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**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

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## Recommendations

1. That the Timing of Development Charge Calculation, Instal1ment 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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**Submitted by:**

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*This report was prepared in consultation with Rob Fleming, Senior Tax & Revenue Analyst, and reviewed by Margaret Murphy, Associate Director, Budget Planning & Strategy.*

**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  |

<i>Policy Category</i>	<i>Name of Policy</i>
<i>Financial</i>	<i>Timing for Development Charge Calculation, Instalment and Interest Policy for the Purposes of Sections 26.1 &amp; 26.2 of the Development Charge Act</i>

<b>Policy Owner</b>	Corporate Services, Financial Management & Planning, Associate Director, Budget Planning & Strategy
<b>Approval Body</b>	Council
<b>Approval Date</b>	
<b>Effective Date</b>	January 1, 2021
<b>Review by Date</b>	Every five years or upon expiry of a Regional Development Charge By-law.

## 1. Legislative Framework – Calculation of Development Charges

### 1.1. Timing for Development Charge calculation amount under section 26.2 of the Act:

Under subsection 26.2 (1) of the Act, the total amount of a development charge (i.e. rate) is determined under Niagara Region's Development Charge Bylaw in effect on:

- 1.1.1. the day an application for an approval of development under subsection 41 (4) of the Planning Act was made, or
- 1.1.2. If clause 1.1.1 does not apply, the day an application for an amendment to a bylaw passed under section 34 of the Planning Act was made, or
- 1.1.3. If neither clause 1.1.1 nor 1.1.2 applies, the date the development charges would have been payable under section 26 of the Act which is normally building permit issuance as per By-law 2017-98 unless permitted otherwise through section 26.1 of the Development Charges Act.

### 1.2. By-law not in effect

Under subsection 26.2 (2) of the Act, subsection 26.1 (1) applies even if the by-law under which the development charge would be determined is no longer in effect.

### 1.3. Interest under section 26.2 of the Act:

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Under subsection 26.2 (3) of the Act, Niagara Region may charge interest on the development charge, at a rate not exceeding the prescribed maximum interest rate, from the date of the application referred to in clause 1.1.1 or 1.1.2 to the date the development charge is payable.

**1.4. Exception, prescribed amount of time elapsed**

The dates as determined under sections 1.1.1 and 1.1.2 do not apply if:

- 1.4.1.** any part of a development to which section 26.1 applies if, on the date the first building permit is issued for the development, more than 2 years has elapsed since the application referred to in clause 1.1.1 or 1.1.2 was approved as defined in section 11.2 O. Reg. 82/98; or

**2. Legislative Framework – Development Charge Installments**

**2.1. Installment Payments under section 26.1 of the Act and as defined in O.Reg 82/98.**

Under subsections 26.1 (1), (2) and (3) of the Act, development charges shall be paid in equal annual instalments, beginning at the earlier of first occupancy or occupancy permit issuance date under the Building Code, Act, 1992 for:

- 2.1.1.** Rental housing development that is not non-profit housing as defined under section 11.1 (1) of O. Reg 82/98 as per section 3 (a) of the Act;
  - 2.1.2.** Institutional development as defined under section 11.1 (2) if O. Reg. 82/98 as per section 3 (a) of the Act; and
  - 2.1.3.** Non-profit housing development as defined under section 11.1 (3) of O. Reg. 82/98 as per section 3 (b) of the Act.
- 2.2.** A non-profit housing development under 2.1.3 shall pay their first payment at occupancy and the following 20 anniversaries after that date (21 equal payments).
- 2.3.** Both a Rental housing development and institutional development as described under 2.1.1 and 2.1.2 shall pay their first payment at occupancy and the following five anniversaries after that date (six equal payments).
- 2.4.** All other development shall pay their development charges upon the issuance of a building permit unless an early or late payment agreement has been entered into under subsection 27 (1) of the Act.
- 2.5.** Interest under section 26.1 of the Act:

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Subsection 26.1 (7) of the Act allows a municipality to charge interest on the installments from the date the development charges would have been payable under section 26 of the Act.

**3. Policy**

- 3.1. The application made date for the purposes of 1.1 of this Policy and 26.2 of the Act shall be determined by the Local Area Municipality and provided to the Region as information.
- 3.2. The applicant shall be notified of the Application Approval date for the purposes of Section 26.2 of the DCA by the Local Area Municipality.

