

**Report from:** Financial Management Services, Administration

**Report Date:** May 10, 2022

**Meeting Date:** May 25, 2022

**Report Number:** FMS-B011-2022

**File:** 60.2.13 & 10.57.99

**Subject:** Development Charges Interest Rate Policy

## **Recommendation**

That the Development Charges Interest Policy included as Appendix 1, as a component required by the City's By-Law 2021-140, be approved; and

That the Treasurer and the Director of Planning and Building Services be delegated the authority to execute agreements related to the required deferred payment plans and rate freezes as required by the Development Charges Act; and

That the Treasurer be delegated the authority to make administrative changes to this Policy that may be required from time to time due to legislative changes or if, in the opinion of the Treasurer, the amendments do not change the intent of the policy; and

That the City Solicitor be directed to prepare the necessary by-laws.

## **Background**

In 2019, the Province introduced through Bill 108, More Homes, More Choice Act, 2019, and further amended by Bill 138, Plan to Build Ontario Together Act, 2019, with amendments to the Development Charges Act 1997 (DCA). Bill 138 received royal assent on December 10, 2019, with regulatory framework that came into force on January 1, 2020.

Outlined in the City By-Law 2021-140 section 3.16 and 3.17 in addition to the DCA sections 26.1 and 26.2, municipalities are required to offer Development Charge (DC) deferrals and rate freezes. The legislation requires municipalities to freeze development charge rates at the time of site plan application or at the time of a zoning by-law amendment application for eligible developments including rental housing, institutional development and non-profit housing. In turn, development charges are collected through equal installments, payable in six or 21 installments, commencing with the first installment payable on the date of occupancy.

An additional change to the legislation that came into effect on January 1, 2020, permitting municipalities 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”.

This provision allows 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

## **Report**

### **Proposed Interest Rate**

The recommended policy includes an interest rate of 5% to be applied for Development Charges according to section 26.1 and 26.2 of the DCA in accordance with scope as identified in the Policy attached as Appendix 1.

The recommended policy also includes an interest rate of 0% to be used for the purpose of section 26.1 and 26.2 for the following types of development: Non-profit housing development as defined under section 11.1 (3) of O. Reg. 82/98, as per section 3 (b) of the Act. This interest rate aligns with the Niagara Region's DC freeze annual interest rate with respect to non-profit housing developments.

### **Alignment with the Niagara Region**

Effective January 1, 2021, the Niagara Region implemented an Interest Policy with a rate of 5% with no compounding. The rate is applied to both DC rate freezes and deferrals according to section 26.1 and 26.2 of the DCA. A 0% interest charge would be applicable for non-profit housing development types only as this development type supports the Region's incentive pillar of Affordable Housing. The other development types which are institutional and purpose-built rentals would remain subject to the interest rate of 5%. In reviewing the Niagara Region and other municipalities adopted interest rates, 5% interest with no compounding is commonly selected and implemented.

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 with consistency from year-to-year.

# **Application and Administration of Interest**

## **Interest Rate- DC Deferral**

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 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 for each subsequent installment. The below steps outline this process:

- Building Permit Issuance: DCs do not become payable for developments that are eligible under section 26.1 at building permit. The first installment for DCs would be payable at occupancy.
- Interest Period: Interest is calculated on an annual basis until occupancy. Interest is calculated on the first installment payment at the time the DCs become payable. The time frame from building permit issuance to occupancy can vary in time.
- Installment Payments: Each additional installment payment occurs on the anniversary date of occupancy. Interest is calculated at each installment.

## **Interest Rate- DC Freeze**

When an application is received and considered to be deemed complete, development charge rates are frozen to the presiding rates outlined in the City By-Law 2021-140 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 for the DCs that have become payable. The below steps outline this process:

- Application Deemed Complete: DC rates are frozen at the time an application is deemed complete.
- Interest Period: Interest is calculated on an annual basis until the building permit is issued. Timing can vary from the application to building permit issuance.
- Building Permit Issuance: DCs become payable, and interest is calculated from the day the application was deemed complete to building permit issuance.

# **Administration of Interest Policy**

The Treasurer or designate shall be responsible to ensure the interest charges on applicable development charges are collected in compliance with this procedure, the Development Charges By-law and the DCA. Confirmation that interest rates are being used and will be made available on the City's Development Charges webpage.

