

**From:** Stan Karwowski  
Director, Finance & Treasurer

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**Subject:** Development Charge Interest Policy

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**Recommendation:**

1. That Report FIN 09-20 of the Director, Finance & Treasurer be received;
  2. That the "Development Charge Interest Policy", attached as Appendix 1, be adopted by Council; and
  3. That the appropriate City of Pickering (City) officials be authorized to take the necessary actions as indicated in this report.
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**Executive Summary:** The purpose of this report is to provide an update on the recent changes introduced by Bill 108, *More Homes, More Choices Act, 2019* ("Bill 108"), and further amended by Bill 138, *Plan to Build Ontario Together Act, 2019* ("Bill 138"), and to establish the Development Charge (DC) Interest Policy; rules and practices for charging interest for frozen DC rates and phased payments, as permitted under sections 26.1 and 26.2 of the *Development Charges Act, 1997, as amended*.

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**Financial Implications:** Changes to the *Development Charges Act, 1997* (DCA) came into effect on January 1, 2020 and this will have a financial impact to the City both from a cash flow and total DCs collected perspective.

Collection of DCs for the affected type of construction will now be **later** than prior to Bill 108. The City's cash flow will be impacted, which could result in increased borrowing for growth-related capital infrastructure projects.

The long term financial impact of frozen rates and phased payments is unknown at this time, however the application of this policy should limit any potential erosion in DC revenues. To compensate the City for the revenue loss associated with time value of money, interest will be charged from the time the DC rates are frozen to the date the DCs are paid in full. For phased payments, the interest will continue to be charged on the outstanding balance as at each anniversary date, until the DCs are paid in full.

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The interest will be calculated and charged to the DC balance owing at the Bank of Canada policy interest rate plus 2 percent. The phrase “Bank of Canada policy interest rate” is more commonly referred to as prime rate.

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## **Discussion:**

### **Bill 108**

Bill 108, *More Homes More Choice Act, 2019*, received royal assent on June 6, 2019. Bill 108 introduced a number of changes to the DCA. Among these changes are provisions that **change the date** at which the DCs are calculated as well as provisions that require municipalities **to defer** collection of DCs over a period of 5 to 20 years, for rental housing, institutional development and non-profit housing development.

### **Bill 138**

Bill 138, *Plan to Build Ontario Together Act, 2019*, was brought forward by the provincial government to the legislature in November 2019 and received royal assent on December 10, 2019. Among other things, Bill 138 amended the DCA to reverse some of the changes from Bill 108, through limiting the types of development that would be eligible to pay development charges in annual installments to rental housing, institutional and non-profit housing developments. Office and industrial development are no longer eligible to pay development charges in annual installments.

## **Finalized Regulations**

DCs are the primary source of revenue to fund growth-related infrastructure. Bill 108, amended the DCA and the *Planning Act*, in ways that impact how municipalities determine and collect development charges.

The sections of Bill 108 pertaining to the freezing of rates and phased payments for certain types of development came into effect on January 1, 2020. Prior to these changes, development charges were typically calculated and charged at prevailing rates at the time of building permit issuance. A summary of the previous and current process for determining and collecting DCs for a site plan agreement is shown in Attachment 2.

### **i) Freezing of Rates**

DC rates are now to be frozen at the site plan or zoning bylaw application date. Once an application is approved, building permit issuance must occur within two years to maintain the frozen rate. If the two year period elapses, the prevailing development charge rates in effect at the time the permit is issued will be applied.

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**ii) Phased Payments – DC Deferral**

In addition, under Bill 108, as amended by Bill 138, rental housing and institutional development can now defer development charge payment to first occupancy and have payments phased in six equal annual installments. In the case of non-profit housing, the development charges are to be made over 21 equal annual installments. As a result of the feedback from municipalities, the province removed commercial and industrial buildings from the list of developments that could be eligible for phased payments; which is positive news.

**Going Forward**

The DCA now allows municipalities to charge interest on frozen and phased development charges. Neither the updated DCA nor the accompanying regulatory framework prescribes how a municipality should implement this interest charge. The regulatory framework does not prescribe a maximum interest rate that a municipality may charge, and the province has indicated that it does not intend to prescribe a maximum rate.

In the absence of a policy to permit the City to recover interest costs on deferred payment agreements and early locked-in DC rates, the change in timing of calculation and collection will lead to a shortfall in the DC collected as compared to the cost of the capital infrastructure required.

