



**STAFF REPORT
ACTION REQUIRED**

**2015 Development Charges Bylaw Amendment –
Results of Public Meeting**

Date:	May 1, 2015
To:	City Council
From:	Deputy City Manager & Chief Financial Officer
Wards:	All
Reference Number:	P:\2015\Internal Services\Cf\Cc15015Cf (AFS #21297)

SUMMARY

At its meeting on April 22, 2015, Executive Committee requested staff to report to City Council with options, including an option which results in no loss of the anticipated revenue of \$165 million plus interest carrying charges, including a recommended option, to phase-in the Development Charges By-law Amendment - Scarborough Subway Extension taking into account concerns heard at the statutory public meeting of Executive Committee on April 22, 2015.

This report evaluates potential alternative phase-in schedules, and concludes that the option to phase-in one half of the increase in August 1, 2015, and the remaining half in February 1, 2016 best balances:

- the impact of the new rates on new development;
- the revenue impact of a phase-in to the City; and
- the risk of appeal of the by-law.

On behalf of the land development industry, BILD indicates that with the revised phase-in discussed in this report, BILD will not appeal the by-law.

RECOMMENDATIONS

The Deputy City Manager & Chief Financial Officer recommends that:

1. City Council delete Executive Committee Recommendation 1 in Item EX5.1.
2. City Council enact the development charges by-law amendment attached as Appendix 1 to this report, which provides for the following phase-in schedule:
 - a. 50% of the increases be implemented on August 1, 2015
 - b. 100% of the increases be implemented on February 1, 2016.

Financial Impact

There is no way to precisely determine the revenue impact of the recommended phase-in of the by-law amendment, since the timing of permit applications and issuance is so variable. However, on a pro forma forecast basis and if development occurs as projected over the first six months and the rest of the ten year forecast period, the recommended phase-in schedule could theoretically result in a development charge revenue reduction of an estimated \$4 million in 2015/16 compared to the previously recommended schedule. However, staff believe that the value of the letter of agreement from the development industry to refrain from appealing the by-law more than offsets this short term revenue reduction, and therefore any net financial impact is negligible.

As with any development charges by-law, this amendment may be appealed to the Ontario Municipal Board. Any appeal carries the risk of a Board ordered reduction. Staff would be available to discuss these risks in camera with Council.

DECISION HISTORY

At its meeting on October 8, 9, 10 and 11, 2013, Council adopted the City's current development charges by-law (By-law 1347-2013), which came into effect on November 1, 2013, and is in force for a maximum of five years.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.1>

Also, at the same meeting, during consideration of the Scarborough Subway Rapid Transit Options, Council directed staff to prepare a development charges by-law to include the City's share of capital costs in respect of the SSE.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.5#>

At its meeting on April 22, 2015, during consideration of the Development Charge Bylaw Amendment – Scarborough Subway Extension, Executive Committee requested staff to report to Council report with options, including an option which results in no loss of the anticipated revenue of \$165 million, including a recommended option, to phase-in the Development Charges By-law Amendment - Scarborough Subway Extension taking into account concerns heard at the April 22, 2015 Executive Committee.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX5.1>

COMMENTS

Subsequent to the public meeting, staff met with representatives from the Building Industry and Land Development Association (BILD) on April 29, 2015 to further discuss options for phase-in of the proposed increases to development charges rates. BILD represents the land development, home building and professional renovation industry in the Greater Toronto Area with more than 1,400 member companies.

- The land development industry requested that the Scarborough Subway Extension (SSE) development charges be implemented on February 1, 2016
- This would result in an estimated potential pro forma development charges revenue loss of \$11M based on an average of \$22M in additional annual development charges revenues from the SSE development charges.

Executive Committee Recommended Increase Schedule

The Executive Committee report recommended that the development charges rate increase be phased-in in accordance with the phase-in schedule and dates for the current by-law, so that the August 1, 2015 rates would be as if the SSE amendment had been originally included in the by-law.

The rationale for the recommendation is that the Council direction to amend the by-law stems back to the original by-law approval in October 2013, and could have been done shortly thereafter. However, the introduction of the amendment was delayed, in part by the municipal election, and the intervening year and a half has been an effective reprieve from the anticipated increase. Furthermore, the 2013 by-law phase-in was somewhat front end loaded, and it made sense to apply the SSE increase after the larger increases had already gone through.

The result is that 85% of the SSE development charges increase, or \$1,754 for a two-bedroom apartment unit, would take effect August 1, 2015, and the remaining \$310, plus any related escalation, would take effect on February 1 next year. These increases would be on top of the already scheduled increases of approximately \$1,342 per two-bedroom apartment unit on each of those dates, before adjustment for indexing.

Alternative Increase Schedules

The development industry, as represented by BILD, has stated that the proposed increase should all take place on February 1, 2016, the date of the final scheduled increase under the 2013 by-law, citing concerns with the calculation, lack of time to adapt to higher rates, and potential impact on parties to existing purchase and sale agreements. BILD maintains that while staff were directed to prepare the development charges by-law amendment in 2014, they were under the impression that the charge itself would not come into effect until the end of the current phase-in period.

