

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 27, 2020

Item 3, Report No. 20, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on May 27, 2020.

3. DEVELOPMENT CHARGES INTEREST POLICY – UNDER SECTION 26.1 AND 26.2 OF THE DEVELOPMENT CHARGES ACT, 1997

The Committee of the Whole recommends approval of the recommendations contained in the following report of the Deputy City Manager, Corporate Services and Chief Financial Officer, dated, May 20, 2020:

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.

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.

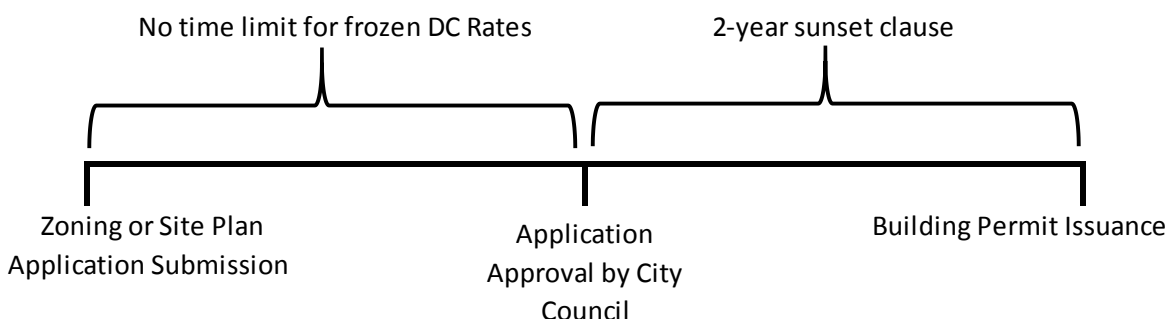
Developments subject to the provision of either a site plan or zoning by-law amendment application submitted after January 1, 2020 can get the benefit of “frozen” development charge rates and some developments can now defer the payment of the development charges and pay for same in installments

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.

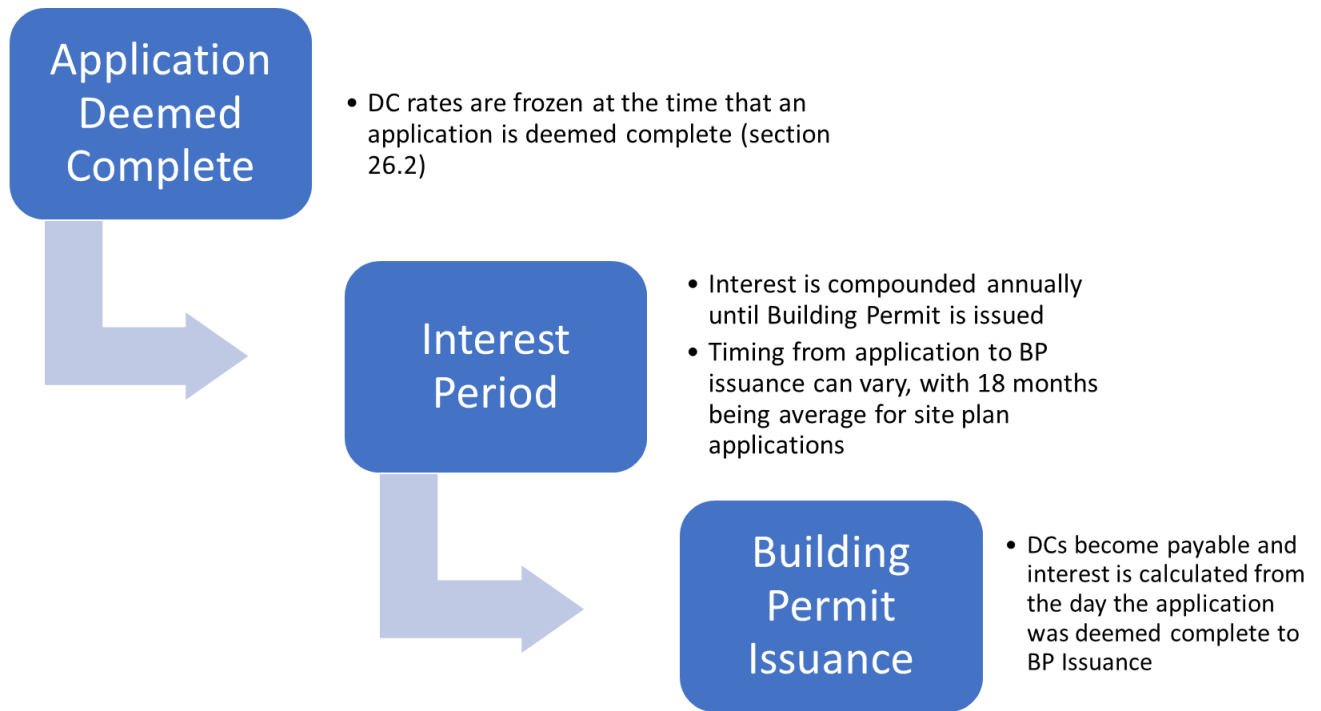
Although the City has historically experienced a slightly lower average growth in the semi-annual Statistics Canada Non-Residential Building Construction Price Index for Toronto the difference is minor; therefore, staff recommend that the same interest rate be used as approved by the Region. City staff 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