**3.3. Application Appeal**

Should any Local Area Municipality decision on the application(s) as noted under section 1.1.1 and 1.1.2 be appealed, the Local Area Municipal decision will stand until final resolution of the appeal.

- 3.3.1. Should a decision on an unapproved application be successfully appealed, the application made date will apply to section 1.1.1 or 1.1.2 of this policy and the application approval date shall be the date the appeal is approved.
- 3.3.2. Should a decision on an approved application be upheld, the application made date will apply to section 1.1.1 or 1.1.2 of this policy and the application approval date shall be the date the decision is upheld.
- 3.3.3. Should a decision on an approved application be successfully appealed or a decision on an unapproved application be upheld, the application made date will not apply to sections 1.1.1 and 1.1.2 of this policy.

**3.4. Interest on Development Charges for Subsection 26.2 (3) of the Act**

Interest will be charged at the rate established in the Procedure on the development charge, from the date of the application referred to in clause 1.1.1 or 1.1.2 of this policy, to the date the development charge is payable.

**3.5. Final Determination of Total Payable Development Charges**

On the day the development charge(s) is first payable, the final determination of the total payable development charge(s) shall be made.

**3.6. Transition**

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Clauses 1.1.1 and 1.1.2 do not apply in the case of an application made before January 1, 2020 as per subsection 26.2 (6) of the Act.

**3.7. Acknowledgment Letter**

For all eligible development under section 26.1 of the Act an Acknowledgement Letter will be provided to the applicant / property owner at the time of building permit issuance outlining the terms of the development charge annual installments as per the Act and Region policy.

**3.8. Notice of Occupancy**

- 3.8.1.** The person responsible to pay development charges shall notify both the Local Area Municipality and Niagara Region in writing within five business days of the building first being occupied unless an occupancy permit has been issued by the Local Area Municipality for the purposes of section 26.1 of the Act.
- 3.8.2.** Under subsection 26.1 (6) of the Act, failure to comply with the occupancy notice requirement under 3.8.1 will result in the development charge including any interest payable becoming payable immediately.
- 3.8.3.** If the person responsible to pay development charges receives an occupancy permit issued by the Local Area Municipality, the Local Area Municipality must notify the Niagara Region within five business days for the purposes of section 26.1 of the Act.

**3.9. Interest on Installments for Subsection 26.1 (7) of the Act**

- 3.9.1.** Interest will be charged on installments at the rate found in section 3.14 from the date the development charge would have been payable in accordance with section 26 of the Act and the Region’s Development Charge by-law.

**3.10. Schedule of Installment Payments**

- 3.10.1.** Niagara Region will provide an Installment Payment Schedule to the person required to pay development charges once notified of occupancy.
- 3.10.2.** Acknowledgement of the Instalment Payment Schedule and the first installment payment shall be due within 15 days of the Installment Payment Schedule being provided. It will be the responsibility of the person responsible to pay development charges to provide payment in a prompt and timely

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manner as per the schedule, no further notification of upcoming payments will be given.

**3.11. Development Charge Grants**

For developments that are in receipt of a Regional development charge grant or credit, the amount that shall be used for the purpose of determining installment payments shall be the net amount of Regional development charges payable.

**3.12. Termination of the Installment Schedule**

The remaining balance of all development charges shall be payable within 15 days immediately following the notification / determination of any of these trigger events:

- a. Change of use to a development type that is not eligible for development charge installments under the Act, as of the day the change is made.
- b. Sale or transfer of ownership.
- c. If the balance of Regional development charges owing plus any accrued interest as per the installment schedule is paid to Niagara Region.

**3.13. Unpaid Development Charges**

**3.13.1.** If any development charges (including interest) are unpaid, those development charges (including interest) may (at the discretion of the Region) be added to the tax roll and collected in the same manner as taxes, in accordance with section 32 of the Act.

**3.13.2.** Interest on late payments added to the tax roll shall incur the applicable taxation interest rate (as provided under section 345 of the Municipal Act, 2001).

**3.14. Interest Rate Used**

**3.14.1.** An interest rate shall be used for the purposes of section 26.1 and 26.2 and shall be made available on Niagara Region’s website under the development charges page.

**3.14.2.** Notwithstanding clause 3.14.1, an interest rate of 0% shall be used for the purpose of section 26.1 and 26.2 for the following types of development:

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- a. Non-profit housing development as defined under section 11.1 (3) of O. Reg. 82/98.