In subsequent discussions, BILD indicated that it would refrain from challenging the by-law at the Ontario Municipal Board (OMB), if the City would defer 50% of the increase to February 1, 2016. The letter from BILD, setting out the above, is attached as Appendix 2. Staff evaluated alternative phase-in options as summarized in the table below:

Alternative Rate Phase-in Impacts Per Two-bedroom Apartment Unit

	Executive Committee Recommended (per 2013 By-law)		Initial Development Industry (BILD) Proposal		Recommended	
	% Increase Phased-in (Incremental)	Incremental Increase per Unit (\$)	% Increase Phased-in (Incremental)	Incremental Increase per Unit (\$)	% Increase Phased-in (Incremental)	Incremental Increase per Unit (\$)
August 1, 2015	85%	\$1,754	0%	\$0	50%	\$1,032
February 1, 2016 ¹	15%	\$310	100%	\$2,064	50%	\$1,032
Total	100%	\$2,064	100%	\$2,064	100%	\$2,064

(1) Before adjustment for indexing

Analysis

The total proposed SSE development charges increase represents approximately 10% of the current (2013) calculated development charges rates. Implementation is important to the City in order to ensure that it achieves the targeted \$165 million development charge portion of the SSE project funding, plus associated debenture interest.

Delays in implementing full rates could reduce the amount that is potentially recoverable through development charges. Phase-ins indicate an intention to fund the uncharged portion from other sources, specifically property taxes, if all development timing proceeds as expected. Ratepayer groups frequently advocate for full application of calculated development charges. Phase-in schedules must balance the potential for market disruption and hardship with the inherent transfer of cost to the taxpayer.

The key (primarily residential) development industry representative (BILD) has agreed to accept the by-law amendment and waive its right to appeal on behalf of its members if 50% of the increase is delayed until February 1, 2016. Based on average annual expected development charges revenues from the amendment, this could potentially cost the City an estimated \$4 million in foregone revenues in 2015/16 compared to the phase-in recommended to Executive Committee. This is based on existing development timing forecast over the next six months and the entire 10 year by-law forecast period.

It is acknowledged that the difference in the per-unit impact under this proposal is relatively small: \$722 of the increase per typical 2 bedroom apartment unit would be deferred for an additional six months. A cost increase of this size is a significant impact, but not necessarily a considerable hardship for developers even if no portion is ultimately passed on to the buyer. The development industry would have been aware that an increase was coming, and made some provision, given the profile of the SSE debate at the very same meeting that the 2013 development charges by-law was adopted, and City staff contact with industry representatives in the interim. Finally, the absence of any charge for the SSE until now, when it could have been implemented theoretically in mid 2014, has already provided a considerable reprieve.

However, staff recommend that negotiated proposal be approved. In the past the City has taken into account the size of the proposed increases and the state of the real estate market and decided to phase-in increases over as much as five years. The 2013 By-law incorporated a two-year phase-in of rate increases. In these terms, a six month phase-in is not considered unreasonable and continues to move industry expectations in the right direction i.e. toward full implementation on adoption.

Furthermore, acceptance of the by-law amendment for this major transit project by the development industry is a positive sign for future transit related development charges. The Toronto York Spadina Subway Extension (TYSSE) was adopted without industry appeal in 2009, and if the SSE development charges amendment is now successful, the City will have established a basis for major transit development charges. This could be of considerable value to the City, given the expectation of many future large transit initiatives.

Finally, the value of acceptance of the by-law amendment by the development industry association compares favourably with the estimate of potential foregone revenue. This amendment may be appealed to the OMB. Although staff are confident that the Background Study methodology is sound, the risks associated with a protracted appeal are real. Even a 10% reduction in the rates would reduce revenues over the remaining life of the by-law by more than the estimated cost of the phase-in (i.e. \$7 million vs. \$4 million). Staff will be available to discuss potential development charges by-law appeal risks in camera, should Council desire.

In view of these considerations, staff recommend that Council adopt the revised phase-in, as shown in Attachment 1, to implement 50% of the calculated SSE development charges amendment increase on August 1, 2015 and implement the balance (50%) of the increase on February 2016.

CONTACT

Joe Farag, Executive Director, Corporate Finance
Tel: 416-392-8108
Fax: 416-397-4555
Email: jfarag@toronto.ca

Robert Hatton, Director, Strategic Initiatives and Intergovernmental Finance, Corporate Finance
Tel: 416-392-9149
Fax: 416-397-4555
Email: rhatton@toronto.ca

SIGNATURE

Roberto Rossini
Deputy City Manager & Chief Financial Officer

ATTACHMENTS

Attachment 1: Proposed Development Charges By-law Amendment
Attachment 2: Letter from BILD dated May 4, 2015