The most transparent methodology to allow municipalities to communicate the interest rate to be charged is to formally adopt a DC Interest Policy.

To date, there is little consistency among the few municipalities that have instituted a policy. Staff believe that charging Bank of Canada policy interest rate, plus 2 percent annual interest rate is a fair practice. This rate is comparable with the interest rate adopted by the Town of Ajax. In discussion with other area treasurers, there appears to be a general consensus of charging “prime plus 2.0%”

**Communication Issues**

The interest rate will be published on the City’s website, and updated every six months based on the Bank of Canada policy interest rate release every June and December of the year.

**Conclusion**

While the changes to the DCA may create financial and administrative costs to the City, the legislation provides a mechanism to recover some of these costs. The proposed policy will help the City to mitigate the potential negative impacts, and ensure that the new freezing and phased payments provisions promote development in our community without placing undue financial burdens on our existing taxpayers.

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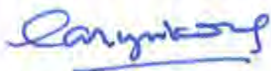
As the provisions for DC rate freezing and phased payments are new to DC framework, the recommendations included in the new Development Charge Interest Policy may need to be updated from time to time as the policy is applied in practice and new information becomes available.

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**Attachments:**

1. Development Charge Interest Policy
  2. Previous and Current Development Charge Determination and Collection Regime
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**Approved/Endorsed By:**



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Director, Finance & Treasurer

Recommended for the consideration  
of Pickering City Council



Marisa Carpino  
Interim Chief Administrative Officer



# Policy

<b>Procedure Title:</b> Development Charge Interest Policy			<b>Policy Number</b> FIN 090
<b>Reference</b> Resolution #XXX/20	<b>Date Originated (m/d/y)</b> July XX, 2020	<b>Date Revised (m/d/y)</b>	<b>Pages</b> 5
<b>Approval: Chief Administrative Officer</b>		<b>Point of Contact</b> Director, Finance & Treasurer	

**Policy Objective**

The fundamental principle of funding growth-related capital costs is that ‘Growth should pay for Growth’. This Policy serves to ensure that there is compensating interest income to fund the carrying costs associated with the provisions of the amended *Development Charges Act, 1997* that allow development charges (DC) rates to be frozen early in the planning process, and DC payments to be phased from 5 to 20 years for certain development.

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

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- 01 Definitions**
  - 01.01 **Development Charges Act (DCA)** – the *Development Charges DCA, 1997*, as amended.
  - 01.02 **Development Charges (DC)** – City of Pickering development charges only, does not apply to the Region of Durham development charges or school board development charges.
  - 01.03 **Rental Housing Development** for the purposes of this Policy only, is defined as per O.Reg 454/19 meaning development of a building or structure with four

or more dwelling units all of which are intended for use as rented residential purposes.

01.04 **Institutional Development** for the purposes of this Policy only, is defined as per O.Reg 454/19 meaning development of a building or structure intended for the following uses:

- a long term care home within the meaning of Subsection 2(1) of the *Long-Term Care Homes Act, 2007*;
- a retirement home within the meaning of Subsection 2(1) of the *Retirement Homes Act, 2010*;
- a university in Ontario that receives direct, regular and ongoing operating funding from the Government of Ontario;
- a college or university affiliated with a university described above;
- an Indigenous Institute prescribed for the purposes of Section 6 of the *Indigenous Institutes Act, 2017*;
- a memorial home, clubhouse or athletic grounds by an Ontario branch of the Royal Canadian Legion; or,
- a hospice to provide end of life care.

01.05 **Non-Profit Housing Development** for the purposes of this Policy only, is defined as per O.Reg 454/19 meaning development of a building or structure intended for use as residential premises by:

- a corporation to which the *Not-for-Profit Corporations Act, 2010* applies, that is in good standing under that Act and whose primary object is to provide housing;
- a corporation without share capital to which the *Canada Not-for-profit Corporations Act* applies, that is in good standing under that Act and whose primary object is to provide housing; or,
- a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*.

01.06 **Eligible Developments** – defined above under Sections 01.03, 01.04 and 01.05, as per Subsection 26.1(2) of the DCA.

01.07 **Interest Rate** – Bank of Canada policy interest rate plus 2 percent.

