

## Development Charges Policy Updates

**Date:** January 13, 2021

**To:** Executive Committee

**From:** Chief Financial Officer and Treasurer

**Wards:** All

### SUMMARY

---

The City currently imposes development charges based upon a bylaw that was approved by Council on April 18, 2018. Subsequently, in December 2019, the Province introduced changes to the legislation that altered how development charges are calculated and collected. The changes, effective January 1, 2020, require development charges to be determined earlier, at planning application, and in the case of rental, institutional and non-profit housing, for the charges to be collected later, in annual instalments over five or 20 years beginning at occupancy.

To mitigate the financial impact of these changes on the City, in December 2019 and January 2020, Council adopted interest charges to apply to the development charges "frozen" at planning application and to the new instalment payments, as permitted by Provincial legislation.

This report recommends timeline updates and modifications to Council's interim development charges policy. These changes are intended to bridge City policies until there is an opportunity to undertake a comprehensive review of the bylaw, which is expected to be completed in spring 2022.

In particular, Council's interest policies applicable to the mandatory instalments payments are proposed to be updated to prime plus three percent where no financial security is provided and the City's cost of capital plus half a percent where financial security is provided. Delegated authority is sought that would allow staff to collect development charges earlier, at building permit, instead of in instalments, and where a developer wished to pay at that time. The development charges applicable to non-profit long-term care development is proposed to be deferred until there is a change of use such that it no longer is a non-profit long-term care home. Finally, Council's interest policy for the development charges "frozen" based on the date of planning application would be extended. This is needed because the policy currently only applies to development applications received before November 1, 2020 and permits issued before November 1, 2021.

Staff will continue to monitor the effects of the changes to legislation and bring forward recommended adjustments to policies for Council consideration, as may be deemed necessary.

## **RECOMMENDATIONS**

---

The Chief Financial Officer and Treasurer recommends that:

1. With respect to rental, institutional and non-profit housing developments that are subject to the new mandatory instalment payments over five and 20 years pursuant to section 26.1 of the *Development Charges Act, 1997*, City Council:
  - a. amend the interest policy previously adopted by City Council pursuant to section 26.1 (7) of the *Development Charges Act, 1997* to provide that:
    - i. interest will be applied at the Canadian Bank Prime rate plus three percent; and
    - ii. the policy will be effective on February 8, 2021, and applies to building permits issued on or after that date;
  - b. authorize the Chief Financial Officer and Treasurer, in consultation with the Chief Building Official and Executive Director, Toronto Building and the City Solicitor, to enter into agreements, in a form satisfactory to the City Solicitor, to provide for interest charges at the City's cost of capital plus half a percent where financial security is provided based on the general terms and conditions in Attachment 1, and including any amendments to previously executed agreements, as necessary, relating to the payment of development charges;
  - c. authorize the Chief Financial Officer and Treasurer, in consultation with the Chief Building Official and Executive Director, Toronto Building and the City Solicitor, to enter agreements, in a form satisfactory to the City Solicitor, to allow the option for the early payment of development charges at the time of building permit issuance based on the general terms and conditions in Attachment 2, and including any amendments to previously executed agreements, as necessary, relating to the payment of development charges;
  - d. authorize the Chief Financial Officer and Treasurer, in consultation with the Chief Building Official and Executive Director, Toronto Building and the City Solicitor, to enter into agreements, in a form satisfactory to the City Solicitor, to further defer the payment of development charges for non-profit long-term care homes for as long as they remain a non-profit long-term care use and based on the general terms and conditions in Attachment 3, including any amendments to previously executed agreements, as necessary, relating to the payment of development charges; and

2. City Council authorize the Chief Financial Officer and Treasurer, in consultation with the Chief Building Official and Executive Director, Toronto Building and the City Solicitor, to make such administrative amendments to the general terms and conditions in Attachment 1, 2 and 3, as necessary, to give effect to Recommendations in 1. b., c. and d. above.
3. City Council extend the interest policy previously adopted by Council pursuant to Section 26.2 (3) of the *Development Charges Act, 1997* pertaining to the "frozen" development charges such that the policy applies to any Site Plan and Rezoning Applications received, and any building permits issued, after November 1, 2020 and City Council direct the Chief Financial Officer and Treasurer to review the interest policy as part of the City's comprehensive development charges bylaw update.

