

May 10, 2024

To Ministry of Municipal Affairs and Housing:

Re: Bill 185, *Cutting Red Tape to Build More Homes Act, 2024*

On behalf of our many municipal clients, we are submitting our comments related to the proposed changes to the *Development Charges Act* (D.C.A.) under Bill 185 (*Cutting Red Tape to Build More Homes Act*). These proposed changes are with respect to:

1. Repeal of the mandatory five-year phase-in of development charge (D.C.) rates;
2. Studies as an eligible capital cost for D.C.s;
3. Process for amending existing D.C. by-laws; and
4. Time limit reductions on the D.C. freeze for specific planning approvals.

1. Repeal of the mandatory five-year phase-in of D.C. rates

The *More Homes Built Faster Act* (Bill 23) required the phase-in of charges imposed in a D.C. by-law over a five-year term. D.C. by-laws passed after January 1, 2022, were required to phase-in the calculated charges as follows:

- Year 1 of the by-law – 80% of the charges could be imposed;
- Year 2 of the by-law – 85% of the charges could be imposed;
- Year 3 of the by-law – 90% of the charges could be imposed;
- Year 4 of the by-law – 95% of the charges could be imposed; and
- Years 5 to 10 of the by-law – 100% of the charges could be imposed.

Bill 185 proposes to remove the mandatory phase-in of the charges. It is proposed that this change would be effective for D.C. by-laws passed after Bill 185 comes into effect.

For site plan and zoning by-law amendment planning applications that were made prior to Bill 185 receiving Royal Assent, the charges payable will be those in place on the day the planning application was made (i.e., including any applicable mandatory phase-in).

Bill 185 also proposes to allow minor amendments to D.C. by-laws that include mandatory phase-in provisions. As provided in further detail below, these amendments would not require the preparation of a D.C. background study or statutory public process. Moreover, the amendments would not be subject to Ontario Land Tribunal (OLT) appeal. This provision for a streamlined D.C. by-law amendment process will only be available for a period of six months after Bill 185 takes effect.



Comment

We believe this to be a positive change for municipalities and the development community. The mandatory phase-in would reduce D.C. revenues by approximately 10% over a 10-year period (based on various analyses undertaken by Watson, as well as reports provided by municipalities). By removing this revenue loss municipalities will no longer have to fund this shortfall from non-D.C. sources (e.g. property taxes, water and sewer rates, etc.). Lower than required D.C. revenues for services that are required to enable the development of housing (i.e. water, wastewater, and services related to a highway) would create challenges for municipalities to provide timely infrastructure. With the removal of the mandatory phase-in, municipalities will be able to collect the funds necessary to construct the infrastructure required for development to proceed.

2. Studies as an eligible capital cost for D.C.s

Bill 23 amended the definition of capital costs (subsection 5 (3) of the D.C.A.). This amendment removed studies, including D.C. background studies, from the definition of an eligible capital cost. Bill 185 proposes to reverse this amendment by reinstating studies as an eligible capital cost. The following paragraphs are proposed to be added to subsection 5 (3) of the D.C.A.:

5. *Costs to undertake studies in connection with any of the matters referred to in paragraphs 1 to 4.*
6. *Costs of the development charge background study required under section 10.*

The proposed amendment will allow municipalities to fund the costs of studies, consistent with by-laws passed prior to Bill 23 amendments. This will allow for the funding of master plans for D.C. eligible services, D.C. background studies, and similar studies that inform the capital costs of the D.C. background study.

Comment

We believe this to be a positive change as well. Growth-related studies such as master plans and other planning-related studies are integral to the growth management and infrastructure planning framework of municipalities. These documents identify how the municipality intends to grow, the infrastructure required to provide desired service levels to support growth/development, and also provides the detailed costing required for municipalities to plan for growth in a financially sustainable way. These studies also add to the defensibility of D.C. background studies and reinstating the D.C. funding eligibility for these studies follows the principle that growth should pay for growth.



3. Process for amending existing D.C. by-laws

Section 19 of the D.C.A. requires that a municipality must follow sections 10 through 18 of the D.C.A. (with necessary modifications) when amending a D.C. by-law. These sections generally require the following:

- Completion of a D.C. background study, including the requirement to post the background study 60 days prior to passage of the D.C. by-law;
- Passage of a D.C. by-law within one year of the completion of the D.C. background study;
- A public meeting, including notice requirements; and
- The ability to appeal the by-law to the OLT.

