

Corporate Services
The City of Cambridge
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August 21, 2019

Municipal Finance Policy Branch
Municipal Affairs and Housing
Attn: John Ballantine, Manager
13th Floor, 777 Bay St.
Toronto , ON M5G 2E5

**Re: Proposed new regulation pertaining to the community benefits authority
under the Planning Act**

Please find attached the City of Cambridge's staff comments on the above noted regulation proposal as a result of Bill 108 – the More Homes, More Choice Act.

Yours truly,



Sheryl Ayres
Chief Financial Officer

Attach.

Proposed new regulation pertaining to the community benefits authority under the Planning Act

Bill 108 - the More Homes, *More Choice Act, 2019* received Royal Assent on June 6, 2019. Upon proclamation, schedule 12 to Bill 108 would make changes to the *Planning Act* to provide the authority for municipalities to charge for community benefits in order to fund a range of capital infrastructure for community services that would benefit new development. There are provisions in Schedule 12 that require additional details to be prescribed by regulation. The following are matters that the province is proposing to prescribe in regulation.

Regulatory Changes:

1. Transition

The amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019* provide transitional provisions for section 37, and section 42 under the *Planning Act*, and development charges for discounted services (soft services) under the *Development Charges Act* to provide the flexibility necessary for municipalities to migrate to the community benefits charge authority.

An amendment to the *Development Charges Act, 1997* provides for a date to be prescribed in regulation that would effectively establish a deadline as to when municipalities must transition to the community benefits authority if they wish to collect for the capital costs of community benefits from new development. Beyond the date prescribed in regulation:

- Municipalities would generally no longer be able to collect development charges for discounted services
- Municipalities would generally no longer be able to pass by-laws to collect funds under section 37 of the *Planning Act*

Proposed Content	City of Cambridge Comment
<p>It is proposed that the specified date for municipalities to transition to community benefits is January 1, 2021.</p>	<p>Given the formula and process for approving a community benefits by-law are yet to be developed, it will be very difficult to complete the analysis, study work, and stakeholder consultation necessary to implement a community benefits charge by January 1, 2021. Many municipalities throughout the Province currently collect soft services development charges, and it is unlikely that the consultants engaged in supporting municipalities with background studies such as the community benefits charge would be able to accommodate all municipalities within this short timeframe. This would result in lost revenue for municipalities.</p>

	<p>Many municipalities have recently implemented new Development Charge By-laws (including the City of Cambridge, effective July 1, 2019) which involved significant time and costs. These will need amended to reflect certain changes beyond removing soft services (i.e. removing the 10% mandatory deduction on the development charge background study costs). It is impractical and costly to redo work in such short timeframe as January 1, 2021. For this reason as well as January 1, 2021 being too short of a timeframe, it is recommended that the transition period be extended to the date of expiry of the municipality's current by-law. At very minimum, the hard transition date of January 1, 2021 should be deferred to January 1, 2023.</p> <p>There is a potentially significant gap in section 51.1 of the <i>Planning Act</i> which would effectively immunize all future redevelopment within an area of a plan of subdivision approved between the date the new section 37 of the <i>Planning Act</i> (which authorizes the CBC) comes into force, and the date an actual CBC by-law is passed, from all future CBC payments (or, alternatively, require the municipality to not require parkland or CIL as a condition of the subdivision). Subdivision agreements entered into prior to January 2021 (and even prior to announcement of proposed legislation changes) may include parkland dedication, preventing the municipality from recovering soft services charges if building permits are pulled subsequent to January 2021. This would not meet the province's stated goal of revenue neutrality. Correcting this likely requires a legislative change.</p>
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2. Reporting on community benefits

The amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019* provide for municipalities that pass a community benefits by-law to provide

the reports and information that may be prescribed in the regulation to persons prescribed in regulation.

Proposed Content	City of Cambridge Comments
<p>In order to ensure that community benefit charges are collected and spent on community benefits in a transparent manner, and for greater accountability, the Minister is proposing to prescribe reporting requirements that are similar to existing reporting requirements for development charges and parkland under section 42 of the <i>Planning Act</i>. Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the community benefits charge special account, such as:</p> <ul style="list-style-type: none"> • Opening and closing balances of the special account • A description of the services funded through the special account • Details on amounts allocated during the year • The amount of any money borrowed from the special account, and the purpose for which it was borrowed • The amount of interest accrued on money borrowed 	<p>Regarding the legislation stating that 60% of the funds collected must be spent or allocated annually, clarification is required on whether amounts can be allocated to a capital project that is planned in the future. It would be impractical to not be able to pool funds for a number of years, and would drastically limit municipalities' abilities to raise sufficient funds for meaningful projects (i.e. recreation complex, new library etc.).</p> <p>Regulations should state that "allocation" can be reported in general terms, specifically as it relates to acquisition of real property – the need to report on specific future real property acquisitions could potentially jeopardize negotiations for those properties, unfairly sterilize those properties, or even prematurely trigger timelines under the <i>Expropriations Act</i>.</p>

3. Reporting on parkland

The amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019* provide that municipalities may continue using the current basic parkland provisions of the *Planning Act* if they are not collecting community benefits charges. Municipalities with parkland special accounts will be required to provide the reports and information that may be prescribed in the regulation to persons prescribed in regulation.

