

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING OF MARCH 9, 2020
FROM:	ANNA LISA BARBON, CPA, CGA MANAGING DIRECTOR, CORPORATE SERVICES & CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	DEVELOPMENT CHARGES HOUSEKEEPING MATTERS RELATED TO BILL 108

RECOMMENDATION

That on the recommendation of the Managing Director, Corporate Services & City Treasurer, Chief Financial Officer, the following actions be taken:

- a) the attached proposed by-law (Appendix "A") being "A by-law to adopt a new Council Policy entitled "Development Charge Interest Rate Policy", BE INTRODUCED at the Municipal Council meeting to be held on March 24, 2020 to establish a framework for determining the interest rate that can be applied to Development Charges for certain development types; and,
- b) the attached proposed by-law (Appendix "B") being "A by-law to approve and authorize a Development Charges Alternative Payment Agreement template to provide for the alternative payment of Development Charges for developments that qualify for deferred Development Charge payments made under Section 27 of the *Development Charges Act, 1997 S.O. 1997, c. 27*, as amended; and to delegate the authority to enter into such Agreements to the City Treasurer or delegate", BE INTRODUCED at the Municipal Council meeting to be held on March 24, 2020.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Planning & Environment Committee, July 22, 2019, Agenda Item 2.16, Information Report - Proposed Regulations for Bill 108-More Homes, More Choices Act, 2019

Planning & Environment Committee, May 27, 2019, Agenda Item 2.3, Bill 108 - More Homes, More Choice Act, 2019

LINK TO STRATEGIC PLAN FOR THE CITY OF LONDON

The following report supports the 2019 - 2023 Strategic Plan through the strategic area of focus of Building a Sustainable City by helping to ensure that London's growth and development is well planned and sustainable over the long-term.

BACKGROUND

The Minister of Municipal Affairs and Housing introduced *Bill 108, More Homes, More Choice Act, 2019* on May 2, 2019. The Bill proposes a number of amendments to 13 different statutes, including the *Development Charges Act (DCA)*, as part of the Provincial Government's Housing Supply Action Plan. The Bill received Royal Assent on June 6, 2019 and certain portions of the Bill have been proclaimed and are in force and effect.

The changes to the DCA resulting from Bill 108 that are now in force and effect include the following:

- **When Development Charges Are Calculated**

The current Development Charge By-law requires development charges to be calculated and paid at the time of building permit issuance. Bill 108 changes the timing of when a development charge is calculated at an earlier point in time. Bill 108 requires the development charge to be calculated on the day a complete application is received for site plan, or if this does not apply, the day a complete application is received for a zoning by-law amendment. The development charge rate would remain 'frozen' for up to two years from the date the application is approved, after which will revert back to time of building permit issuance.

Although the development charge rate would be calculated at an earlier point in time, the City may charge interest from the date a complete application is received to the date the development charge is payable.

- **Deferred Payment of Development Charges**

Bill 108 amends the DCA so that certain types of development qualify for deferred payment of development charges. Rental Housing that is not non-profit, Institutional development and non-profit housing are classified as eligible development types. Development charges for these types of development are to be deferred as follows:

- Rental Housing that is not non-profit and Institutional development are to pay development charges in 6 annual instalments; and
- Non-Profit Housing is to pay development charges in 21 annual instalments.

