

Subject: Authority and Fees for Affordable Rental Unit Agreements entered into pursuant to the Development Charges Act, section 4.1

File Number: ACS2025-SI-HSI-0013

Report to Planning and Housing Committee on 7 May 2025

and Council 14 May 2025

Submitted on April 28, 2025 by Geraldine Wildman, Interim Director, Housing Solutions and Investment Services, Strategic Initiatives Department

Contact Person: Garrett Schromm, Associate Legal Counsel

612-580-2424 ext. 29521, garett.schromm@ottawa.ca

Ward: Citywide

Objet : Pouvoirs et droits relatifs aux Conventions relatives aux unités de logement abordable conclues conformément à l'article 4.1 de la *Loi de 1997 sur les redevances d'aménagement*

Numéro de dossier : ACS2025-SI-HSI-0013

Rapport présenté au Comité de la planification et du logement

Rapport soumis le 7 mai 2025

et au Conseil le 14 mai 2025

Soumis le 2025-04-28 par Geraldine Wildman, directeur par intérim, Solutions de logement et Investissements

Personne ressource : Garrett Schromm, conseiller juridique adjoint

613-580-2424 ext. 29521, garett.schromm@ottawa.ca

Quartier : À l'échelle de la ville

REPORT RECOMMENDATION(S)

- 1. That Planning and Housing Committee recommend that Council approve:**
 - a. The delegation of authority to the Director, Housing Solutions and Investment Services to negotiate and enter into Affordable Rental Unit Agreements on behalf of the City pursuant to section 4.1 of the Development Charges Act, 1997 and Planning Act subsections 37(32.1), 42 (3.0.3) and 51.1.(3.0.2);**
 - b. The general form of the Affordable Rental Unit Agreement set forth in Document 1; and**
 - c. The authorization to the Director, Housing Solutions and Investments Services and to the City Solicitor to include additional terms in the agreement as set forth in this report.**
- 2. That Planning and Housing Committee recommend that Council enact a by-law, substantially similar to that detailed in Document 2, permitting the recovery of a legal fee for preparation of Affordable Rental Unit Agreements.**

RECOMMANDATION(S) DU RAPPORT

- 1. Que le Comité de la planification et du logement recommande au Conseil municipal d'approuver :**
 - a. la délégation à la directrice, Services des solutions de logement et des investissements, du pouvoir de négocier et de conclure des Conventions relatives aux unités de logement abordable de la part de la Ville, conformément à l'article 4.1 de la *Loi de 1997 sur les redevances d'aménagement* et aux paragraphes 37(32.1), 42(3.0.3) et 51.1(3.0.2) de la *Loi sur l'aménagement du territoire*;**
 - b. le formulaire général de la Convention relative aux unités de logement abordable présenté dans le document 1;**

- c. la délégation à la directrice, Services des solutions de logement et des investissements, et à l'avocat général de la Ville du pouvoir d'ajouter des modalités dans la convention, comme l'énonce le présent rapport.

- 2. Que le Comité de la planification et du logement recommande au Conseil d'adopter un règlement en grande partie similaire à celui décrit dans le document 2, qui vise à permettre le recouvrement des frais juridiques liés à la préparation des Conventions relatives aux unités de logement abordable.

EXECUTIVE SUMMARY

This report recommends providing delegated authority to staff to enter into agreements, containing the terms outlined in Document 1, to ensure that any new rental development which wishes to benefit from statutory exemptions from Development Charges or reductions in Community Benefit Charges or parkland dedication (or cash-in-lieu thereof) applicable to units which are rented at a Provincially-prescribed “affordable” rate are obligated to maintain the affordable status of these rental units for a period of 25 years.

The municipality is obligated to provide the opportunity for rental applicants to enter into such an agreement under the *Development Charges Act* and the present report would recommend the terms upon which staff are delegated authority to do so.

The report also recommends creating a fee to recover the costs of preparing and negotiating such agreements (as set out in Document 2).

This report pertains only to proposed affordable units which are intended to be offered for rent. Staff will return to Council with a proposal for a form of agreement to cover units which are to be sold at an affordable level, which are also addressed in the legislation.

SYNTHÈSE ADMINISTRATIVE

Le présent rapport recommande de déléguer des pouvoirs au personnel pour qu'il puisse conclure des conventions, contenant les modalités indiquées dans le document 1, afin de s'assurer que le promoteur de tout nouveau projet d'aménagement à des fins de location qui souhaite bénéficier de l'exemption des redevances d'aménagement prévue par la loi ou de la réduction des redevances pour avantages

communautaires ou des frais relatifs aux terrains à vocation de parc, applicables aux unités qui sont louées à un coût « abordable » prescrit par le gouvernement provincial, soit obligé de maintenir le statut abordable de ces unités de location pour une période de 25 ans.

