

Bill 134, Affordable Homes and Good Jobs Act, 2023

Changes 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.

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Summary of Recommendations

1. Revise the proposed income-based definition of affordability to ensure that affordable housing is affordable to low income households.
2. Do not implement the proposed increase to rents under the market-based definition of affordability.
3. Use the 30%-of-income standard for calculating affordable rents for households.

About CCHR

CCHR is Canada's leading registered charitable organization working to advance the right to adequate housing. For 35 years, we have worked tirelessly at the intersection of human rights and housing, providing free services to renters facing evictions and human rights violations to remain housed, providing education and training about housing rights across Canada, and advancing rights-based housing policy through research, policy advocacy, and law reform.

Introduction

Ontario is in the midst of an affordable housing crisis. Households across the province are struggling to find an affordable place to live, and are struggling to pay for their rent and other basic necessities. To incentivize construction of affordable housing, in 2022 the Ontario government introduced mandatory development charge exemptions for developers building "affordable" housing. Bill 134 would change the definition of "affordable" rental housing incentivized by development charge exemptions.

The *Development Charges Act* currently defines "affordable" rental housing as housing with rent no higher than:

- 80% of average market rent.

Bill 134 would redefine "affordable" rental housing as housing with rent no higher than the lower of:

- 100% of average market rent.
- Rent affordable to households at the 60th percentile of gross annual incomes for renter households in each municipality (defined as 30% of those households' income).

"Affordable" housing under the current definition is not affordable to most Ontarians in need of adequate, affordable housing. CCHR is pleased that the government is revisiting this definition. We support moving from market-based to income-based definitions of affordability.

However, the housing that would be defined as “affordable” under Bill 134 would also not be affordable to most Ontarians in need of adequate, affordable housing. In fact, the proposed definition would likely lead to higher rents for “affordable” housing.

Consequently, despite its positive aspects, Bill 134 would overall represent a step backwards, making “affordable” housing under the *Development Charges Act* even less affordable than it already is.

Measuring the need for affordable rental housing

The accepted measure of whether a household lacks affordable housing is called “core housing need.” A household is in core housing need when living in an unsuitable, inadequate, or unaffordable dwelling, and when the household cannot afford alternative housing in the community. Both Statistics Canada and the Canadian Mortgage and Housing Corporation (CMHC) use core housing need as the metric for measuring the affordable housing deficit.

Policies aimed at incentivizing the construction of affordable housing should be targeted at meeting the needs of Ontarians in core housing need, since, by definition, these are the people in need of adequate, affordable housing. The vast majority are renters. Alarming, over 30% of Ontario renter households are in core housing need.¹ It is therefore critical that the government prioritize the creation housing options that will be affordable to these households.

The Housing Needs Assessment Tool (HNAT) provides detailed data on the characteristics of households in core housing need, current to 2021.² The government should avail itself of this data to inform the development of evidence-based programs and policies that will meet Ontarians’ real housing needs.

The HNAT categorizes households as “very low income,” “low income,” “moderate income,” “median income,” and “high income.” A large majority of Ontario households in core housing need, 424,660 households, are in the low income category. An additional 71,580 very low income households are in core housing need. Overall, 76% of households in core housing need have low or very low incomes. Only 24% of households in core housing need have moderate, median, or high incomes, with the majority of these of course being in the moderate income category.³

The HNAT data clearly demonstrates that, to benefit most Ontario households in core housing need, “affordable” housing must be affordable to low or very low income households.

Unfortunately, under both Ontario’s current definition and the definition proposed in Bill 134, “affordable” housing is only affordable to moderate, median, and high income households. It is not affordable to the majority of households that need it.

Below, we explain why the current and proposed definitions do not benefit low and very low income households, and offer evidence-based recommendations.

“Affordable” rental housing under the current definition

The current *Development Charges Act* defines a rental unit as “affordable” if the rent is no more than 80% of the average market rent. Market-based definitions of affordability are widely recognized as flawed, because they do not reflect what households can actually afford. A household’s spending power is based on its income, not on what is available on the market. The Ontario government has an obligation to ensure that everyone in the province can access adequate and affordable housing that meets their needs. Ensuring that what is considered affordable housing reflects the economic realities of households is a crucial way this government can make meaningful progress towards preventing homelessness and ensuring that everyone has a secure home.

