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<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-PROPOSED REGULATIONS PROMOTING AFFORDABLE HOUSING ACT, 2016 (INCLUSIONARY ZONING) MEETING ON JANUARY 22, 2018</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Planning and City Planner, the following actions **BE TAKEN**:

- a) This report **BE RECEIVED** for information; and,
- b) This report **BE FORWARDED** to the Ministry of Municipal Affairs for consideration in response to the Environmental Bill of Rights (EBR) posting of the proposed regulation, noting that the comment period is from December 18, 2017 to February 1, 2018.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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Information Report on Inclusionary Zoning in Bill 204, the *Promoting Affordable Housing Act, 2016*, Planning and Environment Committee, August 22, 2016.

<b>EXECUTIVE SUMMARY</b>
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- On December 8, 2016, the *Promoting Affordable Housing Act, 2016*, (Bill 7, formerly Bill 204) was introduced on September 14, 2016, and received Royal Assent on December 8, 2016. The Bill made various amendments to the *Planning Act*, including provisions that would enable municipalities to adopt Official Plan policies and pass zoning by-laws related to inclusionary zoning.
- Portions of the Bill came into force on the day of Royal Assent, including amendments to the *Planning Act* that included restrictions on appeals to policies to enable secondary dwelling units or inclusionary zoning to the Ontario Municipal Board, however, other portions of the Bill are to come into force on a date to be proclaimed.
- On December 18, 2017, proposed regulations to implement inclusionary zoning were posted for a 45 day public review and comment period. The review period closes on February 1, 2018.
- The proposed regulations address matters such as affordability period, thresholds that would permit inclusionary zoning and the maximum affordable housing set aside, inclusionary zoning agreements, municipal incentives, and restrictions on off-site development.
- The Province previously consulted on this matter in August, 2016, and the City provided written comments to the Province at that time. While many of the matters identified in the City's previous submission have been addressed, the proposed regulations include matters not contemplated in the past submission.
- The proposed regulations include three significant proposals:
  1. Purpose-built rental projects would be exempt from any inclusionary zoning by-law.
  2. Unless part of a Community Permit Planning System, a municipal financial contribution is required for every affordable unit to be created.

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- The affordable units required to be provided as part of a development may be permitted to be located off-site, to be constructed within 36 months of the transfer of the affordable units from the proposed development.

<b>BACKGROUND</b>
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Inclusionary zoning refers to policies, by-laws and programs that would require private 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. In proposing legislation that would permit the use of inclusionary zoning, the Province identified three objectives:

- To serve more people by increasing the supply of affordable housing units
- To create inclusive and integrated communities.
- To meet local needs by allowing local municipalities to tailor inclusionary zoning by-laws to address local conditions as set out in their Official Plans and zoning by-laws.

During the previous consultation, the City provided comments on the matters identified by the Province to be addressed in the legislation. These matters included program targets, price and rent, affordable housing set asides (that is, how much of a development should be set aside as affordable), affordability period, threshold size (that is, how large should a development be before affordable housing is required), measures and incentives, standards, agreements, administration and reporting, and the use of Section 37 (bonusing).

While the Province may prescribe (require) that municipalities must provide for inclusionary zoning, the legislation is permissive, that is, municipalities that are not prescribed to provide for inclusionary zoning may adopt Official Plan policies that authorize inclusionary zoning by requiring the inclusion of affordable housing in buildings or projects that include residential units and requiring that these units be maintained as affordable for a prescribed period of time.

The following chart summarizes Comments related to each of the proposed regulations.

