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**Subject:** Update of C-F-025 Regional Development Charges Deferral Policy

**Report to:** Corporate Services Committee

**Report date:** Wednesday, March 6, 2024

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## Recommendations

1. That C-F-025 Regional Development Charges Payment Deferral Policy section 1.6 **BE AMENDED** to remove the requirement for a letter of credit for agreements arising from conditional approval under the Industrial Use RDC Grant, as more specifically provided in CSD 03-2024; and
2. That C-F-025 Regional Development Charges Payment Deferral Policy sections 1.12 and 3.1.1 **BE AMENDED** to remove the Director, Legal & Court Services as co-signatory to Regional development charge deferral agreements, as more specifically provided in CSD 03-2024.

## Key Facts

- The purpose of this report is to seek Committee's approval to amend the current Regional Development Charges (RDC) Payment Deferral Policy to remove the requirement for a letter of credit for agreements arising from conditional approval under the Industrial Use RDC Grant in response to feedback from the development community.
- Pursuant to section 27 of the Development Charges Act, 1997 (DCA), C-F-025 Regional Development Charges Policy the Region is permitted to enter into an agreement with a developer for the purpose of deferring development charges for a building or structure in certain instances, such as the conditional approval of a grant.
- Currently, section 1.6 of Policy C-F-025 requires the developer to provide the Region with a letter of credit in the amount of the RDCs deferred prior to the RDC deferral agreement being ratified. This requirement in relation to the application and conditional approval of the RDC Industrial Use Grant is seen as a potential barrier to development by the developer community.
- While the letter of credit is the safest security option, if the developer defaults on the agreement, and no letter of credit is provided, Section 32(1) of the DCA permits a municipality to add any unpaid RDCs to the tax roll of the property, where it can be collected in the same manner as taxes.

- The Policy should also be amended to remove the Director, Legal & Court Services as co-signatory to Regional development charge deferral agreements, as it is anomalous for Legal Services to both prepare and execute the agreements.
- A further review of the Deferral Policy will be undertaken at a later date to ensure alignment with all new Incentive Policy and Procedures.

## **Financial Considerations**

There are no direct financial considerations associated with this report as the Region will retain the ability to collect any RDCs owing on a project as Section 32(1) of the DCA, the Region is permitted to add any unpaid RDCs to the tax roll of the property in the event a developer defaults on their deferral agreement and does not pay any applicable Regional Development Charges at the end of the deferral period. In the case of default there would be additional administrative costs associated with collecting unpaid RDC's through the tax roll (while a letter of credit allows the Region for an easier method to collect any applicable RDCs).

## **Analysis**

Under Regional By-laws 2022-71 (Niagara Region) and 2022-94 (Niagara Transit Commission), the Region levies a development charge on every residential or non-residential building permit issued from each of the local building departments. For non-residential buildings, there are three classifications for the purpose of RDCs: commercial, industrial, and institutional. The commercial rate has an open-ended definition and is therefore the default development charge for non-residential buildings.

The Region offers a RDC Industrial Use Grant in which the development charges for bona fide industrial buildings are granted at the building permit stage, or within 90 days of initial building permit issuance. To qualify for approval under this grant, industrial use must be proved according to the "Industrial Use" definition in By-law 2022-71 which reads:

"Industrial use" means land, buildings or structures used for or in connection with manufacturing by:

- Manufacturing, producing, and processing goods for a commercial purpose, as well as storing and/or distribution of goods manufactured, produced or processed on site.
- Research or development in connection with manufacturing, producing or processing good for a commercial purpose.
- Retail sales by a manufacturer, producer or processor of goods they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place.
- Office or administrative purposes, if it is:
  - Carried out with respect to manufacturing, producing, processing, storage or distributing of something.
  - In or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution.

If a non-residential building is to be constructed, but the ultimate use/occupancy is not yet known, for example a building that is intended to be rented to tenants (that may occupy the building for either industrial or commercial purposes), the default charge pursuant to the by-law would be commercial RDCs as the use is undetermined and therefore the developer cannot prove Industrial Use. In these instances, the developer may seek conditional approval for the RDC Industrial Use Grant if they intend to have tenants that meet the definition and will therefore become eligible for an RDC deferral under Policy C-F-025.