## **FINANCIAL IMPACT**

---

Development charges are the primary source of revenue to fund growth-related infrastructure costs needed to support anticipated population and employment growth. The purpose of development charges is to ensure that growth pays for growth.

Legislative changes effective January 1, 2020, notably the "freeze" in the rates, could have resulted in a significant negative financial impact on the City without the mitigating measures that were adopted by Council.

As a result of the "freeze" of rates at planning application, developers can theoretically file applications to lock in rates and avoid the scheduled rate phase-in or even avoid rate changes from future bylaw updates. Planning applications representing proposals for over 46,000 residential dwelling units were filed last year before the City's November 1, 2020 rate increase. If these units were all approved and frozen at the old rates, and collected after the increase with no interest or alternate payment program, the City could have experienced a revenue loss of approximately \$200 million compared to what would have been collected under the previous legislation, with respect to the rate phase-in.

The charging of interest (at 1.5 percent every 30 days but capped at the rates in effect at building permit issuance), along with Council's conditional permit payment policy (that requires the charges to be calculated and paid based on the date of above grade permit during the rate phase-in, and upon the issuance of first permit after the phase-in), helps to mitigate the financial impact of the change on the City.

The policy updates in this report are interim measures needed to transition the bylaw to the new legislative framework. The policies will be updated as part of the City's development charges bylaw review to be completed in 2022.

## DECISION HISTORY

---

At its meeting on April 24, 2018, City Council adopted EX33.3 "Development Charges By-law Review – Results of Additional Consultation" to adopt the City's current development charges bylaw, including a two-year rate phase-in, and continued the practice of requiring applicants seeking conditional below grade-permits to enter into agreements providing for the charges to be calculated and paid at the time of issuance of the above-grade permit.

1. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX33.3>

At its meeting on December 17, 2019, City Council adopted MM13.27 "Response to Proclamation of Development Charges Act changes effective January 1, 2020" and adopted interest policies that apply to the development charges "frozen" at Site Plan and Rezoning Bylaw application and to the new statutory deferral and instalment payments for rental, institutional and non-profit housing.

2. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.MM13.27>

At its meeting on January 19, 2020, City Council adopted MM14.18 "Re-opening of MM13.27 Response to Proclamation of Development Charges Act changes effective January 1, 2020" to clarify how the interest charges would be calculated for the "frozen" development charges at the time of planning application and directed staff to report back on any modifications to the interest rates or development charges policies, once there is an opportunity to more fully assess changes to development charges legislation.

3. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM14.18>

At its meeting on October 27, 2020, City Council adopted EX17.1 "Towards Recovery and Building a Renewed Toronto" and directed staff to report to City Council through Executive Committee on the feasibility of financial incentives, including eliminating or reducing development charges, for non-profit long term care homes.

4. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX17.1>

## COMMENTS

---

The recommended policy updates in this report are discussed below.

### **Developments subject to the instalment payments**

Effective January 1, 2020, development charges for rental, institutional and non-profit housing, as defined in O. Reg. 454/19, are deferred until occupancy and payable in six annual instalments over five years in the case of rental and institutional development, and in 21 annual instalments over 20 years in the case of non-profit housing, beginning at occupancy. As permitted by the legislation, Council adopted interest rate policies that would apply to the installments. Staff have reviewed these policies and propose the following updates:

1. Where no financial security is provided, interest charges would be amended to prime plus 3% (from the higher of prime plus 5% or the market rate of construction financing). This simplifies the rate structure and allows the City's rates to be more competitive with the rates in surrounding jurisdictions.
2. Where financial security is provided, interest would be charged at the City's cost of capital plus half a percent (from the City's cost of capital), with rates updated on the first day of each quarter and an agreement would be executed between the developer and the City, as per advice of City Legal Services. The terms and conditions of the policy are set out in Attachment 1.
3. A developer would be permitted to pay earlier in the development process, at the time of building permit, rather than in instalments with interest starting from occupancy. The early payment does not modify the amount of the charges that would otherwise be payable on the development. The general terms and conditions of the early payment are set out in Attachment 2.

