

City Comments on Provincial Bill 134 Proposed Definition of Affordable Residential Unit

Date: October 20, 2023

To: Planning and Housing Committee

From: Chief Planner & Executive Director, City Planning and Executive Director, Housing Secretariat and Controller, Office of the Controller

Wards: All

SUMMARY

On September 28, 2023 the Ontario government introduced [Bill 134, the Affordable Homes and Good Jobs Act, 2023](#) (Bill 134) and posted proposed amendments on the Ontario Regulatory Registry for a 30-day consultation, with comments due by October 28, 2023. As part of Bill 134, amendments to the Development Charges Act, 1997 (DCA) are proposed to update the definition of 'affordable residential unit' that were introduced through Bill 23 on November 28, 2022 but are not yet in effect. The proposed definitions would impact which units qualify for the statutory exemption from municipal development charges under the DCA, and the community benefits charge and parkland dedication requirements under the Planning Act.

This report outlines staff comments on the proposed definition of 'affordable residential unit' under the DCA. The proposed changes incorporate an income-based approach to the definition of affordable rental and ownership housing and modifies the market-based approach in the current definition. The proposed definition aligns with the current definition of 'affordable' in the [Provincial Policy Statement, 2020](#). Overall, staff are supportive of incorporating an income-based approach, as it aligns with the City's own efforts to improve housing affordability for residents, recognizing that market rents and ownership costs continue to increase at a much higher rate than incomes. To this effect, the City itself has in-force [Official Plan affordable definitions](#) which reflect the City's commitment to taking a rights-based approach to housing, as outlined in the [HousingTO 2020-2030 Action Plan](#). Further, the proposed amendments respond to the City's previous requests to the Government of Ontario as they relate to Bill 23, which include the request to add an income indicator into the definition.

Despite these positive aspects, Bill 134 will have negative impacts to municipalities if enacted without offsetting financial compensation, and there is limited information on the methodology for determining income-based affordable rents and prices to fully assess the impacts, with many of the details to be determined based on "the Minister of Municipal Affairs and Housing's opinion". To help mitigate these potential impacts, staff

are recommending that the Government of Ontario include a number of key principles in its approach for determining income-based affordable rents. These include: using transparent, reliable and publicly accessible data to determine the rents or prices that households can afford; providing incentives to encourage the development of affordable units and ensure they remain affordable long term; ensuring the City's financial interests are protected and that there are no additional financial burdens placed on the City as a result of the province's new definition; and ensuring that incentives given to developers are passed on to renters and homebuyers.

Second reading of Bill 134 took place on October 3 and 4th, 2023 and has been referred to the Standing Committee on Heritage, Infrastructure and Cultural Policy. The recommendations contained in this report address concerns and comments raised by City staff, including City Planning, the Housing Secretariat, and Finance and Treasury. Following Planning and Housing Committee's consideration of this report, staff will submit the recommendations from Committee to the Ontario's Regulatory Registry, as comments are due by October 28, 2023, and will submit any additional comments received at City Council's meeting on November 8, 2023 as supplementary information to the recommendations contained in this report.

RECOMMENDATIONS

The Chief Planner & Executive Director, City Planning, the Executive Director, Housing Secretariat, and the Controller recommend that:

1. City Council request the Government of Ontario to create a provincial grant or other incentive program that provides incentives to promote affordability directly to homeowners, renters or developers, instead of exemptions to development charges, community benefit charges and parkland dedication fees, which provides a different level of incentive in municipalities across the province depending on the level of fees imposed.
2. City Council express to the Government of Ontario its support in principle of the direction in Bill 134 to adopt an income-based approach for the definition of affordable housing which is consistent with the Provincial Policy Statement, provided that the Government:
 - a. rely on publicly accessible, reliable and objective data for determining the income-based affordable rent and affordable purchase price to develop the "Affordable Residential Units bulletin", such as the Canada Mortgage and Housing Corporation's Rental Market Survey and Census information published by Statistics Canada;
 - b. ensure provincial income-based affordable rents and purchase prices take into consideration the Canada Mortgage and Housing Corporation's National Occupancy Standard and different household incomes and sizes for different bedroom types;

