



The Regional Municipality of Durham Report

To: The Finance and Administration Committee
From: Commissioner of Finance
Report: #2020-F-14
Date: June 9, 2020

Subject:

Final Recommendations Regarding Amendments to Regional Residential and Non-residential Development Charges By-law No. 28-2018

Recommendation:

That the Finance and Administration Committee recommends to Regional Council that the proposed amendments to Regional Development Charge Residential and Non-residential By-law No. 28-2018 to waive the annual indexing included in the April 24, 2020 Background Study not be adopted.

Report

1. Purpose

1.1 The purpose of this report is to provide final recommendations regarding the proposed amendments to Regional Residential and Non-residential Development Charge (DC) By-law No. 28-2018 to waive the annual indexing scheduled for July 1, 2020 as presented in the Background Study dated April 24, 2020.

2. Background

2.1 On April 29, 2020, Regional Council authorized staff through Report No. 2020-COW-11 to proceed with the public process to amend Regional Residential and Non-residential By-law No. 28-2018 and Regional Transit DC No. 81-2017 in order to waive the annual indexing on July 1, 2020. The public process included a Public Meeting (May 27, 2020), public notice and public release of the proposed amending by-laws and background studies, released on April 24, 2020.

2.2 As stated in Report No. 2020-COW-11, Regional Council will consider the final recommendations regarding the proposed by-law amendments on June 24, 2020, which will consider feedback provided in writing or comments received verbally at the May 27, 2020 Public Meeting as part of the public process.

- 2.3 This was put forward to Council as a COVID-19 potential mitigation measure. Had the opportunity not been presented in the April report, due to legislative requirements in the Development Charges Act, Council would not have had the opportunity to give consideration to a waiver.

3. Input Regarding proposed Amendments to by-law No. 28-2018

- 3.1 Pursuant to the requirements of the Development Charges Act, 1997 (DCA), Regional Council held a public meeting on May 27, 2020 to receive input on the proposed DC by-law amendment. No verbal submissions were made at the public meeting of Council.
- 3.2 The Region received an item of correspondence from the Building Industry and Land Development Association (BILD) (Attachment No.1) and a letter from the Durham Region Homebuilders' Association (Attachment No. 2). Both letters indicate support to waive the scheduled indexing of Regional DC for a period of one year and appreciate the efforts during these uncertain times.
- 3.3 The Region received two items of correspondence from a resident (Attachment No. 3). The comments raised in the two items of correspondence are identical with one addressing the amendments to Regional Transit DC By-law No. 81-2017 and the other addressing to Regional Residential and Non-residential DC By-law No. 28-2018. The letters indicate the resident is opposed to the amendments to waive the annual indexing for the following reasons:
- a. The real estate development industry is one of the most profitable sectors of the Ontario economy;
 - b. The Federal and Provincial governments are providing support programs as result of the pandemic;
 - c. Most real estate development projects will continue to receive financing from the major banks;
 - d. Canada's fiscal and monetary policies and low interest rates will help stimulate the economy;
 - e. There is pent-up demand for residential housing; and
 - f. The burden of the foregone development charge revenue will be absorbed by the taxpayers.

4. Questions / Comments from Regional Council

- 4.1 The following discussion provides staff responses to the comments and questions by Council members during the May 27, 2020 Council meeting.

Annual Lost Revenue from Indexing

- 4.2 A question was asked if the estimated annual lost revenue from waiving the indexing (estimated at \$3.3 million to \$4.3 million as provided in Report No. 2020-F-09) occurs every year or just one year.

- 4.3 The lost revenue from waiving the indexing will occur every year since the DC rates would not be increased by 2.9% for the construction cost inflationary increases on July 1, 2020 and thus the future years' inflationary increases would be applied to a lower base than if the indexing had occurred on July 1, 2020. This loss in potential DC revenue will occur until the development charge by-laws are renewed in 2023, or earlier if required. The renewal of the development charge by-laws re-sets the rates to reflect up to date cost estimates and incorporates the new growth forecast.