Proposed Content	City of Cambridge Comments
<p>In order to ensure that cash-in-lieu of parkland is collected and used in a transparent manner, the Minister is proposing to prescribe reporting requirements for parkland. Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the special account, such as:</p> <ul style="list-style-type: none"> • Opening and closing balances of the 	<p>The acquisition of land for parks is currently prescribed as an ineligible service under O. Reg. 82/98, largely due to it being acquired through the parkland dedication provisions under the <i>Planning Act</i>. The proposed legislation removes a municipality's ability for parkland dedication under the <i>Planning Act</i> if they have a community benefits charge in place.</p>

<p>special account</p> <ul style="list-style-type: none"> • A description of land and machinery acquired with funds from the special account • Details on amounts allocated during the year • The amount of any money borrowed from the special account, and the purpose for which it was borrowed • The amount of interest accrued on money borrowed 	
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4. Exemptions from community benefits

To help reduce the costs to build certain types of development that are in high demand, amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019* provides for the Minister to prescribe such types of development or redevelopment in respect of which a community benefits charge cannot be imposed.

Proposed Content	City of Cambridge Comments
<p>The Minister is proposing that the following types of developments be exempt from charges for community benefits under the <i>Planning Act</i>:</p> <ul style="list-style-type: none"> • Long-term care homes • Retirement homes • Universities and colleges • Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion • Hospices • Non-profit housing 	<p>Any exemptions prescribed should be better defined for clarity; for example, “Retirement Homes” should be restricted to Retirement Homes as defined under the Retirement Homes Act, “Universities” limited to academic related development and exclude private institutions.</p> <p>Any prescribed exemptions should not require funding from other sources (user rates and/or tax levy).</p> <p>Exemptions should be available at Council’s discretion.</p> <p>Residents of retirement homes and non-profit housing utilize the services provided in the community benefits charge, and therefore should not be exempt. Retirement homes will become a growing segment as the “baby boomer” generation ages and moves towards this type of housing. If they are exempted, what mechanism will ensure that new revenue tools will be revenue neutral? It is recommended that retirement homes and non-profit housing not be enforced exemptions but left to Council’s discretion.</p>

	At very minimum, limit the retirement home restriction to non-profit retirement homes only.
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5. Community benefits formula

The amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019*, provide the authority for municipalities to charge for community benefits at their discretion, to fund a range of capital infrastructure for community services needed because of new development. This capital infrastructure for community services could include libraries, parkland, daycare facilities, and recreation facilities. For any particular development, the community benefits charge payable could not exceed the amount determined by a formula involving the application of a prescribed percentage to the value of the development land. The value of land that is used is the value on the day before the building permit is issued to account for the necessary zoning to accommodate the development.

Proposed Content	City of Cambridge Comments
<p>In determining the prescribed percentages, there are two goals.</p> <ol style="list-style-type: none"> 1. to ensure that municipal revenues historically collected from development charges for “soft services”, parkland dedication including the alternative rate, and density bonusing are maintained. 2. to make costs of development more predictable. <p>The Ministry is not providing prescribed percentages at this time. However, the Ministry would welcome feedback related to the determination of these percentages. There will be further consultation on the proposed formula in late summer.</p>	<p>There remain a number of questions and concerns at this time. These include:</p> <ul style="list-style-type: none"> • Is there an exhaustive list of inclusions eligible to be included as community benefits charge, both type of service and type of expense? For example, under density bonusing a municipality may obtain funding for affordable housing, and subsequently grant or loan these funds to third-party non-profit affordable housing, to encourage increased affordable housing in the community; given this is not municipally-owned infrastructure, would it be eligible? Is acquisition of land for parks an eligible service, given the elimination of parkland dedication? • What lands / development type will the charge apply to? Currently non-residential lands are allocated 5% of the cost of soft services under the City’s development charge by-law. • How will the maximum prescribed rates be split in two tiered municipalities? • Will the community benefits charge apply to all development, whether

greenfield or intensification? How will the land values be determined and pro-rated in the case of intensification (i.e. expanding an existing condo building)?

It is recommended that extensive consultation and testing take place with municipalities before the formula is prescribed in the regulation.

The revenue neutrality goal can only be achieved if caps are set high enough that they will rarely apply as long as a reasonable rate for the CBC is set. If the CBC strategy determines a rate based on need/revenue neutrality then the only purpose a cap can serve is to ensure that the determine needs or existing revenues are not achieved.

Also, “revenue neutrality” should not be capped at existing amounts for all time – some allowance needs to be made for future growth.

