



# Committee Report

<b>To:</b>	Warden McQueen and Members of Grey County Council
<b>Committee Date:</b>	July 23, 2020
<b>Subject / Report No:</b>	FR-CW-19-20
<b>Title:</b>	Development Charges Deferral, Payment Plan and Rate Freeze Interest Rates
<b>Prepared by:</b>	Kevin Wepler and Randy Scherzer
<b>Reviewed by:</b>	Kim Wingrove
<b>Lower Tier(s) Affected:</b>	All municipalities
<b>Status:</b>	

## Recommendation

- 1. That Report FR-CW-19-20 be received which provides information regarding interest rates for Development Charge deferral payment plans (section 26.1) and rate freezes (section 26.2) as required by the Development Charges Act; and**
- 2. That Council approve the charging of interest pursuant to sections 26.1 and 26.2 of the Development Charges Act, 1997:**
  - a. Effective as at January 1, 2020**
  - b. At a rate of 3.5% compounded annually**
  - c. Notwithstanding Recommendation 2b, a rate of 0% be used for payments under section 26.1, beginning at time of building permit, to help encourage these rental housing and non-profit housing developments; and**
- 3. That authorization be given to the Director of Corporate Services and the Director of Planning to execute agreements related to the administration of the Development Charges By-laws for Payment Plans and Rate Freezes as required by the Development Charges Act; and**

**4. That the Development Charges Interest Policy included as an attachment in this report be approved.**

## Executive Summary

On January 1, 2020, the Province introduced changes to the Development Charges Act that requires municipalities to offer 5-year deferral payment plans for development charges associated with rental housing and institutional developments, and 20-year payment plans for non-profit housing developments as per section 26.1. The current County Development Charges By-law only applies development charges to residential developments and therefore a County development charge is not applied to Institutional developments.

The changes to the Development Charges Act also freeze the development charge rates at the time of when a site plan application is submitted or at the time a zoning by-law application is submitted as per section 26.2.

The Development Charges Act changes in Bill 108 and Bill 138 allow municipalities to charge interest on phased payment plans and rate freezes, as well as interest on deferral agreements the County enters with developers.

As it pertains to the freezing of development charges, it is being recommended that an interest rate of 3.5% would apply to developers who lock in development charge rates under section 26.2 of the Act, that is, developers who submit a site plan application or zoning bylaw amendment application on or after January 1, 2020. For developers proceeding without a zoning bylaw amendment or site plan application, development charges would continue to be calculated and payable at building permit unless the development is eligible for a payment plan as per section 26.1 of the Development Charges Act.

Staff recommend for these types of development eligible for the deferral payment plans, such as purpose-built rental and not-profit housing development, that a 0% interest rate be used during the deferred payment plan period in order to help encourage these types of developments. These developments would still be subject to interest on the frozen portion of development charges, until the County considers updates to the County's Development Charges By-laws.

The recommendation also includes providing authorization to the Director of Corporate Services and the Director of Planning to execute agreements related to the required deferred payment plans and rate freezes as required by the Development Charges Act.

## Background and Discussion

On January 1, 2020, the Provincial Government introduced changes to the Development Charges Act (the DC Act) that requires municipalities to offer a 5-year payment plan for rental housing and institutional developments and a 20-year payment plan for non-profit housing developments (section 26.1 of the DC Act). The first payment for these payment plans would be due upon the date of an occupancy permit being issued by the municipality or the date the building is first occupied, whichever comes first.

The DC Act also proposes to freeze the development charge rates at the time of when a site plan application has been submitted for a development or when a zoning by-law amendment application is submitted, whichever application is later (section 26.2 of the DC Act). The rate freeze only applies to applications submitted after January 1, 2020 and are frozen for a maximum period of two years from the date the application is submitted.

The changes made to the DC Act were introduced by both Bill 108 - More Homes, More Choices Act and Bill 138, the Plan to Build Ontario Together Act. Some of the changes made by Bill 108 and Bill 138 to the DC Act have been proclaimed whereas other changes to the DC Act have not been proclaimed to date.

The Province recently introduced Bill 197 entitled the COVID-19 Economic Recovery Act. Bill 197 is an omnibus bill that proposes to make changes to a number of Acts including the DC Act. Staff are still reviewing the proposed changes being introduced by Bill 197, however it appears that these changes will help to provide the information that the County has been waiting for in order to align and finalize the proposed changes to the County's Development Charges By-laws. Staff plan on bringing forward a draft of the proposed changes to the County's Development Charges By-law in the near future so that the public review process can commence.

In the interim, the County is currently receiving requests to enter into Development Charge Deferral Payment Plans as required by subsection 26.1 of the Development Charges Act. As noted above, subsection 26.1 of the DC Act requires municipalities to offer deferral payment plans for rental housing and institutional developments (5 year payment plans), and non-profit housing developments (20 year payment plans). The County's current Development Charges By-laws only applies to residential developments and therefore a County Development Charge does not apply to institutional developments. For development charge rate freezes (section 26.2), this will only apply when the County DC rate changes as per the annual indexing scheduled for January 1, 2021 and therefore staff anticipate that rate freeze payments will begin to apply starting next year.

