

# HEMSON

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*Sent Via E-mail*

**From:** Jaclyn Hall, Hemson Consulting

**Date:** March 11, 2021

**Re:** Waiving of Fees and Charges for Affordable Housing Development

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This memo provides an overview of the options to waive various municipal fees and charges for affordable housing developments with a specific focus on DC exemptions. There are multiple ways to provide incentives including:

1. Administering a grant-in-lieu of payment;
2. Registering a Municipal Housing Capital Facilities Agreement and passing an accompanying by-law;
3. Amending the DC by-law (would only apply to the development charge but not the other fees); or
4. Through the use of a Community Improvement Plan (CIP).

## **A. POSSIBLE EXEMPTIONS**

### **1. Grant-in-Lieu of Payment**

In absence of an existing Community Improvement Plan (CIP) or Municipal Housing Capital Facilities Agreement, the fastest way to exempt the development from the fees listed, is to provide a grant-in-lieu. Grants-in-lieu can be provided by Council on a case-by-case basis but require that a by-law be passed. This is supported by Section 107 of the Municipal Act, 2001 which states that:

*"a municipality may make grants, on such terms as to security and otherwise as the council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality".*

However, Section 107 is subject to the limitations set out in Section 106 which prevents a municipality from granting of bonuses but specifically references manufacturing businesses or other industrial or commercial enterprises, not affordable housing developments.

**That said, there is some uncertainty as to whether an exemption for affordable housing developments would be considered as “bonusing”. A legal article on the issue of municipal bonusing can be found here:**

- [http://www.millerthomson.com/assets/files/article\\_attachments/Municipal Bonusing Whats Permitted and Whats Not.PDF](http://www.millerthomson.com/assets/files/article_attachments/Municipal_Bonusing_Whats_Permitted_and_Whats_Not.PDF)

If a municipality were to provide a grant-in-lieu for affordable housing developments, we would suggest the following question be reviewed with legal counsel:

- The powers to provide grants and loans under Section 107 relate to the issuances of loans, land and use. Do these powers also allow for a municipality to provide a grant for other fees and charges including development charges?

## **2. Municipal Housing Capital Facilities Agreement**

It is possible, and encouraged, for municipalities to provide financial assistance to affordable housing providers, through the reduction or exemption of development charges. This may be implemented through the use of a Municipal Housing Capital Facilities Agreement with the developer.

Prior to entering into a Municipal Housing Capital Facilities Agreement with a property owner, the municipality must pass a municipal housing capital facilities by-law. This by-law must contain a definition of “affordable housing”, policies regarding public eligibility for the housing units, and a summary of the provisions that the municipal housing capital facilities agreements must contain. The By-law is enacted under Section 110 of the Municipal Act, 2001 and Ontario Regulation 603/06.

## **3. Exemption Provided Through DC By-law**

In addition to the options presented above, a full exemption of development charges can be enacted through the DC By-law under the *Development Charges Act, 1997*.

## **4. Community Improvement Plan**

Lastly, the use of a Community Improvement Plan is possible to reduce or remove planning application fees and development charges as well as other incentives such as tax increment equivalency grants. To implement a CIP, municipal council must adopt Official Plan policies and an accompanying by-law to designate the CIP area. The Official Plan policies must specify municipal programs and incentives and their

eligible works, improvements, buildings or facilities. The use of CIPs is permitted under section 28 of the *Planning Act, 1990*.

## **B. FINANACIAL CONSIDERATIONS**

In accordance with the requirements of section 5(1)6 of the DCA, if a development charge by-law exempts a type of development, phase in a development charge, or provides a reduction from the calculated development charge rates, the rules for development charges may not provide for any resulting shortfall to be made up through higher development charges for other development.

As such, if a municipality exempts a development from paying development charges, the exemption must be funded through other revenue sources (e.g. property tax).

## **C. ENABLING LEGISLATION**

Below are excerpts from the relevant pieces of legislations that would enable a municipality to exempt developments from DCs, cash-in-lieu, planning and building permit fees for affordable housing developments.

### **1. Municipal Act, 2001**

- <https://www.ontario.ca/laws/statute/01m25#BK130>

#### **a. Section 107**

- Municipalities have the power to make a grant to non-commercial enterprises. A municipality is able to provide relief from DCs, cash-in-lieu payments, planning and building permit fees. This option, however, provides for minimal control over the lifetime of the development. Below is the enabling section for entering into agreements which provide for the length of time the agreement is in place for, it can be registered on title, and include the repercussions of breaking the agreement. York Region and the City of Toronto rely on these to exempt their affordable housing developments.

