



**Proposed changes to O. Reg. 82/98 under the
Development Charges Act related to Schedule 3 of Bill
108 - More Homes, More Choice Act, 2019
ERO: 019-0184**

August 21, 2019

Detailed comments by the City of Brampton on the Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of Bill 108 - More Homes, More Choice Act, 2019.

Transition

The Minister proposes that the specified date for municipalities to transition to community benefits is January 1, 2021.

From this date to beyond:

- Municipalities would generally no longer be able to collect development charges for discounted services

City of Brampton Comments:

As part of the commentary to Bill 108, the City requested a transition period of four years between the former DC regime and the new community benefits charge regime. The reasons are:

- The changes stemming from Bill 108 are significant and drastic. The previous amendment to the DC Act occurred in 1997, and that allowed municipalities two years to transition into the revised regulations (within the same Act). Now municipalities must operate under a completely new regime, under a different Act, within a lesser timeframe. Brampton is concerned that it will not be possible to complete the strategy and adopt a by-law prior to January 2021. This means there will be a significant loss of important revenue.

- The draft Regulations do not describe any of the requirements that municipalities must follow to complete a Community Benefits Strategy. It is reasonable to assume that it will require the same transparency, effort, detail and public consultation that the DC Background Study requires. Brampton recently completed a DC by-law update and the entire process took roughly 13 months, while operating under the same rules and regulations since 1997.

- As they do with DC By-law updates, most municipalities will need to retain the professional services of an outside consultant to complete the CBC strategy process. There are currently only two qualified firms in Ontario that could provide such services. There simply are not enough resources given the impending January 1, 2021 deadline.

An alternative to the January 1, 2021 prescribed date could be:

- the date the DC by-laws come to a natural expiry, or are repealed by Council; or*
- 3 years after the Regulations detailing the proposed cap, and the requirements of the Community Benefits Strategy are finalized.*

Scope of types of development subject to development charges deferral

The Minister proposes that the types of developments proposed for development charge deferrals be defined as follows:

Deferrals

City of Brampton Comments:

As set out in its comments on Bill 108, Brampton opposes mandatory deferrals for these uses and questions how they will meet the stated objective of providing more housing. The mandatory deferrals cause alarm for municipalities in terms of assurance of revenue collection. Under the previous DC Act, most DCs were calculated and payable at the time the building permit is issued. The corresponding legislation, the Building Code Act, explicitly stated that the CBO of the municipality has the authority to withhold the building permit until all fees and charges (including development charges) were paid. This was a crucial tool for ensuring collection. There is nothing in the current Building Code Act that speaks to withholding the occupancy permit until all fees and charges are paid.

Recommendation - amend the Building Code Act that allows the CBO to withhold the occupancy permit until the first installment of the development charges are paid.

With respect to the remaining payments (owing over the next 5 to 20 years, depending on the development type), the municipality has no mechanism to ensure that the developer ultimately pays the full amount of the DCs. A further complication is when the landowner changes during the payment period; how are municipalities be able to track the changes in ownership?

Recommendation - hold the funds owing for the deferral period in "trust" so that the municipality has assurance the full payment will be paid over time. Or ask for a security for the amount and the remaining payments and the municipality would drawn down on the anniversary date of occupancy. Additionally, it is recommended that municipalities be given authority to register deferral agreements on title to the development lands and collected in like manner to taxes, to ensure future owners are bound by the terms.

"Rental housing development" means construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for residential purposes with four or more self-contained units that are intended for use as rented residential premises

City of Brampton Recommendations:

- Ensure that the development remains "rental housing" over the course of the building's lifetime.*
- Ensure that deferral would be for purpose-built rentals only, and not units that are sold at market value and then rented out on a case by case basis after occupancy.*
- Ensure that deferral would be limited to buildings that are pure purpose-built rentals, and not simply a portion of the units in the building that are rentals.*

“Non-profit housing development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for residential purposes by a non-profit corporation.

City of Brampton Recommendation:

The Canada Revenue Agency (CRA) tax services offices are responsible for deciding if an organization qualifies for tax-exempt status as a non-profit organization. Non-profit housing developments wishing to receive the deferral must qualify as a non-profit organization as per the CRA.

“Institutional development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:

- long-term care homes;
- retirement homes;
- universities and colleges;
- memorial homes; clubhouses; or athletic grounds of the Royal Canadian Legion; and
- hospices

City of Brampton Recommendation:

- Deferral should be limited to long term care homes, and universities and colleges

“Industrial development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:

- manufacturing, producing or processing anything,
- research or development in connection with manufacturing, producing or processing anything,
- storage, by a manufacturer, producer or processor, of anything used or produced in such manufacturing, production or processing if the storage is at the site where the manufacturing, production or processing takes place, or
- retail sales by a manufacturer, producer or processor of anything produced in manufacturing, production or processing, if the retail sales are at the site where the manufacturing, production or processing takes place.

