

December 19, 2019

To Our Development Charge Clients:

**Re: Proposed Changes to the Development Charges Act**

This letter is to advise that the Province of Ontario has now proclaimed portions of both the *More Homes, More Choice Act* and *Plan to Build Ontario Together Act*, that amend the *Development Charges Act, 1997* (D.C.A.). The proclaimed sections will take effect on January 1, 2020 and include the following:

***More Homes, More Choice Act (Bill 108):***

- Sched. 3 – Subsection 8 (1), sections 9 and 12, and subsection 13 (6)
  - s. 8 (1) – instalment payments for rental housing development (that is not non-profit housing), institutional development and non-profit housing development, and the date when the amount of the charge is determined for permits occurring after the approval of a Site Plan or Zoning By-law Amendment planning application
    - Including provisions for interest on instalment payments, unpaid amounts added to taxes, changes in development type during the instalment period, and the prescribed amount of time after Site Plan or Zoning By-law Amendment Approval to determine the charge
  - s. 9 – “including any interest payable” added to the provisions for unpaid charges added to the tax roll
  - s. 12 – Non-parties bound by a front-ending agreement to be subject to the same instalment payments as provided in s. 26.1 (i.e. rental housing development, institutional development and non-profit housing development)
  - s. 13 (6) – The Lieutenant Governor in Council may make regulations,
    - governing the types of development for instalment payments;
    - prescribing the maximum rate of interest; and
    - prescribing the amount of time for the purposes of Site Plan or Zoning By-law Amendment application approvals

***Plan to Build Ontario Together Act (Bill 138):***

- Sched. 10 – Section 1 – removes industrial and commercial development from the types of development eligible for instalment payment provisions under s. 26.1 (2)



Further information on these amendments to the D.C.A. is provided below.

## 1. Payment in Instalments:

**Types of Development Eligible for D.C. Instalment Payments** – The following types of development shall pay applicable development charges in instalments, as follows:

- Rental housing development (that is not non-profit housing development) and institutional developments will now pay their D.C.s in six equal annual instalments beginning on the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation of the building and the date the building is first occupied, and annually thereafter on the anniversary date of the first payment or the subsequent 5 years.
- Non-profit housing development will now pay their D.C.s in 21 equal annual instalments beginning on the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation of the building and the date the building is first occupied, and annually thereafter on the anniversary date of the first payment for the subsequent 20 years.

Note, the *More Homes, More Choice Act* (Bill 108) included Industrial and Commercial as eligible development types for instalment payments; however, the *Plan to Build Ontario Together Act* (Bill 138) subsequently removed these development types from instalment payments.

**The Amount of the Instalments for D.C.s determined at Planning Application** – D.C instalment payments related to rental housing, non-profit housing or institutional development, where the amount of the D.C. is determined in accordance with section 26.2 described below (i.e. the charges at the time of Site Plan or Zoning By-law Amendment application), is applicable even if the by-law under which the amount of the D.C. was determined is no longer in effect on the date an instalment payment is due.

**Notice of Occupation** – Where occupation of a building in respect to rental housing, non-profit housing or institutional development is not required by a permit under the *Building Code Act, 1992* (i.e. occupancy permit), the person required to pay the D.C. shall notify the municipality within five business days of the building first being occupied.

**Failure to Provide Notice of Occupation** – Where there is failure to provide notice of occupancy, when required, the D.C., including any interest payable, is payable immediately.

**Interest** – Municipalities may charge interest on instalment payments from the date the D.C. would have been payable, to the date the instalment is paid. The interest rate may not exceed the prescribed maximum interest rate.



If instalment payments are not made, the instalment payment and interest may be added to the property and collected as taxes.

**Change in Development Type** – If any part of a development to which instalment payments apply is changed so that it no longer consists of a type of development eligible for instalments, the remaining instalment payments, including interest, is payable immediately.

