

Corporate Policy

Development Charges Deferral and Conditional Exemption Policy

Approved by: Council

By-laws: 5105-21

Replaces: None

Section: Planning

Policy: 11-1

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Policy Statement

The Development Charges Deferral and Conditional Exemption Policy establishes guidelines related to applications for, and the administration and issuance of, development charge deferrals and conditional exemptions to applicants.

Purpose

This Policy will apply to all landowners, developers and/or builders who apply to the County of Grey for a deferral or conditional exemption of development charges to their proposed development or for equal deferral payments as required by the Development Charges Act. The Policy is intended to assist applicants to proceed with their proposed development and also assist in the provision of services that contribute to a strategic goal of the County, as set out in the County Official Plan (Recolour Grey) and in the County's Community Improvement Plan Program (e.g., affordable housing and accessible housing). An application for approval of a deferral request is required in accordance with this Policy unless a deferral meets the requirements as per Section 26.1 of the Act. Approved deferral requests will require the applicant to enter into a deferral agreement, or a conditional exemption agreement, with the County; these will be optional for deferrals satisfying Section 26.1 of the Act.

Scope

County Council has, from time to time, approved applications for development charge deferrals. The rationale for requesting a deferral has varied over the years, however, a set of principles has been developed from Council's previous approvals in order to streamline the deferral request process.

Development charges are calculated and collected on land and structures being developed in accordance with the Development Charges Act, and the County of Grey's Development Charges By-laws. The collection of development charges typically occurs at the issuance of a building permit. Section 27(1) of the Development Charges Act allows for the deferral of development charges beyond the timeline stipulated in the County of Grey's Development Charges By-laws.

The roles and responsibilities outlined in this Policy will be subject to the best practices of the corporation. If a development meets the eligibility criteria outlined in this Policy or meets the required provisions for a deferral outlined under the Development Charges Act, then a deferral agreement will be entered into, and the Director of Finance and Director of Planning can approve such agreements. A deferral request that does not meet the eligibility requirements outlined under this Policy would be subject to the approval of Council. For deferrals under Section 26.1 of the Development Charges Act, an agreement is optional but encouraged.

Council has approved in the past development charge deferral requests for several development projects that were providing more affordable/attainable housing options as well as developments that were providing housing units that met the accessibility standards of the Accessibility for Ontario Disabilities Act (AODA). These past approvals have helped to shape the eligibility requirements outlined in this Policy.

The province also passed changes to the Development Charges Act that came into effect January 1, 2020, that requires municipalities to defer development charges for purpose-built rental housing, non-profit housing, and institutional developments. The County's Development Charges By-laws currently only applies to residential development and wind turbines. The County's Development Charges By-laws also exempts non-profit housing units and conditionally exempts rental housing units. If a development qualifies for the deferral of development charges under Section 26.1 of the Development Charges Act, the landowner will have the option of having the development charges deferred until time of occupancy and paid out over a 5-year period (6 equal instalments) as per the Development Charges Act. If a development qualifies for a deferral of development charges or a conditional exemption as outlined under this Policy, the landowner will need to enter into an agreement with the County as per the requirements outlined in this Policy.

In order to consider other deferrals beyond the conditional exemptions or beyond the required deferrals under the Development Charges Act, this Policy identifies eligibility requirements for the deferral of development charges for other types of development, including:

1. Housing units that meet the Accessibility for Ontarian Disabilities Act standards. Any housing units that meet the AODA standards would be eligible for a County DC deferral until time of occupancy.
2. Other rental developments that would not be eligible for a conditional exemption under the County's Development Charge By-laws.
3. Any new condominium apartment developments or life lease/land lease developments.

For developments that meet the deferral criteria identified in this Policy, a deferral agreement would be required which would need to be registered on title. Developments that qualify for a conditional exemption as per the County's updated Development Charges (DC) By-laws will be required to enter into a 'Deferral and Conditional Exemption Agreement' which will also need to be registered on title. The Director of Finance and the Director of Planning shall be delegated the ability to sign a deferral agreement, a conditional exemption agreement, or a short-term deferral agreement, that meets the criteria identified in the DC Deferral policy as well as the updated DC By-laws. Further, the CAO or their delegate and the Director of Legal Services shall be authorized to use discretion on when to register the notice of the deferral and conditional exemption agreement on title to the property, however in no case shall it be later than time of occupancy. If a DC deferral request is received that does not meet the criteria in the DC Deferral and Conditional Exemption policy, the application will be presented to County Council for its consideration, if requested by the applicant.

