



Report to: General Committee

Report Date: March 21, 2016

SUBJECT: Update to Development Charges Deferral Policy and Changes to the Development Charges Act

PREPARED BY: Kevin Ross, Manager, Development Finance (x2126)

RECOMMENDATION:

- 1) THAT the report entitled “Update to Development Charges Deferral Policy and Changes to the Development Charges Act” be received;
- 2) THAT the Development Charge Deferral Policy as amended in Appendix A and noted in this report, be approved by Council; and
- 3) THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

N/A

PURPOSE:

The purpose of this report is to seek Council’s approval of a proposed amendment to the Development Charge Deferral Policy which was approved by Council on November 8, 2011. The Policy relates to the City portion of development charges only – applicants who require a deferral of the Region of York and School Board portions of the development charges are required to contact these organizations directly.

This report also provides Council with information regarding the enactment of *Bill 73, the Smart Growth for Our Communities Act* (“Bill 73”), specifically the amendments to the *Development Charges Act, 1997* (“DCA”).

BACKGROUND:

From October 2013 to January 2014, Provincial consultations were undertaken to review the DCA and recommendations were provided by the City during this process. The Province responded to comments received through the consultation process and introduced Bill 73 in the Provincial Legislature. The Bill had its First Reading in March 2015. The stated intent behind the amendment to the DCA was to ensure that development charges are predictable, transparent, cost effective and responsive to the changing needs of communities.

The City, as well as other municipalities, provided input in the form of recommended changes to the DCA as a part of the Bill 73 process. After reviewing all submissions, the

Province enacted Bill 73 on December 3, 2015 with the accompanying Ontario Regulation 428/15 being filed on December 17, 2015.

The amendment to the DCA included the following changes:

- a) Expansion of services eligible for development charges funding to include waste diversion;
- b) Removal of the mandatory 10% reduction applied to some eligible services such as transit
 - o Transit services are no longer subject to the 10-year historic average service level restriction anymore, instead a methodology utilizing a 10-year planned level of service will be instituted;
- c) Increased emphasis on area specific charges;
- d) Payment of development charges at first permit issuance for developments requiring multiple building permits;
- e) Requirement for municipalities to adopt an asset management plan;
- f) A prohibition on municipalities implementing additional levies (voluntary payments) in addition to development charges;
- g) Improved annual reporting requirements; and
- h) A background study is required to be available to the public 60 days prior to the passage of a by-law (up from the former 20 day requirement).

The legislative changes came into force on January 1, 2016, and most of the amendments to the DCA will be effective when the City's by-laws are updated in 2018. There are two amendments (items d and f) that will impact current daily operations, and necessitate adjustments to how the City currently manages development charges.

Under the amendment, a development requiring more than one building permit will pay development charges ("DCs") at the issuance of the first building permit – where two or more phases are not constructed concurrently, each phase is seen as a separate development, with DCs payable at separate intervals. This amendment will impact the current DC payment process for developments such as condominiums and non-residential structures. The City's current DC by-laws require the payment of land-based charges at the issuance of a below grade permit (e.g. shoring/excavation, foundation/underground parking garage) with the remaining DCs payable at the issuance of the above grade permit. Payment of all DCs will now be required earlier in the process. While this may negatively impact some developers who had planned their financing based on the City's current process, the DCA amendments supersede the City's DC by-laws as there is no transition provision that would make the change effective only through newly enacted DC by-laws.

The amendment to prohibit additional levies (voluntary contributions) may impact the receipt of funds for public art and public realm. The Planning department is currently reviewing this change, and will make the necessary adjustments to comply with the DCA,

while simultaneously exploring feasible options to facilitate the receipt of funds being pledged by developers.

OPTIONS/DISCUSSION:

Timing of Development Charge Payment

As stated above, an amendment to the DCA has changed the timing in the collection of the DCs for developments that require more than one building permit. The change will mainly impact condominium and multi-storey non-residential developments (i.e. offices). The amendment introduced subsection 26 (1.1), which establishes the requirement for payment of DCs at the issuance of the first building permit. Prior to the amendment, section 26 the DCA allowed the City to determine which permit(s) would trigger the payment of DCs, and this was embedded in the City's DC by-laws. As set out in more detail below, the amendments to the DCA do not impact Council's authority to approve deferrals through deferral agreements.

