to take over the agreement and respect the time frame for which the housing project facilities agreement is in force. Funding for the above incentives flows from capital grants. \$11.3 million in capital grant dollars are provided by the City of Ottawa (\$3.8 million) and the Federal Government through the Federal/Provincial Community Rental Housing Program (\$7.5 million).

Documents:

Have a hard copy of bylaw

Action Ottawa website: http://ottawa.ca/city_services/housing/ActionOttawa/

Contacts:

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Region of Waterloo, ON

The Region of Waterloo's Municipal Capital Facilities (MCF) bylaw was passed in 2002, and allows the Region to enter into agreements with private and non-profit developers for the provision of affordable rental housing. Funds to support the range of incentives under the MCF bylaw flow from a reserve fund established by Regional Council. In order to enter into an agreement, a two-part capital facilities bylaw is passed. The first part of the bylaw outlines general administrative procedures and defines affordable housing; the bylaw defines affordable housing as housing at rents less than the average rent in the region of Waterloo as determined by CMHC. The second part of the bylaw, the municipal capital facility project specific bylaw, varies from project to project and outlines the details of each development including the number of units that must be affordable.

- Incentives available under the Region of Waterloo MCF bylaw are:
- Development charges grant (the developer pays the development charges but the municipality provides the developer a grant to offset the charge);
- A grant of up to a \$15,000 for each unit to off set construction costs.

Housing is required to be affordable for a 20-year period. The grants are structured as a debt; as long as the developer abides by the agreement, the debt does not have to be repaid. If the agreement is breached (i.e., by raising rents above the agreed upon level), the debt and accumulated interest on the debt must be repaid. If the property is sold, the developer is to require the new purchaser to enter into an agreement with the Region. This agreement imposes the conditions of the municipal housing project facilities agreement on any subsequent purchasers for the remaining period of the agreement. Thus far, the Region has entered into an agreement with five private developers. One project is a 52-unit stacked town home. Construction commenced in fall 2003 and was completed in March 2004. All units in the building were rented out in three months, and 18 low-income households were picked from the Region's housing waiting list (through the use of rent supplements from the Region for low-income households in need of affordable rental housing). The MCF bylaw pertains only to rental housing.

Documents:

Have a hard copy of bylaw.

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Quebec

Summary

Quebec is unique in that its provincial housing agency, the Société d'habitation du Québec prepares and implements policies and programs that affect the entire housing sector, including private provision of affordable housing. Its mission is to facilitate access to appropriate housing, based on the varying financial resources and needs of the Quebec population. The Société d'habitation du Québec is governed by the Act respecting the Société d'habitation du Québec, and is under the authority of the Minister of Municipal Affairs, Sport and Leisure. This section focuses on the private sector component of the Affordable Housing Québec program, offered by the Société.

Affordable Housing Québec – Private sector component

The Société d'habitation du Québec operates the Affordable Housing Québec program, which has a private sector component. The Affordable Housing Québec program provides financial assistance to private sector developers to encourage the creation of market affordable housing units. Dwellings built under this program are geared to the needs of moderate-income households in municipalities with low rental vacancy rates. The program targets urban centres with rental vacancy rates below 3%. Municipalities applying for the program must be able to demonstrate a need for a substantial number of new dwellings in order to relieve the shortage of affordable rental housing.

A municipality that has been accepted by the Société d'habitation du Québec must prepare and administer its own program, which involves adopting a program bylaw, having it approved by the Société d'habitation du Québec, and signing an agreement with the Société. When preparing its program, the municipality must comply with the criteria set out in the framework program drawn up by the Société d'habitation du Québec in accordance with the conditions of the Affordable Housing Québec Program – Private Component. Projects can be new affordable housing projects or redevelop existing buildings or sites that were not previously used for residential purposes.

The assistance is funded by the federal and provincial governments in the following proportions: The federal government covers 50%, Quebec government covers 35%, and the municipality covers 15%. Property owners are responsible for managing their own lists of tenants. Financial assistance is a fixed amount established according to the location and type of dwellings produced. For example, the assistance available for a two-bedroom dwelling varies from \$10,600 to \$12,500. The maximum allowable rent would be approximately \$800 per month, including electricity. Landlords must agree to comply with certain conditions for a ten-year period following completion of the work:

- Rent can not exceed the maximum rent recognized by the Société;
- Residential units must be offered as rental accommodations;
- Owners cannot take possession of residential units for themselves or for members of their families;
- Units cannot be modified (number, type); and
- Property cannot be sold without authorization.

Implementation

Currently 10 municipalities participate in the program: Gatineau, Joliette, Laval, Longueuil, Mont-Laurier, Montreal, Quebec City, Saint-Hyacinthe, Sherbrooke, and Trois-Rivières.

