

## Committee of the Whole (2) Report

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**DATE:** Tuesday, May 9, 2023

**WARD(S):** ALL

**TITLE:** DEVELOPMENT CHARGE INTEREST RATE POLICY – UNDER SECTIONS 26.1, 26.2 AND 26.3 OF THE DEVELOPMENT CHARGES ACT, 1997

**FROM:**

Michael Coroneos, Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer

**ACTION:** DECISION

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**Purpose**

To revise the existing Development Charges Interest Policy in response to changes to the *Development Charges Act, 1997*, introduced through *Bill 23, More Homes Built Faster Act, 2022*.

**Report Highlights**

- Bill 23, More Homes Built Faster Act, 2022 amended the Development Charges Act, 1997 to prescribe a maximum interest rate for developments that are eligible under 26.1 and 26.2 of the Development Charges Act.
- The maximum prescribed interest rate is average prime +1%.
- Staff have updated the DC interest policy to align with the legislative changes.

**Recommendations**

1. THAT Council approve the charging of interest as per section 26.3 for development that is eligible under sections 26.1 and 26.2 of the *Development Charges Act, 1997*
  - a. Effective as of June 1, 2022
  - b. At a rate of average prime + 1%

2. THAT Council approve the Development Charges Interest Policy (Attachment 1), to administer the charging of interest as outlined in Recommendation 1.

## **Background**

Bill 108, the *More Homes, More Choice Act* received Royal Assent on June 6, 2019. This Bill amends 13 different statutes that impact municipalities and land use planning processes. Bill 138, the *Plan to Build Ontario Together Act*, received Royal Assent on December 10, 2019. Bill 138 amended some of the changes to the *Development Charges Act, 1997* (“Act”) and the *Planning Act, 1990* that were made by Bill 108. Some of the changes to the Act were proclaimed to come into effect as of January 1, 2020 and impact the way municipalities are to calculate and collect development charges.

### **Developments subject to the provision of either a site plan or zoning by-law amendment application submitted after January 1, 2020 can get the benefit of “frozen” development charge rates and some developments can now defer the payment of the development charges and pay for same in installments**

One of the changes included in Bill 108 was the requirement for municipalities to freeze development charge (“DC”) rates at site plan application or zoning application and to allow certain types of development including rental housing and institutional development to defer their DC payments and allow for payments of same in installments. The requirement to freeze DC rates and to begin phasing payments went into effect on January 1, 2020. Prior to this, DCs were typically calculated and payable at the rates in effect at the time of building permit issuance (i.e., for large buildings DCs are payable at issuance of conditional footing/foundation permit).

As a part of these changes to the Act, a provision was also included to allow a municipality to charge interest over the period from when the DC rates are frozen to when they are paid and, in the case of deferred payment, charge interest from when the DCs would have been payable to the date the installment is paid. Initially the Province did not prescribe a maximum interest rate, or a regulatory framework for these purposes. In May 2020, Staff brought forward a policy for Council approval that allowed for interest to be charged at a rate of 5% compounded annually in alignment with the Region of York.

## **Previous Reports/Authority**

[Development Charges Interest Policy – Under 26.1 and 26.2 of the Development Charges Act, 1997](#)

## **Analysis and Options**

### **Bill 23 now prescribes a maximum interest rate and framework for the charging of interest**

Bill 23, More Homes Built Faster Act, 2022 received Royal Assent on November 28, 2022 and included further amendments to the *Development Charges Act*, 1997 which now prescribes a maximum interest rate of average prime rate + 1% under section 26.3 of the Act. The interest rate will be determined based on the adjustment dates under section 26.3 of the Act as follows:

A base rate of interest shall be determined for April 1, 2022 and for each adjustment date after April 1, 2022 and shall be equal to the average prime rate on,

- i. October 15 of the previous year, if the adjustment date is January 1,
- ii. January 15 of the same year, if the adjustment date is April 1,
- iii. April 15 of the same year, if the adjustment date is July 1, and
- iv. July 15 of the same year, if the adjustment date is October 1.

In response to the amendments included in Bill 23 staff have updated the City's Development Charges Interest Policy to ensure alignment with the legislation.

### **Application of interest for Section 26.1 and 26.2**

When an application is received and considered to be deemed complete, development charge rates are frozen to the presiding rates at that time as per section 26.2 of the Development Charges Act. When a building permit is issued, and DCs become payable, interest will be calculated and compounded annually for the DCs that have become payable.

Developments that are eligible to have their DCs frozen under section 26.2 of the Act will also have their interest rate frozen at the same time that based on the adjustment

dates in section 26.3 of the Act and outlined above. The freezing of the interest rate provides the cost certainty principle that is achieved by freezing the DC rate.

Developments that are eligible to pay their DCs in installments under section 26.1 of the Act will be charged interest at the maximum permissible rate under section 26.3 of the Act on the day the development charges would have been payable (i.e. building permit). For subsequent payments the maximum interest rate permissible under section 26.3 of the Act will be charged based on the date that the installment payment comes due.

If an applicant is eligible under section 26.1 of the Act to defer DCs and make payments in installments the first payment becomes due at the time that the building receives occupancy. Interest is calculated and compounded annually on the installment payment back to the date the application was deemed complete and the DC rates were frozen. Each subsequent installment is payable at the annual anniversary of building occupancy and interest is calculated and compounded annually for each subsequent installment.

### **Financial Impact**

DCs are the City's primary source of funding for growth-related capital infrastructure. The freezing of rates and the deferral of payments under 26.1 and 26.2 of the Act has the effect of disconnecting the cost of infrastructure from the rates being paid. Developers may lock into a rate for a previous background study which may not include future infrastructure costs.

Including an interest component when administering the frozen and deferred payments will allow the City to mitigate some of the cost being passed on unfairly to future development due to the delay in DC payment. It will also encourage development to proceed in a timely fashion because interest will continue to accrue until a developer acquires a building permit.

Revising the policy to align with legislation, allows the City to maximize the interest earning potential when the prime rate is high, however when the rate begins to lower, the interest revenue will also decrease. As this is now a prescribed maximum, all municipalities will be consistent on the rate being used.

### **Operational Impact**

There are no operating impacts associated with this report.

### **Broader Regional Impacts/Considerations**

The Region of York presented a revised policy that addressed the interest related to

section 26.1 and section 26.2 of the Act to their Council in March 2023. As the City acts as an agent for the Region of York with regards to DC collections, the City will also be required to administer the Region's Development Charges Interest Policy. The City has followed a similar approach to the interest policy of the Region and accordingly, the internal administration and approach to the collection of interest will be relatively consistent across both levels of government.

### **Conclusion**

Charging interest on frozen and deferred DCs could help to mitigate the impact of Bill 108 by improving cost recovery and encouraging developers to proceed with development in a timely manner. Revising the policy to charge the prescribed maximum interest further aligns the City with others and creates consistency and cost certainty for developers.

**For more information**, please contact: Nelson Pereira, Manager of Development Finance, ext. 8393

### **Attachment**

1. Development Charges Interest Policy – Under Sections 26.1, 26.2 and 26.3 of the Development Charges Act, 1997

### **Prepared by**

Brianne Clace, Project Manager of Development Finance, ext. 8284

### **Approved by**



Michael Coroneos, Services, CFO and City Treasurer

### **Reviewed by**



Vince Musacchio  
on behalf of Nick Spensieri,  
City Manager