

Development Charges Deferral for Retail Buildings

Approved By: Regional Council

Approved On: November 25, 2021

Policy Statement

A policy governing the deferral of Regional development charges and area-specific development charges for retail buildings.

Application

This policy is available for retail buildings in York Region subject to the terms and conditions as set out in this policy.

Purpose

The purpose of this policy is to establish the rules and practices for deferring development charges on retail buildings.

This policy will also support York Region's goal of building complete communities and will help achieve the following outcomes:

- Encourage 'place-making' through a mix of uses
- Promote live/work
- Support the development and attraction of retail businesses

Definitions

Act: The *Development Charges Act*, S.O. 1997, c. 27, 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 any area-specific development charges.

Gross Floor Area: As defined under the Region's Development Charges Bylaw No. 2017-35 as amended by Regional Development Charges Bylaw No. 2018-42 or any successor development charges bylaw.

Letter of Credit: A form of financial security issued by a financial institution that guarantees payment or performance by one or more counterparties to a beneficiary (the Region). At any time, the beneficiary reserves the right to draw upon the security up to a specified total in the event of default or non-delivery.

Retail: As defined under the Region's Development Charges Bylaw No. 2017-35 as amended by Regional Development Charges Bylaw No. 2018-42, or any successor development charges bylaw.

Description

1. Development Charges Deferral Agreement

Upon site plan approval and prior to building permit issuance, any developer(s) wishing to defer development charges for a retail building must enter into a development charge deferral agreement with the Region and provide the Region with a letter of credit for the development charges owed.

2. Duration of Deferral

The deferral of development charges for retail buildings will be in accordance with with following schedule:

- First anniversary of building permit issuance: one-third drawn from letter of credit
- Second anniversary of building permit issuance: one-third drawn from letter of credit
- Third anniversary of building permit issuance: one-third drawn from letter of credit

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For greater clarity, development charge payments are being deducted from the letter of credit through three equal annual payments beginning on the first anniversary of building permit issuance.

3. Development Charges Rates

The development charges rate will be the amount determined under the applicable Regional development charges bylaw, or area-specific development charges bylaw, on:

- a. Day of building permit issuance for:
 - i. Applications submitted for approval of a development in a site plan control area under subsection 41 (4) of the Planning Act for a retail building prior to January 1, 2020, or
 - ii. Applications submitted for an amendment to a bylaw passed under section 34 of the Planning Act prior to January 1, 2020

- OR -

- b. Day of application for:
 - i. Applications submitted for approval of a development in a site plan control area under subsection 41 (4) of the Planning Act for a retail building including and after January 1, 2020, or
 - ii. Applications submitted for an amendment to a by-law passed under section 34 of the Planning Act including and after January 1, 2020

For greater clarity, if clause b(i) or b(ii) does not apply to a retail building that is seeking to defer development charges including and after January 1, 2020, the development charges rate is determined on the day the development charges is payable in accordance with section 26 of the Act.

4. Development Charges Payable

The amount of the development charges payable to the Region, as required under the Act, will be based on the rates determined under Term '3' of this policy multiplied by the Gross Floor Area of the retail building, of which will be determined on the day that the developer(s) enters into a development charges deferral agreement with the Region-and provides a letter of credit.

Actual monetary value of the development charges will be received via draw upon the letter of credit which will be done in three equal annual installments, beginning on the first anniversary of the building permit issuance, by the local municipality, for the retail building.

5. Security – Letter of Credit

The submitted letter of credit must:

- Be printed on letterhead from the issuing financial institution
- Comply with the International Standby Practices (ISP98) or its successor as published by the International Chamber of Commerce
- Be denominated in Canadian dollars in an amount requested by the Region
- Include an automatic renewal provision where the agreement is to be in place for more than one year
- Indicate that the Region will be given 30 days' notice by registered mail if the counterparty does not intend to renew
- Refer to a renewal schedule described in the agreement where the value of any letter of credit renewals or extensions are subject to changes from the original letter of credit amount
- Conform to the intent of the standard format provided in Attachment A. Any deviation from the standard format will be subject to review by the Region and may be refused for non-compliance

A letter of guarantee or confirmation may be requested from time to time as evidence of capacity to secure a letter of credit. However, at no time will a letter of guarantee or confirmation serve as an acceptable alternative to a letter of credit. Letters of guarantee or confirmation must indicate that the financial institution is willing to provide a letter of credit in a format and within a time period deemed acceptable to the Region.

For all other details regarding the requirements of the letter of credit, please see the Region's Letter of Credit Policy, as amended, revised, re-enacted or consolidated from time to time.

