

Development Charges Deferral for Purpose-Built Rental Buildings

Approved By: Council

Approved On: October 17, 2019

Policy Statement

A policy governing the deferral of Regional development charges and area-specific development charges, as the case may be, for purpose-built rental buildings that are a minimum of four (4) storeys that are above grade.

Upon the date a community benefits charges bylaw is adopted by Regional Council and comes into effect, this policy shall include the deferral of the Regional community benefits charges applicable to purpose-built rental buildings.

Application

This policy is available for purpose-built rental buildings in the Regional Municipality of York subject to the terms and conditions as set out in this policy. 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 twenty (20) years. In order to be eligible, the development must be a minimum of four (4) storeys that are above grade.

Purpose

The purpose of this policy is to incentivize the development of purpose-built rental buildings that are a minimum of 4 storeys and that are above grade. Additional purpose-built rental buildings in the Region could achieve the following outcomes:

- Increased purpose-built rental supply in the Region
- More complete communities offering a range of ownership tenure across 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

Community Benefits Charges: The Region's Community Benefits Charges, established by a Community Benefits Charges Bylaw, under Section 37 of the *Planning Act*, R.S.O. 1990, c. P. 13, 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 the area-specific wastewater development charges for the Village of Nobleton

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

Valuation Date: This means, for the purposes of Community Benefits Charges, with respect to land that is the subject of development or redevelopment

- a) The day before the day the building permit is issued in respect of the development or redevelopment, or
- b) If more than one building permit is required for the development or redevelopment, the day before the day the first permit is issued

Description

Terms of the deferral policy

A. Development Charges Deferral agreement

Any developer wishing to defer development charges for a purpose-built rental building (minimum of four (4) storeys) must enter into a Development Charges Deferral agreement with the Region.

A Development Charges Deferral agreement shall 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.

For greater clarity, all of the foregoing in Term 'A' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

B. Duration of the deferral

- i) Where an application is submitted for approval of a development in a site plan control area under subsection 41 (4) of the *Planning Act* for a purpose-built rental building prior to section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* being proclaimed, or for a purpose-built rental building for which an application for an approval of a development in a site plan control area under subsection 41 (4) of the *Planning Act* does not apply but which has submitted an application for an amendment to a by-law passed under section 34 of the *Planning Act* prior to section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* being proclaimed; the deferral period shall begin the day a building permit is issued by the local municipality.

Development Charges are therefore deferred until fifteen (15) days immediately following the date that is thirty-six (36) months after the date that the building permit is issued by the local municipality.

- ii) Where an application is submitted for approval of a development in a site plan control area under subsection 41 (4) of the *Planning Act* for a purpose-built rental ~~after~~ section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* is proclaimed, or for a purpose-built rental building for which an application for an approval of a development in a site plan control area under subsection 41 (4) of the *Planning Act* does not apply, but has submitted an application for an amendment to a by-law passed under section 34 of the *Planning Act* ~~after~~ section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* is proclaimed; the deferral period shall begin on 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.

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 (5) business days of the building first being occupied, whereupon the deferral period will begin. Failure to notify the Region within five (5) business days of the building first being occupied will constitute a material default of the deferral agreement.

Development Charges are deferred until fifteen (15) days immediately following the date that is thirty-six (36) months 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.

Development Charges shall be payable prior to the thirty-six (36) month period should any of the following trigger events occur:

- Change of use from a purpose-built rental building
- Material breach of the Restrictive Covenant
- Any material default under the terms of the security or guarantees as stipulated in the agreement(s)
- Any other material default as defined in the agreement(s)

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

For greater clarity, all of the foregoing in Term 'B' shall apply to Community Benefits Charges, when a Community Benefits Charges bylaw has been adopted and is in effect.

C. Development Charges rates

The Regional development charges rate, or area-specific development charges rate, as the case may be, shall be the amount determined under the applicable Regional development charges bylaw, or area-specific development charges bylaw, as the case may be, on:

- i) The day that the building permit is issued for the construction of the purpose-built rental building by the local municipality if an application for an approval of development in a site plan control area under subsection 41 (4) of the *Planning Act*, or an application for an amendment to a by-law passed under section 34 of the *Planning Act* was submitted prior to section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* being proclaimed
- ii) The day an application for an approval of development in a site plan control area under subsection 41 (4) of the *Planning Act*, was made in respect of the development that is the subject of the Development Charges or if an application for an approval of development in a site plan control area under subsection 41 (4) of the *Planning Act*, does not apply, the day an application for an amendment to a by-law passed under section 34 of the *Planning Act* was made in respect of the development that is the subject of the Development Charges if either application was submitted after section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* being proclaimed
- iii) If clause (ii) does not apply to a purpose-built rental building that is seeking to defer Development Charges after section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* has been proclaimed, the Development Charges rate is determined on the day the Development Charges is payable in accordance with section 26 of the Act

For greater clarity, when a Community Benefits Charges bylaw has been adopted and is in effect, the Community Benefits Charges rate will be set on the day that the building permit is issued for the construction of the purpose-built rental building by the local municipality and shall be capped based on the prescribed percentage at the Valuation Date.