Documents:

Société d'habitation du Québec – private sector component:

http://www.habitation.gouv.qc.ca/en/programmes/volet_prive.html

Montreal**Summary**

After the amalgamation of cities located on the Island of Montreal led to the enactment of the Charter of the Ville de Montreal January 2003. Unlike provincial legislation (The Cities and Towns Act and the Municipal Code), the Charter de la Ville de Montreal gives the City special jurisdiction, obligations and powers concerning housing

The Charter de la Ville de Montreal

Section 87(5) explicitly states that the City has special jurisdiction, obligations and powers concerning certain municipal amenities including housing.

Section 89 states that Council may, by bylaw, assist the carrying out of a project, where:

- The project relates to residential, commercial or industrial establishment situated in the business district, or if situated outside the business district, a commercial or industrial establishment the floor area of which is greater than 25,000 metres squared (section 89(3); and
- Housing is intended for persons requiring assistance, protection, care or lodging, particularly within the framework of a social housing program implemented under the Act respecting the Société d'habitation du Québec (discussed above).

Section 104 explicitly states that the City shall establish a housing development fund, which it uses to fund housing programs directed at both non-profit and for-profit developers and property owners.

Implementation

Montreal has implemented several affordable housing programs that involve private sector developers.

Through a RFP process, the City is currently offering formerly industrial land (the site will undergo remediation) at below market value for the construction of project between 60 and 110 dwelling units. 25% of the dwelling units (which must have at least two bedrooms) must be sold at \$170,000, and another 25% of the project must be sold at \$150,000 or less. The purpose of this program is to promote affordable homeownership opportunities in a central city location. The project will be selected according to its architectural integration into the existing neighbourhood, and the extent to which it will promote revitalization and trigger other affordable housing projects in the community. The City is especially looking for projects that provide different housing types for a range of incomes, to promote a mixed age (including seniors) and income development.

Documents:

(in French) http://www.habitermontreal.qc.ca/fr/pdf/comm_28_04_04.pdf

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In April, 2004, Council adopted two new measures to encourage the creation of affordable housing and homeownership opportunities in Montreal. From the City's perspective, these measures will encourage young households to stay in Montreal, rather than relocating to suburbs, where home ownership opportunities are generally less expensive. The first program involves offering financial aid to developers for the building affordable housing. The second program involves providing financial aid to non-profit organizations to build affordable, experimental projects (i.e., higher density, shared common spaces) that are suitable for low-income home ownership opportunities.

Bonuses to developers – Grants offered to developers through this program range between \$5,000 and \$12,000 for each new dwelling. Under certain conditions (e.g., building in designated revitalization areas), the City offers a supplementary amount of \$5,000. The program applies to the construction of new affordable housing and the redevelopment of sites or buildings that were previously not used for residential purposes.

Pilot project, *Accession à la propriété* – The purpose of this pilot project is to build new affordable housing units geared to low-income households. Although the incentive offers financial aid to non-profit developers only, it is of interest here because the housing produced is sold on the private market. A grant between \$16,000 and \$33,000 per dwelling unit is available, depending on the selling price of the units. The maximum selling price is \$133,000 (including taxes). The funds necessary to implement the new measures for this project are provided by the Société d'habitation du Québec and the City of Montreal.

Documents:

(in French) http://www.habitermontreal.qc.ca/fr/pdf/comm_28_04_04.pdf

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Prince Edward Island

Summary

The Municipalities Act is the provincial legislation governing Prince Edward Island's municipalities. The Act does not apply to PEI's, largest municipalities, Charlottetown and Summerside; each operates under its own act as discussed below. Drafted in 1988, minor amendments to the Act were consolidated in 2003. The Act is currently under review. Sections 30 and 31 outline municipal powers. Section 30 implicitly allows municipalities to provide incentives to private businesses in exchange for goods or activities that will benefit the municipality. The municipal official interviewed claimed that section 30 could implicitly apply to private developers building affordable housing because the Act does not explicitly or implicitly forbid this; in other words, because the Municipalities Act is it is "silent on the issue", it is implicitly permitted.

The Municipalities Act

Section 30 applies to PEI's municipalities that are designated as "towns" and "villages", and implicitly allows municipalities to provide benefits to private businesses, including land developers. Sections 30(m) municipal and regional development, and 30(p) housing development and promotion, implicitly allow municipalities to provide benefits to private developers for the provision of affordable housing (the provincial official claims this is permitted because the Act is "silent on the issue"). While section 30(p) specifically refers to housing, the benefits that municipalities are permitted to provide for the provision of affordable housing are not explicitly mentioned. Under section 33, a municipality must apply to the Minister and indicate the service(s) it intends to provide, the need for these services, the financial implications of the provisions of the service(s), and the extent of resident support for the new service(s). This is done through a letter of request, which is reviewed by the Minister. If the application is approved, notice of approval must be published in the provincial newspaper. After an application is approved, according to section 64 of the Act, Council may make bylaws concerning the service(s) it has been authorized to provide. According to the provincial official, letters of request are very rarely rejected.

