



STAFF REPORT ACTION REQUIRED

Development Charge By-law – Amendment

Date:	September 16, 2011
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2001\Internal Services\SP\ec11004SP (AFS # 14206)

SUMMARY

This report presents a proposed amendment to Development Charge By-law 275-2009 for consideration at a statutory public meeting. The amendment rectifies an anomaly in the availability of a development charge reduction for certain non-residential lands that are redeveloped to other non-residential uses.

Under the current development charge by-law in cases where an existing non-residential building or structure is redeveloped, through demolition or conversion, to another non-residential use, a development charge reduction is provided only in cases where the existing use is chargeable. Consequently, redevelopment of an industrial facility (non-chargeable) to another non-residential use requires the payment of development charges, even if no new floor area is created. In some cases, this provision has created an undue financial burden on some development applicants, especially small businesses, and has resulted in a disincentive to the redevelopment of certain non-residential uses. In the course of implementing the by-law, staff has reconsidered this policy and recommends amending the relevant provision of Development Charge By-law 275-2009 so that development charges are only imposed on the additional floor area created and not on the floor area that exists or existed prior to the redevelopment.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that

1. Council adopt the Development Charge Background Study (dated September 6, 2011, attached to this report as Appendix 1) for the purposes of complying with the *Development Charges Act, 1997*.

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

Financial Impact

The City received over \$90 million in development charge payments in 2010, and more than \$97 million during the first six months of this year; approximately 5% of these revenues resulted from non-residential development charge payments. The recommendations contained in this report affect only a subset of non-residential land development (i.e., only redevelopment of non-residential space). Accordingly, if the recommendations are adopted, they are likely to have a very limited impact on aggregate development charge revenues. Further, any reduction in annual development charge collections resulting from the proposed amendment is likely to be more than offset by higher property taxes resulting from increased assessment values (please see Appendix 3) and other economic benefits of the redevelopment, including the creation of employment opportunities.

DECISION HISTORY

Council adopted Development Charge By-law 275-2009 (the "2009 DC by-law") at its meeting on February 23, 24 and 25, 2009. The by-law has been in effect since May 1, 2009. The links to the by-law and a subsequent amendment are provided below.

<http://www.toronto.ca/legdocs/bylaws/2009/law0275.pdf>

<http://www.toronto.ca/legdocs/bylaws/2009/law1195.pdf>

ISSUE BACKGROUND

Under the 2009 DC by-law in cases where an existing non-residential building is redeveloped (demolished or converted) to another non-residential use, a development charge reduction is provided only in cases where the existing use is chargeable. Consequently, redevelopment of an industrial building (non-chargeable) to another non-residential use requires a DC payment, even if no new floor area is created. In some cases, this provision has created an undue financial burden on development applicants, especially small businesses wishing to convert industrial buildings (typically long-vacant light-industrial buildings) to other employment uses.

COMMENTS

As a general rule, new land development projects – the creation of additional residential units or non-residential floor area – require the provision of municipal services by the City. In some cases the need for additional services resulting from such growth can be met through existing capacity, while in other instances it requires capital investments by the City to service the increased need. Development charges are imposed to help pay for capital costs incurred by the City to service the increased need arising from growth and development. In deciding whether or not to impose DCs and the amount of the charge, Council must balance the revenue needs of the City with its planning and economic development objectives; DCs are not meant to be a disincentive to growth and development.

The 2004 DC by-law (547-2004) provided a redevelopment reduction in all cases of non-residential redevelopment that resulted in other non-residential uses. This was seen as financially punitive to the City in that redevelopment from an exempt use to a non-exempt use resulted in a reduction of DCs. Further, the policy could have been viewed as offering a modest incentive for the redevelopment of industrial lands to other non-industrial uses, which would be seen as counter to the City's planning and economic development objectives. In order to address these two concerns, under the 2009 DC by-law, the availability of a NR redevelopment reduction was linked to the DC status of the existing NR use.

