

April 11, 2024

To Our Municipal Clients:

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

On behalf of our many municipal clients, we are writing to inform you of the Ontario Legislature's proposed changes to the *Development Charges Act* (D.C.A.) under Bill 185 (*Cutting Red Tape to Build More Homes Act*) and to Ontario Regulation 82/98 under the D.C.A. These proposed changes are with respect to:

- The definition of eligible capital costs (to include certain studies);
- The removal of the mandatory phase-in of charges;
- The process for minor amendments to development charge (D.C.) by-laws;
- A reduction of time for the D.C. rate freeze related to site plan and zoning by-law amendment planning applications;
- Modernizing public notice requirements; and
- Implementation of the Affordable Residential Unit exemptions.

Further details with respect to these proposed changes are provided below.

With respect to changes to the *Planning Act* arising from Bill 185, Watson will be preparing a subsequent letter summarizing the changes.

1. Revised Definition of Capital Costs

On November 28, 2022, the Province enacted Bill 23, *More Homes Built Faster Act*, which included a number of discounts, exemptions, and reductions to D.C.s. As part of this legislation, the definition of capital costs (subsection 5 (3) of the D.C.A.) was amended to remove studies, including D.C. background studies.

Bill 185 proposes to reverse the capital cost amendments of the *More Homes Built Faster Act* (Bill 23) 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 studies, consistent with by-laws passed prior to the *More Homes Built Faster Act* (Bill 23). This will allow for the funding of master plans, D.C. background studies, and similar studies that inform the capital costs of the D.C. background study.

2. Removal of the Mandatory Phase-in

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 applications that were made prior to Bill 185 receiving Royal Assent, the charges payable will be the charges that were in place on the day the planning application was made (i.e., including the applicable mandatory phase-in).

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

3. Process for Minor Amendments to 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 D.C. by-laws. Sections 10 through 18 of the D.C.A. 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 Ontario Land Tribunal.



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 above (with the exception of the notice requirements):

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 limitations provided in the D.C.A.);
2. To impose D.C.s for 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 2 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 requirements for these minor amending by-laws are similar to the typical notice requirements, with the exception of the requirement to identify the last day for appealing the by-law (as these provisions do not apply).

4. Reduction of D.C. Rate Freeze Timeframe

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 were subject to a site plan and/or a zoning by-law amendment application. 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 (subject to applicable interest). Once the 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 to 18 months and move this timeframe from being identified in O. Reg. 82/98 to being identified in the D.C.A. Transition provisions are included that require the two-year D.C. “freeze” for site plan and zoning by-law amendment applications that were approved prior to Bill 185 receiving Royal Assent to remain in effect.

^[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.



Note that the streamlined process for minor amending by-laws does not appear to include the ability to amend D.C. by-laws to meet this legislative change.

5. Other Proposed Changes

Along with the proposed legislative changes outlined in Bill 185, the Province has identified related proposed regulatory changes regarding modernization of the public notice requirements. In addition, the Province has noted that implementation of the Affordable Residential Unit exemption will occur on June 1, 2024.

5.1 Modernizing Public Notice Requirements

The D.C.A. sets out the requirements for municipalities to give notice of public meetings and of by-law passage. These requirements are prescribed in sections 9 and 10 of O. Reg. 82/98 and include giving notice in a newspaper of sufficiently general circulation in the area to which the by-law would apply. The proposed regulatory changes would modernize public notice requirements by allowing municipalities to provide notice on a municipal website if a local newspaper is not available.

5.2 Implementing the Affordable Residential Unit Exemption

The More Homes Built Faster Act (Bill 23) identified an exemption for Affordable Residential Units. This exemption was subsequently revised through Bill 134, *Affordable Homes and Good Jobs Act, 2023*, which received Royal Assent on December 4, 2023. The exemption is summarized as follows:

- Affordable Rental: Where the rent is no greater than the lesser of the income based affordable rent^[1] set out in the Affordable Residential Units Bulletin and the average market rent identified in the Affordable Residential Units Bulletin.
- Affordable Owned Unit: Where the price of the residential unit is no greater than the lesser of the income-based affordable purchase price^[2] set out in the Affordable Residential Units Bulletin and 90% of the average purchase price identified in the Affordable Residential Units Bulletin.

^[1] Based on the 60th percentile of gross annual incomes for renter households in the applicable local municipality and where the rent is equal to 30% of the income of the household.

^[2] Based on the 60th percentile of gross annual incomes for households in the applicable local municipality and where the purchase price would result in annual accommodation costs equal to 30 per cent of the income of the household.



The Provincial Backgrounder has indicated that this exemption will come into force on June 1, 2024, and that the Affordable Residential Units Bulletin will be posted on Ontario.ca.

Note, no commentary has been provided on the Attainable Unit exemption at this time.

6. Summary Comments on the Proposed Amendments

Many of these changes to the D.C.A. appear positive for municipalities by assisting in ensuring that growth pays for growth to the extent possible. This is achieved by allowing for the inclusion of growth-related studies that will allow municipalities to appropriately plan for additional development. Furthermore, the removal of the mandatory phase-in provisions ensures discounts to D.C.s are not provided to development and redevelopment that municipalities do not aim to incentivize. The reduction in the D.C. rate freeze timeline helps to ensure development that is not proceeding quickly does not receive D.C. discounts. Additionally, the ability to make minor amendments to D.C. by-laws to align with the legislative changes without onerous administrative requirements will assist municipalities in aligning policies with the amended legislation quickly. Modernizing the public notice requirements further assists municipalities in areas where there is no local newspaper.

With respect to the implementation of the Affordable Residential Unit exemption on June 1, 2024, as stated in previous correspondence, while it is an admirable goal to create additional affordable housing units, further D.C., community benefits charge, and parkland exemptions will continue to provide further financial burdens on municipalities to fund these exemptions.

Watson will be providing a submission through the Environmental Registry of Ontario on these legislative changes. Watson will also be seeking an opportunity to speak as a delegation to the Standing Committee, if possible, to provide our comments on behalf of our municipal clients. We will continue to monitor the progress of Bill 185 through the legislature and will continue to keep our clients informed of any changes. If you have any questions, please do not hesitate to contact us.

Yours very truly,

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