

## Report to Planning and Environment Committee

**To:** Chair and Members  
Planning & Environment Committee  
**From:** John M. Fleming  
Managing Director, Planning and City Planner  
**Subject:** Update on Regulations for the *Promoting Affordable Housing Act, 2016* (Inclusionary Zoning)  
**Meeting on:** August 13, 2018

## Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken with regards to Inclusionary Zoning for the delivery of affordable housing:

- (a) The attached report **BE RECEIVED** for information;
- (b) Staff **BE DIRECTED** to report back to Planning and Environment Committee outlining options and approaches to implement Inclusionary Zoning in London, following consultation with the London Home Builders Association and London Development Institute; and
- (c) Staff **BE DIRECTED** to prepare a draft Municipal Assessment Report to establish a framework for policies for Inclusionary Zoning.

## Executive Summary

### Summary

This report provides a summary of the regulations recently released by the Province to implement Inclusionary Zoning. A summary of changes made since the City provided comments on the previous draft version of regulations is also provided in this report.

## Analysis

### 1.0 Background: Affordable Housing Context

As part of the *Promoting Affordable Housing Act, 2016*, the Province provided a framework for municipalities to introduce inclusionary zoning into Official Plan policies and Zoning By-law regulations. Draft regulations were released for public comment in December 2017. The City provided comments regarding applicability of the draft regulations in London. Following the comment period on the Environmental Bill of Rights, final regulations were released by the Province on April 11, 2018.

#### 1.1 Inclusionary Zoning in Context of Other Affordable Housing Programs

The City of London has established affordable housing objectives and a variety of municipal programs designed to help prevent homelessness, allow access to housing, and support the affordability of housing. This range of existing programs includes government provision of housing, and incentives to support the creation of affordable housing. The programs cover the affordability spectrum from income supports up to average market rent. Inclusionary Zoning is a new regulatory tool that the City can now consider as a means of supporting the provision of affordable housing. As a result of the Province releasing regulations under the *Promoting Affordable Housing Act, 2016*, there is now clarity regarding how a possible inclusionary zoning by-law could support the provision of affordable housing.

If the City chooses to introduce Inclusionary Zoning it could, by by-law, require a certain number of units be created by developers as part of their planning and development applications, and require those units be made available at an affordable rate.

In general terms, inclusionary zoning refers to zoning regulations that would require private development proposals with residential units to include affordable housing units as part of those proposals, and require that those units be maintained as affordable over a period of time.

Inclusionary Zoning does not replace publicly-provided housing, nor is it a municipal incentive program with financial supports. It may, however, be complementary to those programs. Figure 1, below, shows Inclusionary Zoning's relationship to the existing suite of programs in the homelessness to average market rent spectrum:

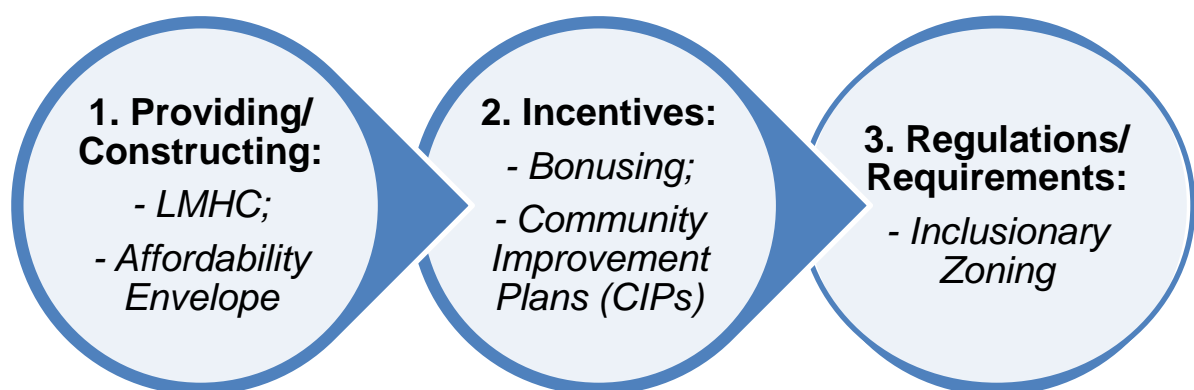


Figure 1: Suite of housing programs

Inclusionary Zoning policies and by-laws may now be considered as a result of legislative changes that would permit the use of inclusionary zoning. The legislation was passed in 2016 and regulations were developed in 2017 and proclaimed in 2018.

