



## BY-LAW

NO. 2024 –

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### Being a By-law to Adopt a Development Charge Interest Policy for The Corporation of the Municipality of Kincardine

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**Whereas** pursuant to the said Municipal Act, Sections 8 and 9 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

**Whereas** Section 270 (1) of the Municipal Act 2001, S.O. 2001, c. 25, as amended, requires a municipality to adopt and maintain a policy with respect to the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public; and

**Whereas** Section 26.3 for development that is eligible under Sections 26.1 and 26.2 of the Development Charges Act, 1997 provides Council with the authority to pass a By-law to approve the charging of interest; and

**Whereas** the Council of the Corporation of the Municipality of Kincardine desires to adopt a new Development Charge Interest Policy; now therefore be it

**Resolved** that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That the Development Charge Interest Policy for The Municipality of Kincardine, attached hereto as Schedule 'A' and forming part of this By-law be adopted.
2. That this By-law shall come into full force and effect upon its final passing.
3. That Policy GG.2.24 and all other Policies passed by By-law and Resolution inconsistent with this By-law, be repealed.
4. That By-law may be cited as the "Development Charge Interest Policy By-law".

**Read a First, Second and Third Time and Finally passed** this 12<sup>th</sup> day of June, 2024.

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Mayor

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Clerk

## Schedule 'A'

**Policy No.:** FIN.07

**Section:** Your Government and People

**Policy Title:** Development Charge Interest Policy

**Adopted Date:** June 12, 2024

**By-law No.:**

**Revision Date:**

### 1. Purpose

The purpose of this policy is to establish the rules and practices for charging interest, as permitted under sections 26.1, 26.2 and 26.3 of the *Development Charges Act, 1997* (DCA). The sections allow the Municipality to charge interest on development charges that are payable in instalments or where the amount has been frozen in accordance with the legislation because of a valid zoning amendment or site plan application.

The principle grounded in development charges is that 'growth should pay for growth'. Thus, this policy allows for municipalities to collect by the means of interest payments on the otherwise lost development charges resulting from rate freezes and deferred payment requirements.

### 2. Scope

This Policy applies to the charging of interest, as permitted under sections 26.1, 26.2, and 26.3 of the *Development Charges Act, 1997*. This includes all types of development and redevelopment in the Municipality of Kincardine:

- a) That are eligible for installment payments under 26.1 of the *Development Charges Act, 1997*
- b) Under section 26.2 of the *Development Charges Act, 1997*, where an application has been made for:
  - i. Approval of development in a site plan control area under subsection 41(4) of the *Planning Act, 1990*, or
  - ii. An amendment to a By-law passed under Section 34 of the *Planning Act, 1990*

### 3. Definitions

**"Act" shall mean** the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended, revised re-enacted or consolidated from time to time, and any successor statute.

**"Development" shall mean** 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.

**"Development Charges" (DC) shall mean** a charge imposed against land in the Municipality pursuant to the *Development Charges By-law*.

**"Planning Act" shall mean** the *Planning Act*, R.S.O. 1990, c. P.13, as amended.

**"Total Accrued Amount" shall mean** equal to the total of the development charges and interest which has accrued.

#### 4. Responsibility

**Council:** Reviews and approves the Development Charges Interest Rate Policy and any updates as necessary every 5 years, or upon expiry of the Municipality's Development Charges By-law.

**Director of Corporate Services/Treasurer:** Administering this policy, including but not limited to:

- a) Assisting the Building Department in determining the total amount of the development charge that would be determined under the bylaw and the applicable interest rate that would apply;
- b) Ensure the total accrued amount is being charged and collected when due.

**Chief Building Official:** Enforcing this policy, including but not limited to:

- a) Assisting landowners, developers, builders and other stakeholder in determining the total amount of development charges that would be determined under the Municipality's by-laws;
- b) Informing the Finance Department when development charges should be issued;
- c) Informing the Finance Department if a development qualifies to have their development charge rate frozen under section 26.2 of the Act;
- d) Informing the Finance Department if a development qualifies to have their payments deferred under section 26.1 of the Act.

#### 5. Background

Municipalities are permitted to charge interest pursuant to section 26.1(7) of the Act which 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".

In addition, section 26.2(3) of the Development Charges Act, 1997 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 rules for determining the maximum interest rate are prescribed under section 26.3 of the Act. The maximum interest rate being the average prime rate, as defined under the Act, plus 1%.

#### 6. Policy

##### 6.1. Installment Payments Under Section 26.1 of the Act

Under subsections 26.1(1), (2) and (3) of the Act, development charges shall be paid in equal annual installments, beginning at the earlier of first occupancy or occupancy permit under the Building Code Act, 1992, for:

- a) Rental housing development
- b) Institutional development

**6.1.1.** 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 maximum interest rate determined in accordance with section 26.3 of the Act.

