

Staff Report to Council

Title: Development Charges Interest Rate Policy Update

Report Number: Financial Services-2024-11

Director: Corporate Services

Manager: Manager.

Meeting Date:
Wednesday, June 12, 2024

Date to be considered by Council:
Wednesday, June 12, 2024

Recommendation:

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, effective as of June 1, 2022 and at a rate of average prime plus 1%; and

That Council repeals the former Development Charges Interest Policy GG.2.24; and

Further that Council approve the attached new Development Charges Interest Policy to administer the charging of interest.

Executive Summary:

The purpose of this report is to revise the existing Development Charges Interest Policy 2.24 adopted on July 5, 2021 in response to changes to the Development Charges Act, 1997, introduced through Bill 23, More Homes Built Faster Act, 2022. This is primarily a housekeeping matter, as the former policy must be repealed and a new policy that aligns with legislation should be adopted.

Strategic Priorities:

B.5-Evaluate and proactively plan for infrastructure to meet population growth and long-term sustainability

Financial Considerations:

Development Charges are the Municipality'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 allows the Municipality 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 Municipality 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.

Policy:

Development Charges Interest Rate Policy

Context and Background Information:

One of the changes included in Bill 108, the *More Homes, More Choice Act*, which received Royal Assent on June 6, 2019, 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 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.

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 July 2021, Staff brought forward a policy for Council approval that allowed interest to be charged at a rate of 5%. This was consistent with the approach used by many other municipalities in Ontario, in the absence of a prescribed rate.

Subsequently, 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 Municipality's Development Charges Interest Policy to ensure alignment with the legislation.

Application of interest for Section 26.1 (the “*payment plan*”):

Section 26.1 of the DC Act provides for the deferral of DCs for rental housing development and institutional development. 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 DCs 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.

Application of interest for Section 26.2 (the “*freeze*”):

Section 26.2 of the DC Act provides that 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 is to be determined under the DC by-law on the date when the complete site plan application or a zoning by-law amendment application is made.

If a development was subject to both site plan and re-zoning applications, it is the date of the later one that is used to determine the DC. If neither of these applications apply to the development, then the DC is determined on the building permit issuance date.

When an application is received and considered to be deemed complete, DC rates are frozen to the prevailing 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 while 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.

Consultation Overview:

The DC Interest Rate Policy was discussed with Infrastructure & Development and was also reviewed by Hemson Consulting to ensure alignment with applicable legislation.

As the Municipality acts as an agent for the County of Bruce with regards to County DC's, the draft Policy was circulated to Bruce County staff for their awareness. Currently, the County does not have its own DC Interest Rate Policy in place.

Origin:

Bill 23, More Homes Built Faster Act

Implementation Considerations:

Municipal staff will need to be aware of the continuing changes to the legislation to understand the impact on this policy. The Province recently announced Bill 185 which proposed a change to the 2-year provision ("freeze") for the time of site plan application to building permit issuance.

Currently, DC rates are frozen at the time of application for site plan approval or rezoning provided building permits are not issued within 2 years of application approval. Bill 185 proposes to reduce the 2-year time limit to 18 months to support the Bill's "use it or lose it" policies by incenting developers to move quickly on their projects.

The policy has been worded to account for pending changes to this timeframe.

Since the adoption of the former Development Charges Interest Rate Policy GG.2.24, the Municipality has not issued any building permits for rental housing or institutional development that would have qualified for installment payments under Section 26.1. There were also no developments with an application received under subsection 26.2(1) of the Act between January 1, 2020, and June 1, 2022 (i.e. where the interest rate is not prescribed under the Act), which would have resulted in a 2-year rate freeze during this period. Therefore, there are no transitional implementation concerns.

Risk Analysis:

If the draft policy is not approved by Council, our existing Policy is not in compliance with current legislation. The Provincial legislation overrides the provisions of the municipal policy.

Attachments: Development Charges Interest Policy

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