Section	Item	Key Comments
<b>1</b>	<b>Prescribed Official Plan Policies</b>	<p>Municipalities that have Official Plan policies authorizing inclusionary zoning (IZ) would need to include provisions that:</p> <ul style="list-style-type: none"> <li>- Specify that zoning by-laws to implement IZ could only apply to developments or redevelopments that have 20 units or more.</li> <li>- Identify areas where IZ would apply</li> <li>- Identify the range of incomes for which IZ could provide affordable units</li> <li>- Identify the approach for establishing the average market price for each type of affordable housing unit. The average market price may vary by location within the municipality, and would be required to be updated annually.</li> </ul> <p>Establishing a threshold of 20 units before any affordable units under IZ would be required is the minimum number where an affordable unit would be created based upon the maximum unit set aside of 5% proposed elsewhere in the regulation.</p> <p>The proposal that would allow different areas to be subject to IZ and allow different average market price by location could result on areas of the City not being subject to IZ, which would not address the goal of creating inclusive and integrated communities. Establishing area rather than City-wide average market prices would also be difficult, and would result in the differing values of affordability across the City, further undermining the intent of inclusive and integrated communities.</p>

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<b>2</b>	<b>Municipal Assessment Report</b>	<p>This report would be required to be prepared prior to adopting Official Plan policies authorizing IZ, and would address matters such as municipal population and household population and demographic information, household size and types, household income, existing and planned housing supply, a housing affordability analysis, and an analysis by housing type of average market price, including consideration of where the affordable units are to be located within the municipality. An updated assessment report would require to provide all of the above information and documentation.</p> <p>The proposed regulation requires that the average market price by unit type be established annually. It is unclear if this includes all of the information within a municipal assessment report. It is also unclear that the “consideration of location within the municipality” of the affordable units would mean that an IZ by-law would need to be area-specific and not city-wide.</p>
<b>3a</b>	<b>Unit Set Aside</b>	<p>The total number of affordable housing units or the total gross floor area to be occupied by residential uses shall not exceed 5% of the total number of units to be provided. This can be increased to 10% if the project is within a high density transit-station area identified in the Official Plan.</p> <p>The City did not support mandatory set asides (minimum or maximum), and suggested that these be developed based on local conditions.</p> <p>City policies support the provision of 25% affordable housing city-wide. Given the exemption of rental development from an IZ by-law, this maximum 5% set-aside would not likely have a major impact on meeting the City’s affordable housing goals.</p> <p>In its Research Insight on Inclusionary Zoning, CMHC notes that typically 10-20% of units are required to be set aside as affordable units in IZ regulations.</p>
<b>3b</b>	<b>Affordability Period</b>	<p>The affordability period has been proposed to be no less than 20 years and no more than 30 years, with a period of no more than 10 years after the affordability period where the affordability price and sale provisions established in the by-law would continue to apply.</p> <p>The City was supportive of the Province establishing affordability periods that provided for local considerations that would reflect changes in local market conditions.</p>
<b>3c</b>	<b>Measures and Incentives</b>	<p>Unless the lands under development were subject to a community planning permit system, the proposed regulation would require a financial contribution to be paid by the municipality. The contribution would be equal to 40% of the difference between the average market price of the affordable housing units and the affordable price for the affordable housing units. The contribution could be satisfied by a reduction in planning application fees, an exemption from cash-in-lieu of parkland requirements, a reduction in parking requirements, or an exemption from all or part of the applicable development charges.</p> <p>In its previous submission, the City noted that:</p> <p><i>Inclusionary zoning is a regulatory approach to the provision of Affordable Housing. Financial incentives are available through other sections of the Planning Act (bonusing and/or community improvement). The discussion of incentives may confuse the notion that inclusionary zoning for affordable</i></p>