The change in policy is, however, acting as a significant barrier to the productive utilization of under-utilized industrial space. Projects that could lead to economic and social benefits from the redevelopment of existing industrial buildings (or parts thereof) are becoming financially unviable as a result of the current policy that requires the payment of DCs even if no new floor area is created. It would likely be in the City's interest to promote employment generation and productive utilization of employment lands rather to have them vacant and under-performing for prolonged periods of time. It is for this reason that staff is recommending the proposed amendment to the 2009 DC by-law.

Proposed Amendment

As stated earlier, DCs are imposed to help pay for capital costs incurred by the City to meet the growth-related increase in need for municipal services. Development projects that do not create new floor area would then seemingly not be required to pay DCs. In the case of redevelopment of existing NR floor area to other NR uses, it could be argued that municipal services are available and therefore no DCs should be payable if no additional floor area is created. In such instances imposing DCs could potentially act as a disincentive to productive utilization of existing floor area and to the redevelopment of otherwise idle and/or vacant space. The proposed amendment eliminates this potential disincentive and provides a NR redevelopment reduction in all cases of redevelopment of NR floor area to other NR uses. Under the proposed amendment, DCs would only be due

for any increase in the gross floor area of the ground floor. While redevelopment of industrial space for commercial or retail purposes is not actively promoted by the City, it should not penalize owners who wish to put such lands to other productive non-residential use(s).

Land Use Impact

Various planning policies, including the Provincial Policy Statement, Places to Grow, the City's Official Plan, and zoning by-law(s) determine and regulate land use in the City. All development or redevelopment projects are required to comply with the City's policy objectives and permitted land uses. The proposed amendment does not alter this requirement nor does it diminish Council's ability to direct or control land use in the City. It is indeed likely that in the absence of the redevelopment reduction in DCs provided by the proposed amendment, some NR redevelopment projects may not be proposed or undertaken; however, all such projects that do proceed will still be subject to the normal planning application evaluation and approval process, if a planning application is required.

Background Study

Council passed the 2009 DC by-law in accordance with the stringent requirements of the *Development Charges Act, 1997* (the "Act"), including completion of the required background study that included estimates of the amount, type and location of development, the increase in the need for service attributable to the anticipated development, calculations under s.5(1) of the Act for each service, as well as an examination of the long-term capital and operating costs of the capital infrastructure required for the services.

Pursuant to subsection 19 (1) of the Act, all requirements for passing a DC by-law (sections 10 to 18) are applicable with "necessary modifications" in the case of an amendment to the DC by-law, including the completion of a background study. The sole purpose of the proposed amendment is to revise municipal policy concerning one type of development charge reduction/exemption; it does not alter or address the growth forecast, the capital program or the calculation of the DC. As a result, the "necessary modifications" in subsection 19 (1) of the Act serve to reduce the scope of the background study (attached as Appendix 1) to this particular policy matter.

Process to Amend the DC By-law

The Act prescribes the process for amending a DC by-law and requires that Council

- a) hold at least one public meeting;
- b) give at least 20-days notice of the public meeting or meetings in accordance with the regulation; and
- c) ensure that the amending 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 then prior to the first meeting.

In accordance with the above requirements, the notice of the public meeting was published on September 12, 2011, and the proposed amendment and the background study were made available to the public through the City Clerk's office on September 16, 2011. The process offers stakeholders an opportunity to provide input relating to the proposed amendment.

The amending by-law may be appealed to the Ontario Municipal Board which may exercise its powers in relation to the amendment only.