D. Development charges payable

The amount of the Development Charges payable to the Region, as required under the Act, shall be based on the rates determined under Term 'C' of this policy multiplied by the number of dwelling units, of which shall be determined on the day

that the developer enters into a Development Charges Deferral agreement with the Region.

For greater clarity, when a Community Benefits Charges bylaw has been adopted and is in effect, the Community Benefits Charges payable shall be set on the day that the building permit is issued for the construction of the purpose-built rental building by the local municipality and shall be capped based on the prescribed percentage at the Valuation Date.

E. Interest waiver

All interest shall be calculated using the Development Charges payable in Term 'D' to this policy until the date upon which the Development Charges are fully paid.

All deferred Development Charges shall 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 two (2) per cent per annum. All interest shall accrue and be compounded.

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

The Region shall 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 fifteen (15) business days immediately following notification of a trigger event as defined in Term 'B' of this policy).

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

For greater clarity, all of the foregoing in Term 'E' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

F. Restrictive covenant

A twenty (20) year change of use covenant shall be registered on the title stipulating that the property shall be developed and entirely operated as a rental building for a period expiring twenty (20) years from the date that an occupancy permit is issued for the purpose-built rental building.

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

G. 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, or other incentives, for the proposed development.

It shall 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, and what that is
- Whether or not interest is waived for any deferral
- Other incentives that may be provided, be them financial or otherwise

For greater clarity, all of the foregoing in Term ‘G’ shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

H. Unpaid development charges

If any Development Charges (including any interest) are unpaid within fifteen (15) business days immediately following notification of a trigger event identified in Term ‘B’ of this policy, or at the end of the development charge deferral timeframe when payment has not been made, those Development Charges (including interest) shall 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 shall continue to accrue and be compounded until all outstanding charges are fully paid.

For greater clarity, all of the foregoing in Term ‘H’ shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

I. 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.

For greater clarity, all of the foregoing in Term 'I' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

J. Other agreements required

In order to take advantage of this policy, the developer must enter into a Development Charges Deferral agreement with the Region.

In addition, the developer shall enter into other agreements as required by the Regional Solicitor. Those include, but are not limited to:

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

For greater clarity, all of the foregoing in Term 'J' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

K. 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, shall be borne by the developer.

L. 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 a purpose-built rental building.

For greater clarity, all of the foregoing in Term 'L' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

M. Non-Applicability - Development Charges Deferral for Affordable, Purpose-Built Rental Buildings

For greater clarity, any purpose-built rental building that avails itself of the deferral under this policy is not also eligible for the Region's Development Charges Deferral for Affordable, Purpose-Built Rental Buildings that are a minimum of four (4) storeys.

N. Section 26.1 of the Act

For greater clarity, any purpose-built rental building to which section 26.1 applies (upon the date that the section is proclaimed) and that opts to pay Development Charges in instalments in accordance with section 26.1 of the Act, shall not be entitled to also avail itself of the deferral under this policy.

O. One (1) per cent exemption, Ontario Regulation 82/98

For greater clarity, any purpose-built rental building that avails itself of the deferral under this policy shall not benefit from the one (1) per cent development charges exemption, for the creation of additional units within other existing residential buildings, under Ontario Regulation 82/98 (upon the date it comes into effect).

P. Effective date

The amendments to this policy shall 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 and Regional Treasurer, Finance Department

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

Regional Solicitor, Legal Services

- Draft and prepare for execution deferral agreement between Region and all parties

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- Draft and prepare for execution any additional agreements required including pari passu agreement
- Registration of restrictive covenant
- Registration of security on title

Chief Planner, Planning and Economic Development, Corporate Services Department

- 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
- Collect all Community Benefits Charges when due (when in-effect)
- Monitor timing of payment in order to ensure compliance with Term 'E' of the policy
- Notify, through the Regional Treasurer, 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

Compliance

Immediately upon the occurrence of any of the trigger events identified in Term 'B' of this policy, the **Director, Treasury Office** shall notify the owner of the property on the tax roll that Development Charges are due within fifteen (15) business days, the timing of which shall begin with the mailing, by registered mail, of notice.

The **Director, Treasury Office** shall also monitor the payment of the Development Charges due (and Community Benefits Charges, when in-effect) in order to ensure interest is only forgiven (Term 'E' of the policy) when the Development Charges are paid in full to the Region within fifteen (15) business days immediately following notification of a trigger event.

Reference

Legislative and other authorities

- [Bill 108, More Homes, More Choice Act, 2019](#)
- [Development Charges Act, 1997, S.O. 1997, c. 27](#)
- [Ontario Regulation 82/98](#)
- [Planning Act, R.S.O. 1990, c. P.13](#)

Appendices

- [Council Report, Private Market Rental Development Charges Deferral Site Specific Pilot Project in the Town of Newmarket, November 21, 2013](#)
- [Council Report, 2017 Development Charge Bylaw Directions, November 17, 2016](#)
- [Council Report, 2017 Development Charge Background Study and Bylaw, May 25, 2017](#)
- Council Report, Purpose-Built Rental Housing Incentives, October 10, 2019 (hyperlink to be inserted)
- [The Regional Municipality of York 2017 Development Charge Background Study – FINAL – May 18, 2017](#)

Contact

Director, Treasury Office, Finance Department at extension 71644

Approval

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Accessible formats or communication supports are available upon request.