



*Office of the City Clerk and Solicitor  
Bureau du greffier municipal et de l'avocat général*

January 31, 2018

The Honourable Peter Milczyn  
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The Honourable Bill Mauro  
Minister of Municipal Affairs  
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cc: [inclusionaryzoning@ontario.ca](mailto:inclusionaryzoning@ontario.ca)

**Re: Inclusionary Zoning – Submission to Ontario Ministry of Municipal Affairs  
and Ministry of Housing Regarding Proposed Regulation**

Dear Ministers Milczyn and Mauro,

This is to advise you that the Council of the City of Ottawa at its meeting of January 31, 2018, approved the following motion:

WHEREAS the City of Ottawa is committed to continuing to work with both the private and not-for-profit sectors in the development of affordable housing to advance the objectives of the City's 10 Year Housing and Homelessness Plan and the Official Plan; and

WHEREAS the City of Ottawa currently provides a number of programs targeted towards the development of new affordable housing through municipal funding and financial incentives;

WHEREAS the *Promoting Affordable Housing Act, 2016* was introduced in the Ontario Legislative Assembly on September 14, 2016 and received Royal Assent on December 8, 2016; and

WHEREAS this legislation enables the Minister of Municipal Affairs to introduce regulations under the *Planning Act* related to inclusionary zoning; and

WHEREAS the Ontario Ministry of Municipal Affairs and Ministry of Housing published proposed regulations on December 18, 2017 and is seeking public comments by February 1, 2018; and

WHEREAS inclusionary zoning is intended to be a tool municipalities can use to require the development of affordable housing in targeted areas, such as within Transit-Oriented Development locations; and

WHEREAS, as described in the memorandum to Members of Council from the General Manager of Planning, Infrastructure and Economic Development dated January 22, 2018, staff have reviewed the proposed regulation and identified a number of areas to be addressed in order to provide Council with the flexibility to best use the inclusionary zoning provisions to make material improvements in Ottawa's affordable housing stock, including, but not limited to:

- The proposed regulation applies only to new condominiums and houses being built for sale, and does not address the rental sector, which is a crucial component of Ottawa's affordable housing needs; and
- The requirement for municipalities to offset 40% of the cost of making units affordable through specified incentives is unaffordable for municipalities and will compete with other necessary municipal objectives including availability of monies set aside for affordable housing through development charges; and
- The proposed regulation creates potentially complex, burdensome and costly implementation and administration requirements.

THEREFORE BE IT RESOLVED that Council approve the comments to the Ontario Ministry of Municipal Affairs and Ministry of Housing on its proposed regulations on inclusionary zoning as described below, and as further detailed in the staff, technical submission set out in the Appendix A to this motion:

- a) That the regulation include a companion inclusionary zoning regulation addressing rental housing;
- b) That the Province of Ontario recognize current municipal investments and incentives for affordable housing and reconsider the requirement for municipalities to offset 40% of the costs through specified incentives as this would impede current programs municipalities are offering;

- c) That the Province of Ontario provide funding to municipalities to offset the costs of implementing the regulation; and
- d) That municipal decision-making be permitted in key provisions such as unit set-aside rates, off-site replacement restrictions and equity sharing models; and

BE IT FURTHER RESOLVED that Council direct the City Clerk and Solicitor to forward a letter to the Ontario Ministry of Municipal Affairs and Ministry of Housing with a copy of this motion and the staff technical submission attached as the Appendix A for their information and consideration; and

BE IT FURTHER RESOLVED that Council direct the General Manager, Planning, Infrastructure and Economic Development, or his designate, to follow-up with the Ministry on any additional procedural and technical concerns, to continue to work with the Ministry to communicate possible impacts, and to incorporate consideration of the new legislation on inclusionary zoning in any relevant upcoming studies and reviews, including the R4 Review and preparations for the next Official Plan and report out to the Planning Committee and Council as appropriate.

Should you have any questions in this regard, please do not hesitate to contact the undersigned.

Regards,



M. Rick O'Connor, CMO  
City Clerk and Solicitor  
City of Ottawa

Attachment: Appendix A – Staff Comments to the Province on Inclusionary Zoning

CC: Timothy Marc, Senior Legal Counsel – Planning, Development and Real Estate  
Andrea Gay Farley, Strategic Support Coordinator,  
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## **Appendix A – Staff Comments to the Province on Inclusionary Zoning**

### **Overall Comments**

As proposed, inclusionary zoning appears to represent a significant, unfunded transfer of responsibility for the provision of affordable housing from the Province to municipalities. We are concerned that there are substantial administrative and budgetary burdens associated with the provision of less-expensive ownership housing, but no measures to address less expensive rental housing. This is coupled with financial disincentives towards maintaining the current approvals process, and a push towards switching to CPP comprehensively.

In implementing inclusionary zoning, the City would appear to be responsible for absorbing the following costs, with no transfer of funding or support from the province:

- Initial program development;
- Ongoing data collection, research and market analysis;
- Direct payments of 40% of the difference between market and affordable price on a per-development basis;
- Administration costs for regular tracking and transfers of units;
- Ongoing operation for maintaining the supply and administration of units;
- Long-term financial obligations to acquire more units;
- Legal costs to assign agreements and conduct follow-up monitoring; and
- Long-term financial equity transfer obligations.

