

Report to Corporate Services Committee

To: Chair and Members
Corporate Services Committee
From: Anna Lisa Barbon, Deputy City Manager, Finance Supports
Subject: Development Charge Alternative Payment Agreement
Amendments
Date: May 27, 2024

Recommendation

That, on the recommendation of the Deputy City Manager, Finance Supports, the following action be taken:

- a) The attached proposed by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting to be held on June 4, 2024 to amend By-law No. A.-7956-84, as amended, being "A by-law to approve and authorize a Development Charges Alternative Payment Agreement template to provide for the alternative payment of Development Charges for developments that qualify for deferred Development Charge payments made under Section 27 of the Development Charges Act, 1997 S.O. 1997, c. 27, as amended; and to delegate the authority to enter into such Agreements to the City Treasurer or delegate", to repeal and replace Schedule "1" to the by-law.

Executive Summary

The purpose of this report is to recommend changes to the Council approved Alternative Payment Agreement (APA) template, which provides applicants that are required to defer a development charge (DC) over six annual installments under the Development Charges Act (DCA), the option to pay at an earlier point in time. Currently, the only APA option available is payment at building permit issuance.

This report recommends amending the APA template to add two additional payment options, which are at building occupancy and one year after building occupancy. These changes are recommended based on experience gained to-date and feedback received from the development and building industry.

Linkage to the Corporate Strategic Plan

This report supports the 2023-2027 Strategic Plan for the City of London through the Climate Action and Sustainable Growth and Economic Growth, Culture, and Prosperity strategic areas of focus by ensuring infrastructure is built to support future development.

Analysis

1.0 Background Information

Since 2019, the DCA has gone through some significant legislative changes, including amendments to the timing of when DCs are calculated, paid and to provide for certain development types to pay DCs over an extended period of time. More specifically, rental housing that is not non-profit and certain Institutional developments are required to pay DCs in 6 annual instalments.

Section 27 of the DCA allows municipalities to enter into agreements with a person who is required to pay a DC either before or after it would otherwise be payable. In order to provide greater flexibility for developments subject to deferred DC payments, the City has an APA where DCs can be paid at building permit issuance (the same time as non-deferred developments).

Through experience gained to-date and through feedback received from the development and building industry, civic administration is recommending adding two additional APA options:

1. Payment in full at building occupancy; and,
2. Payment in full one year after building occupancy.

These additional APA options have been incorporated into section 3 of the APA template.

Maintaining the APA option at building permit issuance will provide developments subject to deferred payment with enhanced flexibility to determine if their financial projections and funding would be better served by paying DCs through installments or paying the full cost of DCs upfront. However, adding the two additional payment options may provide an even greater degree of flexibility. More specifically, these additional payment options will benefit some DC ratepayers by alleviating cashflow constraints created due to the timing of construction mortgages that are not transferred to the Canada Mortgage and Housing Corporation (CMHC) until building occupancy. Also, the rental housing revenue stream does not start until after building occupancy.

Section 6 of the agreement has been added to allow for the municipality to collect any remaining amounts owing plus interest. This section is now required to ensure a collection mechanism for APA options beyond permit issuance.

Section 7 of the agreement addressing interest on the amount of DCs owing before the due date is also recommended to be changed. Since the APA provides for payment options that are not prescribed in the DCA, the reference to the section of the DCA that addresses interest is not relevant. Rather, the language in the section has been simplified to state the interest rate and the interest period that will be applied.

The methodology that will be applied by civic administration for the purposes of establishing an interest rate in the APA will be based on the lowest average prime rate from major Canadian banks plus 1% for the respective interest period, noting that the interest rate will be adjusted on January 1, April 1, July 1 and October 1. Interest will be applied and calculated using the lowest rate in effect at any point during the frozen DC period. If the frozen DC period has lapsed, then the interest rate will be the average prime rate from major Canadian banks plus 1% in effect at building permit issuance.

2.0 Financial Impact/Considerations

There are no direct financial expenditures associated with this report.

Conclusion

The DCA allows for municipalities to enter into agreements with a person who is required to pay a DC either before or after it would otherwise be payable. The City currently has an APA in place with a payment option at building permit issuance. This report recommends adding two additional payment options, at building occupancy and one year after building occupancy, to provide DC ratepayers with additional flexibility.

Prepared & Submitted by: Jason Senese, CPA, CGA, MBA
Director, Capital Assets and Projects

Recommended by: Anna Lisa Barbon, CPA, CGA
Deputy City Manager, Finance Supports

APPENDIX 'A'

Bill No.
2024

By-Law No.

A by-law to amend By-Law No. A.-7956-84, as amended, being a by-law “to approve and authorize a Development Charges Alternative Payment Agreement template to provide for the alternative payment of Development Charges for developments that qualify for deferred Development Charge payments made under Section 27 of the Development Charges Act, 1997 S.O. 1997, c. 27, as amended; and to delegate the authority to enter into such Agreements to the City Treasurer or delegate” to repeal and replace Schedule 1

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorize a municipality to pass by-laws necessary or desirable for municipal purposes and, in particular, paragraph 3 of subsection 10(2) authorizes by-laws respecting the financial management of the municipality;

AND WHEREAS section 23.1 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate its authority;

AND WHEREAS subsection 23.2(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate quasi-judicial powers under the Municipal Act, 2001 to an individual who is an officer, employee, or agent of the municipality;

AND WHEREAS the Municipal Council of The Corporation of the City of London deems it appropriate to pass a by-law to delegate an alternative payment agreement template for developments that qualify for deferred Development Charge payments made under Section 27 of the *Development Charges Act, 1997* S.O. 1997, c.27, as amended;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. By-law No. A.-7956-84, as amended, is hereby amended by repealing and replacing Schedule “1” with the new attached Schedule “1”.
2. The City Treasurer, or delegate, is hereby authorized to enter into and execute Development Charges Alternative Payment Agreements authorized and approved in section 1 above.

3. This by-law comes into force on the day it is passed.

PASSED in Open Council on February June 4, 2024.

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First Reading –
Second Reading –
Third Reading –

SCHEDULE 1

DEVELOPMENT CHARGES ALTERNATIVE PAYMENT AGREEMENT

THIS AGREEMENT made this day of , 20xx.

BETWEEN:

APPLICANT NAME

(hereinafter referred to as the "Applicant")

-and-

THE CORPORATION OF THE CITY OF LONDON

(hereinafter referred to as the "City")

WHEREAS the Applicant has represented to the City that the lands described in Schedule "A" hereto (the "Lands") are owned by it;

AND WHEREAS pursuant to the City's Development Charge By-law, a development charge is payable by the Applicant to the City for 'Rental Housing that is not non-profit in 6 annual instalments / certain Institutional Development in 6 annual instalments';

AND WHEREAS the *Development Charges Act, 1997, S.O. 1997, c. 27*, as amended provides that a municipality may enter into an agreement with persons who are required to pay a development charge, to authorize that all or a portion of the development charge be paid before or after it would otherwise be payable;

NOW THEREFORE IN CONSIDERATION OF the foregoing, the parties agree as follows:

RECITALS

1. The Recitals are confirmed by the Applicant and the City (the "Parties") to be correct and to constitute the basis for this Agreement.

REQUEST TO ADVANCE PAYMENT OF DEVELOPMENT CHARGE

2. The Applicant acknowledges its obligation to pay a development charge in accordance with Section 26 of the *Development Charges Act, 1997*, as amended. The Applicant has requested that it be permitted, pursuant to Section 27 of the *Development Charges Act, 1997*, as amended, to pay the development charge for the ‘Rental Housing that is not non-profit / Institutional development’ before it would otherwise be payable.

“DUE DATE” FOR PAYMENT PURSUANT TO THIS AGREEMENT

3. The Applicant hereby covenants and agrees to pay the applicable development charge to the City with interest OR without interest, on MM DD YYYY (the “Due Date”), which is on or prior to the date of initial permit issuance for the development OR the date the building is first occupied and the first annual DC instalment would otherwise be payable OR the one year anniversary from the date the building is first occupied and the second annual DC instalment would otherwise be payable [executed agreement will contain only one of the above scenarios and this explanation and the alternatives will be deleted].

ANTICIPATED DEVELOPMENT CHARGE

4. The anticipated amount of the development charge payable by the Applicant has been calculated on the basis of the following information:

Type	Units / m2 of Gross Floor Area (A)	Development Charges Rate (B)	Development Charges Payable (A) * (B)
Single & Semi-Detached			
Multiples / Row Housing			
Apartments < 2 Bedrooms			
Apartments >= 2 Bedrooms			
Institutional			
Credits			
Exemptions / Discounts			
Interest Charge			
TOTAL			

TIMING OF DEVELOPMENT CHARGE CALCULATION

5. The actual amount of the development charge will be determined on the basis of prevailing rates and rules in accordance with Section 26 of the *Development Charges Act, 1997*, as amended. If, before any building permit is issued, the City's Development Charge By-law is amended or is repealed and replaced or the information set out above is revised, the applicable development charge will be revised to reflect these changes and the Parties agree that this Agreement will apply to that revised information and amount. Once any building permit has been issued, the amount of the applicable development charge shall be calculated in accordance with Section 26 of the *Development Charges Act, 1997*, as amended.

COLLECTION OF CHARGES

6. The Applicant acknowledges that if any amount owing to the City under this Agreement remains unpaid after the Due Date, the City may, in addition to any other rights it may have, add the unpaid amount plus applicable interest to the tax roll for the Lands, without notice, and collect such amount in the same manner as property tax.

INTEREST

7. The Applicant agrees to pay interest to the City at the rate of ____% on the amount of the development charge for the period noted below:
 - I. Date of complete application received to date of initial permit issuance,
OR
 - II. Date of complete application received to date the building is first occupied,
OR
 - III. Date of complete application received to one year anniversary from the date the building is first occupied, OR
 - IV. Date of first building permit issuance to date the building is first occupied,
OR
 - V. Date of first building permit issuance to one year anniversary from the date the building is first occupied.

NOTICE

8. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in writing sent by prepaid registered post, addressed in the case of notice given by the City, to:

City Clerk
The Corporation of the City of London
P.O. Box 5035
300 Dufferin Avenue
London, ON N6A 4L9

And in the case of notice given by the Applicant, to:

Applicant Name
Applicant Address

WARRANTY

9. The Applicant represents and warrants to the City as follows:

9.1. The Applicant is a corporation validly subsisting under the laws of Ontario and has full corporate power and capacity to enter in this Agreement; and

9.2. All necessary corporate action has been taken by the Applicant to authorize the execution and delivery of this Agreement.

BINDING ON SUCCESSORS

10. It is agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Applicant herein contained shall run with the Lands for the benefit of the City.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

SIGNED, SEALED AND
DELIVERED

)
) APPLICANT NAME
)
) _____ c/s
) Name:
) Title:
) I have authority to bind the corporation.
)
)
) THE CORPORATION OF THE CITY OF
) LONDON
)
) _____
) City Treasurer or Delegate

SCHEDULE "A"

DESCRIPTION OF "LANDS"