La municipalité a l'obligation de donner à ceux qui déposent une demande d'aménagement locatif la possibilité de conclure une telle convention en vertu de la *Loi de 1997 sur les redevances d'aménagement*, et le présent rapport recommande les modalités en vertu desquelles le personnel recevrait les pouvoirs d'agir de la sorte.

Le rapport recommande aussi l'instauration de droits pour récupérer les coûts de la préparation et de la négociation de telles conventions (comme le précise le document 2).

Le présent rapport ne vise que les unités abordables proposées devant être offertes en location. Le personnel soumettra plus tard au Conseil une proposition de convention qui s'appliquerait aux unités devant être vendues à un prix abordable, lesquelles sont aussi mentionnées dans la loi.

BACKGROUND

Legislative Requirement for Affordable Rental Unit Agreements

Legislative amendments have created the requirement for a new form of agreement to secure the affordability of rental units which are to benefit from new legislative exemptions or reductions in development charges, community benefit charges, or parkland obligations.

Subsections 4.1 (8) and (9) of the *Development Charges Act* exempt Affordable Residential Units which are intended to be an Affordable Residential Unit for 25 years or more from the time that the unit is first rented from development charges, provided that the owner of said unit enter into an agreement to that effect with the municipality.

The criteria for what constitutes an "Affordable Residential Unit", where the unit is intended for rental, are set out in subsection 4.1 (2):

- The unit rent must be no greater than the lesser of two rental rates set out in a bulletin published online by the Minister of Municipal Affairs and Housing (the "Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin"). The two rental rates are the average market rate or the "income-based affordable rate". The latter is determined based on the rent that, in the

Minister's opinion, is equal to 30 percent of the household income of a household in the 60th percentile of gross annual incomes for rental households in each municipality.

- The tenant must be dealing at "arms-length" with the landlord.

The current "[Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin](#)" is in effect from June 1, 2024 to May 31, 2025 and is expected to be updated annually by the Province. Data from the current Bulletin pertaining to affordable rents and purchase prices in Ottawa is available on the [City of Ottawa's website](#).

The *Planning Act*, R.S.O. 1990, c. P.13 ("*Planning Act*"), subsection 37 (32.1) provides a reduction in Community Benefits Charges for development or redevelopment that includes affordable residential units as defined in subsection 4.1 (1) of the *Development Charges Act*. The reduction is a percentage reduction proportionate to the share of gross floor area of affordable units in the overall development floor area.

The *Planning Act* subsections 42 (3.0.3) and 51.1. (3.0.2) also provide a reduced parkland dedication obligation (and/or cash-in-lieu thereof) where such units are proposed. The number of units which count toward the "alternative" rate for parkland dedication or cash in lieu (either 1 hectare per 600 units or cash value of 1 hectare per 1000 units) is reduced by the number of affordable units.

The above-described legislative provisions were part of the amendments enacted in the *More Homes Built Faster Act, 2022*, S.O. 2022, c. 21 (Bill 23), and came into force June 1, 2024.

Subsection 4.1 (9) of the *Development Charges Act* makes entering into an agreement with the municipality a mandatory requirement for qualifying for the exemption. The *Planning Act* sections pertaining to community benefits charges and parkland dedication reductions cross-reference s. 4.1 of the *Development Charges Act*, thus the agreement is required to qualify for these *Planning Act* reductions.

Subsection 4.1 (9) of the *Development Charges Act* states that the agreement shall require "the residential unit [...] to be an affordable residential unit for a period of 25 years." Otherwise, the legislation is silent on the contents of the agreement. Subsection 4.1 (12) allows the Minister of Municipal Affairs and Housing to establish "standard forms of agreement" for the purposes of subsection (9), but as of the date of this report no such standardized forms of agreement have been established.

Subsection 4.1 (13) permits such affordable unit agreements to be registered against lands to which they apply and entitles the municipality to enforce the provisions against the current and subsequent owners of the lands.

It should be noted that the Development Charges Act also creates an exemption for units which are intended to be sold, not rented, at affordable rates, defined in subsection 4.1 (3). Staff are still developing a recommendation as to the standard contents for units intended to be sold at affordable rates, additional terms, over and above those in Document 1, may be required for these agreements, in order to ensure that the legislative intent to secure their affordability for 25 years is met.

DISCUSSION

Staff are recommending a delegation of authority to the Director, Housing Solutions and Investment Services to negotiate and enter into these Affordable Rental Unit Agreements on behalf of the City.

