

Bill No. 237
2024

By-law No. A.-

A by-law to approve template Affordable Residential Unit Development Charge Exemption Agreements and to authorize the Deputy City Manager, Planning and Economic Development to execute and amend same.

WHEREAS section 5(3) of the *Municipal Act*, 2001 S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act*, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS the *Development Charges Act*, 1997 exempts affordable residential units that meet the criteria under s. 4.1 of the *Development Charges Act*, 1997;

AND WHEREAS s. 4.1(9) of the *Development Charges Act*, 1997 requires a person who, but for s. 4.1(8) would be required to pay a development charge to enter into an agreement with The Corporation of the City of London that requires the residential unit to be an affordable residential unit for a period of 25 years from the date the unit is first sold or rented;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Affordable Residential Unit Rental Development Charge Exemption Agreement template attached to this bylaw as Schedule "1" is hereby authorized and approved.
2. The Affordable Residential Unit Ownership Development Charge Exemption Agreement template attached to this bylaw as Schedule "2" is hereby authorized and approved.
3. The Deputy City Manager, Planning and Economic Development, or their written designate, is authorized to approve amendments to the agreements approved under section 1 and 2 of this bylaw.
4. The Deputy City Manager, Planning and Economic Development, or their written designate, is authorized to execute the agreements approved under section 1 and 2 of this bylaw, which may be amended pursuant to the Deputy City Manager, Planning and Economic Development's authority under section 3 of this bylaw.
5. This by-law comes into effect on the day it is passed subject to the provisions of PART VI.1 of the *Municipal Act*, 2001.

PASSED in Open Council on July 23, 2024 subject to the provisions of PART VI.1 of the *Municipal Act*, 2001.

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First Reading – July 23, 2024
Second Reading – July 23, 2024
Third Reading – July 23, 2024

SCHEDULE 1

AFFORDABLE RESIDENTIAL UNIT RENTAL DEVELOPMENT CHARGE EXEMPTION AGREEMENT

(the "Owner")

-and-

The Corporation of the City of London

(the "City")

WHEREAS the *Development Charges Act, 1997* exempts the creation of residential units intended to be affordable residential units for a period of 25 years or more from the time the unit is first rented;

AND WHEREAS the Owner is the registered owner of the property municipally known as [INSERT ADDRESS];

AND WHEREAS the Owner intends to build [INSERT NUMBER] residential unit(s) and has made application [INSERT NUMBER] for a building permit from the City;

AND WHEREAS the Owner intends to develop and operate Affordable Residential Unit[s] within the above-referenced building permit application and has applied for an exemption of its development charges;

AND WHEREAS the Property must comply with the prescribed requirements under the *Development Charges Act, 1997* to qualify for the exemption;

NOW THEREFORE in consideration of the mutual covenants and other terms and conditions of this Agreement and the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the parties to each other (the receipt and sufficiency whereof are acknowledged), the parties agree as follows:

Interpretation

1. In this Agreement and its Schedules, the following terms have the following respective meanings:
 - "Act" or "*Development Charges Act, 1997*" means the *Development Charges Act, 1997*, S.O. 1997, c. 27, as may be amended.
 - "Affordable Residential Unit" means a residential unit that meets the criteria set out in s. 4.1(2) of the Act and rented in accordance with this Agreement.
 - "Arm's length" has the meaning set out in section 251 of the *Income Tax Act* (Canada) applied with necessary modifications.
 - "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, which is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario.
 - "average market rent" means the average market rent for the year in which the residential unit is occupied by a tenant, as identified in the Affordable Residential Units bulletin, as it is amended from time to time.

“Building Permit” is the building permit issued pursuant to the *Building Code Act*, S.O. 1992, c. 23 for the residential unit[s] the Owner proposes to build in respect of which development charges are payable.

“income-based affordable rent” means the income-based affordable rent for the residential unit set out in the Affordable Residential Units bulletin.

“Property” means the lands described in Schedule “A”.

TERM

2. The term of the Agreement shall commence on the date the building is first occupied and end on the twenty-five anniversary of the Affordable Residential Unit first being rented.