City of Brampton Comments:

It is unclear how deferrals to Industrial development will provide for "More Homes, More Choice". There is no apparent correlation between new industrial development and increased housing supply.

“Commercial development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:

- office buildings as defined under subsection 11(3) in Ontario Regulation 282/98 under the Assessment Act; and
- shopping centres as defined under subsection 12(3) in Ontario Regulation 282/98 under the Assessment Act.

City of Brampton Comments:

It is unclear how deferrals to Commercial development will provide for "More Homes, More Choice". There is no apparent correlation between new Commercial development and increased housing supply. Commercial development places a major strain on municipal infrastructure (namely the road network), which needs to be in place prior to the occupancy of the commercial development. That means, the DC revenue should be available to the municipalities up front, and not over a 6 year period from occupancy.

Recommendation:

- limit deferral to major office buildings only*
- remove shopping centres from deferral*

Period of time for which the development charge freeze would be in place

The proposed regulatory change would establish the period in which the development charge rate freeze will be in place.

Proposed content

In order to encourage development to move to the building permit stage so that housing can get to market faster and provide greater certainty of costs, the Minister is proposing that the development charge would be frozen until two years from the date the site plan application is approved, or in the absence of the site plan application, two years from the date the zoning application was approved.

City of Brampton Comments:

Bill 108 provides that the DC rates be frozen at the time Council receives a site plan application or a zoning amendment application. A time period in which the DC rates will be frozen is now proposed by the Minister; two years from the date the application is approved. There could potentially be a significant time lapse between the date the DC rate is frozen (application date) and approval date.

Recommendation:

- The length of the DC rate freeze should be limited to six months to a maximum of one year from the complete application date to permit issuance, to provide revenue certainty.*
- It should be clarified that revisions to the application would not "reset" the clock on the date on the DC rate freeze, to prevent developers from submitting frivolous applications that freeze the rates, with the intention of revising them later.*

Interest rate during deferral and freeze of development charges

Amendments to the Development Charges Act in Schedule 3 to the More Homes, More Choice Act, 2019 would, upon proclamation, provide for municipalities to charge interest on development charges

payable during the deferral. It also provides for municipalities to charge interest during the development charge 'freeze' from the date the applicable application is received, to the date the development charge is payable. In both cases, the interest cannot be charged at a rate above a prescribed maximum rate.

Proposed content

The Minister is not proposing to prescribe a maximum interest rate that may be charged on development charge amounts that are deferred or on development charges that are frozen.

City of Brampton Comments:

The City is supportive of the Minister's decision to not prescribe a maximum interest rate. Municipalities will need to consider several factors when deciding the appropriate interest rate (e.g. - annual short-term borrowing costs, long-term debenture rates, inflationary cost of constructing hard service infrastructure).

Additional dwelling units

In order to reduce development costs and increase housing supply the Development Charges Act as amended by Schedule 3 to the More Homes, More Choice Act, 2019 would, upon proclamation, provide that:

- the creation of additional dwelling in prescribed classes of residential buildings and ancillary structures does not trigger a development charge; and
- the creation of a second dwelling unit in prescribed classes of new residential buildings, including ancillary structures, is exempt from development charges.

Proposed content

The existing O. Reg. 82/98 prescribes existing single detached dwellings, semi-detached/row dwellings and other residential buildings as buildings in which additional residential units can be created without triggering a development charge and rules related to the maximum number of additional units and other restrictions. It is proposed that this regulation be amended so that units could also be created within ancillary structures to these existing dwellings without triggering a development charge (subject to the same rules/restrictions).

It is also proposed that one additional unit in a new single detached dwelling; semi-detached dwelling; and row dwelling, including in a structure ancillary to one of these dwellings, would be exempt from development charges.

It is also proposed that within other existing residential buildings, the creation of additional units comprising 1% of existing units would be exempt from development charges.

City of Brampton Comments:

Additional dwelling units in existing dwellings were already statutorily exempt per the DC Act and its Regulations. As well, the City of Brampton provided the second unit exemption in new dwelling units in its 2019 DC By-laws.

The creation of additional housing types is seen as a positive move to increase the supply of housing, however the impact on neighbourhoods should be monitored.

Secondary unit development entails a range of administrative and process driven task by municipal staff that require compensation. As such it is suggested that these development may require discounted DCs rather than no DC fees at all.