

Town of Whitby

Staff Report

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Report Title: Growth-Related Development Fees Exemptions for Affordable Residential Units

Report to: Committee of the Whole

Date of meeting: May 5, 2025

Report Number: FS 14-25

Department(s) Responsible:

Financial Services Department

Submitted by:

Fuwing Wong, Commissioner of
Financial Services / Treasurer

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

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1. Recommendation:

1. That Council approve the Affordable Residential Units Exemptions Policy included as Attachment 1 of Staff Report FS 14-25
2. That the Treasurer be delegated the authority to enter into and make certain amendments to the agreements as outlined in this Report FS 14-25 with the Region of Durham and property owners for the purpose of providing development charge, parkland dedication, and community benefit charge exemptions for Affordable Residential Units.

2. Highlights:

- The Province of Ontario passed various legislative bills that amended the Development Charges Act, 1997 (“DCA”) and the Planning Act, R.S.O. 1990 (“PA”), to exempt affordable residential units (“ARU”) from development charges, community benefits charges and parkland dedication requirements (collectively “growth-related development fees”).
- The Province also defines dollar thresholds for developments to qualify as ARUs, by municipality, in the “Affordable Residential Units for the Purposes of the

Development Charges Act, 1997 Bulletin” (**ARU Bulletin**) based on income and market rates/prices within each municipality.

- The ARU Bulletin currently notes that affordable unit rate thresholds for the Town of Whitby as follows:
 - Affordable Rental Housing:
 - \$1,533/month for 3+ bedroom units;
 - \$1,433/month for 2-bedroom units;
 - \$1,287/month for 1-bedroom units; and,
 - \$1,036/month for bachelor units;
 - Affordable Ownership Housing
 - \$517,400 purchase price threshold
- A draft Affordable Residential Units Exemption Policy reflecting Staff recommendations on the implementation of the legislated exemptions for development charges (both Town and Regional), community benefit charges, and parkland dedication is included as “Attachment 1” to this report.
- A draft template for the Affordable Residential Units Unit Exemptions Agreement, developed in collaboration with the Region of Durham and designating the Region as a party to the Agreement, is provided as "Attachment 2" to this report.
- The proposed agreement includes the following:
 - Agreements are registered on title;
 - Applicants to ensure ARUs remain affordable for 25 years;
 - If default occurs, the owner (at the time of default) must reimburse the Town and Region the lesser of:
 - The remaining prorated exemptions (plus interest); or,
 - applicable growth-related development fees at the time of default.
 - Pro-rating reduces owed amounts by 1/25 for each full year elapsed.
 - Unpaid charges after 90 days may be added to the property tax roll for collection.

3. Background:

In October, 2022 the Province of Ontario introduced the *More Homes Built Faster Act, 2022* (“**Bill 23**”). Bill 23 proposed various amendments to the DCA including definitions for affordable and attainable residential units based on market value averages. The PA would also be amended to reference the definitions. These definitions would be necessary as Bill 23 would introduce provisions to the PA and DCA that would exempt affordable and attainable residential units from applicable community benefits charges, parkland dedication, and development charges. Bill 23 received Royal Assent on November 28, 2022, but the exemptions for affordable and attainable units would not come into force until a proclamation issued by the Lieutenant Governor.

In December 2023, the Province of Ontario passed the *Affordable Homes and Good Jobs Act, 2023* (“**Bill 134**”). Amongst other proposed changes to the DCA, Bill 134 further expanded the definitions for ARUs. An income-based approach was added, and the market value-based approach was refined.

The implementation date for these exemptions would not be made known until the introduction of the *Cutting Red Tape to Build More Homes Act, 2024* (“**Bill 185**”) in April 2024. Bill 185 would reverse some of the proposed changes to the DCA brought forward by Bill 23 but there would be no changes in relation to the affordable and attainable residential units. Bill 185 would receive Royal Assent on June 6, 2024, and the amendments to the PA and DCA exempting affordable and attainable residential units would be proclaimed into force as of June 1, 2024.

Definition of an Affordable Residential Unit

Following the amendments introduced by the previously mentioned legislative bills, ARUs are classified into one of two categories within the DCA.

An “Affordable Residential Unit, **Rental**” is defined as a unit where the rent is not greater than the lesser of:

- Income-based rent: Rent that is equal to 30 per cent of gross annual household income for a household at the 60th percentile of the income distribution for renter households in the local municipality; and
- Market-based rent: Average market rent of a unit of the same unit type in the local municipality.

An “Affordable Residential Unit, **Ownership**” is defined as a unit where the price is not greater than the lesser of:

- income-based affordable purchase price for the residential; and
- 90 per cent of the average purchase price.