Currently, under section 1.6 of Policy C-F-025, a letter of credit is required in the amount of RDCs deferred as part of the conditional approval. Section 1.6 currently reads as follows:

1.6. For developments that are eligible for deferral under paragraph 1.1.2, at the time of execution of a deferral agreement under this policy, the applicant must provide a Letter of Credit for the amount of Regional Development Charges deferred.

This provision is meant to ensure that the Region can readily and swiftly collect any RDCs owing at the end of the deferral period if the developer defaults on the agreement. It was imposed as a requirement solely related to conditional approvals, by reason of the fact that the developer in that instance is seeking to avail themselves of a lower RDC rate without being able to factually establish their entitlement at the time of collection; and the provision of a letter of credit affords an immediate and straightforward method of collection if required at the end of the deferral period. While a letter of credit is the safest security option from the point of view of ensuring the Region will immediately collect any outstanding RDCs (and with minimal indirect costs in terms of staff time), it is viewed as restrictive by the developers, as letters of credit will count as a liability on their pro forma statements if they intend to obtain construction loans. This may be perceived as a deterrent to development in the Niagara Region if other municipalities do not require a letter of credit for conditional industrial developments.

It should be noted that section 32(1) of the DCA permits a municipality to add any unpaid development charges to a property's tax roll, where it is collected in the same manner as taxes. Therefore, even without a letter of credit, the Region can ensure that any RDCs that may be owing at the end of the agreement's deferral period may be recouped even if a portion of the building does not meet the Region's Industrial Use definition (although it should be noted that this method will result in some indirect costs in terms of staff time to process adding the costs to the tax roll; payment may be delayed in circumstances where taxes are not being paid by the property owner on a timely basis; and the payor may be different from the developer in circumstances where the property has been transferred since the time that the deferral was granted).

It is the recommendation of staff that section 1.6 be amended to include the following:

1.6. For developments that are eligible for deferral under paragraph 1.1.2, at the time of execution of a deferral agreement under this policy, the applicant must provide a Letter of Credit for the amount of Regional Development Charges deferred, unless the development has received conditional approval under the Industrial RDC Grant Program; in which case any development charges owing at the end of the deferral period may be added to the property tax roll as permitted by s. 32(1) of the Development Charges Act, 1997.

It is important to note that this change is being recommended because of feedback from the development community. It has been communicated to Regional staff that the requirement of a letter of credit for the deferral or RDCs acts as a barrier to development because it affects a developer's pro forma statements when it comes to

obtaining construction financing. While it is easier to collect any unpaid RDCs using a letter of credit, since the funds are readily available to the Region in the event a developer defaults on the agreement, collection can still occur by adding any unpaid RDCs to the tax roll per s.32(1) of the DCA.

Additionally, the following sections in the Regional Development Charges Payment Deferral Policy are being removed and amended to remove the Director, Legal & Court Services as co-signatory to Regional development charge deferral agreements. The Director, Legal & Court Services has traditionally signed these agreements, however as Legal Services prepares these documents and does not oversee this program, it is anomalous for them to execute. It is instead proposed that the CAO be added.

Section 1.12 to be updated as follows:

Authority to execute deferral agreements on behalf of Niagara Region resides ~~jointly with the Director, Legal & Court Services and jointly with the CAO and Commissioner, Corporate Service~~ (or their respective designates authorized in writing to act on their behalf in their absence)

3.1.3 To be updated to remove paragraph 3:

Director, Legal & Court Services or designate in writing

Ensures that all Regional development charge deferral agreements satisfy all legal requirements as outlined in appropriate legislation.

Ensures that all Regional development charge deferral agreements appropriately mitigate legal exposure for Niagara Region.

~~Acts as a co-signatory to Regional development charge deferral agreements jointly with the Commissioner, Corporate Services or designate in writing.~~

## **Alternatives Reviewed**

Council may elect to leave the policy as it is currently written and require a letter of credit for all deferred RDCs. This alternative is not recommended as the development community has identified that they consider that it adds a barrier to potential industrial development in Niagara, as the requirement for a letter of credit makes construction financing more difficult for developers.

## **Relationship to Council Strategic Priorities**

The collection of development charges supports the priority of Fiscal Responsibility. Promoting industrial use buildings in Niagara supports the priority of Innovation.

## **Other Pertinent Reports**

None.

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## **Appendices**

Appendix 1            C-F-025 Regional Development Charges Payment Deferral Policy