- c. not publish the “Affordable Residential Units bulletin” until meaningful consultation with the City and stakeholders has taken place on data sources and the detailed methodology for determining average market rent, income-based affordable rent, income-based affordable purchase price and average purchase price;
- d. following further consultation with the City and stakeholders, the Province publish the “Affordable Residential Units bulletin” on an annual basis on a set date;
- e. enact legislation to ensure legal mechanisms exist to secure units created under this definition are registered on title, including securing the affordability term, depth of affordability, and tenure;
- f. ensure there is a process put in place to guarantee fair and equitable access to the affordable rental and ownership units and require the use of any existing municipal process;
- g. update Bill 23 amendments to further amend the Development Charges Act, 1997 to specify that affordable rental and ownership units that receive exemptions from municipal fees and charges must remain affordable for a minimum 50-year period, instead of 25 years as currently outlined;
- h. update Bill 23 amendments to further amend the Development Charges Act, 1997 and Planning Act, 1990 to provide that where an owner does not provide affordable units for the required duration or otherwise breaches its obligations, to authorize the City to add the amounts plus interest to the tax roll and to give such amounts priority lien status;
- i. update Bill 23 amendments to further amend the Development Charges Act, 1997 to eliminate municipal development charge exemptions for “attainable residential units”, and alternatively create a direct provincial grant or other Provincial incentive program for developers, renters or homeowners; and
- j. ensure that the proposed Provincial Planning Statement and any future provincial legislation, regulation and policy, includes an income-based definition of “affordable” consistent with the proposed definition under Bill 134.

3. City Council request the Government of Ontario to make the City whole respecting Bill 23 impacts, for all of the impacts that came into effect starting on November 28, 2022, that reimbursement include both operating impacts as well as the value of the fee reductions and exemptions provided through Bills 23 and 134, and that reimbursement commence in 2024, and continue annually thereafter.

4. City Council direct Executive Director, Housing Secretariat, in consultation with Chief Financial Officer and Treasurer, to report to the Planning and Housing Committee, with any recommended changes to the Open Door Affordable Rental Housing and Home Ownership Assistance programs following Bill 134 coming into effect, by Q1 2024.

FINANCIAL IMPACT

The proposed changes to the definition of an affordable rental and ownership unit would change which units might qualify for a provincially mandated exemption from development charges (DC), the community benefits charge (CBC) and parkland dedication fees.

Further information from the Province will be required to fully understand the scope and fiscal implications of these exemptions. The Ministry of Municipal Affairs and Housing (MMAH) is expected to provide additional details on inputs used to calculate affordable unit thresholds through an Affordable Residential Units Bulletin. Details should include how the Minister determines a household to be in the 60th percentile of renter/ownership households, what constitutes housing accommodation costs and key data sources. Housing accommodation costs will be impacted by inputs such as assumed down payment, amortization period and mortgage rates.

The City currently provides a DC deferral for affordable ownership units that are repaid when the unit is sold. Proposed changes introduced through Bill 23 to exempt affordable ownership units from DCs, community benefit charges and parkland dedication requirements will have financial implications that are unknown and subject to future take-up and require further consideration.

The City will incur costs related to administering the program, as well as the revenue loss from the exemptions. While the Province indicated in its letter to the City in November 2022 that it would “make the City whole” from the Bill 23 impacts, this is pending the completion of a provincial audit currently underway.

The level of Growth Funding Tools varies across the province, resulting in different levels of incentives depending on the DC, CBC and Parkland rates in individual municipalities. Instead of providing incentives through statutory exemptions to municipal charges, with the value to be reimbursed by the province, staff are of the view that alternatively, it would be more efficient and effective for the Province to create a provincial program that provides incentives directly to developers or homeowners through targeted grants or other incentive policies.

