

# Staff Report



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To	<b>Committee of the Whole</b>
Service Area	Corporate Services
Date	Monday, February 3, 2020
Subject	<b>Development Charge Interest Policy</b>
Report Number	CS-2020-23

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## Recommendation

That the Development Charge Interest Policy as recommended through report titled Development Charge Interest Policy dated February 3, 2020 and numbered CS-2020-23 be approved.

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## Executive Summary

### Purpose of Report

To approve the Development Charge (DC) Interest Policy as included in Attachment-1, as required with the recent changes to the Development Charges Act, 1997 (DCA) through proclamation of Schedule 3 changes of Bill 108 More Homes More Choice Act, 2019 (Bill 108).

### Key Findings

DCs are fees levied on new development to fund the cost of infrastructure needed to accommodate growth.

Recent changes made to the DCA through the proclamation of Ontario Regulation 454/19 (OReg 454/19) on December 10, 2019, as well as legislative changes from Schedule 3 of Bill 108 amended the timing of determination of the DC rate payable and when payment of DCs are due and also introduced DC payment deferrals for some types of development. These changes went into effect on January 1, 2020.

These changes have been proclaimed in advance of the first release of the regulations for the Community Benefit Charge, which were expected in the fall of 2019. These are now expected early in 2020 and will come into effect on January 1, 2021 unless the province extends this deadline given the deferral in the regulations.

The OReg 454/19 changes allow the freeze of a lower DC rate earlier in the development process and deferring the payment to a later date than previously in place. Table 1 summarizes the changes from an operational perspective and illustrates the much more complex and administratively burdensome process that staff will be required to manage. These changes have the potential to have a negative impact on DC revenues and the City's ability to fund growth capital projects.

Table 1: Summary of DC changes

	Previous DCA Rules	DCA as of January 1, 2020
DC Calculation	All development – Building Permit	Site Plan application – two year freeze, then reverts to rate in effect at Building Permit  Zoning by-law application – two year freeze then reverts to rate in effect at Building Permit  Other development – Building Permit
DC Payment	All development – Building Permit	Development eligible for deferral – Occupancy Permit with five to 20 year payment plan  All other development – Occupancy Permit

The DCA also now allows municipalities to charge and collect interest in these situations, and to that end, a DC Interest Policy has been developed for Council approval. Interest will mitigate the negative financial impacts that are expected to occur during the freeze and deferral periods.

Early Payment Agreements will be offered if the owner of a development would prefer to pay the full DC owing at time of occupancy.

### **Financial Implications**

Charging interest on DCs owing will offset some of the negative financial impacts expected from these changes to the DCA and will help to provide sufficient funding to meet the capital commitments prescribed by the Council-approved DC Background Study.

In addition to the lost revenue as a result of the changes in DC calculation timing and collection, there is also added staff time as most of these changes will require manual tracking as there is no standardization to the new formulas that are easily translated into the financial system. User fee increases to compensate for the increased cost to the development process will be considered in future budgets.

The fiscal impact from these changes is difficult to quantify as it will depend upon the specific timing and type and quantum of development activity.

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### **Report**

DCs are fees levied on new development to fund the cost of infrastructure needed to accommodate that growth. The specific DC rate for various types of development

are determined through a DC Background Study that identifies the required capital investment over a specific period of time to accommodate a targeted level of growth. The DC rate is indexed annually using the non-residential construction price index to ensure the rate collected keeps pace with the increasing cost of construction.

Since its initial implementation in 1997, the DCA has been modified a number of times, the most recent being the Bill 108 released in May of 2019. This legislation introduced a number of changes, including the elimination of soft service DCs to be replaced by a Community Benefit Charge, the timing of when DCs were determined from building permit to Site Plan or Zoning By-law amendment and the timing of DC collection from building permit to occupancy and for some development, over a period of five to 20 years. Regulations regarding the Community Benefit Charge are expected early this year and will come into effect on January 1, 2021. Regulations related to timing of calculation and payment were approved via Royal Assent on December 10, 2019 and came into effect January 1, 2020.

This change in timing will lead to a misalignment between the DC rate collected and the cost of the capital infrastructure required. Given the short time between announcement and implementation staff have worked diligently to access ways that the City is able to mitigate these impacts, both financially and administratively. Staff are working to address the operational impacts, notice has been posted on the City's website and a cross-functional team continues to work to map out the new process while continuing to ensure uninterrupted service delivery by the City's Planning and Building departments.

To minimize the impact of the potential lost revenue, Subsection 26.2 (3) of the DCA has been revised to permit a municipality to charge interest on a DC from the date the DC is calculated to the date the DC is payable and Subsection 26.1 (7) of the DCA permits a municipality to charge interest on the instalments required by subsection (3) from the date the DC would have been payable in accordance with section 26 to the date the instalment is paid.