Rental housing developers were consulted, through the Building Industry and Land Development Association, in fall 2020. In general, input received noted that the City's interest charges and financial security requirements have associated costs, which in turn have varying impacts on rental housing developments. The sector cited challenges facing rental housing compared to ownership housing, such as a longer timeframe for revenue cash flows and profits, recent declines in rent prices, and higher vacancy rates due to market factors of lower demand and increased supply from short-term rentals entering the market, and Provincial actions limiting evictions of tenants during the pandemic. Developers requested that the City consider lower interest costs and alternate forms of financial security, as well as additional financial incentives to level the playing field between rental and ownership housing proposals.

The policy proposals in this report are interim measures until the City has an opportunity to undertake a comprehensive policy review. The current proposals give developers options on whether to pay in instalments, with or without financial security, or opt out and pay at the time of permit issuance. Given the City's current fiscal challenges, the request for further modifications and additional financial incentives for market rental housing is being considered as part of the City's bylaw update initiative.

### **Non-profit long-term care homes deferrals**

In October 2020, Council directed staff to examine the feasibility of reducing or eliminating development charges for non-profit long-term care homes. The current pandemic has highlighted the need for safe accommodations for our seniors in long-term care facilities.

A discount or exemption cannot be provided in the short term in the bylaw. Provincial legislation requires the City to undertake a Development Charges Background Study and a statutory public consultation process before it can amend or adopt a new bylaw with new policy relief. In the interim, staff recommend that development charges for non-profit long-term care homes be deferred for as long as the development remains a

non-profit long-term care use. The general terms and conditions of the policy are set out in Attachment 3.

### **Development charges "frozen" at planning application**

Council's interest rate regime applicable to the development charges "frozen" at the time of planning application, adopted in January 2020, provides for interest charges at 1.5 percent every 30 days but capped based on the rates in effect at building permit issuance. The policy needs to be extended because it only applies to planning applications received before November 1, 2020 with permits issued after November 1, 2021. This report recommends that Council's currently policy framework be extended for the term of the City's current bylaw. Staff will report back on proposed changes to the policy as part of the City's comprehensive bylaw update process.

### **Conclusions**

This report proposes updates to interim policies that help mitigate the impact of the January 1, 2020 legislative changes on the City until Council has an opportunity to update its bylaw and policies to reflect the new legislation. The City is in the process of retaining an external professional consultant to support the bylaw update through a competitive procurement process. The update will be coordinated with other changes to growth funding tools, namely the community benefits charge and the alternate parkland dedication rate. Staff will report to Committee and Council in spring 2021 on key elements of the review including strategic coordination of the project, the proposed work plan and the stakeholder engagement process.

### **CONTACT**

---

Shirley Siu, Senior Financial Analyst, Corporate Financial Strategy and Policy,  
Tel: 416-397-4205, [Shirley.Siu@toronto.ca](mailto:Shirley.Siu@toronto.ca)

Andrew Flynn, Controller, Office of the Controller,  
Tel: 416-392-8427, [Andrew.Flynn@toronto.ca](mailto:Andrew.Flynn@toronto.ca)

### **SIGNATURE**

---

Heather Taylor  
Chief Financial Officer and Treasurer

## **ATTACHMENTS**

---

- Attachment 1: General Terms and Conditions of the Development Charges Instalment Payments with Financial Security
- Attachment 2: General Terms and Conditions of the Development Charges Early Payment
- Attachment 3: General Terms and Conditions of the Development Charges Non-profit Long-term Care Deferral

## **Attachment 1: General Terms and Conditions of the Development Charges Instalment Payments with Financial Security**

### 1. Eligibility

- a. Applies to rental housing, institutional development and non-profit housing development and redevelopment that are subject to instalment payments under section 26.1 of the *Development Charges Act, 1997*, as amended.

### 2. General Terms and Conditions

#### Application and Agreement

- a. The applicant must indicate its intent in writing to apply for this program and provide financial security. The owner must enter into an agreement with the City under Section 27 of the *Development Charges Act, 1997*.

