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Hamilton

August 19, 2019

ERO Number: 019-0183

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

Dear Mr. Ballantine:

Subject: City of Hamilton Submission on Proposed New Regulation Pertaining to the Community Benefits Authority under the Planning Act

Thank you for the opportunity to provide comments on the above-referenced proposal (the Proposal) relating to the *More Homes, More Choice Act, 2019* (the Act). Please accept the following comments for consideration.

First and foremost, the City requests the Province to release the full draft Regulation for consultation. The Proposal is a description provided in general terms. The full impact of the Proposal is not capable of being understood or assessed without the official language that will appear as written in the Regulation. The City of Hamilton's (the City's) comments have been prepared based on a general interpretation of the Proposal. The City requests that once any draft regulations are completed, they be posted and be subject to comments from all stakeholders.

For ease of review, the City's comments respond to the same eight categories set out in Proposal.

1. Transition

The Proposal provides that the prescribed date by which a municipality must adopt a community benefits charges (CBC) by-law will be January 1, 2021, after which point, a development charge (DC) for soft services may no longer be imposed.

The City comments that, without a full understanding of what is required in a CBC By-law, the prescribed date by which one has to be passed may be unachievable. For example, the City commenced the 2019 DC Background Study in January 2018 and it was adopted 17 months later in June 2019. If a similar calculation process is required, or a calculation process is proposed for which existing data is not readily available, there is a concern that the proposed timeline will not be achievable. Municipalities that have recently dedicated resources to a soft service DC calculation will again be required to dedicate resources to the CBC calculation. The cost of undertaking studies and the use of consultants (if necessary) are passed through the DCs, or presumably the CBC, thus acting counter to the Provincial goals of reducing costs of development. Furthermore, other Bills, such as Bill 6, are already requiring substantial municipal resources which are limited.

The City requests that the prescribed date be set at January 1, 2024 to recognize the cost and efforts spent on recently updated DC studies and allow municipalities to plan for the cost and effort of a CBC calculation at a time that would somewhat align with the next scheduled cycle of DC by-law updates.

2. Reporting on Community Benefits

The Proposal provides that annual reporting requirements would be similar to the existing reporting requirements for development charges and parkland under section 42 of the *Planning Act*.

The City comments that annual reporting of detail as described is appropriate and is consistent with the City's priorities and culture statements embedded in the City's 2016-2025 Strategic Plan.

The City comments, that since a draft regulation has not been released, a complete and detailed comment on this portion of the Proposal cannot be made.

The City requests the Province to release the full draft regulation for consultation and comment.

3. Reporting on Parkland

The Proposal provides that annual reporting requirements would be prescribed for municipalities with parkland special accounts.

The City comments that annual reporting of detail as described is appropriate and is consistent with the City's priorities and culture statements embedded in the City's 2016-2025 Strategic Plan.

The City comments, that since a draft regulation has not been released, a complete and detailed comment on this portion of the Proposal cannot be made.

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The City requests the Province to release the full regulation for consultation and comment.

4. Exemptions from Community Benefits

The Proposal has identified six forms of development that would be exempt from community benefits charges.

The City comments that the Province has listed types of development without clear definitions of the terms. The lack of the provision of definitions raises a number of general concerns including:

- (a) the scope and breath of the interpretation of the categories;
- (b) if left undefined, disputes are likely to arise as to their interpretation; and
- (c) if they are defined in the forthcoming regulations the City will not have been provided the opportunity to comment on the definitions.

More specifically, the proposed exemptions include "universities and colleges". This appears to be a broad category without any guidance provided as to the scope of the intent of the meaning of "universities and colleges". Are the following included within the meaning of "universities and colleges": privately funded colleges and universities, developments which are public-private partnerships i.e. university / college partnerships with private developers, developments owned by others but used by a university or college? Is the meaning of "universities and colleges" restricted to certain types of development such as academic facilities, research facilities, student residences or facilities which have mix of the foregoing?

The courts have confirmed that colleges established under the *Ministry of Colleges and Universities Act*, R.S.O. 1990, c. M.19 are crown agents and unless explicitly stated in legislation, they are not bound by it. The *Planning Act* and the amendments thereto found in the Act do not appear to expressly bind colleges, the Crown or any Crown agents and therefore, colleges would not be obligated to pay a DC. Accordingly, it is unclear why colleges are listed as exempt.

It is unclear if memorial home and clubhouses by groups other than the Royal Canadian Legion are intended to be included in the definition. It is unclear what a memorial home or clubhouse is.

The City requests the Province definition each use and to release the full Regulation for consultation.

