
REPORT TITLE: Development Charge Interest Rate Policy – Bill 108

FROM: Stephen Van Ofwegen, Commissioner of Finance and Chief Financial Officer
 Andrew Farr, Acting Commissioner of Public Works
 Patrick O'Connor, Regional Solicitor

RECOMMENDATION

That the Development Charge Interest Rate Policy attached as Appendix I to the report of the Commissioner of Finance and Chief Financial Officer, the Acting Commissioner of Public Works and the Regional Solicitor, titled “Development Charge Interest Rate Policy-Bill 108” be approved;

And further, that charging the rate of interest pursuant to the Development Charge Interest Rate Policy (the “Policy”) and the imposition of the interest rate in accordance with the Policy be approved;

And further, that the Commissioner of Finance and Chief Financial Officer be authorized to execute any necessary agreements under the *Development Charges Act, 1997*, or other legislation, on business terms satisfactory to the Commissioner of Finance and Chief Financial Officer and on legal terms satisfactory to the Regional Solicitor;

And further, that a by-law making provision for such approvals and authorization be brought forward for enactment.

REPORT HIGHLIGHTS

- Elements of Bills 108 and 138 have made significant changes to the *Development Charge Act, 1997* some of which have become effective on January 1, 2020.
- The legislative changes provide for deferral of the payment of certain development charges (DC), a freeze of the rates charged for certain developments, and allows for interest to be charged to cover additional costs associated with the DC freeze and the DC deferral.
- A Development Charge Interest Rate Policy (the Policy) is proposed to protect the Region’s financial interests, to support development of affordable housing, and to provide predictability in the implementation of Bills 108 and 138.
- A DC Freeze Interest rate of 5.5 per cent per annum and a DC Deferral Interest rate of zero per cent per annum will be applied effective January 1, 2020 subject to changes as may be authorized by Regional Council from time to time.
- Regional staff are proposing a grace period during which a DC Freeze Interest Rate of zero per cent per annum will be applied if the building permit is issued prior to August 1, 2020.
- Local municipalities and the Building Industry and Land Development Association have been informed of the guiding principles of this policy development.

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- Staff will work with local municipalities to implement the DC Interest Rate Policy and other administrative processes required as a result of Bill 108.
- The proposed DC Interest Rate Policy strikes a balance between mitigating financial risks associated with servicing growth while promoting an increase in the supply of affordable housing.

DISCUSSION

1. Background

Bill 108: the *More Homes, More Choice Act, 2019* introduced changes to the *Planning Act*, the *Development Charges Act, 1997* and other legislation that have significant implications for municipalities.

On June 6, 2019 the Ontario Legislature passed Bill 108: *More Homes, More Choice Act, 2019*. Bill 108 made significant statutory changes to the *Development Charges Act, 1997* and 11 other Acts.

On December 10, 2019 Bill 138: *The Planning to Build Ontario Together Act, 2019* received Royal Assent; Bill 138 made amendments to certain sections of Bill 108. Subsequently certain sections of Schedule 3 of Bill 108 were proclaimed and came into force on January 1, 2020.

Since the Province introduced Bill 108 in June 2019, staff have brought forward following reports to Council that identified impacts resulting from Bills 108 and 138 and analyzed how they changed the way municipalities can recover growth related infrastructure costs:

- The report dated June 4, 2019 titled *Implications of Bill 108: More Homes, More Choices Act, 2019*
- The report dated October 10, 2019 titled *Comments on the Proposed Regulatory Changes for the More Homes, More Choice Act*.
- The report dated December 12, 2019 titled *An Update on Bill 138: Planning to Build Ontario Together Act, 2019, and Ongoing Advocacy Efforts on Bill 108*.

Regional staff along with others in the municipal sector have advocated for changes to Bill 108. The Province has been receptive to the municipal sector and Regional recommendations, notably the industrial and commercial developments have been removed from the development charge deferral eligibility and the Province provided needed clarity on certain development charges exemptions.

