



# Chapter 9

## By-Law Implementation



## 9. By-law Implementation

### 9.1 Public Consultation Process

---

#### **9.1.1 Introduction**

This chapter addresses the mandatory, formal public consultation process (Section 8.1.2), as well as the optional, informal consultation process (Section 8.1.3). The latter is designed to seek the co-operation and participation of those involved, in order to produce the most suitable policy. Section 8.1.4 addresses the anticipated impact of the D.C. on development from a generic viewpoint.

#### **9.1.2 Public Meeting of Council**

Section 12 of the D.C.A. indicates that before passing a D.C. by-law, Council must hold at least one public meeting, giving at least 20 clear days' notice thereof, in accordance with the Regulation. Council must also ensure that the proposed by-law and background report are made available to the public at least two weeks prior to the (first) meeting.

Any person who attends such a meeting may make representations related to the proposed by-law.

If a proposed by-law is changed following such a meeting, Council must determine whether a further meeting (under this section) is necessary (i.e. if the proposed by-law which is proposed for adoption has been changed in any respect, Council should formally consider whether an additional public meeting is required, incorporating this determination as part of the final by-law or associated resolution. It is noted that Council's decision regarding additional public meetings, once made, is final and not subject to review by a Court or the Local Planning Appeal Tribunal (L.P.A.T.) (formerly the Ontario Municipal Board (O.M.B.)).

#### **9.1.3 Other Consultation Activity**

There are three broad groupings of the public who are generally the most concerned with County D.C. policy:



1. The first grouping is the residential development community, consisting of land developers and builders, who are typically responsible for generating the majority of the D.C. revenues. Others, such as realtors, are directly impacted by D.C. policy. They are, therefore, potentially interested in all aspects of the charge, particularly the quantum by unit type, projects to be funded by the D.C. and the timing thereof, and County policy with respect to development agreements, D.C. credits and front-ending requirements.
2. The second public grouping embraces the public at large and includes taxpayer coalition groups and others interested in public policy.
3. The third grouping is the industrial/commercial/institutional development sector, consisting of land developers and major owners or organizations with significant construction plans, such as hotels, entertainment complexes, shopping centres, offices, industrial buildings and institutions. Also involved are organizations such as Industry Associations, the Chamber of Commerce, the Board of Trade and the Economic Development Agencies, who are all potentially interested in County D.C. policy. Their primary concern is frequently with the quantum of the charge, gross floor area exclusions such as basements, mechanical or indoor parking areas, or exemptions and phase-in or capping provisions in order to moderate the impact.

## 9.2 Anticipated Impact of the Charge on Development

---

The establishment of sound D.C. policy often requires the achievement of an acceptable balance between two competing realities. The first is that high non-residential D.C.s can, to some degree, represent a barrier to increased economic activity and sustained industrial/commercial growth, particularly for capital intensive uses. Also, in many cases, increased residential D.C.s can ultimately be expected to be recovered via higher housing prices and can impact project feasibility in some cases (e.g. rental apartments).

On the other hand, D.C.s or other County capital funding sources need to be obtained in order to help ensure that the necessary infrastructure and amenities are installed. The timely installation of such works is a key initiative in providing adequate service levels and in facilitating strong economic growth, investment and wealth generation.

---



## 9.3 Implementation Requirements

---

### 9.3.1 Introduction

Once the County has calculated the charge, prepared the complete background study, carried out the public process and passed a new by-law, the emphasis shifts to implementation matters.

These include notices, potential appeals and complaints, credits, front-ending agreements, subdivision agreement conditions and finally the collection of revenues and funding of projects.

The sections which follow overview the requirements in each case.

### 9.3.2 Notice of Passage

In accordance with s.13 of the D.C.A., when a D.C. by-law is passed, the County clerk shall give written notice of the passing and of the last day for appealing the by-law (the day that is 40 days after the day it was passed). Such notice must be given no later than 20 days after the day the by-law is passed (i.e. as of the day of newspaper publication or the mailing of the notice).

Section 10 of O.Reg. 82/98 further defines the notice requirements which are summarized as follows:

- notice may be given by publication in a newspaper which is (in the Clerk's opinion) of sufficient circulation to give the public reasonable notice, or by personal service, fax or mail to every owner of land in the area to which the by-law relates;
- s.s.10(4) lists the persons/organizations who must be given notice; and
- s.s.10(5) lists the eight items which the notice must cover.

