



Town of Whitby Policy

Policy Title:	Growth-Related Development Fees Exemption for Affordable Residential Units Policy
Policy Number:	To be assigned following Council approval
Category:	Finance
Reference:	Development Charges Act, 1997 Planning Act, R.S.O. 1990, c. P.13 Bill 23, More Homes Built Faster Act, 2022 Bill 134, Affordable Homes and Good Jobs Act, 2023 Bill 185, Cutting Red Tape to Build More Homes Act, 2024
Date Approved:	Click here to enter a date.
Date Revised:	Click here to enter a date.
Approval:	Council
Point of Contact:	Financial Services Department

Policy Statement

The Town of Whitby is committed to supporting the development of diverse housing options and ongoing community growth. By taking meaningful action to address housing challenges, the Town is dedicated to increasing housing supply, fostering sustainable development, and access to safe, affordable, and inclusive housing for all.

Purpose

The purpose of this policy is to promote consistent and transparent application of growth-related development fee exemptions for affordable residential units. This policy is developed in alignment with the relevant legislative framework, providing guidance on areas not explicitly covered in the legislation. It further aims to safeguard the Town's interests while minimizing barriers to effective implementation.

Scope

This policy applies to exemptions of growth-related development fees, as permitted under section 4.1 of the Development Charges Act, 1997, S.O. 1997, c. 27 ("**DCA**") and subsections 37(32.1), 42(3.0.3) and 51.1(1.1) of the Planning Act, R.S.O. 1990, c. P.13. ("**PA**")

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1. Definitions

- 1.1. **Agreement** means the Affordable Residential Unit Growth-Related Development Fees Exemption Agreement between the Town of Whitby and the Owner, and in some instances the Region of Durham.
- 1.2. **Affordable Residential Unit (“ARU”)** means a residential unit that at all times meets the criteria set out in subsections 4.1(2) or 4.1(3) of the Development Charges Act, 1997.
- 1.3. **Affordable Residential Units Bulletin** means the bulletin entitled the “Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin”, as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a [website](#) of the Government of Ontario
- 1.4. **Affordable Residential Unit, Ownership** means a residential unit not intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:
- a) The price of the unit is no greater than the lesser of,
 - i. the income-based affordable purchase price for the residential unit set out in the Affordable Residential Units Bulletin, and
 - ii. 90 per cent of the average purchase price identified for the residential unit set out in the Affordable Residential Units Bulletin.
 - b) The residential unit is sold to a person who is dealing at arm’s length with the seller.
- 1.5. **Affordable Residential Unit, Rental** means a residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

- a) The rent is no greater than the lesser of,
 - i. the income-based affordable rent for the residential unit set out in the Affordable Residential Units Bulletin, and
 - ii. the average market rent identified for the residential unit set out in the Affordable Residential Units Bulletin.
- b) The tenant is dealing at arm's length with the landlord.

- 1.6. **Growth-Related Development Fees** means Development Charges (Town and Region of Durham), Community Benefit Charges, and Cash-in-Lieu of Parkland Dedication fees
- 1.7. **Event of Default** means any occurrence outlined in the Agreement that constitutes a breach or failure of obligations.
- 1.8. **Landlord** or **Owner** means the registered owner of the Property and its agents, heirs, administrators, successors and permitted assigns.
- 1.9. **Property** means the land, buildings and any associated structures where a proposed development will include at least one affordable residential unit.
- 1.10. **Treasurer** means the Commissioner, Financial Services/Treasurer of the Town.

2. Responsibilities

2.1. Commissioner, Planning and Development

- Assisting stakeholders during pre-consultation / planning approval meetings in determining eligibility for exemptions as ARUs under the PA and DCA

2.2. Commissioner, Legal and Enforcement Services/Town Solicitor

- Prepare Affordable Residential Unit Growth-Related Development Fees Exemption Agreement between the Town of Whitby and the Owner and registration/release of the Agreement against the title of the Property

2.3. Treasurer

Administer this policy, including but not limited to:

- Determining the total amount of the development charge, community benefit charge, and cash-in-lieu of parkland dedication that would be payable under the by-laws and the Legislative Framework
- Monitor and verify the status of ARUs to ensure compliance with the Agreement

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- Determine and collect all development charges, community benefit charges, and cash-in-lieu of parkland dedication, including interest, in the Event of Default
- Working with Town staff to ensure the policy is administered correctly

3. Legislative Framework

- 3.1. The legislative framework for provisions of exemption for ARUs was proclaimed into force as of June 1, 2024.
- 3.2. The exemptions outlined in this policy are not to be applied retroactively.
- 3.3. ARUs are exempt from development charges under subsection 4.1(8) of the DCA:

The creation of a residential unit that is intended to be an affordable residential unit for a period of 25 years or more from the time that the unit is first rented or sold is exempt from development charges.

- 3.4. ARUs are exempt from community benefits charges under subsection 37(32.1) of the PA:

With respect to a development or redevelopment that includes affordable residential units or attainable residential units, as defined in subsection 4.1 (1) of the *Development Charges Act, 1997*, or residential units described in subsection 4.3 (2) of that Act, the community benefits charge applicable to such a development or redevelopment shall not exceed the total community benefits charge as determined, multiplied by the ratio of A to B where:

“A” is the floor area of all buildings that are part of the development or redevelopment minus the floor area of all affordable residential units, attainable residential units and residential units described in subsection 4.3 (2) of the *Development Charges Act, 1997*; and

“B” is the floor area of all buildings that are part of the development or redevelopment.