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		<p><i>housing provision is a regulatory tool and not a financial incentive tool.</i></p> <p><i>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.</i></p> <p>There are few, if any jurisdictions that have implemented IZ that include any notion of municipal financial contribution. This proposed regulation would undermine the utility of an IZ by-law, as any required municipal contribution would likely be better used to support the provision of affordable housing through other means already available to municipalities, such as through community improvement plans or existing municipal affordable housing programs. It is important to note that these programs do not restrict the provision of affordable housing only through home ownership, which is the target of these proposed regulations.</p>
<b>3d</b>	<b>Price</b>	<p>For the purposes of the 20-30 year affordability period, the price that an affordable unit could be sold would be established in the by-law. For the period up to 10 years after the affordability period, the price that an affordable unit could be sold would be the market rate.</p> <p>This is consistent with the City's previous submission that recommended that the price of an affordable housing unit be established by the municipality.</p>
<b>4</b>	<b>Share of Proceeds Related to Equity</b>	<p>The proposed regulation established a formula for determining the share of equity from the proceeds of the sale of an affordable unit.</p> <p>The proposed regulations are very detailed in this matter, however, any affordable housing agreements developed under an IZ by-law will require significant staff resources to both establish and administer. Matters such as sale proceeds, establishing the affordability price and sale price, and possible restrictions on who affordable units could be sold to (other family members, for example) will all need to be considered in these agreements.</p>
<b>5</b>	<b>Reporting by Council of a Municipality</b>	<p>Municipalities would be required to report every two years after the adoption of an IZ by-law on the following information:</p> <ul style="list-style-type: none"> <li>- The type of affordable housing by type</li> <li>- The location of the units</li> <li>- The number of affordable units returned to market units</li> <li>- The total amount of the share of proceeds related to equity received by the City upon the sale of any affordable units.</li> </ul> <p>These reporting requirements would be in addition to the requirement that the affordable price would need to be established annually.</p>
<b>6</b>	<b>Restrictions on Off-site</b>	<p>Any required affordable housing units could be located on lands other than where the units are proposed to be developed, subject to the following conditions:</p> <ul style="list-style-type: none"> <li>- The offsite units must be located in proximity to the proposed development</li> <li>- That land that the units are to be transferred to must be zoned to permit IZ</li> <li>- The offsite units must be available for occupancy within 36 months</li> </ul>

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		<ul style="list-style-type: none"> <li>- The offsite units cannot count towards any affordable housing requirement on the receiving site</li> <li>- No more than 50% of the units in the offsite development can be affordable housing units.</li> </ul> <p>The concept of offsite provision of any required affordable housing units was not part of the Province’s previous submissions on this matter. Matters contemplated in the regulations, such as up to 50% of the receiving site and “in proximity to” undermine the goal of inclusive and integrated communities.</p> <p>No direction is provided on how a municipality could acquire any affordable housing units after the fact if there is a period of up to 36 months to meet the affordable housing unit requirement off-site, and how these units could be secured through an agreement.</p>
<b>7</b>	<b>Restrictions on Use of Section 37</b>	<p>Any required affordable housing units achieved through IZ could not be used to satisfy a community benefit under Section 37 bonusing.</p> <p>This would mean that affordable housing units could not be “double-counted” to meet both an IZ and a Section 37 bonusing requirement.</p> <p>The City noted in its previous submission that this matter of possible IZ and Section 37 confusion related to affordable housing should be clarified.</p>
<b>8</b>	<b>Exempted Developments</b>	<p>The proposal identifies the following exemptions from an IZ by-law:</p> <ul style="list-style-type: none"> <li>- Any proposal for rental residential development</li> <li>- Any proposal made by a non-profit housing provider</li> <li>- Any application made before the day that an inclusionary zoning by-law was passed</li> <li>- Any application for an Official Plan amendment, zoning by-law amendment, site plan, plan of subdivision or condominium made on the day before an Official Plan policy authorizing IZ was adopted by Council.</li> </ul> <p>The exemption of rental residential development from IZ requirements will mean that a large portion of London’s potential affordable housing supply will not be subject to IZ requirements. While affordable home ownership is an issue in many Ontario municipalities, most of London’s affordable housing supply is provided in rental residential development.</p>
<b>9</b>	<b>Community Planning Permit System</b>	<p>The proposed regulation would amend the regulations authorizing Community Planning Permits (O.Reg. 173/16) to permit IZ to be implemented within a community permit planning system.</p>

The following points summarize the concerns with the proposed regulations:

1. Purpose-built rental projects would be exempt from any inclusionary zoning by-law.

This exemption would eliminate a large portion of London’s potential affordable housing supply.