The Province identified three objectives for the introduction of legislation that would enable municipalities to use Inclusionary Zoning:

1. To serve more people by increasing the supply of affordable housing units.
2. To create inclusive and integrated communities.
3. 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.

Inclusionary Zoning is a new tool that could be used to complement the existing suite of housing programs, as well as support Council's Strategic Plan (Strategy 2B of the Growing Our Economy section), which is to "create new partnerships to build, and support the building of, new affordable housing", and the recommendations of the final report of the Mayor's Advisory Panel on Homelessness, entitled "London For All: A Roadmap to End Poverty".

## 2.0 Regulations under the *Promoting Affordable Housing Act, 2016*

### 2.1 The Act and the Draft Regulations

On December 8, 2016, the *Promoting Affordable Housing Act, 2016* (Bill 7, formerly Bill 204) received Royal Assent. This Bill made various changes to the Planning Act, including provisions that would enable municipalities to adopt Official Plan policies and pass zoning by-laws related to Inclusionary Zoning.

On December 18, 2017, proposed regulations to implement Inclusionary Zoning were posted for a 45 day public review and comment period on the Ontario Environmental Registry website (the “EBR”).

The proposed regulations addressed matters such as affordability period, threshold size of buildings (minimum number of units) to which an inclusionary zoning by-law would apply, the affordable housing “set aside” (number of units), inclusionary zoning agreements, municipal incentives, and restrictions to off-site development.

At the Planning and Environment Committee meeting of January 22, 2018, a report was presented with comments related to each of the proposed regulations. That report was circulated to the Ministry of Municipal Affairs for consideration in response to the EBR posting of the proposed regulations. The following points summarize the comments based on the December 2017 draft regulations:

Draft Regulation	City’s previous comments on draft 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.	<p>This contribution would be the equivalent of 40% of the difference between the average market price and the affordable price of the affordable units.</p> <p>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.</p> <p>It is also important to note that inclusionary zoning regulations from other jurisdictions does not generally include any provision for municipal incentives or contributions.</p>
3. The maximum affordable unit set aside is 5% (10% if located in an identified high-density transit station area).	The unit set aside is much lower than the general 10-20% set aside required in other jurisdictions.

Draft Regulation	City's previous comments on draft regulations
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.	Additional City comment: The agreements to implement IZ will require significant staff resources to develop and administer.

The London Housing Advisory Committee (LHAC), the Housing Development Corporation (HDC) London, and other organizations representing municipalities across Ontario also identified similar issues in regards to the draft Inclusionary Zoning regulations.

## 2.2 Final Regulations Released April 2018

On April 11, 2018, the Minister of Municipal Affairs released Ontario Regulation 232/18 under the *Promoting Affordable Housing Act, 2016* (See Appendix "B"). O. Reg. 232/18 included some considerable changes from the draft regulations that were proposed in December 2017.

The final regulations include the following key items:

- Official Plan policies:** Official Plan policies to enable the introduction of an inclusionary zoning by-law are still required, however, many of the matters to be prescribed by policy (per the draft regulations) have changed, as outlined in the bullets below.
- Unit "set aside" (as affordable units):** No percentage of units set aside is prescribed, whereas the draft regulations identified a maximum of 5% of the total units (or 10% at rapid transit stations). The number of units set aside (or gross floor area set aside) is now left to local municipalities.
- Affordability period:** the length of time the units are to remain as affordable units was previously prescribed in the draft regulations; however, the affordability period is now left to municipalities to identify. This will help recognize local considerations and changes in local market conditions.
- Measures and incentives:** Under the draft regulations, municipalities were required to pay an incentive of a financial contribution that would cover a fixed portion (40%) of the difference between the market price for units and the affordable unit price. Under O. Reg. 232/18, a municipal financial contribution incentive is not required.