The City requests that the Province define "long-term care home" as "a long-term care home as defined in the *Long-Term Care Homes Act, 2007*, S.O. 2007, c.8".

The City requests that the Province define "retirement home" as "a retirement home as defined in the *Retirement Homes Act, 2010*, S.O. 2010, c. 11".

The City requests that the Province define “universities and colleges” and that it only apply to developments solely owned by such organizations for the specific uses that the Act intends to include.

The City requests that the Province define and provide clarity for “memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion”.

The City requests that the Province define “hospice”.

The City requests the Province to define “non-profit housing” to apply only to developments that are receiving construction or on-going operating funding through a government housing affordability program.

5. Community Benefits Formula

The Proposal has requested input on varying percentages to use for land values to maintain the historical municipal revenues. The Proposal has also provided that further consultation will occur later this summer.

The City comments that land values vary significantly across the Province and within each municipality which is presumably part of the reason varying percentages are being considered. Construction values, however, vary less across the Province than land values. This concern was included in the City’s comments respecting Bill 108 and the same concern was echoed by the submission of other municipalities in regard to Bill 108. The City understands that the intent of a CBC is to cover the costs of growth-related projects such as parks, recreation facilities, libraries, etc. All of these have a land purchase component and a construction component when being undertaken by a municipality. A CBC calculation methodology should reflect both components.

The City comments that there may be cases where a municipality may experience a need for additional ‘soft services’ in a specific section of the City and a CBC calculation methodology should permit municipalities to factor this need in to the calculation by permitting area-specific calculations of CBCs.

The Proposal only seeks for input on percentages of land value. While the City has undertaken some analysis to provide input, the City is not supportive of a methodology based on land values due to a disconnection between land values and the services that would be funded with a CBC. Services are provided based on population which is reflected in the current DC methodology.

There can be significant differences in land values due to location, density, land size and land use. Within the City, the value per acre is between \$400,000 per acre to \$12,000,000 per acre when adjusting for each of the factors. This variance still exists, but to a lesser extent, if the land use is taken into consideration:

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Residential* - \$750,000 to \$12,000,000 per acre

- Low density residential - \$750,000 to \$1,200,000 per acre
- Medium density residential - \$800,000 to \$3,000,000 per acre
- High density residential, downtown – \$4,000,000 to \$12,000,000 per acre
- High density residential, not downtown - \$1,250,000 to \$7,000,000 per acre

Industrial - \$400,000 to \$1,500,000 per acre

Commercial - \$750,000 to \$3,000,000 per acre

** Excludes single-detached dwelling building lots, which can vary from \$5,000 to \$11,000 per front foot*

The City comments that based on a review of sample projects, the parkland dedication cash-in-lieu and soft service DCs made up between 9% - 75% of the percentage of land value. This is based on a limited sample and the City will be undertaking further analysis to contribute to additional consultation.

The City comments that, while the methodology of cap based on land value is flawed, the flaw is even more pronounced when considering expansions of existing developments and redevelopment of land. The land value encompasses the entire site and may discourage expansions of existing non-residential developments or redevelopments of residential land if the existing and former uses are not factored into the calculation and cap. These outcomes are counter to the goals of increasing housing supply and would encourage sprawl over redevelopment of underutilized lands. In order to encourage redevelopment, the existing land use needs to be considered in a CBC calculation and cap.

The City requests the Province consider different land use categories, residential densities and land sizes when exploring options for establishing the cap of a CBC as a percentage of land value during the consultation this summer explicitly.

The City requests the Province consider a two-step CBC calculation methodology. The first being a land-based component and the second being a construction-based component. A two-step calculation would reflect the notion of construction costs being relatively stable across the province while land values can vary significantly.

The City requests the Province allow for area-specific CBC calculations within a municipality.

The City requests the Province establish a CBC calculation and cap that adjusts for any existing, legally established, use of the land.

The City requests the Province establish a CBC calculation methodology that connects the services being funded from a CBC to the development that is driving the need for increases in those services. The existing DC methodology, without the 10% statutory deduction and adjusted for the uses that the Province is mandating as exempt, is one option to consider.

The City is not making any specific percentage requests related to this matter, at this time, due to the limited information provided through the Proposal and will look forward to further consultation this summer.

6. Appraisals for Community Benefits

The Proposal describes a process by which a community benefit charge can be challenged and which involves up to three land appraisals.

The City comments that the current cost of an appraisal is estimated at a minimum \$6,000 per appraisal. The proposed process will be administratively onerous and expensive for the developer and the municipality. It is unclear whether the costs appraisals can be recovered through the CBC calculation.

