



STAFF REPORT
Finance

Title: Bill 108 More Homes, More Choice Act, 2019 – Impact on Development Charges
Report Number: CORP2019-043
Author: Filipa Reynolds & Michael Pugliese
Meeting Type: Council Meeting
Council/Committee Date: May 27, 2019
File: [File]
Attachments: Appendix A – Approved 2019 DC soft service capital projects
Appendix B – Who pays for growth?
Ward No.: City-Wide

Recommendation:

1. That CORP2019-043 be approved.
2. That CORP2019-043, along with any additional comments that may be deemed appropriate by the City's Chief Financial Officer and Treasurer and/or City Solicitor, be forwarded to the Province of Ontario as the City of Waterloo's comments in relation to Bill 108.
3. That Council request that the Province make regulations associated with Bill 108 available well in advance of the final reading of Bill 108 so that the City can fully understand and be able to analyze the opportunities and impacts of the proposed Bill comprehensively.
4. That Council request that the Province provide for a transparent, in-depth and iterative stakeholder consultation process as part of the development of the regulations associated with the proposed Bill 108, and that the City of Waterloo be included in the consultation.

A. Executive Summary

On May 2, 2019 [Bill 108, More Homes, More Choice Act, 2019](#) was introduced as part of the Provincial government's Housing Supply Action Plan. The proposed legislation received first reading on May 2, 2019 and the opportunity to provide comments remains open until June 1, 2019. There are 13 Acts affected by Bill 108. This report represents the City of Waterloo's comments on Bill 108 specifically as it relates to proposed changes to the Development Charges Act, 1997 (DCA). The regulation has not been

made public. Without the regulation, the Bill on its own does not provide enough details for municipalities, associations, consultants, and industry to adequately understand the impacts of the proposed legislation. However, in the absence of a regulation, staff have extensively reviewed the Bill in consultation with other cities, associations and consultants and are providing comments for Council's consideration for submission to the Province no later than June 1, 2019.

The most significant impacts to the DCA that the City of Waterloo is facing are:

- **Removal of Soft Services:** Parks, Indoor Recreation, Libraries, Parking, Cemeteries and Studies associated with these soft services are to be removed from the DCA. These will be considered under a new Community Benefit Charge by-law if the City wishes to impose one.
- **Community Benefit Charge (CBC)** to allow municipalities to charge up to a cap (yet to be prescribed) directly for soft services, some parkland dedication, and replace the current Section 37 density bonusing provision in the Planning Act. This could have significant funding implications for municipalities.
- **Timing of determining DC Rates** for remaining eligible DC services will shift from the current process of DC rate in effect at building permit issuance to an earlier date (discussed further below) which is likely to result in reduced DC revenue.
- **Cash flow** will be adjusted for rental housing, institutional, industrial, commercial and non-profit housing such that DCs would be paid in six equal annual installments beginning with the date of issuance of an occupancy permit or occupancy of the building, whichever is earlier. This could impact the City's ability to move forward with some projects without taking reserves into the negative or issuing debt. This will also impose an administrative burden to track payments of six installments for every eligible development.
- **Exemption for secondary dwelling** units in new residential buildings from development charges.
- **Transition:** a development charge by-law that would expire on or after May 2, 2019 (as is the Case with the City of Waterloo's current by-law) and before the prescribed date shall remain in force until the earlier of,
 - the day it is repealed;
 - the day the municipality passes a Community Benefit Charge by-law under the Planning Act as re-enacted by the More Homes, More Choice Act, 2019; and
 - the prescribed date.

This transition period is further complicated by the fact that once a Community Benefit Charge by-law is passed, parkland dedication as currently collected is no

longer in force.

B. Financial Implications

Should Bill 108 be approved, resources will be required to implement the legislation. Significant implementation items would include the preparation of a Community Benefits Charge Strategy and by-law as well as amendments to the City’s Capital Budget. The City’s Development Charge by-law would also need to be updated along with the creation of a Community Benefits Charge by-law, should the City wish to pass a CBC prior to the existing DC by-law expiring. This would require additional resources and funding as well.

Moreover, there could be significant financial implications as a result of the changes to soft services and of proposed timing of DC rates and cash flow. These could result in reduced capital programs for parks, libraries, indoor recreation, parking, cemeteries and studies, or put pressure on the general tax base, user rates, or some combination thereof.