### 9.3.3 By-law Pamphlet

In addition to the “notice” information, the County must prepare a “pamphlet” explaining each D.C. by-law in force, setting out:

- a description of the general purpose of the D.C.s;



- the “rules” for determining if a charge is payable in a particular case and for determining the amount of the charge;
- the services to which the D.C.s relate; and
- a general description of the general purpose of the Treasurer’s statement and where it may be received by the public.

Where a by-law is not appealed to the L.P.A.T., the pamphlet must be readied within 60 days after the by-law comes into force. Later dates apply to appealed by-laws.

The County must give one copy of the most recent pamphlet without charge, to any person who requests one.

### **9.3.4 Appeals**

Sections 13 to 19 of the D.C.A. set out the requirements relative to making and processing a D.C. by-law appeal and L.P.A.T. Hearing in response to an appeal. Any person or organization may appeal a D.C. by-law to the L.P.A.T. by filing a notice of appeal with the County clerk, setting out the objection to the by-law and the reasons supporting the objection. This must be done by the last day for appealing the by-law, which is 40 days after the by-law is passed.

The County is carrying out a public consultation process, in order to address the issues that come forward as part of that process, thereby avoiding or reducing the need for an appeal to be made.

### **9.3.5 Complaints**

A person required to pay a D.C., or his agent, may complain to the Council imposing the charge that:

- the amount of the charge was incorrectly determined;
- the reduction to be used against the D.C. was incorrectly determined; or
- there was an error in the application of the D.C.

Sections 20 to 25 of the D.C.A. set out the requirements that exist, including the fact that a complaint may not be made later than 90 days after a D.C. (or any part of it) is payable. A complainant may appeal the decision of County Council to the L.P.A.T.



### **9.3.6 Credits**

Sections 38 to 41 of the D.C.A. set out a number of credit requirements, which apply where a County agrees to allow a person to perform work in the future that relates to a service in the D.C. by-law.

These credits would be used to reduce the amount of D.C.s to be paid. The value of the credit is limited to the reasonable cost of the work which does not exceed the average level of service. The credit applies only to the service to which the work relates, unless the County agrees to expand the credit to other services for which a D.C. is payable.

### **9.3.7 Front-Ending Agreements**

The County and one or more landowners may enter into a front-ending agreement which provides for the costs of a project which will benefit an area in the County to which the D.C. by-law applies. Such an agreement can provide for the costs to be borne by one or more parties to the agreement who are, in turn, reimbursed in future by persons who develop land defined in the agreement.

Part III of the D.C.A. (Sections 44 to 58) addresses front-ending agreements and removes some of the obstacles to their use which were contained in the D.C.A., 1989. Accordingly, the County assesses whether this mechanism is appropriate for its use, as part of funding projects prior to County funds being available.

### **9.3.8 Severance and Subdivision Agreement Conditions**

Section 59 of the D.C.A. prevents a municipality from imposing directly or indirectly, a charge related to development or a requirement to construct a service related to development, by way of a condition or agreement under s.51 or s.53 of the Planning Act, except for:

- “local services, related to a plan of subdivision or within the area to which the plan relates, to be installed or paid for by the owner as a condition of approval under section 51 of the Planning Act;” and
- “local services to be installed or paid for by the owner as a condition of approval under section 53 of the Planning Act.”



It is also noted that s.s.59(4) of the D.C.A. requires that the municipal approval authority for a draft plan of subdivision under s.s.51(31) of the Planning Act, use its power to impose conditions to ensure that the first purchaser of newly subdivided land is informed of all the D.C.s related to the development, at the time the land is transferred.

In this regard, if the County in question is a commenting agency, in order to comply with subsection 59(4) of the D.C.A. it would need to provide to the approval authority, information regarding the applicable County D.C.s related to the site.

If the County is an approval authority for the purposes of section 51 of the Planning Act, it would be responsible to ensure that it collects information from all entities which can impose a D.C.

The most effective way to ensure that purchasers are aware of this condition would be to require it as a provision in a registered subdivision agreement, so that any purchaser of the property would be aware of the charges at the time the title was searched prior to closing a transaction conveying the lands.