



REPORT TO

REGULAR BOARD

## EDUCATION DEVELOPMENT CHARGES BY-LAW PASSAGE

*In their hearts humans plan their course, but the Lord establishes their steps...Proverbs 16:9*

Created, Draft	First Tabling	Review
June 5, 2018	June 14, 2018	<a href="#">Click here to enter a date.</a>

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### RECOMMENDATION REPORT

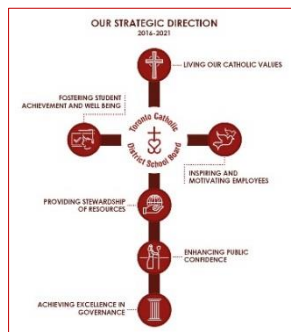
**Vision:**

*At Toronto Catholic we transform the world through witness, faith, innovation and action.*

**Mission:**

*The Toronto Catholic District School Board is an inclusive learning community uniting home, parish and school and rooted in the love of Christ.*

*We educate students to grow in grace and knowledge to lead lives of faith, hope and charity.*



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## **A. EXECUTIVE SUMMARY**

The Toronto Catholic District School Board existing Education Development Charges (EDC) by-law will expire on June 30, 2018 unless a successor by-law is adopted no later than June 26, 2018. The Board is therefore proposing to enact a new EDC by-law that will apply to residential and non-residential developments in the City of Toronto.

The primary purpose of any Board in implementing education development charges is to provide a source of funding for new school sites and expansions of land or site services to accommodate enrolment growth generated by new housing development in the City of Toronto.

*This report recommends the adoption of a successor EDC by-law based on the EDC related policies outlined in this report.*

*The cumulative staff time required to prepare this report was 100 hours*

## **B. PURPOSE**

The purpose of this report is to identify and establish a set of EDC related policy considerations on which to base a decision to adopt a successor EDC by-law, and provide a draft EDC By-law for Trustees to consider for adoption.

## **C. BACKGROUND**

1. Revenue generated by the imposition of Education Development Charges represents the only direct source of funding for site acquisition and site development costs as a result of new growth.
2. The Board's current EDC By-law has a term of 5 years, and expires on June 30, 2018 unless it is repealed sooner. The current by-law provides a uniform charge of \$1,493 per residential dwelling unit across the City of Toronto and \$1.07 per square foot of non-residential development.
3. In order for the Board to have an EDC by-law in place to provide for the uninterrupted imposition of charges on new development, it is necessary that

the Board adopt a successor by-law prior to the expiry of the new by-law and by no later than June 26, 2018.

4. Prior to the adoption of a successor by-law, the legislation requires that school boards must prepare an EDC Background Study in support of the new By-law, as well as undertake a prescribed public process of public meetings and consultation. Furthermore, the EDC Background Study must be approved by the Ministry of Education prior to the Board's adoption of a successor By-law.
5. The TCDSB retained the services of Quadrant Advisory Group to undertake the required EDC Background Study and all associated analyses in support of a successor By-law.
6. The EDC Submission was sent to the Ministry of Education for approval in April 2018. The EDC Submission was circulated to other agencies and stakeholders as prescribed in the legislation, as well as being made available to the public upon request and posted on the Board's website. The Board's consultant has informed staff that Ministry approval of the EDC Submission is expected to be received prior to consideration of adoption of the by-law on June 14, 2018.
7. Education Development Charges may be set at any level, provided that:
  - The procedures set out in the Regulation and required by the Ministry are followed and only growth-related net education land costs are recovered; and
  - No more than 40% of the applicable costs are financed via non-residential development.
8. The EDC calculation is based on new pupils generated by housing units within the by-law area, for which building permits will be issued over the next fifteen-year period and for which additional school accommodation is required. The board undertook the background analysis respecting growth projections, pupil enrolment forecasts, determination of growth-related pupil place requirements, site costing, and the appropriate EDC forms.
9. The Board has conducted meetings with stakeholders, responded to a review of the TCDSB EDC submission by the Building Industry and Land

Development Association (BILD), and received a report from its consultants undertaking a further review of the EDC submission in response to the issues identified by BILD. As a result, the Board's consultants have proposed minor modifications to the charge. The Board can exercise its discretion to adopt these modifications.

10. The TCDB conducted a policy review public meeting on May 2<sup>nd</sup>, and a public meeting to review the proposed charges on May 31<sup>st</sup>. The Board will be seeking additional input from the public and give consideration to all submissions received prior to the passage of its initial Education Development Charges by-law.