CONTACT

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SIGNATURE

Cam Weldon
Deputy City Manager and Chief Financial Officer

ATTACHMENTS

- Appendix 1: Development Charge Background Study (dated September 6, 2011)
Appendix 2: Proposed Amendment to Development Charge By-law (275-2009)
Appendix 3: Recovery of Foregone DCs through Increased Assessment upon Conversion

Appendix 1

Development Charge Background Study (September 6, 2011)

1. INTRODUCTION

1.1 Under Development Change By-law 275-2009 in cases where an existing non-residential building is redeveloped (demolished or converted) to another non-residential use, a development charge reduction is provided only in cases where the existing use is subject to development charges. Consequently, redevelopment of an industrial building (non-chargeable) to another non-residential use requires a DC payment, even if no new floor area is created. In some cases, this provision has created an undue financial burden on development applicants and has resulted in a disincentive to the redevelopment of certain non-residential uses.

2. STATUTORY AND BY-LAW PROVISIONS

2.1 s.s.19(1) of the Act states that:

“Sections 10 to 18 apply with necessary modifications, to an amendment to a development charge by-law other than an amendment by, or pursuant to an order of, the Ontario Municipal Board.”

2.2 Section 10 requires that a DC Background Study be completed by Council before passing a DC by-law.

2.3 This Background Study does not alter or address the growth forecast, the capital program or the calculation of the DC. Its sole area of concern is with respect to municipal policy concerning one type of development charge reduction/exemption. As a result, the “necessary modifications” in paragraph 2.1 serve to reduce the scope of the Background Study to this particular policy matter. This is independent of, and does not affect, the calculation of the City’s 2009 development charge, which was made with regard to all anticipated development, whether DC exempt or not.

2.4 Sections 11-18 of the Act address the requirements involved in passing a DC by-law, including public meeting of Council, meeting notice, release of the Background Study, and by-law appeal, all of which are applicable in this case.

2.5 Council adopted Development Charge By-law 275-2009 (the “2009 DC by-law”) at its meeting on February 25, 2009. The by-law has been in effect since May 1, 2009.

2.6 Section 415-7 of By-law No. 275-2009 deals with the amount of the charge and contains three sub-sections – “A Residential Charge”, “B Non-residential Charge” and “C Redevelopment.” The Redevelopment subsection (attached as Schedule A to this Background Study) addresses redevelopment occurring within thirty-six months of demolition permit or for a structure to be converted from one use to another use.

2.7 Paragraph 1(a) of Subsection C deals with the redevelopment of residential uses, which receive a DC reduction in the amount of the DC otherwise applicable to the dwelling units or rooms demolished or converted.

2.8 Paragraph 1(b) deals with non-residential uses being redeveloped for non-residential purposes. Where the existing non-residential gross floor area to be demolished would have been, if newly constructed, subject to the payment of DCs, then a DC is only payable on all additional non-residential floor area in excess of the existing non-residential gross floor area to be demolished. This means, for example, that demolition of an existing industrial building being converted to a commercial use, would involve no DC reduction, because industrial development in the City is not subject to a DC.

2.9 Paragraph 1(c) states that there is no reduction in the amount of the DC payable in the case of non-residential uses being redeveloped for residential purposes.

2.10 The proposed by-law amendment is set out in Appendix 2. It deletes paragraph 1(b) and replaces it with one that provides that for non-residential redevelopment to a non-residential use, a DC will only be applied on the additional non-residential gross floor area in excess of the existing non-residential gross floor area to be demolished.

2.11 Paragraph 1(c) continues to be applicable for the reasons stated in the 2008 DC Background Study, including the fact that the DC calculation was based on the servicing needs of the City-wide net population/ employment growth, allocated over the gross increase in non-residential floor area.

3. RATIONALE FOR THE PROPOSED AMENDMENT

3.1 Development charges are imposed to help pay for capital costs incurred by the City to service the increased need arising from growth and development. In deciding whether or not to impose DCs and the amount of the charge, Council must balance the revenue needs of the City with its planning and economic development objectives; DCs are not meant to be a disincentive to growth and development.