Subsection 26.1(7) and subsection 26.2(3) of the DC Act allows municipalities to charge interest on payment plan instalments and rate freezes. For subsection 26.1 - payment plans, the interest rate can be applied from the date the development would have been normally payable (i.e. at time of building permit) to the date the instalment is paid, at a rate to not exceed the prescribed maximum rate. For subsection 26.2 - rate freezes, the interest rate can be applied from the date the site plan or zoning amendment application is received to the date the development charge is payable (i.e. at time of building permit). The Province has indicated that they are not planning to prescribe a maximum rate and to leave the determination of the interest rate to municipalities.

County staff consulted with the County's current development charges consultant (Hemson) regarding how other municipalities are treating these interest rates. Hemson indicated that the interest rate applied should relate to the time value of money, which can occur in two ways:

1. In terms of lost monies related to interest earnings (i.e. if the development charge was collected at time of building permit issuance, which is the normal time of when DC's are due, the development charges reserve would be in a higher position and therefore earn interest); and,
2. The cost of borrowing money from the date the development charge is determined (i.e. at time of site plan or zoning amendment application) to the collection of the charge (i.e. building permit)).

The legislation does not prescribe how the interest rates are to be calculated and therefore municipalities can determine what rates should be applied. If however the rates are seen as punitive, there is the possibility that the Province may then consider prescribing a maximum interest rate. In speaking with Hemson, municipalities are generally considering the following options:

- Bank of Canada Prime Rate plus a percentage mark-up
- Non-residential Construction Price Index plus a percentage mark-up
- Borrowing rate on a 20-year loan plus a percentage mark-up
- Multiple bases with the idea of establishing a rate - somewhere in the range of 4.5% to 5.5%.
- Interest rate based on an investment instrument such as the interest rates being received on the One Investment Savings Account plus a percentage mark-up
- The same interest rate as per outstanding property taxes and utility bills or 1.25% per month or 15% per year.
- No interest

In order to try to simplify the interest rate, where applicable, to be applied to development charge deferrals, payment plans, and rate freezes, County staff are recommending a fixed rate over a variable rate to provide transparency and cost certainty to developers and to help reduce the administrative burden to local municipal staff. Therefore, staff are recommending that the following interest rates be applied:

- A rate of 3.5% compounded annually. This interest rate is in line with the Canada's Prime Rate (also known as the prime lending rate that major banks charge), as well as the County's average indexing of development charge rates increases over the past 3 years (2018-2020).
- Notwithstanding the rate of 3.5% compounded annually, a rate of 0% shall be used for payments under section 26.1, beginning at building permit, to help encourage rental housing and non-profit housing developments.

As staff had reported previously in Report [PDR-CW-19-19](#), there is an on-going need for more affordable housing throughout Grey County and more importantly purpose built rental housing and secondary units. One item that staff had suggested to help encourage more affordable housing was to review development charges.

The premise with development charges is that growth should pay for growth related costs so that these costs are not required to be paid by taxpayers. The Development Charges Act allows municipalities to exempt certain types of development from development charges. Certain types of development are already exempted under the County's current Development Charges By-law(s). For example, secondary units constructed either within or attached to an existing residential unit are exempted from a development charge.

Staff had stated that to encourage more purpose-built rental housing and to encourage more secondary units, that Council consider making some changes to the Development Charges By-law(s) to exempt purpose built rental housing and more secondary units.

Therefore, based on this premise to recommend exempting purpose built rental builds from the County's Development Charges By-law(s), staff are recommending that a 0% interest rate be used during the deferred payment plan period for those types of development referred to in section 26.1 of the DC Act.

Staff have also prepared a Development Charges Interest Policy attached to this report. The Interest Policy provides further detail on how the interest rate would be administered.

If required, staff could bring forward in the future, recommendations for interest rate changes based on the effects of the DC Act changes and to respond to any economic or market conditions that may arise.

In order to help expedite the execution of agreements related to the payment plans/rate freezes as required by the DC Act, it is recommended that authorization be given to the Director of Corporate Services and the Director of Planning to execute these agreements.

## Legal and Legislated Requirements

Development Charges Act

## Financial and Resource Implications

Any interest collected through these deferral agreements, payment plans, and rate freezes would be added to the Development Charge Reserve Fund to offset any potential loss in revenue as a result of these deferred payments/rate freezes.

If approved, the use of a 0% interest rate for the types of development eligible for the deferral payment plans, such as purpose-built rental and not-profit housing development, would be foregoing any future interest income.