DECISION HISTORY

At its meeting of December 17, 2019, City Council adopted the HousingTO 2020-2030 Action Plan. One of the actions in the HousingTO Action Plan is to "review options for a revised definition of affordable housing based on 30 per cent of household gross income, consistent with the federal definition of affordable housing". The Action Plan also set a target of approving 40,000 affordable rental homes between 2020 and 2030. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH11.5>

At its meeting of November 9, 2021, City Council adopted Official Plan Amendment 558 – Updating the Definitions of Affordable Rental and Ownership Housing. The adopted definitions reinforce the City’s policy objectives for providing a full range of housing

across the City including affordable housing and implement City Council's direction as part of the HousingTO Action Plan to develop income-based definitions for affordable housing. Official Plan Amendment 558 (OPA 558) was appealed to the Ontario Land Tribunal. In a decision dated February 10, 2023, the Ontario Land Tribunal brought OPA into full force and effect for all lands in the City, except for seven site-specific appeals. <https://secure.toronto.ca/council/agenda-item.do?item=2021.PH28.4>

At its meeting of November 23, 2022, City Council adopted Item 2023.CC.1.2 Update on Bill 23, the More Homes Built Faster Act, 2022 and requested the Government of Ontario to amend the definition of “Affordable Housing” to follow the City of Toronto's "Official Plan Amendment 558 – Updating the Definitions of Affordable Rental and Ownership Housing”, as approved by City Council on November 9, 2021. <https://secure.toronto.ca/council/agenda-item.do?item=2023.CC1.2>

At its meeting of June 14, 2023, City Council adopted Item 2023.PH4.8 City Comments on the Proposed Provincial Planning Statement and requested the Government of Ontario to maintain the current Provincial Policy Statement definitions of “affordable” housing and 'low and moderate-income households” in the proposed new Provincial Planning Statement or provide explicit direction for municipalities to set their own definition. <https://secure.toronto.ca/council/agenda-item.do?item=2023.PH4.8>

COMMENTS

Background

Since 2019, the Provincial government has advanced several initiatives related to the supply of housing through Bill 108, More Homes, More Choice Act, 2019, Bill 138, Plan to Build Ontario Together Act, 2019, and Bill 23, More Homes, Built Faster Act that have impacted revenues that can be collected under municipal growth funding tools: development charges under the DCA and the community benefits charge (formerly Section 37 Density Bonusing) and parkland dedication under the Planning Act.

The changes that are in effect include:

- replacing Section 37 Density Bonusing provisions in the Planning Act with a capped Community Benefits Charge;
- reducing the Alternative Parkland dedication rate;
- removing housing services as an eligible development charge service;
- phasing of development charges rates over a 5-year period;
- development charge discounts for rental housing and exemptions for non-profit housing development;
- freezing development charges and parkland rates earlier and deferring collection of development charges for rental and institutional housing over 5 years from occupancy; and
- capping maximum interest rates.

There are elements of the legislative changes introduced through Bill 23 that are not yet in effect. This includes exemptions from development charges, the community benefits charge and parkland dedication fees for “affordable” and “attainable” residential units. These elements could further reduce the City’s ability to recover growth-related costs and there remains uncertainty on the provincial compensation. While the Province indicated in its letter to the City in November 2022 that it would “make the City whole”, this is pending the completion of a provincial audit that is currently underway.

Status of Bill 134

Bill 134, the Affordable Homes and Good Jobs Act, 2023 (“Bill 134”) was introduced on September 28, 2023. As of the writing of this report, Bill 134 passed second reading and was referred to Standing Committee on Heritage, Infrastructure and Cultural Policy. “Changes related to the Definition of an “Affordable Residential Unit” in the Development Charges Act, 1997 for the Purpose of Municipal Development-Related Charge Discounts and Exemptions” is posted on [Ontario's Regulatory Registry](#) (ERO #109-7669) and includes a commenting period that ends on October 28, 2023.

Bill 134 proposes to amend the definition of “affordable residential unit” for the purposes of the statutory exemptions from development charges, the community benefits charge and parkland dedication fees. The exemptions for affordable rental and ownership housing were first introduced by the Province through the More Homes Built Faster Act, 2022 (Bill 23), enacted on November 28, 2022, but are not yet in force. These affordable residential units would be exempt from development charges, the community benefits charge and parkland dedication fees provided they remain affordable for a minimum of 25 years.

