

## **Development Charges Deferral for Affordable, Purpose-Built Rental Buildings - REVISED**

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Approved By: Regional Council

Approved On: June 24, 2021

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### **Policy Statement**

A policy governing the deferral of Regional development charges and area-specific development charges for affordable, purpose-built rental buildings that are a minimum of four storeys above grade.

### **Application**

This policy is available for affordable, purpose-built rental buildings located within the boundaries of the Urban Area and Towns and Villages as identified in York Region Official Plan, Map 1 Regional Structure, subject to the terms and conditions as set out in this policy and/or modified through the required agreements.

For the purposes of this deferral, the development may be registered as a condominium, but it must be entirely operated as a rental property for a period of not less than 20 years.

To be eligible, the development must be:

- A minimum of four storeys
- Affordable to the midrange income cohort (household incomes that fall between the fourth and sixth deciles of income distribution for York Region) with average rents that are less than, or equal to, 175% of Average Market Rent for private apartments, by bedroom type

## Purpose

The purpose of this policy is to incentivize the development of affordable, purpose-built rental buildings that are a minimum of four storeys above grade. Additional affordable, purpose-built rental buildings could achieve the following outcomes:

- Increased affordable purpose-built rental supply in the Region
- More complete communities offering a range of housing options
- Promote live/work within the Region

## Definitions

**Act:** The *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended, revised, re-enacted or consolidated from time to time, and any successor statute

**Affordable:** Rental housing that is less than, or equal to, 175% of Average Market Rent for private apartments, by bedroom type

**Average Market Rent (AMR):** The average actual rents paid by tenants for private apartments in York Region (Region-wide rents), calculated and published annually through the Canada Mortgage and Housing Corporation (CMHC) Fall Rental Market Report

**Bedroom:** A room that meets the requirements of a bedroom under the *Building Code Act, 1992*, S.O. 1992, c. 23 as amended, revised, re-enacted or consolidated from time to time, and any successor statute and/or the requirements of a bedroom under Ontario Regulation 332/12 as amended, revised, re-enacted or consolidated from time to time, and any successor statute

**Development:** The construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of increasing the size or changing the use thereof from non-residential to residential or from residential to non-residential and includes redevelopment

**Development Charges:** The Region's development charges, including any area-specific development charges

**Dwelling Unit:** Means a room or suite of rooms used, or designed or intended for use by one person or persons living together, in which culinary and sanitary facilities are provided for the exclusive use of such person or persons

**Local Centres:** The specific Local Centres that qualify under this policy are:

- Georgina: Keswick Secondary Plan Urban Centres as well as applicable portions of the Woodbine Corridor
- King: Core Areas in King City and Nobleton, as well as the King City Go Station Area
- Whitchurch-Stouffville: Community Core Area and Western Approach Area within the Community of Stouffville

**Regional Centres and Corridors:** The Regional Centres are as depicted on Map 1 – Regional Structure, York Region Official Plan:

- Markham Centre (Highway 7 and Warden Avenue)
- Newmarket Centre (Yonge Street and Davis Drive)
- Richmond Hill/Langstaff Gateway (Highway 7 and Yonge Street)
- Vaughan Metropolitan Centre (Highway 7 and Jane Street)

For further information on areas identified as Regional Centres and Corridors please contact the Director of Community Planning at extension 71505

**Restrictive Covenant:** A covenant registered on the title of the proposed development requiring it be developed and entirely operated as an affordable rental building for a period of not less than 20 years

**Schedule 'I' Bank:** As referenced in subsection 14(1)(a) of the Bank Act, S.C. 1991, c. 46. These are domestic banks and are authorized under the Bank Act to accept deposits, which may be eligible for deposit insurance provided by the Canadian Deposit Insurance Corporation

**Storey:** A storey must be above grade and is the portion of a building:

- (a) that is situated between the top of any floor and the top of the floor next above it, or
- (b) that is situated between the top of the floor and the ceiling above the floor, if there is no floor above it

## Description

### 1. Development Charges Deferral Agreement

Any developer wishing to defer development charges for affordable, purpose-built rental buildings (minimum of four storeys) must enter into a development charges deferral agreement with the Region.

## Development Charges Deferral for Affordable, Purpose-Built Rental Buildings

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A development charges deferral agreement will only be executed by the Region provided that the developer can immediately upon execution of the agreement attain building permit issuance by the local municipality.

### **2. Development Charges Deferral Agreement – Rules**

The deferrals under this policy will be available to a maximum of 1,500 units over a three year period, commencing immediately after Council originally approved this policy, on October 17, 2019. It will be available on a first-come, first served basis.

In the event more than one affordable, purpose-built rental building wishes to enter into a development charges deferral agreement with the Region on the same day, the result of which is to exceed the total unit cap during the three year period, it will be up to the Commissioner of Finance and the Chief Administrative Officer to determine qualification and whether the unit cap may be exceeded.