Staff recommend a direction that any such agreements contain all of the terms in Document 1. These terms include:

- A requirement that the applicant ensure that the units are rented at the Provincially-determined rate for 25 years and provide proof of the rents actually being charged for the units throughout that term. This provides the opportunity for staff to monitor compliance with the agreement.
- While the legislation does not permit staff to restrict the applicant to renting only to tenants who show a financial need based on income, staff propose a requirement that due consideration be given to prioritizing renting to such tenants.
- Any increases in rent shall maintain a rental rate that is less than or equal to the applicable Bulletin “affordable” rate. The applicant will also acknowledge that they must also comply with any applicable *Residential Tenancies Act, 2006* restrictions on rent increases.
- Units which have been identified as the Subject Units may not be substituted with another unit in the building, as one of the affordable units for the purpose of the Agreement, without the prior written consent of the City. Staff wish to avoid a situation where smaller or lesser quality units are substituted for the units initially identified.

- Should the applicant default on the agreement by charging above-Bulletin rents, the first course of action would be to seek that the applicant repay the funds inappropriately charged in rent to their tenant(s), bringing the applicant back into compliance. Should this prove impossible, then a payment to the City of the pro-rata amount of development charges, community benefit charges or parkland cash-in-lieu would be owing, plus accumulated interest from the date the applicable charge would be owing. If the default takes place before the end of the Term, the applicant remains obligated to rent to their tenants at affordable rates for the balance of the Term.
- The Agreement shall be registered on title to the subject property at the applicant's cost and the applicant shall agree that the lands shall not be transferred to a purchaser/transferee unless that purchaser/transferee agrees to assume the obligations of the agreement

Staff recommend that the Director, Housing Solutions and Investment Services and the City Solicitor be provided with the authority to add any terms which may be required, in their view, to give effect to the intent of Council in adopting the recommendations of this report and ensuring the requirements of the legislation are met. This may include legal terms standard to these types of agreements, or terms which address matters specific to the development in question.

FINANCIAL IMPLICATIONS

The Affordable Rental Unit Agreements will ensure that any new rental development can benefit from statutory exemptions from Development Charges, reductions in Community Benefit Charges or parkland dedication (or cash-in-lieu thereof) applicable to units which are rented at a Provincially prescribed "affordable" rate. Applicants are obligated to maintain the affordable status of these rental units for a period of 25 years. In the event of default the applicant would be required to reimburse the tenant, if they are unable to reimburse the tenant the applicant shall be responsible for paying the pro-rata amount of Development Charges, Community Benefits Charges, or cash-in-lieu of parkland that would have been owing at the time of the development, plus accumulated interest from the date on which each applicable charge was owing.

As the Development Charges are statutory exemptions, the City is not required to fund the exemptions. The exemptions will be a decrease to the associated Development Charge, Community Benefit Charge and Cash in Lieu of parkland reserve(s). The revenue loss cannot be estimated at this time as the volume is not known.

A new user fee is being introduced in recommendation 2. The Affordable Rental Unit Agreement Fee is in accordance with the City's User Fees and Charges Policy whereby Section 391 of the Municipal Act, 2001 provides municipalities with authority to establish and collect user fees and charges to recover costs associated with the delivery of services where users can be identified. As the volume of agreements is not known, no additional resources are being requested and the work to execute and monitor the agreements can be done from within existing resources at this time. Volumes will be reviewed annually, and fees adjusted through future budget process(es), if required.

LEGAL IMPLICATIONS

Entering into an Affordable Rental Unit Agreement is a requirement of the *Development Charges Act* for any developer wishing to benefit from the statutory exemptions/reductions discussed above. Staff require Council authority to negotiate and enter into such agreements. If the report recommendations are approved by Council, Legal Services staff will work with Strategic Initiatives staff to implement Affordable Rental Unit Agreements in cases where a development proposes to include affordable rental units.

The authority discussed in this report relates only to agreements pertaining to affordable units offered for rent. While the legislation contemplates similar exemptions for affordable units offered for sale, staff are evaluating how to implement agreements dealing with such units and will return to Council for authority when a recommendation is available in that regard.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a City-Wide Report.

CONSULTATION

The Affordable Rental Unit Agreements in this report have been legislated by the Provincial government and are, therefore, not subject to consultation at the municipal level.

ACCESSIBILITY IMPACTS

Development of subject sites that enter into an Agreement with the City will be subject to the *Integrated Accessibility Standards Regulation of the Accessibility for Ontarians with Disabilities Act, 2005* (AODA) and the *Ontario Building Code* as required.

ASSET MANAGEMENT IMPLICATIONS

Choose a building block.

CLIMATE IMPLICATIONS

There are no climate implications associated with this report.

DELEGATION OF AUTHORITY IMPLICATIONS

This report recommends delegation of authority to the Director, Housing Solutions and Investment Services, to enter into the required agreements for affordable rental units as Provincially legislated.

ECONOMIC IMPLICATIONS

Developments that include affordable units subject to these Agreements will support jobs and economic development within the City's construction industry.