Proposed Definition of Affordable Rental Housing

The proposed Bill 134 affordable rental unit definition would determine rent based on the lesser of the income-based affordable rent and 100% of average market rent. The income-based affordable rent will be set out by the Minister of Municipal Affairs and Housing in an “Affordable Residential Units bulletin” and determined based on incomes of renter households in the local municipality at the 60th percentile of the income distribution and spending no more than 30 percent of household income towards rent.

This represents a shift from the market-based definition introduced by Bill 23, which defined affordable rental units as having rents no greater than 80 percent of average market rent. While the market-based indicator has increased from 80% to 100% of average market rent under Bill 134, an income-based indicator has also been introduced to ensure rents would still be affordable to moderate income households.

The Bill 134 affordable rent definition aligns broadly with the City of Toronto's Official Plan definition of affordable rental housing definition, which sets affordable rents as the lower of 100% of average market rent by unit type and what is affordable to renter households at the lowest 60th percentile of gross annual incomes. The City's definition is based on the following set of income percentiles, with renter households spending no more than 30% of their income on shelter costs:

- One-person households at or below the 50th percentile income for studio units;
- One-person households at or below the 60th percentile income for one-bedroom units;
- Two-person households at or below the 60th percentile income for two-bedroom units;
- Three-person households at or below the 60th percentile income for three-bedroom units.

While the City's definition accounts for different affordable rents by unit type (i.e., number of bedrooms) based on set income percentiles and household sizes of renter households, the proposed Bill 134 definition does not provide any details on how affordable rents would be set for different unit types.

Proposed Definition of Affordable Ownership Housing

The Bill 134 affordable ownership unit definition also proposes a shift from the market-based definition introduced by Bill 23. Affordable ownership housing is proposed to be based on the lesser of 90% of average purchase price or the income-based affordable purchase price as set out by the Minister of Municipal Affairs and Housing in an "Affordable Residential Units bulletin". The income-based affordable purchase price would be determined based on a household in the 60th percentile in the local municipality spending no more than 30% of their gross annual income towards annual accommodation costs. Similar to the affordable rental definition, the market-based indicator has increased from 80% to 90% of average purchase prices. Bill 23 defined affordable ownership units as having prices no greater than 80 percent of average purchase prices.

In comparison, the City's Official Plan definition of affordable ownership housing recognizes that different income percentiles for low-and moderate-income households should be considered when determining affordable purchase prices for different bedroom types. The City's definition is based on the following set income percentiles spending no more than 30% of their income towards shelter costs:

- Households at or below the 30th percentile income for studio units;
- Households at or below the 40th percentile income for one-bedroom units;
- Households at or below the 50th percentile income for two-bedroom units; and
- Households at or below the 60th percentile income for three-bedroom units.

Income-Based Approach

The alignment of the affordable residential unit definition with the lesser of income-based rent and average market rent is a positive shift from the market-based definition previously introduced in Bill 23. The proposed income-based definition better reflects a human rights approach, ensuring that the price and rent for these units are more aligned with what low- and moderate-income households can truly afford.

The proposed definition is also better aligned with both federal and provincial policy. The Canada Mortgage and Housing Corporation (CMHC) affordability threshold sets affordability at no more than 30% of a household's before-tax income. Similarly, the

[Provincial Policy Statement, 2020](#) and [A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020](#) (Growth Plan) definitions include an income-based component by requiring purchase prices and rents to be less than 30 percent of the gross annual household income for low- and moderate-income households.

Staff support the updated definition as it includes consideration of local incomes and recommend this income-based approach be carried over into the proposed Provincial Planning Statement, which is intended to replace the current Provincial Policy Statement and the Growth Plan.

