



Staff Report for Council Meeting

Date of Meeting: April 22, 2020

Report Number: SRCFS.20.009

Department: Corporate and Financial Services

Division: Financial Services

Subject: SRCFS.20.009 - Update on Bill 108, More Homes, More Choice Act, 2019 and Development Charges Interest Policy

Purpose:

The purpose of this report is to provide an update to Council on recent changes introduced by Bill 108, *More Homes, More Choice Act, 2019* ("Bill 108"), further amended by Bill 138, *Plan to Build Ontario Together Act, 2019* (Bill "138") and the initiatives staff are undertaking to respond to the legislation.

Recommendations:

- a) That the update and initiatives outlined in staff report SRCFS.20.009 be received;
- b) That Council approve the charging of interest pursuant to sections 26.1 and 26.2 of the *Development Charges Act, 1997*, as amended;
 - i. Effective as at January 1, 2020
 - ii. At a rate of 5% compounded annually
- c) That Council approve the policy in Attachment A, to administer the charging of interest in recommendation b;
- d) That Council authorize the Treasurer to give notice for a public meeting if required under the *Development Charges Act, 1997*, as amended.

Contact Person:

Ilan Treiger, Financial Management Advisor, Long Range Financial Planning & Policy, Extension 2415

Gigi Li, Manager Capital and Development Financing, Extension 6435

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Report Approval:

Submitted by: Sherry Adams, Commissioner of Corporate and Financial Services (Acting)

Approved by: Mary-Anne Dempster, Interim City Manager

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner, and City Manager. Details of the reports approval are attached.

Background:

Development charges are fees collected from development projects and are the primary source of revenue to fund growth-related infrastructure.

The Province introduced Bill 108, the "*More Homes, More Choice Act, 2019*" which received Royal Assent on June 6, 2019 and amended the *Development Charges Act, 1997*, as amended (DCA) and the *Planning Act* in ways that impact how municipalities determine and collect development charges. On December 10, 2019, Bill 138, the "*Plan to Build Ontario Together Act, 2019*", received Royal Assent. The Province has already issued the finalized regulations pertaining to the associated changes to the DCA, while some regulations related to changes to the *Planning Act* are still pending.

Bills 108 and 138 change how municipalities recover growth-related infrastructure costs and possess implications for the administrative process of collecting development charge revenues.

Some of the significant changes that Bills 108 and 138 introduced are:

- Freezing of development charges rates
- Development charges payment instalments (deferred/phased);
- Interest rate payable on frozen, deferred/phased development charge instalments; and,
- Introduction of a new Community Benefit Charge ("CBC") imposed under the *Planning Act*

There are three major initiatives staff are undertaking in response to the legislative changes: development of a new Development Charges Interest Policy, a potential Community Benefit Charges Strategy and By-law and an amendment to the City-wide Development Charges By-law.

Proclaimed Changes to the DCA Commencing January 1, 2020:

On January 1, 2020 the proclaimed sections of Bill 108 and Bill 138 came into effect, and included the following sections:

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"Freezing" of Development Charge Rates

For all developments proceeding by Site Plan or requiring a Zoning Amendment, the development charges shall be determined based on the charge in effect on the date of application.

If the development is not proceeding via a Site Plan or Zoning Amendments, then the amount is determined and payable upon the first building permit being issued. The rates would be reassessed and refrozen upon resubmission.

Development Charges Payment Instalments - "Deferrals/Phased"

Development charges for rental housing, institutional developments are to be paid out in 5 years through 6 instalments. Development charges for non-profit housing development are to be paid out in 20 years through 21 instalments. The payments will begin on the date of issuance of an occupancy permit or occupancy of the building, whichever is earlier.

Interest Payable

Municipalities may charge interest on the development charges. Further consideration on a development charges interest rate policy is discussed below.

Development Charges Interest Policy:

As noted above, Bill 108 allows municipalities to charge interest on frozen and phased development charges, at a rate not exceeding the prescribed maximum interest rate, from the date of the application to the date the development charges is payable. Currently, the Province has not prescribed a methodology for the implementation of the interest charge. In addition, the Province indicated that it does not intend to prescribe a maximum interest rate, even though the legislation allows it to do so through regulations.

