

April 20, 2020

John Ballantine
Municipal Finance Policy Branch
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Dear Mr. Ballantine:

RE: ERO proposal number 019-1406

Thank you for the opportunity to comment on the proposed regulatory matters pertaining to community benefit authority under the Planning Act (PA), the Development Charges Act (DCA), and the Building Code Act (BCA).

The City of Guelph offers the following comments on the proposed regulations.

1. Required Content of a Community Benefit Charge (CBC) Strategy

It is proposed that before passing a CBC by-law, a municipality must prepare a community benefits charge strategy. The strategy would need to include the following:

- a) The anticipated type, amount and location of development or redevelopment that would be subject to a community benefit charge;
- b) The anticipated increase in the need for a specific community service resulting from new development or development;
- c) A parks plan that examines the need for parkland in the municipality;
- d) The amount of parkland per person currently being provided in the municipality, and if this is planned to increase, decrease or stay the same;
- e) The capital costs associated with the increased need for a specific community service resulting from new development or redevelopment;
- f) The excess capacity that exists in those specific services;

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- g) Whether the increased provision for those specific services would also service existing residents; and
- h) 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 of Guelph Recommendations/Comments:

The City recommends that the CBC strategy (the Strategy) be updated every five years.

The Strategy should consider growth of eligible services over the same time horizon as the DCA (to build-out as defined in the Official Plan).

Transitional provisions related to the Reserve Fund balances (both positive and negative) for newly ineligible services under the DCA as well as Parkland Dedication and Density Bonusing are required. Some services have collected funding for projects yet to be initiated and some services may have incurred debt to provide capital in advance of development and will require a specific amount to recover those costs. Local municipal flexibility is requested for the transition of these Reserve Fund balances as long as clear, transparent communication of transition is reported through the Annual Treasurer Report.

The Planning Act should not dictate CBC exemptions, and instead, municipalities should direct fee exemptions through Community Improvement Plans or through the CBC Strategy based on local incentive needs.

Clarity for the implications for proposed subsection 1(d) is required. The City is interpreting this to mean that the service level for parkland can be forward looking, similar to Transit Services in the DCA. The City would be supportive of this approach assuming this is the intended interpretation.

The Strategy should permit the inclusion of growth-related studies specific to the eligible services within the CBC.

Similar to the DCA, the municipality does not need to be the constructor/owner/provider of the service in order for CBCs to be used towards eligible capital costs. There are a number of

services where other agencies provide the service but the municipality is required legislatively to fund those services.

2. Services Eligible to Be Funded Through Development Charges
It is proposed that the following services would be identified in regulation under subsection 2(4) of the DCA:

- a) Public libraries, including library materials for circulation, reference or information purposes;
- b) Long-term care;
- c) Parks development, such as playgrounds, splash pads, equipment and other park amenities
- d) Public health; and
- e) Recreation, such as community recreation centres and arenas.

City of Guelph Recommendations/Comments:

The City supports reestablishing the eligibility of these services in the DCA. We ask you to consider expanding this list to include court services, City-provided parking services, child care services, social/subsidized housing, airports and municipal masterplans, Official Plans and other legislative planning studies.

The City supports the elimination of the 10% reduction from all DC eligible services as well as the elimination of the 10-year planning horizon.

Transitional provisions for the elimination of the 10% reduction should be effective for all projects identified in the DC Study in effect at the date of adoption of this legislation. This can be achieved through a reserve fund adjustment for any projects where construction has been initiated.

3. Percentage of Land Value for Determining a Maximum Community Benefits Charge

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%

City of Guelph Recommendation/Comments:

The City supports a uniform cap for both residential and non-residential development (including redevelopment) provided that the municipality has the flexibility to charge a per unit rate on the underlying development transaction. However, a development by development application, due to the underlying discrepancy in cost per unit between low and high density development, will mean there is a significant amount of uncollected revenue. The City strongly advocates for this cap to be applied on a city-wide basis and not on a development basis.

Based upon the City's preliminary costing assumptions, a 15% cap will not be sufficient to provide revenue neutrality as compared to the City's current DCA, density bonusing and parkland revenues. An increase in the cap is recommended. This cap will limit the capacity of the City to collect revenues for additional growth-related service costs like child care and affordable housing. As a growing city, our past revenues have been capped due to the historical service level requirement under the DCA. These caps do not provide for growing cities to meet increasing demands.

The City recommends that where a single-tier municipality has a shared service agreement with another municipality for a CBC eligible service, that the growth-related costs be included proportionately in each municipality's CBC strategy and allowable cap, similar to the DCA.

The City recommends allowing the DCA and the community benefits authority to be used together, such that unrecoverable DC growth-related costs (e.g. service level) can be recovered under the community benefits authority.

The City recommends that the province add a subsection under Planning Act s37 to provide for regular updating of the prescribed maximum amount of community benefits charge: "The Ministry of Municipal Affairs and Housing shall initiate a review of the prescribed maximum amount of community benefits charge before the end of 2024 and thereafter within five years of the end of the previous review."

Provide the Minister of Municipal Affairs and Housing with the authority to allow municipalities to exceed the prescribed

maximum amount of community benefits charge in select circumstances.

Add a subsection under Planning Act s37 to include conveyance such that: "As a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, **require** that land be conveyed to the municipality for park or other public recreational purposes."

Add a subsection authorizing local services in the Planning Act similar to subsection 59 (2) of the DCA.

4. Timeline to Transition to the New Community Benefits Charge Regime

It is proposed that the specified date for municipalities to transition to the community benefits charge's regime would be one year after the date the proposed community benefits charge regulation comes into effect.

City of Guelph Recommendations/Comments:

The City recommends that the deadline to be compliant with the new community benefit regime be the later of 2 years from the date the regulations come into effect or the expiry of the Development Charge By-law.

5. Community Benefits Charge By-law Notice

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 provision under the DCA regarding the passage of a DC by-law:

- 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.
- 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.

- In order to facilitate public awareness of the passage of a community benefits charge by-law, notice would include the following:
 - A statement that the council of the municipality has passed a community benefits charge by-law.
 - 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.
 - A statement setting out the last day for appealing the by-law.
 - An explanation of the charges imposed by the by-law.
 - 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.
 - 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, and
 - The date the notice is mailed, if the notice is sent by mail.

City of Guelph Recommendation/Comments:

The City agrees with this approach; however, we recommend that the legislation allow for more modern, effective and fiscally effective modes of communication including city websites and social media platforms rather than newspapers.

6. Minimum Interest Rate for Community Benefits Charge Refunds Where a By-law has Been Successfully Appealed

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 of 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 DCA.

City of Guelph Recommendation/Comments:

The City agrees with this approach.

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 establish a mechanism for ensuring the payment of community benefits charges prior to the issuance of a building permit.

City of Guelph Recommendations/Comments:

The City recommends aligning the payment timing of DCs with the payment timing of CBCs. Both fees should be due at building permit. This will reduce administrative burden associated with collecting at two different times (building permit for CBC and occupancy permit for DC) and also simplify the process for developers and builders.

The City recommends that all development and redevelopments be required to pay at building permit and not in installments.

Sincerely,



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