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Hon. Steve Clark, Minister
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto Ontario M5G 2E5

Minister's Zoning Orders

Dear Minister:

The *Federation of North Toronto Residents' Associations* ("FoNTRA") is an umbrella organization representing over 30 residents' associations in central Toronto engaged in public policy debates on planning and development issues that directly affect our member organizations. In recent months, FoNTRA has become concerned about the current use of Minister's Zoning Orders ("MZOs") and believes that the sudden launch of a flotilla of MZOs undermines the legitimacy of the statutory planning system. By stripping provisions for notices, public meetings, and rights of appeal from the zoning process, in our view, MZOs do not do so much as cutting red tape as purging ordinary citizens from the democratic planning process. Having carefully reviewed the background to this planning tool and its current "*enhanced*" application, FoNTRA offers the following observations:

1. The legislative intent in introducing the MZO into the planning system was to provide a tool for some extraordinary circumstances. Successive governments adhered to this view and made a judicious use of MZOs. According to records in the Archives of Ontario, during the period 1969 to 2000, a total of only 49 MZOs - or an average of 1.6 per year over 31 years - were issued.¹ During the period 2000 to 2013, it appears that 17 new MOZs were issued – or an average of 1.3 MZOs per year.² This government has now abandoned such moderation.
2. The 1973 *Review of Municipal Planning in Ontario* by the Ontario Economic Council, when discussing the Provincial role, does not mention MZOs but raises more general questions about provincial intervention relevant also here: "*Yet the lessons of Spadina warrant serious attention. It is important to know what the Province is about when it interposes itself so devastatingly into the local scene. Is such intervention based on reasoned judgments, does it derive from a systematic concept of development and planning goals, or are such actions simply the response to political intuitions?*"³ [emphasis added]

¹ http://ao.minisisinc.com/scripts/mwimain.dll/144/ARCH_DESC_FACT/FACTSDESC/REFD+RG+19-82?SESSIONSEARCH

² <https://www.caledonenterprise.com/news-story/3925473-what-is-a-ministerial-zoning-order/>

³ Ontario Economic Council, **Subject to Approval: A Review of Municipal Planning in Ontario**, Toronto, 1973 (para. 3.4)

3. The 1977 *Report of the Planning Act Review Committee*, similarly, emphasized the need for limits and transparency when the Minister exercises this discretionary power: *“There is little doubt that to carry out his responsibilities the Minister should be in a position to exercise discretion on a number of matters; a system that is too rigid would be unworkable. But if there is to be a general shift to the principle of local autonomy in planning matters, it seems to us that limits of ministerial discretion should be clearly expressed in legislation. Just as we feel that the basis for provincial intervention in municipal planning should be embedded in the Act itself, we also feel that for those matters on which the discretion is to be exercised is to be spelled out ... We also believe that where the Minister makes discretionary decisions, he should be required as a general rule to state the reasons for his decisions.”*⁴ [emphasis added]
4. The subsequent 1978 *White Paper on the Planning Act* reinforced the government’s intention to maintain the restraints on MZO limited to narrow situations: *“Zoning orders are presently used for three main purposes:*
 - *In special circumstances where a particular provincial interest must be protected until municipal planning controls can be amended to provide adequate safeguards as in the case, say, of developing a new town.*
 - *To impose controls in areas where lack of adequate municipal regulations could cause planning problems owing to pressure for growth.*
 - *In unorganized parts of northern Ontario where new growth caused perhaps by the development of a new mine, must be controlled....**Accordingly, the provisions of section 32 in their present form will be used by the Minister in special emergencies where it is necessary for the province to step in to protect a provincial interest, as has been done in the past.”*⁵ [emphasis added]
5. The 1993 Report of the *Commission on Planning and Development Reform in Ontario* again stressed the need to define the scope where the Minister’s discretionary power could be exercised: *“Currently, the Minister has the authority to impose zoning orders to regulate land use anywhere in Ontario, on land with and without local zoning controls in place. The authority is commonly used in unorganized areas, where no municipal powers exist. Although infrequently used in municipalities, the Minister’s zoning orders do have the effect of overriding existing municipal zoning by-laws. The Commission believes that, in order to remove possible duplication with municipal controls, the exercise of this power should be limited to areas without zoning controls. If the province is to intervene directly in municipal planning matters, it must be on a policy basis, as contemplated in the emergency power discussed above. The Commission is recommending that the Minister be authorized to place a zoning order on any site or area without local zoning controls where there is a provincial interest that will not otherwise be protected. The right of appealing such orders to the Ontario Municipal Board should be retained.”*⁶ [emphasis added]
6. At a recent conference, you outlined the reasoning underlying the government’s new use of MZO, as follows:⁷ *“And I strongly encourage every municipality to use the tools they have to find local solutions so high-priority projects can move ahead without delay. Minister’s Zoning Orders are one tool we’re using to cut red tape to support Ontario’s recovery. I’m proud that we’ve been able to help municipal councils give their priority projects a jumpstart, allowing*

⁴ *Report of the Planning Act Review Committee*, Toronto 1977 (para. 4.22 & 4.24)

⁵ Government of Ontario, *White Paper on the Planning Act*, Toronto, 1978 (para. 4.41 & 4.45)

⁶ Commission on Planning and Development Reform in Ontario, *New Planning for Ontario*, Toronto, 1993

⁷ Hon. Steve Clark, Speech at the 2020 Association of Municipalities of Ontario Conference

them to move ahead faster, and help stimulate their economies ... Whether it's helping to build long-term care homes in Innisfil... or Clarington... Or hundreds of housing units, including for seniors in Whitchurch-Stouffville... These MZOs help get shovels in the ground faster, create jobs and support local priorities. ... And we're doing more to help our municipal partners reduce delays on critical projects that local communities need... by enhancing the Minister's Zoning Order authority..... Our focus on supporting economic recovery has not wavered – we're helping to build more housing, long-term care facilities, and leveraging our transit investments, and that is the focus for the enhanced MZO.... When we choose – strategically – to use this new authority... We can also support another top priority, by requiring that affordable housing be part of the mix in new developments through inclusionary zoning.”

In conclusion, FoNTRA considers the expanded use of MZOs a high-handed, illegitimate rule by fiat. The tool of MZOs was introduced at a time when many municipalities lacked Official Plans and effective zoning regulations. Provincial intervention was justified in such situation. Today, the conditions have changed materially since municipalities now control development with broad sets of planning tools. For the government to now invite municipalities – many with sophisticated planning resources on their own - to apply for MZOs represents a radical reversal of roles that can only damage the planning framework. Moreover, the *Provincial Policy Statement* protects the provincial interest and Provincial Plans – particularly the *Growth Plan for the Greater Golden Horseshoe* - give the Province effective control over development priorities without having to resort to MZOs. FoNTRA agrees, though, that during this pandemic, projects related to long-term care homes and supportive housing are emergencies where MZOs may be appropriate.

FoNTRA, respectfully, asks the government to confine the use of MZOs to extraordinary situations arising from the pandemic and to swiftly discard the recent widespread and undemocratic “*enhanced*” approach of backroom deals without notice, without public consultation, and without the right of appeal.

Sincerely Yours,

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Mayor John Tory and Toronto City Council
Mr. Gregg Lintern, Chief Planner and Executive Director, City of Toronto
FoNTRA Members and Others

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of more than 30 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.