This Term will be subject to Extension of Time provisions in Term '18'.

### **3. Covenants Included in the Development Charges Deferral Agreement**

Every development charges deferral agreement will include covenants on the part of the developer.

These covenants will include, but not be limited to, a covenant by the developer(s) that:

- a) The affordable, purpose-built rental building will remain affordable for a period of not less than 20 years
- b) Monthly rents will not be increased at a rate that brings them above 175% of Average Market Rent for private apartments, by bedroom type
- c) For those units that achieve 125% Average Market Rent or less for private apartments, by bedroom type, and do not have to satisfy the unit split requirement identified in Term '4' of this policy, that they will be maintained at 125% Average Market Rent or less for private apartments, by bedroom type, for the duration of the development charges deferral
- d) They will notify the Region on an annual basis, at an agreed upon date, in an agreed upon manner, of the rents, by bedroom type, in the affordable, purpose-built rental building
- e) If they are found to be in non-conformity with clauses 'a', 'b', 'c', or 'd' of this Term ('3'), development charges will be made payable (including interest)

- f) They will enter into any additional agreement(s), as determined to be required by the Regional Solicitor, to give full force and effect to the development charges deferral agreement

**4. Duration of the Deferral**

a. Duration

The duration of the development charges deferral will vary based on the location, total number of units and number of units that are two or more bedrooms, in accordance with Table 1 below.

**Table 1  
Duration of Development Chart Deferral**

<b>Criteria*</b>	<b>Duration of Development Charges deferral</b>
1. Affordable rental housing	5 Year
1. Affordable rental housing 2. Located in Regional Centres and Corridors or specific Local Centres	10 Year
1. Affordable rental housing 2. Minimum of 100 Dwelling Units 3. Minimum of 50% of the total number of dwelling units in the affordable, purpose-built rental building must have two or more bedrooms (unit split requirement)**	10 Year
1. Affordable rental housing 2. Located in Regional Centres and Corridors or specific Local Centres 3. Minimum of 200 Dwelling Units 4. Minimum of 50% of the total number of dwelling units in the affordable, purpose-built rental building must have two or more bedrooms (unit split requirement)**	20 Year

\*Note:

- All criteria must be met to qualify for each Duration of Development Charges Deferral

\*\*Note:

- Units that achieve 125% of Average Market Rent or less for private apartments, by bedroom type, may not have to satisfy the unit split requirement

## Development Charges Deferral for Affordable, Purpose-Built Rental Buildings

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- In addition, those units that achieve 125% of Average Market Rent or less for private apartments, by bedroom type, will be excluded from the total number of units used to calculate the unit split calculation
- Those units that have been excluded from the unit split requirement, as a result of achieving 125% of Average Market Rent or less for private apartments, by bedroom type:
  - must be maintained at 125% of Average Market Rent or less for private apartments, by bedroom type for the duration of the Development Charges deferral
  - after the Development Charges deferral they must still be less than, or equal to, 175% of Average Market Rent for private apartments, by bedroom type
- These units must remain less than, or equal to, 175% of Average Market Rent for private apartments, by bedroom type, for the duration of the restrictive covenant as identified under Term '8' of this policy.

### b. Start date

1. Development charges are deferred until 15 days immediately following the date that is 5 years, 10 years, or 20 years (as applicable) after the date that the building permit is issued by the local municipality
  - Applications submitted for approval of a development in a site plan control area under subsection 41(4) of the Planning Act for an affordable, purpose-built rental building prior to January 1, 2020, or
  - Applications submitted for an amendment to a bylaw passed under section 34 of the *Planning Act* prior to January 1, 2020
2. Development charges are deferred until 15 days immediately following the date that is 5 years, 10 years, or 20 years (as applicable) after the earlier of the date of the issuance of a permit under the Building Code Act, 1992, authorizing occupation of the building or the date the building is first occupied
  - Applications submitted for approval of a development in a site plan control area under subsection 41(4) of the Planning Act for an affordable, purpose-built rental building including and after January 1, 2020, or
  - Applications submitted for an amendment to a by-law passed under section 34 of the Planning Act including and after January 1, 2020

If the occupation of the building is not authorized by a permit under the Building Code Act, 1992, the developer must notify the Region within five business days of the building first being occupied, whereupon the deferral period will begin. Failure to notify the Region within five business days of the building first being occupied will constitute a material default of the deferral agreement.