Housing defined as “affordable” under the current definition is only affordable to moderate income households.⁴ It is not affordable to low or very low income households, which include 76% of the households in core housing need. We are pleased that the government is revisiting this definition.

“Affordable” rental housing under the proposed definition

Bill 134 would change the definition of “affordable” rental housing in the *Development Charges Act* as follows:

- Increasing the market-based definition of “affordable” rent from 80% to 100% of average market rent.
- Adding a second, income-based definition of “affordable” rent, defined as rent affordable to households in the 60th percentile of gross annual incomes for renter households in each municipality.
- Setting “affordable” rents using the market-based or income-based definition, whichever is lower.

The proposed definition of “affordable” housing would still only be affordable to moderate income households. We urge the government to reconsider which households are the beneficiaries of affordable housing incentivized by development charge exemptions, for the following three reasons.

The proposed definition of “affordable” rental housing relies on data that is not publicly available.

There is no publicly available data on renter household income percentiles.⁵ Consequently, it is not possible to determine which households would actually be able to afford the “affordable” housing defined by Bill 134 in its current form.

The government must promote the production of housing that is affordable to the households who, based on the evidence, actually need the most affordable housing – namely, low and very low income households. Without publicly available data regarding the income levels that fall within the 60th renter income percentile, it is not possible to fully assess how many Ontarians in need will benefit from this new affordability definition, and the choice of the 60th percentile appears arbitrary.

Bill 134 in its current form may also prove difficult to implement, as it does not define what data sources the government proposes that the Minister use to calculate household incomes. If the Minister makes use of data that is not publicly available, the process may lack transparency and accountability.

“Affordable” rental housing under Bill 134 would not be affordable to most Ontarians in core housing need.

In the absence of relevant data, we can only estimate the impact of the affordability definition proposed in Bill 134. Based on the limited data that is available, housing incentivized under the proposed definition would only be affordable to households categorized as “moderate income” by the HNAT.⁶ As discussed above, this income category does not include most Ontario households in core housing need. Rather, 76% of households in core housing need have “low” or “very low” incomes. None of those households would benefit from the “affordable” housing incentivized by Bill 134 in its current form.

In its current form, Bill 134 would likely make “affordable” rental housing even less affordable than it currently is.

We are concerned that as proposed, Bill 134 in fact risks increasing the rents of housing defined as “affordable.” In at least some municipalities, housing affordable to households at the 60th income percentile of renter households would be even less affordable than “affordable” housing under the current definition of 80% of average market rent.⁷

This is problematic because Bill 134 would also abolish the current 80% of average market rent definition. Instead, “affordable” housing would only be capped at 100% of average market rent, well beyond what is affordable for Ontario households in core housing need.⁸

“Affordable” housing under the current definition is already unaffordable to most Ontarians who need it. By abolishing that definition and replacing it with an even less affordable definition, Bill 134 would represent an overall step backward in housing affordability.

The proposed income-based standard of affordability

Although the income level of households for whom housing will be affordable needs to be reconsidered, we support the government’s move to define rental housing as being “affordable” to a household if the rent is equal to or less than 30% of that household’s before-tax income. This standard is commonly used throughout Canada, and is considered a best practice by many

experts. It is the standard used by Statistics Canada and the Canadian Mortgage and Housing Corporation. It is also the standard used by the HNAT.

The 30% of income standard is not a perfect measure of affordability. It does not account for variations in household expenses, and in particular, may not be appropriate for measuring affordability for very low income households (which need to spend more than 70% of their income on non-housing necessities) or for high income households (which can afford to spend more than 30% of their income on housing). However, for housing targeted at low and moderate income households, the 30% of income standard is a reasonable measure of affordability.

More and more Canadian jurisdictions are moving from market-based to income-based measures of affordability, and we commend the government's proposal to do so in this Bill.

Recommendations

1. Revise the proposed income-based definition of affordability to ensure that affordable housing is affordable to low income households.

Affordable rental housing should not be targeted at households in the 60th percentile of renter incomes. Instead, the Minister should be guided by the evidence, to ensure that development charge exemptions incentivize the construction of housing that is affordable to the Ontarians that need it.

The Minister should select target household income levels for each municipality based on publicly available data, such as Statistics Canada reports, CMHC reports, and the HNAT. The Minister should target household income levels which, based on the data, include significant numbers of households in core housing need in each municipality.