In May 2024, the Minister of Municipal Affairs and Housing released the first [ARU Bulletin that defines Affordable Residential Units \(Rental and Ownership\)](#) by municipality, based dollar thresholds calculated on an income and market approach (noted above) for each Ontario municipality. The Minister will update the Affordable Housing bulletins regularly and the Town will use the amounts outlined in the bulletins as the definition (or upper threshold) for ARU’s going forward. The current thresholds for ARU’s posted are to remain until the next anticipated update on June 1, 2025.

Based on the ARU Bulletin, the Town of Whitby’s monthly rental rate thresholds for an **Affordable Residential Unit, Rental** are as follows (i.e. the maximum monthly rent a landlord may collect from a tenant for the unit to still qualify as affordable/an ARU for the exemption program):

- Units with 3 or more bedrooms: \$1,533/month
- Units with 2 bedrooms: \$1,433
- Units with 1 bedroom: \$1,287
- Bachelor units: \$1,036

Further, based on the ARU Bulletin, the purchase price threshold for an **Affordable Residential Unit, Ownership** (i.e. the maximum price a unit could be sold for and still qualify as affordable/an ARU for the exemption program) is \$517,400.

Exemption from Growth-Related Development Fees

For an ARU to be exempt from growth-related development fees (specifically, Town and Regional development charges, community benefits charges and parkland dedication) the units must be sold or rented in an arm's length transaction. Additionally, there is a requirement for the units to remain affordable for a period of 25 years.

Definition of Attainable Still Under Development

Although attainable residential units are included and referenced in the legislation, the Province has yet to provide a formal definition or criteria for evaluating these units. Until such a definition is established, no exemptions will be granted based on the designation of attainable units.

4. Discussion:

The DCA includes provisions to support compliance with the conditions and requirements of receiving an exemption for ARUs, and to protect the municipality in the event of non-compliance. These provisions include entering into agreements with the municipality, and registration of said agreements on title of the property. While certain aspects of the legislation are explicitly detailed, others are left to the discretion of individual municipalities as policy decisions. The subsequent section provides an overview of these decisions, and the draft Affordable Residential Units Exemption Policy reflecting Staff recommendations are included as "Attachment 1" to this report.

Agreements

To ensure that the unit remains affordable for a period of 25 years, the seller or landlord must enter into an agreement with the Town. Section 4.1(12) of the DCA states that "The Minister of Municipal Affairs and Housing may establish standard forms of agreement" to be used for the purposes of ARU exemption from development charges. However, at the time of this report, no standard agreement has been established by the Ministry of Municipal Affairs and Housing.

A working group including Region of Durham and the lower-tier municipalities within the Region was established with the purpose of creating a standard agreement that would be a standardized tri-party agreement. The tri-party agreement would reduce the administrative cost and requirement for the developer, and also protect the Town and Region of Durham's interests.

The Affordable Residential Unit Exemptions Agreement template is included as "Attachment 2" for Council's approval, it is requested that Council provide the Treasurer delegated authority to enter into and amend such agreements.

Term of the Agreement

Unless terminated earlier, agreements shall take effect and remain in effect until the earlier of:

- a) The twenty-fifth (25th) anniversary of the date the last ARU is occupied at the Development; or
- b) One year after the twenty-fifth (25th) anniversary of the date the first ARU is occupied at the Development.

Registration of the Agreement

As there are no restrictions on the sale of an affordable unit, it is probable that ownership will change during the 25-year term. To ensure that the provisions of these agreements are enforceable, staff recommend that all agreements be registered on title against the applicable land. The municipality is authorized to do so through the DCA to best ensure that the provisions of the agreements will apply to the registered owner at any given time through subsequent changes of ownership.

The registration of the agreement on title is an effective method to ensure that the intent of the unit to remain affordable is not forgotten over a long period of time, i.e. 25 years. However, Staff anticipate that there will be future situations where a subsequent purchaser will claim they were not aware and/or they need to sell the unit at market rates (i.e. above the Affordable thresholds set by the Province via the ARU Bulletin). The proposed Agreement allows for this situation and applies growth-related development fees pro-rated over the balance of the 25 years remaining (see more information below).

Associated Costs

Any cost or expenses incurred for the preparation, registration, discharge, administration and enforcement of the agreements are the obligation of the Owner. Town staff will be bringing forward any changes required to the Fee By-law #7220-17, as amended to account for any increased costs related to this Agreement.

Monitoring

To ensure the integrity of the ARU exemptions, Staff recommend verification of ARU thresholds (to the current ARU Bulletins) at the following transaction stages:

- Occupancy;
- Change of ownership; and,
- Execution of a lease

For Affordable Residential Units, Rental, the Region of Durham will take the lead to develop and implement an annual monitoring/reporting process that may include the requesting of leases, proof of rent receipts, attestations/declarations, or any other information or documentation to establish the rents paid by tenants occupying ARUs.