#### **b. Section 110 (1)**

- This section applies to an agreement entered into by a municipality for the provision of municipal capital facilities by any person, including another municipality, if the agreement provides for one or more of the following:
  - Lease payments in foreign currencies as provided for in subsection (2).

- Assistance as provided for in subsection (3).
- Tax exemptions as provided for in subsection (6).
- Development charges exemptions as provided for in subsection (7). 2006, c. 32, Sched. A, s. 51.

**c. Section 110 (7)**

- Despite the *Development Charges Act, 1997*, the council of a municipality may exempt from the payment of all or part of the development charges imposed by the municipality under that Act land or a portion of it on which municipal capital facilities are or will be located that,
  - is the subject of an agreement under subsection (1);
  - is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and
  - is entirely occupied and used or intended for use for a service or function that may be provided by a municipality. 2006, c. 19, Sched. O, s. 3 (2).
- Regulations under the act – [O. Reg. 603/06](#) prescribe the restrictions and mandatory information to be contained in the municipal housing facility by-law.

**2. Development Charges Act, 1997**

- <https://www.ontario.ca/laws/statute/97d27#BK36>
- The DC By-law can be amended to provide for the exemption of DCs for affordable housing developments under Section 5 (10).
- A municipality may also enter into a deferral agreement under Section 27 for DCs to be paid at a later date as specified through the conditions of the agreement.

**3. Planning Act, 1990**

- <https://www.ontario.ca/laws/statute/90p13#BK63>
- The Official Plan must contain such policies and measures as are practicable to ensure the adequate provision of affordable housing. This provision can then be used as a basis for amending the existing by-law, establishing a CIP or establishing a municipal housing capital facilities by-law.

- Section 28 of the Planning Act enables municipalities to create a CIP.

#### **D. EXAMPLE FROM OTHER MUNICIPALITIES**

##### **1. City of Peterborough**

- There are a number of financial incentive programs that are part of the City's affordable housing CIP, including:
  - The Municipal Incentive Program: The City of Peterborough provides relief from planning application fees.
  - The Affordable Housing Tax Increment Based Program: The City reimburses a portion of the municipal property tax increase resulting from higher assessment to owners of redeveloped properties. For the first five years, the grant is generally equivalent to 100 %+ of the municipal tax increase with the owner gradually paying an increasing amount for the next five years
  - 20 year affordability period
  - <http://www.peterborough.ca/Assets/City+Assets/Planning/Documents/Affordable+Housing+CIP+Application+Package.pdf>

##### **2. City of Ottawa**

- Ottawa provides exemptions from development charges for not-for-profit housing providers or charitable developers who are building new affordable rental housing. The City requires these developers to provide proof of their non-profit or charitable status in order to receive this development charge exemption. The City's development charges by-law provides for the exemption as follows:
  - "The following lands are exempt from development charges:
  - (ix) A residential use building erected and owned by non-profit housing, provided that satisfactory evidence is provided to the Treasurer that the residential use building is intended for persons of low or modest incomes and that the dwelling units are being made available at values that are initially and will continue to be below current market levels in the city"

##### **3. York Region**

- Example of a Municipal Housing Facilities By-law:
  - [By-law 2010-28 - A By-law for the provision of municipal housing facilities.](#)

- 20 year affordability period

#### 4. Toronto

- The City of Toronto currently provides for the waiving of development charges, planning and building fees and property taxes through the Open Door Affordable Housing Program.
  - <https://www.toronto.ca/community-people/community-partners/affordable-housing-partners/open-door-affordable-housing-program/>
- Through the municipal capital facilities bylaw and agreements enabled by the City of Toronto Act, chosen applicants are provided a rent by way of forgivable loan as well as exemption from:
  - Property taxes,
  - Development charges,
  - Planning application fees,
  - Building permit fees,
  - Parkland dedication payment requirements, and
  - Toronto district School Board Levies.
- 25 year affordability period (inclusive of a five year phase out)

#### E. OTHER RESOURCES

- MMAH – [Municipal Tools for Affordable Housing](#)
- Contact at MMAH:

Municipal Services Office – Central  
 777 Bay Street 13th Floor  
 Toronto, ON, M5G 2E5  
 General Inquiry: 416-585-6226  
 Toll Free 1-800-668-0230  
 Fax: 416-585-6882

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