

Attachment 4: City of Toronto Comments on Bill 185 Development Charge Act Changes and Related Matters

Table 1: Comments on Development Charges Act Changes

Background / Proposed Change	Comments	Recommendation
1. General		
<p>Since 2019, the Province has made iterative changes to the legislation governing municipal funding tools.</p>	<ul style="list-style-type: none"> • Growth funding tools (GFTs) allow municipalities to require development to contribute to growth-related infrastructure and services so that growth can be funded in a fiscally sustainable way. • The key principle underlying GFTs is that “growth pays for growth”; however, GFTs has not fully covered the cost of growth in the past, nor are they expected to in future. When growth does not pay for growth, the shortfall is funded by other sources or growth-related capital investments must be deferred. • Many proposed Bill 185 changes to the DCA reverse some of the previous Bill 23 changes, but some of the changes remain, such as removal of housing as an eligible DC service, and the new exemptions that have been proclaimed into force will negatively impact revenues. • The province had previously indicated it would reimburse the City for the impacts of the legislative changes (estimated at \$2.3 billion over 10 years), which has yet to be confirmed and received. 	<p>Recommendations</p> <p>Request the Province to provide direct incentives, rather than discounts and exemptions from municipal funding tools, to support the supply the housing, such as a grant or rebate program targeted to development that meet established provincial criteria (e.g. rental, affordable, etc.) and to make the City whole with respect to Bill 23 and other changes impacting growth funding tools.</p>

Background / Proposed Change	Comments	Recommendation
	<ul style="list-style-type: none"> Previous Bill 108 legislative changes that replaced the Section 37 Density Bonusing with the Community Benefits Charge (CBC) capped at 4% of land values, is estimated to result in a reduction of \$50 to \$70 million, or 40%, annually compared to the previous Section 37 density bonusing regime. Overall, the analysis suggests that the City will not maintain the same revenue potential that would have been available under Section 37 Density Bonusing. 	
2. Reinstating Studies as an Eligible DC Cost		
<ul style="list-style-type: none"> Bill 23 removed growth-studies as an eligible DC cost. This change applied to municipalities when they update their next DC bylaw (i.e., it did not impact the City's 2022 DC bylaw). Bill 185 proposes that growth-related studies once again be eligible for DC recovery, upon Bill 185 receiving Royal Assent. Bill 185 did not add back housing as an eligible DC service. 	<ul style="list-style-type: none"> This change would have impacted growth-related studies DC service, including planning studies and the DC Background Study, and potentially Environmental Assessments and Infrastructure Master Plans in future bylaws. The studies form the basis for long-term capital planning. Typically, capital works are not approved unless appropriate studies have been completed. A preliminary analysis estimates the removal of the Studies DC service would result in an estimated revenue loss of about \$9.2 million over 10 years. This does not include any studies costs that are embedded in the service specific DC study capital programs. Respecting the removal of housing as an eligible DC service, based on the DC study development forecast, staff estimated that it would result in a total of \$1.3 billion in foregone DC reserves over a 10-year period. 	<p>Support with Recommendations</p> <p>Support restating studies as an eligible capital cost to help ensure growth-related infrastructure can be planned and funded in a fiscally sustainable way.</p> <p>Despite positive changes that help the City plan for growth, the City requests that the Province also add back Housing as an eligible DC service to support the creation of vital</p>