Section 31 applies to municipalities that are designated as "communities" (Community Improvement Committees (CIC's)). CIC's have the most limited powers, and are implicitly prohibited from giving benefits to private businesses, as the list of services they are permitted to provide include things like fire protection, garbage collection, and street lighting.

Implementation

According to the provincial official, incentives or rebates for land development through section 30 have mostly been for commercial uses in towns and villages thus far. A few municipalities, Tignish (population 800) for example, which has the power to exercise section 30 of the Act, have provided residential tax incentives.

Documents:

Municipalities Act: <http://www.gov.pe.ca/law/statutes/pdf/m-13.pdf>

Have a chart showing which legislation applies to which municipalities.

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**Charlottetown Area Municipalities and the City of Summerside
Summary**

The Charlottetown Area Municipalities Act and the City of Summerside Act were drafted in 1988 and consolidated in 2003. Both Acts are identical in that PEI's two largest municipalities are permitted to provide assistance to community development projects, housing development and promotion being aspects that are specifically mentioned. Providing benefits to private companies, including developer is not explicitly or implicitly forbidden. The Acts are discussed together as the section dealing with the types of services and benefits the Cities are permitted to provide are identical.

Charlottetown Area Municipalities Act and the City of Summerside Act

Section 21(m) of the Charlottetown Area Municipalities Act and The City of Summerside Act explicitly state that Council may provide "community or regional development including...housing development and promotion. 21(m) also explicitly states that the Council may provide assistance for community development projects. According to the provincial official interviewed, both of the above statements can implicitly allow Council to provide benefits to private developers building affordable housing. While the Act gives the municipality the power to private developers incentives to build affordable housing, this power has not been used in Charlottetown, simply because it has not been proposed yet.

Charlottetown has however provided incentives to private businesses in other areas related to community improvement, such as business development and heritage conservation. The City offers a development tax incentive agreement to new businesses that fall within the constraints of the agreement. The agreement only applies to certain businesses, such as light industry or manufacturing, and technology. The agreement provides a tax incentive for the first five years of a business' operations. The business must increase the property's value by at least 25%. In the first year of operations, the business is eligible for 90% municipal taxes back and then 70%, 50% 30%, and 10% for each subsequent year. A resolution of Council established a bylaw for the establishment of the program. To enter into an agreement with the municipality, the business must have a building permit, and fill out an application form, which includes details of the property. A general tax incentives agreement is then drafted which includes the value by which the business has increased the property. This figure will be used for the next five years of the agreement to determine the amount of the taxes the business will receive back from the municipality.

Charlottetown has a heritage area that was designated by bylaw. In addition, individual properties outside the heritage area may also be designated heritage by bylaw. These properties are exempt from planning fees. The City's heritage renovation program provides heritage building owners \$2,500 per year to renovate heritage properties in ways that maintain the integrity of the structures. The City also offers a tax incentive

agreement similar to the program for new businesses outlined above: for the first year, property owners get 100% of their taxes back and 80%, 60%, 40%, and 20% for each consecutive year

Documents:

Charlottetown Area Municipalities Act: http://www.gov.pe.ca/law/statutes/pdf/c-04_1.pdf

City of Summerside Act: http://www.gov.pe.ca/law/statutes/pdf/s-09_1.pdf

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Conclusion

This research examines the incentives municipalities can provide to private developers in exchange for affordable housing, as permitted under provincial legislation. As demonstrated, provincial legislation varies considerably from province to province (Please refer to Appendix 1 for summary tables for benefits permitted under each provincial legislation). As shown in Table 2, out of the ten provinces, seven permit municipalities to provide benefits to private businesses. All ten provinces allow benefits to the non-profit sector.

Table 2: Provinces that permit municipal incentives to the private sector

Province	Provincial legislation	Incentives to the private sector
British Columbia	Local Government Act	Yes
	Community Charter	
Alberta	Alberta Municipal Government Act	Limited
Saskatchewan	Urban Municipalities Act	Yes, under Cities Act
	Cities Act	
Manitoba	Municipal Act	Yes. Winnipeg Charter gives the city more power than other municipalities in Manitoba
	Winnipeg Charter	
Ontario	Municipal Act	Yes
	Planning Act	
Quebec	Cities and Towns Act	Yes
	Municipal Code	
	Charter of the Ville de Montreal	
New Brunswick	Municipalities Act	No
Newfoundland	Municipalities Act	No
	City of St. John's Act	
Prince Edward Island	Municipalities Act	Yes
	Charlottetown Area Municipalities Act	
	City of Summerside Act	
Nova Scotia	Municipal Government Act	Limited: bonus zoning allowed

Potential legislative changes to the Nova Scotia Local Government Act

In order to provide benefits to the private sector legislation must be implemented to ensure the transparency of the partnering process between the municipality and the developer, i.e., public accountability. Ensuring long-term affordability of dwelling units housing built as low-cost housing also must be addressed by the legislation. As mentioned in the introduction of this research, the Nova Scotia legislation currently limits benefits to private developers to indirect financial assistance via bonus zoning, and does not permit direct financial assistance (e.g., grants or tax incentives). This section outlines potential changes that could be made to Nova Scotia's Local Government Act to give HRM (and other municipalities in Nova Scotia) the power to provide a broader range of incentives to private developers in exchange for affordable housing.

