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## INCLUSIONARY HOUSING UDI ALBERTA & CHBA – ALBERTA RECOMMENDATIONS

### 1. BACKGROUND AND POTENTIAL UNINTENDED CONSEQUENCES

#### Background

Inclusionary Housing (herein referred to as IH) is a term which refers to municipal planning policies that require a given share of new housing units to be attainable by people with low to moderate incomes. This tool has historically been used in jurisdictions where there is a wide gap between the median family income and average house price (often largely attributable to issues with housing supply), which creates challenges in providing housing to large segments of the workforce.

Our industry is supportive of inclusive communities and is not against the idea of an IH program **provided careful consideration to broader housing affordability is given**. With careful implementation of policies that do not adversely impact market housing costs and/or industry's ability to finance and develop housing in a timely manner, this tool can be effectively implemented. As has been well established in literature related to IH, if market impact neutrality is not maintained, then the cost of providing IH units to municipalities is downloaded to the other units of the development, thereby making the rest of the non-IH units more expensive. The only way to prevent this and the resulting increased cost of market housing is through meaningful offsets that wholly negate the increased cost of providing the IH units.

Regulatory requirements are critical, so that Municipalities can apply the proposed legislative provisions in manner that ensures that the industry can continue to provide a broad range of market affordable housing. Failure to provide clear direction in the regulation can have a significant, detrimental impact on new home buyers and the housing market.

#### Avoiding Unintended Consequences

Industry views inclusionary and affordable housing as a societal issue whereby the costs should be shared by all. Singling out developers and home builders to subsidize affordable housing options through the donation of land, building units, or cash creates additional costs which must be recovered. Without effective offsets, the only way to recover these additional costs is for industry to pass them on to new home owners which increases the cost of housing for the remainder of the population and, ironically, increases the number of families who cannot qualify for a new mortgage.

It is critical that any IH program not impact the cost of market housing (herein referred to as market impact neutral) which would erode affordability across the housing spectrum, negatively impact the economy and put more people in need of affordable housing. Failure to accept this principle has the unintended consequence of raising the price of not only new housing but all existing housing stock.



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If **inclusionary housing is not market impact neutral** history has shown that a 2% increase in housing costs across a municipality can be expected. While 2% may not seem a high number, based on a study prepared by UDI Edmonton Region in 2014, for every \$10,000 increase in a home price, approximately 15,000 Alberta households are priced out of a home. This is an important consideration because if not adequately addressed in the regulation it will create barriers for residents with moderate incomes and those looking to enter the housing market. The recommendations on the following pages were prepared with this specifically in mind and focus on establishing rules for IH that avoid these negative and unintended consequences.

## 2. KEY PRINCIPLES

Industry has carefully considered the development and application of IH and believe that key principles must be clearly addressed in the regulations in order to make the tool viable. If not properly addressed, the tool itself will further exacerbate the issue of housing affordability, especially for those most at risk. While unintended, this would be the consequence of not establishing meaningful offsets. Inclusionary Housing is supportable if the following principles are incorporated into the legislation and/or regulations:

### I. Meaningful and Complete Offsets

- Offsets fully balance out with the project such that there no additional costs are passed on to new homeowners (market impact neutral). To address this, the province can modify Section 694(j)(viii) of the Act in the following manner:

*694(j)(viii) measures and any requirements to offset in whole ~~or in part~~ a requirement to provide inclusionary housing.*

- The regulation should outline the principles, definition, value and application of offsets through the process.
- A variety of offsets are required and these offsets must ensure that the cost impact of the affordable housing units provided do not occur at the expense of the remaining market-units. This needs to be enshrined in the regulation to prevent municipalities from simply offering a single option for an offset that may hold no value to an applicant and result in an increased cost of the market housing units. As an example, increased density in many instances result in more costs to a developer / builder (i.e. requires transition to concrete vs. wood structure), so would not be a viable offset. Individual projects will benefit from different offsets and this needs to be reflected in the regulation.

### II. Ability to Appeal

- The regulation needs to provide applicants with recourse for any disagreement related to offsets, timing, process and other elements of an IH bylaw. The right of appeal is a critical component of any fair, balanced and transparent process.



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### III. Legislative Clarity

- Clarity must be provided through the regulations on how IH is to work, whether they are to be applied to rentals, private or public ownership, and the corresponding criteria, processes and requirements for each.
- Establishing a clear process and parameters, which includes direction on items such as when in the development process IH units and offsets should be identified, applied and decided upon and how long the process should take.

