CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members General Issues Committee
COMMITTEE DATE:	June 14, 2023
SUBJECT/REPORT NO:	Development Charges Exemptions Sustainable Funding Strategy (FCS23064)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Lindsay Gillies (905) 546-2424 Ext. 5491
SUBMITTED BY: **SIGNATURE:**	Mike Zegarac General Manager, Finance and Corporate Services Corporate Services Department

RECOMMENDATION(S)

(a) That a $40.59 M (3.69%) Property Tax Levy increase be referred to the 2024 Tax Capital budget process and reviewed annually thereafter for the following pressures:

i) A $3.75 M (0.34%) increase to the Tax Supported Capital Budget to replace development charges revenues lost for CityHousing Hamilton projects ($1.28 M) and Growth Studies ($2.47 M) due to changes to the *Development Charges Act, 1997* through the *More Homes Built Faster Act, 2022* (Bill 23);

iii) A $17.08 M (1.55%) increase to fund statutory exemptions required due to changes to the *Development Charges Act, 1997* through the *More Homes Built Faster Act, 2022* (Bill 23);

iii) A $10.19 M (0.93%) increase to fund statutory exemptions required under the *Development Charges Act, 1997* prior to the enactment of the *More Homes Built Faster Act, 2022* (Bill 23);

iv) A $9.57 M (0.87%) increase to fund the City's discretionary Development Charge exemptions;

(b) That a $27.28 M (9.75%) Water and Wastewater/Stormwater rate increase be referred to the 2024 Rate Budget process and reviewed annually thereafter for the following pressures:

   i) A $14.08 M (5.03%) increase to fund statutory exemptions required due to changes to the *Development Charges Act, 1997* through the *More Homes Built Faster Act, 2022* (Bill 23);

   ii) A $10.30 M (3.68%) increase to fund statutory exemptions required under the *Development Charges Act, 1997* prior to the enactment of the *More Homes Built Faster Act, 2022* (Bill 23);

   iii) A $2.90 M (1.04%) increase to fund the City's discretionary Development Charge exemptions;

(c) That the Development Charges (DC) Exemptions Reserve Policy, attached as Appendix "D" to Report FCS23064, be approved and a reserve established.

EXECUTIVE SUMMARY

Report FCS23064 addresses the statement within Report FCS22042(b) "Tax and Rate Operating Budget Variance Report as at December 31, 2022 – Budget Control Policy Transfers" that staff will incorporate a funding strategy for the remaining development charges (DC) exemption shortfall in the 2024 Tax Supported Capital Budget and Financing Plan.

The City has historically budgeted insufficient funding to cover the discretionary DC exemptions that are provided by Council through the City's DC By-law. While the City has, over the past decade, increased the budget for discretionary DC exemptions, DC exemptions have not been fully budgeted due to budget guidelines and residential tax affordability concerns.

In addition, the *More Homes Built Faster Act, 2022* (Bill 23) was passed by the Provincial government on November 28, 2022. Bill 23 made several changes to the *Development Charges Act, 1997* (DC Act) which impacts all municipalities' ability to finance planned growth infrastructure. The planned growth infrastructure is required in order to ensure that there are serviced lands which can be developed, upgraded infrastructure to permit intensification and to provide the community services, such as parks, recreation centres and libraries which ensure complete and vibrant communities.

The purpose of Report FCS23064 is to recommend an overall DC exemption funding strategy including the financial impacts of Bill 23. A 2024 net property tax levy impact of $40.59 M (3.69%) and a 2024 net rate levy impact of $27.28 M (9.75%) is being recommended to fund these exemptions.

Appendix "A" to Report FCS23064 illustrates how the total costs of growth were funded pre-Bill 23 and post-Bill 23.

Recommendations (a) i), ii), and (b) i) provide recommended levy and rate increases necessary to ensure that infrastructure to support growth can proceed as a result of the changes to the DC Act from Bill 23. These estimates have been based on several assumptions with the goal of minimizing the impact to existing tax and rate payors. These assumptions are detailed in Appendix "B" to Report FCS23064.

Notably, staff has used the current pace of growth to calculate the estimated impact versus the pace of growth necessary to achieve provincial growth targets. As the pace of growth in the City increases, further tax and rate increases or deferral of planned infrastructure will be necessary in the absence of upper level government funds. Exclusive of sustainable funding for growth related infrastructure projects, the City's ability to meet provincial growth targets would be in jeopardy, or the City would need to accept lesser service levels and defer investments in the condition of existing infrastructure assets.

