City of Kingston
Report to Council
Report Number 20-072

To: Mayor and Members of Council
From: Desiree Kennedy, Chief Financial Officer & City Treasurer
Resource Staff: Lana Foulds, Director, Financial Services
Date of Meeting: February 18, 2020
Subject: Amendment to the Development Charges Act

Council Strategic Plan Alignment:

Theme: Regulatory & compliance

Goal: See above

Executive Summary:

The City collects development charges under By-Law Number 2019-116, a By-Law to Establish Development Charges for the City of Kingston, Cited As the “City of Kingston Development Charge By-Law 2019” for the purposes of financing the anticipated costs of infrastructure required for future development in the municipality. By-Law Number 2019-116 provides for the calculation and payment of development charges at the time of issuance of the building permit.

Bill 108 - More Homes, More Choice Act, 2019 received Royal Assent on June 6, 2019, with some sections coming into force on the day of Royal Assent and others coming into force on the day named by proclamation. Schedule 3 of Bill 108 amends the Development Charges Act, 1997. The Lieutenant Governor in Council has also recently made and filed regulations (O.Reg. 454/19) which amend certain regulations made under the Development Charges Act, 1997 (O. Reg. 82/98). These amendments are intended to encourage increased housing development, affordability and predictability throughout the Province.

As a result of these recent amendments, effective January 1, 2020, three development types are eligible to pay development charges on an installment basis. For rental housing and institutional developments, development charges are payable over a five-year term, in six equal annual installments. For non-profit housing developments, development charges are payable over a 20-year term, in 21 equal annual installments.
Also effective January 1, 2020, for all developments proceeding by a Site Plan or Zoning By-Law Amendment planning application made after December 31, 2019, the development charge will be based on the rates in effect at the time of the planning application subject to the building permit issuance occurring within two years from the date of the Site Plan or Zoning By-Law Amendment approval. If the development is not proceeding via these planning approvals, or if the development is as a result of another type of planning application approval (i.e. Plan of Subdivision), the calculation of the development charge will continue to be determined at the time of issuance of the building permit.

These amendments to the Development Charges Act, 1997 also permit a municipality to charge interest on development charges payable during the deferral period for rental housing, institutional development, and non-profit housing development from the date the development charge would have previously been payable to the date the installment is paid. Moreover, a municipality may now charge interest during a development charge rate freeze from the date the applicable application is received to the date the development charge is payable. In both cases, the interest rate imposed is not to exceed the prescribed maximum interest rate. It is noted however, that no maximum interest rate has been prescribed at this time; therefore, municipalities are required to determine what interest rate will apply.

The purpose of this report is to provide authority to the Chief Financial Officer and City Treasurer to charge interest in accordance with s. 26.1 and 26.2 of the Development Charges Act, 1997, as amended.

Recommendation:

That Council authorize the Chief Financial Officer and City Treasurer to charge interest on development charges which are payable in annual installments in accordance with section 26.1 of the Development Charges Act, 1997:

   a. at the City’s Banking Institution prime rate plus one percent or;
   b. at the prescribed maximum rate

Calculated from the date the development charge would have been payable in accordance with section 26 of the Development Charges Act, 1997 to the date the development charge installment is paid; and

That Council authorize the Chief Financial Officer and City Treasurer to charge interest on development charges which are determined in accordance with subsection 26.2(1)(a) or 26.2(1)(b) of the Development Charges Act, 1997:

   a. at the City’s Banking Institution prime rate plus one percent or;
   b. at the prescribed maximum rate

Calculated from the date of the applicable application to the date the development charge is payable.
Consultation with the following Members of the Corporate Management Team:

Paige Agnew, Commissioner, Community Services

Peter Huigenbos, Commissioner, Business, Environment & Projects  Not required

Brad Joyce, Acting Commissioner, Corporate Services

Jim Keech, President & CEO, Utilities Kingston  Not required

Sheila Kidd, Commissioner, Transportation & Public Works  Not required
Options/Discussion:

The City collects development charges under the Development Charges Act, 1997 for the purposes of financing the anticipated costs of infrastructure required for future development in the municipality. In 2019, an update to the Development Charges Background Study (“Study”) was undertaken and approved by Council. Anticipated changes resulting from Bill 108 – More Homes, More Choice Act, 2019 were monitored during the Study preparation; however, as these were not fully proclaimed at the time of by-law passage, they were not incorporated. It was recommended to Council in the next steps of Report Number 19-222 ‘Final 2019 Development Charge Background Study’ that the background study and by-law would need to be updated at a later date, as required, to reflect any regulations and transitional rules related to the implementation of Bill 108. Council approved By-Law Number 2019-116, a By-Law to Establish Development Charges for the City of Kingston, cited as the “City of Kingston Development Charge By-Law 2019”, which came into effect on September 29, 2019.