Background / Proposed Change	Comments	Recommendation
		affordable housing services.
3. Repealing the mandatory five-year phase-in		
<ul style="list-style-type: none"> • Bill 23 required municipalities to phase-in DCs over five years. • With the phase-in, DCs were reduced to 80% of Council-approved rates in the first year, increasing by 5% each year after, until reaching 100% in the fifth year. • This change applied retroactively for DC bylaws passed on or after Jan 1/22. • Bill 185 proposes to repeal the phase-in, but not for developments with frozen¹ DC rates. 	<ul style="list-style-type: none"> • The City's 2022 DC bylaw already had a two-year phase-in (no change in rates upon adoption on August 15, 2022, 50% of the increase May 1, 2023 and the full increase May 1, 2024). In 2022, the development industry submitted a letter to the City indicating that, with the phase-in and other proposed policies and changes, it would not appeal the City's bylaw. • The enactment of Bill 23 forced additional rate reductions. The phase-in had a disproportionate impact across Ontario. It retroactively applied only to by-laws passed on or after January 1, 2022 (i.e., municipalities with bylaws passed earlier were not impacted). • Bill 185 aims to repeal this provision, yet it is not repealed for developments with frozen rates. The City faces significant revenue risks, especially with an estimated 67,000 proposed units with Site Plan received since November 28, 2022 that is potentially subject to DC freeze and phase-in reduction, amounting to a potential \$570 million impact. While interest (capped at Prime + 1% through Bill 23) and below-grade conditional permit policies provide 	<p>Support with Recommendations</p> <p>Support repeal of the phase-in and request the Province to repeal the phase-in for any permits issued after Bill 185 comes into effect, including those with frozen rates to ensure growth is funded in a fiscally sustainable way; as a transition, that the Province provide a time-limited provincially funded grant or DC rebate to developers to mitigate the impact of the repeal to developments that are well along in the development approval process (e.g. developments with</p>

¹ Section 26.2 of the DC Act allows DC rates to be frozen at complete site plan or rezoning amendment application date, and provided a permit is issued within two years of the approval of the application.

Background / Proposed Change	Comments	Recommendation
	<p>partial relief, these significant revenues risks need addressing.</p> <ul style="list-style-type: none"> The Province could retroactively remove the phase-in as of a certain date (i.e., for permits issued after Bill 185 comes into effect), mirroring past actions in Bill 23, which removed housing DC services retroactively to January 1, 2020 for permits issued on or after Bill 23 came into effect. However, this change could pose administrative challenges for developments expecting lower DCs. A transition plan could mitigate such issues, ensuring a smooth adjustment process for affected parties while maintaining fiscal sustainability. 	<p>permits issued within 6 months of Bill 185 coming into effect) or make the City whole with respect to the Bill 23 impacts that remain.</p>
<p>4. Reducing the time limit on the DC freeze, from two years to 18 months</p>		
<ul style="list-style-type: none"> <i>DC Freeze</i> – In 2020, Bill 108 froze DCs based on the date a complete site plan application (or rezoning application if no site plan) was submitted. The DC rates for these developments are frozen at the application date, subject to interest. A time limit of two years applies from the time of Approval of the Site Plan before the freeze lapses. After that, DCs are imposed based on rates at permit issuance. 	<ul style="list-style-type: none"> For the City of Toronto, this change is expected to have a limited impact on the timing of housing construction. This is because most building permits are issued prior to Site Plan approval (i.e., well in advance of the DC freeze time limit). For below grade conditional permits issued in 2023, all except for one was issued within 18 months of receiving Site Plan approval (Notice of Approval Conditions). The DC freeze and mandatory instalments has significantly increased the complexity around the calculation and collection of DCs and created uncertainty around the level of DC revenues that will be collected for units issued permit. 	<p>Support with Recommendations</p> <p>Support the reduction of the freeze period; however, request the Province reinstate the practice of calculating and collecting DCs at permit issuance to streamline processes and ensure fiscal sustainability of growth. Instead of the freeze and instalments, that provincial incentives</p>

