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**City of Kingston**

216 Ontario St.  
Kingston, ON K7L 2Z3  
613-546-4291

**Date:** April 20, 2020

**To:** The Ministry of Municipal Affairs and Housing  
John Ballantine, Municipal Finance Policy Branch

**Subject:** The City of Kingston's comments on the proposed regulatory matters pertaining to community benefits authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* (ERO Number 019-1406)

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Thank you for the opportunity to provide comments on the proposed regulatory matters pertaining to the community benefits authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* (ERO Number 019-1406). The City of Kingston's comments are provided below. The items are numbered in accordance with the numbering of the proposed regulatory matters included in the ERO posting.

## 1. Required content of a Community Benefits Charge (CBC) strategy

### Proposal

To provide greater clarity about the components of a CBC strategy, it is proposed that a municipality would need to include the following content in their strategy:

1. The anticipated type, amount and location of development or redevelopment that would be subject to a Community Benefits charge
2. 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
3. A parks plan that examines the need for parkland in the municipality
4. The amount of parkland per person currently being provided in the municipality, and if this is planned to increase, decrease or stay the same
5. The capital costs associated with the increased need for a specific community service resulting from new development or redevelopment

6. 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)
7. 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)
8. 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

### **City's response**

The City recently completed draft Community Benefit Guidelines to direct the implementation of Section 37 of the *Planning Act*. Those Guidelines include a requirement for potential benefits to be identified in either a City-approved plan (such as the Official Plan), or to be determined by the development proponent through a Community Services and Facilities Study (CSFS).

This requirement for a CSFS seems to be pre-empted by the content proposed to be included in the CBC Strategy by items 2, 5, 6 and 7. These items represent areas where the City may have detailed information available that would make their inclusion in the Strategy a simple exercise. However, for many areas of potential community benefits in a smaller city like Kingston, the City would need to undertake significant work in order to identify the anticipated increase in need for each benefit (item 2), the associated increased capital costs (item 5), the excess capacity that exists in those services (item 6), and the benefit to existing residents (item 7).

The purpose of requiring a CSFS for potential benefits that have not been studied in detail by the City is to ensure the cost of that work is borne by the proponent, and not the taxpayers. The cost and effort involved in creating a Strategy that examines all potential Community Benefits to the level of detail proposed is challenging in the timing suggested, which may lead to inequity across areas of the city, by favouring those areas or services that have been already studied in detail. The City is looking for clarification on how often the Strategy would need to be updated, and whether there would be implications in what is included (or not) for potential appeals to the Local Planning Appeal Tribunal (LPAT). Could a proponent challenge the City on its forecasted needs for specific services, for example? Would the City need to be able to justify its service levels at the Tribunal? What resources exist for municipalities to ensure assumptions around needs for services are defensible?

## **2. Services eligible to be funded through development charges**

### **Proposal**

It is proposed that the following services would be identified in regulation under subsection 2(4) of the *Development Charges Act*.

1. Public libraries, including library materials for circulation, reference or information purposes
2. Long-term care
3. Parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks)
4. Public health

5. Recreation, such as community recreation centres and arenas  
Development charges may be imposed to fully recover the capital costs related to the provision of these proposed services due to new growth. These proposed services would be ineligible to be funded through Community Benefits charges.

### **City's response**

The inclusion of libraries, long-term care, park development, public health and recreation is a positive shift and a significant amendment from an earlier proposal where the new CBC would have financed these services. This provides the City with greater certainty on growth related capital funding of these services. The City along with other municipalities expressed concern on CBCs being able to adequately fund growth. Further information and modelling is required to fully understand what is proposed, but this is a welcomed improvement.

If public health is now included, the City would need to determine the details of how this would work as it currently owns 65.95% of the public health assets.

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

#### **Proposal**

The proposed percentages of land value that would be prescribed in regulation under the *Planning Act* would be structured as follows:

- single-tier municipalities: 15%
- lower-tier municipalities: 10%
- upper-tier municipalities: 5%

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.

The Community Benefits charges levied by municipalities would support the growth-related capital costs of acquiring land for parks, and other Community Benefits required because of development, such as child care facilities, affordable housing, social services, parking and by-law enforcement. There would need to be a connection between the Community Benefits charge levied and the increased need for community services associated with new development.

Different percentages are being proposed for single, upper and lower-tier municipalities to reflect the varying service delivery requirements of each tier of municipality to service new growth with community amenities. This percentage structure ensures that the combined percentage for upper and lower-tier municipalities would be equal to the percentage for single-tier municipalities.

**City's response**

The City recommends that the government consider local land considerations in the percentage calculations. A big factor to consider is the prescribed valuation method meaning the Municipal Property Assessment Corporation (MPAC) value versus an independent appraiser value. MPAC land values can often understate the true market value resulting in reduced CBC revenue potential, and therefore not supporting the necessary growth expenditures.

In the absence of a full review, it is difficult to determine if a set percentage would be beneficial for the City's development objectives.