Applying a higher indexing rate in July 2021

- 4.4 Regional Council asked if the Region can limit the lost revenue in future years by applying a higher indexing rate in July 2021.
- 4.5 If the annual indexing for July 1, 2021 is negative, which would lower the DC rate and lower DC revenue collections, the Region could amend the DC by-laws to waive the negative indexing to prevent a further decrease in DC collections. This in effect applies a higher indexing rate. This would require the preparation of a DC background study, public notice and a public meeting.
- 4.6 In 2009, Regional Council waived the annual indexing due to the economic recession. However, in 2010, the annual indexing was negative, therefore Regional Council approved amending the by-law to waive the negative indexing.
- 4.7 If the indexing rate is positive in 2021, the Region cannot apply a higher indexing rate than the prescribed rate as determined through the Statistics Canada Non-residential Construction Price Index. That is, if the 2.9 per cent indexing rate from 2020 was waived, it cannot be added to the indexing rate in 2021.

Options to Defer Payment of Development Charges

- 4.8 Regional Council asked about the options to defer the payment of development charges as opposed to waiving the annual indexing.
- 4.9 The following table provides the recent changes to the DCA and the Region's DC By-laws that provide for the deferral of DC payments and the freezing of DC rates.

Changes to the DCA (Bill 108) Effective January 1, 2020	Deferral of DC / Freezing of DC Rates
Rental Housing and Institutional Development	Paid in six equal installments over five years commencing the earlier of the date of issuance of occupancy permit or the date of first occupancy
Non-Profit Housing	Paid in twenty-one equal installments over twenty years commencing the earlier of the date of issuance of occupancy permit or the date of first occupancy
All developments approved through site plan application or a zoning by-law amendment application received on or after January 1, 2020	DC rates frozen at the date of site plan or zoning by-law amendment application. Rates remain frozen for two years after approval of site plan or zoning by-law amendment application
2018 Changes to the Region's DC By-laws	
Housing services use (i.e. rental housing provided by Durham Regional Local Housing Corporation or by a non-profit housing provider)	DCs for housing services use can be deferred at the discretion of the Commissioner of Finance, for up to eighteen months from the date of the first building permit issuance

- 4.10 As well, there are provisions in the DCA that allow for the deferral of DC payments. Pursuant to section 27 of the Development Charges Act, 1997, a municipality can enter into a deferral agreement respecting the payment of development charges:

27 (1) 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.

27 (2) The total amount of a development charge payable under an agreement under this section is the amount of the development charge that would be determined under the by-law on the day specified in the agreement or, if no such day is specified, at the earlier of,

- (a) the time the development charge or any part of it is payable under the agreement;
- (b) the time the development charge would have been payable in the absence of the agreement.

- 4.11 Further, pursuant to section 20(5) of the Regional Development Charges By-law No. 28-2018, Regional Council may enter into deferral agreements pursuant to Development Charges Act, 1997:

“ . . . Council may from time to time, and at any time, may enter into agreements in accordance with section 27 of the Act which provide for all or any part of a development charge to be paid before or after it would otherwise be payable.”
The agreements can include provisions for interest charges.

