

The Regional Municipality of York

Committee of the Whole
Finance and Administration
February 6, 2020

Report of the Commissioner of Finance

Potential Development Charge Bylaw Amendment and Interest Policy – Bill 108, *More Homes, More Choice Act, 2019*

1. Recommendations

1. 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 5% compounded annually
 - c. Notwithstanding Recommendation 1b, a rate of 0% be used for payments under section 26.1, beginning at building permit, for developments that have taken advantage of a Regional development charge incentive and/or relief, current or future
2. Council approve the policy in Attachment 1, to administer the charging of interest in Recommendation 1
3. Council delegate authority to the Commissioner of Finance to schedule and give notice for a public meeting(s) required by the *Development Charges Act, 1997*
4. The Regional Clerk circulate this report to the local municipalities and to the Building Industry and Land Development Association – York Chapter (BILD).

2. Summary

This report updates Council on key policy initiatives staff plan to undertake in 2020 to respond to recent changes introduced by Bill 108, *More Homes, More Choice Act, 2019* (“Bill 108”), and further amended by Bill 138, *Plan to Build Ontario Together Act, 2019* (“Bill 138”). The proposed work plan helps to ensure the Region can continue to recover growth-related infrastructure costs while balancing stakeholder concerns.

Key Points:

- There are three key elements to staff’s recommended policy response to Bill 108: a new Development Charge Interest Policy, an amendment to the Region-wide Development Charge Bylaw, and a potential new Community Benefits Charge Bylaw

- Charging interest on frozen and phased development charges as permitted by the legislation could help mitigate negative financial impacts of Bill 108 and encourage timely development, while providing transparency and certainty to developers
- Amending the Region's Development Charge Bylaw in 2020 could achieve alignment with legislative changes, and address other policy and administrative issues
- Timing of a new Community Benefits Charge Strategy and Bylaw will depend on when the Province finalizes the related regulations

3. Background

Bill 108 changed how municipalities recover growth-related infrastructure costs

Development charges are the primary source of revenue to fund growth-related infrastructure. Bill 108, which received Royal Assent on June 6, 2019, amended the *Development Charges Act, 1997*, ("Act") and the *Planning Act, 1990* in ways that impact how municipalities determine and collect development charges. As of this writing, the Province has issued the finalized regulations pertaining to changes to the Act, while some regulations related to changes to the *Planning Act, 1990* are still forthcoming.

Beginning on January 1, 2020, development charge rates are frozen at application, and some types of developments can phase their payments

The sections of Bill 108 pertaining to the freezing of rates and phased payments came into effect on January 1, 2020. Prior to these changes, development charges were typically calculated and charged at the prevailing rate at building permit issuance. Development charge rates are now frozen at site plan application or zoning bylaw application date. The rates would be reassessed and refrozen upon resubmission. Once the application is approved, building permit issuance must occur within two years to maintain the frozen rate.

In addition, under Bill 108, as amended by Bill 138, institutional and rental housing development can now defer development charge payment to first occupancy and have payments phased in equal instalments annually over five years. In the case of non-profit development, the phasing period is 20 years.

Bill 108 also introduced other changes to the Act that have not been proclaimed

Other sections of Bill 108 that amend the Act, such as the list of development charge eligible services and removal of the 10% statutory deduction, have not yet been proclaimed. Staff anticipate these changes may be proclaimed together with the proclamation of the community benefits charges regime. Based on the previously proposed regulatory framework in the summer of 2019, the deadline to enact a new community benefits charge bylaw could be January 1, 2021. However, as of this writing, the Province has not released the proposed regulations regarding the prescribed percentage caps and community benefits charges formula. Staff will continue to monitor the legislative and regulatory changes, participate in any consultative process that is initiated and report back to Council as appropriate.

4. Analysis

The Province has taken positive steps to address concerns raised by York Region and other municipalities pertaining to Bill 108 and the regulatory framework

Since the Province tabled Bill 108, Regional staff have been diligent in reviewing and providing feedback to the Province on the proposed legislation and regulatory framework. Staff's comments on the proposed legislation and regulatory framework can be found in previous reports to Council on [June 6, 2019](#) and [September 19, 2019](#) respectively. Table 1 summarizes areas where positive changes have been made by the Province.

