

Committee of the Whole (2) Report

DATE: Wednesday, May 20, 2020

WARD(S): ALL

**TITLE: DEVELOPMENT CHARGES INTEREST POLICY – UNDER
SECTION 26.1 AND 26.2 OF THE DEVELOPMENT CHARGES
ACT, 1997**

FROM:

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

ACTION: DECISION

Purpose

To introduce a Development Charges Interest Policy in response to changes to the *Development Charges Act, 1997*, introduced through *Bill 108, More Homes, More Choices Act, 2019*, as amended by Bill 138, the *Plan to Build Ontario Together Act*.

Report Highlights

- Propose a Development Charges Interest Policy to allow for the collection of interest on “frozen” development charges and deferred payments of development charges that were introduced by *Bill 108, More Homes, More Choice Act, 2019*.
- Propose to charge interest on “frozen” development charges and deferred payments as permitted under section 26.1 and 26.2 of the amended *Development Charges Act, 1997*, at a rate of 5%, compounded annually.
- The proposed interest rate is in alignment with the Region of York.

Recommendations

1. That Council approve the charging of interest pursuant to sections 26.1 and 26.2 of the *Development Charges Act, 1997*:
 - a. Effective as at January 1, 2020;

- b. At a rate of 5% compounded annually; and
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.

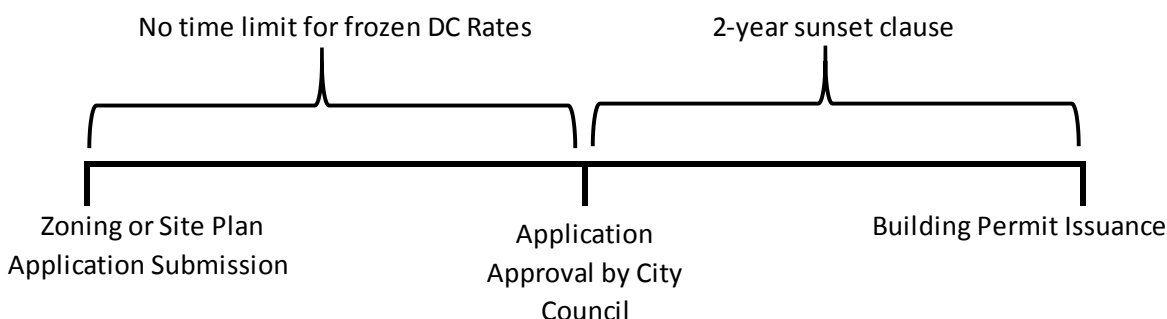
Developments subject to the provision of either a site plan or zoning by-law amendment application submitted after January 1, 2020 can get the benefit of “frozen” development charge rates and some developments can now defer the payment of the development charges and pay for same in installments

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 six annual installments. Non-profit housing developments are permitted to defer their DC payments and pay for same in 21 annual installments, starting at occupancy. 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. To date, the Province has not prescribed a maximum interest rate, or a regulatory framework for these purposes even though Bill 108 allows it to do so under the regulations.

Developers could lock in development charge rates for many years

The regulations released by the Province in response to the changes in the Act provide for a 2-year sunset clause that starts after their application is approved by Council to the time that a building permit is issued. This, however, does not limit how long developers can freeze DC rates between the application date and Council approval of the application. Consequently, it is now possible for developers to freeze their DC rate across multiple DC by-laws. The time to achieve approval of a development application is tied to a number of factors such as: the timing of application submission; quality of the applicant's submission; speed of applicant's response to review comments; status of the related Official Plan amendment (if applicable); the complexity of the application; community response; appeals to the Local Planning Appeal Tribunal ("LPAT") by the applicant or a third party; timing of infrastructure delivery; and market conditions. As a result, there can be significant variability in the overall amount of time between application submission, Council approval and issuance of a building permit.



Overall, developments proceeding through the site plan process typically take less time to achieve building permit issuance from the date of application compared to those proceeding through the plan of subdivision process. Applications proceeding and approved through a Draft Plan of Subdivision require the applicant to satisfy conditions of Draft Plan of Subdivision approval, prior to the registration of the plan. Typically the applicant takes 6 months to 1 year to satisfy conditions of approval, prior to being in a position to register the plan and obtain a building permit.

As this ability to freeze DCs could allow an applicant to lock in DC rates over a long period of time, this will result in a reduction in the amount of DCs that the City will be able to collect as compared to the previous regime is expected. Although it is difficult to determine the actual impact to DC collections in an approximate dollar figure, it should be noted that frozen rates would not be subject to the bi-annual indexing of the DC rates, and in some cases a development may freeze DC rates from the current DC by-law, while a new DC by-law may be in place at the time the DCs become payable.

