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February 2, 2018

The Honourable Bill Mauro  
Minister of Municipal Affairs  
College Park, 17th Floor  
777 Bay Street  
Toronto, Ontario M5G 2E5

The Honourable Peter Milczyn  
Minister of Housing/Minister Responsible for the Poverty Reduction Strategy  
College Park, 17th Floor  
777 Bay Street  
Toronto, Ontario M5G 2E5

**RE:** Comment on Proposed Inclusionary Zoning Regulations (EBR Registry Number: 013-1977)

Dear Ministers Mauro and Milczyn:

On behalf of the Association of Municipalities of Ontario (AMO), I am offering comments on the proposed inclusionary zoning regulations under the *Planning Act*. While AMO supported your government adding inclusionary zoning to the municipal toolbox, we are extremely disappointed with the framework before us. If enacted without significant change, it will result in a lost opportunity for Ontarians. In short, as the regulations are proposed, inclusionary zoning will simply not meet the public policy objectives of creating affordable housing in a meaningful way. For example, the exclusion of purpose built rental housing needs serious reconsideration as does the mandatory financial contribution by municipal governments. Inclusionary zoning should be more than a home ownership program subsidized off of the property tax base.

The provincial and municipal governments have a shared interest in getting this right. There is interest among a range of municipal governments varying in size and from different geographic regions of Ontario. However, the applicability under the proposed regulations seem geared toward growing, large urban centres. It is a mistake to limit the applicability in this way and not seize all available opportunities so that the benefits of affordable housing can be dispersed throughout the province.

While there is interest in exploring the potential of inclusionary zoning, the proposed regulations put up significant barriers that will inhibit voluntary uptake. Primarily, the

requirement for a municipal contribution of 40% is a major challenge for fiscally restrained municipal governments and likely a deal breaker for most, if not all. Administering inclusionary zoning will be cumbersome and entail a cost for municipal governments already; adding more cost pressures on the municipal tax base is unacceptable and not appropriate. Nor will it advance the widespread use of inclusionary zoning.

As you know, we do our best with nine cents of the household tax dollar. Municipal governments are already doing their part making contributions to affordable housing where feasible and affordable. It is surprising that in the proposed regulations, there is no provincial 'skin in the game' through a requirement for provincial contributions. Social housing is a municipal responsibility in Ontario, unlike other provinces and jurisdictions, but there is still a provincial interest and responsibility in expanding a broader range of affordable housing supply to low and moderate income households. Municipal governments may voluntarily opt to provide contributions, but this should serve to deepen the level of affordability and not to subsidize the core program.

Of most significant concern is that the Minister has the legislative authority to designate inclusionary zoning in municipalities prescribed by regulation. While it is appreciated that this is not done in the current regulatory proposal, we are very concerned about decisions that future ministers may make. If prescribed, this would effectively result in an unfunded mandate to the affected municipal governments; one that may not be affordable in the face of other pressing infrastructure priorities. It is not appropriate that this authority is exercised especially with a mandatory municipal contribution in play. Fundamentally, AMO is not supportive of this legislative authority in the first place.

The only exception to the municipal contribution scenario appears to be if municipal governments adopt a Community Planning Permit System (CPPS). We find it curious as to the rationale for this and the thinking about widespread applicability. Our understanding is that CPPS is only used by a handful of municipal governments and while others may be exploring its use, it would take many years and some cost to implement. There are trade-offs with using this type of system that local councils need to decide on whether it is appropriate for their communities. In the end, it is not guaranteed that a CPPS will be in place any time soon by municipal governments that are also currently interested in inclusionary zoning. Waiting for this change will only delay the development of new affordable housing.

As well, we have serious doubts about the technical feasibility to implement inclusionary zoning as currently framed and worded. For example, it is not clear how it would work in an upper-lower tier situation or in northern situations involving District Social Service Administration Boards and municipal governments. An indication of the role of each tier in an inclusionary zoning program is needed. More examples and specific comments are outlined in the appendix included with this letter.

Underlying our comments, AMO is emphasizing that inclusionary zoning will only achieve the outcomes it is intended for if its regulations allow for a high level of flexibility in local implementation. Housing needs and markets vary significantly across the province, and a 'one-size-fits-all' approach will not work. Unless there is a clear reason for standardization, the default should be local flexibility and municipal discretion to identify zoning details. This is not reflected in the proposed regulations.