### IV. Strategic Planning

- IH must be understood as one tool within a broader housing strategy. Prior to implementing IH, a municipality must undertake a comprehensive process to evaluate its existing housing market and demonstrate a need for IH within the municipality. If demonstrated, a comprehensive plan (subject to public consultation) is required to outline how the program will be used, managed and how the tool fits within the broader context of other tools being used across the housing spectrum. This document must also detail offsets and other tools that will be used to ensure the program is market impact neutral. Once completed, a municipality would be in a position to implement IH through bylaw.

## 3. LEGISLATIVE FRAMEWORK

Enabling legislation for IH comes through Bill 21 which establishes the broad framework to guide the preparation of the regulation. The framework for the regulation is as follows:

### 694 – Regulations

- (j) *respecting the provision of inclusionary housing, including, without limitation, regulations respecting:*
  - (i) *standards for inclusionary housing;*
  - (ii) *the requirements and conditions under which a land use bylaw may require inclusionary housing as a condition of the applicant's being issued a development permit or as a condition of the applicant's receiving a subdivision approval;*
  - (iii) *the conditions when money in place of inclusionary housing is permitted and the purposes for which the money can be used;*
  - (iv) *the conditions or restrictions on the use of land provided for inclusionary housing;*
  - (v) *the responsibility for ongoing operations of the management of dwelling units provided for inclusionary housing;*
  - (vi) *the conditions for the sale or disposal of dwelling units or land provided for inclusionary housing;*
  - (vii) *respecting the ownership of dwelling units or land provided for inclusionary housing;*
  - (viii) *measures and any requirements to offset in whole or in part a requirement to provide inclusionary housing;*



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The key principles above and proposed legislative framework outlined below are based on the key elements of the proposed legislation to ensure conformity with the Act.

#### 4. IMPLEMENTATION THROUGH REGULATION

##### (1) *Market Research, Strategic Planning and Policy Articulation*

- (a) The regulation needs to clearly define IH as:

***Inclusionary Housing:*** *municipal planning policies that require a given share of new housing units to be affordable for those making between 70% – 100% of the median family income within a given municipality.*

IH is only one tool and is not intended to address affordable / social housing as a whole. It is specific to those who are just below the threshold of being able to afford market housing. It is critical that the regulation define it as such otherwise municipalities may attempt to use this tool to solve problems it is not designed to address.

- (b) In order to ensure IH is an appropriate fit for the municipality, they need to first undertake a clear market analysis of the current and future needs as well as an assessment of what impacts IH could have on the existing housing market. This market analysis should be made publicly available and updated regularly. If the intent of IH is already being met by housing within the local market, there is no need for the municipality to implement it.
- (c) Following a needs assessment, the municipality must undertake a comprehensive affordable housing strategy to outline the steps, programs and tools it is undertaking to address housing across the spectrum (affordable, social, market, etc.). Specific to IH, municipalities must outline:
- (i) How and where IH will be used;
  - (ii) Who the units are intended for;
  - (iii) Offsets to make projects market impact neutral;
  - (iv) The process in which developers / builders will need to follow to identify units and eventually provide them to the municipality;
  - (v) How the units provided will be managed, distributed and overseen;
  - (vi) How the units may be disposed of or sold / released within the market; and
  - (vii) Outcome reporting procedures to ensure the program is functioning as intended without impacting the cost of market housing.

This affordable housing strategy should be made publicly available and updated regularly.

##### (2) *Applicable Projects and Number of Units*

- (a) IH should be applicable to projects requiring development permits, for 100 units or more. This number of units will provide municipalities and applicants more flexibility



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in identifying market impact neutral offsets due to the larger size of the projects. Using a smaller threshold (e.g. 20 units) will prove problematic as these projects generally have substantial limitations in terms of site and building size.

- (b) The maximum number of IH units that can be required by municipalities should be 5% which is a percentage used in a number of jurisdictions across North America. A larger percentage would create challenges in finding offsets substantial enough to mitigate any impact on the cost of market housing units.
- (c) Commercial / industrial (non-residential) projects should be exempt from IH requirements. Given that the IH tool is intended to facilitate the provision of housing units, requiring units from projects that cannot provide them should not be considered, as appropriate offsets are not appropriate nor applicable.
- (d) Exemptions should be in place for projects that provide for housing units below the median market price or meet the established inclusionary threshold.

