

Ruchi Parkash
Municipal Finance Policy Branch
College Park 13th flr, 777 Bay St
Toronto, ON M7A 2J3

October 27, 2023

Dear Ms. Parkash,

RE: ERO 019-7669, 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

I am writing on behalf of the Municipal Finance Officers' Association of Ontario (MFOA), and the municipalities it serves, to provide comment on the proposed changes to the *Development Charges Act, 1997* (DCA), under Bill 134, *Affordable Homes and Good Jobs Act, 2023* (Bill 134).

The Municipal Finance Officers' Association of Ontario (MFOA) was established in 1989 to represent the interests of municipal finance professionals across the province. Our membership includes more than 4500 individual members who are responsible for handling the financial affairs of municipalities and are key advisors to councils. Throughout our history, MFOA has been a strong advocate for best practices that encourage long-term financial sustainability in the municipal sector.

This letter includes details of MFOA's recommendations for Bill 134. A summary of our technical recommendations is as follows:

- MFOA believes municipalities are equal partners with other orders of government in creating complete, vibrant communities with sustainable services;
- MFOA's members are committed to helping address the housing affordability crisis and believe the proposed legislation can be improved to better ensure affordable housing remains affordable;
- Administrative challenges with respect to ongoing monitoring and enforcement have the potential to undermine the goals of the proposed legislation;
- Ongoing compliance monitoring will be complicated by changes in ownership that could result in transitions between rental and non-rental categories and municipalities seeking financial recourse from ill-informed buyers of affordable units;
- Effective compliance systems require enforcement mechanisms that are efficient, act as a deterrent, and aid in recovering costs of administration; and,
- MFOA is supportive of the inclusion of an income-based approach to defining “affordable” and recommends further consultation on development of the Affordable Residential Units Bulletins

MFOA believes municipalities are equal partners with other orders of government in creating complete, vibrant communities with sustainable services

We understand that Minister Calandra is taking steps to address the current housing crisis. It is clear from the various proposed amendments to legislation and regulations that the province is committed to increasing the housing supply in Ontario.

Overall, MFOA's response is based on our extensive advocacy work surrounding development charges (DC) and is grounded in three guiding principles:

1. Growth should pay for growth on a place-by-place basis
2. Complete, vibrant communities are good for everyone
3. Provincial legislation related to municipal governance should be enabling and permissive

MFOA recognizes that any exemptions to development charges will move further from the objective of growth paying for growth, but that complete and vibrant communities require a mix of housing options to accommodate all levels of income and different housing needs. However, it is important to ensure that where exceptions are made to the growth-pays-for-growth principle that the exceptions are designed in a manner that effectively accomplish their intended goal and deter misuse. Misuse of the exemption legislation would put more than intended financial pressure on municipalities, which may result in to a shift of burden onto the property tax base. Under most metrics of housing affordability, property taxes are considered a shelter cost, and misuse can therefore result increase affordability for issues without alleviating them for those intended. In this submission MFOA has endeavored to present potential solutions and opportunities for further collaboration to mitigate or eliminate the challenges identified in the proposed legislation.

MFOA's members are committed to helping address the housing affordability crisis and believe the proposed legislation can be improved to better ensure affordable housing remains affordable

MFOA supports the Province's commitment to addressing the issue of housing affordability in Ontario. We recognize that this is a complex issue and believe that consultation with stakeholders can help identify innovative solutions and mitigate unintended consequences and thank the Province for the opportunity to provide input and feedback into the proposed definitions. MFOA's submission is meant to highlight two main challenges identified in the proposals in Bill 134 – considerations for administrative burden and concerns about the Affordable Residential Units Bulletin as it relates to affordability.

Administrative challenges with respect to ongoing monitoring and enforcement have the potential to undermine the goals of the proposed legislation

MFOA and its members are concerned that administrative burden and lack of strong and efficient enforcement mechanisms of the affordable residential units exemption program will result in DC exempted homes failing to meet affordable definitions over the full 25 year period.

Subsection 4.1 (8) of the DCA states that the creation of an affordable residential unit is dependent on the unit remaining affordable for a period of 25 years or more. Subsections 4.1 (9) through 4.1 (13) describe a governance regime for the exemptions based on the use of agreements between the person who would be "required to pay the development charge" and the "local municipality." In response to *More Homes Built Faster Act, 2022*, municipalities expressed concern with respect to the monitoring and enforcement aspects of affordable/attainable residential unit exemptions and in particular the logistical details and ongoing costs of administration.