2. Unless part of a Community Permit Planning System, a municipal financial contribution is required for every affordable unit to be created.

This contribution would be the equivalent of 40% of the difference between the average market price and the affordable price of the affordable units.

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Given that the total number of affordable housing units that could be developed as a result of inclusionary zoning, and the difference between the average market price and affordable price of affordable housing has not yet been calculated, there could be significant financial implications to the City in implementing inclusionary zoning.

It is also important to note that inclusionary zoning regulations from other jurisdictions does not generally include any provision for municipal incentives or contributions.

3. The maximum unit set aside is 5% (10% if located at an identified transit station), which is much lower than the general 10-20% set aside in other jurisdictions.
4. The proposed regulations are silent on matters of standards of design, unit size, energy efficiency, etc. as noted in the City's previous submission.

By not specifying minimum standards of design, unit size, etc., affordable housing units could be developed at a lower standard than the prevailing community standard with respect to such matters as materials and appearance and qualities of finishes and/or smaller unit sizes not consistent with the prevailing development pattern.

5. The affordable units required to be provided as part of a development may be permitted to be located off-site, to be constructed within 36 months of the transfer of the affordable units from the proposed development.

It is not known how these off-site units could be provided if they were not developed within the 36 month period after the development requiring the units was completed, nor is there any direction regarding "in proximity to". This could also result in a concentration of affordable housing units, rather than a distribution across the community to provide for integrated and inclusive communities.

6. The agreements to implement IZ will require significant staff resources to develop and administer.

In addition, the London Housing Advisory Committee (LHAC) met on January 10, 2018, and asked that the Resolution below be attached to the City's submission on this matter to the Province.

That the following actions be taken with respect to the proposed Regulation under the *Planning Act*, relating to Inclusionary Zoning:

- a) the Municipal Council BE ADVISED that the London Housing Advisory Committee supports Inclusionary Zoning in principle as a tool to advance affordable housing and the development of mixed income communities;
- b) the Municipal Council BE ADVISED that the London Housing Advisory Committee expressed concerns over the draft regulations and their capacity to address affordable housing needs in London, specifically within the following provisions in the proposed regulatory areas:
  - i) the proposed inclusionary zoning regulations do not apply to rental units (where there is the greatest need for affordable housing);
  - ii) the proposed five percent target for the "Unit Set Aside" is understood to be lower than other jurisdictions with inclusionary zoning;
  - iii) the off-site provision for a proposed development or redevelopment being ready for occupancy no later than thirty-six (36) months after the transfer of the affordable units from the proposed principal development;
  - iv) the agreements that will be required to administer these regulations may be complex; and,
  - v) the requirement for municipal contribution;
- c) the Municipal Council BE ADVISED that the London Housing Advisory Committee would like to remain informed and involved in any future local decision making related to this proposed legislation and any associated local policies; and,

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- d) the above-noted London Housing Advisory Committee comments BE INCLUDED with the City of London submission to the Ministry of Municipal Affairs, in response to the request for comments regarding the proposed regulations.

These comments are supportive of inclusionary zoning as a tool to provide affordable housing, and note concerns regarding the proposed regulations.

Staff have also consulted with Staff from the Housing Development Corporation. While supportive of a regulation that would advance the provision of affordable housing, the HDC has identified similar concerns to those noted in this report, and will be providing a report to the HDC Board of Directors on January 18, 2018.

<b>CONCLUSION</b>
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Inclusionary zoning is an important tool in the provision of affordable housing. The City is very supportive of this tool, however, the utility and effectiveness of an inclusionary zoning by-law may be compromised by these proposed regulations.

<b>PREPARED AND SUBMITTED BY:</b>
<b>GREGG BARRETT, AICP MANAGER, LONG RANGE PLANNING AND RESEARCH</b>
<b>RECOMMENDED BY:</b>
<b>JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>

January 15, 2018

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