

	<i>Development Charge Credit and Reimbursement Policy</i>	
	Policy Category:	
	Policy No.:	Implementing Procedure No.:
Approving Authority: Council		Effective Date: May 31, 2016
Approved or Last Reviewed Date: June 23, 2008		Next Review Year: 2021
Area(s) this policy applies to: Development Finance and Engineering		Owner Department: Development Finance
Related Policy(ies):		
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Note: Questions about this Policy should be directed to the Owner Department.

1. Purpose Statement *(Outline why the organization is issuing the policy and its desired effect or outcome of the policy)*

The Development Charge Credit and Reimbursement Policy ("Policy") establishes guidelines for the application, administration and issuance of development charge credits and/or reimbursement to developer(s), to be implemented through formal agreements with the City.

2. Applicability and Scope Statement *(Who and what this policy applies to and/or affects)*

This Policy will apply to all landowners, developers and/or builders who apply to Markham for development charge credits and/or reimbursement, related to infrastructure being constructed on the City's behalf. The Policy is intended to assist landowners, developers and/or builders who construct infrastructure eligible for development charge credits and/or reimbursement, to recoup the related portion of their costs that is included in the Development Charges Background Study. An application for approval of credits and/or reimbursement is required in accordance with this Policy.

3. Background *(Indicate any reasons, history, and intent that led to the creation of the policy)*

In order for a new residential or industrial subdivision or site plan to be developed, it is often a requirement that certain public works, internal or external, to the Plan of Subdivision or Site Plan, have to be constructed in order to allow the development to proceed. The public works may include construction of roads, intersections, traffic control signals, watermains, sanitary sewers, stormwater management facilities, etc. included in the City's Development Charges Background Study and by-law but shall not include "local services" as defined in the *Development Charges Act, 1997, as amended*.

The design of the public works is normally carried out by City staff and its consultant and then tendered for construction, in accordance with the City's capital expenditure plan, subject to approval of the City's capital budget that year. Funding for capital projects is obtained, in accordance with the City of Markham's Development Charge By-laws, from development charges reserves for the growth component and non-development charge sources (e.g. tax levy) for the non-growth component.

In some cases, a developer may wish to carry out the work in order to advance the construction of the public works necessary for private development to proceed. In these cases, a Credit and/or Reimbursement Agreement is necessary in order to establish the mechanism for the developer to recover all or part of their costs (i.e. including land, design and contract administration costs) and to establish the developer's obligations for construction. Council approval to the construction and the development charge credit and/or reimbursement must be obtained prior to the commencement of construction. This is particularly important when the developer is constructing public works and the contract award process may not be as public or transparent as the City's tendering process.

This Policy has been designed for efficient administration of the Credit and Reimbursement Agreement process. The procedures for administration of Credit and Reimbursement Agreement applications are also contained in the Policy. The procedures outlined will be subject to best practices in the industry and minor amendments to this Policy and procedures can be implemented by the Treasurer without Council approval.

4. Definitions *(If applicable, define any terminology or interpret meanings of a general term)*

N/A

5. Policy Statements *(Detail the specific regulations, requirements, or modifications to organizational behaviour to be addressed by this Policy)*

The City will consider granting development charge credits and/or reimbursement for the construction of public works where the following criteria are met:

Eligibility Requirements

Public works, as described above, may be eligible for Development Charge Credits and/or Reimbursement, including projects for which the detailed design has commenced and even been approved, provided that:

- The costs for the public works must be included in the Development Charge Background Study that led to the most current City of Markham Development Charge By-law(s);
- Council approval if required must be obtained in advance of commencement of construction, for the developer to construct and obtain development charge credits and/or reimbursement. If a developer proceeds with construction in advance of receiving development charge credit and/or reimbursement approval from Council, such works shall be constructed at their own financial risk and expense; and
- The policies outlined in this document are applicable to all projects being commenced from and after July 1, 2008 (the initial effective date of this Policy). Any project undertaken or request made prior to July 1, 2008 will be dealt with on a case by case basis.