DEVELOPMENT CHARGE INTEREST RATE POLICY

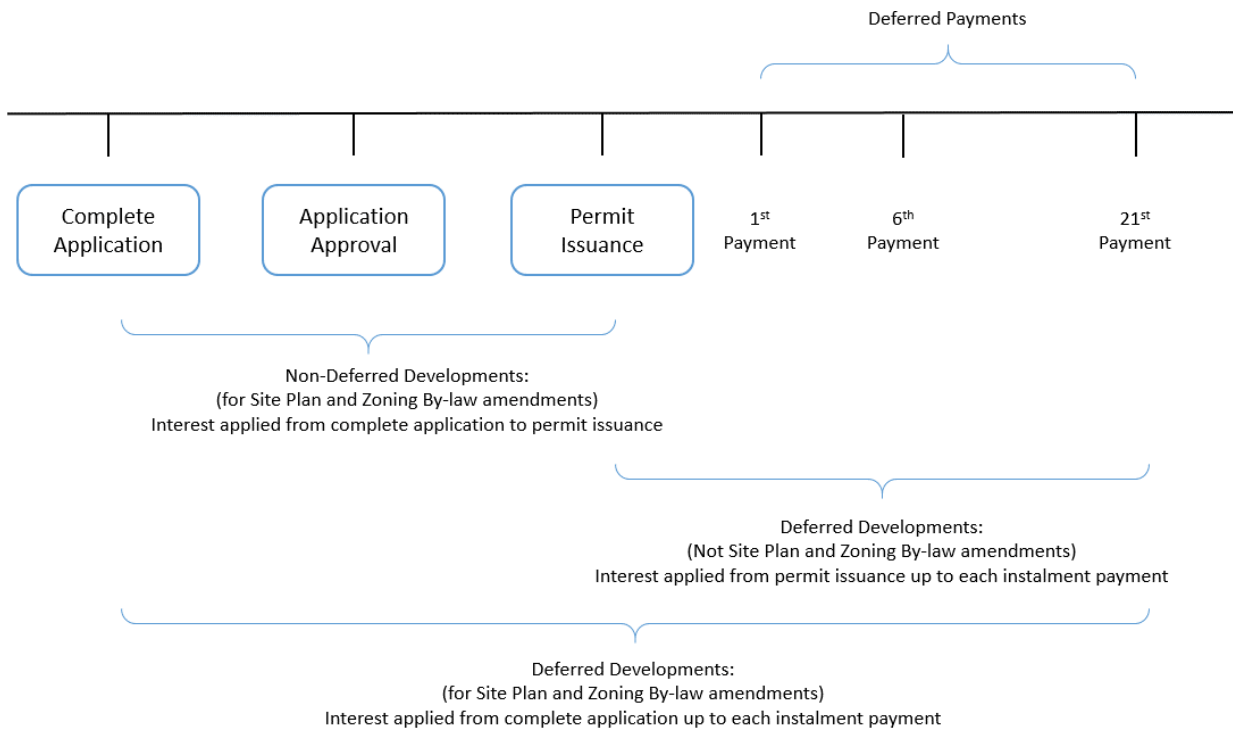
Since the DCA now allows municipalities to charge interest from the point that development charges are calculated until time of payment, establishing an interest rate policy will provide a consistent and transparent approach. Ensuring that interest is applied to development charges until time of payment is critical to ensure that development charges reserve funds have the cash flows and appropriate funding needed to support future growth related infrastructure needs across the City.

While the DCA allows for interest to be charged on development charges, there is no guidance provided for what the interest rate should be or how the interest rate is to be determined. The DCA does not prescribe a maximum interest rate which gives municipalities the flexibility to establish and design an interest rate program that is applied to development charges.

Figure 1 illustrates the development charge interest rate periods. For non-deferred developments with a site plan application or zoning by-law amendment, interest begins accruing from the day a complete application is received until the day the building permit is issued. Where there is no site plan application or zoning by-law amendment, the development charge is calculated at the time of building permit issuance, therefore no interest is applied.

For deferred developments with a site plan application or zoning by-law amendment, interest begins accruing from the day a complete application is received until the day of each instalment. However, if there is no site plan application or zoning by-law amendment, then interest is applied from the date of building permit issuance until the date of each instalment.

Figure 1 – Development Charge Interest Periods



The Policy Framework

The Civic Administration is recommending that the attached by-law and related policy (Appendix “A”) be approved by Municipal Council. Since determining development charge rates at an earlier point in time will lower the amount of development charge levies and deferring payments for certain qualifying development types impacts cash flows, applying interest will be essential to ensure that funds are available and that required growth infrastructure can be built when planned. The Civic Administration is recommending that the interest rate applied to ‘frozen’ development charge rates and deferred payments be established at the time development charges are calculated. This locked-in interest rate would be based on the average annual historical five year Statistics Canada Non-residential Building Construction Price Index for Toronto year over year change as of September 30th. This approach is recommended for the following reasons:

- Using the Non-residential Building Construction Price Index would be the same index that is used to increase development charge rates annually, which supports achieving a revenue neutral position.
- Presently, the DCA restricts the types of costs that can be recovered through development charges to capital costs. The Non-residential Building Construction Price Index provides inflationary increases for non-residential construction, which is aligned with the types of costs that are included in the development charges rates.
- Using a five year average will help smooth year-to-year fluctuations in the index so that the interest rate applied to development charges will be less susceptible to significant changes to the rate.
- Provides a consistent and transparent approach for the administration of development charge interest for both deferral scenarios.