Impact of Waiving the Annual Indexing on the Future Capital Program

- 4.12 A question was asked about the impact of lost DC revenue from waiving the DC indexing on the future capital program.
- 4.13 Waiving the indexing of the Regional development charges will not result in a financial shortfall for the 2020 capital program. The long-standing Regional Financing Policy is to fund the current capital program from the prior year's development charge reserve fund balance. Therefore, the 2020 capital program for water, sewer and roads was funded from the reserve fund balances as of December 31, 2019 and thus are not dependent on the 2020 development charge receipts.
- 4.14 The lower development charge receipts in 2020 and 2021 will have an impact on the 2021 and future growth-related capital program, therefore, the future growth-related capital program will be adjusted to match the reduced development charge funding. That is, some capital projects may be deferred due to decreased development charge receipts which could correspondingly delay future development.
- 4.15 The potential foregone revenue for the period July 1, 2020 to June 30, 2021 from waiving the scheduled July 1, 2020 indexing is dependent on the level of residential and non-residential development activity during this time period, which is challenging to predict. Based on actual development activity in 2019, the revenue loss would be approximately \$3.3 million. Using staff's previous planning forecast for 2020, the estimated revenue loss would be approximately \$4.3 million.
- 4.16 Indexing Approach of Other Regions and Area Municipalities in Durham Region
- 4.17 A question was asked regarding the approach taken by other Regions and area municipalities within Durham with respect to indexing DC.
- 4.18 Peel, Halton and York Region and the City of Toronto have or are intending to index their development charges in 2020. Seven of the eight area municipalities within Durham have confirmed they have or are intending to index development charges in 2020. One municipality is waiving the scheduled July 1, 2020 indexing of the non-residential development charges.

5. Final Recommendations

- 5.1 Given the concerns raised with the lost revenue from waiving the annual indexing at the Regional Council meeting on May 27, 2020, it is recommended that the proposed amendments to Regional DC By-law No. 28-2018 not be approved as proposed in the April 24, 2020 Background Study to waive the annual indexing.
- 5.2 After careful consideration, it is not recommended that the Region provide additional development charge deferrals on the indexing component of the charge other than those provided through the DCA and within the Region’s DC By-laws for the following reasons:
 - a. Due to the changes to the DCA, a number of development types now qualify for the deferral of DC including purpose built rental developments that can pay over five years, which addresses the cash flow challenges these developments face as units do not generate revenue until they are constructed and rented. As well, non-profit housing developments are permitted to pay DC over twenty years;
 - b. Any development that goes through site plan or zoning by-law amendment application now benefits from the freezing of development charge rates;
 - c. Challenges in determining which developments warrant a DC deferral;
 - d. Low value of the indexing amount that would be deferred versus the administrative requirement involved;
 - e. Challenges in collection of the deferred development charges after the issuance of building permit. After building permit issuance, there is no subsequent permit that can be withheld to ensure payment of the deferred DC; and
 - f. The Region’s Revitalization Program targets development projects in need of financial assistance.
- 5.3 The following chart provides the residential development charge receipts for the first four months of 2020, compared to 2019. Based on the updated information on receipts to date, there does not appear to be a slowdown in residential development.

**Table 1
Region of Durham
2019 and 2020 Residential DC Receipts (Units)**

	<u>January</u>	<u>February</u>	<u>March</u>	<u>Estimated April</u>	<u>Total Jan - April</u>
<u>2020</u>					
Residential Units	377	266	566	381	1,590
<u>2019</u>					
Residential Units	235	32	431	204	902

6. Further Considerations by Regional Council Per Development Charges Act, 1997

- 6.1 Given that the recommendation is to proceed with the annual indexing, there is no need to amend the DC by-laws. Since there is no recommendation to amend any DC by-law, Regional Council is not required to consider whether a further public meeting is necessary.

7. Conclusion

- 7.1 Proceeding with the annual indexing of DC will help provide the Region with the funds to construct the necessary infrastructure for future development. The potential waiver was put forward to Council as a COVID-19 potential mitigation measure. Had the opportunity not been presented in the April report, due to legislative requirements in the Development Charges Act, Council would not have had the opportunity to give consideration to a waiver.
- 7.2 This report has been reviewed by staff of the Works, Legal and Planning and Economic Development Departments who concur with the above recommendations.

8. Attachments

Attachment No. 1: Item of Correspondence from BILD

Attachment No. 2: Item of Correspondence from the Durham Region Homebuilders' Association

Attachment No. 3: Items of Correspondence from a Resident

Original Signed By

N. Taylor, BBA, CPA, CA
Commissioner of Finance

Recommended for Presentation to Committee

Original Signed By

Elaine C. Baxter-Trahair
Chief Administrative Officer