C. Technology Implications

None

D. Link to Strategic Plan

(Strategic Priorities: Multi-modal Transportation, Infrastructure Renewal, Strong Community, Environmental Leadership, Corporate Excellence, Economic Development)

Impact to all areas of the Strategic Plan

E. Previous Reports on this Topic

None

F. Approvals

Name	Signature	Date
Author: Michael Pugliese		
Author: Filipa Reynolds		
Director:		
Commissioner:		
Finance:		

CAO



Bill 108 More Homes, More Choice Act, 2019 – Impact on Development Charges CORP2019-043

1. INTRODUCTION

On May 2, 2019 [Bill 108, More Homes, More Choice Act, 2019](#) was introduced as part of the Provincial government's Housing Supply Action Plan. Along with the new Growth Plan that will come into effect on May 16, the legislation is intended to address barriers to the provision of new ownership and rental housing. The Province is presenting these changes as a means of making it 'faster and easier for municipalities, non-profits and private firms to build the right types of housing in the right places'.

The proposed legislation received first reading on May 2, 2019 and the opportunity to provide comments remains open until June 1, 2019. There are 13 Acts affected by Bill 108. This report represents the City of Waterloo's comments on Bill 108 specifically as it relates to proposed changes to the Development Charges Act, 1997. A companion report (IPPW2019-043) has also been prepared to address the proposed changes to the Planning Act, Local Planning Appeal Tribunal Act and Ontario Heritage Act which are closely related in some instances to the proposed Development Charges Act changes.

In addition to city staff reviewing the Bill itself, there has been a tremendous amount of information sharing regarding the impacts of the Bill among cities, associations and consultants. City of Waterloo staff have been speaking directly with colleagues in the local municipalities at various levels of the organization, sharing dialogue with the Municipal Finance Officers Association of Ontario (MFOA), participating in a municipal webinar, reviewing summaries provided by other associations (e.g. AMCTO) as well receiving commentary from DC consultants (Hemson Consulting and Watson & Associated Economists Ltd.). The collective opinion across the municipal sector is that reducing development charges will reduce municipal revenues as well as spread out the timing of when those revenues will be received. These actions will negatively impact a municipality's ability to finance growth related capital works and long term sustainability. It is unclear if the actions proposed will result in more housing options that are affordable for different people in different circumstances. It does appear however that it may negatively impact new investment in community building (parks, indoor recreation, library, parking, etc.) or increase taxes and/or user fees in order to maintain plans for community building pre Bill 108 or a combination of these.

2. IMPACT OF BILL 108 IN RELATION TO DEVELOPMENT CHARGES AT THE CITY OF WATERLOO

[Schedule 3 of Bill 108](#) proposes changes to the Development Charges Act, 1997 (DCA). Bill 108 also proposes changes to the Education Act (schedule 4) specific to Education Development Charges, however staff are not commenting on the DC changes under the Education Act as they are not within our purview.

2.1 Discounted/Soft services will be moved from the Development Charges Act to the Planning Act and will compete for an unknown amount of funding along with parkland dedication via a new Community Benefits Charge

The new Community Benefits Charge (CBC) system is described in a revised Section 37 of the Planning Act. The new Section would authorize a municipality to impose community benefit charges to pay for the capital costs associated with development/redevelopment. The community benefits charge could be imposed on development requiring a building permit as well as in association with certain planning applications (i.e. zoning, minor variances, consents, subdivisions, certain land conveyances, condominiums) and would replace:

- the existing density bonusing provisions known as section 37 of the Planning Act (PA);
- development charges for discounted (soft) services under the Development Charges Act, 1997 (costs of growth that are eligible for Development Charges as set out in Section 2(4) of that Act are excluded from the charge); and,
- parkland dedication, if the municipality chooses to collect parkland through this mechanism rather than a parkland dedication by-law under Section 42 of the PA.