Effective January 1, 2020 sections 8(1), 9, 12 and 13(6) of Schedule 3 of Bill 108 came into force. Those sections amended the Development Charges Act, 1997 to change the timing of the determination and payment of Development Charges (DCs) in certain circumstances. In this regard, s. 26.1 was added to the Development Charges Act, 1997 to make DCs for rental housing (that is not non-profit) and institutional development payable in six (6) equal annual installments and DCs for non-profit housing development payable in 21 equal annual installments. The first installment payment would occur on the date of issuance of the occupancy permit or occupancy of the building, whichever is earlier, with the subsequent installments occurring annually on the anniversary date of the first installment payment.

Section 26.2 was added to the Development Charges Act, 1997 to set out rules for when the amount of a DC is determined. The calculation of DCs will now be based on (a) the date of an application for a site plan control area, or (b) if there is no such application, the date of an application for zoning by-laws, or (c) if neither of these applications have been made, the charge will continue to be determined at the time of building permit issuance. The charges are effectively frozen at the DC rate in effect at the time of submission of a complete Site Plan or Zoning By-Law Amendment application. A ‘Notice of Complete Application’ is prepared and distributed when it has been determined that the required information was submitted with the application. Upon approval of the application, developers have a maximum of two years in which a building permit must be issued and the development charges paid at these frozen rates. If that time has elapsed, then the rate continues to be determined at the rate in effect at the time of building permit issuance. It is noted that these provisions are only applicable to developments for which Site Plan and Zoning By-law Amendment planning applications were submitted on or after January 1, 2020.

Where DCs are payable in installments or the charges are determined at the time of Site Plan or Zoning By-Law Amendment planning application, the municipality may charge interest on the DC payment. The interest rate may be established by the municipality, but must not exceed the prescribed maximum interest rate. Moreover, the interest period for installment payments is from the date of building permit issuance to the date of DC payment, and for Site Plan and Zoning By-Law Amendment applications, from the date of the planning application to the date of DC
payment. Unpaid DCs, including interest payable, can be added to the tax roll (Schedule 3, Section 8 (1) [DCA S 26.1 (7)-(8) & S 9 [DCA S 32 (1)])).

It is noted that no maximum interest rate has been prescribed at this time; therefore, municipalities are required to determine what interest rate will apply. For the purpose of applying interest, staff is recommending a rate equal to the bank prime lending rate plus one percent or the Minister prescribed maximum interest rate, once determined, whichever is greater.

Further changes to the Development Charges Act, such as the transition of soft service charges to a Community Benefits Charge under the authority of the Planning Act, have not been proclaimed at this time. Amendments to DC By-Law Number 2019-116 will be undertaken once these changes are proclaimed and the transition period is formally defined.

Existing Policy/By-Law:

By-Law Number 2019-116, ‘A By-Law To Establish Development Charges For The City of Kingston, Cited As The “City Of Kingston Development Charges By-Law 2019’

Development Charges, Act, 1997, S.O. 1997, Chapter 27 (D.C.A)

Bill 108, the “More Homes, More Choice Act, 2019”

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

It is expected that the legislative changes that allow for payment of DC’s over a number of years will impact development charge cash flow requirements. As most of the relevant “hard services” must be provided in advance of development occurring, increased debt and borrowing costs will be required to fund capital expenditures that are made well in advance of receiving DC revenues. The ability to charge interest allows the municipality to recover some of the lost revenue from the installment regime; however, this may not fully mitigate the interim financing requirements.

DC rates are “re-set” every five years as part of the Background Study process. This process, along with annual indexing, attempts to align DC revenues with current infrastructure costs. The indexing factor is implemented to keep pace with the inflationary factors affecting the costs of goods and services and DC updates are required at least every 5 years to ensure the charges reflect the necessary funding for growth-related needs. Locking-in DC rates well in advance of the building permit issuance will produce a shortfall in DC revenues.
Contacts:
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Other City of Kingston Staff Consulted:
Lisa Capener-Hunt, Manager, Building Services & CBO, Building & Enforcement Services
Tim Park, Manager, Development Approvals, Planning Services
Andrea Gummo, Acting Manager, Policy Planning, Planning Services
Jeff Walker, Manager, Taxation & Revenue, Financial Services
Andrew Reeson, Associate Legal Counsel, Legal Services

Exhibits Attached:
None