##### 6.2. Development Charge Freeze Under Section 26.2 of the Act

Subsection 26.2(1) of the Act states that the total amount of a development charge is determined under the Municipality's Development Charge By-Laws based 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) or clause (b) applies,
- d) 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
- e) In the case of a DC in respect of a development to which 26.1 does not apply, the day the DC is payable in accordance with section 26.

**6.2.1.** 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 clauses 26.2(1)(a) and (b) of the Act to the date the development charge becomes payable, in accordance with section 26.3 of the Act.

### **6.3. Maximum Interest Rate Under Section 26.1 and 26.2**

The rules for determining the maximum interest rate are prescribed under section 26.3 of the Act.

The maximum interest rate being the average prime rate, as defined under the Act, plus 1%. The average prime rate will be determined quarterly in accordance with the adjustment dates prescribed under section 26.3 of the Act, or in accordance with any successor legislation.

### **6.4. Interest Rate Charged**

#### **6.4.1. Interest Rate Charged for 26.2 and Timing**

The interest rate that shall be charged is the maximum interest rate permitted under section 26.3 of the Act, at the time an application under subsection 26.2(1) of the Act is received by the Municipality (i.e. the date an application is deemed complete).

For 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), a rate of 5% shall be used.

The rate as prescribed above, shall be used for the duration of the application, save and except instances where a subsequent application for the same development has been made, or where the development qualifies under section 26.1 of the Act.

#### **6.4.2. Interest Rate Charged for 26.1 and Timing**

The interest rate that shall be charged for each installment payment under section 26.1 of the Act will be determined as follows:

- a) For the first installment payment, the maximum interest rate permitted under section 26.3 of the Act as at the day the development charges would have been payable (i.e. building permit issuance);
- b) For all subsequent installment payments, the maximum interest rate permitted under section 26.3 of the Act as at the date of the installment payment

#### **6.4.3. Early Payment Agreement**

Early Payment Agreements will be offered under section 27 of the Act if the owner of a development would prefer to pay the full DC owing at Occupancy. In the event that an agreement has been entered into pursuant to section 27 of the Act, sections 6.4.1 and 6.4.2 of this Policy do not apply.

**7. Acknowledgement Letter**

For all eligible development under section 26.1 of the Act, an Acknowledgement letter will be provided to the applicant/property owner at the time of building permit issuance outlining the terms of the development charge annual instalments as per the Act and Municipal Policy.

**8. Notice of Occupancy**

**8.1** The person responsible to pay development charges shall notify the Municipality in writing within five (5) business days of the building first being occupied unless an occupancy permit has been issued by the Municipality for the purposes of section 26.1 of the Act.

**8.2** Under subsection 26.1(6) of the Act, failure to comply with the occupancy notice requirement under will result in the development charge including any interest payable becoming payable immediately.

**9. Unpaid Development Charges**

**9.1.** If any development charges (including interest) are unpaid, those development charges (including interest) may be added to the tax roll and collected in the same manner as taxes, in accordance with section 32 of the Act.

**9.2.** Interest on late payments added to the tax roll shall incur the applicable taxation interest rate (as provided under section 345 of the Municipal Act, 2001).

**10. Amendment or Revision of Interest Rate**

In the event that section 26.3 of the Act is repealed, a default interest rate of 5% shall be used for all eligible applications. Applications that had interest frozen prior to the repeal of section 26.3 of the Act will continue to pay the interest rate as prescribed at the time the application was made, in accordance with subsection 26.2(1) of the Act. For developments with installment payments under subsection 26.1(1), all future unpaid installments will attract the interest rate of 5%.

**11. Compounding and Prorating**

All interest shall be compounded annually and shall accrue from the date the applicable application is deemed complete until the date the accrued amount is calculated and payable. The applicant shall have 15 days interest free to make the payment. After the 15-day period, if payment has not been made, the interest will be recalculated and reflect the new balance owing.

**11.1 Subsequent Application(s):**

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

- a) The date the subsequent application is made will become the new date under which the total amount of the development charge is determined;
- b) All interest that had accrued prior to the subsequent application shall be deemed to be nil (0);
- c) Interest will be calculated as compound interest and begin to accrue from the date the subsequent application is made.

**11.2 Interest under section 26.1:**

If a development was one of the eligible types of development for the installment payments under section 26.1 of the Act, the total accrued amount shall continue to accrue interest from the date of the issuance of the building permit.

During the installment timeframe, interest shall continue to accrue on the outstanding balance. This shall continue until the date the total accrued amount has been fully paid.

**12. Effective Date**

Upon approval by Council, this Policy shall take effect as of June 12, 2024.

**13. Transition**

Any applicable application that was deemed complete prior to this enactment of this Policy by Council will have their interest calculated at 5%, compounded annually, as per the previous policy GG.2.24.

Applicable applications that are deemed complete on or after the date that this Policy is enacted by Council will be charged interest in accordance with this Policy.

**14. Related Documents/Legislation**

- a) *Development Charges Act, 1997*
- b) Development Charges By-law 2021-114