Financial Management Services Department roles and responsibilities will include:

- Administration of this policy;
- Calculation of development charges, inclusive of 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.

Planning and Building Services Department roles and responsibilities will include:

- For developments subject to deferral payments under section 26.1, provide the Financial Management Services Department with the date a permit authorizing occupancy under the Building Code Act, 1992 is issued or a building is first occupied;
- Determine the date that a Site Plan application is made for site plans in accordance with section 41(4) of the Planning Act, to determining the date that development charge rates are frozen;
- Determine the date that an application is received for a zoning by-law amendment (subsequently deemed complete) in accordance with section 34 of the Planning Act, to determine the date that development charge rates are frozen.

## **Financial Implications**

Development Charges 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.

With the requirement to freeze DC rates early in the development process this could allow an applicant to lock in DC rates over a long period of time, resulting in a reduction in the amount of DCs that the City will be able to collect. The frozen rates would not be subject to the annual indexing of the DC rates by the City, 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. For example, the 2022 DC rates were indexed at the non-residential building construction price index which had a year over year change of 11.6% from 2021. This increase in DCs would not be captured in frozen or deferred rates but with the implementation of interest, we can bridge the gap of lost funds.

Including an interest component when administering the frozen and deferred payments will allow the City to mitigate some of the cost being passed on to future development due to the delay in DC payment. Instituting an Interest Rate Policy is meant to ensure that the City remains revenue neutral considering the changes to the Development Charges Act, 1997, shifts in inflation and reduce financial risks associated with servicing growth while ensuring consistency with good fiscal policy.

## **Conclusion**

The approval and implementation of the Development Charges Interest Rate Policy is necessary to meet the changing legislation to the Development Charges Act, 1997, around interest, rate freezes and deferrals, while also aligning with the Region's policies

and practices and creating a balance between providing reasonable and predictable rates to developers while maintaining the City's revenues.

### **Prepared by**

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### **Submitted by**

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### **Approved by**

Kristine Douglas,  
Director, Financial Management Services / City Treasurer

### **Appendices**

1. Development Charges Interest Rate Policy

**Subject:** Development Charge Interest Rate Policy

**Prepared by:** Financial Management Services

**Approved by:** Kristine Douglas, Director of Financial Management Services, Treasurer

**Issue Date:** May 30, 2022

**Policy #:**

**Review Date:** June 2, 2025

**Revision Date:**

## Policy:

This policy governs how interest will be calculated and applied to frozen development charges (DCs) rates and deferred development charge payments under sections 26.1 and 26.2 of the *Development Charges Act, 1997 (DCA)*.

## Purpose:

The purpose of this policy is to establish the rules and practices for charging interest on development charges that are eligible for a freeze and/or deferral under Sections 26.1 and 26.2 of the DCA. This policy provides a consistent process that aligns with the evolving circumstances arising from the DCA while protecting the City's financial interests.

## Scope:

This policy applies to:

- 1) Developments that qualify for a DC deferral under Section 26.1 of the DCA. Eligible developments include rental housing, institutional development and non-profit housing, and
- 2) Developments that are eligible for a DC freeze under Section 26.2 of the DCA, which freezes DC rates for developments requiring site plan application and/or zoning by-law amendment approvals.

This policy does not apply to developments whose DCs are calculated and paid at building permit issuance.

## Definitions

For the purpose of this policy:

**“City”** means The Corporation of the City of St. Catharines.

**“DCA”** means the Development Charges Act, 1997, SO 1997, c.27.

**“DC Freeze Interest Rate”** means the interest rate(s) authorized in this policy used for application under Section 26.2(3) of the DCA

**“DC Deferral Interest Rate”** means the interest rate(s) authorized in this policy used for application under Section 26.1(7) of the DCA.

**“Deferral”** means the change in collection of development charges for rental housing, institutional, and non-profit housing from the date the development charges would have been payable under Section 26 of the DCA (ordinarily the date of building permit issuance) to the installment date provided for under Section 26.1 (3) of the DCA.

**“Development”** means 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 increasing the size or usability thereof and includes Redevelopment. Notwithstanding the foregoing, development does not include Temporary Buildings or Structures permitted in accordance with the City’s Comprehensive Zoning By-law No. 2013-283, or permitted under a “temporary use by-law” pursuant to section 39 of the Planning Act.

