
Subject: Policy for Timing of Development Charge Calculation, Installment and Interest for the Purpose of section 26.1 and 26.2 of the Development Charges Act

Report to: Corporate Services Committee

Report date: Wednesday, December 9, 2020

Recommendations

1. That the Timing of Development Charge Calculation, Instalment and Interest Policy for the Purposes of Sections 26.1 & 26.2 of the Development Charge Act as included as Appendix 1 of Report CSD 49-2020, **BE APPROVED**;
2. That a \$550 administration fee for payment defaults under section 26.1 of the Development Charges Act **BE APPROVED** for inclusion in the 2021 Fees and Charges By-law; and
3. That Report CSD 49-2020 **BE CIRCULATED** to the Local Area Municipalities including Area Treasurers, Planners, Chief Building Officials and Economic Development (Team Niagara) for information and action as required.

Key Facts

- The purpose of the report is to seek Council approval on the proposed policy for timing of development charge calculation, development charge installments and interest for the purpose of section 26.1 and 26.2 of the Development Charges Act (DCA).
- Section 26.1 and 26.2 of the DCA came into effect on January 1, 2020 when Bill 138 received royal assent on December 10, 2019.
- Section 26.1 of the DCA established that development charges for certain types of developments are payable in installments over certain periods of time with the first installment due on building occupancy:
 - Institutional developments and rental housing (that is not non profit) – 6 annual installments
 - Non-profit housing development – 21 annual installments
- Section 26.2 of the DCA established guidelines for determining the calculation date for development charges payable. Under this section the calculation date is the earlier of:

- The date of an application for a site plan control area, or
 - If there is no such application, the date of an application for zoning by-laws, or
 - If neither of these applications have been made, the charge will continue to be determined at the time of building permit issuance.
- Under section 26.2 of the DCA, upon approval of one of the aforementioned planning applications, developers have a maximum of two years in which a building permit must be issued and the development charges paid at these frozen rates or the rates will continue to be calculated at the time of permit issuance.
- Section 26.2 of the DCA only applies to applications that were submitted on or after January 1, 2020.
- Both Section 26.1 and 26.2 allows an annual interest rate to be applied to both the installments and frozen rates. Included as part of the accompanying Procedure, staff are proposing the rate be set at 5% (with exemptions aligned with Regional Incentive Pillars).
- Extensive engagement occurred with the Local Area Municipalities in September 2020 including the Area Treasurers, Planners, Chief Building Officials and Economic Development (Team Niagara) for input and comments on the proposed Policy. The Area Treasurers were supportive of the proposed Policy and associated interest rate.

Financial Considerations

Changes to the Development Charge Act (DCA) under Bill 108 are effective January 1, 2020 and this policy is meant to formalize the process for Regional development charge (RDC) calculation and installments for eligible development types.

The interest rate that is proposed for certain development types is intended to offset the Region's opportunity cost of providing the development charge rate freeze and installments as proposed under the section 26.1 and 26.2 of the DCA. The interest that will be generated from this policy will be fully allocated to the RDC reserves on a prorated basis.

Staff are also proposing a \$550 administration fee in the event of default of payment under the section 26.1 installment plans. This \$550 fee is intend to offset the staff time required to remedy the default which may include adding any outstanding installment amounts to the tax roll of the property. This fee is consistent with the existing fee for development charge agreements and will not be allocated to the RDC reserves but allocated to the appropriate operating revenue account to offset any expenditures incurred.

Analysis

On December 10, 2019, Provincial Bill 138 “Plan to Build Ontario Together, 2019” received Royal Assent. This Bill amended and repealed various statutes including some of the previously introduced articles of Bill 108 from earlier in 2019. As a result, effective January 1, 2020 certain changes to the DCA under sections 26.1 and 26.2 came into force. These changes effect all municipalities in Ontario that have a development charge by-law. Those sections amended the DCA and changed the timing of the determination and payment of DCs in certain circumstances. Both section 26.1 and 26.2 are discussed below in detail under separate headings. As a result of the changes to the DCA under section 26.1 and 26.2 staff are recommending that the Region implement a Policy to provide greater clarification on the changes for the development community as well as establish an interest rate as permitted under the DCA for the rate freeze and installment payment plans. The Policy can be found in Appendix 1 of this Report.