The CBC does not include a provision to acquire parkland in the same manner as the existing sections 42 and 51.1 of the *Planning Act*, but would permit “in-kind” contributions which could include land to be used as parkland. However the new in-kind contributions are based on the value of the contribution, and not an area of land (as the current parkland dedication provisions). Because in-kind contributions cannot be required, this effectively means that all land acquired for park purposes will now need to be purchased by municipalities. In order to meet the Province’s goal of revenue neutrality, consideration will need to be given to the fact that municipalities will now have to purchase parkland at market rates.

It is also noted that the in-kind contribution

	provisions do not permit agreements (or registration of agreements) and may be capped at the amount of the CBC payable (e.g. there is no provision that would allow for a CBC credit).
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6. Appraisals for community benefits

The authority to charge for community benefits under the *Planning Act* would enable municipalities, at their discretion, to fund a range of capital infrastructure for community services needed because of new development. For any particular development, the community benefits charge payable could not exceed an amount determined by a formula involving the application of a prescribed percentage to the value of the development land on the day before the building permit is issued. The amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019* provide for the owner of land proposing to develop a site, to provide the municipality with an appraisal of the site they are of the view that the community benefits charge exceeds what is legislatively permitted. Similarly, a municipality can also provide the owner of land with an appraisal if it is of the view that the owner of the land's appraisal is inaccurate. If both appraisals differ by more than 5 percent, a third appraisal is prepared.

Proposed Content	City of Cambridge Comments
<p>The Minister is proposing the following:</p> <ul style="list-style-type: none"> • If the owner of land is of the view that the amount of a community benefits charge exceeds the amount legislatively permitted and pays the charge under protest, the owner has 30 days to provide the municipality with an appraisal of the value of land. • If the municipality disputes the value of the land in the appraisal provided by the owner, the municipality has 45 days to provide the owner with an appraisal of the value of the land. • If the municipality's appraisal differs by more than 5 percent from appraisal provided by the owner of the land, the owner can select an appraiser from the municipal list of appraisers, that appraiser's appraisal must be provided within 60 days. 	<p>Additional clarity is required:</p> <ul style="list-style-type: none"> • How is the value of the land initially determined and who is responsible for providing the value at the time that the community benefits charge is calculated? • • The proposed mechanism does not deal well with phased development. Would the value of the land within each phase be applied or would each phase be capped at a percentage of the value of the full parcel? • Municipalities who do not have internal appraisal capacity may have difficulty obtaining appraisals within required timeframes, particularly where required to maintain additional lists of appraisers available for final determinations • Not clear if an appraiser on the list of appraisers is available as an option to provide appraisals to a

	<p>municipality or developer. Limited availability of appraisers in some areas may make timeframes difficult to achieve, and some flexibility is required.</p> <ul style="list-style-type: none"> • It is not clear what would happen if an appraiser selected from the municipal list of appraisers fails to deliver an appraisal report within the required timeframe.
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7. Excluded services for community benefits

Amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019* provide that community benefits charges cannot be imposed for facilities, services or matters associated with services eligible for collection under the *Development Charges Act, 1997*. It also provides for the province to prescribe facilities, services or matters in respect of which community benefit charges cannot be imposed.

Proposed Content	City of Cambridge Comments
<p>The Minister is proposing to prescribe that the following facilities, services or matters be excluded from community benefits:</p> <ul style="list-style-type: none"> • Cultural or entertainment facilities • Tourism facilities • Hospitals • Landfill sites and services • Facilities for the thermal treatment of waste • Headquarters for the general administration of municipalities and local boards <p>This would be consistent with the ineligible services list currently found under the <i>Development Charges Act</i>.</p>	<p>Additional clarification is required:</p> <ul style="list-style-type: none"> • Will the definition of eligible capital costs be the same as in the <i>Development Charges Act</i>? • Will there be any limitation to capital costs for computer equipment and vehicles with less than 7 years' useful life as is prescribed under the <i>Development Charges Act</i>? <p>These types of facilities listed as excluded are all impacted by growth in the same manner as other growth related infrastructure (i.e. indoor and outdoor recreation, libraries) and therefore should be eligible for inclusion under the <i>Development Charges Act</i> or the <i>Community Benefits Charge</i>.</p> <p>At minimum, the excluded facilities should not be defined so broadly as to include things like public art which would have been eligible under the existing section 37.</p>

8. Community planning permit system

The community planning permit system is a framework that combines and replaces the individual zoning, site plan and minor variance processes in an identified area with a single application and approval process. *O. Reg. 173/16 "Community Planning Permits"*

outlines the various components that make up the system, including the matters that must be included in the official plan to establish the system, the process that applies to establishing the implementing by-law and the matters that must or may be included in the by-law.

Proposed Content	City of Cambridge Comments
Amendments to the <i>Planning Act</i> in the <i>More Homes, More Choice Act, 2019</i> establish a new authority for municipalities to levy charges for community benefits to make requirements in this regard more predictable. As the community planning permit system also allows conditions requiring the provision of specified community facilities or services, it is proposed that a community benefits charge by-law would not be available for use in areas within a municipality where a community planning permit system is in effect.	Agree.