The City comments that not all developments utilize the land at the highest and best use. A land valuation considers the highest and best use. An express statement should be provided that appraisals, through the payment in protest process, are to consider the highest and best use, not the specific development being constructed.

The City comments that the Province has not provided a clear indication of when each time period starts. For appraisals required after the initial appraisal, will the prescribed time period commence from the CBC payment date or from the date of receipt of the preceding appraisal?

The City requests the Province to provide that municipal appraisal costs can be included in the determination of a CBC and also requests clarity on the date that each prescribed amount of time is measured from.

The City requests the Province to provide an express statement that appraisals, through the payment in protest process, are to consider the highest and best use of the land, not the specific development being constructed.

7. Excluded Services for Community Benefits

The Proposal provides that several services be excluded from community benefits. The excluded services align with the excluded services list in the *Development Charges Act*, 1997, S.O. 1997, c.27 (DC Act) as amended by the Act.

The City comments that the effort to retain the ability to collect for the same services collected for under the existing DC Act and parkland dedication tool is appreciated. However, there are services that municipalities are not able to collect for through the existing DC Act which are the services listed as being excluded from a community benefits charge.

The City comments that the DC Act explicitly listed library collection materials as eligible. Library collection materials are not specifically identified in the Proposal.

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The City comments that all costs associated with servicing future growth should be eligible for consideration in a community benefit charge calculation. There should not be any excluded services unless it can be demonstrated that there are environmental benefits or other "greater-good" benefits to excluding such service. The City agrees that landfill sites and services and facilities for the treatment of waste is reasonable to be excluded from a community benefits charges.

The City requests the Province to only list "landfill sites and services" and "facilities for the treatment of waste" in the list of services excluded for community benefits.

The City requests the Province to clarify that library collection materials are eligible for funding from a CBC.

8. Community Planning Permit System

The Proposal provides that a community benefits charges by-law would not be available for use in areas within a municipality where a community planning permit system is in effect.

The City comments that the intent to prevent a doubling up of fees between a community planning permit system and a CBC is noted.

The City comments that while community planning permit systems are not currently in use, the option of a community planning permit system for future growth is being considered.

The City comments that without understanding how a CBC is to be calculated, it is unclear whether revenue neutrality can be achieved when comparing value obtained through a community planning permit system with the value collected through a CBC.

The City requests the Province release the full CBC calculation methodology and full regulations for comment.

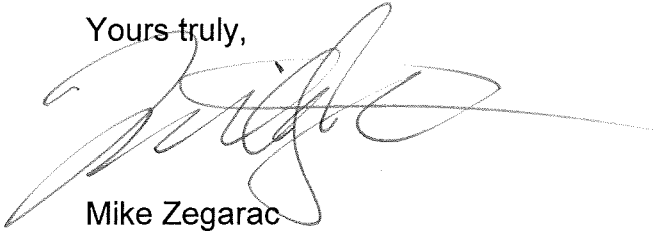
Notwithstanding the above, and to reiterate the City's opening comment, the Province has not yet released full draft regulations. The City's comments have been prepared based on general interpretations of the Proposal. The full impact of the Proposal cannot be determined without disclosure of the actual draft regulation. The City requests further consultation to provide feedback on the complete draft regulations.

The City remains concerned with changes imposed by the Act and submits that at this point, absent the release of the draft regulations, the Act and Proposal do not ensure the promise of revenue neutrality. The changes are a significant departure from the current legislative framework and undermine an effective tool for creating vibrant communities. Reducing development charges will not make housing more affordable. Restricting cost recovery tools does not guarantee lower house prices. House prices are set by the market.

The changes through the Act will require extensive administration, delay cash flow needed to install infrastructure and expose municipalities to collection risks. If more municipal operating revenues are needed to cover the cost of growth, it will be at the expense of maintaining existing capital assets, levels of services, or current property tax rates. For greater emphasis, the City submits that purchase price is only one element of affordability. Property taxation rates factor into the carrying costs of a property and hence its affordability. The changes proposed by the Province may result in increased property taxes making it less affordable for residents to live in their homes or for businesses / industries to stay in their locations or expand their operations.

Thank you again for the opportunity to provide meaningful input into this review. The City looks forward to further review and consultation towards the development of the final Regulations. City of Hamilton staff would be pleased to meet with you to discuss these comments in greater detail.

Yours truly,

A handwritten signature in black ink, appearing to read 'Mike Zegarac', with a long horizontal flourish extending to the right.

Mike Zegarac
General Manager
Corporate Services Department