The regulatory framework that came into force on January 1, 2020 provides for the development charge deferral and the development charge freeze for certain types of the developments in certain circumstances. More details are provided below:

a) DC Rate Freeze

Under the new legislation the total amount of a development charge for a development that is proceeding through a site plan control approval or a zoning by-law amendment approval will be subject to a freeze in the DC Rate. The DC rate would be determined when the site plan application or a zoning by-law amendment application is made and maintained for a period of two years from the date upon which the application was

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approved. If two years have elapsed since the approval of the relevant application, the amount of the development charge would be determined at the issuance of the building permit.

Further, section 26.2(3) of the *Development Charges Act, 1997* (the *Act*) provides that where the regulated development charges freeze applies, the municipality may charge interest on the development charge at a rate not exceeding the prescribed maximum interest rate from the date of development application to the date of the development charge is payable. To date, the Province has not prescribed a maximum interest rate which can be applied.

b) Deferral of DCs

The amendments to the *Development Charges Act, 1997* made by Schedule 3 of Bill 108 provide for the deferral of development charges for:

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

The definitions of these development types are provided in the Regulation 454/19, and these are included in the proposed Regional Development Charge Interest Rate Policy attached as Appendix I. The annual equal instalment payment on those development types will start 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.

- For the non-profit housing development type, the development charges shall be paid in 21 annual instalments; and
- For the other two types of development, (i.e. rental housing development that is not non-profit housing development and institutional development), DCs shall be paid in 6 annual instalments.

Similar to the DC freeze, section 26.1(7) of the *Act* provides that where payments of development charges are to be made by instalments, interest may be charged on the instalments from the date upon which payment would have been required but for the introduction of payments by installment (typically this would have been the building permit date) to the date the instalment is made, at a rate not exceeding the prescribed maximum interest rate.

c) Current Development Charge Regime

Under the current development charge regime, the development charges for the relevant development types are determined under the Regions' Development Charges By-law 46-2015 on the date a building permit is issued and are in most instances payable at the same time.

2. Analysis and Recommendations

The regulatory changes to the development charges collections create a significant time lag between when revenues are received from developers and when the cost of growth-related infrastructure needs to be incurred, leading to a wider funding gap.

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The proposed Development Charge Interest Rate Policy (the “Policy”) aims to mitigate financial risks for the Region, to support increased supply of affordable housing, and to provide a measure of predictability for the Region and the development community.

The Province acknowledges that municipalities may incur some additional costs as a result of the new legislative requirements, and for that reason, the legislation provides authority for municipalities to charge interest to cover costs associated with the deferral and the freeze.

The setting of the interest rates is guided by balanced principles including but not limited to:

- Growth should pay for growth;
- The interests charged are to cover costs associated with servicing growth;
- Provide an appropriate level of predictability, stability and reliability to enable the Region and the development community to determine the timing and amount of the development charges; and,
- Council’s priority for Affordable Housing.

Regional staff is recommending the Development Charge Interest Rate Policy (the “Policy”) attached as Appendix 1 be approved. Some key elements of the Policy are highlighted below:

DC Freeze Interest Rate

To ensure the cost of funding Peel’s growth-related infrastructure is appropriately funded by development, staff propose the following:

- a) As permitted under Section 26.2(3) of the *Act*, a DC Freeze Interest Rate of 5.5 per cent per annum, will be applied from the date of the Site Plan or Rezoning application to the date the development charge is payable.
- b) Currently Regional development charges are subject to bi-annual indexing on February 1st and August 1st of each year. Given that the development charges rate will remain unchanged between now and the next indexing date, Regional staff are proposing a grace period during which a DC Freeze Interest Rate of zero per cent will be applied if the building permit is issued prior to August 1, 2020. This will prevent the introduction of interest charging from having a punitive effect.
- c) The interest will be accrued from the date of the site plan or rezoning application on the balance of the development charge that remains unpaid; and at a rate equal to the Region’s interest rate in effect from time to time. The interest accrued is payable at the time when the development charge is payable. The interest will be compounded on any unpaid amount of interest after it is due.

The proposed rate largely reflects a forecasted annual rate of cost increase in order to cover the additional costs associated with the DC freeze. The financial analysis conducted by Regional staff considers key variables such as infrastructure cost inflation, the Region’s growth forecast, the economic outlook and capital market dynamics.