3.2 Development projects that do not create new floor area are typically not required to pay DCs. This is because it can be argued that municipal services are already available and therefore no DCs should be payable if no additional floor area is created. In such instances imposing DCs could potentially be a disincentive to the productive

utilization of existing floor area and to the redevelopment of otherwise idle and/or vacant space. The proposed amendment eliminates this potential disincentive and provides a NR redevelopment reduction in all cases of redevelopment of NR floor area to other NR uses. Under the proposed amendment, DCs would only be due for any increase in the gross floor area of the ground floor. While redevelopment of industrial space for commercial or retail purposes is not actively promoted by the City, it should not penalize owners who wish to put such lands to other productive non-residential use(s).

3.3 It is difficult to estimate the reduction in DC revenues that may be experienced as a result of the proposed revision to the NR redevelopment reduction policy, because of the uncertainty as to the timing and amount of existing industrial uses that may be redeveloped to other NR uses.

The City received over \$90 million in development charge payments in 2010, and more than \$97 million during the first six months of this year. Approximately 5% of these revenues resulted from NR development charge payments. The proposed amendment affects only a subset of NR land development (i.e., only redevelopment of NR space) and is likely to have limited impact on aggregate development charge revenues. Further, any reduction in annual development charge collections resulting from the proposed amendment is likely to be more than offset over time, by higher property taxes resulting from increased assessment values, as well as other economic benefits of the redevelopment, including the creation of employment opportunities.

3.4 It is likely that in the absence of the redevelopment reduction in DCs provided by the proposed amendment, some NR redevelopment projects may not be proposed or undertaken; however, all such projects that do proceed will still be subject to the normal planning application evaluation and approval process, if a planning application is required.

3.5 The decision whether or not to redevelop existing NR buildings or structures to other NR uses is influenced by a number of factors other than the availability of a redevelopment reduction. The choice between developing vacant land and redeveloping an existing NR building or structure, similarly, is affected by a variety of considerations. The perceived financial benefit associated with the redevelopment reduction will most likely be capitalized in land value – a vacant parcel of land will potentially be less expensive to acquire as compared to one with an existing NR building or structure for which a redevelopment reduction would be available, as a result of the proposed amendment (setting aside all other considerations such as the value associated with the existing building and cost of demolition, etc.).

4. IMPLEMENTATION

4.1 The Act prescribes the process for amending a DC by-law and requires that Council

- a) hold at least one public meeting;
- b) give at least 20-days notice of the public meeting or meetings in accordance with the regulation; and
- c) ensure that the amending 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 then prior to the first meeting.

The amending by-law may be appealed to the Ontario Municipal Board which may exercise its powers in relation to the amendment only.

Section 415-7C of By-law No. 275-2009

§ 415-7. Amount of charge.

C. Redevelopment.

- (1) Despite any other provision of this article and subject to Subsections C(2) and C(3), where, as a result of the redevelopment of land, a demolition permit has been issued within the thirty-six month period immediately prior to the date of submission of a complete building permit application with respect to the whole or a part of a building or structure existing on the same land, or a building or structure is to be converted from one use to another use on the same land, the development charges otherwise payable with respect to such building permit application shall be reduced as follows:
 - (a) In the case of a residential building or structure, or the residential uses in a mixed-use building or structure, which is being redeveloped for residential or non-residential purposes, the development charges will be reduced by an amount calculated by multiplying the applicable development charge under Subsection A by the number of dwelling units or dwelling rooms that have been or will be demolished or converted to another type of residential use or non-residential use, and according to the type of dwelling unit or dwelling room so demolished or converted.
 - (b) In the case of a non-residential building or structure, or the non-residential uses in a mixed-use building or structure, which is being redeveloped for non-residential purposes, no development charge will be imposed to the extent that the existing non-residential gross floor area to be demolished would have been, if newly constructed, subject to the payment of development charges at the time of building permit issuance for the new building or structure and is replaced by new non-residential gross floor area; however, development charges will be imposed on all additional non-residential gross floor area in excess of the existing non-residential gross floor area that has been or will be demolished.
 - (c) In the case of a non-residential building or structure, or the non-residential uses in a mixed-use building or structure, which is being redeveloped for residential purposes, there shall be no reduction in the amount of development charges payable.