As noted above, Bill 185 proposes to allow municipalities to undertake minor amendments to D.C. by-laws for the following purposes without adherence to the requirements noted above¹:

1. To repeal a provision of the D.C. by-law specifying the date the by-law expires or to amend the provision to extend the expiry date (subject to the 10-year by-law term limitations provided in the D.C.A.);
2. To impose D.C.s to include the costs of studies, including the D.C. background study; and
3. To remove the provisions related to the mandatory phase-in of D.C.s as discussed in section 1 of this letter.

Minor amendments related to items 2 and 3 noted above may be undertaken only if the D.C. by-law being amended was passed after November 28, 2022, and before Bill 185 takes effect. Moreover, the amending by-law must be passed within six months of Bill 185 taking effect.

Notice of by-law passage requirements for these minor amending by-laws are similar to the notice requirements in the D.C.A., with the exception of the requirement to identify the last day for appealing the by-law (as these provisions do not apply).

Comment

The ability to make minor amendments to D.C. by-laws to align with the legislative changes without onerous administrative requirements and further process delays will assist municipalities in aligning policies with the amended legislation quickly.

We would note, however, that minor amendments are not permitted for reducing the rate freeze from 2 years to 18 months to align with the amended legislation. This may

¹ Notice of by-law passage for these streamlined amendments would still be required.



impose administrative burdens on municipalities to undertake amendments to reflect the shorter periods, depending on the structure of their D.C. by-laws.

Additionally, these minor amendments may only be undertaken if the D.C. by-law is passed prior to Bill 185 coming into force. There are a number of municipalities that have released D.C. background studies but will not be able to pass a by-law until after Bill 185 comes into force. This poses a timing issue for these municipalities, as they will either have to file D.C. addendum reports prior to adoption to include the costs of studies or have to undertake a full D.C. amendment process to do so after just having passed a new D.C. by-law.

Recommendations

1. It is recommended that the Province add a clause to allow for minor amendments related to the timeline reduction for the rate freeze for site plan and zoning by-law amendment planning applications; and
2. It is recommended that the Province include a transitional clause to allow municipalities that have released a D.C. background study prior to Bill 185 coming into force, and that will allow municipalities to pass a by-law after the Bill comes into force to undertake minor amendments for the inclusion of the costs of studies. This can be achieved by allowing for minor amendments for by-laws that have passed within two or three months after the Bill takes effect (rather than before the Bill takes effect).

4. Time limit reductions on the D.C. freeze for specific of planning approvals

Bill 108, *More Homes, More Choices Act, 2019*, which received Royal Assent on June 6, 2019, provided several changes to the D.C.A. including the requirement to freeze the D.C.s imposed on certain developments. This applied to developments that received site plan and/or a zoning by-law amendment approval within 2 years of the date a D.C. is payable (e.g. building permit issuance). The D.C. rate for these developments is “frozen” at the rates that were in effect at the time the site plan and/or a zoning by-law amendment application was submitted. Once the planning application is approved by the municipality, if the date the D.C. is payable^[1] is more than two years from the approval date, the D.C. rate freeze would no longer apply.

Bill 185 proposes to reduce the two-year timeframe from planning approval to the date the D.C. is payable to 18 months. Bill 185 also proposes to move this requirement from

^[1] In the case of Rental Housing and Institutional development, once the application is approved by the municipality, if the date the first building permit is issued is more than two years after the date of approval, the D.C. rate freeze would no longer apply.



O. Reg. 82/98 to the D.C.A. Transition provisions are included in the Bill that require the two-year D.C. “freeze” for these planning approvals to remain in effect if approved prior to Bill 185 receiving Royal Assent.

Comment

Overall, this proposed change is positive. The reduction in the D.C. rate freeze timeline helps to incentive timely development with continued D.C. predictability for developers.

As noted above, the streamlined process for minor D.C. by-law amendments does not appear to include amendment to meet this legislative change.

Recommendations

1. It is recommended that the Province add a clause to allow for minor amendments related to the timeline reduction for the rate freeze of site plan and zoning by-law amendment planning applications.

We appreciate the opportunity to provide comments related to the proposed changes on behalf of our municipal clients.

Yours very truly,

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