

Background

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 the date of writing this report, 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.

The sections of Bill 108 pertaining to the freezing of rates and instalment payments came into effect on January 1, 2020. These changes for freezing of rates affect only applications for rezoning or site plan approval submitted after January 1, 2020.

Freezing of Rates

Changes in determining the applicable rate of DCs payable has been changed for properties for which a rezoning or an application for Site Plan agreement are required. Previously, the rates for properties in these categories were determined as of the day of the issuance of the Building Permit. This guide still continues to apply to properties which do not require a rezoning or a site plan agreement.

For the identified categories, effective January 1st, 2020 the legislation provides that the rate of development charges applicable is determined as of the date that the application for rezoning or site plan is complete, or if both are applied for, the date of the completion of the later of the two applications. The application will be considered complete once the City issues a completion notice in accordance with City policy. Due to the complexities associated with working through the development process, there may be considerable time passing between the date of submission of the application and the date of issuance of the building permit. By freezing the rate at complete submission of the application rather than building permit, the developer may have the benefit of a lower DC rate. Of course if it should happen that the DC rates fall, the frozen rate would still be determined as of the date of the application. It should be noted that the rates are frozen only for 2 years. If the building permit is not issued within 2 years of the ‘freeze date’, the developer will be required to pay the DC rate applicable at the date of the issuance of the building permit.

Instalment Payments

In addition, under Bill 108, as amended by Bill 138, the Province has provided for an instalment payment plan for certain types of development. The definitions established in the Act for these affected types of development are set out below:

1. Institutional development
 - a. Long-term care homes under Long-Term Care Homes Act 2007; retirement homes under Retirement Homes Act 2010; post-secondary institutions; Royal Canadian Legion memorial home, clubhouse or athletic grounds; and hospices to provide end of life care.
2. Rental
 - a. Building with four or more dwelling units all of which are intended for use as rented residential premises.
3. Non-profit housing development
 - a. Intended for use as residential premises by: non-share capital corporation under Corporations Act or Canada Not-for Profit Corporations Act and in good standing under governing Act with primary object is to provide housing; non-profit housing co-op under Co-Operative Corporations Act and in good standing under the Act.

Some of these developments may receive exemption from development charges under Section 5 of the City's DC by-law 2019-100. For example, exemptions include: buildings owned by university and used for the university's academic or research purposes; hospice that is exempt from property taxes; long-term care homes that are regulated under the Long-Term Care Homes Act and exempt from property taxes; rental buildings with four or more units have a reduction of 50% to the DC amount if fully located within a node or 100 metres of the corridor.

The amendments to the DC Act, 1997 provide that developers of institutional or rental housing development may pay the applicable development charges by way of 6 equal instalment plans over 5 years and developers of non-profit housing may pay the applicable development charges by way of 21 equal installment plans over 20 years. The first payment is due on the earlier of the date of occupancy or approval of occupancy under the building permit and the remaining instalments on the subsequent annual anniversaries of that date. The onus is on the developer to notify of occupancy. Failure to notify the City of occupancy within 5 business days, may result in loss of the right to installments, with payment of the entire amount becoming due in full. However, the City is entitled to charge interest on the unpaid amount.

This approach benefits the developer by removing the requirement for a single bulk payment on issuance of the building permit while compensating the municipality with interest. Developers may still pay in full at any time if they wish to do so. The obligation to pay the DC's continues until payment in full, and is not impacted by changes in the rates under the DC bylaw or by a repeal of the DC bylaw.

Protection for the Municipality

The changes introduced by the Province are designed to assist the developer.

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. There will be risk exposure to the City in relation to the type of developments that are entitled to instalment payments for development charges.

However, the province has also considered some protection for municipalities which may be impacted by delays in receipt of funds, or receipt of development charges at lower rates than under the pre-2020 rules, for some types of developments.

Bill 108 allows municipalities to charge interest on frozen and instalment payments of development charges. While the legislative framework provides that the Province may set a maximum interest rate, it has not done so yet, and has indicated that it does not intend to do so.

It has been left to the municipality to determine if it wishes to charge interest on the unpaid development charges and to set an interest rate.

Staff recommend an interest rate charge of 5% which is consistent with two other DC instalment payment agreements approved by Council in 2019 and early 2020 relating to a senior's residence as well as an industrial building. If a landowner does not make payment based on the instalment payment plan, then late payments will be subject to the existing accounts receivable interest rate of 1.25% per month. The interest rate of 5% would start at the date when DC's are payable, which would be the date the building permit is issued, in accordance with the DC Act.

Furthermore, if a landowner misses a DC instalment payment, the missed payment can be added to the tax roll on the property. There would be an additional administration fee (\$64 at the time of writing this report) when the amount owing is moved to the tax roll.

As of January 1, 2020 the City of Toronto began charging interest for both frozen and instalment payment of 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 instalment payment of development charges, the City of Toronto is charging based on its cost of capital if financial security (ie. letter of credit) is provided; or 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%, 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 other municipalities within the province will soon address this issue.

Notice

The introduction of instalment payments for development charges for certain types of developments introduces the risk that new purchasers or lenders will not be aware of the outstanding obligations.

To assist purchasers / mortgage lenders, staff propose to include comments on tax roll accounts and on the tax certificate to give notice that there are outstanding development charges. As a tax certificate is generally obtained on a purchase or mortgage transaction, this will be one way to relay information. Staff will also be exploring other options to inform purchaser /mortgage lenders of outstanding development charge obligations by advising those inquiring of the account that there are DC's owing as a result of a DC instalment agreement.

Internal Policies and Procedures

The changes introduced by Bill 108 have administrative implications that require internal policies and procedures. These changes would include the application of an interest charge on frozen and instalment payments of development charges as well as to track the timing of development charge rate determination and payments as well as collection of instalments of up to over 20 years after a building permit is issued.

Conclusion

Charging interest on frozen and instalment payments of development charges will help mitigate the impact of Bill 108 by improving cost recovery to minimize impact for existing taxpayers and encouraging developers to proceed with development in a timely manner. Charging of interest will assist to balance the loss of cash flow on DC's collected from time of building permit issuance for those that are frozen at earlier rates or paid by instalments to a later date.