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October 27, 2023

***Sent VIA ERO Posting***

**RE: ERO Posting 019-7669, Bill 134, *Affordable Homes and Good Jobs Act, 2023***

The intent of this letter is to provide the City of Hamilton's comments on ERO Posting 019-7669, Bill 134, *Affordable Homes and Good Jobs Act, 2023*.

City staff will be taking a report to Planning Committee on November 14, 2023 and to Council on November 22, 2023 outlining our submission. Council's position will be forwarded to the Province once it has been ratified.

**Overview of Changes**

The proposed changes to the definition of an affordable residential unit in the *Development Charges Act* suggest there may be more of a focus on the ability for households to pay instead of only looking at the market. The proposed definition considers the lesser of the average market rent / 90 percent of the average purchase price or the income-based affordable rent / purchase price (in the 60<sup>th</sup> percentile of the applicable gross annual household income and rent equal to 30 percent of the household income) as an "affordable residential unit".

Currently, an affordable residential unit is 80 percent of average market rent or average market purchase price. The proposed changes raise the average purchase price threshold from 80 percent to 90 percent and the average market rent threshold from 80 percent to 100 percent. This suggests the intent of the proposed changes may be to increase the number of units considered as affordable residential units. Developments which meet the new definitions of affordable residential unit will have exemptions from development charges therefore this change will increase the cost to municipal tax and rate payors.

**Definition of Affordable Residential Unit – Rental Dwellings**

The City of Hamilton has the following concerns and/or requests for clarification respecting the proposed definition of affordable residential unit for rental dwellings:

- Average market rents do not necessarily equate to affordable rents.
- Using the Provincial Affordable House Prices and Rents Tables, 2022, it is apparent that 100 percent of average market rent is less than 30 percent of the 60<sup>th</sup> percentile's gross income. However, the proposed change in definition is a

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significant increase in rent from the previous definition requiring 80 percent of average market rent. Specifically, the increase to rents ranges from \$183 to nearly \$300 per month depending on the unit size based on 2022 data from MMAH, as shown in Table 1 below (difference between 80% and 100%). The City of Hamilton does not support this amendment which increases the maximum rent that can be charged to qualify for municipal development-related charges.

Table 1 - Average Market Rent

Unit Type	100% AMR (new definition)	80% AMR (current definition)	Difference between 80 and 100%
Studio	\$919	\$735.20	\$183.20
1 Bedroom	\$1,142	\$913.60	\$228.40
2 Bedroom	\$1,334	\$1067.20	\$266.8
3 Bedroom	\$1,486	\$1,188.8	\$297.20

- The average market rent for a two-bedroom unit in the City of Hamilton is \$1,334 which requires an annual household income of \$53,400 to be considered "affordable" (30% of income). This does not align with the 60th percentile income identified in Table 2. Based on 2021 census data, in the City of Hamilton there are 58,136 households with an annual income below this threshold which is equal to approximately 26 percent of households in Hamilton. The PPS Affordable House Prices and Rents Tables, 2022, indicates an income of \$53,400 is between the 40th and 50th percentile.

Table 2 - Income Based Rent

Percentile	Income	Rent as 30% of Income
60%	\$69,800	\$1,750

- The City reiterates its comments provided in response to Bill 23 through ERO 019-6172 regarding the Minister's Bulletin respecting how the average market rent /purchase price metric will be localized (i.e. by municipality, larger portions of Ontario, subgroups within a municipality).
- Using a single numerical data point set at the 60th percentile of gross renter incomes to determine affordability would result in many smaller units being considered affordable when they are not truly affordable in comparison with market rents for similar sized units, or the average incomes of renters occupying smaller units.
- Having one market rate metric vs separating based on unit type could lead to an unintended amount of units being exempted, example, all one bedroom units may be required to be exempted in one area of the City if the average market rent is not differentiated between unit types and a citywide measure is used.

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- A more equitable measure of income-based affordability would be to establish a gradation of affordability levels scaled relative to unit sizes, such as:
  - For studio units, a rent equal to 30 percent of an income in the 30th percentile of gross annual renter income;
  - For one bedroom units, a rent equal to 30 percent of an income in the 40th percentile of gross annual renter incomes;
  - For two bedroom units, a rent equal to 30 percent of an income in the 50th percentile of gross annual renter incomes; and,
  - For three bedroom or larger units, a rent equal to 30 percent of an income in the 60th percentile of gross annual renter incomes
- Clarification is requested on why clause (a) respecting the 60th percentile of gross annual income under the Residential Units Bulletin is “in the Minister’s opinion”.
- Clarification is also requested on whether ‘rental housing’ includes condominium dwellings that are rented on the secondary market. If condominium dwellings are included, how would unknown variables such as condominium fees be factored into the accommodation costs so that they are equal to 30% of income for the 60th percentile. Will there be further regulations governing condominium fees to ensure the accommodation costs remain equal to 30% of the income for the 60th percentile?
- There is no timeframe associated with the definitions, which could indicate that affordability will be indefinite. Clarification from the Province on the affordability timeframe is needed.
- The data for the household income used to determine clause (a) must be published regularly to allow for easy access and calculations by the local municipality. The City is supportive that this metric is proposed to be based on “renter households” instead of all households (ownership and rental) for rental housing.