#### **D. EVIDENCE/RESEARCH/ANALYSIS**

1. The following sets out the key policy decisions that must be made by the Board in advance of adopting a new by-law, along with staff recommendations. Each of these policy decisions will be considered as part of the by-law adoption process.
  - What by-law term is proposed by the board;
  - What level of EDC charge does the Board wish to impose, given that the board is entitled to recover less than 100% of the net education land costs?
  - Is there a need to conduct any further public meetings in advance to adopting the new by-law?
  - Are the charges to be applied on an area-specific or jurisdiction-wide basis?
  - What portion of the net education land costs are to be recovered from residential and non-residential (e.g. Industrial, commercial and institutional) development?
  - Does the Board wish to exempt any residential or non-residential

development? If so, how does the board propose to fund the shortfall?

- Does the board wish to provide any demolition or conversion credits beyond that specified in the legislation?
- Is there any need to consider a phase-in of the charge or to grandfather the EDC rates applicable to any development applications that are in process of being approved by the City of Toronto?

2. **Term of the By-law:** the *Education Act* permits a school board to pass an EDC by-law with a maximum term of five years. A five-year term provides the maximum flexibility since a Board has the power to amend the by-law or pass a new by-law at an earlier point, if necessary. *Staff recommend that an EDC by-law having a 5 year term be adopted.*

3. **Recovery of Net Land Education Costs:** *O. Reg. 20/98* Section 7 paragraphs 9 (iii) and 10 (vi) restrict a Board to a maximum of 100% recovery of the “net” growth-related education land costs from residential and non-residential development.

- One of the most significant considerations in the legislative treatment of Education Development Charges is that there is no tax-based funding source to make up the shortfall where full cost recovery is not achieved. Further, there is a limited pool of funds available to the Ministry of Education to pay for land acquisition and site development expenditures in situations where the costs are not eligible to be funded through the imposition of Education Development Charges. In addition, many of the revenue sources under the existing education capital funding model are “enveloped” and are therefore not available to be used for purposes other than that for which they were legislatively intended.
- Under the existing capital funding model, a school board that qualifies to impose education development charges has greater flexibility to use this available revenue source to fund growth-related site acquisition and development costs without having to wait until provincial funding is approved through a request-based funding approach.

- The proposed EDC by-law is designed to recover as much of the net education land cost needs as the legislation will allow. *Staff recommend that TCDSB seek to recover 100% of the net growth-related education land costs.*

4. **Additional public meeting requirements:** the TCDSB has complied with the requirement to

- Conduct a review of the education development charge policies;
- Conducted at least two public meetings in accordance with the legislation (the TCDSB has conducted three public meetings);
- Ensure that adequate information is made available to the public by providing notice in the local newspaper and posting the EDC background study and meeting notice on the Board's website;
- Demonstrated that the Board qualifies to adopt a successor EDC by-law and has completed an Education Development Charges Background Study, and;
- Has forwarded all of the background information necessary for the Minister of Education to review and approve the Board's projected enrolment and the number of elementary and secondary school sites/site preparation costs to be funded under the proposed EDC by-law.

*Staff recommend that no further public meetings are required in advance of considering adoption of a successor by-law.*

5. **Jurisdiction-wide or Area Specific Application of the By-law:** The existing "in force" EDC By-law is applied on a City-wide uniform basis (with the exception of the Railway lands as required in the legislation). The rationale for this decision is primarily based on the premise that:

- A jurisdiction-wide approach is more consistent with the way in which education services are provided by the Board;
- A jurisdiction-wide charge affords more flexibility to the Board to meet

its long-term accommodation needs;

- Uniform application of Education Development Charges is more congruent with the education funding model as a whole; and
- Money from an Education Development Charges account may be used only for growth-related net education land costs attributed to or resulting from development in the area to which the education development charge by-law applies (section 16 of *O. Reg 20/98*). Therefore, monies collected in one by-law area could not be spent outside of that by-law area and this is particularly problematic given school choice at the secondary level.

If, as a result of the consultation process undertaken in contemplation of the adoption of an EDC by-law or by-laws, the Board chooses a different policy direction, it is usually advised by legal counsel that a new Background Study is required, and the calculation/public consultation process begins anew.

