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**Planner: Travis Macbeth**

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING &amp; ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>
<b>SUBJECT:</b>	<b>INFORMATION REPORT ON INCLUSIONARY ZONING IN BILL 204, THE <i>PROMOTING AFFORDABLE HOUSING ACT, 2016</i> MEETING ON AUGUST 22, 2016</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Planning & City Planner, the following actions be taken:

- a) This report **BE RECEIVED** for information;
- b) This report **BE FORWARDED** to the Ministry of Municipal Affairs in response to the Inclusionary Zoning Consultation Discussion Guide regarding changes to the *Planning Act* as proposed in Schedule 4 of Bill 204, the *Promoting Affordable Housing Act, 2016*; and
- c) The Ministry of Municipal Affairs **BE ADVISED** that the City of London would appreciate the opportunity to provide comments on any further changes to the *Planning Act* or future regulations associated with the *Promoting Affordable Housing Act, 2016*.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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None.

<b>BACKGROUND</b>
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In support of the Province of Ontario’s updated Long-Term Affordable Housing Strategy, the Province is adding steps to make affordable housing a part of the land use planning process through amendments to the *Planning Act*. Bill 204, the *Promoting Affordable Housing Act, 2016*, was introduced at the Provincial Legislature and received first reading on May 18, 2016. This Bill includes a number of potential changes to provincial acts, including the establishment of a framework for municipalities to pass inclusionary zoning by-laws through changes to the *Planning Act*.

Inclusionary zoning refers to policies, by-laws and programs that require development proposals with residential units to include affordable housing units, and provide for those units to be maintained as affordable over a period of time. Inclusionary zoning should not be confused with other means of providing affordable housing. Inclusionary zoning is not government funding to provide affordable housing, nor is it a government program to provide affordable housing; rather, inclusionary zoning is a regulatory tool to require the private market to provide affordable housing units.

Prior to proposed Bill 204, municipalities in Ontario have not had legislative authority to use inclusionary zoning. Currently the closest provisions to inclusionary zoning are the “facilities, services or matters” under section 37 of the *Planning Act*, commonly referred to as bonusing. Limitations of section 37 include:

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- 1) Section 37 only applies to developments seeking additional density/height through planning applications and thus is not applicable to most developments;
- 2) The value of community benefit is assessed only against the additional height or density not against the entire development;
- 3) The community benefits that can be provided typically include a long list of options, not just affordable housing, so affordable housing may or may not be provided; and
- 4) The type and value of community benefits is determined case-by-case through individual negotiations between a municipality and a development proponent, not through a clear, open, fixed set of rules applied to all.

The Province’s intended outcomes of the new inclusionary zoning legislation are to: create affordable housing that serves the needs of low- to moderate-income families and individuals; increase the supply of affordable housing units; and to help municipalities meet affordable housing objectives and targets, such as those set out in Official Plans and/or Housing and Homelessness Plans.

**Key Elements of Inclusionary Zoning Bill 204 legislation**

If Bill 204 is passed, the key changes to the *Planning Act* that will facilitate inclusionary zoning are as follows:

- 1) Municipalities’ Official Plans “shall contain policies that authorize inclusionary zoning” (s.16.(4)) by authorizing the inclusion of affordable housing units within buildings or projects that contain residential units, and provide for the affordable housing units to be maintained over time. Inclusionary zoning policies must set out goals and objectives and must describe the measures and procedures proposed to attain those goals and objectives. Inclusionary zoning policies must also include the provisions, if any, that are prescribed by regulation;
- 2) Municipalities are required to pass zoning by-laws to give effect to the inclusionary zoning policies of the Official Plan. Bill 204 sets out the matters to be dealt with in the Zoning By-law; however, no specific policies or regulations to implement the list of matters are included in the Bill. Instead, rights are reserved through Ministerial authority to make future regulations regarding the matters listed below and for municipalities’ by-laws to be reflective of any such regulations once they are made by the Minister. The matters that are to be addressed by inclusionary zoning by-laws are:
  - o the number of affordable units to be provided;
  - o the period of time for which the affordable housing units must be maintained as affordable housing units (i.e. before any transition to market-rate units);
  - o the requirements and standards that affordable housing units must meet;
  - o the measures and incentives that may be provided to support inclusionary zoning; and
  - o the price at which affordable housing units may be sold and the rent at which they may be leased.
- 3) An inclusionary zoning by-law must also require the owners of lands, buildings or structures that are developed or redeveloped under the by-law to enter into agreements with the municipality regarding the above list of inclusionary zoning matters. Such an agreement may be registered against the land, so that any subsequent owners would be subject to the same regulations.
- 4) Municipalities that pass inclusionary zoning by-laws will be required to establish procedures for monitoring and ensuring the required number of affordable units are maintained as affordable for the required period of time. These procedures must contain any provision prescribed by future Ministerial regulations.