The ongoing costs of administration of this program should be considered when designing enforcement mechanisms. As municipalities will be responsible for monitoring and ensuring affordable residential units remain affordable for a 25-year period, making exempted DCs easily recoverable in the event of breach and implementing a fine mechanism would serve a dual effect of incenting compliance while enabling municipalities to recover some administrative costs. The province should also consider compensating municipalities for any administrative shortfalls to ensure a strong compliance system so that affordable units can stay affordable. In particular, the province should consider the potential resource and capacity restraints of smaller municipalities to monitor and administer these programs.

Ongoing compliance monitoring will be complicated by changes in ownership that could result in transitions between rental and non-rental categories and municipalities seeking financial recourse from ill-informed buyers of affordable units

Rented residential premises will be easier to monitor through rental agreements, particularly for purpose built rental properties. However, the use of the terms “residential unit” and “residential rental premises” in the *Residential Tenancies Act, 2006* suggests that the exemptions can apply to a broader array of property types including condominium units. As condominium units are more likely to transfer ownership than purpose-built rental properties, the unit is at greater risk of changing categories from rental unit to non-rental unit and vice versa over the 25-year period. Without monitoring and enforcement mechanisms, affordable non-rental residential units can be sold below market rate and turn into rental units at market rate or higher.

The sale of residential units will be more difficult to monitor as the final sale price is only obtained after the sale has occurred or after the risk of DC exemption repayment transfers to the new owner of the property. Subsection 4.1 (13) does permit the ability to register on title, so the provisions of the agreement can be enforced against any new owners. This is a welcome addition to the regulation, and, while registering on title will require resources, it will be a key component to enforcing compliance with the legislation. However, the transfer of this risk upon sale and the post facto timing of sales information could put municipalities in the unfortunate position of enforcing a breach of the agreement on an owner who may not have been fully aware of the agreement. As the risk transfers with ownership according to the legislation, buyers will need adequate protection and recourse from less than transparent sellers.

As risks related to monitoring, compliance, and enforcement increase with non-rental properties, the Province should consider restricting the affordable residential exemptions to purpose-built rental properties.

Alternatively, should affordable unit exemptions proceed on non-rental properties the Province should implement mechanisms to protect buyers of affordable units, such as developing regulations for full transparency in the resale of affordable units.

Additionally, the Province should work with municipalities to develop a recommended common language for agreements that contemplates the transition of affordable units from rental to non-rental and vice versa to ensure units stay affordable.

Effective compliance systems require enforcement mechanisms that are efficient, act as a deterrent, and aid in recovering costs of administration

In order to ensure that the exemptions achieve their goal of creating affordable housing, monitoring and enforcement mechanisms will need to be in place to ensure ongoing compliance. It is in the public interest to ensure that affordable housing remains as such for the

full 25-year period. The Province should make any exempted DCs fully recoverable with interest in the event that an affordable residential unit owner breaches their agreement.

In addition to exempt DC recoveries, the Province should allow municipalities to impose penalties and fines on owners breaching an agreement. A fine or penalty would further deter owners from attempting to circumvent the agreement and help municipalities recover some administrative costs. If the current market price of the unit exceeds the prescribed affordable price and the DC exemption repayment amount, the owner may be incented to break the agreement – a further fine or penalty would mitigate that risk. Additionally, a fine or penalty would help municipalities recover some administration costs related to enforcing affordable rental unit prices.

With respect to enforcement and administrative efficiencies, the Province should provide easy mechanisms for recovery of exempted DCs, such as permitting municipalities to apply DC recoveries and any fines or penalties to the property tax bills of those who breach compliance. It should also permit municipalities to collect interest on exempted DCs and impose additional fines and penalties.

MFOA is supportive of the inclusion of an income-based approach to defining “affordable” and recommends further consultation on development of the Affordable Residential Units Bulletins

Bill 134 proposes to amend the previous definition for “affordable” (both rental and affordable ownership housing) for the purposes of DC exemptions under subsection 4.1 of the DCA. The current definition of affordable only focuses on market prices and rents to determine affordability. MFOA previously raised concerns that the market-based approach was not in a threshold that would maintain affordability for most Ontarians and does not consider the other factors that make up housing affordability.