- 3.5. ARUs are exempt from conveyance of land for park purposes under subsections 42(1.1) and (3.02), and 51.1(1.1) and (3.03) of the PA:

With respect to land proposed for development or redevelopment that will include affordable residential units or attainable residential units, as defined in subsection 4.1 (1) of the *Development Charges Act, 1997*, or residential units described in subsection 4.3 (2) of that Act, the amount of land that may be required to be conveyed under subsection (1) shall not exceed 5 per cent of the land multiplied by the ratio of A to B where,

“A” is the number of residential units that are part of the development or redevelopment but are not affordable residential units, attainable residential units or residential units described in subsection 4.3 (2) of the *Development Charges Act, 1997*; and

“B” is the number of residential units that are part of the development or redevelopment

- 3.6. ARUs shall not be included in the calculation of net residential units when determining the conveyance of land for park purposes under the alternative requirement (hectares per residential unit) approach.

4. Agreements

- 4.1. The effective date shall be the date upon execution of the Agreement by all parties.
- 4.2. The term of the Agreement shall remain in effect from the effective date until the earlier of:
- a) the twenty-fifth (25th) anniversary of the date the last Affordable Residential Unit is occupied; or
 - b) one year after the twenty-fifth (25th) anniversary of the date the first Affordable Residential Unit is occupied
- 4.3. The Agreement is to be registered against and have priority on the title to the Property, and not released from title to the Property, except following the expiration of the term of the agreement, or by written request of the Owner with approval by the Treasurer, on such terms as the Treasurer deems appropriate in their sole and unfettered discretion.
- 4.4. Any release of the Agreement from title to the Property without the consent of the Treasurer shall be treated as an Event of Default (refer to section 8 of this policy).

5. Limitations and Restrictions

- 5.1. An ARU cannot be sublet for an amount greater than the combined rent, utilities, and maintenance fees being charged to the leaseholder.
- 5.2. An ARU must not be utilized for any purpose that undermines the objective of providing affordable housing. This includes, but is not limited to, its use for temporary accommodations.
- 5.3. Financial transactions and lease/agreement of purchase and sale agreements that undermine the objective of providing affordable housing are restricted. This includes, but is not limited to, transactions/agreements that

include cash and/or non-cash consideration that exceeds and circumvents the amounts listed in the Affordable Residential Units Bulletin.

- 5.4. A violation of the outlined restrictions constitutes an Event of Default and is subject to remedies as outline in Section 8 of this policy.

6. Verification

- 6.1. Documents for the purpose of verifying units meet the criteria of an ARU can be in the form of rent rolls, lease agreements, agreements of purchase and sale, or other documentation to the Treasurer's satisfaction.
- 6.2. Documentation must be provided to the Treasurer within thirty (30) days of a change in ownership, which demonstrates that the purchase price of the unit(s) continue(s) to meet the criteria for an ARU.
- 6.3. A copy of the lease or rental agreement for an ARU must be provided to the Treasurer within thirty (30) days its execution.
- 6.4. The providing of false or misleading information to the Treasurer, whether for the purpose of verifying compliance or in response to requests for information or documentation related to compliance with the Agreement, constitutes an Event of Default.
- 6.5. Documents must be provided to the Treasurer annually for verification of compliance with this Policy and the Agreement. Annual verification of compliance documents for the preceding year is to be submitted by the Owner no later than January 31 and July 1 of the current year for rental and ownership units, respectively. Documents not provided to the Treasurer, by the Landlord or Owner or a previous Landlord or Owner, may constitute an Event of Default.

7. Associated Costs

- 7.1. The Owner shall be responsible for all associated costs incurred in connection with:
- 7.1.1. registration and discharge of the Agreement, caution, restriction, and/or notice on title of the Property;
 - 7.1.2. preparation of consents to the Agreement;
 - 7.1.3. preparation of assumption agreements for the Agreement;
 - 7.1.4. applicable administrative fee in accordance with the policies of the Town; and

- 7.1.5. all legal costs, disbursements and other expenses incurred by the Town, on a full indemnity basis, in the event the Town takes any legal action in response to an event of default, or as it may otherwise take to enforce the Town's rights under this Policy or the Agreement.

8. Remedies

- 8.1. The amounts to be payable by the Owner in the event of default shall be the lesser of:
- a) The Development Charge, Community Benefits Charge and cash-in-lieu of parkland dedication that would have been payable, pro-rated as described below and with the addition of interest, accrued from the date a building permit was first issued, at the maximum prescribed rate in accordance with section 26.3 of the DCA; or
 - b) The applicable Development Charges, Community Benefit Charges, and Cash in Lieu of Parkland Dedication calculated using the prevailing rates for the ARUs at the time of the Event of Default.
- 8.2. Pro-rating will be calculated by subtracting one twenty-fifth (1/25) of the total amounts owed, for each full calendar year that has elapsed during the term. No pro-rating will be given for partial calendar years.
- 8.3. If the amounts owing, calculated within this section, are not fully paid after ninety (90) calendar days of the Owner receiving written notice of an Event of Default, the unpaid amounts may be added to the tax roll and be collected in the same manner as property taxes.

9. Successors

- 9.1. The Property or any part thereof is transferred, and the Transferee fails to enter into an assumption agreement for the Agreement as required, prior to the date of transfer shall be treated as an Event of Default.

This Policy is hereby approved by Council Resolution #_____ on this _____ day of _____, 20__.

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