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- 5) Municipalities that pass inclusionary zoning by-laws are required to provide reports and information concerning affordable housing units in the municipality.
- 6) If municipalities pass an inclusionary zoning by-law for specified lands, buildings or structures, then they are prohibited from passing a Section 37 by-law on the same lands, buildings, or structures, except as may be permitted through future regulations. (A Section 37 by-law is the bonusing of additional height or density in exchange for services, facilities and matters – including affordable housing – that are provided by the developer to the municipality as a community benefit in return for the increased density.) Also, municipalities are not permitted to authorize the payment of money in lieu of the provision of affordable units, nor can affordable units be erected on lands outside of the Inclusionary Zoning By-law area in lieu of land or buildings that are specified within the by-law (i.e. no “swapping” the location of affordable units).
- 7) The Council decisions, by-laws and conditions related to policies authorizing second units (secondary suites) or inclusionary zoning cannot be appealed to the Ontario Municipal Board by anyone except the Minister.
- 8) By-laws requiring owners or occupants of buildings or structures to provide and maintain loading or parking must contain provisions related to future regulations made by the Minister regarding minimum parking requirements, including reduced parking requirements or no minimum parking requirement.
- 9) For developments within a site plan control area, drawings submitted for approval must display exterior access to each building that will contain affordable housing units, if both the Official Plan and by-law designating the site plan control area contain exterior access requirements or standards related to inclusionary zoning.
- 10) Committees of Adjustment are prohibited from authorizing Minor Variances from inclusionary zoning regulations.
- 11) An additional exception to subdivision control and part-lot control under sections 50(3) and (5) is provided. The exception is the situation where the land is being leased for a period of not less than 21 years and not more than 99 years for the purpose of constructing or erecting a building or project that will contain affordable housing units.
- 12) If a plan of subdivision proposes any affordable housing units and if a shared facilities agreement will be entered into under section 21.1 of the Condominium Act, 1998, or otherwise, the approval authority may impose, as a condition of the approval of the description, a requirement that the shared facilities agreement be satisfactory to the approval authority.
- 13) Despite any tariff or fees established by a municipality or planning board for processing applications, the fee charged for processing an application related to development or redevelopment that will include affordable housing units must not exceed the maximum fee prescribed by regulation.

**EXISTING CITY OF LONDON DIRECTIONS IN SUPPORT OF AFFORDABLE HOUSING**

Despite the absence of the legislative framework of Bill 204, Council direction has provided a public policy and planning framework to address the issues of housing and affordability.

The Council-approved London Community Housing Strategy (LCHS), 2010, which comprises part of the City’s legislated Homeless Prevention and Housing Plan, includes reference to Inclusionary Zoning. Specifically, from page 17, “the LCHS does not rely on inclusionary zoning as a

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mechanism for achieving affordability targets but rather recognizes that, as of June 2010, the City has a position of support in principle regarding inclusionary zoning.” Moreover, the Actions to implement the LCHS include Action 3.13, which includes:

- Continuing to support inclusionary zoning in principle, while requesting clear implementation guidelines and policy direction related to Bill 198 [a 2009 predecessor bill to enable municipalities to require inclusionary zoning] ;
- Advocating that Municipalities be given the tools necessary to respond to and implement Provincial planning policies; and
- Advocating for improvements to the Provincial Policy Statement related to mix of housing types and affordability, respecting deeper levels of assistance with affordability.