Council has the ability to charge interest on the funds deferred. Interest is normally charged in order to reflect the interest lost due to the funds not being in a reserve account. Interest rates will be charged in accordance with the County's Development Charges By-laws as well as in accordance with the Development Charges Interest Rate Policy.

1.0 Definitions

- 1.1 "DC" means Development Charge(s);
- 1.2 "DC By-laws" means the County's Development Charges By-laws, as amended from time to time.
- 1.3 "Act" means the Development Charges Act.

2.0 Policy Statements

- 2.1 Eligibility Requirements

- a) Development charge deferrals may be available for the following:
- i) Accessible Housing Units – housing units that will meet the Accessibility of Ontarians Disabilities Act (AODA) standards.
 - ii) Other residential rental developments that would not be eligible for an exemption or conditional exemption as per the County’s Development Charges By-laws
 - iii) Any new condominium apartments or life lease/land lease developments.
 - ‘condominium apartment buildings’ means development of a building or structure with four or more condominium dwelling units.
 - “land lease development” means a land lease community as defined in the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17;
 - “life lease development” means a life lease development as defined in Ontario Regulation 88/04, as amended, made under the *Land Transfer Tax Act*, R.S.O. 1990, c. L.6, as amended, but does not include any such life lease development owned by an entity identified in clause 1 of section 2 of that Regulation
- b) Conditional exemptions may be available for developments that meet the eligibility requirements under the County’s DC By-laws subject to entering into a Deferral and Conditional Exemption Agreement that would address matters as outlined in the DC By-laws as well as address the following matters, where applicable:
- i) Payment of any development charges on the land to which the Agreement applies shall be deferred during the period of the Agreement, provided that breach of the terms of the Agreement shall cause any deferred development charges to become immediately payable together with any applicable interest. The term of the agreement will be from the commencement of the agreement to a date not less than twenty years from the first date on which the development was lawfully permitted to be occupied for residential purposes
 - ii) The development to which the Agreement applies shall not be used for any purpose other than as approved in the Agreement for the period of time of as established for the category of use of the development set out in section 18 of the DC By-laws. Should the use

change during the term of the agreement, the following actions will be considered:

- If the development is destroyed by an act of nature during the term of the agreement, the conditional exemption agreement will not have been breached as long as a building permit for reconstruction substantially in the form of the original exempted development has been issued within 5 years of the date of the demolition permit. The original agreement, including its term, will continue to apply to such developments destroyed by act of nature and rebuilt within the timeframes noted above.
- If the landowner wishes to intensify the original use (e.g., add more rental units to the building), this will be assessed at time of rebuild and would be based on the provisions of the DC By-laws at the time of rebuild which could include triggering payment of the original development charges that were exempted and offsetting with applicable credits subject to provisions of the DC By-laws. A new conditional exemption agreement may be possible subject to the provisions of the DC By-laws at the time of rebuilding.
- If the landowner applies to convert the original exempted use to another use (e.g., condominium apartments or non-residential space), the landowner will have the option of withdrawing the application(s) prior to either being approved by the applicable approval authority or prior to a non-decision appeal date being triggered under the Planning Act without triggering payment of the development charges. If, however, the approval authority approves the application(s) allowing for the conversion of the original exempted use or the non-decision appeal date is hit as per the Planning Act, payment of the development charges will become immediately due with applicable interest.
- Should the County become aware that any of the rental units are being used for short-term accommodation, the County will issue a warning to the landowner indicating that the short-term accommodation use must cease within 30 days of the warning. Should the short-term accommodation use continue past this period or cease but then be resumed by the same landowner, payment of the development charges will become immediately due with applicable interest.

