

	<i>Development Charge Deferral Policy</i>	
	Policy Category:	
	Policy No.:	Implementing Procedure No.:
Approving Authority: Council		Effective Date: November 8, 2011
Approved or Last Reviewed Date: N/A		Next Review Year: 2021
Area(s) this policy applies to: Development Finance		Owner Department: Development Finance
Related Policy(ies): •		

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 Deferral Policy establishes guidelines related to applications for, and the administration and issuance of, development charge deferrals to applicants.

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 a deferral of development charges applicable to their proposed development. The Policy is intended to assist applicants to proceed with their proposed development and also assist in the provision of services that contribute to a strategic goal of the City (e.g. affordable and special needs housing). An application for approval of a deferral request is required in accordance with this Policy.

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

Markham Council has, from time to time, approved applications for development charge deferral, after a review and analysis by City staff followed by a report to Council. The rationale for requesting a deferral has varied over the years, however, a set of principles can be developed from those previous Council approvals, to facilitate the streamlining of the process and thereby creating efficiencies in the administration of the development charge deferral process.

Development charges (“DCs”) are calculated and collected on land and structures being developed pursuant to the *Development Charges Act, 1997* and Markham’s DC by-laws. The collection of development charges occurs at the execution of a subdivision agreement and/or at the issuance of a building permit. DCs must be paid in order to secure a building permit. The *Development Charges Act, 1997*, however allows for the deferral of DCs beyond the timeline stipulated in Markham’s by-laws.

Markham is permitted to enter into deferral agreements pursuant to section 27(1) of the *Development Charges Act, 1997* which states: “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 roles and responsibilities outlined in this Policy will be subject to the best practices of the corporation and minor amendments to these procedures can be implemented by the Treasurer.

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)***Eligibility Requirements**

Development charge deferrals may be available for the following:

1. Affordable and Special Needs Housing

- a. The development provides affordable and special needs housing and is eligible to receive applicable Federal, Provincial and Regional affordable and special needs housing program funding.
- b. The applicant must be a government agency or not for profit organization.

2. Servicing Constraints

- a. The development is unable to be completed based on an approved plan, due to servicing constraints that are outside of the applicant's control.

3. Development is Multi-phased (for land-based DCs)

- a. The development will be built in phases and future phases have no executed agreement (e.g. site plan) or building permit applications and cannot proceed without further approvals.
- b. No development can occur on that portion of the lands on which DCs are deferred.

4. Developments that require more than one Building Permit

- a. The development will be built utilizing more than one building permit. For example, a condominium or office building may utilize three permits (i.e. shoring and excavation, underground parking garage and above grade) during its construction process.
- b. Where two or more phases are constructed concurrently, each phase is seen as a separate development.

Notwithstanding the above criteria, if there is a strategic and significant direct economic benefit to Markham from the proposed development, the Treasurer can recommend a deferral of the development charges to Council. Determination of the strategic and significant direct economic benefit is at the discretion of the Treasurer and CAO.

Applicants for a deferral of development charges must comply with all the conditions that are determined as necessary for development (e.g. *Planning Act* etc.), agree to any other conditions imposed by the Treasurer on the deferral authorization and enter into an agreement with the City, which agreement shall

be registered on title.

Irrespective of the basis on which previous deferral approvals were granted, all future deferral requests and approvals must conform to this Policy.

The requirements outlined in this document are applicable to all DC deferral applications received on or after the date that this Policy becomes effective. Deferrals previously granted will be grandfathered under the terms and conditions under which they were approved.

Applicable DC Rates

In order to ensure that the City does not collect an amount less than the initial payment due, development charges deferred shall be payable in accordance with the deferral agreement executed with the City and shall 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 building permit issuance, plus accrued interest, at the Bank of Canada Prime Business Rate; or
- d) The rate in effect at building permit issuance, plus the average cost of borrowing through the Region (i.e. comes into force if the City borrows for its DCs by way of Regional debentures) **or** City (through internal borrowing), if applicable (i.e. comes into force if the City borrows for its DCs by way of Regional debentures).