These directions and actions of the London Community Housing Strategy also informed the *London Plan* and its City Building policies related to Inclusionary Zoning and Affordable Housing, including:

- Policy 516: The City may assist in the administration of housing programs of the federal and provincial governments; and
- Policy 517: A target of 25% of new housing, in aggregate, is to be affordable to low- and moderate-income households as defined by the Provincial Policy Statement and this Plan. This target may be met through residential greenfield development and the many forms of intensification identified in the City Structure policies of this Plan.

(Note: *London Plan* policy numbers are from the Council-adopted version dated June 2016).

The *London Plan* also includes a Homelessness Prevention and Housing policy section that carries forward, and broadens, the policies of the Official Plan, 1989. The *London Plan* policies are focused on four major community goals. These goals include a community housing strategy; creating housing opportunities, including through a recently created Housing Development Corporation as a means to increase supply and opportunities to create affordable housing; a focus on affordability of housing; and homelessness prevention.

The City of London is also considering an official plan amendment to introduce secondary dwelling unit policies. Secondary dwelling units are also known as accessory suites, in-law suites, coach houses, or secondary suites. The secondary suite is a self-contained residential unit with kitchen and bathroom facilities, located within a dwelling or an accessory structure (e.g. gate house or laneway house). The unit must be clearly ancillary to the primary residential dwelling unit. Policies to introduce secondary suites will be recommended to Council under separate cover, but are also of note as they provide an additional method of addressing housing availability, affordability and rental costs.

**PROVINCE SEEKING MUNICIPAL INPUT ON BILL 204**

As is noted above, Bill 204, the *Promoting Affordable Housing Act, 2016*, identifies a number of changes to the legislative framework in support of affordable housing and inclusionary zoning tools. Bill 204 does not, however, include targets or measures to quantify or operationalize the framework proposed. Such implementation measures will be addressed through any subsequent regulations that may be authorized through the Minister.

In order to address potential regulatory measures for implementing inclusionary zoning, the Ministry of Municipal Affairs has prepared an Inclusionary Zoning Consultation Discussion Guide and has identified a number of questions and themes upon which municipalities may comment. The Province is consulting with municipalities and the public through the Ontario Environmental

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Bill of Rights (the Ontario Environmental Registry) and is seeking municipal comments on the discussion guide until August 16, 2016. Staff have confirmed that the Ministry will accept comments after this date, such that comments regarding this report and the concurrent Secondary Suites report can be forwarded to the Province following the City’s August Council date (held August 30<sup>th</sup>).

The questions posed to municipalities are:

Subject	Question(s)
Program Targets	Should there be provincial direction to further specify the target groups for inclusionary zoning, or should this be left to each municipality to determine? If you think direction is needed, who should be addressed based on the PPS definition of “affordable”?
Price and Rent	Should there be provincial direction on how price and rent would be determined in an inclusionary zoning by-law when inclusionary zoning units are sold or leased? If so, what approach would you recommend?
Unit Set-Aside	Should minimum and/or maximum unit set asides be specified province-wide or should this be left to each municipality to determine? If you think that a specified number or percentage of units should be applied province-wide, what would you recommend?
Affordability Period	Should there be provincial direction for a minimum or maximum affordability period that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine? If you think a province-wide affordability period should be specified, what would you recommend (e.g., 20 years, 30 years, no time limitation)?
Threshold Size	Should there be provincial direction for a minimum and/or maximum threshold size that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine? If you think the threshold size should be specified province-wide, what would you recommend?
Measures and Incentives	Should measures and incentives be required on a province-wide basis through regulation, or should this be left up to municipalities? If you think the province should provide direction, what would you recommend?
Requirements and Standards	Should there be provincial direction to specify minimum requirements and standards for inclusionary zoning units or should these be left up to each municipality to determine? If you think requirements or standards should be specified province-wide, what would you recommend?
Agreements	Should there be provincial direction on inclusionary zoning agreements? If so, what would you recommend?
Administration, Monitoring and Reporting	Should there be provincial direction on requirements for ongoing administration of units and ensuring affordability over the control period? If so, what types of requirements would you recommend?
	Should there be provincial direction on mandatory requirements for municipal monitoring procedures? If so, what mandatory requirements would you recommend?
	Should there be provincial direction on municipal reporting of inclusionary zoning units (e.g., reports must be publicly available; reports must be provided annually to municipal council)? If so, what would you recommend?
Use with Section 37 (Height and Density)	In what circumstances would it be appropriate to require inclusionary zoning units as well as community benefits in exchange for additional