### **(3) Offsets**

- (a) Offsets offered must fully offset the cost of providing the affordable housing unit(s) – this ensures that the overall impact of IH is market impact neutral. This concept is critical to the success of this tool and needs to be enshrined in the regulation to avoid unintended consequences or misapplication of the tool at the local level.
- (b) The IH units required must balance with the value(s) of the offsets being offered.
- (c) Through a bylaw, municipalities to establish a formal time-bound process, available prior to submission of a development permit to identify offsets in consultation with the applicant.
- (d) Offsets should be as flexible and wide-ranging as possible. As conditions commonly vary from project to project, a variety of mechanisms will allow for greater adaptability in creating the value required to allow the provision of units.
- (e) The type of offsets offered should be made publicly available by the municipality, but the applicant should ultimately determine which offset(s) in whole or in combination will make the IH proposal market impact neutral.
- (f) The regulation must outline a variety of potential offsets while providing municipalities and the applicant the flexibility to determine the most appropriate option for the specific project. The following outlines potential offsets that should be enabled for in the regulation:
  - Density (increased or decreased);
  - Floor Area Ratio;
  - Height;
  - Landscape coverage;
  - Landscape standards;
  - Parking;
  - Private amenity area requirements;
  - Building separations;
  - Development securities;
  - Site coverage;
  - Alternate servicing standards;
  - Permit timelines;
  - Land swaps (example like closed road allowances);
  - Road right of way requirements;



- Warranty periods;
- Road frontage requirements;
- Building setbacks;
- Reduced or deferred levies applicable at the DP stage;
- Property tax rebates or deferrals;
- Development fees; and/or
- Other offsets as agreed to by the development authority and the applicant.

**(4) Offset Provisions Considering Current Appeal Mechanism**

- (a) In the event that an offset requiring a variance to a bylaw (e.g. additional density or site coverage) is used to accommodate IH, the offset variance should not be appealable by the public. To have offsets trigger the potential for appeals diminishes the value of the offset through increased development uncertainty and risk as well as increased development approval timelines and costs to participate in an appeal. The regulation should provide direction for this to ensure that the offset can be effectively applied without that appeal risk.

**(5) Process**

- (a) Municipalities must be required to identify and communicate early in the development process, the areas where IH are to be applied, the number of IH units, the management, ownership and disposition of the IH units, along with the corresponding offsets to be offered. This early communication is critical to establishing a timely, transparent and cost-effective process.
- (b) While senior policy (such as ASP's) should indicate areas of need, industry believes that the logical point for identifying specific units and offsets would be through the development permit process. The units and their corresponding offsets can be most effectively identified at this stage in development. This clarity can be introduced through amending Section 694(j)(ii) of the Act in the following manner:

*694(j)(ii) the requirements and conditions under which a land use bylaw may require inclusionary housing as a condition of the applicant's being issued a development permit ~~or as a condition of the applicant's receiving a subdivision approval;~~*

- (c) In preparing an IH Bylaw, municipalities must outline the following:
- (i) The point within the approvals process where the number of units required are identified, in conjunction with the municipality's needs assessment and overall housing strategy;
  - (ii) The corresponding offsets for the units required;
  - (iii) A clear timeframe to establish the value of the offset with the corresponding number of units;
  - (iv) Details on the management, ownership, transfer and disposition of the units as applicable; and
  - (v) Decision-making and timing within the process: decisions on IH need to be time-bound to ensure the housing can be provided in a timely and predictable manner.



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- (d) When subjective requirements are introduced into the development process, delays to the applicant within that process add costs to the project, which would require further offsets to return to a market-neutral position. As such, industry believes it is imperative that a municipality be required to articulate its requirements in a single pre-application meeting and/or have its requirements articulated in policy to a degree that would allow the applicant to move forward with their design and development application.

**(6) Units Versus Cash-in-Lieu**

- (a) Industry believes that the primary focus for IH should be on the provision of units. The tool can then most directly meet the intent for which it was created, and maximizes the offset value in order to best provide for the units required. Land offerings or swaps may be considered as part of the offset negotiations, however cash-in-lieu is not supported as it does not meet the intent of the IH tool or goal of building inclusive communities.
- (b) Cash-in-lieu of units should only be used in rare circumstances where the municipality and applicant are in agreement that the provision of units is not in the best interest of either party. The risk is that cash-in-lieu could become the default IH request of municipalities which turns the tool into a tax. If the goal of inclusionary units is to generate affordable housing units and build inclusive communities, the provision of physical units should always be requested by municipalities.
- (c) The regulation must clearly state that cash-in-lieu of units should only occur as a last resort and in rare cases, when the municipality and the applicant are in agreement that the provision of units is not feasible due to either:
- The physical design of the building(s); or
  - The ability to provide IH units feasibly to those who need them.