Affordable Residential Units Bulletin

The proposed legislation states that the income-based affordable rent and affordable purchase price will be based on an Affordable Residential Units bulletin published by the Minister of Municipal Affairs and Housing. The methodology, data sources and time frame as to when this bulletin will be published and updated are not specified, and, as a result, affordable rent and purchase price limits could be difficult for municipalities, the development industry and the public to understand and predict. In addition, Bill 134 states that the determination of household incomes at the 60th percentile, rent and purchase price are also based on "the opinion of the Minister". It is unclear if the Minister would have discretion in determination of these variables related to identification of affordable residential units. The City relies on information published annually through the CMHC's Rental Market Survey to determine average market rent for private apartments in the City of Toronto by unit type and relies on the most recent Census income data from Statistics Canada, adjusted annually based on changes to the consumer price index.

The definition also specifies income-based affordable rents and prices are for renter households and households in the local municipality. This is a change from the Provincial Policy Statement, 2020 definition where average market rent is associated with the regional market area. It is unclear if local municipalities are associated with lower tier and single tier municipalities.

As well, it is unclear which accommodation costs are included in the affordable rent and purchase price. The City's current affordable rent definition includes costs for utilities (i.e., heat, hydro, hot water and water), while the affordable ownership definition includes costs for property taxes, mortgage insurance and condominium fees.

Staff recommend the Province provide additional details on the Affordable Residential Units bulletin and consult with municipalities in the development of the bulletin.

Consideration of Unit Types

A key difference between the proposed definition and the City's income-based definition is the consideration of rents and purchase prices by unit (bedroom) type. It is unclear whether the provincial bulletin would differentiate rent or price and incomes by unit types. Toronto's income-based Official Plan definition factors in household size for different unit types. For example, affordable rents for studio and one-bedroom units are based on incomes of one-person renter households and two-bedroom units are based

on incomes of two-person renter households. As a result, a range of household incomes are considered as opposed to setting the income threshold at the 60th percentile of all household incomes. For example, Toronto's definition sets affordable rent for studio units based on one-person renter households at the 50th income percentile in order to differentiate the rent for one-bedroom units. If the Province does not differentiate affordable rent based on the size of the household and percentile of income, this may result in inequitable access to affordable housing for families in Toronto.

Additionally, Toronto's affordable ownership definition is based on household incomes at the 30th to 60th income percentile depending on unit type, as it was determined that single person households could not afford one-bedroom or studio affordable purchase prices based on the 60th income percentile. The proposed definitions should ensure that household sizes are used to determine rents and prices for specific unit types which align with CMHC's National Occupancy Standard.

Affordability Period

DCA legislation currently requires that affordable units remain affordable for a minimum of 25 years as set out in an agreement that can be registered on title to land to qualify for the statutory exemptions from development charges, the community benefits charge and parkland dedication fees. Municipalities are entitled to enforce the provisions of the agreement against the owner and all subsequent owners. The Province may establish standard forms of agreement that shall be used.

The City of Toronto has historically provided development charges exemptions for affordable units under the Open Door Affordable Rental Housing Program provided they remain affordable for 40 to 99 years. Staff recommend that the DCA be amended to extend the affordability period from 25 to a minimum of 50 years, to ensure any units benefitting from statutory incentives remain affordable over the long term.

Impact on the City's Affordable Housing Programs

While the Province has noted that Bill 134 will increase the supply of affordable housing across Ontario, more analysis and consultation is needed following the release of the Affordable Residential Units bulletin to better understand the impact on delivery of affordable housing in Toronto.

Currently, the City's affordable housing programs such as Open Door Affordable Rental Housing Program, Multi-Unit Residential Acquisition (MURA) Program, and Housing Now Initiative, use an eligibility requirement of maximum 100% average market rent. The Housing Secretariat will be undertaking a review of their affordable housing programs to understand the impacts of adopting the income-based definition of affordable housing.