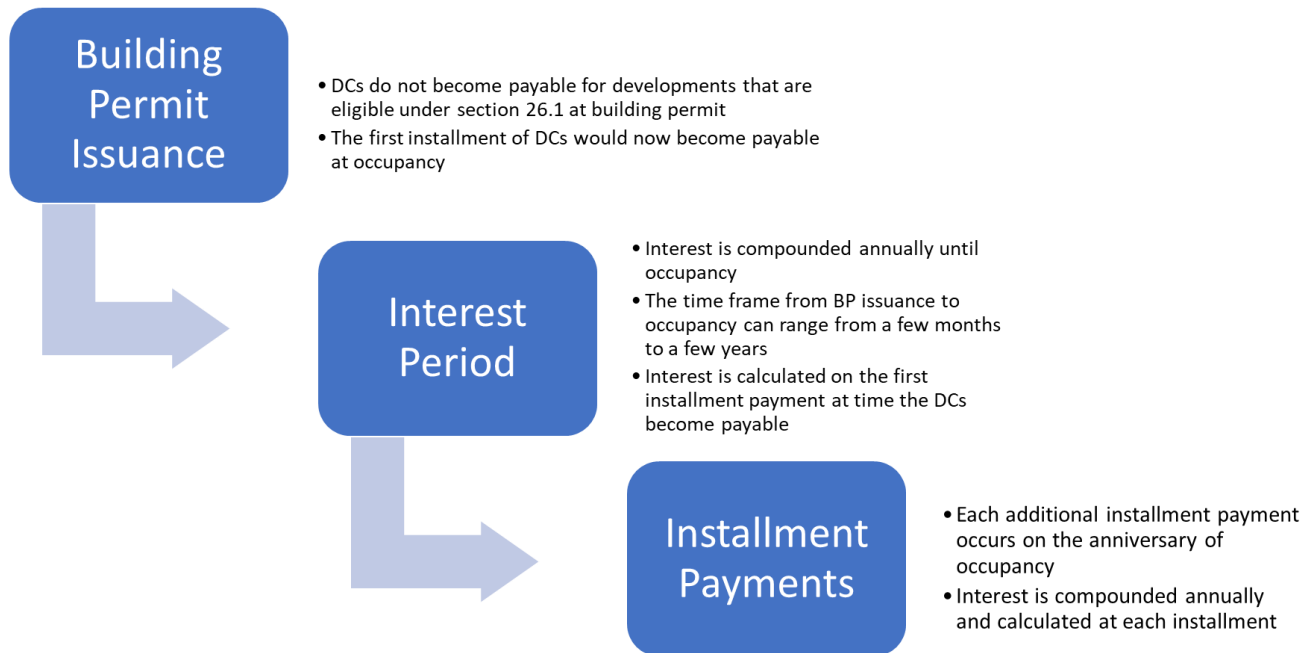
The Region has chosen to provide interest relief for developments that are able to take advantage of other DC relief programs that they have available. The Region's portion of DCs is significantly larger than that of lower-tier municipalities and therefore the decision to provide interest relief ensures 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

Brianne Clace, Project Manager, Development Finance, 8284



CITY OF VAUGHAN

CORPORATE POLICY

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

POLICY NO.: 12.C.08

Section:	Finance & Budgets		
Effective Date:	January 1, 2020	Date of Last Review:	Click or tap to enter a date.
Approval Authority: Council	Policy Owner: DCM, Corporate Services & CFO		

POLICY STATEMENT

A policy governing the charging of interest on development charges deferred and/or frozen, under sections 26.1 and 26.2 of the *Development Charges Act, 1997*.

