



MEMO / NOTE DE SERVICE

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TO: Mayor, Members of Council and Senior Leadership Team

DESTINATAIRE : Maire, Conseil municipal et équipe de la haute direction

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DATE: March 16, 2020

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FILE NUMBER: ACS2020-PIE-GEN-0003

SUBJECT: Proposed regulatory matters pertaining to community benefits authority

OBJET: Proposition de questions réglementaires relatives au pouvoir d'imposer des redevances pour avantages communautaires

PURPOSE

The purpose of this Memo is to provide Council an update on the Provincial Government's proposed regulatory matters pertaining to community benefits authority. Staff intend to submit comments before the consultation deadline of March 30, 2020.

The memo also serves as a follow up to Motion PLC 2019 7/5 which directed the General Manager, Planning, Infrastructure and Economic Development to review the categories into which Non-Residential lands are divided for development charge purposes and submit a recommendation to Committee and Council no later than the first quarter of 2020.

BACKGROUND

The Government of Ontario introduced [Bill 108, More Homes, More Choice Act, 2019](#), for first reading on May 2, 2019. The Bill is described as the provincial government's plan to tackle Ontario's housing crisis and contains 13 schedules which affect 15 Acts. Many of these amendments have municipal implications. A companion [provincial policy paper](#) provides context for the new proposed legislative changes contained in the Bill.

As of June 6, 2019, Bill 108, the *More Homes, More Choice Act* ("Bill 108") received Royal Assent and passed into law. This legislation has significant impacts on City operations including development charges, planning appeals, inclusionary zoning, endangered species management, and heritage matters, which were detailed as part of report [ACS2019-PIE-GEN-0004](#) approved by Council on June 12, 2019.

On November 6, 2019, amendments to the community benefits charge provisions under the Planning Act were introduced through the [Plan to Build Ontario Together Act, 2019](#). The Bill received Royal Assent on December 10, 2019. The amendments, set out under Schedule 10 and 31 of the Act, include new transition provisions for alternative parkland dedication and a mechanism to appeal a municipality's community benefits charge by-law to the Local Planning Appeal Tribunal.

On February 28, 2020, the Ontario government published the "[Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act](#)", requesting comments until March 30, 2020.

The Province is proposing to significantly narrow what a community benefits by-law would apply to:

- Parkland Acquisition (which has been ineligible for development charge funding since 1997);
- Parking and By-law Enforcement (was formerly eligible for development charge funding);
- Social/Subsidized Housing and Shelters (was formerly eligible for development charge funding);
- Childcare (was formerly eligible for development charge funding); and
- Other community amenities previously funded under Section 37 or other mechanisms.

Other areas would remain in the conventional development charges by-law:

- Public Libraries (including library resources);
- Long-Term Care;
- Park Development (but not parkland acquisition);
- Recreation (including community centres and arenas); and
- Public Health.

The provincial government proposes that development charges, additional to their main purpose of paying for capital costs of infrastructure like roads and sewers associated with new development, could also pay for the capital costs of certain community services such as public libraries, parks development (other than acquiring land for parks) and recreational facilities.

A municipality could choose to collect development charges to fund the development of new park facilities or enhance existing parks such as playgrounds and splash pads. To acquire the land needed to build new parks, a municipality would have the option of using one of the following tools under the [Planning Act](#):

1. A municipality could apply the basic parkland dedication rate in which a maximum of either 5% (for example, for a residential development) or 2% (for a commercial or industrial development) of a proposed development is dedicated as parkland or cash-in-lieu is provided (section 42 “Conveyance of land for park purposes” and section 51.1 “Parkland” under the *Planning Act*).
2. Alternatively, a municipality could establish a community benefits charge by-law to collect funds to acquire land for parks as well as other community services such as affordable housing and child care. If both a developer and municipality agree, a developer could provide land for parks (rather than a payment). The agreed-upon value attributed to the in-kind parkland contribution would be applied toward the community benefits charge payable.

If a municipality has a community benefits charge by-law in place it cannot apply the basic parkland dedication provisions of the Planning Act.

To implement the above, the government of Ontario is seeking feedback on the following:

1. Required content of a community benefits charge strategy
2. Services eligible to be funded through development charges
3. Percentage of land value for determining a maximum community benefits charge
4. Timeline to transition to the new community benefits charge regime
5. Community benefits charge by-law notice
6. Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed
7. Building code applicable law

DETAILED SUMMARY OF PROPOSAL

1. Required content of a community benefits charge strategy

Before passing a community benefits charge by-law, a municipality must prepare a community benefits charge strategy. The proposal sets out a list of matters which must be addressed by the strategy. The proposed requirements are:

- The anticipated type, amount and location of development or redevelopment that would be subject to a community benefits charge
- The anticipated increase in the need for a specific community service (for example, the acquisition of land for parks, affordable housing, child care, etc.) resulting from new development or redevelopment
- A parks plan that examines the need for parkland in the municipality
- The amount of parkland per person currently being provided in the municipality, and if this is planned to increase, decrease or stay the same
- The capital costs associated with the increased need for a specific community service resulting from new development or redevelopment
- The excess capacity that exists in those specific services (for example, the extra capacity that exists in a service that is not currently being used)
- Whether the increased provision of those specific services would also serve existing residents (for example, existing residents may also benefit from new child care facilities that are needed as a result of new development or redevelopment)
- Any capital grants, subsidies, or contributions from other levels of government or other sources like donations that are anticipated to be made to support those specific services

This can be seen as analogous to the Background Study required under the *Development Charges Act*, as the proposal adopts similar policies to the Background Study requirements in s. 5 of that Act and adds additional requirements specific to parkland.