EXEMPTION FROM DEVELOPMENT CHARGES

3. The Owner will be exempt from Development Charge on the Affordable Residential Unit(s) on the Property if it complies with the terms and conditions of this Agreement and the requirements of the *Development Charges Act, 1997* for Affordable Residential Units.
4. The Development Charge payable on the Affordable Residential Unit(s) on the Property [INSERT AMOUNT] (“Development Charge”) will be payable upon an Event of Default together with any interest accrued in accordance with this Agreement.

AFFORDABLE RESIDENTIAL UNIT, RENTED

5. The Owner shall build [insert number] Affordable Residential Unit(s) on the Property in accordance with the Building Permit issued to the Property.
6. The Affordable Residential Unit(s) shall meet the criteria for an Affordable Residential Unit set out in the *Development Charges Act* for the term of the agreement.
7. The Affordable Residential Unit(s) shall be rented at a rent no greater than the lesser of
 - a. the income-based affordable rent for the residential unit set out in the Affordable Residential Units bulletin, and
 - b. the average market rent identified for the residential unit set out in the Affordable Residential Units bulletin.
8. The Affordable Residential Unit(s) shall only be rented to a tenant that is dealing at Arm’s Length with the Owner.

ISSUANCE OF A BUILDING PERMIT

9. If the City does not issue a building permit, the Owner and the City agree that this Agreement shall terminate and that the parties’ respective obligations under the Agreement shall end.

REGISTRATION OF AGREEMENT

10. The Owner shall prepare and register the Agreement against the title to the Property at its own expense and provide written confirmation from the Owner’s solicitor that the Agreement has been registered, together with a copy of the registered instrument prior to the Development Charge becoming payable under the Act or, if applicable, the first annual installment of the Development Charge becoming due under s. 26.1 of the Act.
11. Following the expiry of the term of the Agreement, the Owner may submit a written request to the City to have the Agreement discharged from title to the Property and the City shall consent to the discharge of this Agreement from title to the Property.

ANNUAL REPORTS AND INFORMATION SHARING

12. The Owner shall obtain a Residential Rental Unit License prior to renting the residential unit.
13. The Owner shall submit an annual report to the City in the form set by the Director, Municipal Housing Development. The form will be sent to the Owner each year by email at [INSERT EMAIL] or by mail to the address for notice to the Owner and shall be completed and returned to the City by the date specified on the notice.
14. The Owner shall provide the City with a copy of the lease and rent receipts for the Affordable Residential Unit[s] on the Property and any other information or documents required by the City to review compliance with this Agreement within 30 days upon request.

EVENT OF DEFAULT

15. Each of the following shall constitute an event of default ("Event of Default") under the Agreement:
 - i. The Owner fails to comply with a term or condition of this Agreement;
 - ii. The annual report submitted to the City is untrue or misleading.

CONSEQUENCES OF EVENTS OF DEFAULT

16. If an Event of Default occurs,
 - i. The City shall provide notice of an Event of Default to the Owner;
 - ii. The entire Development Charge stated in clause 4 shall become due and payable by the Owner immediately and the Owner acknowledges and agrees that this Agreement shall be treated as an alternative payment agreement under section 27 of the Act;
 - iii. Interest will be charged on the Development Charge at a rate of interest of [INSERT RATE OF INTEREST] calculated from the date the building permit for the development was issued to the date of payment of the Development Charge together with the accrued interest and all other amounts owing under the Agreement;
 - iv. If the Development Charge, together with the interest accrued, remains unpaid after 90 days from the Owner receiving a Notice of Default it shall be added to the tax roll and be collected in the same manner as taxes;
 - v. The City may initiate any action or proceeding it considers necessary against the Owner to recover the Development Charge, together with any interest accrued.
17. The City shall have the option of waiving any and all of its remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided. If an Event of Default occurs, all the remedies in this Agreement are cumulative and not alternative and the City shall not be precluded from availing itself simultaneously of some or all of said remedies and any other remedies available in equity or in law.

COSTS

18. The Owner shall be responsible for all legal costs and expenses incurred by the City in the event that it takes any legal action following an Event of Default or any action taken to enforce the terms and conditions of the Agreement.

