

Development Charges Deferral for Affordable, 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 affordable, 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 passed by Regional Council and comes into effect, this policy shall include the deferral of the Regional community benefits charges applicable to affordable, purpose-built rental buildings.

Application

This policy may apply to 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 twenty (20) years.

In order to be eligible, the development must be a minimum of four (4) storeys and must be affordable to the midrange income cohort (household incomes that fall between the fourth (4th) and sixth (6th) deciles of income distribution for York Region) with average rents that are less than, or equal to, one-hundred and seventy-five (175) per cent of Average Market Rent (AMR) 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 (4) storeys that are 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, one-hundred and seventy-five (175) per cent of Average Market Rent (AMR) for private apartments, by bedroom type.

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

Bedroom: Shall meet 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.

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.

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 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 means, 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

A. Development Charges Deferral agreement

Any developer wishing to defer Development Charges for affordable, purpose-built rental buildings (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 effect.

B. Covenants included in the Development Charges Deferral agreement

Every Development Charges Deferral agreement shall include covenants on the part of the developer.

These covenants shall include, but not be limited to:

- a) Covenant, by the developer(s), that the affordable, purpose-built rental building shall remain affordable for a period of not less than twenty (20) years
- b) Covenant, by the developer(s), that monthly rents shall not be increased at a rate that brings them above one-hundred and seventy-five (175) per cent of Average Market Rent (AMR) for private apartments, by bedroom type
- c) Covenant, by the developer(s), that for those units that achieve one-hundred and twenty-five (125) per cent (%) AMR or less for private apartments, by bedroom type, and do not have to satisfy the unit split requirement identified in Term 'C' of this policy, that they will be maintained at this level of affordability (one-hundred and twenty-five (125) per cent (%) AMR or less for private apartments, by bedroom type) for the duration of the Development Charges deferral

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- d) Covenant, by the developer(s), that 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) Covenant, by the developer(s), that if they are found to be in non-conformity with clauses 'a', 'b', 'c', or 'd' of this Term ('B'), Development Charges shall be made payable (including interest)
- f) Covenant, by the developer(s), that they will enter into any additional agreement(s), as determined to be required by the Regional Solicitor, in order to give full force and effect to the Development Charges Deferral agreement

C. Duration of the deferral

The duration of the Development Charges deferral shall vary based on the location, total number of units and number of units that are two (2), or more, bedrooms and will be in accordance with Table 1 below.

Table1

Criteria	Duration of Development Charges deferral
1. Affordable rental housing	5 Year
1. Affordable rental housing AND 2. Located in Regional Centres and Corridors or specific Local Centres	10 Year
1. Affordable rental housing AND 2. Minimum of 100 Dwelling Units AND 3. Minimum of 50 per cent (%) of the total number of Dwelling Units in the affordable, purpose-built rental building must have two (2), or more, bedrooms (Unit Split Requirement)*	10 Year

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Criteria	Duration of Development Charges deferral
1. Affordable rental housing AND 2. Located in Regional Centres and Corridors or specific Local Centres AND 3. Minimum of 200 Dwelling Units AND 4. Minimum of 50 per cent (%) of the total number of Dwelling Units in the affordable, purpose-built rental building must have two (2), or more, bedrooms (Unit Split Requirement)*	20 Year

*Note: Units that achieve one-hundred and twenty-five (125) per cent (%) of Average Market Rent (AMR) or less for private apartments, by bedroom type, may not have to satisfy the unit split requirement. In addition, those units that achieve one-hundred and twenty-five (125) per cent (%) of Average Market Rent (AMR) or less for private apartments, by bedroom type, shall 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 one-hundred and twenty-five (125) per cent (%) of Average Market Rent (AMR) or less for private apartments, by bedroom type, must be maintained at this level of affordability (one-hundred and twenty-five (125) per cent (%) of Average Market Rent (AMR) or less for private apartments, by bedroom type) for the duration of the Development Charges deferral after which time they must still be less than, or equal to, one-hundred and seventy-five (175) per cent of Average Market Rent (AMR) for private apartments, by bedroom type. These units must remain less than, or equal to, one-hundred and seventy-five (175) per cent of Average Market Rent (AMR) for private apartments, by bedroom type, for the duration of the restrictive covenant as identified under Term 'H' of this policy.

- 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 an affordable, purpose-built rental building prior to section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* being proclaimed, or for an affordable, 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 (5) years, ten (10) years or twenty (20) years 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 an affordable, purpose-built rental building after section 8 of Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019*, is proclaimed, or for an affordable, 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 bylaw 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 five (5) years, ten (10) years or twenty (20) years 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 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 one-hundred and seventy-five (175) per cent of Average Market Rent (AMR) for private apartments, by bedroom type
- Monthly rents exceeding one-hundred and twenty-five (125) per cent (%) of Average Market Rent (AMR) for private apartments, by bedroom type, for

those units that do not have to satisfy the unit split requirement identified in Term 'C' 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 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 'C' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

D. 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 affordable, 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 an affordable, 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 affordable, purpose-built rental building by the local municipality and shall be capped based on the prescribed percentage at the Valuation Date.

E. 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 'D' 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 affordable, purpose-built rental building by the local municipality and shall be capped based on the prescribed percentage at the Valuation Date.

F. Interest waiver

All interest shall be calculated using the Development Charges payable in Term 'E' 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 'C' of this policy).

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

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

G. Unit cap

The deferrals under this policy will be available to a maximum of 1,500 units over a three (3) year period, commencing immediately after Council approval. 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 (3) year period, it shall be up to the Commissioner of Finance and the Chief Administrative Officer to determine qualification and whether the unit cap may be exceeded.

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

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

I. 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 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
- Whether or not interest is waived
- Other incentives that may be provided, be them financial or otherwise

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. 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 'C' 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 'J' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

K. 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 'K' shall apply to Community Benefits Charges when a Community Benefits Charges bylaw has been adopted and is in effect.

L. Other agreements required

In addition to the requirements that the developer enter into a Development Charges Deferral agreement with the Region, the developer shall enter into any other 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

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. 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.

N. Report back to Council

Staff shall 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.

O. 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 (4) storeys.

Notwithstanding the foregoing, any affordable, purpose-built rental building that has previously executed a Development Charges Deferral agreement with the Region, under the Region's 36 month Development Charges deferral for purpose-built high density rental buildings, prior to this policy being approved by Council and coming into effect, may be exempt from this Term.

P. 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.

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

Q. 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.

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

For greater clarity, any affordable, 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).

S. Effective date

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 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
- Collect all Community Benefits Charges when due (when in-effect)
- Monitor timing of payment in order to ensure compliance with Term 'F' 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

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 'C' 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 'F' 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](#)
- [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](#)
- [Ontario Regulation 550/06](#)
- [York Region Official Plan, Map 1 - Regional Structure](#)

Appendices

- Council Report, [Draft Rental Housing Incentives Guideline and Community Improvement Plan](#), June 28, 2018
- Council Report, [Purpose-Built Rental Housing Incentives](#), October 10, 2019
- Memorandum, [Financial incentives for affordable rental housing and large office buildings](#), October 17, 2019

Contact

Director, Treasury Office, Finance Department at extension 71644

Approval

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Accessible formats or communication supports are available upon request.