The City's by-laws currently provide for the payment of DCs for multiple permit developments as follows:

- At the issuance of a below grade permit (e.g. shoring/excavation, underground parking garage), payment of the land-based DCs. Land-based DCs include area specific charges and in the case of non-residential development, the City Wide Hard charges; and
- At the issuance of the above grade permit, payment of the remaining DCs related to the units/gross floor area (GFA) being constructed. These charges include the City Wide Hard charges (for residential) and City Wide Soft charges.

The change in the DCA now requires the payment of all DCs earlier in the construction cycle, and takes precedence over the timing of payments included in the DC by-laws. City staff and Council did not support this proposed change to the DCA during the consultation as:

- Developments would obtain partial permits, before other approvals are in place, with the intention of locking in rates to avoid future increases in the charge. This is particularly significant during a by-law update and may result in reduced recoveries to fund required infrastructure;
- Developments are often planned with financing linked to the customary timing for the payment of DCs as per the by-laws. Requiring these payments 3-9 months earlier in the construction process (depending on the scale of the below ground works), may prove challenging for some developers and negatively impact the pace of development; and
- Modification to development plans (for unit type/count/mix) after charges have been levied at the first permit issuance will likely result in adjustments to the DCs payable, which may result in increased challenges from the development industry.

As previously mentioned, the DCA continues to permit collection of DCs to be deferred by Council, provided that an agreement is entered into. Therefore, in order to be compliant with the DCA, safeguard the City's financial interests and continue to promote economic development, staff recommend an update to the Development Charge Deferral Policy to provide for a deferral of the unit and GFA based charges, at the developer's option, until the issuance of the above grade permit. The DCs proposed for deferral will be those customarily paid under the current by-laws at the issuance of the above grade permit. This will provide the development industry with continuity in the timing of their DC obligation, and remove DCs as a potential limiting factor in the pace of economic development in the City.

DC Deferral Policy Update

The DCA permits a municipality to enter into an agreement to collect development charges after it is otherwise payable. Such deferrals must, however, be authorized by the municipality in order to be effected.

Markham is permitted to enter into deferral agreements pursuant to section 27(1) of the DCA which states that: "*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*".

The current Development Charge Deferral Policy ("Policy") provides for a deferral to be contemplated for developments that fall into the following categories:

1. Affordable and Special Needs Housing
2. Servicing Constraints
3. Multi-phased Development

Staff recommend that the Policy be updated to provide for deferrals to developments requiring more than one building permit, at the option of the developer, provided that an agreement is entered into in accordance with the DCA. Under the recommended deferral, which is at the discretion of the developers, the DCs will be payable as follows:

- *At the issuance of a below grade permit* (e.g. shoring/excavation), payment of the land-based DCs. Land-based DCs include area specific charges and in the case of non-residential development, the City Wide Hard charges
- *At the issuance of the above grade permit*, payment of the remaining DCs related to the units/gross floor area (GFA) being constructed. These charges include the City Wide Hard charges (for residential) and City Wide Soft charges.

A deferral of this nature will effectively continue the payment timing as currently allowed under the by-laws, if requested by developers.

Applicable Rates

Consistent with the current Policy, in order to ensure that the City is not impacted negatively by the delay in payment, development charges deferred will be payable in accordance with a deferral agreement executed with the City, and will be based on the rate that is the higher of:

- a) The rate that is in effect at the time of payment;
- b) The indexed rate (non-residential building construction price index) from the date of building permit issuance;
- c) The rate in effect at first building permit issuance, plus accrued interest, at the Bank of Canada Prime Business Rate; or
- d) The rate in effect at first building permit issuance, plus the average cost of borrowing through the Region (i.e. comes into force if the City borrows for its DC's by way of Regional debentures) or City (through internal borrowing), if applicable.

The average cost of borrowing is now expanded to include internal borrowing as per the Development Charge Borrowing Policy approved by Council on September 21, 2010.

Approval Authority

Staff recommend that the Treasurer and his/her designate be provided with Council delegated authority to approve the DC deferrals in accordance with the Policy. There will be no limitation on the quantum of the deferral to be approved.

Security

There will be no requirement to secure the deferral. The above grade permit will not be issued until the developer makes the full payment to satisfy the remaining DC obligation.

Fees

An administration fee, as per the current Policy, will be charged for each deferral request for the Legal and Finance Department's costs incurred relating to the review, preparation and administration of the development charge deferral agreement.

See attached Appendix A which highlights the changes to the Policy.