Table 1
Summary of Changes Made by the Province

| Area | Initial Provincial Position | Change as Result of Feedback |
|--|--|--|
| Eligible services for development charges | Paramedic services was not an eligible service | Paramedic services now development charge eligible |
| Development eligible for delayed and phased payments | Commercial and industrial developments were eligible for delayed and phased payments | Commercial and industrial developments are no longer eligible |
| Development charge exemption | Unclear if exemption for additional units comprising less than 1% of existing units applies to rental only | Province prescribed the exemption applies only to rental buildings |

As a result of the positive changes made by the Province, the Region's exposure to the negative impacts of Bill 108 has been reduced compared to what was previously anticipated. While staff welcome the above changes, not all of staff's recommendations have been adopted. Most notably, there is no 'sunset period' between the application date and building permit issuance for the freezing of rates. Additionally, Bill 138 provided developers with a right of appeal on the community benefits charge bylaw to the Local Planning Appeals Tribunal; an unintended consequence of which could be delays in the development process, as more cases are brought before the Local Planning Appeals Tribunal.

DEVELOPMENT CHARGE INTEREST POLICY

Bill 108 provided municipalities with a flexible framework to charge interest

Bill 108 allows municipalities to charge interest on frozen and phased development charges. Neither Bill 108 nor the accompanying regulatory framework prescribes how a municipality should implement this interest charge. The Province indicated that it does not intend to prescribe a maximum interest rate, even though the legislation allows it to do so through regulations. Municipalities have the flexibility to design an interest charging program.

Staff recommend an interest charging framework as described in Attachment 1 to support the Region in charging interest as permitted through legislation in a manner that is transparent and simple to administer. Having a policy provides clarity to stakeholders. Charging interest on frozen development charges can help encourage timely development, because the interest owed will continue to accumulate until a developer pulls a building permit to begin construction. It also helps ensure costs are not unfairly passed on to future development.

Developers could lock in development charge rates for many years

The regulations do not limit how long developers can freeze development charge rates between the application date and building permit date. Consequently, it is now possible for developers to freeze development charges over multiple bylaws. Timing of the development application process is tied to a number of factors such as the timing of application submission, quality of submission, status of related Official Plan amendments, complexity, timing of infrastructure delivery, and market conditions. As a result, there can be significant variability in the amount of time between application and building permit.

Overall, developments proceeding through the site plan process typically take less time to achieve building permit issuance from the date of application compared to those proceeding through the plan of subdivision process. In the past, approximately 50% of developments proceeding through a plan of subdivision took between two and five years to achieve building permit issuance from the date of the initial zoning bylaw amendment application. Some have taken upward of 25 years from submission of application to building permit.

The freezing of rates could constrain the Region's ability to fund vital growth-related projects

Allowing freezing of rates disconnects the cost of infrastructure and the rates charged. The Region's current development charge bylaw has a forecast horizon of 2031 and does not capture the numerous projects needed to support growth beyond that time period. The Yonge Subway Extension, for which the Province recently announced partial funding, is not currently in the Region's Development Charge Bylaw. Allowing developers to lock in current rates would mean many of those benefiting from the subway extension would not have paid for it through development charges.

Freezing of rates could also impede the cost recovery of projects sized to provide a benefit to growth beyond the forecast period of the Region's Bylaw, including projects such as the Upper York Water Reclamation Centre. This is because development charge rates must exclude post period benefit, which may only be recovered under future bylaws. This portion of the cost may not be effectively passed on to developments that have frozen their rates.

Finally, development charge rates could increase significantly at every bylaw update or amendment for a number of reasons, including cost escalations, new projects, and changing cost allocations. Since the 2012 bylaw, Regional development charge rates for single detached dwellings increased at an average annual rate of 6%, which is on par with the annual increase in the price of a new single detached dwelling unit. Between bylaw updates or amendments, development charge rates are indexed annually in accordance with Statistics Canada Quarterly Construction Price Statistics.

Staff recommend an interest rate of 5% on frozen development charges

As it pertains to the freezing of development charges, the interest 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.

Staff recommend an interest rate of 5% be used for frozen development charges. This is based on the average historical growth in the Statistics Canada Non-residential Building Construction Price Index for Toronto plus consideration based on the average historical fluctuation to the index to mitigate the risk of cost fluctuations to the Region. Interest shall continue to accrue and be compounded annually beginning from the date of the application until the date development charges are paid. The interest rate could be updated by Council at any time and the new interest rate applies on a going forward basis, including all active developments. Table 2 summarizes the key features and rationale for the proposed policy.