## Development Charges Deferral for Affordable, Purpose-Built Rental Buildings

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Development charges will be payable prior to the timeframe indicated in Table 1 should any of the following trigger events occur:

- Change of use from an affordable, purpose-built rental building
- Failure to notify the Region on an annual basis, at an agreed upon date and in an agreed upon manner of the rents in the affordable, purpose-built rental building
- Monthly rents exceeding 175% of Average Market Rent for private apartments, by bedroom type
- Monthly rents exceeding 125% of Average Market Rent for private apartments, by bedroom type, for those units that do not have to satisfy the unit split requirement identified in Term '4' of this policy. This trigger only applies for the duration of the Development Charges deferral
- Sale, or transfer of ownership, of the property unless an assumption agreement is entered into
- Any other material default as defined in the agreement(s)

Notification to the owner of the property on the tax roll will occur immediately after the trigger event. The 15 business days will begin with the mailing, by registered mail, of notice.

### 5. Development Charges Rates

The Regional development charges rate will be the amount determined under the applicable development charges bylaw:

- a. Day of building permit issuance
  - i. Applications submitted for approval of a development in a site plan control area under subsection 41(4) of the Planning Act for an affordable, purpose-built rental building prior to January 1, 2020, or
  - ii. Applications submitted for an amendment to a bylaw passed under section 34 of the *Planning Act* prior to January 1, 2020

- OR -

- b. Day of application
  - i. Applications submitted for approval of a development in a site plan control area under subsection 41(4) of the Planning Act for an

affordable, purpose-built rental building including and after January 1, 2020, or

- ii. Applications submitted for an amendment to a bylaw passed under section 34 of the Planning Act including and after January 1, 2020

For greater clarity, if clauses b(i) or b(ii) do not apply to an affordable, purpose-built rental building that is seeking to defer development charges including and after January 1, 2020, the development charges rate is determined on the day the development charges is payable in accordance with section 26 of the Act.

### **6. Development Charges Payable**

The amount of the development charges payable to the Region, as required under the Act, will be based on the rates determined under Term '5' of this policy multiplied by the number of dwelling units, of which will be determined on the day that the developer enters into a development charges deferral agreement with the Region.

### **7. Interest Waiver**

All interest will be calculated using the development charges payable in Term '6' to this policy until the date upon which the development charges are fully paid.

All deferred development charges will bear interest at the prime commercial lending rate charged by an agreed upon 'Schedule I' commercial bank on demand loans in Canadian funds to its most creditworthy customers plus 2% per annum. All interest will accrue and be compounded.

The time period will be calculated beginning on the date of issuance of the building permit for the proposed structure by the local municipality.

The Region will forgive all amounts due and owing on account of interest, provided that the development charges are paid in full to the Region at the time required (within 15 business days immediately following notification of a trigger event as defined in Term '4' of this policy).

In the event unpaid development charges are added to the tax roll (Term '10'), interest will continue to accrue and be compounded until all outstanding charges are fully paid.

### **8. Restrictive Covenant**

A 20 year change of use covenant will be registered on the title stipulating that the property will be developed and entirely operated as an affordable rental building for



a period expiring 20 years from the date that an occupancy permit is issued for the affordable, purpose-built rental building.

The burden of the restrictive covenant will run with the title of the land.

### **9. Local Participation**

The Region will only enter into a development charges deferral agreement if the local municipality has provided a similar, if not better, deferral, exemption, or other incentive, for the proposed development.

It will be up to the Commissioner of Finance and/or the Chief Administrative Officer, in consultation with the Chief Planner, to decide what constitutes “similar, if not better”, but this may be determined by looking at:

- Whether or not there is a prescribed timeframe for the deferral
- Whether or not interest is waived
- Other incentives that may be provided, be them financial or otherwise

### **10. Unpaid Development Charges**

If any development charges (including any interest) are unpaid within 15 business days immediately following notification of a trigger event identified in Term ‘4’ of this policy, or at the end of the development charge deferral timeframe when payment has not been made, those development charges (including interest) will be added to the tax roll and collected in the same manner as taxes (in accordance with section 32 of the Act).

In the event unpaid development charges are added to the tax roll, interest will continue to accrue and be compounded until all outstanding total charges are fully paid (development charges + interest).

### **11. Security**

A form of security will be taken and registered against the title to the property, at the execution of the development charges deferral agreement with the Region. The Region’s security interest will always be, at minimum, *pari passu*, or of equal footing, to that of the local municipality offering a similar, if not better, deferral of development charges.

### **12. Other Agreements Required**

In addition to the requirements that the developer enter into a development charges deferral agreement with the Region, the developer will enter into any other

## Development Charges Deferral for Affordable, Purpose-Built Rental Buildings

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agreements as required by the Regional Solicitor. Additional agreements include, but may not be limited to:

- Charge
- Assignment of Rents
- Restrictive Covenant
- Pari Passu Agreement
- General Security Agreement
- Other agreement(s) as deemed necessary

### **13. Legal Fees**

All legal fees of the developer(s) and Region, including any costs incurred by the Region to prepare any other agreements required by the Regional Solicitor, will be borne by the developer.