Development Charge Amendments

The DCA legislation provides the framework and authority for the collection of development charges upon the development of land. The DCA is based on the principle that *growth pays for growth*, however there are a number of restrictions in the legislation that negatively impact the ability of municipalities to fund growth-related infrastructure from development charges. Some of these restrictions include:

- The mandatory 10% discount for services such as indoor recreation, park development and library services;

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- The requirement to utilize a 10-year historical average service level “cap” in the determination of the charge; and
 - The exclusion of services such as waste management and hospitals from the calculation of the charge (these are deemed ineligible services).

When the Province undertook its initial DCA consultations in 2013-2014, Council concurred with the recommendations included in a staff report approved on December 10, 2013. These recommendations, including the three points above, were submitted to the Province for their review on January 10, 2014.

The Province subsequently introduced Bill 73 in 2015 and sought the input of municipalities on the proposed changes to the legislation. Staff reported on the proposed changes and recommendations to the Development Services Committee on June 2, 2015 and subsequently received Council approval. The City’s recommendations were provided to the Province on June 3, 2015 and included the following responses to some key Provincial amendment proposals:

- Ineligible Services to be Prescribed by the Regulation and not the DCA
 - The City supported the amendment but requested that the Province broaden its scope to include all waste management services including waste collection (capital cost of vehicles and facilities) as a DC eligible service. Markham also recommended the removal of hospitals and municipal administration offices from the list of ineligible services.
- Transit Recovery to be moved to the Service Category where no 10% Reduction Applies
 - The City supported the amendment but requested the Province to expand it to include all other soft services such as indoor recreation, park development and library services.
- Timing of Payments for Developments Requiring Multiple Building Permits
 - The City was concerned about this amendment and requested that the Province review this proposal and fix the date of collection of DCs at a time more closely related to the construction of a given development.
- No Voluntary Payments
 - The City required clarification from the Province with respect to the levying of payments for Public Art and Public Realm improvements. If these are considered to be “voluntary payments” under the proposed legislation, it would curtail Markham’s efforts to make improvements to the community through the use of these important tools. The City recommended that Public Art and Public Realm payments to be provided with an exception under the DCA, as they are generated due to growth and intensification in the community.

The Province after reviewing all submissions enacted Bill 73 on December 3, 2015 with the accompanying Ontario Regulations 428/15 being filed on December 17, 2015.

The amendment to the DCA included the following changes:

- a) Expansion of services eligible for development charges funding to include services such as waste diversion;
- b) Removal of the mandatory 10% reduction applied to some eligible services such as transit
 - o Transit services are not subject to the 10-year historic average service level restriction anymore, instead a methodology utilizing a 10-year planned level of service will be instituted;
- c) Increased emphasis on area specific charges;
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- e) Requirement for municipalities to adopt an asset management plan;
- f) A prohibition on municipalities implementing additional levies (voluntary payments) in addition to development charges;
- g) Improved annual reporting requirements; and
- h) A background study is required to be available to the public 60 days prior to the passage of a by-law (up from the former 20 day requirement).

In the view of City staff, more could have been done in the DCA amendment to ensure that growth pays for growth, such as the elimination of the mandatory 10% discount for indoor recreation, park development and library services. While this was not adopted by the Province, the City will continue to work within the existing legislative framework to recover, as far as possible, the cost for growth-related infrastructure.

Attached in Appendix B are details of the amendments to the DCA which show the City's position on the Province's proposal, the final changes to the DCA, and the impact of the changes to the City.

FINANCIAL CONSIDERATIONS:

The deferral of development charges delays the receipt of revenue and impacts the cash flow position of the reserves. In granting deferrals, the City offsets the interest cost of the delayed receipt by ensuring that the rate to be paid at the end of the deferral equates or exceeds the rate in effect at first building permit issuance, plus the average cost of borrowing through the Region or City.

Staff recommend that an administration fee be charged for each deferral request to cover the Legal and Finance Department's costs incurred relating to the review, preparation and administration of the deferral. The fee being proposed is included on page 5 of the current Policy (see Appendix A), and is adjusted annually by the Toronto All-items Consumer Price Index.

ALIGNMENT WITH STRATEGIC PRIORITIES:

N/A

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services.

RECOMMENDED BY:

29/03/2016

29/03/2016

X 

Joel Lustig
Treasurer

X 

Joel Lustig
Acting Commissioner of Corporate Services

ATTACHMENTS:

[Appendix A – Development Charge Deferral Policy](#)

[Appendix B – Changes to the Development Charges Act](#)