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

TO:	Chair and Members Development Charges Stakeholders Sub-Committee
COMMITTEE DATE:	November 9, 2023
SUBJECT/REPORT NO:	Exemptions and Policies – 2024 Development Charges Background Study and By-law Update (FCS23103) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Carolyn Paton (905) 546-2424 Ext. 4371 Lindsay Gillies (905) 546-2424 Ext. 5491
SUBMITTED BY: **SIGNATURE:**	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department

RECOMMENDATION(S)

(a) That the following policies contained within the existing City of Hamilton Development Charges By-law (19-142) be maintained in the draft 2024 Development Charge By-laws prepared for public consultation:

(i) The Adaptive Reuse Exemption for Heritage Buildings (Section 29(f) of By-law 19-142);

(ii) The Redevelopment of an Existing Residential Facility Limited Exemption (Section 29(e) of By-law 19-142);

(iii) The Non-Industrial Development Stepped Non-Industrial Rates Exemption within the boundaries of the City's Community Improvement Project Areas (CIPAs) and Business Improvement Areas (BIAs) (Section 29(a) of By-law 19-142);

(iv) The 5,000 square foot Non-Industrial Expansion Exemption for Office Developments (Section 29(b) of By-law 19-142);

(v) Agricultural Use (Section 25(b) of By-law 19-142);

(vi) The Place of Worship Exemption (Section 25(b) of By-law 19-142);

(vii) Transition Policy (Section 41(a) of By-law 19-142);

(viii) The Parking Exemption, other than Commercial Parking (Section 25(a) of By-law 19-142);

(ix) The Temporary Building or Structure Exemption (Section 25(b) of By-law 19-142);

(x) Section 26 respecting a 70% exemption for Class A Office within the Downtown Community Improvement Area (CIPA) Exemption;

(xi) Section 28 respecting limitations on stacking discretionary exemptions such that only the higher of any applicable discretionary exemptions apply to each development.

(xii) The discretionary ERASE Deferral Agreement Policy (Section 34(b) of By-law 19-142);

(xiii) The discretionary Public Hospitals Deferral Policy (Section 34(d) of By-law 19-142);

(xiv) The discretionary Post-Secondary Deferral Policy (Section 34(e) of By-law 19-142);

(b) That the following policies contained within the existing City of Hamilton Development Charges By-law (19-142) modified in the draft 2024 Development Charge By-laws prepared for public consultation:

(i) That the 50% Industrial Detached Expansion Exemption (Sections 21 to 24 of By-law 19-142) be removed;

(ii) That the Downtown Community Improvement Area (CIPA) Exemption (Sections 26 to 28 of By-law 19-142) be modified in the draft 2024 Development Charge By-laws prepared for public consultation as follows:

(i) Section 27(a) through (d) respecting a reduction for all other development within the Downtown CIPA be modified to apply a 40% exemption to non-residential development (including the non-residential portion of a mixed-use development) only;

(ii) Section 27(e) respecting a Downtown Public Art Reallocation Option be removed;

(c) That the Industrial Reduced Rate (Section 9(c) of By-law 19-142) be modified and renamed in the draft 2024 Development Charge By-laws prepared for public consultation such that:

(i) it provides a net 37% reduction in the overall Development Charge rate by editing the percentage of the Services Related to a Highway;

(ii) the reduced rate no longer applies to Industrial Developments;

(iii) the reduced rate applies to Artists' Studios and Production Studios.

(d) That the discretionary exemptions in the draft 2024 Development Charge By-laws prepared for public consultation apply to the net rates after the statutory phase in deduction (Section 5 (6) 4. of the *Development Charges Act, 1997*) has been applied.

(e) That the discretionary Deferral Agreement Policy (Section 34(a) & (c) of By-law 19-142) be amended to permit staff to accept payment of DCs as early as building permit issuance where a statutory instalment plan has been legislated.