Staff's current understanding is that areas with higher land values will benefit far more from this approach than areas with lower land values. This creates/reinforces inequity across the Province. The City needs to have more information to fully understand the implications. Specifically, we are requesting clarification on whether the charge will be a percentage of the land value, or will the prescribed percentage be the maximum used to limit a charge per unit type, similar to the DC calculations based on the need for service from development? Will there be different rates for residential and non-residential based on benefits received?

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

It is proposed that the specified date for municipalities to transition to the CBCs regime would be one year after the date the proposed CBC regulation comes into effect. This transition period would allow municipalities to prepare CBC strategies and pass by-laws if they choose to implement a CBC regime.

**City's response**

The City has recently completed the background study to inform updates to its Development Charge By-Law, which expired September 29, 2019. Kingston's updated Development Charges By-Law was passed on September 3, 2019 and came into force and effect on September 29, 2019. The City's Community Benefits Guidelines were completed in late 2018 but have been put on hold pending the outcome of the Government's proposed changes.

Based on the regime described, one year to transition to the new CBC regime is not enough time. There are several elements to the process of transitioning to the Community Benefits regime and with the assumption that the process will be similar to development charges, it will take time and resources to carry out the studies, undertake a public process and pass the necessary by-laws. The City is requesting that the specified date be extended to January 1, 2022 at a minimum.

If the requirements for the Strategy are lessened, and municipalities are able to tweak their existing regimes instead of starting from scratch, the transition time could be significantly shorter.

## 5. Community Benefits charge by-law notice

### Proposal

To implement the appeal mechanism, it is proposed that upon passage of a Community Benefits charge by-law, a municipality would be required to comply with the following notice provisions. These provisions are similar to the notice provisions under the *Development Charges Act* regarding the passage of a development charges by-law:

1. Notice would be required to be given through newspaper or to every land owner in the area covered by the by-law through personal service, fax, mail or email.
2. Notice would also be required to be provided by personal service, fax, mail or email to those individuals who specifically request notice, the clerk of the lower or upper-tier municipality (if and as applicable), and the secretary of every school board having jurisdiction in the area covered by the by-law.
3. In order to facilitate public awareness of the passage of a community benefits charge by-law, notice would include the following:
  - i. A statement that the council of the municipality has passed a Community Benefits charge by-law.
  - ii. A statement setting out when the by-law was passed.
  - iii. A statement that any person or public body may appeal the by-law to the Local Planning Appeal Tribunal by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons supporting the objection.
  - iv. A statement setting out the last day for appealing the by-law.
  - v. An explanation of the charges imposed by the by-law.
  - vi. A description of the lands to which the by-law applies, a key map showing the lands to which the by-law applies, or an explanation why no description or key map is provided.
  - vii. An explanation of where and when persons may examine a copy of the by-law.

The date on which notice would be deemed to have been given would be:

- the newspaper publishing date if the notice is published by a newspaper
- the date the fax is sent, if the notice is faxed
- the date the email is sent, if the notice is emailed
- the date the notice is mailed, if the notice is sent by mail

### City's response

The City supports enhanced levels of public consultation and has no objection to the notice requirements proposed. However, it is not clear what the benefit is to the municipality to enable CBC by-laws to be appealed. LPAT hearings are a huge cost for the City of Kingston, and the possibility of appeal and the lack of precedent for this type of hearing could be prohibitive to the

City participating in CBCs. The City encourages the government to reconsider the ability to appeal CBCs as it could result in unintended financial costs to the municipality.

## **6. Minimum interest rate for Community Benefits charge refunds where a by-law has been successfully appealed**

### **Proposal**

It is proposed that the minimum interest rate a municipality would be required to pay on amounts refunded after successful appeals would be 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.

This proposal aligns with the prescribed minimum interest rate for refunds of development charges after successful appeals under the *Development Charges Act*.

### **City's response**

The City is looking for additional clarification on the calculation under this section, for example whether the rate is based on the date payment was received until the appeal date or refund date. The Bank of Canada rate is a reasonable measure.

## **7. Building Code applicable law**

### **Proposal**

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 establish a mechanism for ensuring the payment of community benefits charges prior to the issuance of a Building Permit.

### **City's response**

More information on this aspect is needed in order to define what the municipality's role to administer this requirement will be under the Building Code. The City requests clarification if there be an additional administrative responsibility for the City to ensure the CBC payment has been received. This may not be too onerous but the City requests some additional information to better assess the implications.

The City of Kingston looks forward to further updates from the Province and continued municipal engagement on the proposed regulatory matters pertaining to the community benefits authority.

Sincerely,

Andrea Gummo, Acting Manager, Policy Planning, Planning Services  
613-546-4291 ext. 3256  
[agummo@cityofkingston.ca](mailto:agummo@cityofkingston.ca)

Sukriti Agarwal, Manager, Service Standards & Data Management, Planning Services  
613-546-4291 ext. 3217  
[sagarwal@cityofkingston.ca](mailto:sagarwal@cityofkingston.ca)