INDEMNIFICATION

19. The Owner shall indemnify and hold harmless the City, its elected officials, employees, agents, successors or assigns from all claims, costs, all matters of action, causes and causes of actions, duties, dues, accounts, covenants,

demands or other proceeding of every kind or nature whatsoever at law or in equity arising out of or in connection with the Agreement.

ENTIRE AGREEMENT

20. This Agreement and its Schedules constitute the entire agreement between the parties with respect to all matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations or writings whatsoever not incorporated herein and made part hereof and may not be amended or modified in any respect except by a written agreement signed by both parties.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

21. The Owner acknowledges that the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 applies to this Agreement and any information and reports provided to the City pursuant to the Agreement, which may be subject to public access and disclosure.

INDEPENDENT LEGAL ADVICE

22. The Owner acknowledges and confirms that they have had the opportunity to obtain independent legal advice on the Agreement. The Owner acknowledges that they have read this Agreement, understand the terms and conditions and the Owner's rights and obligations under the Agreement.

NOTICE

23. All notices required by this Agreement shall be in writing and shall be delivered in person or by prepaid courier or mailed by certified or registered mail, return receipt requested, with postage prepaid.

Notice to the City shall be addressed to:

The City Clerk
The Corporation of the City of London
300 Dufferin Ave
PO Box 5035
London, ON N6A 4L9

[INSERT OWNER INFORMATION]

All notices shall be deemed to have been received by the Owner on the date of delivery or on the fifth business day following the mailing of the notice, whichever is applicable. For the purpose of notice, "business day" means every day except Saturdays, Sundays and statutory holidays in the Province of Ontario.

The above address of either the City or the Owner may be changed by giving the other party written notice of the new address.

If postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall only be sent by facsimile transmission or delivered by courier.

PARTIAL SEVERABILITY

24. If any part of this Agreement is rendered invalid or illegal, the remainder of this Agreement continues to apply.

HEADINGS

25. The headings in this Agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions of this Agreement.

AMENDMENTS

26. Any subsequent alteration, amendment, charge or addition to this Agreement shall not be binding on the City or the Owner unless in writing signed by each of them.

ASSIGNMENT

27. This Agreement may not be assigned without the prior written consent of the City, noting that any and all subsequent owners of the Property shall be bound by this Agreement and the municipality shall be entitled to enforce this Agreement against any and all subsequent owners of the Property pursuant to s. 4.1(13) of the Act.

ENUREMENT

28. This Agreement shall enure to the benefit of and be binding on the parties and their respective heirs, executors, successors and permitted assigns. Any and all subsequent owners of the Property shall be bound by this Agreement and the City shall be entitled to enforce the Agreement pursuant to s. 4.1(13) of the Act.

GOVERNING LAW

29. This Agreement shall be governed and interpreted in accordance with the laws of Ontario and Canada applicable to the Agreement and shall be treated in all respects as an Ontario contract. The Owner and the City specifically submit to the exclusive jurisdiction of the courts of Ontario and Canada.

EXECUTION

30. The Owner acknowledge that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

In witness whereof this Agreement has been executed by the Parties.

SIGNED AND DELIVERED

Witness:

Print Name:

[INSERT NAME OF OWNER]

OWNER

I have the authority to bind the Corporation

THE CORPORATION OF THE CITY OF LONDON

Schedule "A"

Municipal Address:

Legal Description:

SCHEDULE 2

AFFORDABLE RESIDENTIAL UNIT OWNERSHIP DEVELOPMENT CHARGE EXEMPTION AGREEMENT

(the "Owner")

-and-

The Corporation of the City of London
(the "City")

WHEREAS the *Development Charges Act, 1997* exempts the creation of residential units intended to be affordable residential units for a period of 25 years or more from the time the unit is first rented;

AND WHEREAS the Owner is the registered owner of the property municipally known as [INSERT ADDRESS];

AND WHEREAS the Owner intends to build an Affordable Residential Unit and has made application [INSERT NUMBER] for a building permit from the City;

AND WHEREAS the Owner intends to develop and sell the Affordable Residential Unit within the above-referenced application for a building permit from the City and has applied for an exemption of its development charges;

AND WHEREAS the Property must comply with the prescribed requirements under the *Development Charges Act, 1997* to qualify for the exemption;

NOW THEREFORE in consideration of the mutual covenants and other terms and conditions of this Agreement and the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the parties to each other (the receipt and sufficiency whereof are acknowledged), the parties agree as follows:

Interpretation

1. In this Agreement and its Schedules, the following terms have the following respective meanings:

"Act" or "*Development Charges Act, 1997*" means the *Development Charges Act, 1997*, S.O. 1997, c. 27, as may be amended.

