



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	October 19, 2023
SUBJECT/REPORT NO:	Development Charges Interest Policy Update (FCS23087) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATION

That Council approves the replacement of the Development Charges Interest Policy, effective November 1, 2023, with the following:

- (a) The Development Charges Legislated Deferral Interest Policy, attached as Appendix "A" to Report FCS23087, for building permits, pursuant to Section 26.1 (7) of the *Development Charges Act, 1997*; and
- (b) The Development Charges Rate Lock-In Interest Policy, attached as Appendix "B" to Report FCS23087, for site plan or zoning by-law amendment applications, for the purpose of Section 26.2 (3) of the *Development Charges Act, 1997*.

EXECUTIVE SUMMARY

On October 25, 2022, Bill 23, *More Homes Built Faster Act, 2022* (Bill 23), was introduced at the Ontario Legislature. Bill 23 received Royal Assent on November 28, 2022 and the Province proclaimed that some sections of Bill 23 would come into force effective November 28, 2022.

One of the changes through Bill 23 was that the Province legislated a maximum interest rate for the purposes of Section 26.1 (7) and 26.2 (3) of the *Development Charges Act, 1997* (DC Act). Section 26.1 (7) allows for interest to be applied to the legislated deferral of Development Charges (DCs) for rental housing and institutional developments from the time of building permit issuance to the time of each instalment payment. Section 26.2 (3) allows for interest to be applied to DC rates locked-in at the time of site plan or zoning by-law amendment application to the time of building permit issuance.

The purpose of Report FCS23087 is to recommend that Council adopt the Development Charges Legislated Deferral Interest Policy, Appendix “A” to Report FCS23087 and the Development Charges Rate Lock-In Interest Policy, Appendix “B” to Report FCS23087. These policies have been amended from the Development Charges Interest Policy adopted by Council on May 27, 2020 due to the legislative changes from Bill 23.

Staff has considered the impact of this policy change on proposed developments which have locked in DC rates through a site plan or zoning by-law amendment application under Section 26.2 (3) of the DC Act. To ensure that existing proposed developments are not impacted, through Recommendation (a) to Report FCS23087, staff is recommending that the Development Charges Rate Lock-In Interest Policy change take effect for site plan or zoning by-law amendment applications submitted on or after November 1, 2023. Through Recommendation (b) to Report FCS23087, staff has recommended that the Development Charges Legislated Deferral Interest Policy change for legislated instalments under Section 26.1 (7) of the DC Act, take effect for building permits issued on or after November 1, 2023.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The recommendation to Report FCS23087 impacts the amount of interest collected under Sections 26.1 (7) and 26.2 (3) of the DC Act. The recommendation ensures that the City is in compliance with the legislated maximum interest rate while continuing to provide developments which locked their DCs in at lower rates with those lower rates.

Staffing: There are no implications to staffing levels required.

Legal: The existing DC Interest Policy is inconsistent with the maximum interest rate proclaimed through Bill 23. There is no legal requirement to amend the DC Interest Policy as the DC Act supersedes any City Policy, the amendments are to align the City’s Policy with the maximum legislated in the DC Act.

HISTORICAL BACKGROUND

- June 6, 2019 Bill 108, *More Homes, More Choice Act, 2019*, (Bill 108) received Royal Assent at the Ontario Legislature.
- January 1, 2020 Sections 8(1), 9, 12, and 13(6) of Schedule 3 of the *More Homes, More Choice Act, 2019* (Bill 108) came into force. These are the sections which prescribe that DCs are payable in instalments for certain types of development and also the section that freezes, or locks-in DCs as of site plan or zoning by-law amendment application date, along with the sections that allow municipalities to charge interest related to each.
- May 27, 2020 Through Recommendations (a) and (b) to Report FCS20028 / PED20105, “Development Charges Interest Rates Recommendation Related to Bill 108 Changes and Related Site Plan Changes”, Council approved the content of the existing Development Charges Interest Policy. The existing Development Charges Interest Policy permits an interest rate equal to the Bank of Canada Prime, plus 2% fixed at the date of building permit issuance, compounded semi-annually for the purposes of Section 26.1 (7) of the DC Act and an interest rate equal to the Bank of Canada Prime, fixed at the date of the related planning application, compounded semi-annually for the purposes of Section 26.2 (3) of the DC Act.
- November 28, 2022 *More Homes Built Faster Act, 2022* (Bill 23) received Royal Assent at the Ontario Legislature.
- November 28, 2022 Section 26.3 of the *More Homes Built Faster Act, 2022* (Bill 23) came into force. This is the section that prescribed a maximum interest rate for Sections 26.1 (7) and 26.2 (3) of the DC Act.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The recommendations of Report FCS23087 are to align the City’s DC Interest Policy with the Provincial legislative changes to the DC Act through Section 26.3. While there is no legal requirement to update the City’s DC Interest Policy, the City would be required to monitor both the existing policy against the legislative requirements and apply interest at the lesser of the two.

Appendix “A” and “B” to Report FCS23087 are the amended Development Charges Interest Policies.

RELEVANT CONSULTATION

Legal and Risk Management Services, Corporate Services Department, was consulted in the development of Report FCS23087.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

On October 25, 2022, Bill 23, *More Homes Built Faster Act, 2022* (Bill 23), was introduced at the Ontario Legislature. Bill 23 received Royal Assent on November 28, 2022 and the Province proclaimed that some sections of Bill 23 would come into force effective November 28, 2022. Through Section 26.3 of the DC Act, Bill 23 prescribed a maximum interest rate that can be applied for the purposes of Sections 26.1 (7) and 26.2 (3) of the DC Act.