**“Development Charges”** means a charge imposed pursuant to by-laws enacted by the City of St. Catharines Council pursuant to the Development Charges Act, 1997, as amended.

**“Development Charges Payment Agreement”** means an agreement between the applicant and the City that sets out the terms and schedule for DC deferral instalments and interest payments.

**“Enactment of Zoning By-law Amendment”** means the date of passage of the zoning by-law affecting the lands that are the subject of the development charge; or, in the event of a Local Planning Appeal Tribunal (LPAT) decision, the date of the final LPAT order.

**“Institutional”** means lands, buildings or structures used or designed or intended for use by an organized body, society, or religious group for promoting a public or non-profit purpose and offices where such uses are accessory to an Institutional use.

**“Non-Profit Housing Development”** means development of a building or structure intended for use as residential premises by:

- (a) a corporation without share capital to which the Corporations Act, R.S.O. 1990, c. C.38 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 (S.C. 2009, c. 23) 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, R.S.O. 1990, c. C.35.

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

## **Procedures:**

### **Legislative Framework**

#### **Background**

On January 1, 2020, changes to the Development Charges Act, 1997 (DCA) came into effect which identified the timing DCs are calculated and collected. Prior to the new legislation, DCs were payable at the time of building permit issuance, based on the DC rates in effect at that time. Under the new legislation, DC rates are frozen or “locked in” at an earlier stage in the planning process, pursuant under Section 26.2 of the DCA and deferral of DC payments for eligible developments including rental housing, institutional development and non-profit housing under Section 26.1 of the DCA. The DCA allows the City to charge interest on the frozen (ie. locked-in) DC rates and deferred DC payments. The interest rate is effectively an indexing rate for the period of time the DC rates are frozen.

#### **Guidelines**

##### **Developments eligible for DC Deferral**

Section 26.1 of the DCA outlines eligible properties for the deferral of development charges which include rental housing (excluding rental housing that is non-profit housing), institutional developments and non-profit housing. The deferral of DCs is executed through equal installment payments on those development types which starts on the earlier of the date of the issuance of a permit under the Building Code Act authorizing occupation of the building and the date the building is first occupied. DC Deferral Installments apply to:

- Development charges for rental housing and institutional developments are due and payable in 6 installments commencing with the first installment payable on the date of occupancy, and each subsequent installment, including interest paid annually according to the DCA, this Policy and noted in the City’s By-Law 2021-140.
- Development charges for non-profit housing developments are due and payable in 21 installments commencing with the first installment payable on the date of



occupancy, and each subsequent installment, including interest according to the DCA, this Policy and noted in the City's By-Law 2021-140.

Section 26.1(7) of the DCA explains that interest may be charged on each installment from the building permit issuance date to the date the installment is paid, at a rate not exceeding the prescribed maximum interest rate.

### **Developments eligible for DC Freeze**

Section 26.2 of the DCA provides that the total amount of a development charge for a development that is scheduled 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 site plan application or a zoning by-law amendment application is made.

Section 26.2(3) of the DCA provides that pursuant to section 26.2(1)(a) or (b), interest can be charged according to the DCA, this Policy and noted in the City's By-Law 2021-140, at a rate not exceeding the prescribed maximum interest rate from the date of development application to the date the development charge is payable.

If two years have elapsed since the approval of the relevant application, the amount of the development charge is to be determined at the issuance of the building permit (if the development charge has been deferred according to section 26.1 of the DCA) or at the time the development charge becomes payable (if the development charge has not been deferred according to section 26.1 of the DCA).

### **Interest Rate**

An interest rate shall be applied for Development Charges according to section 26.1 and 26.2 of the DCA in accordance to scope as identified in this Policy.

<b>City of St. Catharines Development Charge Interest Rates</b>	
<b>Interest Rate Type</b>	<b>Annual Interest Rate Effective June 2022</b>
As pursuant under Section 26.1 and permitted by Section 26.1(7) of the DCA  DC Deferral Interest Rate	5%
As pursuant under Section 26.2 and permitted by Section 26.2 (3) of the DCA  DC Freeze Interest Rate	5%

An interest rate of 0% shall be used for the purpose of section 26.1 and 26.2 for the following types of development: Non-profit housing development as defined under section 11.1 (3) of O. Reg. 82/98, as per section 3 (b) of the Act. This interest rate aligns with the Niagara Region's DC freeze annual interest rate with respect to non-profit housing developments.

