

October 22, 2024

Ministry of Municipal Affairs and Housing
777 Bay Street
Toronto, ON M7A 2J3

**Re: Proposed Amendment to Ontario Regulation 299/19 ADDITIONAL
RESIDENTIAL UNITS, made under the Planning Act**

To Whom it May Concern,

On behalf of the City of Hamilton, I am pleased to provide this letter as the submission regarding proposed amendments to Ontario Regulation 299/19 Additional Residential Units.

The City supports the general intent of the Province to streamline processes to assist in increasing the supply of housing and meeting the Province's goal of building 1.5 million homes. The City has demonstrated its commitment to meeting these targets through the Housing Pledge signed in March 2023, the City meeting 2023 new building targets, and implementing policy and regulatory changes to provide more flexibility for infill and intensification options. Most recently, in April 2024, Council approved the introduction of as-of-right triplex and fourplex dwelling permissions to Hamilton's Low Density Residential Zones in the City-wide Zoning By-law.

The Provincial Government's important role in planning has been to establish and implement a policy led planning framework with a deliberate focus on balancing various competing objectives when making planning decisions. Legislative changes of late, and now the Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units represent a significant departure from this policy led planning framework.

The City of Hamilton has been a leader in the advancement of Additional Residential Unit permissions and is committed to this form of development in achieving the City's housing goals. While staff are in support of the promotion of Additional Residential Units as an important means to meeting the City's Housing Pledge, mandating specific performance standards may interfere with the City's ability to maintain a supportive regulatory framework for Additional Residential Units.

The City previously commented on the proposal to grant the Minister with the authority to make regulations establishing requirements and standards for Additional Residential Units through the City's submission on Bill 185, Cutting Red Tape to Build More Homes Act, 2024. The City expressed opposition stating that mandating specific development regulations cannot consider appropriate integration into existing communities.

Expanding on these earlier comments, the City continues to oppose the introduction of province-wide performance standards for Additional Residential Units that are unable to address context specific conditions. A one size fits all approach to all municipalities in Ontario does not represent good planning. In Hamilton, the set of performance standards regulating Additional Residential Units and Detached Additional Residential units were introduced after comprehensive evaluation and consultation. Through the ongoing monitoring of minor variance and building permit activity, the regulations have been periodically updated to improve implementation and respond to local conditions. It is unclear how the Province will monitor the performance standards to ensure the regulations are having the intended effect or respond to any individual municipal matters that are raised through on the ground monitoring of the regulations.

The City recommends that the Province's authority be directed to further supporting a municipalities' implementation of Additional Dwelling Unit policies and regulations by preparing guidelines for Additional Dwelling Units, stock building plans that may reduce approval timelines, and financial measures to assist their development. Regulations to implement conditional zoning would also provide additional resources for municipalities to incorporate greater flexibility for all residential land uses.

Attached to this letter is the City's responses to each of the proposed performance standards contained in Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units. Following the submission of comments on the Environmental Registry of Ontario posting, City staff will be taking a report to Planning Committee on November 19, 2024, and to Council on November 27, 2024, outlining our submission. Council's position will be forwarded to the province once it has been ratified.

Thank you for the opportunity to comment. City staff would be pleased to meet with you to discuss these comments in greater detail.

Sincerely,



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City of Hamilton

City of Hamilton Comments on Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units

The City of Hamilton does not support province-wide performance standards for Additional Residential Units (hereafter called Additional Dwelling Units), as they are unable to address context specific conditions. At the City of Hamilton, staff developed permissions and performance standards for Additional Dwelling Units and Detached Additional Dwelling Units after extensive evaluation and consultation and have subsequently refined the regulations through ongoing monitoring. The City's regulatory framework for Additional Dwelling Units and Detached Additional Dwelling Units supports their compatible integration in the City's urban neighbourhoods and in the rural area and rural settlement areas.

Even in a geographic area the size of Hamilton, it can be a challenge to apply a standard set of regulations given differences in context such as lot size variability and differences in built form patterns due to the age of development. The concept of a one size fits all approach to a geographic area as vast and varied as Ontario does not in the opinion of staff, represent good planning.

The City of Hamilton provides the following responses to each proposed performance standard for urban residential land:

1. Angular Plane

Proposal	Override all angular plane requirements in zoning by-laws for buildings with Additional Residential Units.
Rationale	Removing this requirement for buildings with Additional Residential Units would make it easier to build structures with more livable space, including ancillary buildings and laneway suites on existing lots.