### **14. Report Back to Council**

Staff will report back to Council prior to the end of this Council term, on the results of the rental incentives provided and provide a recommendation on whether additional steps should be taken to further facilitate affordable, purpose-built rental development.

This Term will be subject to Extension of Time provisions in Term '18'.

### **15. Non-Applicability – 36 month Development Charges Deferral**

For greater clarity, any affordable, purpose-built rental building that avails itself of the deferral under this policy is not eligible for the Region's 36 month development charges deferral for purpose-built rental buildings that are a minimum of four storeys.

### **16. Mixed-Use Developments**

For greater clarity, this policy does not apply to the non-residential development charges due for any mixed-use development, the residential portion of which is an affordable, purpose-built rental building.

### **17. Section 26.1 of the Act**

For greater clarity, any purpose-built rental building to which section 26.1 applies and that opts to pay development charges in instalments in accordance with section 26.1 of the Act, will not be entitled to also avail itself of the deferral under this policy.

### **18. Extension of Time**

## Development Charges Deferral for Affordable, Purpose-Built Rental Buildings

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The three year timeframe, as contemplated in Term ‘2’, will be extended by two years.

The minimum timeframe to report back to Council, as required under Term ‘14’, will be extended by two years.

### **19. Effective Date**

This policy will take effect the day it is passed by Regional Council and may be repealed by the Region at any time.

## **Responsibilities**

### **Chief Administrative Officer, Regional Municipality of York**

- Responsibilities as identified under the Terms of this policy
- Signing of security agreements

### **Commissioner of Finance, Finance Department**

- Responsibilities as identified under the Terms of this policy
- Signing of security agreements

### **Regional Solicitor, Legal Services**

- Draft and prepare for execution the deferral agreement between Region and the developer
- Draft and prepare for execution any additional agreements required
- Maintain copies of all executed deferral agreements and other agreements as required
- Registration of security on title

### **Chief Planner, Planning and Economic Development, Corporate Services Department**

- Assist in determining qualification for the deferral and recommending of the affordable, purpose-built rental building for application
- Other responsibilities as identified under the Terms of this policy

### **Director, Treasury Office, Finance Department**

- Administer the deferral policy, including assisting stakeholders in determining if they qualify for the policy, the development charges rates to be applied, and the development charges payable
- Enforce the deferral policy
- Collect all development charges when due
- Monitor timing of payment to ensure compliance with Term '7' of the policy
- Notify, through the Commissioner of Finance, to the Treasurer of the local municipality if development charges are not paid/received within the prescribed timeframe and to have said charges added to the tax roll of that municipality
- Undertake any additional administrative obligations as determined through the agreements
- Maintain copies of all executed deferral agreements and other agreements as required

### **Director, Community Planning, Planning and Economic Development , Corporate Services Department**

- Assist in identifying structures as within the Regional Centres and Corridors

## **Compliance**

Immediately upon the occurrence of any of the trigger events identified in Term '4' of this policy, the **Director, Treasury Office** will notify the owner of the property on the tax roll that development charges are due within 15 business days, the timing of which will begin with the mailing, by registered mail, of notice.

The **Director, Treasury Office** will also monitor the payment of the development charges due in order to ensure interest is only forgiven (Term '7' of the policy) when the development charges are paid in full to the Region within 15 business days immediately following notification of a trigger event.

## Reference

### Legislative and other authorities

- [Building Code Act, 1992, S.O. 1992, c. 23](#)
- [Development Charges Act, 1997, S.O. 1997, c. 27](#)
- [Ontario Regulation 82/98](#)
- [Ontario Regulation 332/12](#)
- [Planning Act, R.S.O. 1990, c. P.13](#)
- [York Region Official Plan, Map 1 - Regional Structure](#)
- [The Regional Municipality of York - York Region Development Charges Bylaw - No. 2017-35](#)
- [The Regional Municipality of York – York Region Development Charge Bylaw Amendment N. 2018-42](#)

### Appendices

- Council Report, [Draft Rental Housing Incentives Guideline and Community Improvement Plan](#), June 28, 2018
- Council Report, [Purpose-Built Rental Housing Incentives](#), October 17, 2019
- Memorandum, [Financial incentives for affordable rental housing and large office buildings](#), October 17, 2019
- Council Report, [Extension of Large Office and Affordable Rental Development Charges Deferrals Due to the Pandemic](#), June 24, 2021

## Contact

- Director, Treasury Office, Finance Department at extension 71644

## Approval

Council Date: June 24, 2021	Committee Date: June 10, 2021
Council Minute Item: G.1	Committee Minute Item: I.2.9

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Accessible formats or communication supports are available upon request.