- (2) The amounts of any reduction under Subsection C(1) shall not exceed, in total, the amount of the development charges otherwise payable with respect to the redevelopment.
- (3) Any reduction under Subsection C(1) shall apply only where the use of the building or structure that has been or will be demolished or converted to another use has been legally established pursuant to all applicable zoning by-laws and all building statutes and regulations relating to the construction of buildings.

Appendix 2

Proposed Amendment to Development Charge By-law (275-2009)

Authority: Executive Committee Item _____, adopted _____,
by City of Toronto Council on _____, 2011
Enacted by Council: _____, 2011

CITY OF TORONTO

BY-LAW No. _____-2011

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 an amendment is required to amend the provisions of By-law No. 275-2009 relating to the redevelopment of non-residential buildings; and

WHEREAS the Executive Committee at its meeting dated _____, 2011, had before it a Development Charge Background Study dated September 6, 2011, prepared by the Deputy City Manager and Chief Financial Officer (“the Study”); and

WHEREAS the Study and the proposed development charge by-law were 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 _____, 2011, 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 _____, 2011, considered the Study and a report dated _____, 2011, 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 415-7C (Redevelopment) is amended by deleting paragraph (1) (b) in its entirety and substituting the following paragraph 1 (b):

"(b) In the case of a non-residential building or structure, or the non-residential uses in a mixed-use building or structure, which is being redeveloped for non-residential purposes, no development charge will be imposed to the extent that the existing non-residential gross floor area to be demolished or converted and which is located on the ground floor is replaced by new non-residential gross floor area ; however, development charges will be imposed on all non-residential gross floor area located on the ground floor which exceeds the non-residential gross floor area located on the ground floor of the existing building that has been or will be demolished or converted. "

ENACTED AND PASSED this ____th day of _____, A.D. 2011.

Speaker

ULLI S. WATKISS
City Clerk

(Corporate Seal)

Appendix 3

Recovery of Foregone DCs through Increased Assessment upon Conversion

Assume that a 100,000 sq ft vacant industrial building is proposed to be redeveloped to a non-industrial, non-residential use. Under the current DC by-law, \$1,002,517.67 would be due as DCs at building permit issuance. The redevelopment would not only permit productive use of the lands, but potentially have other social and economic benefits associated with the creation of employment opportunities and increased assessment values leading to higher property taxes; however, the requirement to pay DCs for the change of use, despite no increase in gross floor area, makes the conversion financially unviable for the proponent, and the building continues to remain vacant.

Generally speaking, MPAC values rental properties using the income approach (e.g., rental rates), and bases the valuation on the highest and best use for a particular permitted use of that property. On average, commercial net rental rates are 3.5 to 4 times higher than industrial net rental rates in the City, suggesting that a property's value based on rents could increase by a similar order of magnitude. The table below attempts to illustrate the positive impact on municipal property tax revenues as compared to the reduction in DC collections as a result of the proposed amendment. The example uses 2011 municipal property tax rates for industrial and commercial buildings, a 2 times multiplier for increased CVA following conversion, and compares property tax revenues following conversion with property taxes for the existing vacant industrial building. The figures show that while the City would forego just over \$1 million in DC revenues, the increase in property taxes following the change of use would offset that amount in about 5.5 years. However, while the reduction in DC collections is a one-time occurrence, the increase in municipal property tax revenues would be a stream over a period of time in the future.

	Existing Industrial	Converted to Commercial
Size (sq ft)	100,000	
CVA	\$7,500,000.00	\$15,000,000.00
DC due on conversion (@\$107.91 per sq m)	\$1,002,517.67	
Municipal Property Taxes		
Occupied		\$272,639
Vacant	\$88,742	
Incremental municipal property taxes/year	\$183,897	
Time to recover foregone DC revenues (yrs)	5.45	