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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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### **Prepared by:**

Alex Rotundo  
Senior Tax & Revenue Analyst  
Corporate Services

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### **Recommended by:**

Todd Harrison, CPA, CMA  
Commissioner/Treasurer  
Corporate Services

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### **Submitted by:**

Ron Tripp, P.Eng.  
Chief Administrative Officer

This report was prepared in consultation with Beth Brens, Associate Director, Budget Planning and Strategy, Roman Ivanov, Legal Counsel and Daniel Turner, Manager, Strategic Growth Services and reviewed by Helen Furtado, Director, Financial Management & Planning/Deputy Treasurer and Donna Gibbs, Director, Legal and Court Services.

## **Appendices**

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

<i>Policy Category</i> FINANCIAL	<i>Name of Policy</i> REGIONAL DEVELOPMENT CHARGES PAYMENT DEFERRAL POLICY
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<b>Policy Owner</b>	Corporate Services, Financial Management & Planning, Associate Director, Budget Planning Strategy
<b>Approval Body</b>	Council
<b>Approval Date</b>	October 17, 2019
<b>Effective Date</b>	October 24, 2019
<b>Review by Date</b>	Within 2 years or upon expiry of a Regional Development Charges Bylaw.

## 1. Policy

This policy establishes principles and practices for deferral of Regional development charges.

- 1.1. The following development types will be eligible for Regional development charges deferral under this policy:
  - 1.1.1. Affordable housing developments that received funding through an agreement with Niagara Regional Housing or designated agency of Niagara Region as per By-Law 2017-98, Section 11. (f).
  - 1.1.2. Developments that have received conditional/pending approval for Regional Development Charge grant and where the total Regional development charges for the project exceeds the minimum threshold. The deferral amount under this clause will be capped at the amount of the conditional/pending grant.
  - 1.1.3. Developments that Regional staff have identified as eligible for a future Municipal Capital Facility Agreement for which Regional Development Charges will be exempted (subject to conditions under Municipal Act, 2001, section 110 and subsequent Regional Council approval).
  - 1.1.4. Developments that are eligible for a transitional provision in an approved Regional development charge by-law.
- 1.2. Under the terms of this Policy, an individual that is required to make payment of Regional Development Charge may submit a complete application package requesting a Regional development charges deferral agreement prior to the payment of development charges for the development.

<p><i>Policy Category</i></p> <p>FINANCIAL</p>	<p><i>Name of Policy</i></p> <p>REGIONAL DEVELOPMENT CHARGES PAYMENT DEFERRAL POLICY</p>
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- 1.3. An application made under this policy will only be accepted if complete and the prescribed administrative fee has been provided to Niagara Region as outlined in the Region’s Fee and Charges By-law as amended from time to time.
- 1.4. If the request does not comply with the Policy, Niagara Region will refuse the application and advise the applicant accordingly.
- 1.5. If approved, a deferral agreement will be prepared to include the terms and conditions required by both the Director Legal & Court Services and Commissioner, Corporate Services or designate and to secure payment of the deferred charges.
- 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.
- 1.7. If the Regional development charges have already been paid for the development by the applicant, the applicant is not eligible for a deferral agreement under this Policy.
- 1.8. In the event that the development charges become payable, the development charges deferred shall be payable in accordance with the deferral agreement executed with Niagara Region and shall be based on the development charge rate that is in effect at the time of building permit issuance.
- 1.9. An annual interest rate shall apply to the amount of Regional development charges deferred. The interest rate for the purposes of the policy and associated agreements is the Bank of Canada rate.
- 1.10. The maximum deferral term shall not exceed the period as outlined below:
  - 1.10.1. Developments eligible for deferral under 1.1.1 shall see the deferral period capped at the length of time that the units remain affordable housing (as may be outlined in the funding agreement).
  - 1.10.2. Developments eligible for deferral under 1.1.2 shall not see the deferral period exceed 2 years from the date that the Regional development charges are otherwise payable.
  - 1.10.3. Developments eligible for deferral under 1.1.3 shall not see the deferral period exceed the length of time anticipated for the Region to designate the development (or any part thereof) as a Municipal Capital Facility.
  - 1.10.4. Developments eligible for deferral under 1.1.4 shall not see the deferral



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period exceed the length of time as outlined in the transitional provision of a future Regional development charge by-law.

- 1.11. Notwithstanding the aforementioned eligibility criteria, a deferral request may be refused by the Commissioner, Corporate Service if the net development charge reserve balance is in a deficit.
- 1.12. Authority to execute deferral agreements on behalf of Niagara Region ~~resides jointly with the Director, Legal & Court Services~~ with the CAO and Commissioner, Corporate Service (or their respective designates authorized in writing to act on their behalf in their absence).
- 1.13. Approval for a Regional development charge deferral under this policy will be rescinded and associated agreement terminated if the building permit for the development is not issued within 6 months of the date of execution of the agreement.
- 1.14. The applicant must register the executed agreement on title of the subject lands at their expense within 30 days of agreement execution or risk default or cancellation of the agreement. Proof of agreement registration on title must be provided within 30 days of the agreement being executed by all parties.
- 1.15. All future deferral requests and agreements entered into by Niagara Region after the effective date of this policy must conform to this Policy. All previous deferral agreements will be grandfathered under the terms and conditions under which they were approved and executed.

**2. Purpose**

This policy will establish guidelines related to applications for, and the administration and issuance of, Regional development charge deferral agreements pursuant to section 27 of the Development Charge Act, 1997.

**3. Scope**

This policy applies to all Regional development charge deferral requests.

**3.1. Roles and Responsibilities**

**3.1.1 Regional Council**

Approves, by resolution, the development charges deferral policy and any updates as necessary every five years or upon expiry of the Niagara Region Development charges By-law.

**3.1.2 Commissioner, Corporate Services or Designate in Writing**

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Reviews and updates the Regional Development Charge Deferral Policy as necessary every five years or upon the expiry of a Regional Development Charges 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 for future Regional development charge deferral agreements.

Develops and maintains appropriate tracking measures for executed deferral agreements and reports on each annually to Regional Council.

Acts as a co-signatory to Regional development charge deferral agreements jointly with the Director, Legal & Court Services.

**3.1.3 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.~~

**4. References and Related Documents.**

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

4.1.1. Development Charges Act, 1997, S.O. 1997, as amended from time to time.

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

**5. Related Policies**

**6. Document Control**

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

**Approval History**

Approver(s)	Approved Date	Effective Date

<p><i>Policy Category</i></p> <p>FINANCIAL</p>	<p><i>Name of Policy</i></p> <p>REGIONAL DEVELOPMENT CHARGES PAYMENT DEFERRAL POLICY</p>
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**Revision History**

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