Report to: General Committee | Meeting Date: April 20, 2020

SUBJECT: Development Charge Interest Policy
PREPARED BY: Mark Visser, Senior Manager, Financial Strategy & Investments, ext. 4260
Kevin Ross, Manager, Development Finance & Payroll, ext. 2126
REVIEWED BY: Francesco Santaguida, Assistant City Solicitor, ext. 3583

RECOMMENDATION:

1. That the report entitled "Development Charge Interest Policy" be received; and,
2. That the "Development Charge Interest Policy", attached as Appendix A, be adopted by Council; and further,
3. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

Not applicable.

PURPOSE:

The purpose of this report is to provide an update on the recent changes introduced by Bill 108, *More Homes, More Choice Act, 2019* ("Bill 108"), and further amended by Bill 138, *Plan to Build Ontario Together Act, 2019* ("Bill 138"), and to establish the rules and practices for charging interest for frozen DC rates and phased payments, as permitted under sections 26.1 and 26.2 of the *Development Charges Act, 1997, as amended*.

BACKGROUND:

Staff provided updates to Council on proposals under Bill 108 in May 2019 and July 2019. The biggest concern raised by staff was the creation of a Community Benefits Charge ("CBC"), which was proposed to take the place of certain soft development charges, parkland dedication, and Section 37. On February 28, 2020 the Province provided a proposed regulatory framework for the CBC, Development Charges Act and, Building Code Act with a 31-day commenting period ending March 30, 2020. A separate report with details on the proposed changes and staff recommendations will be brought to Committee ahead of the commenting deadline.

Bill 138

Bill 138, the *Plan to Build Ontario Together Act, 2019*, was brought forward by the Provincial government to the legislature in November 2019 and given Royal Assent on

December 10, 2019. Among other things, Bill 138 amended the *Development Charges Act, 1997* to reverse some of the changes from Bill 108, through limiting the types of development that would be eligible to pay development charges in annual installments to rental housing, institutional and non-profit housing developments. Office and industrial development are no longer eligible to pay development charges in annual installments.

Finalized Regulations

Development Charges ("DCs") 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,* ("DC Act") and the *Planning Act*, in ways that impact how municipalities determine and collect development charges. The Province has issued portions of finalized regulations pertaining to changes to the DC Act.

The sections of Bill 108 pertaining to the freezing of rates and phased payments for certain types of development came into effect on January 1, 2020. Prior to these changes, development charges were typically calculated and charged at prevailing rates at the time of building permit issuance. A summary of the previous and current process for determining and collecting DCs for a site plan agreement is shown Appendix B.

A) Freezing of Rates

DC rates are now to be frozen at the site plan or zoning bylaw application date. Once an application is approved, building permit issuance must occur within two years to maintain the frozen rate. If the two year period elapses, the prevailing development charge rates in effect at the time the permit is issued will be applied.

Unfortunately, there is no 'sunset period' between the application date and building permit issuance for the freezing of rates, as was requested by municipalities. This would have acted as a deterrent to developers submitting applications merely to freeze the rates, but having no intention of building in a timely manner.

B) Phased Payments

In addition, under Bill 108, as amended by Bill 138, institutional and rental housing development can now defer development charge payment to first occupancy and have payments phased in six equal annual installments. In the case of non-profit housing, the development charges are to be made over 21 equal annual installments.

As a result of the feedback from municipalities, the Province removed commercial and industrial buildings from the list of developments that could be eligible for phased payments; which is positive news.

OPTIONS/ DISCUSSION:

The DC Act now allows municipalities to charge interest on frozen and phased development charges. Neither the updated DC Act nor the accompanying regulatory framework prescribes how a municipality should implement this interest charge. The regulatory framework does not prescribe a maximum interest rate that a municipality may charge, and the Province has indicated that it does not intend to prescribe a maximum rate.

The most transparent methodology to allow municipalities to communicate the interest rate to be charged is to formally adopt a DC Interest Policy.

To date, there is little consistency among the few municipalities that have instituted a policy. Some recently approved policies include:

Municipality	Frozen DCs/Phased DCs
Toronto	For frozen DCs: 1.5% per month capped at their scheduled rate increase The rate is only until November 2020, as they are in the midst of a DC Rate Phase-in For Phased DCs: • The City's cost of capital if security is provided • The higher of the Canadian Bank Prime rate plus 5% or the market rate for construction financing, if no security is provided
Ottawa	The greater of the Infrastructure Construction Price Index for Ottawa plus 0.5%, which is estimated to be 6.3% (5.8%+0.5%), and the average annual rate at which the City issues debentures to fund development charge projects plus 0.5%.
York Region	• **5% interest rate for both frozen and phased DCs** • **0% in instances that support broader policy objectives** • **Many of the lower tier municipalities in York Region are proposing the same**
Milton	Prime Rate
Barrie	City's average weighted cost of capital
Guelph	Non-residential Construction Price Index

Markham staff have been participating in working groups with York Region and other York Regional municipalities over the past several months regarding the changes put forth by the Province. These working groups have sought to determine an appropriate interest rate to charge on frozen and phased payments. At the moment, many municipalities are still trying to determine an appropriate interest rate policy.

Staff are cognizant of what the Province is trying to accomplish with the changes to the DC Act. As such, in determining an appropriate interest rate policy, there needs to be a proper balance between providing reasonable and predictable rates to developers and maintaining municipal revenues. If too many municipalities decide to charge an unreasonable interest rate, there is a risk that the Province will mandate a maximum rate through the regulations.

Staff recommend being consistent with York Region and the lower tier municipalities within York Region by charging a 5% interest rate, to be compounded annually. While

5% surpasses the Construction Price Index ("CPI") increases over the past 10 years, it is less than Markham's DC increases over that same period. This is partially due to the fact that land values in Markham have increased at a much greater rate than CPI.

Jan 2010 – Jan 2020	Proposed Interest Rate	Markham DCs	Construction Price Index
Average Annual Increase	5.0%	7.1 – 7.4% for singles/ towns/large apartments 9.4% for small apartments	2.6%

Being aligned with York Region's Interest Policy will create consistency and clarity regarding administration and communication to developers.

As these changes being introduced by Bill 108 are new to all municipalities, the Development Charge Interest Policy may need to be amended from time to time, as more information becomes available. Staff may review of the Interest Policy when the next Development Charges Background Study is undertaken, as well, the Policy gives authority to the Treasurer to make changes to the policy that do not change the intent of the policy.

See Appendix A, *City of Markham Development Charge Interest Policy* for more detailed information.

FINANCIAL CONSIDERATIONS

Since Markham will be collecting DCs later that it would have prior to Bill 108, the City's DC cashflows will be impacted which will result in increased borrowing for growth-related capital infrastructure projects. Staff believe that charging the 5% annual interest will be sufficient to offset the additional borrowing costs in the short term. The long-term financial impact of frozen rates and phased payments is unknown at this time however, the application of this policy (if approved) should limit any potential erosion in DC revenues.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Instituting an Interest Rate Policy is meant to ensure that the City remains revenue neutral in light of the changes to the *Development Charges Act, 1997* and, is consistent with good fiscal policy.

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services has been consulted and their comments have been included in the report.

RECOMMENDED BY:

Joel Lustig
Treasurer

Trinela Cane
Commissioner, Corporate Services

ATTACHMENTS:
Appendix A: Markham's Development Charge Interest Rate Policy
Appendix B: Site Plan Control - Previous and Current Development Charge Determination and Collection Regime