We commend the Province for revising the definition of “affordable” to include an income-based approach, as well as revising the market-based approach to align with standard definitions, such as the 2020 Provincial Policy Statement and the definition used by the CMHC. The revised definition will default to the lesser of the two approaches. However, in addition to the administrative issues noted above, the use of Bulletins needs further consideration to ensure the legislation is meeting its objective of creating affordable housing.

Affordable Residential Units Bulletin calculations should rely on timely and transparent data and should be updated frequently to reflect changes in the housing market and municipal expertise should be leveraged in development of calculation methodology

Without further details on the Affordable Residential Units Bulletin, MFOA is unable to comment on the ability for Bill 134 to successfully increase affordable housing in Ontario. A major consideration is what data sources will be used to determine affordability thresholds. It is important that the data informing the bulletins remain timely and the calculations are transparent.

Rental and housing markets continue to be volatile in Ontario. The bulletin must be updated on a regular basis in order to reflect true affordability, but relying on data that is only updated on an annual basis (or less) will result in thresholds that do not reflect the current state of the housing market or the state of affordability. Many municipalities already collect data on their local communities for their existing discounts and exemptions for affordable housing, and while these

methods may vary between municipalities, the Province may benefit from learning about where and how municipalities derive this data for their communities.

The proposed income-based approach for rental and ownership as written in subsections 5(a) and 6(a) note that the income threshold will be based on the Minister's opinion for applicable local municipalities. While it is presumed that the income threshold will be set out in the Affordable Residential Units Bulletin, clarity should be provided on whether the Minister plans to post it in the bulletin or elsewhere and how often that threshold will change. MFOA recommends that Affordable Residential Units Bulletins be updated on a quarterly basis and this be added to legislation. Additionally, MFOA recommends that the municipal sector's expertise in housing data collection be leveraged through consultation in development of the Bulletin methodology.

To incentivise development of appropriate housing types based on the needs of the community, the market approach for deciding affordable residential units should be calculated by local municipalities, and should list different values based on size and configuration of different types of housing

A priority of the Housing Affordability Task Force was to build more homes that address the "missing middle". This commitment was affirmed in the *More Homes Built Faster Act, 2022*, with the creation of the affordable and attainable housing definitions. However, we believe that attention must be paid to the diverse types of "missing middle" housing. It is unclear whether the Affordable Residential Units Bulletin will be categorized by unit types and sizes. Categorizing by unit types and sizes will recognize that municipalities need more than only studio-sized apartments. The "missing middle" refers to rental housing and mid-rise condominiums, but it must also recognize that families live in "missing middle" housing and need space for accommodation. MFOA recommends that the Province include unit categories in the Affordable Residential Units Bulletin to incentivize housing that addresses the "missing middle". Without unit categories, only smaller housing units will be incentivized to be affordable and new housing development will not capture the true needs of communities.

Another consideration is the geographic scope for the Affordable Residential Units Bulletin. Even within regions, lower-tier municipalities can have significant income and market differences to their neighbours. Careful attention must be paid to ensure that the geographic scope does not skew the data so that municipalities experiencing slower growth than their neighbours are not forced to provide exemptions for units that are not affordable in their municipalities. The Province should match its commitment to calculate income-based affordability at the local municipal level and calculate the market definition at the local municipal level.

MFOA and its members look forward to continuing to work with the Province on identifying solutions to the housing affordability crisis and recommends the Province further consult with the sector on definitions for "attainable housing"

MFOA and its members appreciate the Province's consideration of its recommendations to make the proposed legislation more successful at achieving its objective of creating affordable housing units. Additionally, while Bill 134 does not touch on details for attainable housing, which is given full DC exemptions under the *More Homes Built Faster Act, 2022*, MFOA recommends that the Province consult with municipalities on the development of the qualification for attainable housing, as this is a new housing definition in Ontario. Municipalities are on the



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frontline of understanding housing needs in their communities and can provide great insight to ensure the success of attainable housing.

MFOA would be pleased to elaborate on any of the recommendations included in this submission. Should your staff have the need to follow up please contact MFOA's Executive Director, Donna Herridge, by phone (416-362-9001) or by email (donna@mfoa.on.ca).

Yours truly,

A handwritten signature in black ink, appearing to read 'Shelley Stedall'. The signature is written in a cursive, flowing style.

Shelley Stedall, Dipl. B. Admin, AMCT
President, MFOA