Although Council can amend the interest rate from time to time, the rate is anticipated to remain constant for a period of time. A review of the interest rate will be undertaken at the time of updating the DC Background study. This would help provide a measure of certainty and ease of administration to the Region and developers.

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DC Deferral Interest Rate

The affordable housing crisis is currently being addressed through various levels of government. The Federal government pledged to provide a \$40-billion investment plan in implementing the National Housing Strategy; the Provincial government introduced the Housing Supply Action Plan and the Community Housing Renewal Strategy. Most recently, Bill 108 and the *Development Charges Act, 1997* amendments (including regulated DC payment deferral) were introduced by the Province to help incentivize developers to build much needed new housing to meet growing housing demand in Ontario.

The Region of Peel has also acted by approving the 2018 Peel Housing and Homelessness Plan, which sets the direction for the work the Region of Peel and its partners will be undertaking to make affordable housing available and to prevent homelessness in Peel. The Plan was developed based on the 2018 Housing Strategy, which included a Housing Needs Assessment. The Plan identified need for private sector development of purpose-built rental housing.

To advance Council's affordable housing priority, Regional staff are recommending that a DC deferral interest rate of zero per cent per annum be applied for a development that is eligible for the regulated deferral.

A majority of the Institutional development types eligible for the regulated development charges deferral already qualify for exemptions provided through the Region's Development Charges By-law.

This policy will be reviewed at the time of each DC Background study.

3. Risk Considerations and Mitigation

It is anticipated that the negative impact on the Region's cash flow and potential revenue loss as a result of the development charges freeze and staggered payments will drive the Region to determine whether capital spending needs to be adjusted, near-term debt financing needs to be increased and/or future borrowings need to be advanced. In the long-term, these outcomes may have negative implications for the Region's credit rating profile, debt capacity and financial flexibility, impacting its ability to respond to fiscal challenges.

There is also a risk of revenue loss due to potential non-collection of development charges given the long-term nature of the annual instalment payment schedule and possible property ownership change before the DCs are fully paid. In the event there is a default in payment of the deferred development charges the remaining balance will be added to the tax roll and collected in the same manner as taxes.

Collection of Peel DCs is provided by the Local Municipalities. We anticipate changes in legislation and the introduction of a DC Interest Rate policy will result in additional administration to manage the DC collection program. Staff will report back to Council as part of the 2021 budget process should additional investments in technology and/or resources be required in order to administer changes in the program.

4. Next Steps

Staff will continue to engage affected stakeholders to implement the DC Interest Rate policy.

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The Building Industry and Land Development Association (BILD) was informed of the policy's guiding principles at the Growth Management Development Industry Working Group meeting hosted by the Region on January 27, 2020. In a meeting on March 3rd, staff shared with BILD the proposed DC Interest Rate policy directions. Staff will continue dialogue with the development industry to work through implementation requirements resulting from Bill 108 and to promote development charges deferrals to support increased supply of affordable housing.

Regional staff will continue to collaborate with local municipalities to implement the DC Interest Rate Policy and to enhance the development charges collection processes.

The Region's 2020 Development Charge By-law update project is well underway. The 2020 Development Charge Background Study is expected to be tabled and to be made available to the public in July 2020.

CONCLUSION

Staff are proposing the Development Charge Interest Rate Policy in order to mitigate financial risks arising from Bills 108 and 138 and to help provide a desirable level of predictability in their implementation. The Policy strikes a necessary balance to ensure growth pays for growth and that the current need for purpose-built affordable rental housing is supported.

APPENDICES

Appendix I – Draft Development Charge Interest Rate Policy

For further information regarding this report, please contact Stephanie Nagel, Treasurer & Director of Corporate Finance, extension 7105, Stephanie.Nagel@peelregion.ca

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Reviewed and/or approved in workflow by:

Department Commissioners, Division Directors and Legal Services.

Final approval is by the Chief Administrative Officer.



N. Polsinelli, Interim Chief Administrative Officer