## Relevant Consultation

- Internal – Finance, Planning
- External – Hemson (current development charges consultant)

## Appendices and Attachments

Attachment to FR-CW-19-20 Development Charge Interest Policy

# Corporate Policy

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## Development Charge Interest Policy

**Approved by:**

**Policy:** X-XXX-XXX

**By-law:**

**Date Approved:**

**Replaces:**

**Last Revision Date:**

**Section:**

**Scheduled for Review by:**

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### Policy Statement

A policy governing the charging of interest, as permitted under sections 26.1 and 26.2 of the Development Charges Act, 1997.

### Purpose

The purpose of this policy is to establish the rules and practices for charging interest, as permitted under section 26.1 and 26.2 of the Development Charges Act, 1997.

### Scope

This policy applies to all development as eligible for development charge payments under section 26.1 and 26.2 of the Development Charges Act, 1997.

### 1.0 Definitions

- a) Act means the Development Charges Act, 1997, as amended.
- b) Development: The construction, erection or placing of one or more buildings or structures on land. This includes the making of an addition or alteration to a building or structure that has the effect of:
  - i) Increasing the size, or
  - ii) Change the use from non-residential to residential or from residential to non-residential and includes redevelopment
- c) Development Charges: means only the County of Grey development charges imposed pursuant to the Development Charge by-law(s).
- d) Total Accrued Amount: Equal to the total of the development charges and the interest that has accrued

## 2.0 Legislated Requirements

### a) 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:

- Rental housing development that is not non-profit housing development
- Institutional development
- Non-profit housing development

### b) Interest on Installment Payments under 26.1 of the Act

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 the installment is paid, at a rate not exceeding the prescribed maximum interest rate.

### c) Development Charge Freeze under section 26.2 of the Act

Under subsection 26.2(1) of the Act, the total amount of a development charge is determined under the County's Development Charges By-law(s) on:

- i) 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 the development that is the subject of the development charge, or
- ii) If clause i) does not apply, the day an application for an amendment to a bylaw passed under section 34 of the Planning Act was made in respect of the development that is the subject of the development charge.

### d) Interest under section 26.2 of the Act

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 clause 2 c) i) and 2 c) ii) to the date the development charge is payable.

### e) Maximum Interest Rate under sections 26.1 and 26.2

The Act allows a municipality to charge interest on the development charge at a rate not exceeding the prescribed maximum interest rate.

There is no prescribed maximum interest rate under subsections 26.1 and 26.2 of the Act.



### 3.0 Interest Rate Used

- a) An interest rate of 3.5% shall be used
- b) Notwithstanding clause 3(a), a rate of 0% shall be used for payments under section 26.1, beginning at building permit, to help encourage rental housing and non-profit housing developments.

### 4.0 Amendment or Revision to Interest Rates

In the event the interest rate is amended or revised, the new interest rate shall apply to the total accrued amount, prorated from the date of the interest rate amendment or revision to:

- The date the total accrued amount is fully paid, or
- A subsequent amendment or revision of the interest rate

### 5.0 Interest Rate Publication and Notification

Upon Council approval, this policy and the interest rates being used shall be made available on the County's website.

The interest rates shall also be published as part of the County's development charges pamphlet publication.

### 6.0 Compounding and Prorating

All interest shall be compounded annually and shall accrue from the date of the applicable application until the date the total accrued amount is fully paid. A 365-day calendar year shall be used for the purposes of prorating.

#### a) Subsequent Application(s)

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

- The date the subsequent application is made will become the new date under which the total amount of the development charge is determined
- All interest that had accrued prior to the subsequent application shall be deemed to be zero (0)
- Interest will be compounded annually and begin to accrue from the date the subsequent application is made

#### b) 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 on the outstanding balance. This shall continue until the date the total accrued amount has been fully paid.

## 7.0 Effective Date

Upon approval by County Council this policy shall take effect as at January 1, 2020 at 12 a.m. This policy may be repealed and/or modified by County Council at any time.

## 8.0 Early Payment Agreement

- a) Under section 26.1 of the Act, the development charges shall be paid in equal annual installments for eligible development.
- b) Under section 27 (1) of the Act, an early payment agreement will be required if the person required to pay development charges chooses to pay the full development charges plus accrued interest owing prior to building permit issuance or occupancy.
- c) The Director of Corporate Services and the Director of Planning has the authority to issue and execute all early payment agreements.

## 9.0 Termination of the Installment Schedule

The remaining balance of all development charges shall be payable within 15 days immediately following the notification / determination of any of these trigger events:

- Change of use to a development type that is not eligible for a development charge installment under the Act, as of the day the change is made.
- Sale or transfer of ownership of the property unless an agreement is entered into.
- Interest will be compounded annually and begin to accrue from the date the subsequent application is made

## 10.0 Authorization to Execute Agreements

That authorization to execute agreements related to the administration of the Development Charges By-law(s) for Payment Plans and Rate Freezes as required by the Development Charges Act be given to the Director of Corporate Services and the Director of Planning.

# 11.0 Unpaid Development Charges

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

Interest on late payments added to the tax roll shall incur the applicable taxation interest rate.