### **Section 1 Prescribed Official Plan Policies**

- 1a) The language could be more clear, such as inclusionary zoning could only apply to developments with 20 or more residential units.

### **Section 2 Municipal Assessment Report**

- The Municipal Assessment Report five-year update would be onerous to undertake if it occurred through a review in which population projections are not updated. It would be clearer if the Municipal Assessment Report would be required only when new Official Plan growth projections are developed.
- The Municipal Assessment Report should also require reporting on the number of households in core housing need.

### **Section 3 Provisions Required in Inclusionary Zoning By-laws**

- **Unit set aside** – clarify whether gross floor area is up to the inside or outside of the walls. The regulation should not include maximums or caps for the unit set aside. Instead, it could specify a minimum unit set aside.
- **Measures and incentives** – The proposed requirement for municipalities to offset 40% of the costs of the inclusionary zoning units would be a significant disincentive to the uptake of inclusionary zoning in Ottawa. Providing for exemptions or waivers or fees and funds would be highly problematic, as the City relies on them for critical programming and infrastructure needs (acquisition of parkland, public realm improvements, transit etc.). Development application fees

provide cost recovery for municipal development review. Further we strongly oppose the proposed restriction that would prohibit municipalities from using height and density to incentivize affordable units. Height and density is the one tool that could easily and affordably be offered by municipalities and that would be a valuable offset to developers. It is also the most common form of incentive used in other inclusionary zoning programs.

It is unclear why an average price is used for the financial contribution paid to a specific development. It may be more efficient and equitable to use the price related to the affordable units in that specific building to calculate the financial contribution provided for that developer via the subject agreement. This method would also capture the extras such as condo fees that vary considerably between developments, and also extras such as storage and upgrades that are specific to that development. The proposed regulations should be amended to allow municipal flexibility to use an average market price or the listed price for the units in a given development.

In areas of high intensification and housing demand, the direct cost to the City will be much higher, as the spread between market price and affordability will be more significant. This may have the unintended consequence of creating “exclusionary neighbourhoods” that will never see inclusionary zoning because of their high average prices.

There does not appear to be any rationale for making municipalities pay for affordable units under one permitting system (the current zoning/SPC regime) and not under another (CPPS). As an alternative to the financial contribution requirement, developing and implementing a CPP system would be an enormous resource commitment, comparable to developing an entirely new zoning by-law, site plan by-law and official plan policy, and the accompanying administration and technical resources to implement.

#### **Section 4 Provisions Required in Inclusionary Zoning Agreements – Share of Proceeds Related to Equity**

- The provisions related to the resale of an affordable unit at an affordable price are consistent with the City’s practice to ensure long-term affordability when building units.
- As the housing markets vary across the Province it may be advantageous to allow municipalities to determine the equity share after the affordability period has expired. Homeowner equity may be a more important component to some municipalities’ Housing Plan than others. Similarly, the increase in property tax differs between jurisdictions and some municipalities may require flexibility in equity shares as a way to finance this program.
- The regulation should specify the need for all first sales to be “at-arms transactions” to reduce the possibility of selling to a friend/family member and then reselling and sharing the profit.
- The regulations should provide municipalities the flexibility to recognize that, in some instances, homeowner equity may be an incentive to purchase an affordable unit, recognizing that there are a variety of reasons why a household might need to move/sell their home. Potential purchasers may be disincented to purchase an Inclusionary Zoning unit where the option exists to purchase low-density units in the suburbs or a resale home where they stand to gain equity in their investment.

## **Section 5 Reporting by council of a municipality**

- Clarify whether reporting is to Council or to the Province.

## **Section 6 Restrictions on Off-site**

- 6a) requiring the off-site units to be located “in proximity” to the original site is too vague. It is unclear how this would be implemented
- 6c) the 36-month time period is too long. Delaying affordable housing for 3 years is not acceptable; the affordable housing should be built in the same time frame as the market housing. The section seems to suggest that the off-site units could be built by others and as part of a different planning agreement. Who would guarantee the construction, time frame or financing in this case? What enforcement and monitoring mechanisms would ensure the units were built? Would the City still be required to offset 40% of the costs to the original developer? We see this policy as an out clause for developers.

## **Section 7 Restrictions on use of section 37**

- As noted in Section 3c, we strongly oppose the proposed prohibition that would not allow municipalities to use height and density as a measure/incentive to offset developer costs.

## **Section 8 Developments or Redevelopments**

- Rental housing is a major affordable housing generator. The exemption for purpose-built rental developments is strongly opposed as it would result in significant lost opportunities for increasing the supply of affordable housing and providing a greater range and mix of housing in the City. The rental sector is a crucial component of Ottawa’s affordable housing needs.
- As proposed, this program seems to be about subsidizing property ownership, not housing at all. Those who need housing assistance either can't afford market rents or have challenges pulling together a down payment and getting approved for a mortgage. The focus on affordable ownership and exemption for affordable rental is a flaw and an inefficiency.
- As zoning cannot specify tenure, this consideration would need to occur at time of development application, which may create incentives for development to change tenures after the fact to avoid program requirements.
- Clarify whether conversion of rental apartments to condominiums would be exempt.