Significant proposed amendments include:

- The new Community Benefits Charge (CBC) will replace existing height and density bonusing provisions and include parkland dedication and it will provide municipalities with the power to collect fees for 'soft' services that will no longer be collected under the DCA.
- Soft services for the City of Waterloo are: Parks, Indoor Recreation, Library, Parking, Cemeteries, and Studies associated with these soft services.
- A cap of the amount of CBC will be prescribed.
- This cap will be a percentage, to be prescribed, of the appraised land value, the day before a building permit is issued (details of this cap are not defined in the legislation and would be set out in a regulation). A dispute resolution process involving the use of land value appraisals is defined in the proposed legislation.
- 60% of the CBC funds collected must be spent or allocated each year and the municipality will be required to provide reporting and information on its use.
- The City can no longer collect cash in lieu of Parkland under Section 42 of the Planning Act if a CBC is passed. This is enshrined in the clause that "A by-law under Planning Act subsection 42 (1) is of no force and effect if a community

benefits charge by-law under section 37, as re-enacted, passed by the municipality is in force”

- Under the proposed system, the municipality would need to prepare a community benefits charge strategy and approve a by-law to address the types of facilities services and matters to be funded through community benefit charges, among other things (prescribed requirements are yet to be defined).
- Only one community benefits charge by-law may be in effect within the municipality.
- Future Regulations are expected to define exemptions for types of development and/or types of facilities, services and matters that will be excluded from the charge.
- If the municipality passes a community benefits charge by-law before the prescribed date (yet to be determined), the municipality shall, on the day it passes the by-law, allocate the money in the existing special accounts or reserve funds to the new special account created under the CBC by-law.

Staff Comments:

- Timing of passing a CBC by-law will be important because once it is passed, Parkland under existing section 42 cannot be collected, and yet, at some point in time soft services will no longer be able to be collected through DCs. The City will need to determine the least negative impact once the regulation provides more information.
- What will be the prescribed cap and the methodology for determining the charge? There is suggestion that there may be different percentages prescribed for different municipalities or classes of municipalities and for different values of land.
- It is understood that the cap (still to be defined through regulation) will likely result in less revenue for municipalities to build the community through expansion of parks, libraries, indoor recreation facilities, cemeteries, parking facilities and growth related studies. This is naturally a concern as it is likely to mean that the planned project portfolio for cities will shrink, or the general tax base will pay more, or a combination of both.
- Uncertainty about how CBCs will be charged and allocated within a 2 tier system.
- Concerns about lengthy and prescriptive appraisal process, and administrative costs associated with this.
- It is unclear how appraisal costs are recovered, and the appraisals may become a significant cost on each individual property.
- Significant time and resources will be required to prepare a strategy and by-law.
- Uncertainty about which items will be eligible and conversely exempt.
- It appears as though allocating the money in existing special accounts or reserve funds to the new special account created under the CBC by-law will create a pool of funding which the municipality will likely have some control or discretion over how to prioritize and allocate funding for eligible projects, but with a smaller overall funding source to utilize.
- Annual reporting to be defined and therefore difficult to comment on the efficiency of this process.

- Impact on Cash in Lieu of Parking – there has been no indication that the CBC will impact municipalities' cash in lieu of parking policies but staff will verify this as regulations are released.

2.2 DCs to be calculated earlier in the development process such as at the site plan or zoning application stage rather than at the issuance of a building permit; development charges would continue to be paid at the time of building permit issuance (except as noted in section 2.3 below)

Staff Comments:

- This could result in a shortfall of DCs collected as the rate used to calculate DCs may be years prior to the issuance of a building permit for large developments or subdivisions. As capital project costs increase over time, this creates a disparity between the costs of a project to what is recovered to pay for it.
- A time limit imposed on how long the development takes to move from site plan approval, or zoning change, to the issuance of a building permit would be beneficial. There is no financial incentive for the development to move quickly to building permit and this may induce speculation to change the land use and then market the lands to secure a lower DC rate.

2.3 DC Payable date and cash flow

Six (6) instalments for development types of: rental housing, non-profit housing, institutional, industrial, and commercial development; paid in equal annual instalments beginning on the earlier of the date of the issuance of an occupancy permit under the Building Code Act, and the date the building is first occupied.