- **Price:** the price of affordable units during and after the affordability period (a defined “transition” period in the draft regulations) has been removed and is now at the discretion of the local municipality.
- **Tenure:** in the draft regulations, development of purpose-built rental buildings was exempt from the Inclusionary Zoning by-law regulations. The final regulations have included both ownership and rental projects that may be subject to the Inclusionary Zoning regulations.
- **Share of proceeds related to equity:** Under the draft regulations, an agreement between the unit owner and City allowed for sale proceeds to be shared based on a scale of how many years it had been owned by the current owner. The final regulations do not include scalar agreements, but instead identify that a by-law may be established and that the municipal portion cannot exceed 50% of the proceeds. Local conditions can establish the apportionment.
- **Restrictions on off-site units:** Under O. Reg. 232/18, the affordable units can be located off-site from the rest of the market-rate development under certain conditions. The affordable units can be located off-site if the municipality’s Official Plan includes Inclusionary Zoning policies that set out the circumstances and conditions under which they may be permitted off-site; if the off-site units are in proximity to the market units; if the off-site location is on lands subject to an Inclusionary Zoning By-law; and those off-site units cannot be counted towards the affordable unit requirements for a development on that second property (i.e. no “double counting”).
- **Exempted developments:** The key changes to exemptions under O. Reg. 232/18 is that buildings of fewer than ten (10) units are exempt from the Inclusionary Zoning By-law (whereas buildings of fewer than twenty (20) units was earlier proposed in the draft regulations). Also, as noted above, rental buildings are no longer exempt under the final version of the regulations.
- **Assessment report:** as identified in section 4 of this report, below, an assessment report is required to be prepared with information supporting the Official Plan Amendment. The housing and market information in the assessment report is to be updated and presented to Council and the public every five years. In addition, reports regarding the subsequent implementing Zoning By-law are required to be presented to Council every two years on the status of affordable housing units, including the number, type, and location of units, as well as range of incomes.

### 3.0 Stakeholder and Public Consultations

#### 3.1 Consultations to Examine Potential Implementation

Inclusionary Zoning is a new tool that could complement and expand upon existing programs to address homelessness, housing, and affordability of housing within London. Prior to developing inclusionary zoning policies and new zoning by-law, it is recommended that Staff undertake consultations with stakeholders to examine the potential for implementation of Inclusionary Zoning in London.

Consultations will focus on the key concepts of the regulations proposed by the Province and their applicability to the local context in the city of London. Staff will collaborate closely with the development community, as any inclusionary zoning by-law would apply to private residential development projects. Under the regulations associated with inclusionary zoning, housing provided by a non-profit housing provider, or any project where a non-profit housing provider has an interest that is greater than 51%, or any project includes a minimum of 51% of the units intended as affordable housing would be exempt from any inclusionary zoning by-law requirements.

Staff will present the findings of those consultations, as well as options and findings of best practice research from other jurisdictions. Regardless of the form of program, an

Official Plan Amendment to introduce enabling policies into the London Plan will be required should London pursue any form of Inclusionary Zoning program. An Official Plan Amendment will be a subsequent step after these consultations to investigate key concepts and considerations for potential implementation.

### **3.2 Overview of key concepts for consultations**

One of the main purposes of the collaboration and consultations is to investigate the key concepts of Inclusionary Zoning and their applicability to London. This first stage of consultation would not be to identify components of a potential Official Plan Amendment that would direct a subsequent Zoning By-law Amendment to introduce a by-law for Inclusionary Zoning, but instead identify the general requirements and approaches to be considered to implement Inclusionary Zoning in London.

The first round of consultations would address market information related to the opportunities and constraints as well as the following matters:

- How would Inclusionary Zoning be structured, for example, different requirements for ownership and rental affordable housing;
- How does London establish threshold numbers or proportions of projects that would be required to be provided as affordable housing;
- What would be the geographic extent of the by-law (i.e. one or more than one Inclusionary Zoning by-law across the City);
- Should off-site locations be considered for the provision of any required affordable units, and if so, how would London define “proximity”;
- How would the City ensure that off-site units are developed;
- Are there certain classes of buildings or land uses that should be exempted from an IZ by-law;
- What would be an appropriate affordability period;
- Should IZ consider matters related to unit size and design.
- What market information can be provided in support of the preparation of an assessment report on the demographics, housing supply and projections, as well as other information, as noted in section 4 of this report, below.
- What City resources are required to administer, monitor, and report on an Inclusionary Zoning program, including as relates to market and housing information of the “assessment report”.