**(7) Rental Projects and Condominiumization**

- (a) The regulation needs to recognize that some projects are intended for pure rental and are therefore not condominiumized. To require a builder to condominiumize a building to sell inclusionary housing units to the municipality is very problematic. The requirement can frustrate financing options for the owner of the balance of the building while also impacting the owner's unfettered ability to manage the life cycle of the asset. Condominiumization also results in all of the administrative and warranty requirements of the *Condominium Property Act* and new home warranty regulations which can be problematic for rental operations and a strong disincentive for new project development.
- (b) Industry believes that management and ownership of IH units should not be mandated for developers/builders providing the IH units, as this may not be in their area of expertise and could result in various negative impacts to users.
- (c) The municipality should not be allowed to actively advertise or market units for rent in a private rental building in a manner that could impact the market rental of units. Leasing should be coordinated through appropriate waiting lists established by the



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municipality or an appropriate channel. If no such waiting list exists, there should not be a taking of inclusionary units as market demand would be questionable.

**(8) Condominiumization of Existing Buildings**

- (a) Projects that do not create new, additional units should be exempt from IH requirements. The taking of inclusionary units or funds where no new units are being created and no old units are being lost is problematic in principle and as well for being able to identify clear off sets that do not increase costs. In many case condominiumization is the only practical strategy for addressing the capital improvement expenditures for tired old rental buildings. Without relevant offsets there could be a clear discouragement of the condominiumization of buildings and by default their revitalization. There are also times where condominiumization may be to facilitate nothing more than family estate planning or financing, in which case the application of an IH requirement is not appropriate.

**(9) Presale Requirements**

- (a) It is reasonable for a regulation to require that where inclusionary units are a requirement of a development permit that those units must be secured by purchase agreements and deposits to the satisfaction of the lender. Lending institutions are increasingly concerned with presale requirements and associated deposits. Often project financings have specific requirements that must be met before funds are advanced.

**(10) Disposal of Units Acquired Through Inclusionary Housing Provisions**

- (a) If IH becomes mandatory and the offsets are not market impact neutral, then industry needs to be an equal stakeholder in determining disposal of units to minimize the impact on market housing. Sales of units to individual customers is problematic in a number of ways:
- The benefit of the initial sale may be limited to the initial customer who is buying and the unit may be subject to market price resale in the future.
  - The sale of the unit may be in direct competition or conflict with the marketing of the overall project. Simple matters of Condo disclosure come into question with such third party sales.
- (b) If a unit is initially held by a housing authority and then there is a determination that the unit(s) are to be put up for sale, there should be regulation on both process and accounting for the funds. In the first 5 years after development any resale should come with a first right of refusal back to the original builder and should be at the rate at which the developer was originally paid for the units.
- (c) In any disposal (or cash-in-lieu arrangement) the funds must be clearly accounted for in a distinct inclusionary housing account that can only be re-used for the same purpose for which the money was taken. Reporting of use of funds on an annual basis is a must.





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### **(11) Right of Appeal**

- (a) Applicants must have the opportunity to appeal any condition of a development approval (number and nature of units, decision timeframe, location of units, offsets and offset values). IH provisions cannot be any different from normal development conditions in that an applicant must have recourse from unreasonable implementation of a regulation or standard. This appeal provision must also include the timeliness of any requests from a municipality. Lastly this process must also provide for the ability to resolve any dispute regarding matters such cash-in-lieu valuations.

## **5. SUMMARY**

Through analysis of the existing housing market in Alberta's major centres, relative to median family incomes, it becomes apparent that housing across Alberta is widely affordable. IH is typically a tool used by municipalities who have a significant disparity between median family income and average housing costs which is generally why IH is referred to as "workforce housing". This is not the case for Alberta's municipalities with the exception of some very specific resort towns. While industry has some concerns with the introduction of IH, there is the potential to make this tool work within the context of Alberta.

Central to the success of this program will be implementing meaningful offsets that negate any cost increases to market housing. Without these offsets there will inevitably be an increased cost of market housing resulting in fewer people being able to afford homes. In addition to meaningful offsets the success of any IH program will rely on a predictable, fair and transparent process that allows applicants and municipalities to work together in achieving a mutually desirable outcome on every application. The recommendations contained in this submission focus on the above and are in line with the legislative framework established in Bill 21. We look forward to working with the province and municipalities on the implementation of policies and hope to be engaged following the release of the draft regulation to assist in finalizing policies that will benefit all Albertans.