Staff Comments:

- Changing when the DC is payable for these types of developments from the current process of full cash outlay at building permit issuance, will delay the receipt of DCs for the City. As most of these "hard services" must be provided in advance of development occurring, it will require increased debt borrowing. Added debt interest will have upward pressure on future DC Rates. The lower DC rate and therefore lower DC revenues as mentioned above, combined with the need for earlier cash outlay will only compound the cash flow crunch for the city.
- The requirement to manage multiple-year collections for each building permit issued for each rental housing, non-profit housing and commercial/industrial/institutional development building permit will cause a tremendous administrative burden on municipalities. This will add to staffing requirements and may be reflected in higher planning and building permit fees.
- This also puts the onus on the end user or renter to notify the City since a person required to pay a development charge for the development types referred to above shall notify the municipality within five business days of the building first being occupied (unless an occupancy permit is issued prior to their occupancy).

2.4 Exemption for one secondary dwelling unit in new residential buildings

The creation of a second dwelling unit in prescribed classes of proposed new residential buildings, including structures ancillary to dwellings (such as coach and laneway houses), is, subject to the prescribed restrictions, exempt from development charges.

Staff Comments:

- This change is expected to have a minimal impact on the City's DC funding program. Historically, the City has not seen a large amount of these types of purpose built 2-dwelling residential buildings. If this type of development were to significantly increase however, the City would lose the ability to collect DCs for the secondary dwelling units of those buildings.
- The City's current DC by-law allows DC exemptions for "the creation of one or two additional dwelling units in an existing single detached dwelling; or the creation of one additional dwelling unit in any other existing residential building, provided the existing residential building unit is substantially complete."
- The City's current DC by-law does not exempt DCs for secondary dwelling units in new residential construction.
- This change would provide more clarity and alignment with new residential homes to that of existing homes which is a more equitable approach so as to not charge DCs on purpose built secondary dwelling units vs ones added after the home is built. The City of Waterloo will amend their DC by-law language surrounding secondary dwelling units to align with the new legislation.
- Staff can support the proposed revisions as a means of providing additional (potentially affordable) housing units within a neighbourhood, provided the municipality retains the existing ability to regulate the uses in order to consider locational constraints (e.g. servicing, flood plain, grading, tree preservation, etc.) and manage impacts (e.g. parking, setbacks, character, etc.).

2.5 Transition of Current DC By-laws

A development charge by-law that would expire on or after May 2, 2019 (as is the case with the City of Waterloo's current by-law) and before the prescribed date shall remain in force until the earlier of,

- the day it is repealed;
- the day the municipality passes a Community Benefit Charge by-law under the Planning Act as re-enacted by the More Homes, More Choice Act, 2019; and
- the prescribed date.

Once a Community Benefit Charge by-law is passed, parkland dedication, as currently charged, is no longer in force.

Staff Comments:

As the City's current by-law does not expire until the end of 2022, it will remain in force until the earlier of a) the day it is repealed, b) the day the municipality passes a Community Benefit Charge by-law, c) the prescribed date (not yet known). This

transition period is further complicated by the fact that once a Community Benefit Charge by-law is passed, parkland dedication as currently collected is no longer in force. This will require analysis and discussions to determine what the optimal time will be to forgo parkland dedication for the sake of collecting funding (to be determined) for growth related soft service capital projects.

While the City's current DC by-law is set to expire in 2022, Hemson Consulting were hired in December 2018 to conduct a background study in 2019 for the purposes of aligning an updated DC study and by-law with the City's three year budget process. Work has been taking place over the past 5 months to this end. In light of Bill 108 and the many unknowns still to be uncovered over the coming weeks and months, staff intend to continue with the update of the background study and by-law for Council's consideration along with the budget process in December 2019 – February 2020. Decisions around engineered (hard) services can proceed. Should Bill 108 be passed with impacts to soft services or any other significant impacts prior to Council's approval of the DC by-law, staff will review options to address those impacts and make recommendations to Council at that time. If Bill 108 is passed as is, staff will likely need to open the three year budget in 2020 or 2021 (depending on the prescribed date set by the Province or when a CBC by-law is passed, whichever comes first) to revise the capital program accordingly for council's reconsideration.

In the meantime, staff recommend continuing to proceed as planned with funding the 2019 DC soft services capital projects; except Ref# 219 – West Side Recreation Facility – Land Acquisition and Ref# 232 – Vista Hills Programmable Soccer Field – Partnership with WRDSB. CMT, as part of the quarterly DC monitoring process, has moved to defer these two projects to a future date as they are not yet near the point of project initiation. See appendix A for a summary of the capital budget for soft services (less the two projects deferred as noted above).