- iii) The owner of the land that is the subject of the development shall not sell or otherwise transfer its ownership interest in that land or any portion thereof to any other person unless they take such steps as the County may require to bind that further owner to the provisions of the Agreement. The new owner will have 90 days from the sale of the land to execute an assignment and assumption agreement with the County. If the County discovers the sale of a property after this time period, the new owner will have 30 days to enter into an assignment and assumption agreement from the date the County is made aware of the sale. The Director of Finance and the Director of Planning may extend that timeline by up to 60 further days, if they are satisfied that it would be appropriate to allow the extension under the circumstances in which the sale was identified by the County and the steps taken by the new owner to proceed in good faith to enter into such an agreement. If the new owner does not enter into an assignment and assumption agreement within the required timeframes, the conditionally exempted development charges will become due immediately along with any applicable interest;
 - iv) Notice of the Agreement may be registered on title to the land at the sole discretion of the County and if such notice is registered, such registration shall stand in priority to any encumbrance later registered on that title;
 - v) Pursuant to the County's DC By-laws, upon full and complete satisfaction of the terms of the agreement over the period described in the agreement, the development shall then be deemed to have been exempt from the development charges deferred under the agreement and the same shall not be payable in respect of the development.
- c) Notwithstanding the above criteria, the Director of Corporate Services and the Director of Planning are authorized to approve other deferral requests that meet the general intent of the Development Charges Deferral and Conditional Exemption Policy.
 - d) Notwithstanding the above criteria, if there is a strategic and significant direct economic benefit to Grey County from the proposed development, the Director of Finance and the Director of Planning can recommend a deferral of the development charges to Council. Determination of the strategic and significant direct economic benefit is at the discretion of the Director of Finance and the CAO.

- e) Applicants for a deferral of development charges must comply with all the conditions that are determined as necessary for development (e.g. Planning Act, etc.), agree to any other conditions imposed by the Director of Finance on the deferral authorization and enter into an agreement with the County, which agreement shall be registered on title; such registration shall generally occur promptly after the agreement is executed, but the CAO or delegate and the Director of Legal Services may agree to delay the registration up until the time of occupancy for the development.
- f) The requirements outlined in this document are applicable to all DC Deferral applications received on or after the date that this Policy becomes effective. Deferrals previously granted will be 'grandfathered' under the terms and conditions under which they were approved.

2.2 Applicable Development Charge Rates

- a) In order to ensure that the County does not collect an amount less than the initial payment due, development charges deferred or conditionally exempted shall be payable in accordance with the agreement executed with the County and shall be based on the rate in effect at the time of building permit issuance plus applicable interest compounded until time of payment. Payment of the deferred development charges and the interest rate applied to the deferral will be in accordance with the County's Development Charges Interest Rate Policy. Payment of the deferred development charges as described in Section 2.1(a) of this Policy will be due upon the earlier of the following occurring:
 - i) Upon issuance of the first occupancy permit; or
 - ii) Upon occupancy of the first unit; or
 - iii) To a maximum of 5 years from building permit issuance
- b) For development charge deferrals required by the Development Charges Act, the interest rate will be in accordance with the County's Development Charges Interest Rate Policy.

2.3 Approval Authority

- a) Approval of a deferral or conditional exemption shall be obtained prior to the normal trigger for an applicant paying development charges on the proposed development (e.g., prior to building permit being issued for commencement of construction).
- b) Notwithstanding the eligibility requirements outlined in this Policy, a deferral request may be refused by the Director of Finance and Director of Planning if the net development charge reserve balance is in a deficit.

- c) For developments that meet the eligibility requirements as described in Section 2.1(a) of this Policy or the eligibility requirements under the Development Charges Act, the Director of Finance and Director of Planning can approve the deferral request and execute the deferral agreement if:
 - i) The deferral request does not exceed \$2 million (at the time of the approval); and,
 - ii) The deferral does not exceed 5 years or in the case of required deferrals under the Development Charges Act the deferral period in accordance with the Act.

