



**STAFF REPORT  
ACTION REQUIRED  
with Confidential Attachment**

**Development Charge Complaint – 343 Evans Avenue**

<b>Date:</b>	September 23, 2009
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager and Chief Financial Officer
<b>Wards:</b>	Ward 6
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
<b>Reference Number:</b>	P:\2009\Internal Services\SP\Ec09011Sp (AFS #10490)

**SUMMARY**

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The purpose of this report is to provide staff recommendations in response to a complaint filed pursuant to section 20 of the *Development Charges Act, 1997*.

Famous People Players was assessed development charges for its conversion of existing industrial space into a theatre and dining facility. At the request of Famous People Players, Council authorized entering into a Development Charge Late Payment Agreement that allowed for the payment of applicable development charges in 36 interest-free, monthly installments. In view of a variety of circumstances, including the timing of the Famous People Players building permit application and the nature of redevelopment resulting from its conversion of existing space, it is recommended that Council give favourable consideration to the request for relief from the payment of development charges in this instance.

**RECOMMENDATIONS**

**The Deputy City Manager and Chief Financial Officer recommends that**

1. Council determine that the City’s Development Charge By-law has been properly applied.

2. Council provide Famous People Players, on an exception basis, relief from the payment of applicable development charges for its development at 343 Evans Avenue.
3. Council authorize and direct the appropriate City staff to take necessary action to give effect thereto.
4. Council receive the confidential information contained in Attachment 1.
5. Council determine that the confidential information in Attachment 1 will remain confidential in its entirety.

### **Financial Impact**

Development charges in the amount of \$186,554.91 were assessed for the Famous People Players' redevelopment at 343 Evans Avenue. The City and Famous People Players have entered into a Development Charge Late Payment Agreement that allows the charges to be paid in 36 interest-free, monthly installments of \$5,182.08. Adoption of the recommendations contained in this report will result in the City foregoing \$186,554.91 in development charge revenues to be received over the 36-month period. The City has to-date received three installments of \$5,182.08, for a total of \$15,546.24, which will have to be refunded to Famous People Players if Council adopts the staff recommendations.

### **ISSUE BACKGROUND**

Famous People Players is a world-renowned, not-for-profit black light theatre company founded in 1974 to integrate developmentally challenged individuals into society. It has leased a unit in an existing industrial building and carried out interior alterations to make the space suitable for its purposes of operating a theatre and dining facilities. The complaint (Attachment 2) relates to the assessment of development charges upon the issuance of a building permit for the interior alterations and subsequent change of use at an existing industrial unit. The complainant's stated position is that the change of use and interior alterations do not create new floor area, the use is permitted under the applicable zoning by-law, and as such the application of the by-law and the imposition of the development charge were incorrectly made. As an alternative position, it is requested that the City provide relief from the payment of development charges in this instance.

### **Provisions under the Act**

Under Section 20 of the *Development Charges Act, 1997* (the "Act"), a person required to pay a development charge may complain to Council that:

- (a) the amount of the development charge was incorrectly determined;

- (b) a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or
- (c) there was an error in the application of the Development Charge By-law.

Section 20 further requires that Council hold a hearing into the complaint and give the complainant an opportunity to make representations at that hearing. After hearing the evidence and submission of the complainant, Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. Under Section 22 of the Act, the complainant may appeal the decision of Council to the Ontario Municipal Board (the “Board”). The complainant may also appeal to the Board if Council does not deal with the complaint within 60 days after the complaint has been made.

### **Agreement to Alter Timing of Payment**

Under both the Act (section 27) and the City’s DC By-law, Council may enter into an agreement providing for all or any part of the DC to be paid before or after it would otherwise be payable. City Council, at its meeting on May 25, 26 and 27, 2009, adopted the following motion:

“City Council, recognizing the significant public and community benefits, including employment opportunities, which Famous People Players brings to the City of Toronto, direct and authorize the Deputy City Manager and Chief Financial Officer to negotiate and enter into an agreement in a form satisfactory to the Deputy City Manager and Chief Financial Officer and the City Solicitor that allows the Famous People Players to pay in equal installments without interest, the assessed development charges over a 36-month period, thus enabling staff to release the required building permits for the development of the site.”

As directed by Council, staff negotiated and entered into a Development Charge Late Payment Agreement, and the building permit was issued on June 9, 2009.

## **COMMENTS**

### **Redevelopment Reduction**

The City’s policy with respect to redevelopment reductions has progressively become more focussed under successive development charge (DC) by-laws. The table below summarizes redevelopment reduction provisions under the previous and current City of Toronto DC by-laws.

DC By-law	Redevelopment Reduction Eligibility			
	Residential to		Non-residential to	
	Residential	Non-residential	Residential	Non-residential
476-1999	Yes	N/A	Yes	N/A
547-2004	Yes	No	No	Yes
275-2009	Yes	Yes	No	Yes*

\* only if existing use (prior to redevelopment) is chargeable under the by-law

Under the 1999 by-law, while all non-residential development was exempted from the payment of DCs, redevelopment of non-residential space for residential purposes was provided a redevelopment reduction. In the 2004 by-law, which introduced a ‘retail-only’ non-residential charge, a DC reduction was provided upon the redevelopment to any non-residential space, with only the net increase in non-residential floor area being subject to DCs if developed for retail purposes; however, conversion from non-residential to residential uses, or vice versa, was no longer eligible for the redevelopment reduction. Under the current DC by-law a reduction is available only in instances where the existing non-residential use is chargeable.

### **Application of the DC By-law**

The current by-law provides a list of specific exemptions. These include, among others, lands used for municipal or board of education purposes, colleges and universities, public hospitals, places of worship and cemeteries, and industrial uses. The use proposed by Famous People Players (FPP) does not qualify under any of the exemptions afforded in the by-law. Further, in accordance with other provisions of the by-law, no redevelopment reduction is applicable in this case as the space that is being redeveloped is not chargeable. Consequently, DCs were assessed in accordance with the provisions of the by-law and became due prior to the issuance of the building permit. Should Council elect to confirm the DCs and Council’s decision is appealed to the Board, staff is confident that the Board will uphold the application of the by-law in this instance.

### **Basis for Relief**

FPP commenced its development application and review process during the transition period between the old and the current DC by-laws. Under the redevelopment provisions of the old DC by-law the subject development would not have been assessed DCs. FPP may not have had the benefit of proper advice to fully appreciate the impact on its application of the differences between the two by-laws and applied for its building permit on May 6, 2009; the permit was issued on June 9, 2009, subsequent to FPP signing the Development Charge Late Payment Agreement. Had FPP applied for and drawn the building permit prior to May 1, 2009, the day the current DC by-law came into effect, it would not have been subject to DCs. In view of the foregoing, and as discussed further in Attachment 1, staff is recommending, on an exception basis, that FPP be granted relief from the payment of applicable DCs for its redevelopment at 343 Evans Avenue.

**CONTACT**

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**SIGNATURE**

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Cam Weldon

Deputy City Manager and

Chief Financial Officer

**ATTACHMENTS**

Attachment 1: Confidential Attachment

Attachment 2: Complaint Letter, dated August 5, 2009, from Gowlings