Staff have verified the DCs collected to date are sufficient for funding the remaining major projects as approved by Council in the 2019 Capital program (East side library project being the exception). DC reserve balances for the Library are not sufficient to fund the full East side library project without running it into the negative (which is permissible under the DC Act). It should be noted that the DC reserve for studies is currently in a negative position. The DC background study accounts for these situations and forecasts shortfalls to be recovered over the 10-year planning period of the current DC by-law. The Bill does not explain how deficit DC reserve balances are to be transferred to the new CBC bylaw special account or if the deficit is to be recovered over time from the new CBC. Further information regarding the East side library project and funding options will be communicated to Council separately. DC funding for the 2019 WMRC expansion is sufficient and proceeding with the planned project is important given the community consultation and expectation to date.

It is possible that with a reduction in future funding, that other capital investment in soft services will be limited by drawing down the existing DC funds. By waiting to understand all the implications of Bill 108, these projects would likely get deferred to 2020.

Ultimately, if the balance in the soft service DC reserves is merged into a new CBC account in the future, with caps on revenue collections, these decisions will be considered by Council at that time to determine how to re-prioritize the capital program or what, if any, other sources of funding is available to ensure priority projects move forward.

2.6 Waste Diversion Costs

Fully cover municipalities' waste diversion costs (excluding landfill sites and services, and facilities and services for the incineration of waste) and 10% reduction for waste diversion costs removed

Staff Comments:

- This is a positive change from a growth driven cost recovery perspective for DCs. Waste services are the responsibility of the Region of Waterloo and therefore this change does not impact the City of Waterloo directly.

3.0 Local Municipalities

City staff have been in communication with area municipalities, including Guelph to discuss the potential impacts of Bill 108 over the past few weeks. All are sharing the same concerns with particular emphasis on the impact to revenue related to soft services. Staff note for Council's information the following DC by-law expiry dates for the area municipalities:

- Cambridge expires June 23, 2019
- Kitchener expires July 1, 2019
- Region of Waterloo expires July 31, 2019

They are all in the midst of passing new DC by-laws shortly.

4.0 Advocacy & Education

Various associations have been actively following Bill 108 and analyzing legislation as it becomes available (e.g. Association of Municipalities of Ontario (AMO), Municipal Officers Association of Ontario (MFOA), Association of Municipal Clerks and Treasurers of Ontario (AMCTO)). In the meantime, they too are analyzing the Bill to understand the impacts and explain the impacts to their membership through summaries of key issues, legal opinions, and webinars to allow for discussion and interaction between municipalities. Ultimately, all are saying the same thing: without the legislation/regulation, there are many gaps and unknowns presented within the Bill and as a result, it is difficult to comment on the impact of a legislative change without knowing what the specific change is. Therefore, the advocacy needs to cover all of the potential scenarios in the absence of a regulation.

The Municipal Finance Officers Association of Ontario will be submitting formal comments to the province by June 1st on behalf of all Ontario municipalities. They have been publishing information about the Bill and what it may mean. One such publication is attached as Appendix B – “Who pays for growth?” Hemson Consulting Ltd. (The City’s current DC consultant) is working closely with MFOA to prepare a detailed response. Watson & Associates Economists Ltd. (the City’s former consultant and also the consultant currently for the City of Cambridge and the Region of Waterloo) will also be submitting formal comments to the Province.

5.0 Next Steps

Staff will forward CORP2019-043 to the Province of Ontario as the City of Waterloo’s comments in relation to Bill 108 as it pertains to schedule 3, Development Charges Act, should Council approve doing so.

Staff is in ongoing contact with area municipalities and will be reviewing the formal comments that are being prepared by the Municipal Finance Officers Association of Ontario and in conjunction with the City’s DC consultant Hemson Consulting for the standing committee to review the Bill, in advance of the City’s submission to the Province. Most importantly, city staff will be reviewing the regulation along with our DC consultant as soon as it becomes public. The regulation may shed light on the unanswered questions and as a result, allow for a more fulsome understanding of what the impacts to the City of Waterloo will be, should the proposed legislation receive royal assent as written. Staff will continue to monitor information actively over the coming weeks/months and keep Council apprised of relevant insights.