Previous Reports/Authority

Region of York Staff Report - [Potential Development Charge Bylaw Amendment and Interest Policy - Bill 108, More Homes, More Choice Act, 2019](#)

Analysis and Options

In order to mitigate the reduction and delay in collections due to the freezing and deferral of DCs permitted under sections 26.1 and 26.2 of the amended Act, and to encourage developments to pull building permit in a timely fashion, staff recommend that a policy framework be approved (as set out in Attachment 1) to support the charging of interest as permitted through legislation in a manner that is transparent and simple to administer. The policy is intended to provide clarity to stakeholders.

The City has aligned its proposed policy and interest rate with the interest policy approved by the Region of York

On February 27, 2020 the Region of York Council approved an interest policy for the charging of interest which provides for 5% interest to be compounding annually for DCs “frozen” under section 26.2 of the Act. They also recommended an interest rate of 5% for developments eligible to defer and phase their development charge payments under section 26.1 of the Act unless they were also taking advantage of development charge relief under existing Regional policies. If the development is able to receive development charge relief, the Region will charge 0% interest. This applies to institutional developments (e.g. long-term care homes, retirement homes, post-secondary institutions, Royal Canadian Legion memorial homes, club house or athletic grounds and hospices), purpose-built rentals and non-profit housing development.

The Region recommended an interest rate of 5% based on the evaluation of their average historical growth in the annual Statistics Canada Non-Residential Building Construction Price Index for Toronto plus consideration toward average historical fluctuation to the index to mitigate the risk of cost fluctuations.

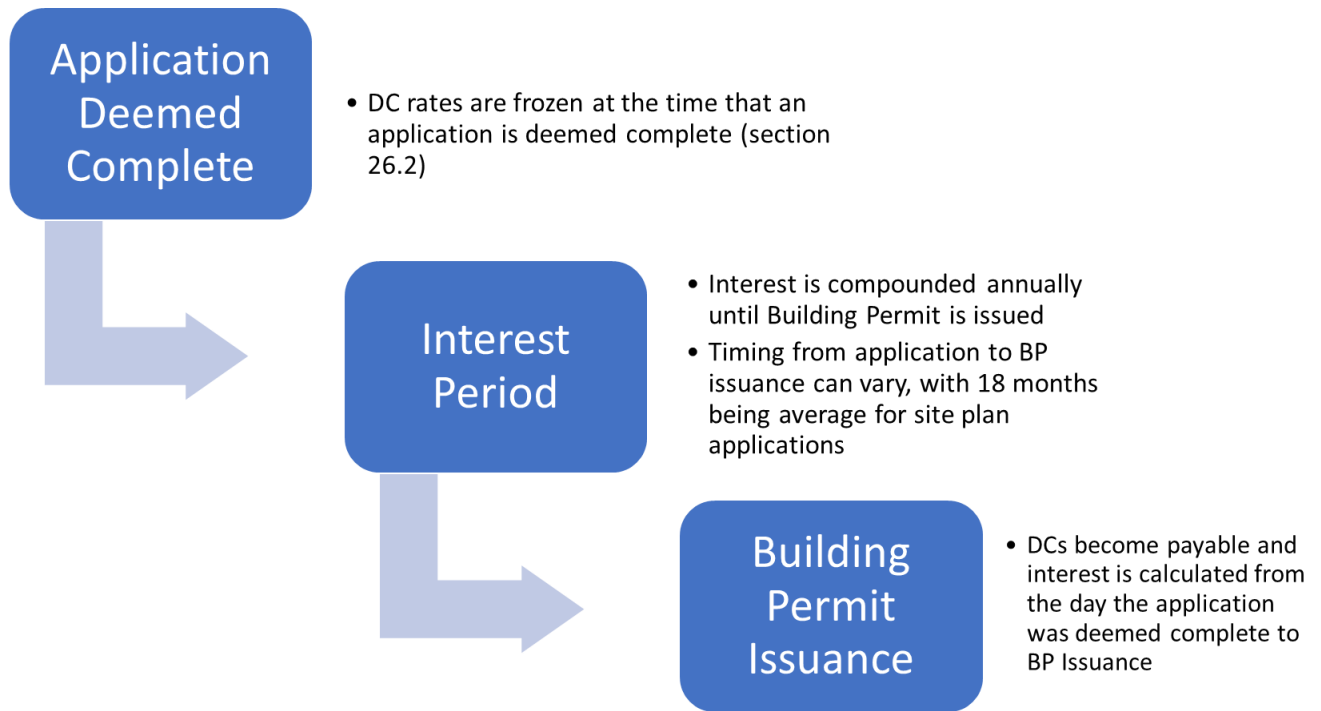
Although the City has historically experienced a slightly lower average growth in the semi-annual Statistics Canada Non-Residential Building Construction Price Index for Toronto the difference is minor; therefore, staff recommend that the same interest rate be used as approved by the Region. City staff act on behalf of the Region in the administration and collection of Regional DCs therefore using the same interest rate and approach as approved by the Region with respect to the City’s DCs will streamline administration and provide a clear approach that is simple for internal staff and developers to understand.