This approach provides an objective rate setting process that supports the ‘growth pays for growth’ model while providing a balance between affordability and the need to fund growth projects.

The Civic Administration will monitor the effectiveness of the development charges interest rate policy and will report back to Municipal Council should the policy need to be adjusted.

DEVELOPMENT CHARGES ALTERNATIVE PAYMENT AGREEMENTS

The DCA requires that eligible development types for deferred payment must pay development charges over the stipulated period of time. However, the DCA also allows for development charges to be paid at an earlier or later date than would otherwise be payable. Section 27(1) of the DCA states:

A municipality may enter into an agreement with a person who is required to pay a development charge providing for all or any part of a development charge to be paid before or after it would otherwise be payable.

Prior to the Bill 108 amendments to the DCA, alternative payment agreements by the City of London were rare. However, now that the DCA requires that certain types of development charges be paid in deferred installments, it is likely that the volume of alternative payment arrangements under Section 27 of the DCA will increase.

This report recommends the provision of alternative payment options for those developments subject to deferred payment rules. There are a number of drivers that support introducing a proposed development charges alternative payment agreement template at this time. These include:

- Provides greater flexibility for those parties required to pay development charges over an extended period of time so that earlier payment options are available;
- The interest costs charged on deferred payments may be avoided by earlier payment;
- Reduces the administrative burden that would be required each time Section 27 of the DCA is exercised; and
- Provides a consistent and transparent approach for handling alternative payment agreements.

The Civic Administration is recommending that the by-law and Development Charges Alternative Payment Agreement Template attached as Appendix “B” to this report be approved by Municipal Council and that the City Treasurer or designate be delegated the authority to enter into such agreements.

The following alternative payment options are recommended:

- 1) Rental Housing that is not non-profit and Institutional development that are required to pay development charges in 6 annual instalments be given an alternative payment option to pay at building permit issuance (the same time as non-deferred developments);
- 2) Non-Profit Housing that is required to pay development charges in 21 annual instalments be given the following alternative payment options:
 - a. Full development charge payable at time of building permit issuance; or
 - b. Full development charge payable at either 1 or 2 years after building permit issuance.

The 1 or 2 year payment alternatives for non-profit housing development is recommended since some non-profit housing providers receive senior government funding that is used to support the development. However, it is common that this funding is not released until a building permit has been issued. This creates a cash flow problem that is predicated on the timing of the release of the senior government funding. By providing non-profit housing developments with the ability to pay development charges 1 or 2 years after building permit issuance, allows flexibility so that these cash flow constraints are addressed.

The Civic Administration will monitor the effectiveness of the Development Charges Alternative Payment Agreement Template and will report back to Municipal Council should the agreement need to be adjusted.

CONCLUSION

As a result of *Bill 108, More Homes, More Choice Act, 2019*, the DCA has been amended to adjust the timing of when development charges are calculated and to provide for deferred development charges for certain development types. The recommendations outlined in this report related to a development charges interest rate policy and delegated authority for development charge alternative payment agreements are driven by the legislative changes to the DCA.

PREPARED BY:	PREPARED BY:
JASON SENESE, CPA, CGA, MBA MANAGER, DEVELOPMENT FINANCE	KEVIN EDWARDS, MCIP, RPP MANAGER, DEVELOPMENT FINANCE
SUBMITTED BY:	RECOMMENDED BY:
PAUL YEOMAN, RPP, PLE DIRECTOR, DEVELOPMENT FINANCE	ANNA LISA BARBON, CPA, CGA MANAGING DIRECTOR, CORPORATE SERVICES & CITY TREASURER, CHIEF FINANCIAL OFFICER

APPENDIX “A”

Bill No. _____ 2020

By-law No. CPOL.- _____

A by-law to adopt a new Council Policy entitled
“Development Charge Interest Rate Policy”.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, C.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, C.25, as amended, provides a municipality with the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS the *Development Charges Act, 1997* S.O. 1997, c.27, as amended authorizes the council of a municipality to pass a by-law to impose Development Charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies;

AND WHEREAS the Council of The Corporation of the City of London wishes to enact a new Council Policy entitled “Development Charge Interest Rate Policy”;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The policy entitled “Development Charge Interest Rate Policy”, attached as Schedule “A” to this by-law is hereby adopted.
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –

SCHEDULE "A"

Policy Name: Development Charge Interest Rate Policy

Legislative History: Enacted March 24, 2020 (By-law No. CPOL.-_____)

Last Review Date: March 9, 2020

Service Area Lead: Director, Development Finance

1. Policy Statement

The purpose of this Policy is to establish a framework for determining the interest rate that can be applied to Development Charges for certain development types.