Recommendations (a) iii), iv), (b) ii), and iii) provide recommended levy and rate increases related to ensuring adequate funding for the pre-Bill 23 statutory and Council directed discretionary exemptions. These estimates have been adjusted for the statutory Bill 23 impacts that would affect the same forms of development to ensure that there is no double counting of the exemptions.

Recommendation (c) proposes a DC Exemptions Reserve to be established and the associated DC Exemptions Reserve Policy. This recommendation is to establish a process to increase transparency and accountability by moving to a 'fund-as-you-go' approach to funding DC Exemptions. It is recommended that starting in 2024, all in-year DC exemptions would be funded from the DC Exemptions Reserve. The existing backlog of unfunded DC exemptions, up to December 31, 2023, would continue to be addressed through the Tax Capital Budget, Rate Budgets and allocations from future year-end tax and rate supported operating budget surpluses.

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Appendix "B" to Report FCS23064 details the financial impacts to statutory DC exemptions required due to changes to the *Development Charges Act, 1997* through the *More Homes Built Faster Act, 2022* (Bill 23), as well as, provides a financing plan for all DC exemptions.

Since the discretionary DC exemptions will be reviewed as part of the 2024 DC By-law process, 50% of the amount calculated in Appendix "B" to Report FCS23064 related to discretionary exemptions is being recommended to stay in line with the goal of minimizing the impact to existing tax and rate payors.

Regardless of any decisions made with the 2024 DC By-law, the exemptions contained within the 2019 DC By-law will continue to be provided for any developments who locked in their DC rates via a site plan or site-specific zoning amendment application.

A 2024 net property tax levy impact of $40.59 M (3.69%) is being recommended to fund these exemptions.

A 2024 net rate levy impact of $27.28 M (9.75%) is being recommended to fund these exemptions.

Staffing: As identified through Report FCS22085 "Bill 23, Proposed *More Homes Built Faster Act, 2022* as it relates to the *Development Charges Act*", additional staffing will be required to support the effective administration, tracking and monitoring of the changes to the DC Act enacted through Bill 23, as well as, the associated affordable and attainable housing agreements. The Province has not yet released details regarding the affordable housing and attainable housing agreements. Once details are known staff will report back and provide recommendations as necessary through the annual budget process.

Legal: The DC Act does not allow exemptions or reductions to one type of development to be made up through higher charges to other forms of development (Subsection 5 (6) 3 of the DC Act) and, therefore, the City must find alternate source of funds to cover the costs of exemptions.

Having a financing plan for DC exemptions in place demonstrates that the City is committed to growth enabling infrastructure and has plans to fund the shortfall arising from Council approved discretionary exemptions, as well as, statutory exemptions which may aid in reducing appeals of the 2024 DC By-law.

HISTORICAL BACKGROUND

Since 2019, the Provincial government has advanced a number of initiatives and legislative changes that impacted the DC Act and municipalities' ability to fund growth related infrastructure projects. Appendix "C" to Report FCS22064 provides a summary of the net changes from the following Acts:

- *More Homes, More Choice Act, 2019* (Bill 108)
- *COVID-19 Economic Recovery Act, 2020* (Bill 197)
  - Note that this Act largely reversed proposals of Bill 108 prior to them coming into effect. Only the net impacts are shown on Appendix "C" to Report FCS23064
- *Better for People, Smarter for Business Act, 2020* (Bill 213)

- *More Homes for Everyone Act, 2022* (Bill 109)
- *More Homes Built Faster Act, 2022* (Bill 23)
- *Helping Homebuyers, Protecting Tenants Act, 2023* (Bill 97)
  - Note that this Bill has not yet been passed

Report FCS22042(b) "Tax and Rate Operating Budget Variance Report as at December 31, 2022 – Budget Control Policy Transfers" presented at the Audit, Finance & Administration Committee meeting of April 20, 2023, indicated that staff will incorporate a funding strategy for the remaining DC exemption shortfall in the 2024 Tax Supported Capital Budget and Financing Plan.

The following historical letters related to Bill 23 are referenced in the "Analysis and Rationale for Recommendation" section of Report FCS23064.

