

Development Charges Act – Proposed Amendments

Date:	August 20, 2007
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2007\Internal Services\SP\Ec07007Sp (AFS#4525)

SUMMARY

This report responds to Council’s direction for a report pertaining to a motion seeking amendments to the *Development Charges Act, 1997* (the “Act”), to permit full recovery of growth-related capital costs through development charges. The motion sought the removal of the following constraints currently imposed by the Act:

- use of historical service level averages to estimate increase in need;
- statutory 10 percent reduction of capital costs; and
- exclusion of specified municipal services from development charge calculations.

The cap imposed by the use of historical service levels on eligible growth-related capital costs, used in the 2004 Development Charge Background Study, had a significant negative impact on the amount recoverable through development charges. The effect of the statutory reduction of 10% of the capital costs is relatively minor. It is currently not possible to quantify the effect of the exclusion of specified services from the development charge calculation; however, staff expects that the impact could be significant.

The City, along with other members of the Association of Municipalities of Ontario, is assisting the Ministry of Finance and the Ministry of Municipal Affairs and Housing to develop a range of options on reform of the Act.

FINANCIAL IMPACT

The 2004 Development Charge Background Study, prepared in accordance with the provisions and requirements of the *Development Charges Act, 1997*, calculated the maximum permissible rates that could have been charged by type of development.

However, Council elected to reduce the residential charge, maintain the exemption for non-residential development, and introduced the calculated charge for retail uses. This resulted in a reduction of almost \$20 million in estimated annual development charge revenues as compared to at the rates calculated in the background study. It is currently not possible to estimate the increase in development charge revenues resulting from the inclusion of all services. However, the elimination of the historical cap and the statutory 10 percent reduction would have led to at least an additional \$25 million in estimated annual development charge revenues at Council-adopted rates.

DECISION HISTORY

City Council, at its meeting on March 7, 2007, referred the following motion, moved by Councillor Cliff Jenkins, to the Deputy City Manager and Chief Financial Officer for a report to the Executive Committee.

“That City Council request the Minister of Municipal Affairs and Housing to bring forward amendments to the Development Charges Act, 1997, to permit full recovery of growth-related capital costs and reduction of debt in the 2008-2011 Capital Plan, such amendments to include the removal of the following constraints on the City:

1. the exclusion of specified municipal services from the development charge calculations;
2. the statutory 10 percent reduction of the capital costs; and
3. the requirement to use historical service levels to estimate increase in need.”

ISSUE BACKGROUND

Development charges are an important tool for municipalities to partially finance growth-related capital infrastructure requirements. The Act provides the legislative authority for municipalities to levy the charge, and prescribes the methodology and other requirements for the calculation of the charge that may be imposed.

Subsection 2(4) of the Act prohibits the imposition of development charges to fund the capital costs of certain services. These services include cultural and entertainment facilities, tourism facilities, parkland acquisition, waste management services, hospitals, and administrative headquarters.

Section 5 of the Act details the methodology for the determination of development charges. Paragraph 4 of subsection 5(1) prescribes the use of historical service levels – the average level over the 10-year period immediately preceding the preparation of the background study. Paragraph 8 of subsection 5(1) provides the statutory requirement to reduce capital costs by 10 percent.

COMMENTS

The Act prescribes the methodology to be employed for the determination of the quantum of development charges that may be levied. In order to quantify eligible growth-related gross capital costs that can potentially be recovered through development charges, the Act requires the use of average service levels achieved in the 10-year period immediately preceding the preparation of the Background Study. In accordance with other provisions of the Act, eligible growth-related gross capital costs are further reduced to account for

- benefit to existing development;
- benefit accruing to development beyond the 10-year planning horizon (post-planning period capacity);
- grant, subsidies, or cost-sharing provisions; and
- a statutory 10 percent reduction, for some services.

The impact of the foregoing provisions is to reduce the amount that can be recovered through development charges.

The rationale for the above methodology is the concept that ‘growth ought to pay for growth’ and that new development should not have to pay for enhancing or improving service levels. The costs of such improvements are required to be equitably apportioned between existing development, the development likely to occur within the planning horizon of 10 years, and the development that may occur beyond that horizon.

Of the \$7.8 billion gross development-related capital cost of the entire 10-year capital program included in the 2004 Development Charge Background Study, \$1.1 billion (14%) was determined to be recoverable through development charges. The major deductions were on account of the use of the prescribed historical service levels (36%) and netting out of benefits to existing development (38%); the balance was accounted for by grants and subsidies, post-planning period capacities and the statutory 10 percent reduction. While the Background Study calculated the maximum permissible rates that could be charged by the type of development, the by-law imposed charges at a reduced level following consultation with representatives of the land development industry. The by-law, as enacted by Council, reduced the quantum of residential development charges by approximately 18% as compared to the maximum permissible calculated in the Background Study. In addition, Council elected to maintain the existing development charges exemption for non-residential development, with the exception of imposing the calculated charge for retail development only. As a result, the estimate of annual development charge revenue was scaled back from \$63 million (at maximum permissible rates) to \$43 million (at Council-adopted rates).

Use of Historical Service Levels

In the 2004 Development Charge Background Study, of the fourteen services covered by the City’s Development Charges By-law (the “by-law”), eligible capital costs of four

services – police, shelter, housing and support, EMS and the TTC – were affected by the use of historical service level averages. A total of \$2.8 billion (36% of the gross growth-related capital costs) was deemed ineligible for recovery through development charges on account of this requirement of the Act; the bulk of this amount was constituted by transit-related costs. If the 2004 development charge calculations had not been subject to this constraint, the annual development charge revenue would have been almost 49% higher (\$64 million) at Council-adopted rates.

Through recent amendments to the Act, the Province has exempted the Spadina Subway extension project from being subject to this requirement, thereby allowing the City to recover a more appropriate share of the growth-related capital costs of the project. The Province has also advised that the exemption is an exception in view of the broader policy objectives that the project fulfils.

Statutory 10 percent service discount

Under the Act, municipalities are required to finance 10 percent of the growth-related capital costs of providing all services except water, sewer, storm water management, police, fire and roads. This reduction is made after all other deductions have been carried out and, consequently, its impact is relatively minor.

In the event that the 2004 development charge calculations had not been subject to this discount, there would have been approximately \$2 million in additional development charge revenue on an annual basis at Council-adopted rates.

The recent amendments to the Act, referred to above, exempt the Spadina Subway extension project from this requirement.

Exclusion of specified municipal services

Under the Act, a municipality may impose development charges to pay for increased capital costs required because of increased need for any service except

- cultural, entertainment, tourism facilities
- acquisition of land for parks
- hospitals
- waste management services
- headquarters for general administration

It is currently not possible to estimate with a high degree of confidence the quantum of additional development charge revenue that could be realized if such services had not been excluded from the development charge calculation. Studies and analyses to provide the required data and information have not been conducted for the services that are excluded from the development charge calculations. However, staff expects that such potential revenue could be significant.

Provincial Review of Development Charges

As part of the broader Provincial-Municipal Fiscal and Service Delivery Review initiative, the Province has recently set up a Development Charges Sub-Group with the goal of developing long-term, sustainable options for funding for municipal infrastructure. The City, along with other members of the Association of Municipalities of Ontario, is assisting the Ministry of Finance and the Ministry of Municipal Affairs and Housing to develop a range of options on reform of the Act.

CONTACT

Joe Farag, Director, Special Projects
Tel.: 416-392-8108; Fax: 416-397-4465; email: jfarag@toronto.ca

SIGNATURE

Joseph P. Pennachetti
Deputy City Manager and Chief Financial Officer