Recommended Principles

An affordable housing definition is a foundational element in housing policy. A common definition that is used consistently in provincial policies and legislation helps to further housing goals for municipalities and the province. As the new definition is introduced for the purposes of DCA and relates to municipal development charges, the community

benefits charge and parkland dedication fee exemptions for affordable residential units, the following principles should be associated with the new affordable housing definition:

- An income-based approach that differentiates rents and prices by unit type should be included in the affordable definition.
- The definition should include a clear and transparent methodology, including an approach to updating income data between census years, which can be replicated by municipalities to ensure predictability for municipal budgeting.
- The definition should be based on reliable and objective data that is publicly accessible at no cost.
- The market area for determining average market rent and average purchase price should be clearly defined as it relates to local or single tier municipalities.
- There should be one definition of affordable housing that that is used consistently in provincial policies, legislation and regulation. The definition of affordable housing should be included in the Provincial Policy Statement and Growth Plan or in the new Provincial Planning Statement.
- An affordable residential unit benefitting from municipal development charge, community benefits charge and parkland dedication fee exemptions should be secured at affordable rents or prices for a minimum period of 50 years.
- Measures should be in place to ensure the owner is required to repay the exempted amounts, with interest, should the unit no longer qualify as an affordable unit during the required minimum affordability period, including provisions to ensure the collection of these amounts, plus interest, through the tax roll and assigning priority lien status thereto.
- Provincial reimbursement to the City on Bill 23 impacts should include the value of the exemptions as well as operating costs, such as costs to administer exemption programs over the longer term.

Current Definition of Attainable Housing

Bill 23 introduced a definition of 'attainable residential units', which is not yet in effect. Attainable units would also be exempt from development charges, community benefits charge and parkland dedication fees. An attainable unit is defined as a unit that meets the following criteria:

- The residential unit is not an affordable residential unit.
- The residential unit is not intended for use as a rented residential premises.
- The residential unit was developed as part of a prescribed development or class of developments.
- The residential unit is sold to a person who is dealing at arm's length with the seller.
- Such other criteria as may be prescribed.

While no provincial regulation has been released providing further details on the definition of attainable residential units, Bill 23 indicated these units would be ownership units targeting higher income households than affordable units.

Staff are concerned that the same level of incentives will be given to attainable (market) units as affordable units and that this will undermine the creation of affordable rental units. Staff recommend Bill 134 be amended to remove the exemptions in the DCA for attainable residential units to ensure financial incentives are focused on achieving affordable housing.

Conclusion

Bill 134 introduces welcome amendments to the Development Charges Act, 1997 to incorporate an income-based approach in the definition of affordable residential units. While staff are supportive of the proposed amendments that would link affordability to the incomes of low- and moderate-income households as opposed to market rents and prices, there is concern about the financial impact to the City and further details on the methodology and data sources are required fully assess the implication and to ensure appropriate transparency and predictability.

The City welcomes further consultation with the Province and other municipal partners to establish and refine the Minister's approach for determining income-based affordable rents and prices. As well, further consultation with the Province is welcome on Bill 134's alignment with existing municipal programs to incentivize affordable housing development.

City staff continue to be concerned that the exemptions for attainable units are equal to the affordable housing exemptions, which will undermine the creation of affordable units and that the 25-year affordability term will not address affordability concerns over the long term. As the proposed definitions would relate to the statutory exemptions from development charges, the community benefits charge and parkland dedication fees, the Government of Ontario must make the City whole from the Bill 23 impacts to ensure the services needed to facilitate responsible growth continue to be delivered or instead create a direct provincial grant or other incentive program to developers, renter or homeowners.

CONTACT

Valesa Faria, Director, Housing Policy and Strategy, Housing Secretariat, 416-392-0602, Valesa.Faria@toronto.ca

Kerri Voumvakis, Director, Strategic Initiatives, Policy and Analysis, City Planning, 416-392-8148, Kerri.Voumvakis@toronto.ca

Shirley Siu, Senior Financial Analyst, Revenue Services, 416-397-4205, Shirley.Siu@Toronto.ca

Christine Ono, Project Manager, Strategic Initiatives, Policy and Analysis, City Planning,
416-392-1255, Christine.Ono@toronto.ca

SIGNATURE

Abigail Bond
Executive Director
Housing Secretariat

Andrew Flynn
Controller
Office of the Controller

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division