"Arm's length" has the meaning set out in section 251 of the *Income Tax Act* (Canada) applied with necessary modifications.

"Affordable Residential Unit" means a residential unit that meets the criteria set out in s. 4.1(3) of the Act and sold in accordance with this Agreement.

"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, which is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario.

"average purchase price" means the average purchase price for the year in which the residential unit is sold, as identified in 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.

“Building Permit” is the building permit issued pursuant to the *Building Code Act*, S.O. 1992, c. 23 for the residential unit[s] the Owner proposes to build in respect of which development charges are payable.

“income-based affordable purchase price” means the income-based affordable purchase price for the residential unit set out in the Affordable Residential Units bulletin.

“Property” means the lands described in Schedule “A”.

TERM

2. The term of the Agreement shall commence on the date the Affordable Residential Unit is effectively sold and end on the twenty-fifth anniversary of each Affordable Residential Unit first being sold.

EXEMPTION FROM DEVELOPMENT CHARGES

3. The Owner will be exempt from Development Charge on the Affordable Residential Unit(s) on the Property if it complies with the terms and conditions of this Agreement and the requirements of the *Development Charges Act, 1997* for affordable residential units, ownership.
4. The Development Charge payable on the Affordable Residential Unit(s) on the Property [INSERT AMOUNT] (“Development Charge”) will be payable upon an Event of Default together with any interest accrued in accordance with this Agreement.

AFFORDABLE RESIDENTIAL UNIT, OWNERSHIP

5. The Owner shall build an Affordable Residential Unit on the Property in accordance with the Building Permit issued to the Property.
6. The Affordable Residential Unit shall meet the criteria for an Affordable Residential Unit, ownership set out in the *Development Charges Act* for the term of the agreement.
7. The Affordable Residential Unit shall not be used as a rented residential premises.
8. During the term of this Agreement, the Affordable Residential Unit shall only be sold to a person dealing at arm’s length with the seller.
9. During the term of this Agreement, if the Owner sells the Property, the purchase price of the Affordable Residential Unit shall not exceed 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.

ISSUANCE OF A BUILDING PERMIT

10. If the City does not issue a building permit, the Owner and the City agree that this Agreement shall terminate and that the parties’ respective obligations under the Agreement shall end.

REGISTRATION OF AGREEMENT

11. The Owner shall prepare and register the Agreement against the title to the Property at its own expense and provide written confirmation from the Owner’s solicitor that the Agreement has been registered, together with a copy of the registered instrument prior to the Development Charge becoming payable under the Act.

12. Following the expiry of the term of the Agreement, the Owner may submit a written request to the City to have the Agreement discharged from title to the Property and the City shall consent to the discharge of this Agreement from title to the Property.

DECLARATION TO BE PROVIDED ON TRANSFER OF PROPERTY

13. The Owner and the Purchaser shall complete and sign any forms, attestations or declarations required by the Director, Municipal Housing Development prior to the transfer of the Affordable Residential Unit. The Owner shall contact housing@london.ca to obtain the form, attestation or declaration 30 days prior to transferring the Affordable Residential Unit.

EVENT OF DEFAULT

14. Each of the following shall constitute an event of default ("Event of Default") under the Agreement:

- i. The Owner fails to comply with a term or condition of this Agreement;
- ii. The attestation submitted to the City is untrue or misleading.

CONSEQUENCES OF EVENTS OF DEFAULT

15. If an Event of Default occurs,

- i. The City shall provide notice of an Event of Default to the Owner;
- ii. The entire Development Charge stated in clause 4 shall become due and payable by the Owner immediately and the Owner acknowledges and agrees that this Agreement shall be treated as an alternative payment agreement under section 27 of the Act;
- iii. Interest will be charged on the Development Charge at a rate of interest of [INSERT RATE OF INTEREST] calculated from the date the building permit for the development was issued to the date of payment of the Development Charge together with the accrued interest and all other amounts owing under the Agreement;
- iv. If the Development Charge, together with the interest accrued, remains unpaid after 90 days from the Owner receiving a Notice of Default it shall be added to the tax roll and be collected in the same manner as taxes;
- v. The City may initiate any action or proceeding it considers necessary against the Owner to recover the Development Charge, together with any interest accrued.