PURPOSE

To establish the rules and practices for charging interest on development charges deferred and/or frozen under sections 26.1 and 26.2 of the *Development Charges Act, 1997*.

This policy will support the City of Vaughan's ability to build growth-related infrastructure in a way that is fiscally sustainable and will help to achieve the following objectives:

- Reliable delivery of growth-related City programs and services.
- Continued delivery of complete communities in a financially sustainable way.
- Fair and equitable treatment of all stakeholders involved in delivering housing supply, including residents, businesses and developers.

SCOPE

This policy applies to the charging of interest on development charges that are eligible to be deferred and/or frozen. This includes all types of development and redevelopment in the City of Vaughan:

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

POLICY NO.: 12.C.08

- That are eligible for deferred payments under 26.1 of the Development Charges Act, 1997
- That are eligible to benefit from frozen payments under section 26.2 of the Development Charges Act, 1997

LEGISLATIVE REQUIREMENTS

Municipalities are permitted to charge interest on development charges that are eligible to be deferred or frozen under sections 26.1 and 26.2 of the Act.

For deferred payments, subsection 26.1(7) of the Act states: “A municipality may charge interest on the installment required by subsection (3) from the date the development charge would have been payable in accordance with section 26 to the date the installment is paid, at a rate not exceeding the prescribed maximum interest rate”.

For frozen payments, subsection 26.2(3) of the Act states: “Where clause 1(a) or (b) applies, the municipality may charge interest on the development charge, at a rate not exceeding the prescribed maximum interest rate, from the date of the application referred to in the applicable clause to the date the development charge is payable”

The Ministry of Municipal Affairs and Housing has not proposed to prescribe a maximum interest rate.

DEFINITIONS

1. **Act:** *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended.
2. **Development:** The construction, erection or placing of one or more buildings or structures on land, or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof and includes redevelopment.
3. **Development Charges (DC):** A charge imposed against land in the City pursuant to any by-law passed by the council of a municipality pursuant to the Act for the imposition of a development charge against land where the development of land would increase the need for services.
4. **DCM/CFO:** Deputy City Manager of Corporate Services, Chief Financial Officer, and Treasurer.
5. **Planning Act:** *Planning Act*, R.S.O. 1990, c. P.13, as amended.

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

POLICY NO.: **12.C.08**

6. Total Accrued Amount: Equal to the total of the development charges and interest which has accrued.

POLICY

1. Legislative Framework

1.1. Deferred payments under 26.1 of the Act

The province has mandated the deferral of development charges for:

- Rental housing development that is not non-profit housing development.
- Institutional development.
- Non-profit housing development.

Development charges for rental housing and institutional development shall be paid in equal annual installments beginning on the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation and the date the building is first occupied, and continuing on the following five anniversaries of that date.

Development charges for non-profit housing shall be paid in equal annual installments beginning on the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation and the date the building is first occupied and continuing the following twenty anniversaries of that date.

1.2. Interest on installment payments under section 26.1 of the Act

Subsection 26.1(7) of the Act allows a municipality to charge interest on the installments from the date the Development Charges would have been payable, under section 26 of the Act, to the date of the installment is paid, at a rate not exceeding the prescribed maximum interest rate.

1.3. Development Charge freeze under section 26.2 of the Act

Under subsection 26.2(1) of the Act, the total amount of a Development Charge is determined under the City's Development Charge By-Laws based on:

- 1.3.1. The day an application for an approval of development in a site plan control area under subsection 41(4) of the *Planning Act* was made, or,

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1.3.2. If an site plan application has not been applied for, the day an application for an amendment to a bylaw passed under section 34 of the *Planning Act* was made.

1.4. Interest under section 26.2 of the Act

Under subsection 26.2(3) of the Act, a municipality may charge interest on the development charge, at a rate not exceeding the prescribed maximum interest rate from the date of the application referred to in subsection 26.2.(1)(a) or 26.2.1(b) of the Act to the date the development charge becomes payable.