City of Hamilton Response

Detached Additional Dwelling Units are not subject to an angular plane requirement in Hamilton's City-wide Zoning By-law No. 05-200. The maximum height permission of 6.0 metres is intended to address scale and massing. The regulation for maximum height, combined with setback requirements and a maximum permitted Gross Floor Area for the Detached Additional Dwelling Unit, are in place to collectively regulate the size and location of a Detached Additional Dwelling Unit vis-à-vis the principal dwelling and dwellings on adjoining properties. These regulations reflect Hamilton's approach to integrating Additional Dwelling Units into neighbourhoods.

While the performance standard being proposed does not impact the City's existing regulatory framework for Additional Dwelling Units, the City's approach to scale and massing was developed specifically for the City-wide Zoning By-law based on a

comprehensive evaluation of the City's neighbourhoods, lot fabric, and other local conditions and considerations, as well as the established regulatory framework of the City's Zoning By-law.

2. Lot Coverage

Proposal	Allow at least 45% lot coverage for all buildings and structures on parcels with Additional Residential Units.
Rationale	Setting out a provincial standard of 45% lot coverage for buildings and structures on a lot that includes at least one ARU would make it easier to build ancillary buildings like garden and laneway suites on existing lots, as well as rear additions to the primary building. Zoning could still regulate building location through setbacks.

City of Hamilton Response

Further clarification is required to confirm the intent of this performance standard. Does the Province intend to establish a set minimum or maximum lot coverage percentage of 45%? The proposal wording is vague in stating "Allow at least 45% lot coverage...".

Hamilton's city-wide Zoning By-law does not regulate lot coverage except in a small number of cases. Instead, setback requirements and maximum height establish the buildable envelope and are implemented alongside additional requirements like minimum landscaped area. The coverage of buildings on a lot varies, depending on the size of a lot, with the coverage of buildings (lot coverage) increasing as lot area decreases. The impact of a lot coverage on the potential development of a lot can vary. As well, differences in built form characteristics across neighbourhoods due to age of development can result in variability in 'typical' lot coverage percentages across the city. Finally, a set lot coverage standard cannot respond to individual municipal requirements around maintaining a certain amount of pervious surface on a lot to manage impacts on stormwater infrastructure. This is one of the many considerations that are specific to a municipality.

For these reasons, establishing a province-wide standard lot coverage is not considered good planning or a reasonable approach to supporting Additional Dwelling Units across the province. While this performance standard does not impact the City's existing regulatory framework, as the comments demonstrate, the City's approach was developed specifically for the City-wide Zoning By-law based on local conditions and considerations.

3. Floor Space Index (FSI)

Proposal	Override all Floor Space Index requirements in zoning by-laws that apply to parcels with Additional Residential Units.
Rationale	<p>FSI is the gross floor areas of all buildings on a lot, divided by the lot area.</p> <p>Removing this requirement would make it easier to build structures with more livable space, including ancillary buildings and laneway suites on existing lots.</p>

City of Hamilton Response

Floor space index represents the ratio of a building's total floor area to the size of the lot on which the building is located. It can be employed in a zoning by-law to regulate the intensity of the use of lands and the scale of the development permitted. A Floor Space Index could result in a Detached Additional Dwelling Unit being larger than the principal dwelling. Hamilton's city-wide Zoning By-law does not employ floor space index to regulate scale of development (or the similar floor area ratio). Hamilton's approach is to employ a series of tested performance standards to regulate the scale of development. Setback requirements, a maximum height permission, a maximum Gross Floor Area permission for a Detached Additional Dwelling Unit, and a combined maximum lot coverage for all accessory buildings and the Detached Additional Dwelling Unit, are in place to manage scale and the intensity of use.

While this performance standard being proposed does not impact the City's existing regulatory framework for Additional Dwelling Units, the City's approach is an example of zoning regulations that were developed specifically for the City-wide Zoning By-law based on the comprehensive evaluation of the City's neighbourhoods, lot fabric, and other local conditions and considerations, as well as the established regulatory framework of the City's Zoning By-law.

4. Minimum Lot Size

Proposal	Override all minimum lot size/lot area requirements that are specific to parcels with Additional Residential Units.
Rationale	Removing minimum lot size requirements for Additional Residential Units would ensure that the same lot size standards that apply to a house also apply to a house with an Additional Residential Units.

City of Hamilton Response

In the urban area of Hamilton, there are no minimum lot size requirements for Additional Dwelling Units or Detached Additional Dwelling Units. The suite of zoning regulations for Detached Additional Dwellings Units dictates whether a property is of sufficient size to accommodate a Detached Additional Dwelling Unit in the rear or side yard of a property. Internal Additional Dwelling Units are subject to the zoning provisions of the principal dwelling.