In the case of affordable and special needs housing, the Treasurer shall select the rate from a) through d) above, which most closely represents the impact of the cash flow lost as a result of the deferral.

Approval Authority

- Approval of a deferral shall be obtained prior to the normal trigger for an applicant paying development charges on the proposed development (i.e. subdivision agreement execution or a building permit being issued for commencement of construction).
- In circumstances where development cannot proceed on the land for which a deferral is being requested through circumstances beyond the applicant's control (e.g. servicing constraints), the applicant will not be required to make interim payments towards outstanding development charges.
- In circumstances where development may proceed, at least in part, on the land for which a deferral is being requested (e.g. multi-phased development, affordable and special needs housing), the applicant may be required to make interim, regular payments towards outstanding (deferred) development charges. The quantum and frequency of interim payments will be determined by the Treasurer prior to the execution of a subdivision agreement or the issuance of a building permit.

- Area specific development charges shall not be deferred for affordable and special needs housing as the term of the deferral will result in a delay in the financing required for infrastructure in the area.
- A development charge deferral agreement will be executed detailing the duration and interim payments (if, any) due over the deferral period and any other conditions or terms required by the Treasurer. The approved deferral of DCs may be set out in other development agreements (i.e. subdivision/site plan) if appropriate.
- Notwithstanding the aforementioned eligibility criteria, a deferral request may be refused by the Treasurer if the net development charge reserve balance is in a deficit.
- Development charge deferral requests that meet any one of the eligibility requirements may be approved by the Treasurer if:
 - The deferral request does not exceed \$2 million (at the time of approval); and,
 - The duration of the deferral does not exceed 5 years or in the case of affordable and special needs housing, the lesser of 20 years or when the applicable residential unit is no longer owned/rented by a purchaser/tenant with an eligible household income.
- The Treasurer and Commissioner of Community and Fire Services are authorized to approve Development Charge Deferrals that comply with the guidelines as outlined in the “Community Use Facilities – Criteria and Conditions for Deferral of Development Charges”, up to a value of \$500,000.
- The Treasurer and his/her designate are authorized to approve Development Charge Deferrals for developments requiring more than one building permit. *There is no cap on the amount that can be approved for these developments.* The DCs for this type of deferral is 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. The above grade building permit will not be issued until payment is received.

Security/Financial Obligation

- An applicant shall secure the deferred DCs by way of a Letter of Credit, in an amount and form satisfactory to the Treasurer – *this excludes deferrals approved for developments requiring more than one building permit.* The Letter of Credit will be held until such time as the development charges are paid to the satisfaction of the City. The Letter of Credit may be reduced, on application by the applicant, if it exceeds the estimated DCs due, or drawn upon, if the agreed upon payment schedule is not adhered to, at the Treasurer’s discretion, throughout the deferral period.
- The value of the Letter of Credit shall be based on the estimated development charges due over the

term of the deferral. This will be determined by increasing the development charge deferred by the most current five-year average construction price index (e.g. 4% for 2006-2010) compounded over the term of the deferral.

- For an eligible affordable and special needs housing development, the applicant may be required to:
 - Enter into a Restrictive Reserve Agreement with the City (primarily for multiple unit development) to secure the deferred DCs, in a form satisfactory to the Treasurer and the City Solicitor. The agreement would require the applicant to create and administer a restricted reserve fund under which the applicant shall set aside cash on an annual basis for repayment of the applicant's obligations under the Deferral Agreement to the City; and,
 - Include the estimated indexed development charges deferred in any vendor take back mortgage for the unit.

Terms and Conditions of Approval

- The Treasurer may impose such additional terms and conditions as are reasonable, in his or her discretion.