There have been no stakeholder submissions suggesting consideration of area specific by-law. *Staff recommend that the Board adopt jurisdiction-wide (i.e. a singular rate applied throughout the City of Toronto) EDC rates as structured under the proposed by-law.*

6. **Percentage of Net Education Land Costs to be borne by Residential and Non-Residential Development:** Section 7 paragraph 8 of *O.Reg. 20/98* requires that, *“the board shall choose the percentage of the growth-related net education land cost that is to be funded by charges on residential development and the percentage, if any that is to be funded by charges on non-residential development. The percentage that is to be funded by charges on non-residential development shall not exceed 40 percent.”*

The major disadvantages of allocating 100% of net education land costs to residential development are as follows:

- Increases the residential charge and in the context of the overall cost of development is not consistent with the need to promote housing affordability;

- A downturn in residential growth due to changing economic conditions will have a negative impact on EDC cash flow and the ability to contain account deficits;
- Potential impact on the residential development market, due to a higher residential EDC bearing 100% of the net education land costs;
- Eliminating the non-residential charge reduces the breadth of the board's overall EDC funding base, which may be particularly significant if there are large commercial (retail and office) developments in future.

The Board received submissions at the May 31 public meeting expressing concern that the then proposed allocation of a 25% recovery rate for non-residential would produce a far greater percentage increase in the EDC charge for non-residential than it would have for residential. The Board can exercise its discretion to vary from a 25% recovery rate. Recovering 82% of the net education costs from residential development and 18% of the costs from non-residential development equalizes the impact of the proposed EDC rate increase on both categories of development (i.e. given the forecast of net new units and non-residential development over the 15-year forecast period in the City of Toronto). *Staff recommend that an 82% recovery rate from residential development and an 18% recovery rate for non-residential be adopted.*

7. **Should the EDC By-law include any Non-Statutory Residential Exemptions:** The legislation provides for specific residential and non-residential statutory exemptions. Statutorily-exempt development is excluded from the determination of the EDC rates, so that the foregone revenue is not passed on to non-exempt development.

While the legislation permits a school board to grant additional non-statutory exemptions for both residential and non-residential development, there is no funding source currently available under the new funding model to absorb the cost of providing non-statutory exemptions. In addition, by-law administration and collection of the charge, and the ability to treat all



development applications in a fair and equitable manner, are complicated by the granting of non-statutory exemptions.

A 2007 legal opinion provided to the TCDSB, suggests that a school board must absorb the cost of exemptions voluntarily granted by the board to any non-statutory development (i.e., the board would not be in a position to make up the lost revenue by increasing the charge on the other non-exempt non-residential development under the legislation).

***Staff recommend that the EDC By-law provide only for the standard mandatory residential exemptions.***

8. **Should the By-law Apply a Differentiated Residential EDC Rate:** O. Reg. 20/98 enables a board to vary the EDC rates to consider differences in size (e.g. number of bedrooms, square footage) of dwelling units or occupancy (permanent or seasonal, non-family households or family households) although the latter (i.e. Occupancy) could change over time.

Section 7 paragraph (9) of O. Reg. 20/98 states that, “the board shall determine charges on residential development subject to the following,

*i) the charges shall be expressed as a rate per new dwelling unit,*

*ii) the rate shall be the same throughout the area in which charges are to be imposed under the by-law, ...”*

Despite this, a board may impose different charges on different types of residential development (differentiated residential EDC rates), based on the percentage of the growth-related net education land costs to be applied to residential development that is to be funded by each type. The restrictions noted above would also apply in the case of differentiated residential EDC rates.

The proposed increase in the residential EDC rates would produce a differential between low density and high-density rates in excess of 8.6 times (i.e. bachelor and 1-bedroom units). Further, there has been no request from

stakeholders to consider anything other than a uniform residential EDC rate.  
***Staff recommend that a differentiated residential rate not be implemented.***

9. **Demolition and Conversion Credits:** Section 4 of O. Reg 20/98 prescribes a replacement dwelling unit exemption.

Section 4 states that “*a board shall exempt an owner with respect to the replacement, on the same site, of a dwelling unit that was destroyed by fire, demolition or otherwise, or that was so damaged by fire, demolition or otherwise as to render it uninhabitable.*”

However, “*a board is not required to exempt an owner if the building permit for the replacement dwelling unit is issued more than two years after,*

*a) the date the former dwelling unit was destroyed or became uninhabitable;  
or*

*b) if the former dwelling unit was demolished pursuant to a demolition permit issued before the former dwelling unit was destroyed or became uninhabitable, the date the demolition permit was issued.*”

- Section 5 of O. Reg. 20/98 deals with exemptions for the replacement of non-residential buildings. Similar provisions apply with respect to the replacement of non-residential gross floor area (GFA), except that the credit is only applied to the extent that the amount of new floor space is equivalent to the GFA of the floor space being replaced. The grace period for the replacement of non-residential GFA is five years.
- There are no legislative provisions specifically dealing with conversion of use. However, the EDC Guidelines, section 4.1, states that, “Board by-laws may include provisions for credits for land use conversion. Typically, this situation would arise if an EDC is paid for one type of development and shortly thereafter (the period of time defined in the board’s EDC by-law), the land is rezoned and a new building permit issued for redevelopment (to an alternate land use). EDC by-laws may include provisions for providing credits in this situation to take into

account the EDC amount paid on the original development (generally by offsetting the EDC amount payable on the redevelopment).” The 2013 TCDSB EDC by-law provides a credit equal to the amount of the charge originally paid on the space that is being converted.

*Staff recommend that the Board adopt a 2-year demolition grace period for residential uses and a 5-year demolition grace period for non-residential uses, consistent with the draft by-law before the Board. Further, staff recommend that the Board approve the EDC by-law provision permitting conversion credits, consistent with historical practice.*

10. **EDC By-law Rates and the Potential for Phase-in of the Charge:** Staff recommend the transitional by-law provisions and rates outlined in the table on the following page for the consideration of the Board. At the May 31 public meeting, the Board received submissions expressing concern about the significant increase in the charge for residential units. The Board can exercise its discretion to phase in rate increases from one by-law period to the next.

The transitional periods are consistent with those in the new City of Toronto Development Charges By-law. While the new city of Toronto by-law extends transition beyond October 31, 2019, staff again notes that the City has a different funding model. The phase-in recommended for the Board thus balances the value of providing for transition between rates and avoiding significant shortfall.

There will be an annual monitoring of the EDC account balance to ensure that the transitional provisions are allowing the Board to meet its growth-related site acquisition needs. The interim rate will cover the Board's requirements in the event that legislative change over the next 16 months permits a rate based on the implementation of the strata school approach. If that occurs charging an interim rate on this basis will avoid requirement to refund Education Development Charges.

## Toronto Catholic DSB Education Development Charge Rate Schedule

EDC Phase-in Rates	Residential Rates per Dwelling Units (all unit types)	Non-residential Rates (per sq ft of GFA)	Non-residential Rates (per sq metre of GFA)
<b>Current In-force EDC Rates to June 30, 2018</b>	<b>\$1,493.00</b>	<b>\$1.67</b>	<b>\$17.98</b>
July 1, 2018 to September 30, 2018	\$1,632.00	\$1.83	\$19.65
October 1, 2018 to October 31, 2019	\$4,683.00	\$3.37	\$36.27
November 1, 2019 to June 30, 2023	\$7,860.00	\$5.66	\$60.92

### E. STAFF RECOMMENDATIONS

1. That the Education Development Charges Submission prepared by Quadrant Advisory Group Limited, submitted to the Ministry of Education for approval, and approved by the Minister be received.
2. That the following EDC related policy considerations for a successor By-law be adopted:
  - a. A recovery rate of 100% of the Board's net education land costs through EDC's;
  - b. EDC By-law with a term of 5 years;
  - c. EDC By-law, including the phased-in rate increases outlined in the body of this report, to be effective July 1, 2018;
  - d. A single, jurisdiction-wide EDC By-law
  - e. Calculation of the charge for the EDC By-law be based on 18% of the net education land costs funded by non-residential development and 82% by residential development;
  - f. Non-statutory residential exemptions not be approved at this time;

- g. Non-residential exemptions in the current By-law be continued on the successor EDC By-law;
  - h. Successor EDC By-law continue to provide a conversion credit as well a 2 year grace period for demolition for residential development and a 5 year grace period for demolition for non-residential development;
  - i. EDC By-law with a uniform residential rate;
  - J. No further public meeting is required prior to the adoption of the By-law
3. That the Board approve an Education Development Charges By-law as contained in Appendix 'A' of this report, based on policy considerations in Recommendation #2 above.