
To: Minister of Municipal Affairs and Housing

From: Andrew Whittlemore, Commissioner of Planning and Building

Date: August 21, 2019

Subject: City of Mississauga Comments – Bill 108 – Proposed Regulations

CONTEXT

Omnibus Bill 108, the *More Homes, More Choices Act*, transforms Ontario's land use planning system with changes to 13 Acts. The Bill received Royal Assent on June 6, 2019.

This submission provides a joint response to two regulations posted on the Environmental Registry of Ontario (ERO # [019-0183](#) & [019-0184](#)) to implement Bill 108. It is noted that additional regulations to support the Bill are expected over the summer and fall of 2019.

The proposed regulations include direction on the following items:

1. A framework for developing the Community Benefits Charge
2. The administration of Development Charges (DC)

COMMENTS

1. COMMUNITY BENEFITS CHARGE

Bill 108 establishes a Community Benefits Charge ("CBC") by-law authority that combines Section 37 contributions, soft services development charges (e.g. library, recreation, parks, and likely other services subject to the statutory ten per cent deduction) and parkland dedication requirements. It is proposed that the amount of the charge is a prescribed percentage of the value of the lands, rather than a per unit type charge.

The proposed regulation provides the following information and direction:

- Legislative provisions for the CBC are expected to come into force by January 1, 2020. Municipalities are required to transition to the CBC by January 1, 2021.
- A list of CBC exemptions (long-term care homes, retirement homes, universities and colleges, memorial homes, hospices and non-profit housing).
- A framework for how the Province will develop the CBC formula and percentage cap to calculate the CBC.
- Timelines for the required appraisal process to arbitrate disputes over the amount of a CBC calculation.

- An outline of annual reporting requirements for CBC and parkland provisions.

MISSISSAUGA'S COMMENTS

1.1 Support for provincial objectives

- The City appreciates the opportunity to sit on the Technical Working Group advising on the CBC methodology. The City anticipates a number of administrative implementation challenges to implement a new CBC by-law where predictable revenue streams were available, however, the City agrees with the provincial objectives of:
 1. **Collecting similar revenues**
 2. **Making the charge predictable**
 3. **Ensuring it is not a tax** (must be nexus between need for services and charge)

1.2 Ensuring municipalities collect similar revenues

CBC should be revenue neutral

- The City supports the Province's intent to look at recent DC studies to assess current soft service revenues collected. The City has received the survey where parkland dedication, cash-in-lieu of parkland and section 37 revenue data can be provided. Since development-related revenues can fluctuate year to year, the City recommends the Province also examine the revenues on per unit basis.
- When assessing municipal revenues, the following should be considered:
 - *Financing costs*: Mississauga notes that financing costs are permitted for recovery under the DC regime and should be allowed when calculating revenue neutrality in a CBC charge.
 - *Exemptions*: Mississauga will experience a significant revenue loss as a result of the proposed exemptions. These losses should be incorporated into the revenue neutrality analysis (see following section).
 - *Future costs*: While a CBC can be revenue neutral today, the CBC methodology should allow for the future by-law to reflect prevailing service levels, land values, and the cost of constructing infrastructure that is required to support development.

Revenue loss due to proposed exemptions

- The proposed regulation includes a list of exemptions from the CBC: long-term care homes, retirement homes, universities and colleges, memorial homes, hospices and non-profit housing.
- From that list, the City is particularly concerned with the exclusion of retirement homes and long term care facilities. The City collected \$17.5M in DCs from the four retirement

homes, and one long term care facility that have been approved this past decade. Many of these facilities are for profit enterprises and the City questions why they would be exempt.

- The proposed regulation must include clearer definitions for each of the exemptions. For example, it is difficult to define a “retirement home,” and increasingly the City is seeing new condominium developments geared towards seniors. These types of developments are more akin to luxury apartments, than affordable housing, but based on the current definitions these types of developments may not have to pay the CBC, despite having significant and active residential populations in need of services and facilities.
- The City also notes that it collects parkland dedication and cash-in-lieu on all exempted categories and this further compounds potential revenue loss.
- Overall, the City considers CBC fees should reflect the services and facilities required to support growing population and employment.

Loss of parkland dedication provisions during transition

- The City is concerned that under the current regulations alternative parkland dedication rates (in S. 42) cease to exist immediately upon proclamation. The City strongly urges the Province to ensure there is no gap in this transition, and that the Province does not repeal this ability until at least January 2021.

1.3 Appraisals Process

Appraisal process reduces predictability

- The City is concerned that the proposed approach utilizing site-by-site appraisals will not lead to predictable CBCs for municipalities and developers.
- Presently, DC soft service and parkland per unit rates are known well in advance of building permit issuance providing predictability. Disputes over land valuations are very common, so the proposed process will routinely require three appraisals. As such, it will be time consuming and more difficult for landowners and municipalities to estimate future CBC obligations. A per-unit based charge calculated in advance will likely provide more certainty than a site-by-site land appraisal based charge.
- Additionally, the proposed regulations will likely result in difficult negotiations over what share of the CBC can be provided through land dedication versus cash and the value of in-kind contributions. These negotiations will create tension late in the approvals process that could lead to delays, create more red tape and require more resources from both municipalities and applicants. Disagreements may also occur over what services are the responsibility of a *local*¹ developer versus a municipality (to be funded through CBCs).

¹ The *Development Charges Act* required the establishment of local service definitions to delineate between DC funded items and developer funded infrastructure.