November 30, 2022	The Honourable Steve Clark, Minister of Municipal Affairs and Housing (MMAH) issued a letter to the Association of Municipalities of Ontario in response to municipal feedback regarding the *More Homes Built Faster Act, 2022* (Bill 23). In particular, the suggested impact the legislation could have on the ability of municipalities to fund infrastructure and services that enable housing. In this letter, the Province announced its plan to launch third-party audits of select municipalities.
December 22, 2022	The Honourable Steve Clark, Minister of MMAH, provided a letter to the City Clerk in response to municipal feedback regarding the *More Homes Built Faster Act*. In particular, the suggested impact the legislation could have on the ability of municipalities to fund infrastructure and services that enable housing. Council received this letter, as Item 5.5, at its meeting of January 25, 2023.
January 25, 2023	City Manager, Janette Smith, sent a letter to Hamilton Members of Parliament and Members of Provincial Parliament regarding concerns about Bill 23's impact on specific growth enabling infrastructure and housing projects which will not proceed within the City of Hamilton in response to a motion passed on December 7, 2022.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Report FCS23064 makes recommendations to refer increases to the 2024 budget processes. These increases would impact the City's financing policy.

Report FCS23064 also recommends the establishment of a DC Exemption Reserve and accompanying Policy which is a change from the City's past practice related to financing of DC Exemptions.

The DC Act does not allow exemptions or reductions to one type of development to be made up through higher charges to other forms of development (Subsection 5 (6) 3 of the DC Act). Therefore, the City must fund the costs of exemptions, namely, from existing tax and rate payors in the absence of upper level funding programs.

RELEVANT CONSULTATION

Healthy and Safe Communities Department: Housing Services Division,
Planning and Economic Development: Planning Division, Economic Development Division
Corporate Services Department: Legal and Risk Management Services Division,
Watson and Associates Economists Ltd. (Watson)

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

The City has historically budgeted insufficient funding to cover the discretionary DC exemptions that are provided by Council through the City's DC By-law. While the City has, over the past decade, increased the budget for discretionary DC exemptions, DC exemptions have not been fully budgeted due to budget guidelines and residential tax affordability concerns. This practice of under budgeting has led to an accumulated unfunded backlog of discretionary DC exemptions of almost $60 M (see Report FCS23035 "Development Charges Reserves Status Report and of December 31, 2022"). Since 2017, Council has often approved a transfer from the annual operating budget surplus to cover the in-year discretionary exemptions shortfall. However, the unfunded backlog and persistent under budgeting for DC exemptions has not yet been addressed.

Bill 23 has significantly altered how much "growth pays for growth". Appendix "A" to Report FCS23064 provides a high-level illustration of the impacts that the changes from Bill 23 have on the funding model for growth related infrastructure.

It has been the Province's position that the changes through Bill 23 were necessary. In their December 22, 2022 letter to the City, the Minister of MMAH indicated that "our decision to rein in unsustainable and out-of-control municipal fees on new homebuyers is the right thing to do, and that is why our position on Bill 23 will not waver." The letter also indicated that "There should be no funding shortfall for housing enabling infrastructure as a result of Bill 23, provided municipalities achieve and exceed their housing pledge levels and growth targets." These statements do not align with the methodology required by the DC Act when determining DCs.

In her January 25, 2023 letter to the Hamilton Members of Parliament and Members of Provincial Parliament, City Manager, Janette Smith, reached out for financial support from the Province to offset the lost funding, due to the changes from Bill 23. Concerns were raised, consistent with other municipalities' concerns, about how the change in the funding regime to reduce the amount of growth costs that are paid by that growth would exacerbate the rising cost of housing for existing residents, delay timing of critical infrastructure and ultimately limit the ability to advance housing supply.

Reacting to the municipal response to Bill 23, the Province has launched a "third-party audit of select municipalities to get a factual understanding of their finances, including their reserve funds and development charge administration" as indicated in MMAH's November 30, 2022 letter to the Association of Municipalities of Ontario. Six municipalities have been selected for audit: City of Toronto, Region of Peel, City of Mississauga, Town of Caledon, City of Brampton and the Town of New Market.

The City of Toronto was the first municipality selected and the draft Terms of Reference were adopted by Toronto City Council at its meeting of March 29, 2023. The final report on the two objectives of the audit is anticipated by July 1, 2023 and September 30, 2023.

The engagement's objectives are stated as:

A. Bill 23 financial impacts: What is the estimated impact of Bill 23, *More Homes Built Faster Act, 2022*, on the City's finances, if provincial housing targets for the City are met / exceeded?