Potential legislative vehicles for the Municipal Government Act

- **Community improvement or business improvement areas** – A section could be added to the MGA that would allow municipalities to give incentives to businesses in community improvement areas (delineated in a community improvement plan). While section 56 of the MGA speaks to area improvement and promotion, financial incentives to the business sector are not mentioned. According to the interviews conducted by Dr. Tomalty, the MGA does not explicitly permit incentives to the business sector; municipalities in Nova Scotia are thus prohibited from providing incentives to the private sector. In other provinces (Ontario and British Columbia), municipalities have the right to provide incentives such as reducing or waiving development, planning charges, or taxes, and preferential loans (low or interest free) to private business in delineated business or community improvement areas. In these provinces, such benefits can legally extend to developers building affordable housing.
- **Capital facilities bylaw** – Section 61(1) of the MGA gives municipalities the power to enter into agreements with “any person for the provision of service or capital facility that the municipality or village is authorized to provide.” This section could be amended to include a subsection that would allow housing. The only problem is that housing (subsidized) is a currently under provincial jurisdiction and is therefore not a capital facility the HRM (or any other municipality in Nova Scotia) is authorized to provide. A section could be added to the MGA to permit municipalities in Nova Scotia to pass municipal capital facilities bylaws for goods and services that are not limited to those provided by the municipality, but to any product or service that generally benefits the municipality. Capital facilities bylaws allow municipalities to provide benefits to businesses providing municipal capital facilities, i.e., a good or service that benefits the municipality. In Ontario, affordable housing is considered a capital facility (subsidized housing is also funded and administered by municipalities in this province). Municipal housing facilities bylaws are passed, allowing a municipality to enter into an agreement with a private developer. The municipality provides benefits such as grants and the leasing of municipal land at below market value, and in return the developer builds affordable housing. A condition of the agreement is that the housing remains affordable for a certain period of time (e.g., 15 to 20 years).
- **Specific affordable housing legislation** – Section 191(g) of the MGA permits municipalities to implement bonus zoning (which permits the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest as specified in the requirements). The BC legislation allows municipalities to establish different densities within a defined zone (e.g., the central area of the municipality). Developers can build at higher densities in these zones (e.g., reduced setbacks, smaller lot sizes), and thus reduce costs. Section 191(g) of the MGA could be revised to specifically include affordable housing, or a new subsection could be added to section 191 that would explicitly mention affordable housing as public interest. Explicitly stating that municipalities can employ bonus zoning for the provision of affordable housing may promote the use of this planning tool for this particular purpose.
- **City-charter legislation for HRM** – In some provinces, the largest city has city-charter legislation, which gives the municipality more powers than other municipalities in the province. The Winnipeg Charter is the best example of such legislation; Winnipeg has considerably more powers to provide the benefits

discussed in this research than other municipalities in Manitoba. For example Winnipeg can provide tax incentives to private businesses (including developers), while the rest of the municipalities in the province are prohibited from doing so. City-charter legislation for the HRM could provide Nova Scotia's largest municipality with special powers such as "natural person powers" that would permit the municipality to offer benefits to private businesses.