## **Interest Rate Reviews and Updates**

The Interest Rate and this policy will be reviewed annually or in conjunction with the City's Development Charges By-law review and may be amended from time to time per Schedule A with Council approval.

In the event that the DC Deferral Interest Rate or DC Freeze Interest Rate is amended by Council, the new interest rate shall apply to the period of time from the interest rate amendment to the DC payable date, or a subsequent amendment to the interest rate.

## **Interest Rate- DC Deferral**

### **Deferral Eligibility**

Eligibility for deferral of DC charge will be verified as part of the building permit application review, in accordance with criteria outlined in Section 26.1 (2) of the DCA. The applicant will enter into a Development Charges Payment Agreement with the City that outlines the payment schedule and terms which will further outline the deferral period and number of installment payments.

### **Interest Payment**

Interest of 5% per annum, applicable to rental housing and institutional developments will be calculated and paid at each installment payment. Interest will be applied to the outstanding principal balance of DCs owing from the date the development charge would have been payable, calculated at the DC deferral per annum interest rate.

Interest of 0% applicable to non-profit housing will be applied from the date the development charge would have been payable to the end of the Development Charges Payment Agreement with the City.

### **Notice of Occupancy**

Unless the City issues an occupancy permit under the Building Code Act, 1992, the person responsible to pay development charges shall notify the City, in writing, within five business days of the building first being occupied and provide payment of the first DC deferral installment.

Failure to comply with the occupancy notice requirement will result in full payment of

development charges, including any interest, becoming payable immediately.

## **Other Matters**

Where a development is eligible for DC deferral payments, as permitted under Section 26.1 of the DCA:

- Should the applicant choose to pay the full amount of the DCs owing at the time of building permit issuance, the applicant will enter into a Development Charges Prepayment Agreement in lieu of a Development Charges Payment Agreement.
- Making a payment of DCs at a date earlier than would be permitted pursuant to Section 26.1 may be accepted, with accrued interest where payment is made after a building permit is issued.

## **Interest Rate- DC Freeze**

### **Determination of DC Freeze Rates**

Eligible applications made on or after January 1, 2020, DC rates will be frozen (locked-in) at the DC rates in effect at the time of site plan Application Date or, in the absence of a site plan application, the zoning By-law Amendment Application Date. If the requirement of either of these applications is absent, DCs continue to be determined at DC rates in effect at building permit issuance. In the event that a development has been subject to more than one site plan application or zoning by-law application, the later application date will determine the date at which the DC rates are frozen.

Building permit issuance must occur within two years of the applicable site plan approval date or enactment of zoning By-law Amendment; otherwise DCs are calculated at the DC rates in effect at the time of building permit issuance.

### **Interest Payment**

Interest of 5% per annum will be calculated based on the period of time between the date the DC rates are frozen and the DC payable date, determined at the time of the site plan application or zoning by-law amendment application date.

## **Unpaid Development Charges**

Any DCs or interest payments, in full or in part, that remain unpaid after their due date, shall be added to the tax roll and collected in the same manner as taxes, in accordance with Section 32 of the DCA. Any unpaid DCs or interest charges collected through tax arrears will be transferred into DC reserves.

## **Schedules**

The following schedule to this policy is attached for further reference:

Schedule A – Development Development Charge Interest Rate Policy

## **Effective Date**

This policy shall come into effect on June 2022.

## **References**

Legislation, By-Laws and/or Directives:

- Development Charge Act, 1997, S.O. 1997, as amended from time to time.
- By-law 2021-140 – A By-law to Establish Development Charges for the City of St. Catharines, as amended from time to time.

# Schedule A to the Development Charge Interest Rate Policy

Effective June 2022

City of St. Catharines Development Charge Interest Rates	
Interest Rate Type	Annual Interest Rate Effective June 2022
As pursuant under Section 26.1 and permitted by Section 26.1(7) of the DCA  DC Deferral Interest Rate	5%
As pursuant under Section 26.2 and permitted by Section 26.2 (3) of the DCA  DC Freeze Interest Rate	5%

Note: 0% interest rate will be used for non-profit housing developments as defined under section 11.1 (3) of O. Reg. 82/98, as per section 3 (b) of the Act.