## **DC Freeze**

The new subsection 26.2 (1) of the DCA provides that DCs are to be calculated on:

- a. 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 in respect of development that is the subject of the DC,
- b. if clause (a) above does not apply, the day an application for an amendment to a by-law passed under section 34 of the Planning Act was made in respect of the development that is the subject of the DC;
- c. if neither clause (a) nor clause (b) applies,
  - i. in the case of a DC in respect of a development to which section 26.1 applies, the day the DC would be payable in accordance with section 26 if section 26.1 did not apply, or
  - ii. in the case of a DC in respect of a development to which section 26.1 does not apply, the day the DC is payable in accordance with section 26.

Section 26 requires that the DC payable is due at occupancy. If the period between building permit and occupancy is greater than one month, interest will be charged, as prescribed below:

Where security is provided, the interest rate to be applied to the DC balance owing will be the non-residential consumer price index. The interest owing will be calculated on a monthly basis.

Where no security is provided, the interest rate to be applied to the DC balance owing will be the non-residential consumer price index, plus two percent. The interest owing will be calculated on a monthly basis.

The City has a Council-approved Letter of Credit Policy that outlines acceptable forms of security.

### **DC Deferral**

Subsection 26.1 (1) of the DCA states that, despite section 26, a DC in respect of any part of a development that consists of a type of development set out in subsection (2) is payable in accordance with section 26.1.

Subsection 26.1 (2) identifies the following development types eligible for a DC deferral:

- rental housing development that is not non-profit housing development (five years)
- institutional development (including long-term care homes, retirement homes, universities and colleges, memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion and hospices) (five years)
- non-profit housing development (20 years).

The DC shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the Building Code Act, 1992 authorizing occupation of the building and the date the building is first occupied, and continuing on,

- a. the following five anniversaries of that date, in the case of a DC in respect to rental housing development that is not non-profit housing development, and institutional development; or
- b. the following 20 anniversaries of that date, in the case of a DC in respect of non-profit housing development.

There is a lack of definition in the regulations for these types of development and staff will use the following criterion to determine if a deferral arrangement is eligible. These definitions will be included in the next DC By-law update.

**Institutional Development** means development of a building or structure intended for use,

- a. as a long-term care home within the meaning of subsection 2 (1) of the Long-Term Care Homes Act, 2007;
- b. as a retirement home within the meaning of subsection 2 (1) of the Retirement Homes Act, 2010;
- c. by any of the following post-secondary institutions for the objects of the institution:

- i. a university or college in Ontario that receives direct, regular and ongoing operating funding from the Government of Ontario,
  - ii. a college or university federated or affiliated with a university described in subclause (i), or
  - iii. an Indigenous Institute prescribed for the purposes of section 6 of the Indigenous Institutes Act, 2017;
- d. as a memorial home, clubhouse or athletic grounds by an Ontario branch of the Royal Canadian Legion; or
  - e. as a hospice to provide end of life care.

**Non-Profit Housing** means a building or structure intended for use as residential premises by,

- a. a corporation without share capital to which the Corporations Act applies, that is in good standing under that Act and whose primary object is to provide housing;
- b. a corporation without share capital to which the Canada Not-for-profit Corporations Act applies, that is in good standing under that Act and whose primary object is to provide housing; or
- c. a non-profit housing co-operative that is in good standing under the Co-operative Corporations Act.

**Rental Housing** means a building with four or more dwelling units all of which are intended for use as rented residential premises.

To compensate the City for the revenue loss associated with time value of money, interest shall be charged on the outstanding balance as at each anniversary date, until the DCs receivable are paid in full. The interest will be calculated and charged as follows:

Where security is provided, the interest rate to be applied to the DC balance owing will be the non-residential consumer price index. The interest owing will be calculated on a monthly basis.

Where security is not provided, the interest rate to be applied to the DC balance owing will be the non-residential consumer price index, plus two percent. The interest owing will be calculated on a monthly basis.

Early Payment Agreements will be offered if the owner of a development would prefer to pay the full DC owing at occupancy.

### **Financial Implications**

The fiscal impact of this change is difficult to estimate in advance as it is dependent on the level and timing of development. Staff are continuing to work on ways to capture and quantify the impacts. In addition to the lost revenue as a result of the changes in DC calculation timing and collection, there is also added staff time as most of these changes will require manual tracking as there is no standardization to the new formulas that are easily translated into the financial system. User fee increases to compensate for the increased cost to the development process will be considered in future budgets.

Charging interest on DCs owing will offset some of the negative impacts to the DC reserve funds, however it is likely that it will not provide sufficient funding to account for the difference entirely. This may create situations where the City is not

able to meet the capital commitments prescribed by the Council approved DC Background Study from DC revenue alone.

## Consultations

Legal, Realty and Court Services

Strategy, Innovation and Intergovernmental Services

Planning and Building Services

Information Technology

## Strategic Plan Alignment

This Development Charge Interest Policy aims to ensure that the City is able to fund the new cost of capital required to maintain the delivery of our services to new members of the community. DCs are the main source of funding for infrastructure required to accommodate growth and without mitigation of the anticipated funding shortfall through the application of interest on amounts owing, the tax and rate payers would make up this difference. The City's goal is for growth to pay for growth as much as the DCA allows. This report aligns with the Working Together for Our Future pillar to run an effective and fiscally responsible government; looking for new funding options to ease taxes for residents and business.