Background / Proposed Change	Comments	Recommendation
<ul style="list-style-type: none"> • <i>DC Instalments</i> - Bill 108 also introduced mandatory instalment payments for rental and institutional developments. Instead of collecting DCs at permit issuance, DCs are deferred to occupancy and collected in 6 equal annual instalments over 5 years, with interest. • The above amended the long-standing practice of concurrent calculation and collection of DCs based on the date of permit issuance. • In 2022, Bill 23 capped the interest that could be charged on the frozen rates and instalments to prime + 1% • Bill 185 proposes to reduce the time limit on the rate freeze to 18 months from two years. 	<ul style="list-style-type: none"> • One concerning matter is that the DCA, as currently worded, freezes DCs based on the bylaw that would have been in effect at the time of site plan, not only the DC rates. As a result, out of date definitions or exemptions in old bylaws may persist well past the timeframe when they are applicable or needed, for permits subject to frozen DCs. • In addition, the instalments are not tied to permit issuance, which would otherwise ensure collection of the fees. • While the DCA provides authority to add overdue DCs added to the property tax roll, the DCA does give such funds priority lien status. Therefore, the instalments expose the City to collection risk. 	<p>like time-limited grants or rebates be provided by the Province to bolster development and housing supply.</p>
<p>5. Introducing a time-limited streamlined process for scoped amendments to DC bylaws</p>		
<ul style="list-style-type: none"> • Currently, a DC bylaw update requires a lengthy process, including preparation of a DC Background Study, a statutory public meeting, and other procedural steps. 	<ul style="list-style-type: none"> • The City's 2022 DC bylaw, adopted by Council in July 2022, included a two-year phase-in and a discount for rental uses (frozen at 2022 levels). • The City's rates were reduced retroactively when the Province introduced Bill 23 changes effective 	<p>Support with Recommendations</p> <p>Request the Province to provide the streamlined process to DC bylaws passed on or after</p>

Background / Proposed Change	Comments	Recommendation
<ul style="list-style-type: none"> Bill 185 proposes a streamlined approach to amending bylaws provided to municipalities that passed DC bylaws on or after November 28, 2022 and included a rate phase-in or studies costs, or municipalities extending DC bylaws to 10 years without changing rates. The update must be completed within six months after Royal Assent of Bill 185. 	<p>November 28, 2022, to require a five-year phase-in and further rental discount.</p>	<p>January 1, 2022 that were impacted by the mandatory five-year phase-in or additional 15% to 25% rental discount, for Council's that had adopted a phase-in or rental discount.</p>

Table 2: Proposed Further Amendments to the Development Charges Act to Support Affordable, Attainable, Rental and Non-profit Housing

Background

- The Province has proclaimed exemptions for Affordable and Attainable Residential Units, which were introduced in Bill 23, into force on June 1, 2024. The Province also released the Affordable Residential Units Bulletin, which sets out the affordable ownership prices and rents for various municipalities across Ontario.
- The exemption for Attainable Units is pending Provincial regulation which has yet to be released.
- Bill 23 also introduced a DC, community benefit charge and parks levy exemption for non-profit housing, and a DC discount for purpose-built rental developments, as defined.

General Comments

- Consistent with previous Council requests, the City requests the Province to provide direct incentives, rather than discounts and exemptions from municipal funding tools, to support the supply the housing, such as a grant or rebate program targeted to development that meet established provincial criteria (e.g. rental, affordable, etc.) and to make the City whole with respect to Bill 23 impacts.
- Should the discounts and exemptions be maintained, these incentives would benefit from additional guarantees of tenure and affordability. Comments and key changes related to affordable, attainable, rental and non-profit housing, requested of the Province, are summarized below.

Area	Comment and Requested Amendment
<p>1. DC Services</p> <ul style="list-style-type: none"> • Bill 23 removed housing as an eligible DC service. • Bill 108 removed Civic Improvements and Pedestrian Infrastructure as an eligible DC service. 	<ul style="list-style-type: none"> • To support the creation of affordable housing, request that the Province add back Housing Services as an eligible DC service. • To support the creation of complete communities and the principle that growth pay for growth, that the Province amend the DCA such that there are no ineligible DC services.