## 02 Legislative Framework

### Development Charge Deferral

02.01 Installment Payments under Section 26.1 of the DCA and as defined in O.Reg 454/19.

Under Subsections 26.1(1), (2) and (3) of the DCA, DC 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 (5 years);
- Institutional development (5 years); and
- Non-profit housing development (20 years).

02.02 For Eligible Developments as prescribed under Subsection 26.1(2) of the DCA, the DC shall be paid in equal annual installments beginning on the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation of the building and the date the building is first occupied, and continuing on:

- i) the following 5 anniversaries of that date, in the case of a DC in respect to rental housing development that is not non-profit housing development, and institutional development; or,
- ii) the following 20 anniversaries of that date, in the case of a DC in respect of non-profit housing development.

02.03 Subsection 26.1(7) of the DCA allows a municipality to charge interest on the installments from the date the development charges would have been payable, under Section 26, to the date the installment is paid, at a rate not to exceed the prescribed maximum rate.

02.04 The Interest Rate shall be charged on the outstanding balance as at each anniversary date, until the DC owing are paid in full. The interest will be calculated and charged as follows: the Interest Rate will be applied to the DC balance owing and will be payable on each anniversary date.

02.05 Early payment agreements will be offered if the owner of a development would prefer to pay the full DC owing at occupancy in accordance with Section 27 of the DCA.

02.06 Where there is a change in use of development during the course of the DC deferral period such that the property or properties no longer meet the definition of an Eligible Development, all outstanding DC payments, including any interest payable up to the date of the change in use, become payable immediately.

02.07 Where the party to a deferral arrangement fails to make payments in accordance with the agreed payment schedule, the account will be considered to be in default and all DC become payable immediately.

02.08 If DC or any outstanding part of DC are not paid immediately as required in Section 02.06 or 02.07, all outstanding charges shall be added to the tax roll and collected in the same manner as taxes, in accordance with Section 32 of the DCA. Interest on late payments added to the tax roll shall be calculated by reference to the City's tax arrears interest rate in effect at the date of default.

## Development Charge Rate Freeze

02.09 Subsection 26.2(1) of the DCA provides that DC are to be calculated 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 bylaw 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) nor clause (b) applies, the date the DC would have been payable under Section 26 of the DCA, which is normally building permit issuance.

## Interest Under Section 26.2 of the DCA

02.10 Under Subsection 26.2(3) of the DCA, 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 02.09 a) or b) to the date the development charge is payable.

## 03 Interest Rate Used

03.01 Interest Rate means the Bank of Canada policy interest rate plus 2 percent as at December 31<sup>st</sup> or June 30<sup>th</sup> immediately prior to:

- a) the date the DC would have been payable under the DCA for the installment payments under Section 26.1 of the DCA; or,
- b) the date an application for an approval of the development was made under Subsection 41(4) of the *Planning Act* for DC freezing under Section 26.2 of the DCA.

## 04 Interest Rate Publication

04.01 The current Interest Rate shall be posted on the City of Pickering website, and the website shall be updated within 5 business days of each reset date (i.e., July 1 and January 1).

## 05 Compounding and Prorating

05.01 All interest shall be compounded annually and accrue from the date of the applicable application as outlined in Section 26.1 and Section 26.2 of the DCA, until the date of the total accrued amount is fully paid. A 365 day calendar year shall be used for prorating all interest calculations.



## 05.02 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 zero (0); and,
- interest will be compounded annually and begin to accrue from the date the subsequent application is made.

## 05.03 Interest Under Section 26.1

If a development qualifies for installment payments under Section 26.1 of the DCA, the total accrued amount shall continue to accrue interest from the date of the issuance of a 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.

The applicable interest applied to the annual installment payments determination shall be the Interest Rate in effect at each anniversary date.

## 06 Effective Date

06.01 Upon approval by City of Pickering Council, this policy shall take effect retroactively as at January 1, 2020. This policy may be repealed or modified by City of Pickering Council at any time.

## 07 Policy Administration

07.01 The Treasurer is the delegated authority to make administrative changes to this Policy as may be required from time to time due to legislative or other changes, if in the opinion of the Treasurer, the amendments do not change the objective of the Policy.

**Please refer to all associated Procedures and Standard Operating Procedures, if applicable, for detailed processes regarding this Policy.**

**Previous and Current Development Charge Determination & Collection Regime**