16. The City shall have the option of waiving any and all of its remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided. If an Event of Default occurs, all the remedies in this Agreement are cumulative and not alternative and the City shall not be precluded from availing itself simultaneously of some or all of said remedies and any other remedies available in equity or in law.

COSTS

17. The Owner shall be responsible for all legal costs and expenses incurred by the City in the event that it takes any legal action following an Event of Default or any action taken to enforce the terms and conditions of the Agreement.

INDEMNIFICATION

18. The Owner shall indemnify and hold harmless the City, its elected officials, employees, agents, successors or assigns from all claims, costs, all matters of action, causes and causes of actions, duties, dues, accounts, covenants, demands

or other proceeding of every kind or nature whatsoever at law or in equity arising out of or in connection with the Agreement.

ENTIRE AGREEMENT

19. This Agreement and its Schedules constitute the entire agreement between the parties with respect to all matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations or writings whatsoever not incorporated herein and made part hereof and may not be amended or modified in any respect except by a written agreement signed by both parties.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

20. The Owner acknowledges that the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 applies to this Agreement and any information provided to the City pursuant to the Agreement, which may be subject to public access and disclosure.

INDEPENDENT LEGAL ADVICE

21. The Owner acknowledges and confirms that they have had the opportunity to obtain independent legal advice on the Agreement. The Owner acknowledges that they have read this Agreement, understand the terms and conditions and the Owner's rights and obligations under the Agreement.

NOTICE

22. All notices required by this Agreement shall be in writing and shall be delivered in person or by prepaid courier or mailed by certified or registered mail, return receipt requested, with postage prepaid.

Notice to the City shall be addressed to:

The City Clerk
The Corporation of the City of London
300 Dufferin Ave
PO Box 5035
London, ON N6A 4L9

Notice to the Owner shall be addressed to the Owner at the address for the Subject Lands. All notices shall be deemed to have been received by the Owner on the date of delivery or on the fifth business day following the mailing of the notice, whichever is applicable. For the purpose of notice, "business day" means every day except Saturdays, Sundays and statutory holidays in the Province of Ontario.

The above address of either the City or the Owner may be changed by giving the other party written notice of the new address.

If postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall only be sent by facsimile transmission or delivered by courier.

PARTIAL SEVERABILITY

23. If any part of this Agreement is rendered invalid or illegal, the remainder of this Agreement continues to apply.

HEADINGS

24. The headings in this Agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions of this Agreement.

AMENDMENTS

25. Any subsequent alteration, amendment, charge or addition to this Agreement shall not be binding on the City or the Owner unless in writing signed by each of them.

ASSIGNMENT

26. This Agreement may not be assigned without the prior written consent of the City, noting that any and all subsequent owners of the Property shall be bound by this Agreement and the municipality shall be entitled to enforce this Agreement against any and all subsequent owners of the Property pursuant to s. 4.1(13) of the Act.

ENUREMENT

27. This Agreement shall enure to the benefit of and be binding on the parties and their respective heirs, executors, successors and permitted assigns. Any and all subsequent owners of the Property shall be bound by this Agreement and the City shall be entitled to enforce the Agreement pursuant to s. 4.1(13) of the Act.

GOVERNING LAW

28. This Agreement shall be governed and interpreted in accordance with the laws of Ontario and Canada applicable to the Agreement and shall be treated in all respects as an Ontario contract. The Owner and the City specifically submit to the exclusive jurisdiction of the courts of Ontario and Canada.

EXECUTION

29. The Owner acknowledge that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

In witness whereof this Agreement has been executed by the Parties.

SIGNED AND DELIVERED

Witness:
Print Name:

[INSERT NAME OF OWNER]
OWNER
I have the authority to bind the
Corporation

THE CORPORATION OF THE CITY OF
LONDON

Schedule "A"

Municipal Address:
Legal Description: