

<b>TO:</b>	<b>CHAIR AND MEMBERS STRATEGIC PRIORITIES AND PLANNING ADVISORY COMMITTEE</b>
<b>FROM:</b>	<b>MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>SUBJECT:</b>	<b>CHANGES TO DEVELOPMENT CHARGES ACT - BILL 73 AND REGULATIONS MEETING ON FEBRUARY 29, 2016</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the report with respect to Changes to the Development Charges Act and Regulations **BE RECEIVED** for information.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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| July 27, 2015 | SPPC – Proposed Amendments to the Development Charges Act, 1997 (Bill 73, Smart Growth For Our Communities Act) – Second Reading |
| May 13, 2013  | SPPC – Development Charge Policy – DC Area Specific Charges  |

<b>EXECUTIVE SUMMARY</b>
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- i. Amendments to the Development Charges Act came into effect through Bill 73, in December, 2015.
- ii. Some of the changes favour slightly greater ability to collect Development Charges to recoup costs of growth. Others put potentially challenging administrative requirements associated with the calculation of future Development Charge rates.
- iii. Staff are monitoring the various aspects of the changes and seeking expert advice to assist in interpretations, where warranted. Work plans and DC policy papers in preparation for the next DC study (not required to be completed until 2019) will incorporate the legislated changes.
- iv. This report constitutes a summary of the changes, and is provided for the information of the reader.

<b>BACKGROUND</b>
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**A. Process to legislative change**

The Province initiated a review of the DCA in October 2013. Following the introduction of Bill 73, the Smart Growth for Our Communities Act, 2015, City staff, as part of the Development Charges Working Group established by the Province, provided input with respect to area-specific provisions of the draft legislation.

In November 2015 the Province received submissions to the Standing Committee on Social Policy in response to Bill 73. On December 3, 2015, the Act received Royal Assent. Both the Act and the Regulation came into effect on January 1, 2016.

## **B. LEGISLATIVE CHANGES AND IMPACT**

### **1) Ineligible Services**

Previously, the legislation listed a number of ineligible services, or services that cannot be funded from development charges (including cultural facilities, tourism facilities, parkland acquisition, hospitals, waste management services, city halls).

The changes enacted:

- 1) moved this list from the provisions of the Act, to the regulations. This makes the list easier to amend; and,
- 2) waste management (except landfills and incineration) is now a permissible DC funded service. Upon its inclusion in the DC background study, the eligible capital costs of expanding capacity for waste management services resulting from growth would be recoverable through a development charge rate.

### **2) Area Rating**

Under the previous legislation, 'Area Rating' could be used by municipalities to distinguish charges on certain services in certain areas, from municipal-wide charges. The City of London currently employs area rating in collecting growth costs from areas of the City provided with "urban services" separately from rural areas (areas outside the Urban Growth Boundary) that don't receive the same services. The City's current by-law excludes rural areas from charges for Wastewater services, Water, Stormwater, Urban Works (minor works in and around subdivisions funded under the former system), as these services are generally not available outside the Urban Growth Boundary.

The legislative changes enacted:

- 1) require Municipal Council "to consider" the need for different services in different areas (amendment to clause 10 (2) c.1); and,
- 2) allow the Province to prescribe services and specific areas for area rating. There are no prescribed services or areas in the initial set of new DC Act regulations.

These two changes – the requirement to consider area rating and the ability of the province to dictate that area rating be used for certain services in certain locations – will require all municipalities "to consider" area rating of services in future. Staff have previously provided a DC policy discussion on area rating in connection with the 2014 DC study (<http://sire.london.ca/cache/2/deajbmyxcxlu1xayahy00kqf/9481702042016115325918.PDF>). It is anticipated that the 2019 DC Study will revisit area rating with a policy discussion report, in accordance with the new terms of the revised Act and in consultation with community stakeholders.

### **3) Services with no percentage reduction**

Certain services were previously subject to 10% reduction in their DC rate calculation, hindering a municipality's ability to recover 100% of growth costs. Transit services has now been removed from the list, making it eligible for 100% recovery of growth costs. By itself, this revision would result in a very minor increase to overall DC rates (less than 1%, if applied to the 2014 DC study figures).