2. Definitions

2.1 City: means the Corporation of the City of London.

2.2 City Treasurer: means the individual appointed by Municipal Council in accordance with the *Municipal Act, 2001*.

2.3 Development Charge: means any Development Charge that may be imposed pursuant to a By-law enacted under the authority of the *Development Charges Act, 1997 S.O. 1997, c.27*, as amended.

3. Applicability

This Policy applies only to Development Charges administered in compliance with the current Development Charges By-law enacted under the authority of the *Development Charges Act* that are subject to interest charges.

4. The Policy

The following approach establishes the Policy for Development Charge Interest:

4.1 The average annual historical five year Statistics Canada Non-residential Building Construction Price Index for Toronto year over year change as of September 30th shall be the financial mechanism used as the foundation for establishing the interest rate.

4.2 The interest rate shall be established at the earlier of when the Development Charge is calculated or when the first payment is due. The established interest rate shall remain in effect until the final payment is received.

4.3 Interest accruing on the unpaid balance of the Development Charge shall be compounded annually.

4.4 The City Treasurer, or designate is authorized to execute the administrative actions necessary to implement the Development Charges interest rate.

APPENDIX “B”

Bill No.
2020

By-Law No.

A by-law to approve and authorize a Development Charges Alternative Payment Agreement template to provide for the alternative payment of Development Charges for developments that qualify for deferred Development Charge payments made under Section 27 of the Development Charges Act, 1997 S.O. 1997, c. 27, as amended; and to delegate the authority to enter into such Agreements to the City Treasurer or delegate.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorize a municipality to pass by-laws necessary or desirable for municipal purposes and, in particular, paragraph 3 of subsection 10(2) authorizes by-laws respecting the financial management of the municipality;

AND WHEREAS section 23. 1 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate its authority;

AND WHEREAS subsection 23.2(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate quasi-judicial powers under the *Municipal Act, 2001* to an individual who is an officer, employee, or agent of the municipality;

AND WHEREAS the Municipal Council of The Corporation of the City of London deems it appropriate to pass a by-law to delegate an alternative payment agreement template for developments that qualify for deferred Development Charge payments made under Section 27 of the *Development Charges Act, 1997* S.O. 1997, c.27, as amended;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Development Charges Alternative Agreement template to provide alternative payment agreements for developments that qualify for deferred Development Charge payment made under Section 27 of the *Development Charges Act, 1997* S.O. 1997, c. 27, as amended substantially in the form, attached as Schedule “1” to this by-law and to the satisfaction of the City Solicitor is hereby authorized and approved.
2. The City Treasurer, or delegate, is hereby authorized to enter into and execute Development Charges Alternative Agreements authorized and approved in section 1 above.
2. This by-law comes into force on the day it is passed.

PASSED in Open Council on

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –

SCHEDULE 1

DEVELOPMENT CHARGES ALTERNATIVE PAYMENT AGREEMENT

THIS AGREEMENT made this day of , 20xx.

BETWEEN:

APPLICANT NAME

(hereinafter referred to as the "Applicant")

-and-

THE CORPORATION OF THE CITY OF LONDON

(hereinafter referred to as the "City")

WHEREAS the Applicant has represented to the City that the lands described in Schedule "A" hereto (the "Lands") are owned by it, as stated in the Solicitor's Certificate attached to this Agreement hereto as Schedule "B"

AND WHEREAS pursuant to the City's Development Charge By-law, a development charge is payable by the Applicant to the City in xx annual instalments;

AND WHEREAS the *Development Charges Act, 1997, S.O. 1997, c. 27*, as amended provides that a municipality may enter into an agreement with persons who are required to pay a development charge, to authorize that all or a portion of the development charge be paid before or after it would otherwise be payable;

NOW THEREFORE IN CONSIDERATION OF the foregoing, the parties agree as follows:

RECITALS

1. The Recitals are confirmed by the Applicant and the City (the "Parties") to be correct and to constitute the basis for this Agreement.