2.4 Security/Financial Obligations

- a) An applicant may need to secure the deferred development charge by way of a letter of credit or securing the charge with a mortgage, in an amount and form satisfactory to, and at the discretion of, the Director of Finance. The letter of credit will be held until such time as the development charges are paid to the satisfaction of the County. The value of the letter of credit shall be based on the estimated development charges due over the term of the deferral (i.e., development charge rate at the time of building permit issuance plus applicable interest).
- b) The applicant may be required to include the estimated indexed development charges deferred in any vendor take back mortgage for the unit(s).
- c) If the DCs are not paid in full, the County can then draw against the letter of credit if applicable. Any remaining DC payment that is still owed to the County can then be applied to the property taxes by requesting to the local municipality that the amount be added to the property taxes.

2.5 Terms and Conditions of Approval

- a) The Director of Finance and Director of Planning may impose such additional terms and conditions in the deferral agreement and the conditional exemption agreement as are reasonable, in his/her discretion.

2.6 Applicable Process

- a) The applicant shall forward a complete application package to the director of Finance or Director of Planning for a partial or full development charge deferral, or conditional exemption deferral, a minimum of 60 days prior to the expected date of building permit issuance.
- b) A complete application shall include the following:

- i) The reason/criteria for the deferral or conditional exemption request;
 - ii) Evidence of compliance with the eligibility criteria as outlined in this Policy, the DC By-laws, or the Development Charges Act;
 - iii) The legal description of the land being proposed for the development;
 - iv) The number and type of residential units; and
 - v) Any other additional materials as requested by the Finance Department.
- c) Subject to receipt of the application package, including any additional materials requested by staff, a review will be conducted by the Finance Department and Planning Department, and the Director of Finance and Director of Planning will make a decision to approve or deny the deferral or conditional exemption request in accordance with this Policy.
- i) If the request complies with the Policy and falls within the Director of Finance and Director of Planning's approval authority, the Directors may approve the deferral or conditional exemption, subject to the requirements of this Policy and any additional terms and conditions as deemed appropriate by the Directors;
 - ii) If the request does not comply with the Policy, the Directors will refuse the application and advise the applicant accordingly;
 - iii) If the request falls outside of the Policy criteria but the rationale provided by the applicant is one that merits further consideration, staff will prepare a report to Council with an appropriate recommendation.
- d) Deferral Agreement – if the deferral request is approved, an agreement will be prepared to include the terms and conditions required by the Director of Finance and the Director of Planning and to secure payment of the deferred charges
- e) In the event that a building permit is ready for issuance for an applicant that qualifies for a deferral, but the deferral agreement is not executed and/or registered on title to the land, the applicant will be required to enter into a short-term deferral agreement prior to the issuance of the building permit to allow the full agreement to be finalized and registered on title.

3.0 Roles and Responsibilities

3.1 Finance Department and Planning Department

- a) Future updates to this Policy.
- b) Determining whether a request meets the deferral criteria.

- c) Notifying the local municipality when a deferral request or conditional exemption request has been approved and providing the local municipality with a copy of the deferral agreement which will outline the payment plan and when payments are due.
- d) Assisting local municipalities with the calculation of the development charges due on the proposed development should any questions arise.
- e) Requesting Council approval for DC Deferrals that do not comply with the Policy or that are refused and appealed.
- f) Ensuring the preparation of the deferral agreement or conditional exemption agreement in conjunction with the Clerks Department
- g) Overall administration of the deferral agreements and conditional exemption agreements and applicable letters of credit(s)
- h) Determining the amount to be secured by letter of credit, if necessary.
- i) Ensuring that the instalments and final DC payments are remitted by local municipalities as per the agreement.

3.2 Director of Finance and Director of Planning

- a) Making a decision on applications for a deferral in accordance with this Policy.
- b) Determining, in his/her sole discretion, the length of the deferral, the quantum and frequency of interim payments as well as the DC rates to be paid when due, as per this Policy.

3.3 Clerks Department

- a) Prepare the deferral agreement, conditional exemption agreement, or short-term deferral agreement
- b) Register the deferral agreement or conditional exemption agreement on title.
- c) Ensure that deferral is adequately secured in a form satisfactory to the Director of Corporate Services.

3.4 Legal Services

- a) Advise the Finance Department, the Director of Corporate Services, the Director of Planning, and the Clerks Department on the drafting, securing, and registration on title of the deferral agreement or conditional exemption agreement.

b) Register the deferral agreement or conditional exemption agreement on title.

Forms

To be created as needed.