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Subject	Question(s)
Bonusing	height and density?
	Should conditions or restrictions apply to these circumstances, and if so, what would you recommend?
Transitional Matters	Do you think that planning applications commenced prior to enactment of the proposed legislative process should be grandfathered?
	Do you think that planning applications commenced prior to municipal adoption of inclusionary zoning official plan policies and/or zoning by-laws should be exempted?

These questions ask to what extent should there be provincial direction through regulation or to what degree there should be flexibility for municipal regulation to implement locally developed inclusionary zoning policies and by-laws. The language used within the Consultation Discussion Guide does, however, indicate there is likely to be some municipal discretion. Specifically, the Discussion Guide identifies matters that “may be considered by the Minister for future possible regulatory proposals” [emphasis added].

The City is supportive of guidelines or regulations that would reflect the local conditions in medium- and large-sized Ontario cities comparable to London. Any future regulations should allow the City the flexibility to address local economic, environmental, social, land use planning, and transportation circumstances, as well as alignment with community and Council objectives and strategies.

The following table provides Staff’s recommended comments to the Ministry as the City’s response to the Inclusionary Zoning Consultation Discussion Guide.

Subject	Ministry Question(s)	Proposed Response
Program Targets	Should there be provincial direction to further specify the target groups for inclusionary zoning, or should this be left to each municipality to determine? If you think direction is needed, who should be addressed based on the Provincial Policy Statement (PPS) 2014 definition of “affordable”?	<p>The issue requiring clarification is how inclusionary zoning can address specific targeted groups. Zoning addresses land use, not users (i.e. different forms of residential development, not who occupies the residential development). Section 35 of the Planning Act precludes zoning based on relationships or tenure.</p> <p>The Province could provide direction on the definition of “affordable” as it pertains to inclusionary zoning, noting that the current definition of “affordable” in the PPS addresses both income and housing price, and is set at a level that may not address the needs of target groups.</p> <p>Program target groups should be determined locally, noting that these target groups would need to be described on the basis of affordability (ie, affordable to the 40<sup>th</sup> percentile or 60<sup>th</sup> percentile, or some other measure of affordability as defined at the local level). It is important to note that inclusionary zoning is a tool to provide affordable housing through private market construction. Other tools may be required to</p>

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Subject	Ministry Question(s)	Proposed Response
		address 'targeted' groups.
Price and Rent	Should there be provincial direction on how price and rent would be determined in an inclusionary zoning by-law when inclusionary zoning units are sold or leased? If so, what approach would you recommend?	<p>Price and rent should be established to reflect local conditions. These prices and rents should also be based on program targets, if identified as part of local Housing and Homelessness Plans.</p> <p>The Province may consider providing direction of how to establish prices and rents, however, PPS definitions do not distinguish by unit type, nor do they reflect the affordability for some target groups</p> <p>The cost of housing (price and rent) also needs to be addressed as it translates into the capacity to pay based on the local housing market.</p>
Unit Set-Aside	Should minimum and/or maximum unit set asides be specified province-wide or should this be left to each municipality to determine? If you think that a specified number or percentage of units should be applied province-wide, what would you recommend?	<p>Unit set asides should be determined locally. Local set asides could be based on unit type, as well as levels of affordability.</p> <p>The City would not be supportive of a Provincial mandatory minimum "set aside" (or the percentage of units that are affordable). The consideration for how to establish inclusionary zoning should be a local decision, and similarly, any set-asides should be established based on local/regional considerations and city size. A minimum set aside that is based on Toronto/GTA conditions would not be appropriate outside Toronto or the GTA.</p> <p>Provincial guidelines for establishing appropriate set-asides would be useful.</p>
Affordability Period	Should there be provincial direction for a minimum or maximum affordability period that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine? If you think a province-wide affordability period should be specified, what would you recommend (e.g., 20 years, 30 years, no time limitation)?	<p>The City would be supportive of Provincially-established guidelines to establish local affordability periods, however flexibility would be required to ensure that the affordability period reflects local market conditions.</p> <p>Consideration should be given to incorporating periodic market evaluation during any locally- established affordability period.</p> <p>Minimum timeframes could be established as part of any locally established inclusionary zoning requirements to provide some certainty and stability to the affordable housing market established through</p>