ENVIRONMENTAL IMPLICATIONS

There are no climate implications associated with this report.

INDIGENOUS, GENDER AND EQUITY IMPLICATIONS

These Agreements will support equity in the City by contributing to the City's supply of affordable residential rental units.

RISK MANAGEMENT IMPLICATIONS

The Affordable Rental Unit Agreement will include provisions for addressing cases of default and the process to recover the required payments, as described in this report.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

TERM OF COUNCIL PRIORITIES

Delivery of new units at affordable rents directly supports the 2023-2026 Term of Council Priority for: A city that has affordable housing and is more liveable for all.

SUPPORTING DOCUMENTATION

Document 1: Approved Terms of Affordable Rental Unit Agreement

Document 2: Details of “A by-law of the City of Ottawa to impose legal fees for Affordable Rental Unit Agreements.”

DISPOSITION

If the report recommendations are approved by Council, Legal Services staff will work with Strategic Initiatives staff to implement Affordable Rental Unit Agreements in cases where a development proposes to include affordable rental units.

Legal Services, City Manager’s Office to prepare the by-law described in Document 2 and forward the implementing by law to City Council.

DOCUMENT 1

Affordable Rental Unit Agreement Terms

Unless and until the Minister of Municipal Affairs and Housing establishes a standard form of agreement that shall be used for the purposes of subsection 4.1 (9) of the *Development Charges Act*, Staff are directed to ensure the following terms shall apply to all Affordable Rental Unit Agreements.

1. "Affordable Residential Unit" has the same definition as in section 4.1 of the *Development Charges Act*, as may be amended from time to time
2. The applicant shall represent that the units for which an exemption/reduction is being sought (the "Subject Units") are intended for rental and will meet the Provincial criteria to qualify as Affordable Residential Units for a minimum period of 25 years (the "Term"). The applicant shall provide, prior to the City executing the Agreement, any required evidence to substantiate that representation.
3. Throughout the Term, the applicant shall provide an accounting of the rents actually being charged for the Subject Units and any other supporting documentation required, on terms satisfactory to staff.
4. The applicant shall agree to give due consideration to prioritizing renting the Subject Units to tenants who have demonstrated financial need based on income.
5. The applicant shall agree that any increases in rent for the Subject Units shall comply with the *Residential Tenancies Act* (as applicable) and maintain the status of the unit as "affordable" for the purposes of the "Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin", as it is amended from time to time, published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario (the "Bulletin").
6. Units which have been identified as the Subject Units may not be substituted with another unit in the building, as one of the affordable units for the purpose of the Agreement, without the prior written consent of the City.
7. In the event that the applicant should default on the Agreement by, during the Term, charging rents in excess of the maximum amount permitted under the Bulletin, they shall be liable to immediately reimburse the tenant(s) for the amount of excess rent so charged. If, in the City's sole discretion, the applicant

has made all reasonable efforts to reimburse the tenant(s) but cannot do so, the applicant shall be responsible for paying the pro-rata amount of Development Charges, Community Benefits Charges, or cash-in-lieu of parkland that would, but for the agreement, have been owing at the time of the development in issue to the City, plus accumulated interest from the date on which each applicable charge was owing. Such a default would not relieve the applicant of an obligation to rent the unit in question to any new tenants at an affordable rate for the balance of the Term, if applicable.

8. The Agreement shall be registered on title to the subject property at the applicant's cost and the applicant shall agree that the lands shall not be transferred to a purchaser/transferee unless that purchaser/transferee agrees to assume the obligations of the agreement.
9. Such other terms as may be required, in the view of the Director, Housing Solutions and Investments Services and the City Solicitor, to give effect to the intent of Council in adopting the recommendations of this report and to ensure compliance with the applicable legislative requirements.

DOCUMENT 2

BY-LAW NO. 2025-_____

A by-law of the City of Ottawa to impose legal fees for Affordable Rental Unit Agreements.

WHEREAS Section 4.1 the *Development Charges Act, 1997*, S.O. 1997 c. 27 exempts from development charges “Affordable Residential Units” which are intended to be an Affordable Residential Unit for 25 years or more from the time that the unit is first rented, provided that the owner of said unit(s) enters into an agreement to that effect with the municipality;

The Council of the City of Ottawa enacts as follows:

1. Where an Affordable Rental Unit Agreement is required under section 4.1 of the *Development Charges Act, 1997*, a legal fee in the amount of \$2,051.00 shall be paid prior to the execution of the document by the City.
2. All legal fees collected pursuant to this By-law will be subject to Harmonized Sales Tax (H.S.T.) or any successor sales tax program thereto, where applicable.

ENACTED AND PASSED this ____ day of _____, 2025

CITY CLERK

MAYOR