Approval

- Development charge credits and/or reimbursements will be requested and approved through the development application process as follows:
 - a) **Site Plans with Delegated Staff Approval** – Treasurer to approve development charge credits and/or reimbursement claims for less than \$500,000 and Council to approve claims for \$500,000 or greater.
 - b) **Site Plans with Development Services Committee Approval** – Council to provide delegated authority for DSC to approve development charge credits and/or reimbursement included in staff reports, submitted to DSC for approval.
 - c) **Development Applications that Require Council Approval** – Council to authorize development charge credits and/or reimbursement included in staff recommendation reports submitted to DSC and Council.
 - d) **Transition for Current Requests** – Treasurer to approve development charge credits and/or reimbursement claims for less than \$500,000 and Council to approve claims for \$500,000 or greater.

If a request for a development charge credit and/or reimbursement is made subsequent to a development application approval, for legitimate reasons verifiable by staff, the Treasurer will approve claims for less than \$500,000 and Council will approve claims for \$500,000 or greater.

- Council authority, if required, for a fixed development charge credit and/or reimbursement amount shall be obtained prior to the commencement of construction of the public works. In circumstances where it is necessary to commence the works prior to Council approval, the recommendation of the CAO and Treasurer will be required for a credit and/or reimbursement agreement, in principle, prior to the start of construction.
- The amount of the available development charge credit and/or reimbursement will be limited to the project component of the City's development charge by-law (i.e. credits and/or reimbursement for a road's construction will be limited to the amount of the development charge capital cost that is attributable to that road in the Development Charges Background Study). Credits and/or reimbursement will be the lesser of the project's cost component in the by-law(s) or the actual cost of the works.
- Credits and/or reimbursement will not be extended to other development charge by-laws (i.e. ASDC to CWH or CWS) unless that portion of the project's capital cost is included in the background study attributable to that by-law.
- Any development charge credit and/or reimbursement request that exceeds the amount of development charges payable by that developer in respect of its development will be subject to a negotiated long term credit and/or reimbursement arrangement recommended by the Treasurer and approved by Council.

- In certain cases, a public works project may have a non-growth component, which cannot be funded through Development Charges. In such instances, the non-growth component is funded through the tax rate or other non-DC sources. If a developer opts to construct public works in advance of the City's capital expenditure plan in order to develop their site prior to the City's expected timelines, it is important that taxpayers are not burdened by this unanticipated, accelerated cost. Therefore, in order to reduce the burden on the taxpayer by accelerating the payment of the City's non-growth component of the cost of the public works, the developer may be required to make a contribution toward the non-growth component cost, when the work is being constructed in advance of the City's capital program. The value of the non-growth component will be determined based on the non-growth cost breakdown identified in the Development Charges Background Study for the specific works. Recovery, if any, of the non-growth component by the developer shall be the lesser of the amount included in the Development Charges Background Study or the prorated actual cost based on the percentage breakdown in the Development Charges Background Study; this will be subject to a negotiated long term payment arrangement recommended by the Treasurer and approved by Council.
- The Council approved DC credit and/or reimbursement for public works may be set out in the City's subdivision or site plan agreements where a developer is undertaking the works.
- A separate credit and/or reimbursement agreement will be executed for public works where more than one developer or a developer group is undertaking to complete the work.
- In order to qualify for reimbursement at least one of the following criteria must be met:
 - The development charges payable by the developer do not provide sufficient credits to cover the cost of the public works
 - The developer constructed public works that are included in the DC Background Study for two or more by-laws and may have received compensation in the form of credits and/or reimbursement from the by-law related to the development area. The developer can qualify for reimbursement from the adjoining by-laws, on a proportionate basis, as and when DC's are collected from the other by-laws towards the constructed public works
 - The developer undertaking the public works has already made contributions towards the works to be constructed (on a proportionate basis) through prior Area Specific Development Charge payments
 - The developer has constructed the public works, with the recommendation of staff, and has no DC credits available as there are no current or future DC payments anticipated.