Staff will report the results of the consultation about these matters to a future meeting of the Planning and Environment Committee. A subsequent set of consultations would refine the different quantitative measures of a potential Inclusionary Zoning policy and by-law, including matters such as the: threshold size of building to require the provision of affordable units; unit set aside (i.e. the proportion of units to be identified as affordable units); affordability period; price and rent; and share of proceeds.

## **4.0 Assessment Report**

### **4.1 Assessment Report**

As part of the preparation of Inclusionary Zoning policies, an assessment report is required that identifies certain housing market and demographic information. The assessment report is required as a background report at the time of the Official Plan Amendment for the introduction of policies for Inclusionary Zoning. The assessment

report is then required to be updated at least every five years, with monitoring reports every two years.

The assessment report is required to include the following:

1. An analysis of demographics and population in the municipality;
2. An analysis of household incomes in the municipality;
3. An analysis of housing supply by housing type currently in the municipality and planned for in the official plan.
4. An analysis of housing types and sizes of units that may be needed to meet anticipated demand for affordable housing.
5. an analysis of the current average market price and the current average market rent for each housing type, taking into account location in the municipality.
6. An analysis of potential impacts on the housing market on the financial viability of development or redevelopment in the municipality from inclusionary zoning by-laws, including requirements in the by-laws related to: number of affordable units/affordable gross floor area; affordability period; incentives; and the sale or lease price for affordable units. This analysis will take into account:
  - i) Value of land;
  - ii) Cost of construction;
  - iii) Market price;
  - iv) Market rent; and
  - v) Housing demand and supply

The City's analysis of potential impact on the housing market (i.e. item 6 above), is also required to take into account Provincial policies and plans as well as the municipal Official Plan in its analysis of growth and development in the City. The analysis in item 6 is furthermore required to be independently peer reviewed by a person deemed by Council to be qualified.

Staff propose that a draft assessment report be prepared concurrent to the first stage of consultations, so that it can both support those consultation discussions and provide the information required to align with the timing of any subsequent Official Plan Amendment process.

## **5.0 Next Steps**

Staff will begin the consultation process with the London Home Builders Association, the London Development Institute, and other affordable housing stakeholders. Staff will also undertake the preparation of the assessment report and report back to the Planning and Environment Committee on the results of the consultations and the options and approaches for the implementation of inclusionary zoning in London. Following the selection of a preferred approach, an Official Plan Amendment for inclusionary zoning policies will be initiated. This Official Plan Amendment process would include extensive public consultation to ensure broad community understanding regarding Inclusionary Zoning. It is important to note that Official Plan policies, or a Zoning By-law Amendment to implement IZ, are not appealable, so extensive consultation is recommended to ensure information is available to the public.

## **6.0 Conclusion**

Inclusionary Zoning is a powerful implementation tool to provide affordable housing. Initial consultation with the development community to understand the roles and

potential requirements of private developers to provide affordable housing through Inclusionary Zoning is important. It is therefore recommended that initial consultation with the development community be undertaken prior to the preparation of draft Inclusionary Zoning policies.

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Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Planning Services.	

July 19, 2018  
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## **Appendix A – Relevant Previous Reports**

### **Previous Reports Pertinent to this Matter**

Information Report on Inclusionary Zoning in Bill 204, the Promoting Affordable Housing Act, 2016. Planning and Environment Committee, August 22, 2016.

Information Report – Proposed Regulations, Promoting Affordable Housing Act, 2016 (Inclusionary Zoning). Planning and Environment Committee, January 22, 2018.