(f) The Indexing Policy (Section 38 of By-law 19-142) be modified such that the initial indexing occurs on the date that the by-law is implemented and annually thereafter.

(g) The Date By-law Effective (Section 44 of By-law 19-142) be set as June 1, 2024 in the draft 2024 Development Charge By-laws prepared for public consultation.

EXECUTIVE SUMMARY

The *Development Charges Act, 1997, as amended,* (DC Act) sets out a number of mandatory DC exemptions and policies. However, under Section 5 (1) 10 of the DC Act, Council can enact exemptions on a discretionary basis.

The current City of Hamilton DC By-law (19-142) contains several discretionary DC policies, some with full or partial exemptions. The foregone DC revenue is funded by existing tax and ratepayers through funding allocations in both the Rate and Tax Capital Budgets.

The purpose of Report FCS23103 is to recommend the discretionary policies (including exemptions, deferrals, indexing date and effective By-law date) that will be contained within the draft DC By-laws which will be released for public consultation alongside the 2024 DC Background Study prepared by Watson & Associates Economist Ltd. prior to December 31, 2023 for approval.

Should Council choose to edit any of these draft policies or exemptions, as a result of public consultation or further information, they may do so prior to adopting the DC By-laws in 2024. Amendments to DC policy once the By-laws have been adopted would likely trigger a resetting of the statutory phase in of the DC rates.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Table 1 below outlines the estimated fiscal obligations to 2032 for the recommended Discretionary DC Exemptions. It should be noted that this table does not detail the statutory exemptions set out in the DC Act or the exemptions that will continue to be provided based on locked-in DC rates. Table 1 does consider that the discretionary exemptions will apply, and therefore are calculated, after the statutory phase in of DC rates has been applied.

On June 21, 2023 Council approved Report FCS23064, "Development Charges Exemptions Sustainable Funding Strategy", that referred an overall DC exemption funding strategy including the financial impacts of Bill 23 for consideration in the 2024 Rate and Tax Supported Budget. 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%) was estimated to fund future exemptions. These estimates were included in Report FCS23074 – 2024 Budget Outlook Report received by Council on September 27, 2023. If Council adopts the staff recommendations in this Report FCS23103, a further analysis of exemptions will be required for referral to the 2025 budget process.

Table 1 – Recommended Discretionary Exemptions

Fiscal Obligations 2023 to 2032 (in millions) – Discretionary Exemptions

D.C. Exemption	Under Current Policy	Under Recommended Policy	Difference (Recommended vs. Status Quo)
Downtown CIPA	$168.9	$11.7	$157.2
Industrial Reduced Rate	$132.6	$0*	$132.6
Industrial Expansion (Detached)	$2.6	$0	$2.6
Non-Industrial Expansion	$4.9	$4.9	$0
Non-Industrial Stepped Rate (New Construction)	$9.4	$9.4	$0
Transitional Rates	$26.8	$26.8	$0
Agricultural	$63.5	$63.5	$0
Heritage Building	$1.1	$1.1	$0
Place of Worship	$3.6	$3.6	$0
Other Discretionary Exemptions	$7.4	$7.4	$0
Total	$420.9	$128.6	$292.4

***Artist / production studios forecast data not currently available**

Staffing: None.

Legal: The draft DC By-laws are being prepared by Legal Services Division, Financial Planning, Administration and Policy Division and Watson and Associates Economist Limited. Once approved by Council, the By-laws are subject to a 40-day appeal period. Any appeals to the By-laws will require further involvement from Legal Services' staff.

The DC Act requires the following: "A development charge By-law must set out the following: An express statement indicating how, if at all, the rules provide for exemptions, for the phasing in of development charges and for the indexing of development charges."

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 an alternate source of funds to cover the costs of exemptions.

HISTORICAL BACKGROUND

The City of Hamilton DC By-laws have historically contained several discretionary DC policies with full or partial exemptions. In 2018, as part of the 2019 DC By-law update, a review of the City's Development Charges policies was undertaken. Report FCS18062(a), "2019 Development Charges By-law Policy", made recommendations for various policies to be modified, eliminated or added in the draft 2019 DC By-law.