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Subject	Ministry Question(s)	Proposed Response
		inclusionary zoning.
Threshold Size	Should there be provincial direction for a minimum and/or maximum threshold size that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine? If you think the threshold size should be specified province-wide, what would you recommend?	Threshold size, or the size of developments at which inclusionary zoning requirements would be triggered, should not be established by the Province. Unlike a minimum “set aside” percentage, a minimum threshold for size of building or number of units has the potential to become the standard for all future development. For example, if 50 units is established as the minimum threshold where inclusionary zoning would apply, then there is the potential for many buildings or projects to be built just below the threshold unit count (47, 49, etc.) to avoid the construction of the affordable units required through inclusionary zoning. The minimum threshold has the potential to limit the size and intensity of new developments, even if the planned function of a site through the planning permissions of a municipality’s Official Plan and Zoning By-law are for a greater intensity.
Measures and Incentives	Should measures and incentives be required on a province-wide basis through regulation, or should this be left up to municipalities? If you think the province should provide direction, what would you recommend?	<p>Inclusionary zoning is a regulatory approach to the provision of Affordable Housing. Financial incentives are available through other sections of the <i>Planning Act</i> (bonusing and/or community improvement). The discussion of incentives may confuse the notion that inclusionary zoning for affordable housing provision is a regulatory tool and not as a financial incentive tool.</p> <p>Inclusionary zoning should provide for regulatory incentives only. Financial incentives may be dealt with through other mechanisms. Further clarification from the Province is desired prior to the introduction of any such guidelines or regulations related to incentives.</p>
Requirements and Standards	Should there be provincial direction to specify minimum requirements and standards for inclusionary zoning units or should these be left up to each municipality to determine? If you think requirements or standards should be specified province-wide, what would you recommend?	<p>Municipalities should establish standards related to design and character to reflect local conditions. Minimum standards for design should ensure that affordable units are comparable to market units, thus supporting inclusivity in communities.</p> <p>The Province may consider establishing guidelines for standards for affordable units as it relates to size of the unit, energy efficiency, etc.</p>



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Subject	Ministry Question(s)	Proposed Response
Agreements	Should there be provincial direction on inclusionary zoning agreements? If so, what would you recommend?	<p>The Province may consider providing direction through guidelines or examples of agreements outlining approaches to enforcement, reporting requirements, and minimum unit requirements, for example.</p> <p>Agreements should reflect local requirements and standards consistent with local development agreements, for example. A standard agreement template established by the Province may not be reflective of all local requirements.</p>
Administration, Monitoring and Reporting	Should there be provincial direction on requirements for ongoing administration of units and ensuring affordability over the control period? If so, what types of requirements would you recommend?	<p>As this is a new process in Ontario, it is difficult to determine the costs that may be associated with the administration of the units created through inclusionary zoning.</p> <p>The Province may wish to consider providing direction regarding the types of requirements it would require over the control period.</p>
	Should there be provincial direction on mandatory requirements for municipal monitoring procedures? If so, what mandatory requirements would you recommend?	The City would encourage provincial direction to provide clarity, provided a degree of municipal flexibility can accommodate local conditions and community objectives.
	Should there be provincial direction on municipal reporting of inclusionary zoning units (e.g., reports must be publicly available; reports must be provided annually to municipal council)? If so, what would you recommend?	The City encourages reporting of inclusionary zoning units in order to monitor program outcomes. The Province may consider identifying common indicators, and direction on how these indicators are to be measured.
Use with Section 37 (Height and Density Bonusing)	In what circumstances would it be appropriate to require inclusionary zoning units as well as community benefits in exchange for additional height and density?	<p>It is difficult to determine all of the scenarios where both Section 37 and inclusionary zoning would be appropriate. As noted previously, most section 37 benefits are from a long list that may include affordable housing. Inclusionary zoning is a mandatory, regulatory zoning requirement to provide affordable housing, not a negotiated benefit in exchange for an increase in height or density.</p> <p>Once the affordable housing component of an inclusionary zoning by-law has been fulfilled by an applicant, the City would then be supportive of entering into a separate, additional, case-by-case negotiation for section 37, which would result in additional community benefits beyond those required</p>