Area	Comment and Requested Amendment
<p>2. Affordable Housing Exemption</p> <ul style="list-style-type: none"> Affordable Ownership and Rental Units are exempted from DCs, CBCs and Parks Levy. This exemption is proclaimed into force on June 1, 2024. 	<ul style="list-style-type: none"> Request the Province to provide direct incentives, rather than discounts and exemptions from municipal funding tools, to support the supply of housing, such as a grant or rebate program targeted to developments that meet established provincial criteria (e.g., rental, affordable, etc.) and to make the City whole with respect to legislative changes that reduce recovery of costs through DCs and other growth funding tools. If incentives remain, support in principle financial incentives for affordable units, provided that: <ul style="list-style-type: none"> To ensure long-term affordability for both ownership and rental units are maintained, the affordability period be extended from 25 years to 50 years in the agreements that are registered on title. Should the province establish a standard form agreement template, that such template contain a provision that should affordability or tenure change within 50 years, DCs, community benefits charge and parks levy which would have been ordinarily due, become immediately payable plus interest at a rate of Prime + 1%.
<p>3. Rental Discounts</p> <ul style="list-style-type: none"> Bill 23 introduced mandatory 15%-25% DC discount on rental units depending on the number of bedrooms. This discount came into effect upon Royal Assent of Bill 23 (Nov 28/22). 	<ul style="list-style-type: none"> The Bill 23 DCA rental discount is in addition to the Council adopted rental discount (rates frozen at 2022 levels). Currently, for the DCA exemption, there is no requirement that units remain rental. To ensure rental tenure is maintained, request that the Province provide municipalities with the ability to secure rental tenure for a period of 25 years by way of an agreement on title.

Area	Comment and Requested Amendment
	<ul style="list-style-type: none"> Should rental tenure change within 25 years, that DCs which would have been ordinarily due, become immediately payable plus interest, at a rate of Prime + 1%.
<p>4. Non-profit Exemption</p> <ul style="list-style-type: none"> Bill 23 introduced an exemption for non-profit housing, as defined, from DCs, community benefits charge and parks levy. This exemption came into effect upon Royal Assent of Bill 23 (Nov 28/22). 	<ul style="list-style-type: none"> Currently, the non-profit housing DC, community benefit and parks levy exemption only requires the building to be constructed by a non-profit housing provider, as defined in the DCA. There is no requirement for affordable units to be provided or for agreements with the municipality. The exemption is for the entire building, including any market rental or ownership units and non-residential uses. There is no restriction on the sale of the units or building in the future to for-profit developers. To ensure financial incentives are provided to support the supply of housing, request the Province to clarify the non-profit housing exemption to apply only to the residential component of buildings and that a minimum of 30% of the units are affordable for a period of at least 50 years. To ensure affordable units are provided and that non-profit status, as defined under the Act, is maintained, it is requested that agreements be required to be registered on title. Should affordability or non-profit status change within 50 years, the DCs, community benefits charge and parks levy that would have been ordinarily due, become immediately payable with interest at a rate of Prime +1%.
<p>5. Attainable Housing</p> <ul style="list-style-type: none"> Attainable housing, as defined, is exempted from DCs, CBCs and Parks Levy. This exemption is proclaimed into force on June 1, 2024. 	<ul style="list-style-type: none"> The province has yet to release regulations that would define the type of units that would be exempted. Consistent with Council's previous position, request the Province to eliminate the exemption for attainable units and alternatively, create a direct provincial grant or rebate program for developers, renters or homeowners.

Area	Comment and Requested Amendment
	<ul style="list-style-type: none"> • Should the exemption be maintained, to ensure long-term attainability for ownership units are maintained, request that the Province establish an attainability period of 50 years set out in the DCA, and included in the agreements to be required to be registered on title. • Should the province establish a standard form agreement, that the agreement require that should attainability change within 50 years, DCs, community benefits charge and parks levy which would have been ordinarily due, become immediately payable plus interest at a rate of Prime + 1%.
6. Outstanding Fees and Charges Added to the Tax Roll	<ul style="list-style-type: none"> • Currently, unpaid DCs can be added to the property tax roll, but do not have priority lien status. There is currently no authority to add overdue community benefits charge and parks levy to the property tax roll. • To ensure collection of any overdue fees and charges, it is requested that authority be provided in the DCA and Planning Act to add overdue community benefits charge and parks levy to the property tax roll, and for any overdue DCs, community benefits charge and parks levy added to the tax roll to have priority lien status.