As part of Watson and Associates Economist Limited current engagement a similar review of DC Policies was undertaken. It included a review of exemptions to be considered in the 2024 DC Background Study and By-law, a comprehensive review of market feasibility, best practices in comparator municipalities and historical performance of current exemptions. The cost of DC discounts and exemptions were also considered in terms of impact on the tax and ratepayers of the City. City staff has recommended that Council adopt the policies as recommended by Watson & Associates Economists Ltd. which most notably removes the exemption for residential development within the Downtown Hamilton Community Improvement Area (CIPA) and discontinuing a reduced rate for Industrial developments.

On June 21, 2023 Council approved Report FCS23064, "Development Charges Exemptions Sustainable Funding Strategy", that referred an overall DC exemption funding strategy including the financial impacts of Bill 23 for consideration in the 2024 Rate and Tax Supported Budget. 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%) was estimated to fund future exemptions. These estimates were included in Report FCS23074 – 2024 Budget Outlook Report received by Council on September 27, 2023

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

By-law 19-142, being a By-law respecting Development Charges on lands within the City of Hamilton, is proposed to be revoked and replaced on June 1, 2024.

The draft DC by-laws form the starting point for public consultation and is a requirement under the DC Act.

The calculated DC rates will be set out in the 2024 DC Background Study for inclusion in the DC By-laws. A municipality may choose to impose less than the calculated rate but must express so through the DC By-law and cannot make up the lost revenues by increasing the development charge for other types of development.

The GO Transit DC By-law 11-174 will continue to be in effect, without modification, in addition to the Service Specific City DC By-laws. No changes to the GO Transit By-law are being recommended at this time. The GO Transit by-law has an expiration prescribed by the Province through O. Reg. 528/16: Extension of Development Charge By-laws under the *Metrolinx Act, 2006*. The currently prescribed date permits municipalities to collect GO Transit charges until December 31, 2025.

RELEVANT CONSULTATION

Internal

- Planning and Economic Development Department (Growth Management/Economic Development)
- Corporate Services Department Legal and Risk Management Services

External

- Watson & Associates Economists Ltd.

The City receives feedback and correspondence through the City's email address below:

DCBackgroundStudy@hamilton.ca

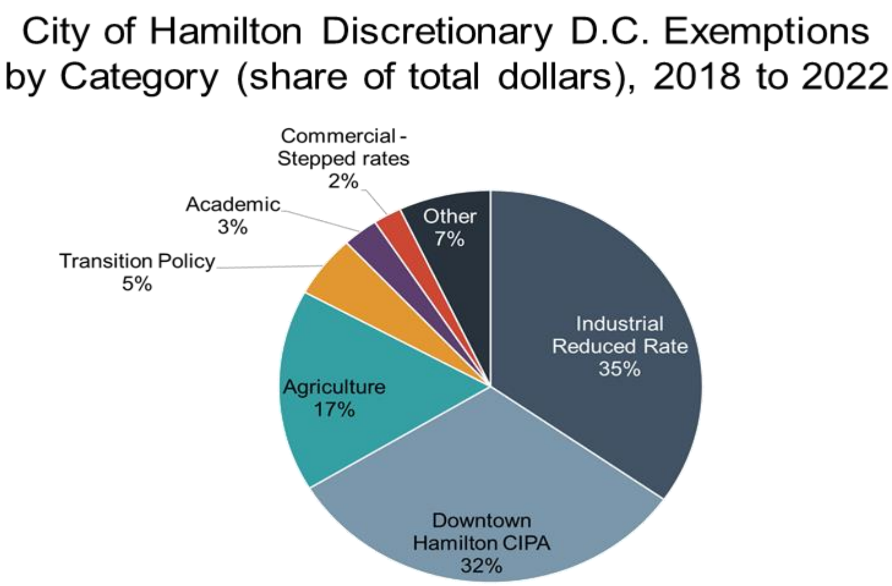
ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Bill 23, *More Homes Built Faster Act, 2022*, legislated a statutory rate phase in for all DC By-laws passed on or after January 1, 2022. The required rate phase in means that municipalities can collect DCs in the following manner:

- 80% of the calculated DC in year 1 of the DC By-law,
- 85% in year 2,
- 90% in year 3,
- 95% in year 4, and
- 100% in years 5 through 10.