### **4) Transit and Planned Level of Service**

The so called "Soft Services" – Fire, Police, Library, Transit, Parks and Recreation – have been subject to rate restrictions that limit the amount of DC rates that can be collected in future years, by limiting the service levels in those services to "historical average levels" that precede a DC study. This means that despite intentions to improve service levels to standards now considered appropriate, the DC rate calculation might have "capped" those services at historical levels.

The approved amendments to the legislation introduce the concept of “planned level of service”. Planned level of service may in the future be prescribed for other services, but for now, the change only applies to Transit service.

Accompanying this change, an extensive list of requirements has been incorporated into the regulations for Transit services. These regulations include requirements related to:

- i. the calculation of the “planned service level”;
- ii. the requirement that Transit be classified as a “discrete service”; and,
- iii. requires consideration of “ridership forecasts” and “ridership capacity” and whether the ridership is from existing or planned development.

These regulations are currently being reviewed by professionals experienced with DC rate calculations for their implications on Transit DC rates. The ultimate interpretation of the new regulations on Transit services will impact the amount of money collected through DC’s for this service. The lack of definitions will make these provisions challenging to implement due the lack of an established interpretation.

### **5) Growth assets and Asset Management Plans**

Previously, the DC legislation required municipalities to complete “an examination, for each service to which the development charge by-law would relate, of the long term capital and operating costs for capital infrastructure required for the service”. The revisions to the Act now also require that:

- i. the assets planned for acquisition and construction within a development charges study be reflected in the asset management plan (AMP);
- ii. the municipality demonstrate that the growth related assets being acquired are “financially sustainable” over their full life cycle; and,
- iii. contain any other information that is prescribed in the manner prescribed.

The City of London has made significant efforts to develop asset management plans over the past several years. To date, these plans have included the lifecycle renewal of existing assets. The new DC Act regulation will require that we also assess the planned future asset acquisitions to be funded (at least in part) by development charges as part of the DC Background Study process. Finance and Corporate Services staff will be working to collectively address the new requirements for asset management planning per the DC Act.

### **6) Where multiple permits are issued**

The legislation also contained revisions to deal with circumstances where more than one building permit is required (such as may occur, for example, with the construction of an apartment building). The changes to the Act require that the DC rate be fixed at the rate in place when the first building permit was issued (e.g., the foundation permit). This permit may be issued long in advance of building completion and occupancy. Presumably, this revision is intended to protect an applicant from increases in DC rates that may occur through the various stages of a complex construction (eg. due to higher DC rates coming into effect during the course of construction – e.g., rate indexing).

By way of comparison, the City’s current DC by-law provisions set the amount payable at the DC rate in effect when the permit is applied for, though payment of the DC rate is not made until the permit is issued.

Both cases – the legislated change regarding “first permit issued” and the City’s policy of fixing the rate charged at the rate in effect when the permit is applied for – result in slightly reduced DC revenues (as the applicant for a permit is able to avoid DC rate increases by applying for permits prior to the date of the rate increase). Administration will introduce the wording changes necessary to implement this change in the DC Act with the next DC by-law.

### **7) Other legislative changes**

The legislation contained a few further notable changes:

- i. The DC Background study is to be made available (including posting on the website) at least 60 days prior to the passing of the development charge by-law. This will add time to the process of reviewing and passing a DC by-law;
- ii. The Treasurer’s Annual report on DC fund activity contains some increased reporting requirements. These have already been substantially met at the City of London;
- iii. Voluntary Payments – used previously in high growth municipalities to overcome financial hurdles to rapid development and facilitate municipal development approvals - are no longer permitted. Further, alleged violations of this provision can be investigated by the Ministry, and at the cost of the municipality.

<b>SUMMARY</b>
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Staff are building knowledge of the new provisions and incorporating necessary changes into work plans for the next DC study. The current DC by-law expires in August, 2019, and each step of the process will incorporate any changes necessitated by the legislative changes. Staff intend to address the need “to consider” area rating and any other policy changes arising from the new legislation or as directed by Council, under separate report(s).

<b>SUBMITTED BY:</b>	<b>RECOMMENDED BY:</b>
<b>PETER CHRISTIAANS DIRECTOR, DEVELOPMENT FINANCE</b>	<b>MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>

- cc. DC – External Stakeholders  
DC Study - Internal Steering committee  
George Kotsifas, Managing Director, Development and Compliance Services and Chief Building Official  
Jay Stanford, Director - Environment, Fleet and Solid Waste  
Lois Burgess, Division Manager, Corporate Asset Management