Français

ONTARIO REGULATION 232/18

made under the

PLANNING ACT

Made: April 11, 2018

Filed: April 11, 2018

Published on e-Laws: April 11, 2018

Printed in *The Ontario Gazette*: April 28, 2018

INCLUSIONARY ZONING

Definitions

1. In this Regulation,

“inclusionary zoning by-law” means a by-law passed under section 34 of the Act to give effect to the policies described in subsection 16 (4) of the Act; (“règlement municipal relatif au zonage d’inclusion”)

“non-profit housing provider” means,

- (a) a corporation without share capital to which the *Corporations Act* applies, that is in good standing under that Act and whose primary object is to provide housing,
- (b) a corporation without share capital to which the *Canada Business Corporations Act* applies, that is in good standing under that Act and whose primary object is to provide housing,
- (c) a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*, or
- (d) an organization that is a registered charity within the meaning of the *Income Tax Act* (Canada) or a non-profit organization exempt from tax under paragraph 149 (1) (l) of that Act, and whose land is owned by the organization, all or part of which is to be used as affordable housing; (“fournisseur de logements sans but lucratif”)

“offsite unit” means an affordable housing unit that is required in an inclusionary zoning by-law and that is erected or located in or on lands, buildings or structures other than those that are the subject of the development or redevelopment giving rise to the by-law requirement for affordable housing units. (“logement hors site”)

Assessment report

2. (1) An assessment report required by subsection 16 (9) of the Act shall include information to be considered in the development of official plan policies described in subsection 16 (4) of the Act, including the following:

1. An analysis of demographics and population in the municipality.
  2. An analysis of household incomes in the municipality.
  3. An analysis of housing supply by housing type currently in the municipality and planned for in the official plan.
  4. An analysis of housing types and sizes of units that may be needed to meet anticipated demand for affordable housing.
  5. An analysis of the current average market price and the current average market rent for each housing type, taking into account location in the municipality.
  6. An analysis of potential impacts on the housing market and on the financial viability of development or redevelopment in the municipality from inclusionary zoning by-laws, including requirements in the by-laws related to the matters mentioned in clauses 35.2 (2) (a), (b), (e) and (g) of the Act, taking into account:
    - i. value of land,
    - ii. cost of construction,
    - iii. market price,
    - iv. market rent, and
    - v. housing demand and supply.
  7. A written opinion on the analysis described in paragraph 6 from a person independent of the municipality and who, in the opinion of the council of the municipality, is qualified to review the analysis.
- (2) The analysis described in paragraph 6 of subsection (1) shall take into account the following related to growth and development in the municipality:

1. Provincial policies and plans.
2. Official plan policies.

(3) An updated assessment report required by subsection 16 (10) or (11) of the Act shall contain the information specified in subsection (1).

**Official plan policies**

3. (1) Official plan policies described in subsection 16 (4) of the Act shall set out the approach to authorizing inclusionary zoning, including the following:

1. The minimum size, not to be less than 10 residential units, of development or redevelopment to which an inclusionary zoning by-law would apply.
2. The locations and areas where inclusionary zoning by-laws would apply.
3. The range of household incomes for which affordable housing units would be provided.
4. The range of housing types and sizes of units that would be authorized as affordable housing units.
5. For the purposes of clause 35.2 (2) (a) of the Act, the number of affordable housing units, or the gross floor area to be occupied by the affordable housing units, that would be required.
6. For the purposes of clause 35.2 (2) (b) of the Act, the period of time for which affordable housing units would be maintained as affordable.
7. For the purposes of clause 35.2 (2) (e) of the Act, how measures and incentives would be determined.
8. For the purposes of clause 35.2 (2) (g) of the Act, how the price or rent of affordable housing units would be determined.
9. For the purposes of section 4, the approach to determine the percentage of the net proceeds to be distributed to the municipality from the sale of an affordable housing unit, including how net proceeds would be determined.
10. The circumstances in and conditions under which offsite units would be permitted, consistent with paragraphs 2, 3 and 4 of section 5.
11. For the purposes of paragraph 2 of section 5, the circumstances in which an offsite unit would be considered to be in proximity to the development or redevelopment giving rise to the by-law requirement for affordable housing units.

(2) Official plan policies described in subsection 16 (4) of the Act shall set out the approach for the procedure required under subsection 35.2 (3) of the Act to monitor and ensure that the required affordable housing units are maintained for the required period of time.

**Net proceeds from sale of affordable housing unit**

4. (1) An inclusionary zoning by-law may require a portion of the net proceeds from the sale of an affordable housing unit to be distributed to the municipality.

(2) A by-law referred to in subsection (1) shall set out the percentage of the net proceeds to be distributed to the municipality, which shall not exceed 50 per cent.