REQUEST TO ADVANCE PAYMENT OF DEVELOPMENT CHARGE

2. The Applicant acknowledges its obligation to pay a development charge in accordance with Section 26 of the *Development Charges Act, 1997*, as amended. The Applicant has requested that it be permitted, pursuant to Section 27 of the *Development Charges Act, 1997*, as amended, to pay the development charge before it would otherwise be payable.

“DUE DATE” FOR PAYMENT PURSUANT TO THIS AGREEMENT

3. The Applicant hereby covenants and agrees to pay the applicable development charge to the City with interest, on **MM DD YYYY** (the “Due Date”).

ANTICIPATED DEVELOPMENT CHARGE

4. The anticipated amount of the development charge payable by the Applicant has been calculated on the basis of the following information:

Type	Units / m2 of Gross Floor Area (A)	Development Charges Rate (B)	Development Charges Payable (A) * (B)
Single & Semi-Detached			
Multiples / Row Housing			
Apartments < 2 Bedrooms			
Apartments >= 2 Bedrooms			
Institutional			
Demolition Credits			
TOTAL			

TIMING OF DEVELOPMENT CHARGE CALCULATION

5. The actual amount of the development charge will be determined on the basis of prevailing rates and rules in accordance with Section 26 of the *Development Charges Act, 1997*, as amended. If, before any building permit is issued, the City's Development Charge By-law is amended or is repealed and replaced or the information set out above is revised, the applicable development charge will

be revised to reflect these changes and the Parties agree that this Agreement will apply to that revised information and amount. Once any building permit has been issued, the amount of the applicable development charge shall be calculated in accordance with Section 26 of the *Development Charges Act, 1997*, as amended.

REGISTRATION ON TITLE

6. It is the intention of the Parties that this Agreement create an interest in the Lands in favor of the City, to the extent of the deferred development charge identified herein. To this end, the Parties intend that Notice of this Agreement, including its schedules, be registered on title to the Lands. The Applicant agrees to pay all costs associated with registration of Notice of this Agreement. If Notice of this Agreement is not accepted by the Registrar for registration, the parties agree that the development agreement under section 41 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, for the residential development that is subject to the development charge, will make reference to the Agreement and its relevant particulars.

REMOVAL OF AGREEMENT FROM TITLE

7. Once the Applicant has satisfied all provisions of this Agreement, the City shall not unreasonably withhold its consent to removal of Notice concerning this Agreement at the Applicant's expense from Title and shall execute such documents as may be required.

COLLECTION OF CHARGES

8. The Applicant acknowledges that if any amount owing to the City under this Agreement remains unpaid after the Due Date, the City may, in addition to any other rights it may have, add the unpaid amount to the tax roll for the Lands, without notice, and collect such amount in the same manner as property tax.

INTEREST ON AMOUNT OWING BEFORE DUE DATE

9. The Applicant agrees to pay interest to the City at the rate of **xx%** per annum on the amount of the development charge, in accordance with Section 26 of the *Development Charges Act, 1997*, as amended and the City's Development Charge Interest Rate Policy.

10. The Applicant agrees to pay interest after the Due Date at the rate of ten percent (10%) per annum on the amount outstanding from time to time, until all amounts, including accrued interest and charges, have been paid in full.

11. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in writing sent by prepaid registered post, addressed in the case of notice given by the City, to:

City Clerk
The Corporation of the City of London
P.O. Box 5035
300 Dufferin Avenue
London, ON N6A 4L9

And in the case of notice given by the Applicant, to:

Applicant Name
Applicant Address

WARRANTY

12. The Applicant represents and warrants to the City as follows:

12.1 The Applicant is a corporation validly subsisting under the laws of Ontario and has full corporate power and capacity to enter in this Agreement; and

12.2 All necessary corporate action has been taken by the Applicant to authorize the execution and delivery of this Agreement.

BINDING ON SUCCESSORS

13. It is agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Applicant herein contained shall run with the Lands for the benefit of the City.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

SIGNED, SEALED AND DELIVERED

)
) **APPLICANT NAME**
)
) _____ c/s
) Name:
) Title:
) I have authority to bind the corporation.
)
)
) THE CORPORATION OF THE CITY OF
) LONDON
)
) _____
) Mayor
)
) _____ c/s
) City Clerk
)

SCHEDULE "A"

DESCRIPTION OF "LANDS"

SCHEDULE "B"

SOLICITOR'S CERTIFICATE