Table 2

Key Features of the Proposed Development Charge Interest Policy

| Feature | Description |
|---|--|
| Fixed rate | <ul style="list-style-type: none">• Provides transparency and cost certainty to developers |
| Compounded annually | <ul style="list-style-type: none">• Compounded interest is reflective of the Region's cost and helps encourage timely development |
| Prorated to the date | <ul style="list-style-type: none">• Prorating the interest to the date ensures the interest rate is applied fairly for the period of the interest charge |
| Effective Date – Retroactivity and Transition | <ul style="list-style-type: none">• The Policy retroactively takes effect as at January 1, 2020• For building permits issued prior to July 1, 2020, no interest will be charged on frozen development charges as the rates have not changed |

Staff recommend charging a 5% interest rate for phased development charges, but in instances that support broader policy objectives, a rate of 0% be used

The types of development eligible for the phased payment plan are institutional development (e.g., long-term care homes, retirement homes, post-secondary institutions, Royal Canadian Legion memorial home, clubhouse or athletic grounds, and hospices), purpose-built rental, and non-profit housing development. Most of these developments could receive development charge relief under existing Regional policies. Attachment 2 summarizes the Region's current development charge treatment for the types of development eligible for phased payments.

As is the case with the frozen development charges, staff recommend charging an interest rate of 5%. However, for developments that have taken advantage of a Regional

development charge relief and/or incentive, a 0% interest rate be used during the phased payment plan period. These developments would still be subject to interest on the frozen portion of development charges.

Developers who delay and phase payments are not required to provide security under the legislation

Under Section 26.1 of the Act, developers are not required to provide municipalities with any form of security to delay and phase development charge payments. For those developments that are subject to a 5% interest charge for the phased payment period, staff recommend that no security be required. There will be limited risk exposure to the Region, as only a small number of developments would fall into this category. This is largely due to the removal of the eligibility of commercial and industrial developments for the phased payments through Bill 138. In cases where developers have taken advantage of a Regional development charge relief or incentive, the Region's interests are already secured (e.g., letter of credit, agreement, collateral mortgage etc.).

Other municipalities charge interest under sections 26.1 and 26.2

As of January 1, 2020 the City of Toronto began charging interest for both frozen and phased development charges. For frozen development charges, the City of Toronto is charging a rate of 1.5% per month capped at their scheduled rate increase in November 2020. In the instances of the phased development charges, the City of Toronto is charging:

- With security, its cost of capital if security is provided
- Without security, the higher of the Canadian Bank Prime rate plus 5% or the market rate for construction financing

The City of Ottawa has also begun charging a rate equal to the greater of the Infrastructure Construction Price Index for Ottawa plus 0.5%, which staff estimate to be 6.3% (5.8%+0.5%), and the average annual rate at which the City issues debentures to fund development charge projects plus 0.5%. Based on consultation, it is expected that many of the Region's other neighbouring and local municipalities will soon address this issue.

Staff have engaged external stakeholders

Staff have consulted with both the local municipalities and the Building Industry and Development Association – York Chapter (BILD) on the administrative process for the interest charge. As with any new policy, staff will continuously monitor the policy's effectiveness and make adjustments if needed.

DEVELOPMENT CHARGES BYLAW AMENDMENT

The 2020 Development Charge Bylaw amendment could reflect legislative changes and review a number of administrative and policy issues

A 2020 Development Charge Bylaw amendment could reflect legislative changes and address some policy and administrative issues. It would be limited in scope and would only

amend specific areas in the bylaw. It does not repeal or replace the existing bylaw and rights of appeal are limited to the areas amended. Specific areas of review include, but are not limited to:

- Removing the 10% statutory deduction for waste diversion and paramedic services and removing soft services that will be funded from community benefits charges
- Reviewing the development charge treatment of stacked townhomes
- Determining if the floor space per worker assumption should be adjusted
- Revising the wording regarding timing of payment and other areas for added clarity

The 2020 Development Charge Bylaw amendment could be tabled in September

Under the Act, the development charge background study must be made publicly available at least 60 days prior to the passing of the development charge bylaw. Additionally, at least one public meeting must be held, with at least 20 days' notice and the proposed bylaw and background study made available to the public at least two weeks prior to the public meeting. Table 3 describes the statutory requirements, Council engagements, and applicable tentative dates. This proposed timeline aligns with the anticipated transition date of January 1, 2021 for the community benefits charge bylaw, and provides staff with time to consider issues that may arise from the public meeting.

Table 3
Key Dates in Development Charge Bylaw Process

| Deliverable | Tentative Date* | Time Elapsed |
|---|------------------------|---------------------|
| 2020 Development Charge Bylaw amendment report and presentation to Committee of the Whole Week 2 | September 3 | |
| 2020 Development Charge Background study and bylaw amendment tabled with Regional Council and publicly released, and notice of public meeting published in all local Metroland newspapers | September 24 | 21 days |
| Public meeting immediately prior to Committee of the Whole Week 2 | October 15 | |
| 2020 Development Charge Bylaw amendment to Council for approval | December 17 | 84 days |
| 2020 Development Charge Bylaw amendment and rates come into effect | January 1, 2021 | |

*Note: These dates are subject to revision based on the 2020 Council and Committee schedule. If a second public meeting is required, it could be held on November 12 or 19.