## Attachments

Attachment-1 Development Charge Interest Policy

## Departmental Approval

Greg Clark, CPA, CMA, Manager Financial Strategy and Long-term Planning

## Report Author

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# Corporate Policy and Procedure

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Policy	<b>Development Charge Interest Policy</b>
Category	Corporate
Authority	Finance
Related Policies	Development Charge By-law, General Reserve and Reserve Fund Policy, Letter of Credit Policy, Investment Policy
Approved By	Council
Effective Date	Wednesday, January-01-2020
Revision Date	Upon each Development Charge By-law update

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## Policy Statement

The fundamental principle of funding growth-related capital costs is that 'Growth should pay for Growth'. This policy serves to ensure that there is compensating interest income to fund the lost development charges (DCs) that will result from the DC rate freeze and deferred payment requirements.

## Purpose

This DC Interest Policy aims to ensure that the City is able to fund the new cost of capital required to maintain the delivery of our services to new populations and businesses in the community. DCs are the main source of funding for infrastructure required to accommodate growth and without mitigation of the funding shortfall expected, the tax and rate payers would make up this difference. The City's goal is for growth to pay for growth as much as the Development Charge Act (DCA) allows. The interest earned from this policy will fund the lost DC revenue resulting from the two-year DC rate freeze as well as the lost DC revenue on the time lapse between date of calculation and ultimate payment of the DCs to the City.

Subsection 26.2 (3) of the DCA permits a municipality to charge interest from the date the DC is calculated to the date the DC is paid in full.

Subsection 26.1 (7) of the DCA permits a municipality to charge interest on the instalments required by subsection (3) from the date the DC would have been payable in accordance with section 26 to the date the instalment is paid.

## Definitions

**Early Payment Agreement** means an agreement with a person or business who is required to pay a DC providing for all or any part of the DC to be paid before it would otherwise be payable.

**Interest Rate** means the non-residential construction price index year-over-year change as of September 30<sup>th</sup> of the prior year.

**Occupancy** means the earliest of either (1) the date on which an Occupancy Permit or a Partial Occupancy Permit is issued by the City of Guelph, or (2) the earliest date on which the use or intended use of a building or part of a building for the shelter or support of persons, animals or property commences.

**Security** means an agreed upon asset or assurance provided in anticipation of later payment in full of DCs.

## Guidelines

### Rate Freeze

The new subsection 26.2 (1) of the DCA provides that DCs are to be calculated on:

- a) 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 in respect of development that is the subject of the DC,
- b) if clause (a) above does not apply, the day an application for an amendment to a by-law passed under section 34 of the Planning Act was made in respect of the development that is the subject of the DC;
- c) if neither clause (a) nor clause (b) applies,
  - i. in the case of a DC in respect of a development to which section 26.1 applies, the day the DC would be payable in accordance with section 26 if section 26.1 did not apply, or
  - ii. in the case of a DC in respect of a development to which section 26.1 does not apply, the day the DC is payable in accordance with section 26.

Section 26 requires that the DC balance owing is due at Occupancy. If the period between DC calculation and Occupancy is greater than one month, interest will be charged, as prescribed below:

Where Security is provided, the Interest Rate in effect at the date of DC calculation will be applied annually to the DC balance owing beginning on the first day of the month succeeding the date of DC calculation. The Interest Rate will be accrued on a monthly basis.

Where Security is not provided, the Interest Rate in effect at the date of DC calculation plus 2% will be applied annually to the DC balance owing beginning on



the first day of the month succeeding the date of the DC calculation. The Interest Rate will be accrued on a monthly basis.

## **DC Deferral**

Subsection 26.1 (1) of the DCA states that, despite section 26, a DC in respect of any part of a development that consists of a type of development set out in subsection (2) is payable in accordance with section 26.1.

Subsection 26.1 (2) identifies the following development types eligible for a DC deferral

- rental housing development that is not non-profit housing development (five years)
- institutional development (including long-term care homes, retirement homes, universities and colleges, memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion and hospices) (five years)
- non-profit housing development (20 years).

The DC shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the Building Code Act, 1992 authorizing occupation of the building and the date the building is first occupied, and continuing on,

- a) the following five anniversaries of that date, in the case of a DC in respect to rental housing development that is not non-profit housing development, and institutional development; or
- b) the following 20 anniversaries of that date, in the case of a DC in respect of non-profit housing development.

The Interest Rate shall be charged on the outstanding balance as at each anniversary date, until the DCs owing are paid in full. The interest will be calculated and charged as follows:

Where Security is provided, the Interest Rate will be applied to the DC balance owing and will be payable on each anniversary date.

Where Security is not provided, the Interest Rate plus 2% will be applied to the DC balance owing and will be payable on each anniversary date.

Early Payment Agreements will be offered if the owner of a development would prefer to pay the full DC owing at Occupancy.