



STAFF REPORT ACTION REQUIRED

Development Charge Bylaw – Technical Amendment

Date:	October 16, 2009
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2009\Internal Services\SP\EC09013SP (AFS # 10650)

SUMMARY

This report presents a proposed amendment to Development Charge Bylaw 275-2009 for consideration at a statutory public meeting. The purpose of the amendment is solely to clarify the definition of “Ground Floor” that is used in calculating the non-residential charge as described in section 415-7 B. of the bylaw.

This technical amendment to the bylaw is required because, in certain circumstances, it is possible to avoid the payment of non-residential development charges by raising the exterior grade surrounding a building, or lowering the average level of the first floor. The City Solicitor recommends the proposed amendment to the bylaw in order to prevent this circumvention of the intent of the bylaw.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. Council adopt the proposed amendment to Development Charge By-law 275-2009, attached to this report as Appendix 1.
2. Council authorize the City Solicitor, in consultation with the Deputy City Manager and Chief Financial Officer, to make such stylistic and minor changes to the attached amendment to Development Charge Bylaw 275-2009 as necessary to give effect to the recommendations contained herein.

Financial Impact

As the development charge bylaw is currently worded, there is the potential that, in certain cases, the City may not be able to collect non-residential development charges as intended. The proposed amendment will ensure that all non-exempt non-residential development will be subject to a development charge as originally intended when Council considered and adopted the City's new development charge bylaw earlier this year.

DECISION HISTORY

Council, at its meeting on February 23, 24 and 25, 2009, adopted Development Charge Bylaw 275-2009 ("the 2009 DC Bylaw") which imposed a uniform city-wide development charge on land development projects for residential and, with certain exceptions, non-residential land uses.

A link to Council's decision is as follows (see Item EX29.8):

<http://www.toronto.ca/legdocs/mmis/2009/cc/decisions/2009-02-23-cc31-dd.htm>.

Contained within that document are links to the background staff reports, the Development Charge Background Study, as amended, and related staff presentations.

ISSUE BACKGROUND

As discussed in the staff reports and Council deliberations leading up to the adoption of the 2009 DC Bylaw, the intended non-residential development charge applies to non-exempt non-residential floor area located on the ground floor only. The reasons for imposing the charge on the ground floor, as advanced in the October 27, 2008 staff report, include:

- the definition of "retail uses" in the previous development charge bylaw (No. 547-2004) presented a number of challenges because it was not always possible to determine, at the building permit stage, whether ground floor non-residential space is going to be used for retail uses or for other non-residential uses. Furthermore, the difficulty in implementing this aspect of the bylaw created uncertainty for developers and resulted in higher costs for the City and developers when differences of opinions arose. In some cases the disputes resulted in complaints filed by applicants pursuant to the *Development Charges Act, 1997* ("DC Act"), and required hearings before Executive Committee and the Ontario Municipal Board ("OMB").
- most retail and personal services uses locate on the ground floor of multi-storey buildings or in single-storey buildings, thus most retail and personal service space will continue to be subject to development charges.

With respect to the bylaw, the ground floor non-residential charge was implemented in the 2009 DC bylaw as follows:

Excerpt of § 415-7. Amount of charge:

“B. Non-residential charge.

(1) Development charges shall be imposed upon all non-residential uses of land, ... according to the amount of non-residential gross floor area which is located on the ground floor of such building or structure....”

Excerpt of § 415-1. Definitions:

“GROUND FLOOR — For the purposes of § 415-7, ground floor shall be the first floor of a building or structure above grade.”

“GRADE — The average level of proposed or finished grade adjoining a building or structure at all exterior walls.”

COMMENTS

This report presents a proposed amendment to the 2009 DC bylaw (the “Amending Bylaw”) for consideration at a public meeting. The proposed Amending Bylaw is attached as Appendix 1 to this report.

The purpose of the proposed amendment is solely to clarify the definition of “Ground Floor” that is used in calculating the non-residential charge. This is required because, in certain circumstances, it is possible to avoid the payment of the non-residential development charge by raising or “building up” the grade surrounding a building, or lowering the average level of the first floor, so that the first floor is below grade. It is possible that in a building with only one storey of non-residential uses, there would be no “Ground Floor”, as defined (i.e. there is no floor above grade), and consequently, there would be no non-residential charge. This is contrary to the intended ground floor non-residential charge, as described in the staff reports and deliberations leading up to bylaw adoption. The intended charge should technically apply to the first floor that is closest to grade, regardless of whether it is above or partially below grade. In order to rectify this situation, the City Solicitor recommends the proposed technical amendment to the 2009 DC Bylaw.