(3) If a by-law referred to in subsection (1) is in force, an agreement referred to in clause 35.2 (2) (i) of the Act shall provide that, where an affordable housing unit is sold, a percentage of the net proceeds from the sale shall be distributed to the municipality in accordance with the by-law.

**Restrictions on offsite units**

5. The authority of a council of a municipality under clause 35.2 (5) (a) of the Act is subject to the following restrictions:
  1. Offsite units shall not be permitted unless there is an official plan in effect in the municipality that sets out the circumstances in and conditions under which offsite units would be permitted.
  2. Offsite units shall be located in proximity to the development or redevelopment giving rise to the by-law requirement for affordable housing units.
  3. The land on which the offsite units are situated shall be subject to an inclusionary zoning by-law.
  4. Offsite units shall not be used to satisfy the by-law requirement to include a number of affordable housing units, or gross floor area to be occupied by affordable housing units, that applies to the development or redevelopment in which the offsite units are permitted.

**Restrictions on the use of s. 37 of the Act**

6. The authority of a council of a municipality under section 37 of the Act is subject to the following restrictions and prohibitions:

1. Any increase in the height and density of a development or redevelopment permitted in return for facilities, services or matters under section 37 of the Act is deemed not to include:
  - i. the height and density associated with the affordable housing units required in an inclusionary zoning by-law,
  - ii. any increase in height and density permitted in an inclusionary zoning by-law as an incentive described in clause 35.2 (2) (e) of the Act.
2. For greater certainty, the council shall not use its authority under section 37 of the Act with respect to a development or redevelopment giving rise to a by-law requirement for affordable housing units in an area in which a community planning permit system is established.

**Reports of municipal council**

7. (1) For the purposes of subsection 35.2 (9) of the Act, if a council of a municipality passes an inclusionary zoning by-law, the council shall ensure that a report is prepared and made publicly available at least every two years.

(2) The council shall ensure that each report describes the status of the affordable housing units required in the by-law, including the following information for each year that is the subject of the report:

1. The number of affordable housing units.
2. The types of affordable housing units.
3. The location of the affordable housing units.
4. The range of household incomes for which the affordable housing units were provided.
5. The number of affordable housing units that were converted to units at market value.
6. The proceeds that were received by the municipality from the sale of affordable housing units.

**Exemptions from inclusionary zoning by-law**

8. (1) An inclusionary zoning by-law does not apply to a development or redevelopment where,

- (a) the development or redevelopment contains fewer than 10 residential units;
- (b) the development or redevelopment is proposed by a non-profit housing provider or is proposed by a partnership in which,
  - (i) a non-profit housing provider has an interest that is greater than 51 per cent, and
  - (ii) a minimum of 51 per cent of the units are intended as affordable housing, excluding any offsite units that would be located in the development or redevelopment;
- (c) on or before the day an official plan authorizing inclusionary zoning was adopted by the council of the municipality, a request for an amendment to an official plan, if required, and an application to amend a zoning by-law were made in respect of the development or redevelopment along with an application for either of the following:
  - (i) approval of a plan of subdivision under section 51 of the Act, or
  - (ii) approval of a description or an amendment to a description under section 9 of the *Condominium Act, 1998*; or
- (d) on or before the day the inclusionary zoning by-law is passed, an application is made in respect of the development or redevelopment for a building permit, a development permit, a community planning permit, or approval of a site plan under subsection 41 (4) of the Act.

(2) Despite clause (1) (b), an inclusionary zoning by-law applies to any offsite units that would be permitted in a development or redevelopment.

**9. Clause (a) of the definition of “non-profit housing provider” in section 1 is revoked and the following substituted:**

- (a) a corporation to which the *Not-for-Profit Corporations Act, 2010* applies that is in good standing under that Act and whose primary object is to provide housing,

**Commencement**

10. (1) Subject to subsection (2), this Regulation comes into force on the later of the day subsection 10 (1) of Schedule 4 to the *Promoting Affordable Housing Act, 2016* comes into force and the day this Regulation is filed.

(2) Section 9 comes into force on the later of the day subsection 211 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day this Regulation is filed.

Made by :  
Pris par :

*Le ministre des Affaires municipales,*

**BILL MAURO**  
*Minister of Municipal Affairs*

Date made: April 11, 2018  
Pris le : 11 avril 2018

Français

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