**Transition, date charge payable** – Instalment payments do not apply to a D.C. payable before the date subsection 8 (1) of Schedule 3 to the *More Homes, More Choice Act, 2019* comes into force (i.e. prior to January 1, 2020).

**Agreement Prevails** – Instalment payments do not apply in cases where there is an agreement under section 27.

## 2. Date When the D.C. Amount is Determined

**Types of Planning Application Approvals for which D.C.s will be determined** – The amount of the D.C. for all developments proceeding by Site Plan or Zoning By-law Amendment planning application, received on or after January 1, 2020, shall be determined based on the D.C.s in effect on the date of the planning application. If the development is not proceeding via these planning approvals, then the amount is determined at the earlier of the date of issuance of a building permit or occupancy, as follows:

- “26.2 (6) Clauses (1) (a) and (b) do not apply in the case of an application made before the day subsection 8 (1) of Schedule 3 to the *More Homes, More Choice Act, 2019* comes into force”; and
- The draft regulation is proposed to apply if building permit issuance occurs within 2 years of planning application approval.

**Regulated Time Period for the Issuance of a Building Permit under s. 26.2** – The provisions for determining the D.C.s payable under s. 26.2 (1) (a) and (b) (i.e. planning applications for Site Plan and Zoning By-law Amendment) will lapse if the first building permit issued for the development occurs at a date later than the regulated time period after planning approval (draft regulations currently establish this period as two years).

### Remarks

The legislative changes noted above will impact the manner in which D.C. by-laws are applied in certain instances. It is recognized that the changes to the Act may not follow existing D.C. by-law provisions; however, the requirements of the Act appear to take precedent. The following areas of change are presented for consideration by the municipality and will subsequently be required to be included in by-law amendments. These amendments will need to consider items such as definitions required for by-laws,



collection policies, establishing interest rates applicable for instalment payments in the event it is not prescribed, and hence require further review and modifications. The following comments are provided for consideration of the reader:

### Payment in Instalments

- Rental housing and institutional developments would pay D.C.s in 6 equal annual payments, commencing from the date of occupancy:
  - The draft regulation defines that “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;
    - hospices; and
  - No definition was provided for rental housing in draft regulations at this time.
- Non-profit housing would pay D.C.s in 21 equal annual payments, commencing from the date of occupancy:
  - Draft regulations define that “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.

It is anticipated that during 2020, municipalities will be required to amend their by-laws to address all D.C. and community benefit charge (C.B.C.) matters. Unless defined by regulation, municipalities should undertake amendments to current D.C. by-laws to define rental housing to clarify treatment and to mitigate risk of D.C. complaints. Note that for a D.C. by-law to be amended, the public process set out in the D.C.A. is required to be followed which includes a minimum 60 days’ circulation of a background report and the draft amendment to the by-law prior to Council being able to pass the amendment.

### Interest on Instalment Payments

As of January 1, 2020, municipalities should determine what interest rate they will apply to instalments. Municipalities should determine the rate by considering if a Council



resolution is required, a future amendment to the D.C. by-law is required, and if there are any other existing D.C. policies that set out an interest rate.

#### Date When the D.C. Amount is Determined

D.C.s for developments proceeding through Site Plan or Zoning By-law Amendment will be determined based on the charges in effect on the day of the application.

It is unclear what is meant by “application,” i.e. does this mean a complete application, or something less? Therefore, it is suggested that municipalities should consider:

- What constitutes an “application”;
- If incomplete applications can be refused under the provisions of the Planning Act; and
- Tracking the date applications are received after January 1, 2020.

#### Interest on when D.C. is Determined

Municipalities may charge interest on the D.C., where applicable for developments proceeding through Site Plan or Zoning By-law Amendment, at a rate not exceeding the prescribed maximum interest rate, from the date of the application to the date the D.C. is payable. Similar to the interest rate on instalment payments, if a rate is not prescribed, municipalities should determine what interest rate will apply.

We trust that the above information is helpful. We anticipate the release of the draft regulations in the very near future and will provide a review and comments on these documents shortly thereafter.

Yours very truly,

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