DC Installment Payments under Section 26.1 of the DCA

Section 26.1 was added to the DCA to allow DCs for rental housing (that is not non-profit) and institutional developments to be payable in six (6) equal annual installments and DCs for non-profit housing developments payable in 21 equal annual installments. The first installment payment would occur on the date of issuance of the occupancy permit or occupancy of the building, whichever is earlier, with the subsequent installments occurring annually on the anniversary date of when the first installment was payable. Under the provisions of this section, the Province has provided that an interest rate can be charged on the amount of RDCs eligible for the installments.

Rate Freeze under Section 26.2 of the DCA (Calculation Date)

Section 26.2 was added to the DCA to set out rules for when the amount of a DC is determined. The calculation of DCs will now be based on:

- (a) The date of an application for a site plan control area, or
- (b) If there is no such application, the date of an application for zoning by-laws, or
- (c) If neither of these applications have been made, the charge will continue to be determined at the time of building permit issuance.

The DCs are effectively frozen at the DC rate in effect at the time of submission of a complete Site Plan or Zoning By-Law Amendment application. Upon approval of the

application, developers have a maximum of two years in which a building permit must be issued and the development charges paid at these frozen rates. If the two year time period has elapsed, then the rate continues to be determined at the rate in effect at the time of building permit issuance. It is noted that these provisions are only applicable to developments for which Site Plan and Zoning By-law Amendment planning applications were submitted on or after January 1, 2020.

Interest on Development Charges

Where RDCs are payable in installments or the charges are determined at the time of Site Plan or Zoning By-Law Amendment planning application, the municipality may charge interest on the RDC payment. The interest period for installment payments is from the date of building permit issuance to the date of RDC payment, and for Site Plan and Zoning By-Law Amendment applications, from the date of the planning application to the date of RDC payment. Unpaid RDCs, including interest payable, can be added to the tax roll under the revisions to the DCA if not paid.

For the purpose of applying interest, staff are recommending an annual rate of 5% non-compounding that is included in the procedure. This rate will be utilized for both section 26.1 and 26.2 interest provisions of the DCA. Should the Province prescribe a maximum interest rate in the future, the interest rate that has been adopted may need to be revised in the procedure document. Authority to amend the interest rate is proposed to be delegated to the Treasurer in the draft Policy. Staff also undertook a review of other interest policies that have been approved by other municipalities. Summaries of the rates can be found below in Appendix 2 of this report. Many municipalities adopted a similar rate to that being recommended for Niagara. This review also emphasized the importance of utilizing an interest rate that is simplistic to interpret and has some consistency from year-to-year. Other municipalities reviewed adopted more complex interest rate determination methodologies, which would cause additional administrative complexities.

Staff have also reviewed various interest exemptions and are proposing to implement a 0% interest rate for both section 26.1 and 26.2 of the DCA for certain development types in alignment with Region's Incentive program priority pillars. This 0% interest charge would be applicable for Non-profit housing development types only as this development type supports the incentive pillar of Affordable Housing. The other development types which are institutional (i.e., LTC/Retirement Homes, Post-Secondary Institutions, Royal Canadian Legion, and Hospices) and not non-profit housing would remain subject to the interest rate of 5%.

Local Feedback

An overview of the new legislation and a draft policy was presented to the Chief Building Officials, Economic Development (Team Niagara) and Area Treasurers groups with a copy distributed to the Area Planners for feedback. From these groups the Region received some suggestions for improvement to the draft Policy which were incorporated. The Area Treasurers were supportive of the proposed policy including the interest rate and exemptions.

Alternatives Reviewed

Council may elect not to approve the proposed policy, which is **NOT RECOMMENDED**. This policy will assist in creating a clear guideline for the Regional administration of section 26.1 and 26.2 of the DCA.

Relationship to Council Strategic Priorities

This policy will address the following Council objectives:

- Fiscally sustainability
- Addressing affordable housing needs

Other Pertinent Reports

- [PDS 26-2019](#) Implications of Bill 108: *More Homes, More Choice Act, 2019*
- [PDS 28-2019](#) Bill 108 – proposed transition regulation materials relating to the *Planning Act, 1990* and *Development Charges Act, 1997*
- [CSC-C 13-2020](#) Bill 197 – Changes to the Development Charges and Planning Act (Community Benefit Charge)

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Appendices

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| Appendix 1 | Timing of Development Charge Calculation, Instalment and Interest Policy for the Purposes of Sections 26.1 and 26.2 of the Development Charge Act Policy |
| Appendix 2 | Summary of Interest Rates Adopted by Other Municipalities |