For these reasons, further consultation with AMO and the municipal sector is needed before finalization of the regulations to ensure that inclusionary zoning is a success. In addition to the policy content changes we are seeking, there is a benefit to realize through further joint provincial-municipal review of the wording of the regulations so that we may avoid any unintended consequences in implementation. AMO staff are available, as always, to convene and contribute municipal expertise and knowledge in confidential forums under the auspices of the AMO-Ontario Memorandum of Understanding (MOU). We have members to draw from our Planning and Affordable Housing task forces. Both groups have considered the matter of inclusionary zoning in some depth and are prepared to offer further advice. Lastly, this matter should also come to the MOU political table before it goes to cabinet given the significant implications.

I have requested a meeting with you immediately so that we can work together to ensure that strong and effective solutions for facilitating the development of affordable housing exist in all communities across Ontario. There is clearly need for further work on both a policy and technical level before inclusionary zoning is implemented in Ontario.

Sincerely,



Lynn Dollin  
AMO President

cc: The Honourable Kathleen Wynne, Premier of Ontario  
Laurie LeBlanc, Deputy Minister, Ministries of Municipal Affairs and of Housing  
Laurie Miller, Director, Ministry of Municipal Affairs  
Scott Kirkham, Senior Policy Advisor, Ministry of Housing  
His Worship John Tory, Mayor of Toronto

## Appendix A

### Specific Comments on the Proposed Inclusionary Zoning Regulations

| AMO's Proposed Change   | Rationale   |
|---|---|
| <p><b>General</b></p> <ul style="list-style-type: none"> <li>▪ Change the name "Inclusionary Zoning By-law" to "Inclusionary Housing Zone" to avoid confusion with the traditional Zoning By-Law.</li> <li>▪ Greater clarity as to how the zoning by-law and by-law to implement inclusionary zoning are to work together needs to be incorporated into the regulations.</li> </ul>   | <p>The name Inclusionary Zoning (IZ) By-law is confusing. However, the regulation could alter the name somewhat. This would clarify it is not the zoning by-law but rather another tool like a site plan agreement or plan of subdivision.</p> <p>For example, it should be clear that the IZ By-law is an overlay unless other circumstances apply.</p>  |
| <p><b>Prescribed Official Plan Policies</b></p> <ul style="list-style-type: none"> <li>▪ There should be full municipal discretion to determine the threshold of whether inclusionary zoning should apply to developments or redevelopments.</li> <li>▪ That Official Plan Policies regarding inclusionary housing be limited to the methodology for identifying the price of affordable housing and not include dollar amounts.</li> <li>▪ An appendix to the Assessment Plan is updated annually and not the Official Plan or Zoning By-law.</li> </ul> | <p>The proposed regulation is 20 units. This limits the applicability of IZ in many smaller municipalities and does not leverage small developments in all communities.</p> <p>The EBR posting reads as if actual financial calculations are in the Official Plan (OP). This information is more appropriate in the supporting Assessment Report. The Provincial Policy Statement already requires affordable housing policy in each Official Plan. It appears that the regulation would require this to be annually updated in the Official Plan. Placing it the Assessment Report will be less administratively cumbersome and expensive for municipal governments.</p> |

| <b>AMO's Proposed Change</b>  | <b>Rationale</b>  |
|---|---|
| <p><b>Municipal Assessment Report</b></p> <ul style="list-style-type: none"> <li>▪ Add reference to dollar amounts from the Official Plan.</li> </ul>   | <p>This information is more appropriate in the assessment report.</p>   |
| <p><b>Provisions Required in IZ By-Laws</b></p> <p><b>Unit Set Aside</b></p> <ul style="list-style-type: none"> <li>▪ The number of affordable units or the total gross floor area should be 10%, and 15% in areas around high-density transit stations, though these may be adjusted at the discretion of the local government.</li> </ul> | <p>A higher figure would provide more opportunity for affordability housing in a reasonable manner. This would be in line with other jurisdictions in the U.S. which are often as high as 20-30%.</p>   |
| <p><b>Provisions Required in IZ By-Laws</b></p> <p><b>Affordability Period</b></p> <ul style="list-style-type: none"> <li>▪ The affordability period should be set for a period of no less than 20 years, and may be set longer at the discretion of the municipal government.</li> </ul>   | <p>Providing local flexibility will provide municipal governments the ability to best meet local needs, even to set the affordability period in perpetuity. Unless long-term, housing affordability issue will shift onto future generations.</p>   |
| <p><b>Provisions Required in IZ By-Laws</b></p> <p><b>Measures and Incentives</b></p> <ul style="list-style-type: none"> <li>▪ There should be no requirement for a financial contribution by a municipal government other than voluntary contributions to deepen the level of affordability.</li> </ul>                                    | <p>The proposed regulations would require a minimum 40% contribution through measures and incentives. This will create a barrier to participation by municipal governments with limited capacity to make these contributions. Further, any contributions to offset developer costs should be borne by the provincial tax base, not the municipal property tax base.</p> |