Proposed bylaw amendment

The revised definition of “Ground Floor”, as set out in the proposed Amending Bylaw, is as follows:

“GROUND FLOOR – For the purposes of § 415-7B, ground floor shall be the floor of a building or structure which is closest to grade, except that a building or structure that is entirely below grade shall be deemed to not have a ground floor for the purposes of imposing a development charge.”

The amended “Ground Floor” definition implements the original intent underlying the non-residential charge such that the charge applies whether the ground floor is partially above or below grade. Where a building or structure is entirely below grade (e.g. underground PATH), the non-residential charge will not apply, which accords with the intent of the 2009 DC Bylaw.

What is the process for amending the bylaw?

Before amending a development charge bylaw, the DC Act requires that Council:

- (a) hold at least one public meeting;
- (b) give at least 20-days notice of the meeting or meetings in accordance with the regulations; and
- (c) ensure that the proposed by-law and the background study are made available to the public at least two weeks prior to the meeting or, if there is more than one meeting, prior to the first meeting.

In accordance with the above requirements, the requisite notice of the public meeting was published in the Toronto Star on October 9, 2009 and the proposed bylaw amendment and background study were made available to the public, through the City Clerk’s office, on October 16, 2009.

The Amending Bylaw may be appealed to the OMB, and the OMB, in an appeal of an amendment to a development charge bylaw, may exercise its powers only in relation to the amendment.

CONTACT

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SIGNATURE

Cam Weldon
Deputy City Manager and Chief Financial Officer

ATTACHMENTS

Appendix 1: Proposed Amendment to Development Charge By-law 275-2009

Appendix 1
Proposed Amendment to Development Charge By-law 275-2009
(rev. October 11, 2009)

Authority: Executive Committee Item _____, adopted as amended,
by City of Toronto Council on _____, 2009
Enacted by Council:

CITY OF TORONTO

BY-LAW No. _____ -2009

**To amend City of Toronto Municipal Code Chapter 415, Development of Land, by
re-enacting Article I, Development Charges.**

WHEREAS the *Development Charges Act, 1997*, S.O. 1997, c.27 (the “Act”), authorizes Council to pass by-laws for the imposition of development charges against land; and

WHEREAS Council desires to ensure that the capital cost of meeting development related demands for, or the burden on, City services does not place an undue financial burden on the City or its existing taxpayers while, at the same time, ensuring new development contributes no more than the net capital cost attributable to providing the historic level of services and meeting the requirements of subsection 5(1) of the Act; and

WHEREAS Council on February 25, 2009, enacted City of Toronto By-law No. 275-2009 to impose development charges against land; and

WHEREAS Section 19 of the Act provides for amendments to a development charge by-law; and

WHEREAS it has been determined that a technical amendment is required to clarify the original intent of the definition of “Ground Floor” in By-law 275-2009; and

WHEREAS the Executive Committee at its meeting dated November 2, 2009, had before it a report entitled “City of Toronto 2008 Development Charge Background Study” prepared by Watson & Associates Economists Ltd., which study was completed on January 13, 2009 (the “Study”); and

WHEREAS the Study was made available to the public at least two weeks prior to the public meeting and Council gave more than twenty days notice to the public and a meeting pursuant to section 12 of the Act was held on November 2, 2009, before the Executive Committee, prior to and at which the Study and the proposed development charge by-law were made available to the public and Committee heard comments and representations from all persons who applied to be heard; and

WHEREAS Council at its meeting held on November 30 and December 1, 2009, considered the Study and a report dated _____, 2009, from the Deputy City Manager and Chief Financial Officer;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Chapter 415, Development of Land, of The City of Toronto Municipal Code is amended as follows:

Section 415-1 (Definitions) is hereby amended by deleting the definition of GROUND FLOOR in its entirety and substituting the following definition:

“GROUND FLOOR – For the purposes of § 415-7B, ground floor shall be the floor of a building or structure which is closest to grade, except that a building or structure that is entirely below grade shall be deemed to not have a ground floor for the purposes of imposing a development charge.”

ENACTED AND PASSED this _____ day of _____, A.D. 2009.

SANDRA BUSSIN,
Speaker

ULLI S. WATKISS
City Clerk

(Corporate Seal)