Reimbursements can be combined with DC Credits and may generally be considered when there are no more credits available. Notwithstanding the above, reimbursements falling outside of the above criteria may be available if recommended by the Treasurer and approved by Council.

Any recommendation for reimbursement will be subject to the availability of funds in the City's Development Charges Reserve and may be subject to a long term agreement. Reimbursements from funds collected through development charges will be limited to the amount collected specifically for

the public works. Any amount recommended for reimbursement in excess of reserve funds available may be subject to discounting, for early payment, to the satisfaction of the Treasurer.

- The Treasurer will have approval authority where the credit and/or reimbursement request is equal to (or less than) the indexed cost of the component set forth in the DC Background Study and the amount is less than \$500,000.

Termination or Amendment

The Treasurer will have authority to approve the termination of, or amendments to, existing Credit and Reimbursement Agreements, in a form satisfactory to the Commissioner, Corporate Services, to be executed by the Mayor and Clerk where:

- The Development Charge by-law on which the credits/reimbursement are based have been repealed or,
- The developer agrees to forego any further credits or,
- The terms on which the credits and/or reimbursement is to be disbursed has changed.

Security/Financial Obligation

- Where the developer is undertaking to complete the construction of the public works, the estimated cost of the public works shall be secured by the developer providing a Letter of Credit in an amount equal to 115% of the estimated cost of the public works, in a form satisfactory to the City Treasurer. The Letter of Credit will also secure payment of the development charge component under consideration for credit and/or reimbursement. The Letter of Credit will be held until such time as the public works are constructed to the satisfaction of the City. The Letter of Credit may be reduced for a maintenance period in accordance with the subdivision, site plan or other construction or development agreement.
- Where the developer is financing (in whole or in part) the capital work to expedite its completion, the estimated cost of the public works shall be secured by the developer providing a Letter of Credit in an amount equal to 115% of the estimated cost of the public works in a form satisfactory to the City Treasurer. The Letter of Credit will be drawn upon, at the City's discretion, throughout the construction of the work.

Disbursement

- Developers who receive approval for DC credits and/or reimbursement will initially receive credits for 80% of the estimated cost of the works (as included in the DC Background Study), with the balance up to the remaining 20% to be provided when the City receives final certification and information on the actual cost of the infrastructure.

Post-Construction Follow Up

- The letter of credit filed to secure the construction of the public works, shall not be reduced or returned in full unless and until the developer satisfies the City Treasurer that the actual cost to construct the public works has not exceeded the 80% development charge credit and/or reimbursement advanced.
- Following an assessment of the final (actual) cost by the Engineering Department, the remaining 20% will be provided based on the lesser of the actual cost and the cost included in the DC Background Study for the infrastructure. If the cost to be credited is greater than the 80% initially provided, the developer will receive the remainder of the credits on future development applications or through DC reimbursements. If the cost to be credited is less than the 80% initially provided, the City will request reimbursement of the differential (80% less actual credits) from the developer. This will be secured through the Engineering letter of credit being held for construction of the public works. If the City is not reimbursed for the excess DC credits provided through advancing the initial 80%, the amount will be drawn from letters of credit being held for the development, once the obligations under the agreement are reduced.

Fees (Effective as of June 2008 – Indexed Annually)

- A cost recovery fee applicable to each credit and/or reimbursement request will be charged for the Engineering, Legal and Finance Departments costs incurred relating to the preparation and administration of the development charge credit and/or reimbursement agreement. The fee is structured in the following manner:
 - A minimum fee of \$1,500 shall be required to review a development charge credit and/or reimbursement request
 - A fee equivalent to 1.0% of the value of the public works, to a maximum of \$10,000 shall be applicable
 - In instances where the City's costs to prepare and administer a credit and/or reimbursement agreement exceed the fee structure set out above, such fees shall be separately quantified and invoiced to the developer.

