
Subject: Regional Development Charges Deferral Policy

Report to: Corporate Services Committee

Report date: Wednesday, October 9, 2019

Recommendations

1. That the Regional Development Charges Payment Deferral Policy as included as Appendix 1 of CSD 43-2019, **BE APPROVED**.
2. That the authority to execute payment deferral agreements in compliance with the Regional Development Charge Payment Deferral Policy **BE DELEGATED** to the Director, Legal & Court Services and Commissioner, Corporate Services (or their respective designates in writing) jointly.

Key Facts

- The purpose of this report is to formalize the Region's process for providing deferral agreements for Regional Development Charges (RDC) as permitted under section 27 of the Development Charges Act, 1997 (DCA).
- Section 27 (1) of the (DCA) provides that a municipality may enter into an agreement with a person who is required to pay a development charge providing for all or any part of a development charge to be paid after it would otherwise be payable.
- Through CSD 63-2017- Regional Development Charges and Proposed By-law, Regional Council previously provided the Director, Legal & Court Services and Commissioner, Enterprise Resource Management Services the authority to execute development charge deferral agreements, however, the report did not establish criteria whereby a RDC deferral agreement would be warranted and was generally only intended for the transitional period between RDC by-laws.
- This report seeks Council's approval on the formalized Regional Development Charges Payment Deferral Policy as included under Appendix 1.

Financial Considerations

Deferral agreements can be considered a useful tool that can be utilized to reduce the administrative burden of both the Region and developers under certain circumstances (i.e., collecting RDC when it is known that a refund will be issued via grant or consideration of a municipal capital facility designation by Council). These agreements also act as an incentive to generate developments that are deemed a Region's priority (i.e., affordable housing).

However, deferring the collection of RDC may result in a loss of interest revenue to be allocated to the development charges reserves as a result of the delayed payment which will reduce the funds available for growth related projects. To compensate, staff are proposing to include a minimum interest rate that would apply to the amount of development charges deferred. The minimum interest rate for the purposes of the policy and associated agreements is the bank of Canada rate.

All applications for a RDC deferral agreement must be accompanied by an application fee as included in the rate and fees by-law to ensure cost recovery for processing of these agreements.

Analysis

Through CSD 63-2017 - Regional Development Charges and Proposed By-law dated October 5, 2017, Regional Council delegated the authority to execute deferral agreements under section 27 of the Development Charges Act, 1997 jointly to the Director, Legal & Court Services and the Commissioner, Enterprise Resource Management Services. At the time when report CSD 63-2017 was approved by Council, there was no formalized policy enacted to guide Regional staff when executing deferral agreements as the delegated authority was primarily intended to address the transitional period between RDC by-laws. Staff have relied on this previous delegation of authority to execute deferral agreements which have mainly been limited to deferrals for affordable housing (as per By-law 2017-98, s. 11(f)).

As a means of formalizing the RDC payment deferral process, Regional staff have developed a policy for Council's consideration and approval which has been included as Appendix 1 of this report. The Policy has been developed in collaboration with the Region's Finance, Legal, Planning and Economic Development staff. This Policy has been created with the intent of clarifying:

- Development types eligible for payment deferrals (Affordable housing, developments pending RDC grant approvals as outlined in the procedure document, and developments subject to a future Municipal Capital Facility agreement);
- The application process and administrative fee requirement;
- Financial security requirements of the Region; and
- Roles and responsibilities.

At the Committee of the Whole meeting held on September 5, 2019, Council endorsed four main categories of incentives that will be implemented starting 2020 (i.e., Affordable housing, brownfield remediation, employment growth and quality of life). This Policy has been developed with those areas of focus in mind.

Staff will also develop a Procedure document to accompany the Policy once approved by Council. The Procedure will be approved by the Commissioner, Corporate Services.

Staff also reviewed the need to develop a RDC pre-payment agreement policy but it was determined to not be warranted at this time. Requests for pre-payment agreements (which are also permitted pursuant to section 27 of the DC Act) have primarily been limited to periods immediately preceding the passing of an updated RDC By-law (which generally occurs ever 5 years). Staff are proposing that Council's approval of any pre-payment agreements be obtained at the time of an updated RDC By-law only.

Alternatives Reviewed

1. That the authority to execute Regional development charges deferral agreements be reverted back to Regional Council to be dealt with on an ad hoc basis. The alternative is **NOT RECOMMENDED**. By continuing to delegate the authority to execute deferral agreements in compliance with the policy to staff, it will create efficiencies from the perspective of developers and builders.
2. That Council not formalize a Regional development charges deferral agreement policy. This alternative is **NOT RECOMMENDED**. A policy would ensure consistency in application and execution of Regional development charges deferral agreements.

Relationship to Council Strategic Priorities

Pending the development of Council's new Strategic Priorities.

Other Pertinent Reports

[CSD 63-2017](#) Regional Development Charges and Proposed By-law

Prepared by:

Rob Fleming, MBA
Senior Tax & Revenue Analyst
Corporate Services

Recommended by:

Todd Harrison, CPA, CMA
Commissioner/Treasurer
Corporate Services

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

This report was prepared in consultation with Margaret Murphy, Associate Director, Budget Planning & Strategy, and reviewed by Helen Chamberlain, Director, Financial Planning & Management/Deputy Treasurer and Donna Gibbs, Director, Legal & Court Services.

Appendices

Appendix 1 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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Policy Owner	Corporate Services, Financial Management & Planning, Associate Director, Budget Planning Strategy
Approval Body	Council
Approval Date	
Effective Date	October 24, 2019
Review by Date	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.

1.3. An application made under this policy will only be accepted if complete and the

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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.
- 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 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

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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 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

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.

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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

Revision History

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