Streamline proposed appraisal process

- Disputes over land valuations are very common, so the proposed process will routinely require three appraisals. For a large scale development, appraisals are typically in the order of \$20K, which could amount to \$60K if three appraisals are required.
- The City understands from the proposed regulation that it would likely be responsible for costs associated with the second and third site specific appraisals. The City would need to factor costs for these appraisals into its development fees, making development more expensive.
- If the Province continues with this approach, the City suggests that the third appraisal be streamlined to a peer review. The City considers it would be more expedient if a mutual third party appraiser reviewed the first two appraisals (rather than requiring a third appraisal). The mutual third party appraiser could provide an opinion as to which appraisal provides the best rationale and value of the land, as well as being quicker and cheaper for all involved.

Appraisal timelines will be difficult to meet

- The time requirements for undertaking these appraisals (30 days) may be challenging to meet, given that this new requirement will place strong demand on the limited number of qualified appraisers in the region. It is unclear what the penalty is for not having an appraisal completed within specified time period.

Upper and lower tiers to be able to determine how to coordinate appraisals

- Appraisal requirements will need to be coordinated across both upper and lower tiers. It is recommended that flexibility be given to the two tiers of government to determine the most efficient way to coordinate appraisals.

1.4 Suggested Approach to Finalizing CBC Methodology

Municipalities to review final CBC regulation

- The City is pleased to provide these comments on the proposed framework for the CBC regulation. Mississauga understands the Province will take this feedback in drafting the final CBC regulation.
- Given the very technical nature of this regulation, the City recommends that the full draft regulation text be released for comment.

Suggested CBC methodology principals

- The City suggests that the Province adopt the following principles when finalizing the CBC methodology:
 1. The Province provides the legislative framework to calculate a CBC land value cap rather than imposing a prescribed percentage.

2. The CBC methodology be aligned to service levels similar to the prior development charges methodology.
3. Municipalities are allowed to update land valuations for a CBC by-law at one point in time (each year for example) rather than require site by site appraisals.
4. Provide the ability to have separate caps for high density, mid-density and low-density residential development, and non-residential development.
5. Allow municipalities to have the option to translate the land value based charge to per capita-charge for residential (apartment, row etc.) and a GFA charge for non-residential. This would make it easier to calculate charges for mixed use developments and provide credits.

CBC should be closely tied to service levels

- Soft service development charges follow a well-established principle that future development should contribute funding at no more than the service level provided to the existing community. The *Development Charged Act* prescribes the methodology on how the charges are to be calculated.
- Since the CBC utilizes a land value percentage for the recovery of all soft services infrastructure, a development in a higher value area will pay a higher charge than the same development in a lower value area. While this is reasonable for land services (e.g. parkland, library land, recreation land etc would cost more), an owner of a higher value property may question why they are contributing more money towards recreation buildings, libraries and splash pads that have minimal links to land value.
- The Province should prescribe a methodology to calculate CBCs with a link to the services being provided. Municipalities should not be responsible for defending prescribed percentages where they have little role in their calculation.
- In addition, the City recommends the Province provide clarity on how demolition credits, currently allowed in DC and parkland dedication by-laws, and parkland dedication credits in existing agreements are to be provided.

1.5 Reporting Requirements

Reporting requirements are in line with current processes

- The annual reporting requirements outlined in the proposed regulation are in-line with the City's current reporting processes, and would not create an administrative burden for City.
- The proposed regulation should clarify the rules for the existing parkland special account under S42(15) once the City passes a CBC by-law. The proposed regulations should clarify if these accounts should be separate or combined.

2. DEVELOPMENT CHARGES

Bill 108 proposes to change the administration of DCs, with all DCs being frozen at an earlier stage in the planning process. Moreover, DCs would be deferred for five types of buildings (rental housing, institutional, industrial and commercial) to be paid in six installments. Non-profit housing can be paid over 20 installments. In any deferral options, the first DC installment is to be paid at occupancy.

The proposed regulation provides the following information and direction:

- Municipalities to transition to new DC By-law by Jan 1, 2021.
- DC deferrals for commercial developments are now limited to offices and shopping centres.
- DCs are fixed at site plan application date, but are fixed for two years from site plan approval.
- Ambulances are now included in the hard services category.
- Deferred fees can have interest rates applied, and the Province has advised municipalities can establish their own rates.
- Exemptions are provided (based on current *Development Charges Act*), where DC funds cannot be spent.

MISSISSAUGA'S COMMENTS

Administering DC payments

- The City requests that the proposed regulation provide clear authority to enter into agreements with applicants/owners who benefit from the statutory deferral scheme, and clear authority to register those agreements on title. This will ensure that these outstanding fees are known and can be paid if lands change hands and are not identified through the due diligence process.
- Clarity is also needed on when occupancy begins. The first DC installment is due upon obtaining an occupancy permit or the date the building is first occupied. However, industrial, commercial and institutional structures do not require occupancy permits, and in some cases buildings are partially occupied. The City will soon have to take on an enforcement role to follow up on these payments, so clarity in the proposed regulation will be paramount.
- Additionally, the City requests that any unpaid DC's that are added to the tax roll be given priority lien status to increase recovery in a bankruptcy/power of sale scenario (pursuant to s 1(2.1) and (3) of the *Municipal Act, 2001*).

Freeze should occur at site plan approval not application

- Freezing the DCs at site plan application stage encourages applicants to apply for site plan approval early with no intention to proceed to Building Permit. The City requests that DCs be frozen at the site plan approval date, otherwise there is no incentive to resolve comments in a timely manner for premature submissions

Supports setting own interest rates

- The City supports the Province's plans for municipalities to set their own interest rates.

Overall, the City would like to thank the Province for the opportunity to comment on the proposed regulations. The City requests that the full draft text of these regulations be released for comment.

If you have any questions or require additional information, please contact me at (905) 615-3200 ext. 5561 or Jason Bevan, Director City Planning Strategies, ext. 5497.



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