#### Development Charges

- b. The amount of the development charges will be determined on the basis of the prevailing rules in accordance with Sections 26, 26.1, and 26.2 of the *Development Charges Act, 1997*, as amended.

#### Instalment Payments

- c. Development charges instalment payments will be determined on the basis of the prevailing rules in accordance with Section 26.1 of the *Development Charges Act, 1997*, as amended.

#### Financial Security

- d. Financial security must be provided to the City before occupancy, in a form satisfactory to the Chief Financial Officer and Treasurer, such as a letter of credit, and with a value equal to the amount of the development charges instalment payments outstanding, less the value of the first instalment payment. The financial security shall be reduced as instalment payments are made.

#### Interest

- e. Where financial security is provided, interest charges shall be applicable on the instalments based on the City's cost of capital plus 0.5 percent, with rates updated on the first day of every quarter, and calculated from the date of building permit issuance under Section 26 of the *Development Charges Act, 1997* to the date of payment.
- f. Should Section 26.2 of the *Development Charges Act, 1997* pertaining to the freeze in the rates at planning application have applied to the development absent an agreement, the owner agrees to pay applicable interest on the development charges, in accordance with Council policy, as may be amended from time to time.



Administrative Amendments

- g. The Chief Financial Officer and Treasurer, in consultation with the City Solicitor, shall be authorized to make administrative amendments to this program and include any additional terms and conditions as may be deemed necessary to protect the City's financial interests and administer the program.

## **Attachment 2: General Terms and Conditions of the Development Charges Early Payment**

### 1. Eligibility

- a. Applies to rental, institutional and non-profit housing development and redevelopment that are subject to instalment payments under section 26.1 of the *Development Charges Act, 1997*.

### 2. Terms and Conditions

#### Application and Agreement

- a. The applicant must indicate its intent in writing to apply for this program. The owner must enter into an agreement with the City under Section 27 of the *Development Charges Act, 1997*.

#### Development Charges

- b. The amount of the development charges will be determined on the basis of the prevailing rules in Sections 26, 26.1 and 26.2 of the *Development Charges Act, 1997*, as amended.

#### Interest

- c. Should Section 26.2 of the *Development Charges Act, 1997* have applied to the development in the absence of an agreement, the owner agrees to pay applicable interest on the development charges, in accordance with Council policy, as may be amended from time to time.

#### Payment

- d. The applicant agrees to pay the applicable development charges to the City, with any applicable interest, on the date of first building permit issuance.
- e. The Chief Financial Officer and Treasurer, or designate, has the authority to allow for an alternate timing of the payment of the charges, provided that the charges are paid with any accrued interest, as determined by the Chief Financial Officer and Treasurer.

#### Administrative Amendments

- f. The Chief Financial Officer and Treasurer, in consultation with the City Solicitor, shall be authorized to make administrative amendments to the program and include any additional terms and conditions as may be deemed necessary to protect the City's financial interests and administer the program.

## **Attachment 3: General Terms and Conditions of the Development Charges Non-profit Long-term Care Deferral**

### 1. Eligibility

- a. Applies to non-profit long-term care home development projects approved by the Ministry of Long-Term Care.
- b. The applicant must provide the City with a copy of their approved Ministry of Long-term Care Development Agreement identifying the project as a not-for-profit long-term care home.

### 2. General Terms and Conditions

#### Application and Agreement

- a. The applicant must indicate its intent in writing to apply for this program. The owner must enter into an agreement with the City under Section 27 of the *Development Charges Act, 1997*.

#### Payment

- b. The payment of development charges shall be deferred for as long as the development remain an eligible use. If the development is no longer an eligible use, the amount of the development charges will be calculated on the basis of the prevailing rules in Sections 26, 26.1 and 26.2 of the *Development Charges Act, 1997*, as amended, applicable to the development as if it were a new development, and collected based on the City's prevailing policies at the time of building permit issuance for any change in use or, if no building permit is issued, on the date that the use is no longer eligible.

#### Administrative Amendments

- c. The Chief Financial Officer and Treasurer, in consultation with the City Solicitor, shall be authorized to make administrative amendments to this program and include any additional terms and conditions as may be deemed necessary to protect the City's financial interests and administer the program.