In particular, the Minister should ensure that target household income levels fall within the HNAT's "low income" or "very low income" categories, since 76% of Ontario households in core housing need are in those two categories.

The proposed s.4.1(5)(a) of the *Development Charges Act* should be amended to adopt this approach.

2. Do not implement the proposal to increase rents under the market-based definition of affordability.

The government should ensure that Bill 134 does not make "affordable" housing even less affordable than it already is. The Bill should provide that "affordable" rents cannot exceed their current levels of 80% of average market rent, rather than increasing them to 100% of average market rent. The proposed s.4.1(2)(1)(ii) of the *Development Charges Act* should be amended to maintain those levels.

3. Use the 30%-of-income standard for calculating affordable rents for households.

To determine the income-based affordable rent for targeted households, the Minister should use 30% of the households' income as the standard. We support the proposed s.4.1(5)(b) of the *Development Charges Act* which adopts this standard.

Conclusion

Development charge exemptions are only one tool that can be used to incentivize the construction of affordable housing. By themselves, they cannot solve the housing crisis or provide affordable housing for every Ontario household in core housing need. However, if the exemptions are to be effective, they should be targeted to benefit as many households as possible that are in core housing need.

At a minimum, “affordable” housing should be affordable to low income households, which include the majority of Ontarians in core housing need.

It is vital that Ontario produce new affordable housing. We urge this government to adopt our recommendations to ensure that the *Development Charges Act* produces housing that is actually affordable. That being said, new affordable private rental units are only one piece of the puzzle. To address the housing crisis and ensure the right to adequate housing for all Ontarians, the government must also take steps to preserve existing affordable housing, invest in public and non-profit housing, and strengthen protections for tenants facing eviction and displacement.

We would be happy to provide further input and discuss our recommendations.

Sincerely,



Dale Whitmore
Director of Policy and Law Reform
Canadian Centre for Housing Rights (CCHR)

¹ [Core Housing Need Status: Characteristics and Gender \(cmhc-schl.gc.ca\)](https://cmhc-schl.gc.ca). The most recently available figure is that in 2016, 32.1% of Ontario renter households were in core housing need.

² [Housing Needs Assessment Tool | Housing Assessment Resource Project \(HART\) \(ubc.ca\)](https://ubc.ca).

³ [Housing Needs Assessment Tool | Housing Assessment Resource Project \(HART\) \(ubc.ca\)](https://ubc.ca).

⁴ The average market rent in Ontario in October, 2022 was \$1,474 ([Full view \(cmhc-schl.gc.ca\)](https://cmhc-schl.gc.ca).) A rent at 80% of this amount would be affordable to a household with an income of \$47,168. Those households are categorized as “moderate income” ([Housing Needs Assessment Tool | Housing Assessment Resource Project \(HART\) \(ubc.ca\)](https://ubc.ca)).

⁵ Statistics Canada publishes data on individuals’ incomes ([Canadian Income Survey: Public Use Microdata File \(statcan.gc.ca\)](https://statcan.gc.ca)), but not household incomes. CMHC publishes data on renter household incomes at the 50th percentile (median) ([Real Median Pre-Tax Household Incomes: Renters \(cmhc-schl.gc.ca\)](https://cmhc-schl.gc.ca)), but not at the 60th percentile. The CMHC data is also only current to 2017.

⁶ For example, in 2017, the 50th percentile Toronto renter household income was \$53,500 ([Real Median Pre-Tax Household Incomes: Renters \(cmhc-schl.gc.ca\)](https://cmhc-schl.gc.ca)). The 60th percentile would have been significantly higher. Further, renter household incomes at the 60th percentile have likely increased since 2017. The current 60th percentile renter household income must therefore be significantly higher than \$53,500. Toronto households with incomes above \$42,500 are “moderate” income households ([Housing Needs Assessment Tool | Housing Assessment Resource Project \(HART\) \(ubc.ca\)](https://ubc.ca)). Data for other Ontario municipalities shows the same trends.

⁷ For example, in Toronto, housing under the proposed definition would be affordable to households with incomes significantly higher than \$53,500 (see note 6). This is considerably higher than the current “affordable” rent, calculated based on either the Ontario market (affordable to households with incomes of \$47,168, see note 4) or the Toronto market (affordable to households with incomes of \$53,280). Data for other Ontario municipalities shows the same trends.

⁸ Average market rents in Ontario are currently affordable to households with incomes of \$58,960.