B. Optimizing growth-related infrastructure investments: Have growth-related capital planning decisions been managed with due regard for economy, efficiency and effectiveness?

Of concern to staff is a statement in the Terms of Reference that the Financial Impacts prong of the audit will "estimate the net increase in municipal revenues (e.g. from property tax …)". This statement raises concern as property taxes are principally used to fund delivery of municipal services, including the state of existing infrastructure. Should the increase in property taxes be viewed as a funding source for the initial capital cost of growth-related infrastructure, the result is no different than adding a levy on tax payors for the shortfall caused by Bill 23.

Through communications about the challenges of Bill 23, the Province has often mentioned the Federal Government's national Housing Accelerator Fund. As stated in the December 22, 2022 letter from MMAH, "We also expect that all municipalities will make an application to the federal Housing Accelerator Fund for funding that will support housing enabling infrastructure and relieve municipal charges levied on new homebuyers."

General Issues Committee at its meeting on May 31, 2023 considered Report HSC23017 / FCS23062 / PED23143, “Canadian Mortgage and Housing Corporation Housing Accelerator Fund”, approving the City making an application to the Housing Accelerator Fund. The intended purpose of the fund is to support municipalities nation-wide in creating 100,000 new residential units using an investment of $4 B. It does not appear that the Housing Accelerator Fund allows municipalities to access funds to offset the impacts of Bill 23.

Both the impacts of Bill 23 on DCs, as well as, a forecast of statutory and Council directed exemptions has been assessed by staff with the goal minimizing the impact to existing tax and rate payors and staff is recommending budget increases based on that assessment.

Appendix “B” to Report FCS23064 provides the financial impacts related to Bill 23, as well as, addresses increases necessary to support the previous statutory and City discretionary DC exemptions. A list of the assumptions used to minimize the impact on existing tax a rate payors is also included in Appendix “B” to Report FCS23064.

Since a goal of minimizing the impact on existing tax and rate payors was considered in the approach, there is a high probability that additional increases or changes to the City’s capital infrastructure plan (see Alternatives for Consideration section of Report FCS23064) will need to be passed in future years. Staff will monitor and make recommendations through future budget processes.

Staff is recommending moving to a “fund as you go” methodology for DC exemptions which will require the establishment of a DC Exemptions reserve. Currently, the City funds the DC reserves up to the amount budgeted each year and then tracks the unfunded exemptions separately. The amount of exemptions varies year over year and the required five-year phase in of DC rates means that the first five years of a new DC by-law will experience more exemptions than the last five years (assuming a 10-year by-law). Since staff has recommended an increase based on a forward looking 10-year analysis, this means that there are expected funding shortfalls in the first five years which will be caught up in the second five years.

This “fund as you go” approach will provide a clear and transparent view of where the municipality stands in terms of funding its overall DC exemption obligations. Appendix “D” to Report FCS23064 contains the recommended DC Exemptions Reserve Policy.

Non-DC Financial Impacts of Bill 23

DCs are not the only growth funding tool that has been impacted by Bill 23. In keeping with the goal of minimizing the impact on existing tax and rate payors, there are no recommendations, at this time, related to the impacts on Parkland Dedication (Sections 42, 51.1 and 53 of the *Planning Act, 1990*) or Community Benefits Charges (CBC) (Section 37 of the *Planning Act, 1990*).

The changes to the Parkland Dedication regime include:

- A requirement to exempt non-profit housing and inclusionary zoning units.
- A requirement to exempt affordable and attainable units (not yet proclaimed into force).
- A requirement to exempt up to two secondary dwelling units, one of which may be detached.
- A requirement to provide credit for existing gross floor area.
- Locking in the land value rate to be used at the date of the related site-plan or zoning specific site plan amendment application date, if applicable, for two years after the approval of that application.
- Reducing the alternative requirement of one hectare (ha) per 300 dwelling units to one ha per 600 dwelling units where land is being conveyed. Where the municipality imposes payment-in-lieu requirements, reducing the amount from one ha per 500 dwelling units to one ha per 1,000 net residential units.
- Capping the alternative requirement at 10% of the land area or land value where the land proposed for development or redevelopment is five ha or less and 15% of the land area or land value where the land proposed for development or redevelopment is greater than five ha.

The updates to the Parkland Dedication regime results in an estimated reduction in parkland revenues (dedicated land value and cash-in-lieu of land) of $23 M annually. The City has $71.6 M in available funds (see Report FCS23041) within the Parkland Dedication Reserve (104090) and $9.0 M in the Parkland Acquisition Reserve (108050) as at December 31, 2022.