**3.15. Late Payment Penalty and Interest on unpaid Development Charge**

- 3.15.1.** All development charge installment (including interest) that are unpaid as per the criteria established under section 26.1 of the Act, will be subject to a Regional administration fee as per the Region’s user fee by-law and may also be added to the tax roll and collected in the same manner as taxes, in accordance with section 32 of the Act.
- 3.15.2.** Interest on late payments added to the tax roll shall incur the applicable taxation interest rate as established by the Local Area Municipality in which the property is located.

**3.16. Policy Common Name**

This Policy can also be referred to as: *Timing for Calculation of Development Charge, Instalment and Interest Policy*

**4. Purpose**

The purpose of this policy is to establish the timing and rules for development charge calculations, as required under section 26.2 of the Development Charges Act, 1997. This policy establishes the conditions, duration, terms and other requirements on when and how Niagara Region determines the total amount of a development charge, the installment methodology for eligible development types and the applicable interest rates as outlined in the Act.

**5. Scope**

This policy applies to all development eligible under section 26.2 and 26.1 of the Development Charges Act, 1997.

**6. Roles and Responsibilities**

**6.1.1. Regional Council**

Approves, by resolution, the Timing for Calculation of Development Charge, Installment and Interest Policy and any updates as necessary every five years or upon expiry of the Niagara Region Development charge By-law.

**6.1.2. Commissioner, Corporate Services**

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Reviews and updates Timing for Calculation of Development Charge, Installment and Interest Policy as necessary every five years or upon the expiry of a Regional Development Charge By-law and submits any necessary changes for Council Approval.

Creates necessary guiding strategies, supporting frameworks and procedures as required to administer this policy which may be amended from time-to-time.

Monitor compliance and adherence to this policy.

Ensure interest rate is updated on website.

**7. References and Related Documents.**

**7.1. Legislation, By-Laws and/or Directives**

7.1.1. Development Charge Act, 1997, S.O. 1997, as amended from time to time.

7.1.2. By-law 2017-98 – A By-law to Establish Development Charges for the Regional Municipality of Niagara Region, as amended from time to time.

**8. Related Policies**

None.

**9. Document Control**

The electronic version of this document is recognized as the only valid version.

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**Approval History**

Approver(s)	Approved Date	Effective Date

**Revision History**

Revision No.	Date	Summary of Change(s)	Changed by

**Appendix 2 – Summary of Interest Rates Adopted by Other Municipalities**

	<b>Section 26.1 Interest Rate (for installments)</b>	<b>Section 26.2 Interest Rate (for rate freeze)</b>
City of Barrie	Weighted average cost of capital as determined by Director of Finance (2019: 4.78%)	Weighted average cost of capital as determined by Director of Finance (2019: 4.78%)
City of Ottawa	The greater of (a) the Infrastructure Construction Price Index <sup>1</sup> plus 0.5%, OR (b) the average annual rate at which the City issues debentures to fund development charge projects plus 0.5%.	The greater of (a) the Infrastructure Construction Price Index plus 0.5%, OR (b) the average annual rate at which the City issues debentures to fund development charge projects plus 0.5%.
City of Guelph	Non-residential construction price index year over year change as of September 30th of the prior year plus 2% if security is not provided.	Non-residential construction price index year over year change as of September 30th of the prior year plus 2% if security is not provided.
Town of Milton	Town's financial institution prime lending rate.	Town's financial institution prime lending rate.
Town of Whitby	Fixed 5% compounded annually.	Fixed 5% compounded annually.
York Region	Fixed 5% compounded annually.	Fixed 5% compounded annually.
Peel Region	0.0%	5.5% per annum after August 1, 2020. Interest will compound on unpaid amounts.
Halton Region	Region's financial institutions prime lending rate.	Region's financial institutions prime lending rate.

Toronto	<p><b>Financial Security</b>  <b>Provided:</b> Cost of capital rate.</p> <p><b>No Financial Security</b>  <b>Provided:</b> Greater of: Canadian Bank Prime Rate plus 5% or market rate of construction financing as determined by the City.</p>	1.5% per month.
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*1 – The Infrastructure construction price index is produced on a cost-recovery basis for the City of Ottawa by Statistics Canada. 2019 annual rate was 2.34%.*