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Subject	Ministry Question(s)	Proposed Response
	Should conditions or restrictions apply to these circumstances, and if so, what would you recommend?	<p>by inclusionary zoning. Other community benefits may be addressed through section 37, but affordable housing should only be considered as a “bonusable” matter if it is provided in addition to the inclusionary zoning requirement.</p> <p>The City recommends that where affordable housing is required by the inclusionary zoning that applies to a site, then affordable housing should only be a “bonusable” matter once the affordable housing requirement of the inclusionary zoning has been satisfied.</p> <p>The City suggests that Section 37 could still be considered, however, the benefits to be provided for affordable housing (and thus the corresponding increase in height and density) would be considered only where the number of affordable housing units to be provided is more than the required number of units through the Inclusionary Zoning By-law. If a developer seeks to provide additional community benefits (facilities, services, and matters), municipalities should still have the opportunity to negotiate for those benefits in exchange for increased development permissions (height and density).</p>
Transitional Matters	Do you think that planning applications commenced prior to enactment of the proposed legislative process should be grandfathered?	Planning applications that have commenced prior to the legislation being enacted should be “grandfathered”.
	Do you think that planning applications commenced prior to municipal adoption of inclusionary zoning official plan policies and/or zoning by-laws should be exempted?	Once legislation has been enacted, municipalities should have the ability to establish the phase-in/implementation of inclusionary zoning following the enactment of the legislation.

In conclusion, there are three overarching comments from the City regarding the proposed Bill 204 inclusionary zoning legislation:

- The City supports the introduction of provincial inclusionary zoning legislation, noting the incorporation of inclusionary zoning into the 2010 London Community Housing Strategy and the policies of the Council-adopted *London Plan* (the new Official Plan) in June 2016.
- Inclusionary zoning should be based on local requirements and local conditions.
- The City is supportive of provincial guidelines regarding minimum standards of regulation to implement and monitor the matters to be addressed through inclusionary zoning policies, as identified in the responses table to the Inclusionary Zoning Consultation Discussion Guide, above.

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The City appreciates this opportunity to provide comment.

**NEXT STEPS**

Staff will forward this report and any associated comments of Committee and Council to the Ministry of Municipal Affairs through the Environmental Bill of Rights (Environmental Registry) and its ongoing consultation process.

Additional steps to address the implementation of inclusionary zoning will be subject to the requirements established once Bill 204 is passed by the Provincial legislature and the passing of subsequent regulations to implement the any changes made to the *Planning Act*. Staff will continue to monitor this initiative and report back to Council as new information or opportunities for municipal participation and engagement are available.

Upon the adoption of any changes to the *Planning Act*, community consultation and public participation meetings will also be held as part of any Official Plan Amendment and Zoning By-law Amendment processes required to implement inclusionary zoning for affordable housing.

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<b>RECOMMENDED BY:</b>	
<b>JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>	

August 3, 2016  
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CC: Kate Graham, Director, Community & Economic Innovation  
Steve Giustizia, Executive Lead, London Housing Development Corporation  
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