The City of Hamilton DC By-laws have historically contained a number of discretionary DC policies with full or partial exemptions. Over the past five years (2018 to 2022), the discretionary DC exemption amount totalled $142.9 M (see Figure 1) Two-thirds of the total DC discretionary exemptions from 2018 to 2022 are attributed to the Industrial Reduced Rate and the Downtown Hamilton CIPA.

Figure 1



Watson & Associates Economists Ltd. analyzed the City's current DC exemption policies and made recommendations regarding what exemptions should continue and where the City may be able to reduce or eliminate exemptions (see Appendix "A" to Report FCS23103). These recommendations are based on a review of market fundamentals in both the residential and industrial development sectors which indicate that strong market predictions demonstrate that these incentives are not needed to enable/support development. Further, removal of these incentives has minimal impact on the City's competitive position. Regarding residential development, new mandatory exemptions now in place to support affordable and purpose-built rental housing development which makes consideration of discretionary exemptions unnecessary for these housing types.

These recommendations have been endorsed by the Growth and Economic Development Working Group of the Senior Leadership Team. Discretionary exemptions are recommended to be applied after the statutory DC discounts. It is important to note that the impact of any applicable discretionary exemptions will be enhanced during the new mandatory phase-in period for DCs, since the exemption percentage will be applied to the phase-in discounted amount.

In addition to the exemptions and policies reviewed by Watson & Associates Economists Ltd., the City's 2019 DC By-law contains some other policies that staff is recommending be maintained or modified as detailed in Appendix "B" to Report FCS23103.

Report FCS23103 recommends the discretionary policies (including exemptions, deferrals, indexing date and effective By-law date) that will be contained within the draft DC By-laws which will be released for public consultation alongside the 2024 DC Background Study prepared by Watson & Associates Economist Ltd. prior to December 31, 2023. Should Council choose to edit any of these draft policies or exemptions, as a result of public consultation or further information, they may do so prior to adopting the DC By-laws in 2024.

ALTERNATIVES FOR CONSIDERATION

Council can establish discretionary Development Charges polices.

Below are some alternatives that Council may choose to include in the draft 2024 Development Charge By-laws prepared for public consultation.

Alternative 1: Modify definition of "Agricultural Use" to limit exemption to food production.

This concept was raised during the September 18, 2023 DC Stakeholders Subcommittee meeting. Staff has prepared the following draft definition which would limit the discretionary Agricultural Use exemption to food production:

> "Agricultural Use " means the use of Agricultural Land and Buildings by a Farming Business outside of the Urban Area Boundary for the farming of food for human or animal consumption including: apiaries, fish farming, dairy farming, the raising of livestock, or the cultivation of grains, fruits, vegetables and any other crops for human or animal consumption, including storage of related equipment, excluding and not limited to:
>
> (i) Residential Uses, including Farm Help Houses;
> (ii) the use of Agricultural Land and Buildings for the farming of things that are not consumable by humans or animals including but not limited to: fur farming, the exhibition of livestock, the cultivation of trees, shrubs, flowers, ornamental plants, or tobacco, including the storage of related equipment for any of the foregoing uses;

(iii) distilleries, wine production facilities, breweries and any retail space, restaurant or other uses associated therewith;
(iv) other non-agriculture uses, including but not limited to banquet halls, Retail Greenhouses and retail stores; and,
(v) Cannabis Production Facilities.