Incentive options

- **Selling of leasing land at below market value** – Some provinces such as British Columbia, Alberta, Saskatchewan, and Manitoba allow municipalities to sell or lease land at below market values if certain conditions are met (e.g., the land is first made available to the public or the purchaser must be in a legal agreement with the municipality). Section 50c and 50d of the MGA allow municipalities to sell or lease land at market value, which is not an incentive. Section 51(1) of the MGA allows municipalities to sell or lease property at less than market value, but this incentive only applies to non-profit organizations whose work Council considers beneficial to the community. The powers of Section 51(1) could be expanded to include the private sector if a private sector business is deemed as providing a good or service that benefits the municipality (a clause could also be added that Council would act in "good faith" in making decisions as to whether the good or service provided by the private business benefits the municipality). Such an amendment would remove the legal prohibition of applying section 51(1) to private developers. In the provinces mentioned above, selling land at below market value does not pertain explicitly to the provision of private sector affordable housing. The legislation does nonetheless, make this opportunity available (and does not legally prohibit municipalities from applying this incentive to private developers building affordable housing).
- **Tax incentives** – Section 57(2) of the MGA prohibits municipalities from granting tax concessions (or other forms of direct financial assistance) to a business or industry. Several provincial legislations – including those of British Columbia, Alberta, Saskatchewan, and Winnipeg – allow municipalities reduce or waive taxes for private businesses (including developers) that provide a good or service in the public interests. Most of these provinces' legislation also contains clauses similar to section 57(2) of the MGA, prohibiting financial assistance to private businesses. Several of the provincial contacts noted that such a statement is "good public policy". In all the legislations mentioned above, there are exceptions to the prohibition of providing incentives to businesses (e.g., if Council acts in "good faith", or if the incentive is being provided for a good or service that will benefit the municipality). Another common exception was if the municipality entered into an agreement (i.e., legal agreement or housing agreement) with the party to whom the incentives are being provided. Sections 61(1) and 59(b) of the MGA currently permit municipalities to enter into agreements. Section 59(b) for example allows entering into agreements with the Minister of Community Services, CMHC or "any body corporate or agency having similar objective to CMHC and Housing Corporation with respect to projects pursuant to the National Housing Act (Canada)..." Section 61(1) gives municipalities the power to enter into agreements with "any person for the provision of service or capital facility that the municipality or village is authorized to provide". These sections could be amended to implicitly or explicitly include private developers building affordable housing. Section 61(1) would be problematic if Nova Scotia municipalities if a

housing agreement would be required; the MGA only permits municipalities to enter into agreements with businesses that provide a “service or capital facility that the municipality or village is authorized to provide”. Subsidized housing is currently a provincial responsibility. As in the case of selling land at below market value, tax incentives in the provinces mentioned above do not pertain explicitly to developers building affordable housing. The legislation of the above provinces does not however legally prohibit municipalities from providing this incentive to developers in exchange for affordable housing. Likewise, the MGA could be amended to implicitly allow municipalities to provide tax incentives to private developers.

- **Waiving or reducing development and/or planning fees** – Again, section 57(2) states that municipalities “shall not grant a tax concession or other form of direct financial assistance to a business or industry”. This prohibition prevents municipalities in Nova Scotia from providing benefits such as waiving or reducing development and/or planning fees. In provinces (British Columbia) where legislation also prohibits municipalities from providing assistance to businesses, there are exceptions to this prohibition. Exceptions can easily be provided through a clause that waives prohibitions if the business is providing a product or service that benefits the municipality. Other exemptions, such as the requirement of a housing agreement would be problematic for Nova Scotia municipalities as the MGA only permits municipalities to enter into agreements with businesses that provide a “service or capital facility that the municipality or village is authorized to provide”, under section 61(1). As previously noted, municipalities in Nova Scotia are not authorized to provide (subsidized) housing.

Potential issues and lack of transferability

- **Transparency** – Providing subsidies to the private sector in return for affordability guarantees raises issues of transparency and public accountability. Any changes to the MGA along these lines should be cognizant of the need to ensure that public decisions are made in an open, democratic fashion following clear policy guidelines.
- **Range of incentives that should be offered** – Deciding on the range of incentives that the MGA should allow municipalities to offer private businesses is complex. Many issues such as compatibility with other provincial legislation (e.g., those dealing with taxation), the availability of funding sources and the limitations of the existing legislation must be considered.
- **Funding** – HRM operates under strict financial constraints, which raises the question as to where the funding to support incentive programs would come from. In some provinces, such as Ontario, municipalities have established housing reserve funds for this purpose. The funds to pay for incentives offered through the municipal capital facilities bylaws in Ontario municipalities often flow from housing reserve funds (complemented by provincial and the federal funding). HRM could explore the feasibility of setting up a reserve fund for this purpose as well, possibly by establishing a linkage fee on large scale residential or commercial development or by capturing some of the surplus from municipal land sales. An analysis of the impacts of a linkage fee on development activity in the municipality should be undertaken before proceeding with a linkage fee.
- **Long-term affordability safeguards** – Several interviewees claimed that providing direct financial incentives (i.e., grants) to developers in exchange for

affordable housing has been problematic because ensuring the immediate and long-term affordability of housing built by private developers is extremely challenging. Even in cases where a housing agreement is in place, these legal documents can be changed relatively easily by compliant councils. For example a property owners may be able to persuade Council to modify the conditions of housing agreements if the owner is experiencing difficulties in finding tenants that meet the requirements of the original agreement or if unexpected investments are required to maintain the property. Safeguards should be built into partnership agreements that anticipate such difficulties and allow Council to address them without jeopardizing the agreement as a whole.

- **A municipal housing office** – A municipal agency would need to be established in order to monitor the implementation of partnership agreements with for-profit developers and ensure agreements are being respected. This office could also negotiate agreements with developers, manage a housing reserve fund, identify new sources of funding and specific housing opportunities, conduct research and so on.