Staff recommend an interest charging framework as described in Attachment A to support the City in charging interest. Charging interest on frozen and phased development charges could help mitigate negative financial impacts of Bill 108 and encourage timely development, while providing transparency and certainty to developers. The interest owed will continue to accumulate until a building permit is issued to begin construction. It also ensures costs are not unfairly passed on to future development.

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Staff recommend that an interest rate of 5% be used for frozen development charges. This is consistent with the interest rate administered by York Region, and is based on the average historical growth in the Statistics Canada Non-residential Building Construction Price Index for Toronto, plus consideration based on the average historical fluctuation to the index to mitigate the risk of cost fluctuations to the City. Interest shall continue to accrue, and be compounded annually beginning from the date of the application until the date development charges are paid. The interest rate could be updated by Council as necessary and the new interest rate applies on a going forward basis, including all active developments.

As is the case with the frozen development charges, staff recommend an interest rate of 5% for eligible phased developments. However, for developments that have taken advantage of a Regional development charge relief and/or incentive, a 0% interest rate will be used during the phased payment plan period. These developments would still be subject to interest on the frozen portion of development charges. This approach is in alignment with the Region.

More Integrated Administrative Process:

As a result of the newly proclaimed sections of Bills 108 and 138, in collaboration with York Region, a new administration process is in development. Local municipalities will continue to act as an agent for the Region, in collecting regional development charges. The new administrative process will require tracking of various information throughout the life of the development applications including the application date where rates are frozen. This will yield a more integrated administrative process, as more information on new developments will be shared between the City and the Region.

Staff have consulted with other local municipalities as well as the development industry to communicate updates on the administrative process. Staff will continue to refine the administrative process and the policy's effectiveness and make adjustments if needed.

Community Benefits Charges (“CBC”):

The Province of Ontario changed municipal funding options related to development charges (DC), parkland dedication/cash-in-lieu of parkland, and Planning Act - Section 37 agreements, and introduced Community Benefits Charges (CBC) legislation in 2019.

Municipalities may, by by-law, impose a Community Benefits Charge against land to pay for the capital costs of facilities, services and matters required, because of development or redevelopment in the area to which the by-law applies.

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In February, the Province released proposed regulations with further changes to development charges and a new CBC framework. The proposed regulation provides flexibility on how a municipality could collect for parkland dedication and density bonusing. Municipalities can choose to apply the basic parkland dedication – the maximum of either 5% for a residential development or 2% for a commercial or industrial development.

As an alternative to this, a municipality can establish a community benefits charge by-law to collect funds to acquire land for parks as well as other community services such as affordable housing and childcare, which were typical Section 37 benefits. In this case, if both a developer and municipality agree, a developer could provide land for parks (rather than a payment). The agreed-upon value attributed to the in-kind parkland contribution would be applied toward the community benefits charge payable.

In such cases, the proposed percentages of land value would be capped at 10% for lower-tier municipalities and 5% for upper-tier municipalities.

In the event a municipality chooses to pass a CBC by-law, a community benefits charge strategy must be prepared. The municipality must comply with any requirements that may be prescribed in regulations regarding the mandatory content that a strategy should address. In preparing a community benefits charge strategy, a municipality must consult, but has the flexibility to determine their consultation approach.

Based on preliminary analysis of the 2 new revenue tools (basic parkland and CBC), Richmond Hill may not experience revenue neutrality, as the proposed maximums (caps) on basic parkland dedication values are not sufficient to maintain the level of parkland dedication collection compared to the previous revenue tools available to fund parkland, including the current fixed rate for apartment and townhouse units.

Furthermore, it is unclear from the proposed regulations whether a municipality can choose to utilize the full 10% collected via a CBC by-law for one community benefit category, if it so chooses, or if it has to collect for a variety of community benefits.

The deadline to establish a CBC by-law will be one year after the CBC authority is in effect. This is a change from a previous regulatory proposal and will give municipalities more time for implementation. The CBC by-law is appealable to the LPAT (similar to DCs).

Staff will continue to monitor and provide updates to Council. The timing of a Community Benefits Charge By-law is contingent on provincial direction and when the related regulations are finalized.