1.5. Maximum interest rate under section 26.1 and 26.2

The Act allows a municipality to charge interest on the development charge amounts that are deferred or on the development charges that are frozen at a rate not exceeding the prescribed maximum interest rate.

There is no prescribed maximum interest rate under subsection 26.1 and 26.2 of the Act.

2. Interest Rate Used

An interest rate of 5% shall be used.

3. Amendment or Revision of Interest Rate

In the event that the interest rate is amended or revised, the new interest rate shall apply to the Total Accrued Amount, prorated from the date of the interest rate amendment or revision to:

- The date the Total Accrued Amount is fully paid.
- A subsequent amendment or revision of the interest rate.

4. Interest Rate Publication and Notification

Upon Council approval, this policy and the interest rates being used shall be made available on the City's website.

The interest rates shall also be published as a part of the City's Development Charges pamphlet.

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5. Compounding and Prorating

All interest shall be compounded annually and shall accrue from the date of the applicable application until the date the accrued amount is fully paid. A 365-day calendar year shall be used for the purposes of prorating.

5.1. Subsequent Application(s)

If a subsequent application(s) is made for a development:

- The date the subsequent application is made will become the new date under which the total amount of the Development Charge is determined;
- All interest that had accrued prior to the subsequent application shall be deemed to be zero (0);
- Interest will be compounded annually and begin to accrue from the date the subsequent application is made.

5.2. Interest under section 26.1

If a development was one of the eligible types of development for the deferred payments under section 26.1 of the Act, the Total Accrued Amount shall continue to accrue interest from the date of the issuance of building permit.

During the timeframe for which Development Charges are deferred, and the payment of same is being provided in annual installments, interest shall continue to accrue on the outstanding balance. This shall continue until the date the Total Accrued Amount has been fully paid.

6. Effective Date

Upon approval by Council, this policy shall retroactively take effect as at 12:00 a.m. on January 1, 2020. This policy may be repealed and/or modified by Council at any time.

7. Transition

To allow for a transition period, this policy does not apply to any development where:

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7.1. An application under section 34 or 41(4) of the *Planning Act* is not required, but:

- Still qualifies for deferred payments under section 26.1 of the Act, and,
- Has been issued a building permit for development by the City prior to July 1, 2020.

7.2. An application under subsection 41(4) of the *Planning Act* is:

- Made after January 1, 2020, and,
- Has been issued a building permit for development by the City prior to July 1, 2020.

7.3. An application for an amendment to a bylaw passed under section 34 of the *Planning Act* is:

- Made after January 1, 2020.
- Has been issued a building permit for development by the City prior to July 1, 2020.

8. Non-Applicability

In the instance where a development is eligible for a Development Charge deferral under any existing City policy, the interest as it relates to section 26.2 of the Act would apply.

If a development is eligible under both section 26.1 of the Act and a development charges deferral under an existing City policy, the Act and the interest charges outlined in this policy would apply only if the development avails itself of the deferral offered under the applicable City deferral policy.

9. Roles and Responsibilities

9.1. DCM Corporate Services, City Treasurer and Chief Financial Officer

- Maintains administrative authority and responsibility for the Development Charges Interest Policy -Under Section 26.1 and 26.2 of the *Development Charges Act*, 1997; and,

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

POLICY NO.: 12.C.08

- Approves department operating procedures and processes under this policy.

9.2. Director, Financial Planning and Development Finance

- Responsible for administering this policy, including but not limited to:
 - - Assisting stakeholders in determining the total amount of the Development Charge that would be determined under the bylaw and the applicable interest rate that would apply.
 - Ensure the Total Accrued Amount is being charged and collected when due.

9.3. Manager, Development Finance, Financial Planning and Development Finance

- Collect all Development Charges, including interest, when due and payable.
- Monitor all development applications and ensure that the correct amount of the Development Charge is being used and that the correct amount of interest has been received.

9.4. Director, Development Planning

- Confirm that a complete application was made for the purposes of determining the total amount of the Development Charge.

ADMINISTRATION

Administered by the Office of the City Clerk.

Review Schedule:	3 Years If other, specify here	Next Review Date:	December 1, 2022
Related Policy(ies):			
Related By-Law(s):			
Procedural Document:			

Revision History

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

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