Fees (Effective as of November 8, 2011 – Indexed Annually):

- An administration fee for each deferral request (with the exception of affordable and special needs housing) will be charged for the Legal and Finance Department's costs incurred relating to the review, preparation and administration of the development charge deferral agreement. The fee is structured in the following manner:
 - An application fee of \$1,000 shall be required to review a development charge deferral request;
 - A fee equivalent to 1.0% of the value of the deferral request, to a maximum of \$10,000, shall be payable upon execution of the deferral agreement; and
 - In instances where staff's costs to prepare and administer a deferral agreement exceed the fee structure set out above, such fees shall be separately quantified and invoiced to the applicant.

Application Process

- The applicant shall forward a complete application package to the Treasurer for a partial or full development charge deferral, a minimum of 60 days prior to the expected date of subdivision agreement execution or building permit issuance. A copy of the application shall be forwarded to the Manager of Development Finance.
- A complete application package shall include the following:
 - The reason/criteria for the deferral request;
 - Evidence of compliance with the eligibility criteria;
 - An application fee of \$1,000;
 - The land area being developed (hectares/acres) confirmed by a survey or Certificate of Surveyor;
 - The number and type of units (for residential) and the gross floor area (for non-residential) of the proposed building(s); and,
 - The proposed usage of the building(s).
- Approval – subject to receipt of the application package, including any additional materials requested by staff, a review will be conducted by the Manager of Development Finance and the Treasurer will make a

decision to approve or deny the deferral request.

- If the request complies with the Policy and falls within the Treasurer's approval authority, the Treasurer may approve the deferral, subject to the requirements of this Policy and any additional terms and conditions deemed appropriate by the Treasurer;
 - If the request complies with the Policy but falls outside of the Treasurer's approval authority, staff will prepare a report to Council with an appropriate recommendation;
 - If the request does not comply with the Policy, the Treasurer will refuse the application and advise the applicant accordingly;
 - If the request falls outside of the Policy criteria but the rationale provided by the applicant is one that merits further consideration, staff will prepare a report to Council with an appropriate recommendation.
- Deferral agreement – if approved, an agreement will be prepared to include the terms and conditions required by the Treasurer and to secure payment of the deferred charges.
- If the applicant is not satisfied with the decision on their deferral request, the applicant may file an appeal with staff, including reasons for the appeal. Staff will then prepare a report to Council providing information on the decision and the reasons for the appeal. Council will provide the applicant an opportunity at General Committee to make representations on why the deferral request should be granted and Council will make the decision to approve or refuse the deferral request.
- In the event that a subdivision agreement is ready to be executed or a building permit is ready for issuance for an applicant that qualifies for a deferral, but the deferral agreement is not executed and/or registered on land title, the applicant will be required to pay the development charges in full or secure the payment with letters of credit. Subsequent to the execution of the deferral agreement and its registration on title, the City will refund the amount of the development charges deferred that were paid or release the letter of credit for the deferred amount to the applicant, without interest.

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

The Financial Services Department shall be responsible for:

- Future updates to this Policy.
- Determining whether a request meets the deferral criteria.
- Calculating the development charges due on the proposed development.
- Requesting Council approval for DC deferrals that do not comply with this Policy or that are refused and appealed.
- Ensuring the preparation of the deferral agreement to the satisfaction of the Treasurer.
- Administration of the deferral agreements and letter of credit(s).
- Determine the amount to be secured by letter of credit.
- Ensure that instalments and final DC payments are made, as per the agreement.

The Treasurer shall be responsible for:

- Making a decision on applications for a deferral.



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- Determining, in his or her sole discretion, the length of the deferral, the quantum and frequency of interim payments as well as the DC rates paid when due, within authorized limits.

The Legal Department shall:

- Prepare the deferral agreement, and if appropriate, the necessary clauses within a subdivision, site plan or other development agreement.
- Register the deferral agreement on title.
- Ensure the deferral is adequately secured in a form satisfactory to the Treasurer.