2. Services eligible to be funded through development charges

The *Development Charges Act* provides authority for municipalities to impose development charges to pay for the increased capital costs of specific services that are needed as a result of new growth. The services that are eligible to be funded through development charges are listed under subsection 2(4) or may be prescribed through regulation. The *Planning Act* stipulates that services funded by development charges may not be funded by community benefits charges fees.

Reinstated services for collection of capital costs under the *Development Charges Act* are proposed, specifically (the underlined services below are proposed new additions to the regulation):

- Water supply services, including distribution and treatment services;
- Waste water services, including sewers and treatment services;
- Storm water drainage and control services;
- Services related to a highway as defined in subsection 1 (1) of the Municipal Act, 2001 or subsection 3 (1) of the City of Toronto Act, 2006, as the case may be;
- Electrical power services;
- Policing services;
- Ambulance services;
- Fire protection services;
- Transit services other than the Toronto-York subway extension;
- Waste diversion services;
- Public libraries, including library materials for circulation, reference or information purposes;
- Long-term care;
- Parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks);
- Public health;
- Recreation, such as community recreation centres and arenas.

This means that capital costs for facilities and services not covered above may be recoverable under the CBC regime. Examples would include, but not be limited to, capital costs for: acquisition of land for parks, child care facilities, affordable housing, social services, and parking and by-law enforcement.

3. *Percentage of land value for determining a maximum community benefits charge*

The Legislation included a mechanism to apply a “cap” to community benefits charges a municipality may collect on any particular development. The proposal states that the maximum, for single-tier municipalities such as Ottawa, is to be **15% of the land value** of the land under development. In any particular case, the community benefits charge levied by a municipality could not exceed the amount determined by applying the applicable proposed percentage to the value of the land that is subject to development. The land value would be calculated as of the valuation date, which is the day before the date the building permit is issued in respect of the development or redevelopment.

4. *Timeline to transition to the new community benefits charge regime*

A specific date is not specified, but it is proposed that the date for municipalities to transition to the community benefits charges regime would be one year after the date the proposed community benefits charge regulation comes into effect. Municipalities would still have the discretion to decline to adopt a CBC by-law.

5. *Community benefits charge by-law notice*

The proposal provides that where a CBC by-law that has been adopted by Council, the City would be required to comply with notice provisions that are similar to the notice provisions under the Development Charges Act regarding the passage of a development charges by-law (public notice through a newspaper and to individuals who requested notice). This notice requirement triggers the appeal deadline already provided in the legislation.

6. *Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed*

The mechanism to appeal a community benefits charge by-law includes a requirement for municipalities to provide full or partial refunds in the event of a successful appeal. The interest rate paid on amounts refunded must not be less than the prescribed minimum interest rate. The Province proposed to set the rate at the Bank of Canada rate on the date the by-law comes into force. Alternatively, if the municipality's by-law so provides, the minimum interest rate would be the Bank of Canada rate updated on the first business day of every January, April, July and October.

7. *Building code “applicable law”*

It is proposed that the *Building Code* be amended to add the community benefits charge authority to the list of items under Division A - Article 1.4.1.3 Definition of Applicable Law. This amendment would allow the City to withhold issuance of building permits until payment of community benefits charges.

CITY'S COMMENT ON THE CBC REGULATIONS

The City of Ottawa would like to propose two changes to the recently released draft regulations concerning the Community Benefits Charge (CBC): allowing municipalities to

implement Parkland Dedication or Cash-In-Lieu in different areas and allowing municipalities the option to delay implementation of the CBC.

The first proposal would allow single tier municipalities that have large greenfield and rural land components the option to implement a CBC By-law in certain geographical locations while at the same time continuing to apply a Parkland Dedication or Cash-In-Lieu By-law solely in other areas. Currently, this option would be available where there is a Regional governance model in place but not an option for single tier municipalities. A two-tier fee approach would allow the City to maintain the existing Parkland Dedication policy in areas that are suburban (outside the greenbelt) locations and to apply the new CBC within urban (inside the greenbelt) areas. Plus, this broader application process would lower the City's administrative costs and better match the servicing requirements in each of these locations.

In our case, the proposed boundaries would not be contentious and are clearly definable because of the existence of the greenbelt. This system of applying the fees aligns with the current practice concerning the application of area-specific development charges by which the cost of servicing has been historically attributed to specific geographic areas resulting in more efficient land use practices and a more accurate attribution of growth-related costs.

In addition, the rationale supporting the continuation of this type of approach would be outlined within the supporting strategy that is required to be provided with the implementation of the CBC regime. The proposed requirements are similar to those included within the development charges background study and include the anticipated type of development that will be subject to a CBC, the increase in need for community services resulting from new development, a parks plan, a parkland per person analysis, capital costs associated with the increased need for community services, excess or available capacity, any benefit to existing residents, and any available capital grants, subsidies or contributions from other levels of government or other sources. The flexibility to apply different by-laws would allow single-tier municipalities the ability to continue to determine the most appropriate type of fee that is best suited to respond to their changing circumstances.

The second proposal would be to allow municipalities the option to delay implementation of the CBC and to extend the transition period to two years after the date the proposed regulations come into effect. The extension of the transition provision would allow for

greater certainty as to which option best conforms to existing policies and funding practices.

Staff will communicate these comments in the City's submission to the province.

Original signed by
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