6. Roles and Responsibilities *(Outline roles and responsibilities of those involved in the implementation of the policy)*

Application

- The developer, along with the Engineering department, will review whether a development charge eligible project is required for the proposed development at the pre-consultation or circulation stage of the application process.
- For projects included in the City's Capital program, the developer shall forward a letter of application to the Director of Engineering and Treasurer to consider construction of public works, and the provision of development charge credits and/or reimbursement, a minimum of six (6) months prior to expected date for commencement of construction of the public works. A copy of the application should be forwarded to the Manager of Development Finance.
- A complete application package shall include the following:
 - Overview of proposed public works
 - Rational why the project should be advanced
 - Financial summary
- Approval – subject to receipt of the application package, including any additional materials requested by staff. Staff will submit a report to Council, if required, seeking approval or refusal of the development charge credit and/or reimbursement request. Depending on the type of development application, and the timing of a credit/reimbursement request, the Treasurer will approve claims for less than \$500,000 (See the "Approval" section in the Policy).

Agreement Stage

Engineering:

- Review whether development charge eligible infrastructure is required for a proposed development at pre-consultation or circulation.
- Review each complete application/submission package within 8 weeks of receipt.
- Notify Development Finance and Legal of receipt of application.
- Compare credit and/or reimbursement request amount against awarded City contracts, in conjunction with the Purchasing Manager, in order to verify the reasonability of pricing. The developer will be required to provide the City with a tender form in the City's format for comparison with recent City tenders.
- Prepare a report to Development Services Committee in conjunction with the Planning, Finance and Legal departments seeking authorization for development charge credit and/or reimbursement.

Development Finance:

- Ensure the cost of the public works to be considered for development charge credits and/or reimbursement is included in the City of Markham Development Charge By-law(s).
- Determine the fixed or maximum amount of development charge credit and/or reimbursement for

recommendation to Council or Treasurer as appropriate.

- Determine the credit and/or reimbursement arrangement for recommendation to Council including provisions for long term credits in the event that the developer's credit claim exceeds the development charges payable in respect of its plan of subdivision or in the event that multiple developers or a landowners group are involved.
- In conjunction with the Engineering, Planning and Legal departments, prepare a report to General or Development Services Committee seeking Council authorization, or to the delegated approval authority (if applicable), to approve or reject the development charge credit and/or reimbursement request.

Planning:

- Support the Engineering department, in reviewing whether development charge eligible infrastructure is required for a proposed development at pre-consultation or circulation.
- Prepare a report to Development Services Committee in conjunction with the Engineering, Finance and Legal departments seeking authorization for development charge credit and/or reimbursement.

Legal Services:

- Preparation of the credit and/or reimbursement agreement or necessary clauses within the subdivision or site plan agreement.
- A schedule shall be included in the credit and/or reimbursement agreement detailing either:
 - The name of the developers who are entitled to the credit and/or reimbursement, and the proportionate share of the total that each is entitled to receive; or
 - The name of the Trustee to whom all payments will be made, for distribution to those developers beneficially entitled.
- Ensure the work is adequately secured in a form satisfactory to the City Treasurer.

Public Works Construction Stage**Engineering:**

- Advise Development Finance of any required action (demand and/or release) on the Letters of Credit.
- Ensure that the work is completed in a manner satisfactory to the City of Markham.
- Verify the actual cost to construct the public works and collaborate with the Finance department to determine whether this exceeds the 80% in credits/reimbursement advanced.

Development Finance:

- Administer and maintain the Letter of Credit(s).
- Collaborate with the Engineering department to determine whether the verified actual cost of the public works, exceed the 80% in credits/reimbursement advanced.



Development Charge Deferral Policy

Policy No.:

Implementing Procedure No.:

Credit Redemption Stage

Development Finance:

- Administer the credit and/or reimbursement agreement in accordance with the *Development Charges Act, 1997 as amended*.
- Determine credits and/or reimbursement to be disbursed in future agreements or funds to be released to the Trustee.