Appendix 1

Summary of relation between municipal responsibility for housing and affordable housing incentives provided to the private sector

Ontario is the only province that has downloaded responsibility for social housing to municipalities. The provincial/municipal dynamic is not consistent across other provinces. In Quebec and British Columbia, municipalities are directly involved in funding housing, usually in cost-sharing arrangements with the provinces. In Quebec municipalities are funded for this by the province, whereas in BC the municipalities put up their own money to attract matching provincial dollars. In both BC and Quebec, municipalities get some sway over project siting, targeting, and other development decisions through their financial contributions. In all other Canadian provinces, social housing is a provincial responsibility.

Province	Incentives permitted to private sector	Municipal responsibility for social housing
British Columbia	X	X
Alberta	Limited	
Saskatchewan	X	
Manitoba	X	
Ontario	X	X
Quebec	X	X
New Brunswick		
Newfoundland		
Prince Edward Island	X	
Nova Scotia	Limited	

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Appendix 2

Summary of provincial legislation permitting incentives to the private sector

Province	Provincial legislation	Sections
British Columbia	Local Government Act	904; 905
	Community Charter	21; 26; 175; 225; 226
Alberta	Alberta Municipal Government Act	347(1); 70(1)
Saskatchewan	Cities Act	38; 244; 153
Manitoba	Municipal Act	258(2)
	Winnipeg Charter	217(3); 218(2)
Ontario	Municipal Act	110.(3); 110.(6); 110.(7)
	Planning Act	28.(6)b; 28.(7)
Quebec	Cities and Towns Act	
	Municipal Code	
	Charter of the Ville de Montreal	
Prince Edward Island	Municipalities Act	30(m), (p)
	Charlottetown Area Municipalities Act	21(m), (p)
	City of Summerside Act	21(m), (p)

British Columbia

Incentives municipalities in British Columbia can provide to private businesses under the Local Government Act

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Density bonusing	904	Explicit	<p>Available to both the private and non-profit sectors.</p> <p>The owner is required to enter into a housing agreement under section 905 with the municipality before a building permit is issued</p>
Housing agreement	905	Explicit	<p>The housing agreement may include terms and conditions agreed to by the local government and the owner under section 905</p> <p>Conditions include:</p> <ul style="list-style-type: none"> -The tenure of the housing units The availability of the housing units to classes of persons identified in the agreement or the bylaw -The rents and lease, sale or share prices that may be charged and the rates at which these may be increased over time. <p>This section also allows the municipality to develop conditions other than those listed in section 905.</p> <p>A developer must enter into a housing agreement in order to qualify for the density bonusing permitted under section 904.</p> <p>Entering into a housing agreement also allows developers to take advantage of some of the benefits in the Community Charter (discussed below).</p>

Incentives municipalities in British Columbia can provide to private businesses under the Community Charter

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Provide assistance other than a tax exemption. Can provide assistance by way of a tax exemption	21	Implicit	The municipality “enters into a partnering agreement for the provision of a service on behalf of the municipality.”
Selling land at less than market value	26	Implicit	Before Council disposes of land, it must publish notice of the proposed disposition.
Municipalities can enter into partnering agreements with anyone, including companies	175	Implicit	<p>If the agreement is more than five years, the matter to which it pertains must be put before and endorsed by electors.</p> <p>Under subsection (5), the municipality must enter into a partnering agreement for a concept that was approved by electors within five years of the concept being endorsed by electors.</p> <p>The concept presented to electors must identify:</p> <ul style="list-style-type: none"> -The nature of the activity, work or facility to be provided under the partnering agreement; -The maximum term of the agreement; -The maximum liability that may be incurred by the municipality under the agreement; and -Any other information required by regulation.
Tax exemptions	225	Implicit	<p>The municipality must enter into an agreement with the party under section 175</p> <p>A bylaw must be passed to allow the tax exemption.</p>
Revitalization tax exemption program	226	Implicit	<p>Allows Council to designate an area of the municipality as a revitalization area in the Annual Financial Plan or the Official Community Plan</p> <p>Council must list reasons for designation and the objectives of the designation</p>

Incentives applicable only to the private sector

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Waive or reduce development cost charges	933 (12) of the Local Government Act	Explicit	Applicable only to non-profit housing.

Prohibitions in the British Columbia legislation for providing incentives to private businesses

Prohibition	Sections	Exceptions
“Council must not provide a grant, benefit, advantage or other form of assistance (including a tax exemption) to a business.”	Section 25 of the Community Charter	All benefits discussed above are exempt from section 25. This statement is good public policy

Alberta

Incentives municipalities in Alberta can provide to private businesses under the Local Government Act

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Waive or reduce taxes:	347(1)	Implicit	
Selling land at below market value.	70(1)	Implicit	The land has to be first advertised so that other members of the public have the opportunity to purchase the land.

Incentives applicable only to the private sector

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Borrowing or guaranteed loans	264(2)	Implicit	Applicable only to the non-profit sector.