Appendix A – Approved 2019 DC soft service capital projects

(excluding Ref# 219–West Side Recreation Facility–Land Acquisition & Ref# 232–Vista Hills Programmable Soccer Field–Partnership with WRDSB)

Soft Service Capital Budget	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	DC Reserve Balance as of Apr 30/2019
Cemeteries	42,170	72,309	-	103,797	-	81,258	29,626	-	-	-	
DC	7,156	7,269	-	10,413	-	8,169	2,955	-	-	-	47,532
Non-DC	35,014	65,040	-	93,383	-	73,089	26,671	-	-	-	
Indoor Rec.	12,959,641	-	-	-	-	-	-	9,261,386	-	-	
DC	11,592,352	-	-	-	-	-	-	8,335,247	-	-	14,773,978
Non-DC	1,367,288	-	-	-	-	-	-	926,139	-	-	
Parks	4,457,049	2,200,187	4,385,686	2,606,203	2,018,215	5,893,386	5,451,890	5,218,183	2,035,056	1,259,669	
DC	2,961,657	1,365,305	2,767,598	1,476,548	1,078,003	2,977,279	2,743,036	2,977,413	1,573,202	682,123	incl in Rec above
Non-DC	1,495,392	834,883	1,618,087	1,129,654	940,212	2,916,108	2,708,855	2,240,770	461,854	577,546	
Library	4,048,279	4,097,065	267,549	338,659	266,485	274,373	1,311,709	12,342,595	299,466	308,330	
DC	2,546,302	2,610,824	226,635	247,312	239,837	246,936	285,387	606,862	269,519	277,497	3,744,422
Non-DC	1,501,977	1,486,240	40,914	91,347	26,649	27,438	1,026,323	11,735,733	29,947	30,833	
Parking	1,669,642	6,497,995	11,610,459	-	-	-	-	-	-	-	
DC	1,502,678	5,848,196	10,449,387	-	-	-	-	-	-	-	4,334,071
Non-DC	166,964	649,800	1,161,072	-	-	-	-	-	-	-	
Studies-Growth	554,327	1,447,657	1,108,687	927,624	300,476	208,954	1,020,431	298,219	263,999	345,080	
DC	399,875	906,058	743,377	707,756	158,026	96,051	691,438	170,099	124,051	191,689	(594,853)
Non-DC	154,452	541,599	365,310	219,867	142,450	112,902	328,993	128,120	139,948	153,391	
Total DC Soft Service	19,010,019	10,737,652	14,186,997	2,442,030	1,475,865	3,328,434	3,722,815	12,089,620	1,966,773	1,151,308	22,305,150
Total Non-DC Soft Service	4,721,088	3,577,562	3,185,384	1,534,252	1,109,311	3,129,537	4,090,841	15,030,762	631,748	761,770	
Grand Total	23,731,107	14,315,214	17,372,381	3,976,282	2,585,176	6,457,971	7,813,657	27,120,382	2,598,521	1,913,079	

Appendix B – Who pays for growth?

Who Pays For Growth?



With changes to development charges, YOU could be paying more



Development charges are fees collected on new development and are currently the primary funding source for infrastructure needed to service growth.



If you're a growing municipality, chances are your community needs new infrastructure to accommodate new residents and businesses.

That's because when most infrastructure was originally built, no one could predict the way communities would grow.

For example, a pipeline meant for a population of 10,000 can't handle more people without upgrading or building new infrastructure.

These changes cost money.

How is growth-related infrastructure paid for?

PRE-1980s

Primarily funded by federal and provincial governments

In the past, the provincial and federal governments paid for infrastructure upgrades.

PRESENT

Primarily funded from growth

However, in the late 1990s, the province changed legislation which transferred **20%** of the cost of growth-related infrastructure to existing residents with **80%** coming from developers.*

*Watson & Associates' 2010 study, "Long-term Fiscal Impact Assessment of Growth: 2011-2021," for the Town of Milton.

POSSIBLE FUTURE

With low development charges:

Primarily funded from existing taxpayers and business owners

Now the province is exploring changes to legislation. If these changes lead to lower development charges, then existing residents and businesses will pay for growth through **higher** property taxes and utility rates.