In the rural area of Hamilton, both Additional Dwelling Units and Detached Additional Dwelling Units are subject to minimum lot size requirements to ensure sufficient area for private servicing. The requirements are:

- Additional Dwelling Units in Agriculture (A1), Rural (A2) and Settlement Residential (S1) Zones: greater than 0.6 hectares.
- Additional Dwelling Units in Agriculture (A1), Rural (A2) and Settlement Residential (S1) Zones: greater than or equal to 1.5 hectares.

According to the proposal details provided on the Environmental Registry of Ontario, the proposed amendments to Ontario Regulation 299/19 will not apply to rural areas or settlement areas without full municipal servicing. None of Hamilton's Rural Settlement Areas are fully serviced. Accordingly, it is staff's understanding that the performance standards proposed will not apply to the Rural Settlement Areas or the rural area of Hamilton where minimum lot size requirements are in place. Staff request that the province confirm if this is correct.

While it appears this performance standard does not impact the City's existing regulatory framework, the City's approach to minimum lot size was specifically tailored to local conditions.

5. Building Distance Separation

Proposal	Restrict building distance separation requirements associated with any building containing Additional Residential Unit to a maximum of 4 metres.
Rationale	<p>Building separation distances set out the minimum distance between a primary building and any ancillary structure.</p> <p>Reducing the minimum building separation distance to a maximum of 4 metres would make it easier to build laneway suites on existing lots.</p>

City of Hamilton Response

The City-wide Zoning By-law requires a minimum separation distance of 7.5 metres between the principal dwelling and the Detached Additional Dwelling Unit when located in the rear yard, and a minimum building separation distance of 4.0 metres when the Detached Additional Dwelling Unit is in the interior side yard. These regulations were established when Additional Dwelling Unit permissions were introduced in 2021. The building separation distances were implemented for several reasons:

- To preserve outdoor amenity space in the rear or side yard of a property containing a Detached Additional Dwelling Unit;
- To contribute to a clear delineation between the primary use: the principal dwelling, and the secondary use: the Detached Additional Dwelling Unit; and,
- To maintain landscaped area on the lot for drainage purposes and space for tree protection and/or tree planting.

Since being introduced, Additional Dwelling Unit and Detached Additional Dwelling Unit regulations have been closely monitored through minor variance and building permit activity. As a result of ongoing monitoring, the regulations have been updated twice, with future updates quite possible to improve implementation and respond to local conditions.

The most recent changes to low density residential permissions in the City's neighbourhoods saw the introduction of triplex and fourplex dwellings as permitted uses. With the expansion of permitted uses and expected changes to the form and function of development on a lot, an evaluation of the existing building separation requirements could be undertaken. This would involve an evaluation of the updated zoning framework, regulations, and local conditions to inform a recommendation. Any recommendations would be a made in Hamilton response based on local conditions and City priorities. Without the benefit of that evaluation, staff cannot support the province's proposed provision.

Additional Comments – Cultural Heritage

Staff would like to highlight that the proposed amendments could impact how changes are regulated in existing and new Heritage Conservation Districts designated under the *Ontario Heritage Act*, as well as considerations for compatibility in Hamilton's identified Established Historical Neighbourhoods. It is not clear how potential conflicts between existing Heritage District Plan guidelines and the proposed performance standards would be addressed. Section 41.2 (2) of the *Ontario Heritage Act* states that in the event of a conflict between a heritage conservation district plan and a municipal by-law that affects the designated district, the heritage conservation district plan prevails to the extent of the conflict. Clarity is required as it pertains to the proposed performance standards introduced through the proposed amendment to Ontario Regulation 299/19.

Implementation

The City of Hamilton requests further information on how the province will support implementation. Will a transition regulation be developed as part of the legislation? More importantly, how does the province intend to monitor the regulations once in effect? Zoning by-laws are living documents and as such, ongoing monitoring is integral when implementing a new set of regulations, as has been demonstrated in the City's comments.

In closing, while the City of Hamilton supports the province's aim to remove barriers to the creation of Additional Dwelling Units, providing the Minister with regulation-making authority and creating specific performance standards to support the building of more Additional Dwelling Units has the potential to create opposition in the community due to incompatible performance standards. Requiring province-wide, as-of-right permissions for up to three units on a lot where residential uses are permitted has had a significant positive impact on the uptake of Additional Dwelling Units. The City recommends that the province support a municipalities' implementation of Additional Dwelling Unit policies and regulations by preparing guidelines for Additional Dwelling Units, stock building plans that may reduce approval timelines, and financial measures to assist their development. Regulations to implement conditional zoning would also provide additional resources for municipalities to incorporate greater flexibility for all residential land uses.