Prohibitions in the Alberta legislation for providing incentives to private businesses

Prohibition	Sections	Exceptions
Municipalities cannot provide financial assistance private businesses in the form of borrowing or guaranteed loans.	264(2)	

Saskatchewan

Incentives municipalities in Saskatchewan can provide to private businesses under the Cities Act

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Selling land at below market value	38	Implicit	Person buying the land must lawfully be able to buy. Council must act in "good faith".
Cancel, reduce or defer property taxes	244	Implicit	Must be approved by both the City and any other taxing authority, e.g., the School Board.
Guarantees the repayment of a loan	153	Implicit	Available to non-profit organizations or a municipally controlled corporation or a business improvement district established by it the municipality. Guarantee must be authorized by bylaw.

Manitoba

Incentives municipalities in Manitoba can provide to private businesses under the Municipal Act

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Municipalities are permitted to provide most of financial incentives and subsidies considered in this report under "Economic Development".	258(2)	Implicit	Council may encourage economic development in any manner it considers appropriate and, for that purpose, may enter into an agreement with a person.

Prohibitions in the Manitoba legislation for providing incentives to private businesses

Prohibition	Sections	Exceptions
Reduce or waive property taxes	258(4)	

Incentives Winnipeg can provide to private businesses under the Winnipeg Charter

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Tax rebates	217(3)	Implicit	Under section 219(3), Council may require the recipient to enter into an agreement with the City before providing financial assistance. The agreement may include any term or condition Council considers appropriate.
Financial assistance (in the form of one or more of the following): Grants: -Tax credits (property taxes); -Loans; -Loan guarantee	218(2)	Implicit	

Ontario

Incentives municipalities in Ontario can provide to private businesses under the Municipal Act

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Financial or other assistance at less than fair market value or at no cost to any person including: -Giving or lending money and charging interest; -Giving, lending, leasing or selling property; -Guaranteeing borrowing; and Providing the services of employees of the municipality	110.(3)	Implicit	When a municipality interprets section 110, it must prove that the housing is a municipal capital facility. A municipal housing facility bylaw must be passed. Person must enter into an agreement to provide capital facilities. Assistance applies to the “provision, lease, operation or maintenance of the facilities” for which the agreement was originally drafted.
Tax exemptions for municipal capital	110.(6), . (7)		Capital facility must be “owned or leased by a person who has

facilities			entered” the agreement, and the facility and must be “entirely occupied and used or intended for use for a service or function that may be provided by a municipality, including housing.
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Incentives applicable only to the private sector

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Grants; the power to make a grant includes the power: -the loan; -to sell or lease land for nominal consideration or to make a grant of land; -to provide for the use by any person of land owned or occupied by the municipality upon such terms as may be fixed by council; and -to sell, lease or otherwise dispose of at a nominal price, or make a grant of, any personal property of the municipality or to provide for the use of the personal property on such terms as may be fixed by council.	107	Implicit	While section 107 does not explicitly differentiate between the private and non-profit sector, this section applies to organizations that have no commercial interests (i.e., non-profit organizations) such as religious institutions and service clubs. Private developers are therefore implicitly excluded from the benefits in section 107.

Incentives municipalities in Ontario can provide to private businesses under the Planning Act (section 28, the establishment of community improvement areas)

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Sell land in a community improvement area to any person including for below market value.	28(6)b	Implicit, but housing is explicitly mention as something that can be provided in a community improvement area.	Property must be within the community improvement area. Under subsection (10), a bylaw or amending bylaw must be passed (after the adoption of the community improvement plan is in

Grants or loans to property owners	28(7)		force). If a bylaw has not been passed, the individual or business receiving the benefits must enter into a written agreement with the municipality to ensure that the land and its use will be in conformity with the community improvement plan until a bylaw or amending bylaw is passed.
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Prince Edward Island

Incentives municipalities in Prince Edward Island can provide to private businesses under the Municipalities Act

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
Incentives to private businesses permitted in exchange for goods or activities that will benefit the municipality	30(m) and (p)	Implicit	<p>Under section 33, a municipality must apply to the Minister and indicate the service(s) it intends to provide, the need for these services, the financial implications of the provisions of the service(s), and the extent of resident support for the new service(s). This is done through a letter of request, which is reviewed by the Minister. If the application is approved, notice of approval must be published in the provincial newspaper.</p> <p>After an application is approved, according to section 64 of the Act, Council may make bylaws concerning the service(s) it has been authorized to provide.</p>

Incentives the City of Summerside and Charlottetown can provide to private businesses under the City of Summerside and the Charlottetown Area Municipalities Acts

Incentive	Sections	Implicit or Explicit (to Affordable Housing)	Conditions
<p>Council may provide “community or regional development including...housing development and promotion.</p> <p>21(m) also explicitly states that the Council may provide assistance for community development projects.</p>	<p>21(m) and (p)</p>	<p>Implicit</p>	<p>As in PEI</p>

Appendix 3

Questionnaire for Provincial Officials

Legislative Provisions Governing Municipal Subsidies and Incentives to the Private Sector in Exchange for the Provision of Low-Cost Housing

As you know, some provincial municipal acts contain provisions that prohibit municipalities from offering financial incentives or subsidies to private businesses. However, there is a growing trend for provincial legislation to permit municipalities to offer certain incentives when the business is meeting a public need.