Staff will engage external stakeholders throughout the 2020 Development Charge Bylaw amendment process

Staff will engage with local municipalities, representatives of the Building Industry and Land Development Association – York Chapter (BILD), non-residential developers and other stakeholders. This consultation process will help ensure all stakeholders understand the Region’s infrastructure investments, methodologies and assumptions for calculating and attributing growth related capital costs.

York Region is expected to pay for a share of the cost for the Yonge Subway Extension, however there are still many unknowns

Staff have started to look at potential options to fund the Yonge Subway Extension, but the scope of the review is beyond what is proposed for the 2020 Development Charge Bylaw amendment. There are still many unknowns that could have significant implications to the Region’s development charge, including the cost sharing arrangement with other levels of government, the share of non-development charge eligible costs, the scope of work, cost estimates, and the planning time horizon.

Given the number of unknowns, including it as part of the 2020 Development Charge bylaw amendment could expose the Region to the risk of appeal. As such, staff recommend that the Yonge Subway Extension be addressed as part of the 2022 Development Charge Bylaw update, after the Municipal Comprehensive Review and master plan processes are complete, assuming more details become available during this time.

COMMUNITY BENEFITS CHARGES

Local municipalities will be impacted more significantly

Community benefits charges replace parkland dedication, density bonusing and certain soft service development charges. The amount of the community benefits charge is based on a percentage of the value of land being developed or redeveloped on the day before the day a building permit is issued, up to a maximum percentage that will be prescribed in regulation.

Community benefits charges will be an important source of revenue for local municipalities as a greater share of local municipal development charge services will be replaced by the new community benefits charge regime, in addition to parkland dedication and density bonusing. For York Region, community benefits charges will help fund growth-related capital costs for public health, court services, senior services and social housing, which currently account for 0.6% of the single detached development charge. York Region does not collect revenues for parkland dedication or density bonusing.

The timing of a new Community Benefits Charge Bylaw is contingent on Provincial direction

The Province has not yet released additional regulatory guidance governing community benefits charges. There remains a number of unknowns that could be clarified through regulation, including the prescribed percentage cap on the charge, methodology to calculate

the charge, treatment of reserves, and administration in a two-tier jurisdiction. Staff will report back to Council with a more detailed timeline and work plan for the Community Benefits Charge bylaw when the regulations are finalized.

5. Financial

Development charges are the primary source of funding growth-related capital infrastructure in the Region. Charging an annual interest of 5% could potentially increase development charge collections by \$176 million over the five year period from 2020 to 2024, compared to the forecast developed for the 2020 Regional budget. The full financial impact of the Policy will not be clear until the Region begins collecting development charges under the provisions of the frozen rates and phased payments.

Passing a development charge bylaw amendment and a new community benefits charge bylaw helps the Region continue to recover growth related capital costs as allowable through legislation while balancing stakeholder concerns and broader policy objectives.

6. Local Impact

The changes introduced by Bill 108 have administrative implications that require integrative process changes at both the regional and local municipal level. Local municipalities are key partners in the efforts to develop and implement the Development Charge Interest Policy. Local municipalities collect development charges for those charges that are payable upon building permit issuance. For this reason, any Regional policy to govern charging interest on frozen and phased development charges must be clearly understood and supported by all local municipalities. Furthermore, local municipalities may wish to develop their own interest charging policies. A coordinated effort will help ensure the policy can be rolled out as smoothly as possible.

Regional staff have engaged with local municipalities to implement the required administrative process changes, including the application of an interest charge on frozen development charges, and will continue to coordinate with local municipalities to track the timing of development charge rate determination and payments. Additionally, regular consultations with the local municipalities may be needed to coordinate the community benefits charges when the regulations are finalized to ensure concerns are appropriately considered and addressed.

7. Conclusion

Charging interest on frozen and phased development charges could help mitigate the impact of Bill 108 by helping to improve cost recovery and encouraging developers to proceed with development in a timely manner. Amending the development charge bylaw prior to its expiry provides an opportunity to revisit specific assumptions and methodologies to better achieve full cost recovery, because of changes introduced by Bills 108 and 138.

For more information on this report, please contact Edward Hankins, Director, Treasury Office at 1-877-464-9675 ext. 71644. Accessible formats or communication supports are available upon request.

Recommended by: **Laura Mirabella, FCPA, FCA**
Commissioner of Finance and Regional Treasurer

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Chief Administrative Officer

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Attachments (2)
eDOCS# 10311725