The changes to CBC regime include:

- A requirement to provide credit for existing gross floor area.
- A requirement to exempt affordable and attainable units (not yet proclaimed into force).

The update to the CBC regime results in an estimated reduction of CBC revenues of $120 K annually.

ALTERNATIVES FOR CONSIDERATION

Alternative 1: Alter the assumptions in the framework

Table 1: Alternatives related to altering the assumptions in the framework

	Alternative 1a	**Alternative 1b**	**Alternative 1c**
Description	Assume 100% of the discretionary exemptions with 2024 DC by-law	Assume 2,770 single detached equivalents per year (vs 2,000)	Phase in the recommended tax and rate increases over two years
Pros	More likely to be able to cover in year exemptions	Utilizes the growth required to meet Provincial housing targets	Spreads the impact over two years
Cons	Increases the overall levy increase (4.56% versus 3.69%) and rate (10.79% versus 9.75%)	Significant levy (8.65% versus 3.69%) and rate (22.65% versus 9.75%) increase to support growth level that the City is not yet realizing	Staff has made recommendations with the goal of minimizing the impact to existing tax and rate payors. Some exemptions started effective November 28, 2022 without an increase to the 2023 levy. The first five years of a DC by-law will have the highest exemptions due to the required five-year phase in of DC rates. As the City experiences increases in the pace of growth, further levy adjustments will be required which may compound upon any staged phase in of the recommended levy increase.
	Alternative 1a	**Alternative 1b**	**Alternative 1c**
Financial	Reduced levy and rate increase	Increased levy and rate increase	Splits the levy increase over two years
Staffing	Same staffing implications as the staff recommendation		
Legal	Same legal implications as the staff recommendation		

Alternative 2: Defer Projects

Table 2: Alternatives related to deferring projects

	Alternative 2a	**Alternative 2b**	**Alternative 2c**
Description	Defer Critical Growth Infrastructure Projects*	Defer Quality of Life Projects**	Defer State of Good Repair Projects
Pros	Reduce the increase required on the tax and rate levy		
Cons	Without critical infrastructure, the municipality will not be well positioned to meet its housing target or permit development to proceed. Employment opportunities are time sensitive and depend on having service ready lands; development may be lost to other municipalities / Provinces if lands are not available for employment development.	Without quality of life projects, residents will not have access to community services such as parks, recreation centres and libraries. In addition, due to the formula for determining the DC for these services, not keeping up with existing service levels means that if the City wants to catch up to previous service levels, there would be a larger portion that needs to be funded by non-DC sources.	The City is already experiencing a significant infrastructure deficit. Delaying state of good repair projects may require closing of municipal facilities and further exacerbate the City's efforts to clear the infrastructure deficit. In addition, not keeping up with service levels is generally more costly; deferred maintenance can cost up to 30 times that of early intervention.
Financial	The Infrastructure deferrals do not absolve the municipality of the requirement to fund DC exemptions, rather the deferral would be required because sufficient funds do not exist.		
Staffing	Same staffing implications as the staff recommendation		
Legal	The Province has legislated the development and construction of the proposed York Region sewage works project to expedite the improvement, enlargement and extension of the York Durham Sewage System to convey sewage to the Duffin Creek Water Pollution Control Plant (Supporting Growth and Housing in York and Durham Regions Act, 2022). It is not common for the Province to mandate infrastructure projects and their timelines. The possibility exists that the Province could intervene in a similar fashion in the City if it is concerned that the City is deferring infrastructure projects in a manner the Province does not consider appropriate.		

Notes:

* Critical Growth Infrastructure projects are growth related capital projects such as underground servicing (water, wastewater, storm), roads, transit, fire, etc.

** Quality of Life projects are growth related capital projects such as parks, recreation centres and libraries.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation
Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Built Environment and Infrastructure
Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance
Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS23064 – Financing of Growth Costs Illustrated – Pre and Post Bill 23

Appendix “B” to Report FCS23064 – Development Charges Financial Impacts related to the *More Homes Built Faster Act, 2022* (Bill 23) and Development Charges Exemption Strategy

Appendix “C” to Report FCS23064 – Summary of Enacted Changes to the *Development Charges Act, 1997* since 2019

Appendix “D” to Report FCS23064 – Development Charges (DC) Exemptions Reserve Policy