We would like to know whether the municipal act in your province allows municipalities to enter into agreements with private housing developers to provide them with public subsidies or financial incentives in exchange for the provision of affordable housing.

We are not interested in provisions related to SOCIAL housing, such as that produced by the non-profit or cooperative sector. We are only interested in finding out about how your provincial legislation frames formal agreements between individual municipalities and PRIVATE SECTOR developers within those municipalities.

We are doing this research on behalf of the Halifax Regional Municipality and the Province of Nova Scotia as officials there are considering changes to the provincial municipal act that would allow municipalities to work more closely with the private sector in encouraging the provision of low cost rental and ownership housing.

Questions

- Does your province have any legislation or policy document that describes the role municipalities should play in encouraging the provision of housing to meet the needs of all population groups? For instance, do you have a provincial policy that encourages municipalities to promote the creation of a wide range of housing types or prices through their planning and development decisions?
- What is the name of the provincial act that governs the powers and responsibilities of municipalities in your province? When was it put in place?
- I'd like to go through the types of subsidies and incentives we are interested in finding out about and ask you whether your [Municipal Act] permits that type of incentive or not. We are interested in finding out about both EXPLICIT provisions in your [Municipal Act] covering these issues and IMPLICIT provisions. By explicit we mean that this type of incentive or subsidy is mentioned by name in the act. By implicit, we mean that the incentive or subsidy is not mentioned by name, but it is understood to be covered by a more general or global provision of the act. For instance, if your [Municipal Act] says that municipalities are forbidden to offer any financial assistance to private businesses for any reason without exception, this would be an implicit prohibition on the type of incentives we are interested in finding out about.

Incentive/Subsidy	Explicitly permitted in Act? (if so, enter section of Act)	Implicitly permitted in a global provision of Act? (if so, enter section of Act)	Explicitly prohibited in Act? (if so, enter section of Act)	Implicitly prohibited in a global provision of Act? (if so, enter section of Act)	If permitted, which municipality has used the incentive? (enter contact information)
Reduce/waive infrastructure levies					
Reduce/waive property taxes					
Land donations e.g., land sales or leases below market value					
Loans and grants (e.g., interest free or other special loans)					
Reduce/waive planning approval and permit fees (e.g., for rezoning, planning amendment, plan of subdivision, building permit)					
Reduce/waive park dedication requirements (land or cash in lieu)					
Reduce/waive parking requirements (# of parking spaces or cash in lieu)					
Density bonusing (letting the developer build at higher densities in exchange for AH)					
Other financial incentives or subsidies					

- In your opinion, how successful have these provisions been in encouraging the private sector to create more affordable housing in your province (e.g., have more private developers taken on affordable housing projects, the number of units produced, and the level of affordability achieved)?
- What shortcomings or problems have been encountered?

Questionnaire for Municipal Officials

- When were public-private partnerships for promoting community reinvestment and affordable housing first implemented in your municipality?
- Why were public-private partnerships for affordable housing implemented in your municipality?
- What is the range of public subsidies that you typically include in these partnerships

Incentive/Subsidy	Implemented/not implemented
Reduce/waive infrastructure levies	
Reduce/waive property taxes	
Land donations e.g., land sales or leases below market value	
Loans and grants (e.g., interest free or other special loans)	
Reduce/waive planning approval and permit fees (e.g., for rezoning, planning amendment, plan of subdivision, building permit)	
Reduce/waive park dedication requirements (land or cash in lieu)	
Reduce/waive parking requirements (# of parking spaces or cash in lieu)	
Density bonusing (letting the developer build at higher densities in exchange for AH)	
Other financial incentives or subsidies	

- What benefits in terms of the supply of affordable housing do you receive in return from the private developers involved?
- What affordability levels are achieved and for how many years are these levels maintained?
- What is the legal instrument that you use to structure these partnerships (e.g., a housing agreement)?
- Please outline the process (from the initial to the final stages of development) your municipality follows when public-private partnerships are used in affordable housing projects?
- What are the key administrative factors that contribute to successful implementation of the partnerships?

- In your opinion, how successful have public-private partnerships been in promoting affordable housing in your municipality (e.g., have more developers taken on affordable housing projects)?
- What are the main benefits of public-private partnerships for promoting affordable housing?
- (In your experience), what are the shortcomings of public-private partnerships?
- Do you have any suggestions for municipalities that currently do not allow public-private partnerships for affordable housing, and are considering implementing such partnerships to promote affordable housing?