Pros: The financial impact of the discretionary Agricultural Use exemption on existing tax and ratepayers would be less compared to the staff recommendation.

Cons: The Agricultural Use exemption is one of the most commonly provided exemptions across municipalities and restricting the use to food production could deter other agricultural uses from establishing themselves in Hamilton.

Financial: The cost of discretionary exemptions would decrease compared to the staff recommendation.

Staffing: None.

Legal: None.

Alternative 2: Provide a discretionary exemption for non-profit childcare centres operating under the *Child Care and Early Years Act, 2014.*

At the October 19, 2023 meeting of the Audit, Finance and Administration (AF&A) Committee, AF&A approved an exemption for a non-profit childcare provider via motion. Staff was advised, at that time, there was an intent to bring a future motion to consider an exemption for non-profit child care operating under the *Child Care and Early Years Act, 2014* within the 2024 DC Background Study. A motion was presented at the October 25, 2023 meeting of Council and referred to the DC Stakeholders Sub-committee. In anticipation of this motion being considered, staff was able to gather preliminary estimates related to an exemption for non-profit childcare centres operating under the *Child Care and Early Years Act, 2014.*

Pros: Would support the goals of the Canada-wide Early Learning and Child Care agreement with the City's Early Years Community plan focusing on equity, diversity, inclusion and belonging to ensure high quality, affordable and accessible child care is reflective of the children and families it serves.

Would support the identified 1,433 community-based licensed child care spaces as expansion targets for the City of Hamilton between 2022 to 2026.

Would support moving the identified access rate goal (the ratio of child care spaces to children aged zero to five years) from 31% to 37% across the City of Hamilton by 2026.

Cons: An exemption in a DC By-law is a binary decision, meaning that it is either exempt or not. Changes to the DC Act through Bill 23, *More Homes Built Faster Act, 2022,* create complexities for amending exemption practices mid By-law. If Council would like to provide support to non-profit child care operating under the *Child Care and Early Years Act, 2014,* a grant program would enable support that can be limited by budget availability, as well as, tailored to specific industry needs and ensure that the use continues for a set period of time.

The cost of the discretionary exemption would need to be covered through other City sources such as the property tax and rate levies. If the staff recommendations of Report FCS23103 are adopted, the overall cost of the discretionary portfolio would decrease versus previous estimates and, therefore, it is not anticipated that the addition of this discretionary exemption would trigger an individual levy increase, i.e. it can be absorbed within the exemption funding referred through staff Report FCS23064, “Development Charges Exemptions Sustainable Funding Strategy”, adopted at the June 14, 2023 meeting of the City’s Audit, Finance and Administration Committee.

Financial: Higher discretionary exemption costs compared to the staff recommendations. The cost of this discretionary exemption is estimated at approximately $2.5 M. Note that the statutory phase in has been accounted for prior to determining the estimated cost.

Staffing: None.

Legal: Verification of the non-profit status of each organization and operation under the *Child Care and Early Years Act, 2014* will be required.

Alternative 3: Phase out the residential DC Exemption within the Downtown Hamilton Community Improvement Project Area (CIPA) instead of removing immediately

Historically, changes to the Downtown CIPA exemption have been phased out. Recommendation (b) (ii) 2. effectively removes the 40% reduction for residential development in the Downtown CIPA effective the day the new DC By-laws come into effect. Note that any developers who have applied for site plans on or after January 1, 2020 will have locked in their DC rates as per Section 26.2 of the DC Act. Therefore, only developments that have not yet applied for site plan or who are proceeding without a site plan requirement will be impacted by the change.

To phase out the Downtown CIPA Exemption instead of removing it immediately, the following schedule could be used:

- Year 1 – 30% reduction within the building heights specified in By-law 19-142
- Year 2 – 20% reduction within the building heights specified in By-law 19-142
- Year 3 – 10% reduction within the building heights specified in By-law 19-142
- Years 4 through 10 – provide no reduction

Note that these reductions would apply in addition to the statutory phase in of the calculated DC rate (see Recommendation (d) of Report FCS23103).