Section 26.3 of the DC Act prescribes interest is calculated as simple interest at a maximum interest rate of one percentage point higher than the base rate of interest on the most recent quarterly adjustment date (January 1, April 1, July 1 and October 1). The base rate of interest is calculated as the mean of the annual rates of interest announced by each of the Royal Bank of Canada, The Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and The Toronto-Dominion Bank on each of the following dates for each adjustment date:

- October 15 of the previous year for January 1 adjustment date
- January 15 of the same year for the April 1 adjustment date
- April 15 of the same year for the July 1 adjustment date
- July 15 of the same year for the October 1 adjustment date

As a result of this legislative change, staff is currently required to maintain two interest calculations to ensure compliance with the DC Act - the prescribed maximum interest rate under Section 26.3 of the DC Act and the Development Charges Interest Policy adopted by Council on May 27, 2020 through Report FCS20028 / PED20105. The existing Development Charges Interest Policy permits an interest rate equal to the Bank of Canada Prime, plus 2% fixed at the date of building permit issuance, compounded semi-annually for the purposes of Section 26.1 (7) of the DC Act and an interest rate equal to the Bank of Canada Prime, fixed at the date of the site plan application or zoning by-law amendment, compounded semi-annually for the purposes of Section 26.2 (3) of the DC Act.

For the purposes of Section 26.1 (7) of the DC Act, which allows for interest to be applied to the legislated deferral of DCs for rental housing and institutional developments, the City's existing DC Interest Policy has exceeded the maximum interest rate prescribed by Section 26.3 since proclamation of Bill 23. Adoption of the Development Charges Legislated Deferral Interest Policy, Appendix "A" to Report FCS23087, through Recommendation (a), will not have an impact on the interest rates applied to legislated deferrals since the Section 26.3 of the DC Act supersedes the City Policy.

For the purposes of Section 26.2 (3) of the DC Act, which allows for interest to be applied to DC rates locked-in at the time of site plan or zoning by-law amendment application, the City’s existing DC Interest Policy has not exceeded the maximum interest rate prescribed by Section 26.3. Adoption of the Development Charges Rate Lock-In Interest Policy, Appendix “B” to Report FCS23087, will result in increased interest charges being applied to locked-in rates between site plan or zoning by-law amendment application and building permit issuance.

Table 1 to Report FCS23087 outlines the difference between the City of Hamilton’s existing Development Charges Interest Policy and those proposed through Recommendations (a) and (b) to Report FCS23087.

Table 1
Comparison of the City of Hamilton’s existing
Development Charges Interest Policy and the Legislated Maximum

	City’s existing DC Interest Policy*	Legislated Maximum (Proposed Policies)
Interest rate	Fixed	Variable
Interest calculation	Semi-Annual Compounding	Simple
Section 26.1 (7): Interest Rates for Instalments of Legislatively Deferred DCs Appendix “A” to Report FCS23087		
June 1, 2022 – June 30, 2022	4.45%*	3.45%
July 1, 2022 – September 30, 2022	4.70%*	4.20%
October 1, 2022 – December 31, 2022	7.45%*	5.70%
January 1, 2023 – March 31, 2023	8.45%*	6.45%
April 1, 2023 – June 30, 2023	8.70%*	7.70%
July 1, 2023 – September 30, 2023	8.95%*	7.70%
October 1, 2023 – December 23, 2023	To be Determined	8.20%
Section 26.2 (3): Interest Rates for DC rates locked-in as of site plan or zoning by-law amendment application date Appendix “B” to Report FCS23087		
June 1, 2022 – June 30, 2022	2.45%	3.45%
July 1, 2022 – September 30, 2022	2.70%	4.20%
October 1, 2022 – December 31, 2022	5.45%	5.70%
January 1, 2023 – March 31, 2023	6.45%	6.45%
April 1, 2023 – June 30, 2023	6.70%	7.70%
July 1, 2023 – September 30, 2023	6.95%	7.70%
October 1, 2023 – December 23, 2023	To be Determined	8.20%

* Note: Interest rate applied is capped at the legislated maximum. The interest rate as calculated by the existing Development Charges Interest Policy has been provided for illustrative purposes.

Due to the complexity of monitoring all files against two interest rate methodologies (the previously adopted policy and the new legislated maximum), through Recommendation (a) to Report FCS23087, staff recommends that Council adopt Appendix “A” to Report FCS23087 as the City of Hamilton’s Development Charges Legislated Deferral Interest Policy which sets the interest rate applied for the purposes of Section 26.1 (7) of the DC Act, effective for site plan or zoning by-law amendment applications submitted on or after November 1, 2023, as the maximum interest rate permitted under Section 26.3 of the DC Act. If Section 26.3 of the DC Act is repealed, the proposed Development Charges Interest Policy reverts to the previously adopted Development Charges Interest Policy.

Through Recommendation (b) to Report FCS23087 staff recommends that Council adopt Appendix “B” to Report FCS23087 as the City of Hamilton’s Development Charges Rate Lock-In Interest Policy, which sets the interest rate applied for the purposes of Section 26.2 (3) of the DC Act, effective for building permits issued on or after November 1, 2023, as the maximum interest rate permitted under Section 26.3 of the DC Act. If Section 26.3 of the DC Act is repealed, the proposed Development Charges Interest Policy reverts to the previously adopted Development Charges Interest Policy.

ALTERNATIVES FOR CONSIDERATION

Not Applicable

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS23087 – Development Charges Legislated Deferral Interest Policy

Appendix “B” to Report FCS23087 – Development Charges Rate Lock-In Interest Policy

AB/LG/dt