The City will charge interest on deferred DC payments for institutional developments

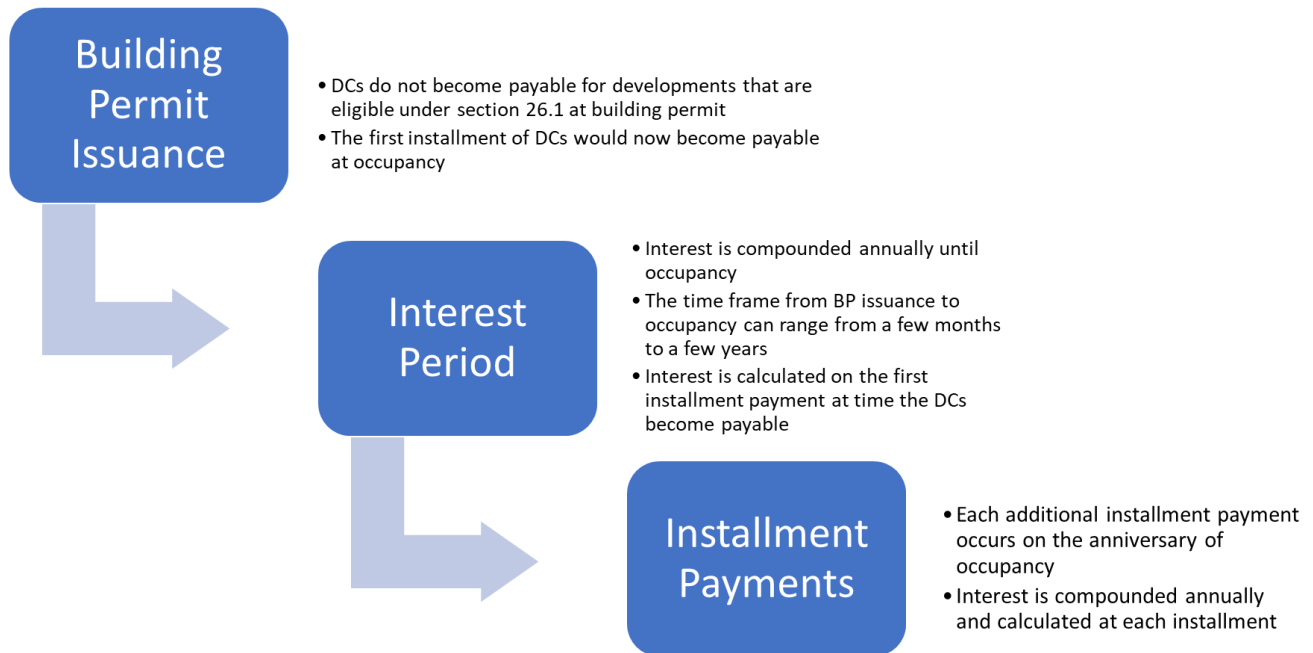
The Region has chosen to provide interest relief for developments that are able to take advantage of other DC relief programs that they have available. The Region's portion of DCs is significantly larger than that of lower-tier municipalities and therefore the decision to provide interest relief ensures that they do not create any additional burden on developments that they are trying to incentivize. City staff recommend that this approach not be taken and charge interest for all developments that are eligible for phased payment under section 26.1 of the Act. The City's portion of DCs is smaller than that imposed by the Region, so the interest component would be less significant. Additionally, on March 11, 2020 City Council approved a City-Wide Development Charges Deferral Policy which allows non-profit developments that are delivering City or Regional services to defer their DCs for up to 5-years. This policy provides for the charging of interest over the deferral period. Charging interest on section 26.1 eligible developments would maintain consistency with this policy that has already been approved.

Application of Interest for Section 26.2 and 26.1

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. Below is a graphic to illustrate the process:



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. Below is a graphic to illustrate the process:



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.

Despite the City's ability to mitigate some of the impacts from Bill 108 through the use of interest, the timing of the delivery of growth-related infrastructure may be impacted. Additionally, the freezing of DC rates could result in developments not paying for future infrastructure that they would directly benefit from.

Broader Regional Impacts/Considerations

On February 6, 2020 The Region of York presented a policy that addressed the interest related to section 26.1 and section 26.2 of the Act. 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 mirrored

the interest policy of the Region and accordingly, the internal administration and approach to the collection of interest will be 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.

Attachment

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

Prepared by

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