**Definition of Affordable Residential Unit – Ownership Dwellings**

The City of Hamilton has the following comments respecting the proposed definition of affordable residential unit for ownership dwellings:

- The City of Hamilton continues to question whether exemption for affordable ownership units will have an impact on the purchase price and therefore the ability of such to achieve the Province’s goal of increasing housing affordability.
- Using a single numerical data point set at the 60th percentile of gross annual incomes to determine affordability would result in many smaller units being considered affordable when they are not truly affordable in comparison with

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market prices for similar sized units, or the average incomes of owners occupying smaller units.

- A more equitable measure of income-based affordability would be to establish a gradation of affordability levels scaled relative to unit sizes, such as:
  - For studio units, a purchase price equal to 30 percent of an income in the 30th percentile of gross annual incomes;
  - For one bedroom units, a purchase price equal to 30 percent of an income in the 40th percentile of gross annual incomes;
  - For two bedroom units, a purchase price equal to 30 percent of an income in the 50th percentile of gross annual incomes; and,
  - For three bedroom or larger units, a purchase price equal to 30 percent of an income in the 60th percentile of gross annual incomes.
- Similarly, if an affordability level set at 90 percent of the average purchase price for a residential unit is being used, further clarification should be provided on what types of units are part of the average purchase price calculation.
- The average purchase price should not be based on a single aggregate average of all units, as this will again create a disconnect between specific unit sizes and their average price levels. Separate average market purchase prices should be considered for each unit type. This includes:
  - Studio units;
  - One bedroom units;
  - Two bedroom units; and,
  - Units with three bedrooms or more.
- The City has completed its own calculations based on the proposed definition. The average purchase price of a detached dwelling was \$831,540 in June 2023, representing an increase of 33 percent over the last three years. Based on a down payment of 20 percent for a household with a purchase price of 90 percent of the average purchase price (\$748,386), the resulting mortgage would be approximately \$4,000 per month which requires an annual income of \$160,000 to be affordable (30% of income). Based on 2021 Census data, there are only 46,500 households in Hamilton with incomes at this level meaning only 21 percent of households could afford a single detached dwelling which meets the criteria for an affordable residential unit defined by (ii) (based on average purchase price). Based on the PPS Affordable House Prices and Rents Tables, 2022, an income of \$160,000 is over the 90th percentile. This analysis reinforces the City's comment that this approach would tend to favour smaller condominium units, which would more likely meet the affordability threshold, in contrast to larger affordable family sized units which are needed to meet the City's housing needs.

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### Implementation of Exemption

The City has the following comments related to the implementation of exemptions on municipal development-related charges.

- The City seeks clarification on the resell requirements for homes that have benefited from a reduction in price resulting from DC exemptions and if the savings will be passed onto subsequent homeowners or if it will only benefit the initial homeowner. Will ongoing monitoring of properties that received a DC exemption be necessary?
- The City reiterates the comments in response to Bill 23 through ERO 019-6172 identifying concerns and challenges with the implementation of this exemption particularly covering the cost of administration. While un-proclaimed, changes to the DC Act made by Bill 23 suggests that the Ministry will provide standard forms of agreement that municipalities can use to enter into agreements with developers who would qualify for the DC exemption. The status of these standard forms of agreement is unknown.
- The exemption applies based on when DCs are due. For rental developments, this is the date the building is approved for occupancy (Sec 26.1 of the DC Act) and for ownership developments this is the date of the building permit issuance (Sec 26 (1) of the DC Act). The first challenge will be obtaining a copy of all rental agreements and purchase and sale agreements which may not be available at this time. Consideration should be given to the additional staff hours needed to prepare and execute agreements, along with the ongoing tracking/monitoring of projects.
- It is noted that average market rate threshold has been raised from 80% to 100%. This change will increase the cost to municipal tax and rate payors. To date, despite general statements from the Province that municipalities should not suffer financial loss as a result of Bill 23, no Provincial funding program has been announced to offset the costs of the DC exemptions. Without such a program, the cost of these and all other statutory exemptions in the DC Act will fall to tax and rate payors who are all dealing with the cost of living crisis. The City notes that while the recent Building Faster Fund program does create a new funding opportunity, it is not expected to offset the DC exemption costs as that program has a limited timeframe, is conditional upon certain targets being met and is not directly tied to municipal revenue lost through a DC exemption.
- The City is concerned about the ability to effectively implement the exemption and that the ongoing administration to ensure compliance may be costly and difficult given the absence of tools/measures in the legislation. The City requests that the Province indicate what specific steps it is taking to ensure compliance with the affordability requirements of this new incentive.

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- The City has previously advised that without an agreement and ongoing monitoring of the agreements/projects receiving DC exemptions, there is no reassurance that the units will remain affordable. The Province must be prudent in the drafting of the template agreement to ensure that the cost of the exempted DCs falls onto the intended accountable party should the unit no longer be considered affordable. The agreement should also consider whether purchasers and sellers are permitted to have separate agreements for upgrades selected to the house vs the base unit price to ensure that purchase and sale agreements are not being structured to abuse the system.
- The following information is requested by the City in order to provide full comment:
  - A draft of the agreement which municipalities shall enter into (Section 4.1 (8), (9) & (12)); and,
  - A draft of the Provincial Bulletin format (Section 4.1(5)).
- The proposed definitions, instead of a more equitable scaled approach, would result in a larger number of units being considered "Affordable" as per the *Development Charges Act*, which may result in a greater amount of legislated Development Charge exemptions and a greater financial impact for the City of Hamilton. It may also have the effect of encouraging additional smaller units that are not truly affordable.

Should you have questions or comments, please contact me at  
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Regards,



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