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Removing the 10% Statutory Deduction on Eligible Services

The draft regulations provided the list of development charge eligible services and removal of the 10% statutory deduction from all services that remain eligible under the DCA. Richmond Hill's services that are impacted include outdoor recreation, indoor recreation and library services. Growth-related projects previously ineligible for development charge recovery as a result of the 10% statutory deduction being applied to soft services are now recoverable at 100%. This would allow the City to fund more projects through development charges.

Approach to Amend and Update to the Development Charges By-law

As a result of Bill 108 related changes to the DCA, the City's existing City-wide DC by-law will require an amendment in 2020 once the DCA and CBC regulations are finalized. The amendment will reflect legislative changes and will be limited in scope amending specific areas in the By-law. It does not repeal or replace the existing by-law and rights of appeal are limited to the areas amended.

Specific areas of review will include the removal of the 10% statutory deduction for outdoor recreation, indoor recreation and library services and may address other policy and administrative issues. Given the removal of the 10% statutory deduction, it would be in the City's best interest to amend the By-law as early as possible to capture 100% of the development charges recovery on soft services.

Council approved a two stage DC By-law Update in 2019. The "first update" occurred in May 2019, as Council adopted the interim City-wide and area specific DC by-laws. The "second update" will include the City-wide and the remaining area specific DC by-laws, slated for Council consideration in 2021. The "second update" will be informed by numerous items that are currently in progress, including:

- Recommendations from the City's capital sustainability review;
- Various updated City's Master Plans (i.e. Official Plan, Parks/Cultural/Recreation Plan, Transportation Master Plan, Urban Master Environmental Servicing Plan);
- Pending decision from the Local Planning Appeal Tribunal (LPAT) on the dispute brought forward by the developers in 2016;
- The Region's revised growth plan to 2041;
- Consideration of City-wide vs. Area Specific.

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The above factors will impact the timing of the tabling of the “second update”.

Financial/Staffing/Other Implications:

Development charges are the primary source of funding for growth related capital infrastructure. Freezing of development charge rates or payment deferrals disconnect the cost of infrastructure and the rates charged. This is a result of timing difference between the construction of growth related infrastructure and the collection of the development charges. The full financial impact of the interest policy will not be clear until the City begins collecting development charges under the provisions of the frozen rates and phased payments.

Removal of the mandatory 10% deduction from “soft services” from the DCA such as outdoor recreation, indoor recreation and library services would result in the City’s ability to collect 100% of the capital costs through development charges instead of 90%. Based on the 2019 Development Charges Background Study, the removal of the 10% statutory deduction would result in an approximately additional \$14 million that would be eligible to be funded through development charges.

Amending the City-wide Development Charges By-law and adopting a Community Benefits Charge By-law will help the City continue to recover growth related capital costs as permitted under the new legislation.

Relationship to the Strategic Plan:

Presenting the updates on initiatives staff plan to undertake in 2020 to respond to recent changes introduced by Bills 108 and 138 demonstrates responsible municipal management in which the following objectives are being met:

- a) Reinforce the commitment to maintain sound fiscal management;
- b) Wise management of resources in Richmond Hill; and
- c) Ensure open information flow and accessible decision-making.

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Conclusion:

Charging interest on frozen development charges and phased developments could help mitigate the negative financial impacts of Bill 108 by helping to improve cost recovery and encouraging developments to proceed in a timely manner. Amending the City-wide development charges by-law prior to its expiry provides an opportunity to revisit specific assumptions and methodologies to better achieve growth-related cost recovery and alignment with legislative changes introduced by Bills 108 and 138. Timing of a Community Benefits Charge Strategy and By-law will depend on when the Province finalizes the related regulations.

Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. If you require an alternative format please call the contact person listed in this document.

- Appendix A – Development Charges Interest Policy

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Report Approval Details

Document Title:	SRCFS.20.009 Update on Bill 108 More Homes More Choice Act and Interest Policy.docx
Attachments:	- SRCFS.20.009 Appendix A.docx
Final Approval Date:	Apr 15, 2020

This report and all of its attachments were approved and signed as outlined below:

David Dexter - Apr 15, 2020 - 1:09 PM

Sherry Adams - Apr 15, 2020 - 1:43 PM

MaryAnne Dempster - Apr 15, 2020 - 2:12 PM