Pros: Provides advance notice to the development community of the reduction.

Cons: Market analysis by Watson & Associates Economists Ltd. for the 2019 DC Background study, as well as, for the 2024 DC Background study concluded that residential development in the Downtown CIPA is viable without a reduction in DCs.

Financial: Higher discretionary exemptions than compared to the staff recommendation.

Staffing: None.

Legal: None.

Alternative 4: Adjust all discretionary exemptions to be included in the draft 2024 DC By-laws for public consultation such that each exemption is capped at the recommended exemption after considering the statutory phase in.

The DC Act contains a requirement to phase in the calculated DC for the first four years of each DC by-law.

The recommended discretionary exemptions would apply in addition to the statutory rate phase in (Recommendation (d)).

For example, Recommendation (c) (iii) would see a Production Studio receive a 37% reduction on the DC rate. This would be applied after the statutory phase in deduction (se recommendation (d) to Report FCS23103). Alternatively, the exemption could be structured such that the combination of the statutory phase in deduction plus a discretionary exempted amount total a 37% exemption.

	Staff Recommendation	**Alternative**
Sample DC Payable before Statutory Deduction	$100,000	$100,000
Year 1 Phase in deduction	20% = $20,000	20% = $20,000
Year 1 DC Rate	$80,000	$80,000
Discretionary Exemption for Production Studio	37% of $80,000 = $29,600	17% of $100,000 = $17,000
Payable	$50,400	$63,000

Pros: Reduces the cost of the City's discretionary exemption portfolio.

Cons: Watson & Associates Economists Ltd. had made their recommendations based on market and this alternative would vary from that market-based approach.

Financial: Lower discretionary exemption costs compared to the staff recommendations.

Staffing: Generally viewed as more challenging to explain which could lead to staff spending additional time on developer complaints about the DC calculations.

Legal: The by-law language will need to be amended to achieve this type of exemption application.

Alternative 5: Provide DC exemptions / reductions, which are currently provided to Community Improvement Project Areas (CIPAs) through the DC By-law, in the form of a grant through Community Improvement Plans (CIPs).

This alternative would take some time to amend / create the required CIP(s) and, therefore, staff recommends that, if this alternative is selected, that the exemptions remain in the DC by-law until such time as they are replaced by a CIP.

Pros: CIPs are able to be amended more easily than a DC By-law and, therefore, the exemption can be modified to suit the current economic conditions in a timely manner. The provision of DC exemptions / reductions can also be limited by budget availability, as well as, tailored to specific market needs based and / or support to prioritize benefits for development that support additional community / Council priorities.

Cons: The administration of a CIP may require more time and resources, especially, if the program will be application and needs based.

Financial: A budget would need to be established to fund the grants provided.

Staffing: Depending on the design of the incentive within a CIP, additional staffing may be required to administer the program.

Legal: Legal would need to be consulted on the design of the program and amendments to the CIPs. If this alternative is adopted the By-law would need to be amended to provide that the exemptions terminate when provided for through a CIP program.

Alternative 6: Do not include any discretionary exemptions in the 2024 Development Charge By-laws prepared for public consultation.

This concept was raised during the September 18, 2023 DC Stakeholders Sub-committee meeting.

Pros: Eliminates the cost of the City's discretionary exemption program once all permits which have locked in their rates and exemption have had their building permits issued.

Cons: Does not consider the recommendations from Watson & Associates Economists Ltd. which are based on market assessments

Financial: Eliminates the cost of the City's discretionary exemption program once all permits which have locked in their rates and exemption have had their building permits issued.

Staffing: None.

Legal: None.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report FCS23103 – Recommended Discretionary Development Charges Exemption Policies

Appendix "B" to Report FCS23103 – Other Recommended Development Charges By-law

CP/LG/dt