| <b>AMO's Proposed Change</b>  | <b>Rationale</b>   |
|---|--|
| <ul style="list-style-type: none"> <li>▪ If the municipal contribution is still required despite AMO's ask that it be eliminated, where the Province chooses to prescribe a municipality for the purposes of Inclusionary Zoning, the Province should be fully responsible for the financial contribution and management of resales that would otherwise fall to the municipal government.</li> </ul> | <p>Further, as the municipal contribution would be limited through the prescribed measures and incentives, this will also affect the level of affordability of units as the total contribution to the developer is tied to the maximum municipal contribution. It is not clear that the price reduction in all developments will even meet the PPS definition of affordability.</p> <p>The assessment report should reveal for each municipality market conditions and income limits that suggest an appropriate percentage for financial support.</p> |
| <p><b>Provisions Required in IZ By-Laws</b></p> <p><b>Price</b></p>   | <p>The assessment report needs to identify the target incomes for which affordable ownership housing is intended. In turn, housing price ranges for affordable home ownership can be identified.</p>   |
| <p><b>Provisions Required in IZ Agreements</b></p> <p><b>Share of Proceeds Related to Equity</b></p> <ul style="list-style-type: none"> <li>▪ It should be stipulated that any debt is a priority lien.</li> </ul>  | <p>There is no provision for default situations. The municipal government should be able to recuperate losses as taxes.</p>  |
| <p><b>Reporting by Council of a Municipality</b></p>  | <p>No changes recommended.</p>   |

| <b>AMO's Proposed Change</b>  | <b>Rationale</b>   |
|---|--|
| <p><b>Restrictions on Off-site</b></p> <ul style="list-style-type: none"> <li>▪ Developers should be required to produce more affordable housing when building off-site.</li> </ul> | <p>This is consistent with practice in other North American jurisdictions as the developer receives a benefit with the ability to build off-site.</p> <p>Mixed income neighbourhoods have long been supported as more beneficial to society.</p>   |
| <p><b>Restrictions of Use of Section 37</b></p> <ul style="list-style-type: none"> <li>▪ Restrictions on the use of section 37 should be removed.</li> </ul>                        | <p>The proposed regulation would restrict the use of section 37 on units or gross floor area designated as affordable to determine community benefits. Restrictions are not warranted and should not be a trade-off to achieving community benefits such as parks, child care, and other infrastructure improvements where extra height and density is requested through the approval process.</p> |
| <p><b>Developments or Redevelopments</b></p> <ul style="list-style-type: none"> <li>▪ IZ should apply to rental units at the discretion of the municipal government.</li> </ul>     | <p>The proposed regulations state that IZ only applies to home ownership, not rental. This limits the affordable housing opportunities and affordable rental units are needed in Ontario's communities.</p>  |
| <p><b>Community Planning Permit System</b></p>  | <p>As only a handful of municipal governments use this process, this section will not have much impact.</p> <p>The Province is urged to continue training on this tool.</p>  |

| AMO's Proposed Change   | Rationale   |
|---|---|
| <p><b>Other</b></p> <ul style="list-style-type: none"> <li>▪ Regulation should set out eligibility criteria for families to secure affordable units.</li> </ul> | <p>There is no provision for a means test for eligible buyers. Without this, low and moderate-income households may not always secure the affordable units.</p> |

### Examples of Technical Details to Work Out:

1. Clarity on the respective roles and interplay between upper and lower tier governments in southern Ontario and between District Social Service Administration Boards (DSSABs), and municipal governments in the north.
2. Clarity on how this links to the Bill 7 amendments concerning shelter from appeal except by the Minister.
3. Clarity on how these new requirements and the existing OP policies, zoning plus the requirements under the Provincial Planning Statement (PPS) interconnect.
4. Clarity on if an affordable unit is to be sold, there should be some municipal consent/permission form required to be produced to the Land Titles Office prior to the sale as proof the owner has fulfilled obligations of the agreement.

**Note -** This is not an inclusive list. More detail can be provided through working group discussions (as recommended by AMO).