6. Interest Waiver

No interest will be charged as the Region is in receipt of a letter of credit.

7. Mixed-Use Buildings

In the case of a mixed-use building, this policy will apply as follows:

- a. Each component of the structure will be deferred in accordance with the applicable policy:
 - i. If the applicable policy requires a letter of credit, a separate letter of credit will be required, and
 - ii. A separate development charges deferral agreement will be required, or
- b. The entirety of the building may be deferred based on the predominant residential use and in accordance with the applicable residential policy.

8. Effective Date

This policy will take effect the day it is passed by Regional Council and may be repealed by the Region at any time.

Responsibilities

Chief Administrative Officer, York Region

- Signing of agreements

Commissioner of Finance and Regional Treasurer, Finance

- Signing of agreements

Director, Treasury Office, Finance

- Administer and enforce 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
- Collect all development charges when due

Director, Strategy and Transformation, Finance

- Process the draw upon the letter of credit at the point development charges are due

Compliance

The **Director, Strategy and Transformation** will process the draw upon the letter of credit at the point development charges are due (for example, in three equal annual installments).

Reference

Legislative and other authorities

- [Bill 108, More Homes, More Choice Act, 2019](#)
- [Development Charges Act, 1997, S.O. 1997, c. 27](#)
- [Ontario Regulation 82/98](#)
- [Planning Act, R.S.O. 1990, c. P.13](#)

Appendices

- [Council Report, 2022 Development Charges Bylaw: Policy Directions, November 25, 2021](#)
- [Council Report, Letter of Credit Policy, April 18, 2013](#)
- [Letter of Credit Policy, April 18, 2013](#)

Contact

- Director, Treasury Office, Finance, at extension 71644

Approval

Council Date: November 25, 2021	Committee Date: November 11, 2021
Council Minute Item: G.1	Committee Minute Item: I.2.2

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Accessible formats or communication supports are available upon request.

ATTACHMENT A

REGION OF YORK
STANDARD DOCUMENTATION FOR LETTERS OF CREDIT

(insert bank letterhead)

LETTER OF CREDIT NO. _____
DATE: _____
APPLICANT: _____

IRREVOCABLE LETTER OF CREDIT

BENEFICIARY: The Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario, Canada
L3Y 6Z1

We hereby authorize you to draw on _____
(Bank, Address, Postal Code)
for account of _____
(name of Applicant)
up to an aggregate amount of _____ Dollars (\$ _____)
available on demand as follows:

Pursuant to the request of our customer, the said _____,
(name of Applicant)
we _____
(name of Bank)

hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total amount of
_____ DOLLARS (\$ _____) CAD

which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you which demand we will honour without enquiring whether you have a right as between yourself and our said customer to make such demand and without recognizing any claim of our said customer.

Provided, however, that you are to deliver to us at such time as a written demand for payment is made upon us a certificate signed by you agreeing and/or confirming that monies drawn pursuant to this Letter of Credit are to be retained and used to meet obligations in connection with:

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CONTRACT NO. _____
MINISTRY SUBDIVISION NO: _____
REGION FILE OR APPROVAL NO: _____
SITE LOCATION: _____
DESCRIPTION OF WORKS: _____

} (as applicable)

The amount of this Letter of Credit will be reduced from time to time as advised by notice in writing given to us from time to time by you.

This Letter of Credit will expire on _____, but will be deemed to be automatically extended without any formal amendment or notice to that effect, from year to year for successive periods of one year each from the present or any future expiration date hereof, unless not less than thirty (30) days prior to the present or any future expiration we will notify you in writing that the bank elects not to renew this Letter of Credit for any such additional period. This notification will be delivered by Registered Mail to the attention of:

Commissioner of Finance & Regional Treasurer
Regional Municipality of York
17250 Yonge Street
4/F, Finance Reception
Newmarket, Ontario, Canada
L3Y 6Z1

Upon receipt by you of such notice, you may draw by means of your demand accompanied by your above written certificate.

Partial drawings are permitted.

The drawings under this credit are to state that they are drawn under the

(Name of Bank, Address)
LETTER OF CREDIT NO. _____
(Number)

This Letter of Credit is subject to the rules set out in *International Standby Practices (ISP98)*, International Chamber of Commerce publication No.590 and engages us in accordance with the terms thereof. This Letter of Credit will also be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada except to the extent that such laws are inconsistent with the *International Standby Practices (ISP98)*.

Authorized Signature

Authorized Signature (For Bank)