For Affordable Residential Units, Ownership, the lower tier municipalities/Town of Whitby Staff will take the lead to develop and implement a process for monitoring, reviewing, and verifying that may include submission of Agreement of Purchase and

Sale, attestations/declaration, or any other information or documentation to establish that the sale price is within the threshold for an affordable residential unit, ownership.

Default of Agreement

The Agreement will include provisions that if within the 25-year period, if the unit ceases to meet the criteria for an ARU (i.e. being rented or sold at a rate/price exceeding the prevailing rate/price specified in the ARU Bulletin) or if the Owner is found to be in default of any provision of the Agreement, the Owner must reimburse the Town the lesser of the following:

- a) The value of exemptions previously provided, pro-rated with the addition of interest calculated from the date a building permit is first issued; or
- b) The applicable Development Charges, Community Benefit Charges, and Cash in Lieu of Parkland Dedication at the time of default for the ARUs.

This provision encourages ARU's to remain affordable over the full 25-year period but recognizes that there may be situations where a future homeowner may need to sell at market prices / where a future apartment owner may need to lease at market rents (above the ARU Bulletin thresholds). It is recommended that future Councils not waive this provision (and required payment) as it will indicate to other Affordable Residential Unit owners that the payment may not be required and may result in a decrease in affordable housing supply (rental or ownership) in Whitby, overall.

Pro-rating

Pro-rating for an Event of Default of the Agreement will be calculated by subtracting from the amount of charges for each ARU default, one twenty-fifth (1/25) of the amounts owed for each full calendar year that has elapsed during the term where the unit met the ARU definition. No pro-rating will be given for partial calendar years.

Effectively, the growth-related development fees are divided by 25 years and pro-rating:

- recognizes / provides a reduction for the full years the unit met the ARU definition; and,
- calculates growth-related development fees to be paid for the remaining years (to a maximum of 25 years) that the unit will no longer be affordable.

Interest

The Town has established a policy to apply interest at the maximum prescribed rate to all development charges payments that are subject to a locked-in rate or paid through installments. It is recommended that this same rate and structure be utilized when interest is applicable to the Agreement. The maximum prescribed interest rate is defined as the average prime rate of the five largest banks in Canada, plus an additional 1%, adjusted quarterly.

Unpaid Charges Added to Taxes

If the amounts owing remain unpaid 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 taxes in accordance section 32 of the DCA.

Amendments to Agreements

Town staff propose that the Treasurer be authorized to make amendments to the Agreement to ensure that the Town's interests are protected or in situations which do not unduly delay the construction of affordable housing. Such amendments will be minor in nature and will only be for minor changes to the core terms noted above. Should an owner or developer seek more substantial changes to the Agreement, including those which make significant changes to the core terms, above, Council authority will be required.

5. Financial Considerations:

As the exemption for ARUs from development charges is a statutory exemption (i.e. mandated by legislation), the Town is not required to identify alternative funding sources to compensate for the resulting development charges shortfall.

The Provincial requirement to ensure that an Affordable Residential Unit (rental or ownership) remains "affordable" (in accordance with the ARU Bulletin) for 25 years helps to ensure there will be a supply of affordable housing (rental or ownership) in the long-term through financial incentives. However, the financial incentives are at the expense of funding, at the municipal level, required to address growth-related infrastructure pressures. Further, the requirement to monitor and enforce is also at the local municipal level. That is, the municipalities must develop programs to administer the agreements, monitor the sales/lease transactions on ARU's, and enforce the collection if an ARU ceases to meet the ARU Bulletin definition before the 25-year period. Staff will also monitor the costs and staff resources related to administering this program and recommend additional staff resources and related recovery fees in future budgets, if required.

6. Communication and Public Engagement:

The approved policy will be made publicly available on the Town's website, to be included under the Finance Policies section of the Town Policies [webpage](#).

7. Input from Departments/Sources:

This report and Attachment 2 have been reviewed in detail and incorporate feedback from Legal Services and Financial Services.

A draft policy was reviewed by the Policy Co-ordination Committee and their feedback has been incorporated into the Affordable Residential Unit Exemptions Policy included as Attachment 1.

8. Strategic Priorities:

The recommendations in this report support the following Community Strategic Plan priorities:

Pillar 1: Action Item 1.3.4 – In collaboration with partners, support the implementation of Durham Region’s Housing Plan regarding affordability and diversity of housing.

9. Attachments:

Attachment 1 – Growth-Related Development Fees Exemption for Affordable Residential Units Policy

Attachment 2 – Affordable Residential Unit Growth-Related Development Fees Exemption Agreement Template