

City of Mississauga
Corporate Report



Date: April 16, 2020

To: Mayor and Members of Council

From: Andrew Whittemore, M.U.R.P., Commissioner of
Planning & Building

File names

LA.07.BIL

BILL 108 PROVINCIAL
LEGISLATION

Meeting date:

April 22, 2020

Subject

Bill 108 – Community Benefits Charge Regulations and Implications for Mississauga

Recommendation

1. That the report titled “*Bill 108 - Community Benefits Charge Regulation and Implications for Mississauga*” from the Commissioner of Planning and Building, dated April 16, 2020, be received for information.
2. That Council endorse positions and recommendations contained in this report.
3. That the Mayor or designate be authorized to make submissions to the Standing Committee with respect to issues raised in this report, or to otherwise provide comments in writing as part of the Ministry’s public consultation process.
4. That the City Clerk forwards this report to the Ministry of Municipal Affairs and Housing and the Ministry of Environment, Conservation and Parks; Mississauga’s Members of Provincial Parliament, the Association for Municipalities Ontario, and the Region of Peel.

Report Highlights

- On February 28, 2020, the Province released proposed regulatory changes to the *Development Charges Act*, the *Planning Act* and *Ontario Building Code Act* to implement the Community Benefit Charge (CBC).
- The regulation proposes:
 - Public libraries, recreation facilities, park development (other than acquiring land for parks), long-term care and public health are reinstated in the *Development Charges Act*. The 10% statutory discount for these services has been eliminated which will

- result in an increase to development charges (DC) rates in the next by-law.
- The removal of Section 37 (Bonus Density) from the *Planning Act*.
 - Acquisition of land for parks, parking, growth-related studies, affordable housing, and child care will be funded through the new CBC, which would be capped at 15% of land value (10% for the City of Mississauga and 5% for the Region of Peel).
 - The proposed CBC could halve parkland related contributions from high density developments. While some of this could be recovered if the full 10% cap was applied to all other development types, this would significantly increase charges currently levied on low density residential development and non-residential developments, and result in these sectors contributing the majority of CBC revenues.
 - The building industry is advocating for reductions to the CBC cap for low density residential uses and non-residential uses. If the caps for these sectors are reduced, the high density residential cap would need to be increased or else the City would have to significantly reduce parkland service levels in growing areas or raise taxes.
 - The proposed CBC weakens the link between population growth and the increased need for services. Additionally, the charge will be complicated and expensive to administer, and will result in delays issuing building permits.
 - Staff has forwarded this report to the Environmental Registry of Ontario as the deadline for comments is April 20, 2020. A Council-endorsed version of this report, along with any additional comments from Council, will be forwarded to the Ministry of Municipal Affairs and Housing for their consideration.

Background

In May 2019, the Minister of Municipal Affairs and Housing released *More Homes, More Choice: Ontario's Housing Supply Action Plan*. In support of the Action Plan the Province developed omnibus Bill 108, *More Homes More Choices Act, 2019*. The Bill made changes to 13 Acts, provided new regulations and changed several provincial planning policies. The Bill received Royal Assent on June 6, 2019.

One of the key concepts proposed under Bill 108 was a new authority for municipalities to charge for community benefits based on land value. The new CBC combines three existing revenue streams: certain soft service development charges, parkland dedication and cash-in-lieu, and density bonusing (Section 37 of the *Planning Act*).

On February 28, 2020, the Province released a draft regulation to implement the CBC. It caps charges at 10% of land value for the City of Mississauga and 5% for the Region of Peel. It also

provides information on the key components to develop a Community Benefits Strategy (to implement the CBC) and provides information of timing to transition to the new regime.

The proposed regulation is posted on the Environmental Registry of Ontario for comment. Council is being asked to endorse all comments contained in this Report.

The proposed regulation provides direction in six key areas:

- Sets the CBC Cap at 10% of land value for lower-tier municipalities
- Eliminates the ability to require parkland conveyance if a CBC by-law is in place
- Identifies park development, recreation, and library services as 100% DC eligible
- Eliminates Section 37
- Outlines key components of a CBC Strategy
- Provides CBC notice and transition requirements

Comments

1. The Proposed 10% CBC Cap for All Uses Does Not Reflect the Increased Need for Service Associated With Each Type of Development

Provincial Proposal

The City would need to fund parkland acquisition, parking and development-related studies from the CBC. Regional CBC services include affordable housing, child care and regional growth studies. The charge would be assessed as a percentage of land value which will be determined immediately before a building permit is issued (with new zoning in place). The maximum charge is set at 15% of land value: 10% of that charge will be for the lower-tier and 5% would be for the upper-tier municipality. The financial analysis contained in the report considers the lower-tier 10% cap only.

At present, parkland and related cash-in-lieu contributions are calculated at 5% of appraised land value for low density residential and “other” uses, and 2% of appraised land value for commercial and industrial uses. There is an alternative rate applied to medium and high density developments of \$10,100 per unit, adjusted twice yearly by 3%.

Impact to Mississauga

When the Province set out to create the CBC one of the objectives was maintaining a similar amount of revenue for municipalities to recover for parkland and other soft services. In Mississauga’s case, a CBC cap of 10% applied to all land uses may result in similar collections over a 10-year period (about \$247M - \$287M including Section 37).

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However, the uniform cap will lead to large swings between what sectors contribute to parkland acquisition. Under the current regime, the medium and high density sectors' projected share of revenue/dedication is 74%; under a CBC cap this amount would be reduced to 31% with the low density residential and non-residential sectors contributing 69%, despite having lower servicing requirements.

This large swing is due to the CBC being calculated based on land absorption and non-residential and low density residential developments require more land. However, land absorption is not the only factor that drives the need for new parkland. The number of people residing in a new development has a more significant impact on the need for parkland and other CBC eligible services.

The Provincial guidance suggests it will be up to the municipality to "justify" the CBC rate to be applied to each land use as long as it does not exceed 10% of land value. CBC by-laws can be appealed to LPAT. If the regulation is enacted as is, Council will be faced with a difficult choice of considering much higher fees on low-density residential and non-residential uses in order to maintain planned service levels. Alternatively, Council may choose to adopt lower charges for these uses which will result in less parkland to service new development. The large per unit variations are illustrated in Table 1.

Table 1: Generalized Examples of Parkland Cash-in-lieu (excludes Section 37) vs. Proposed CBC Cap

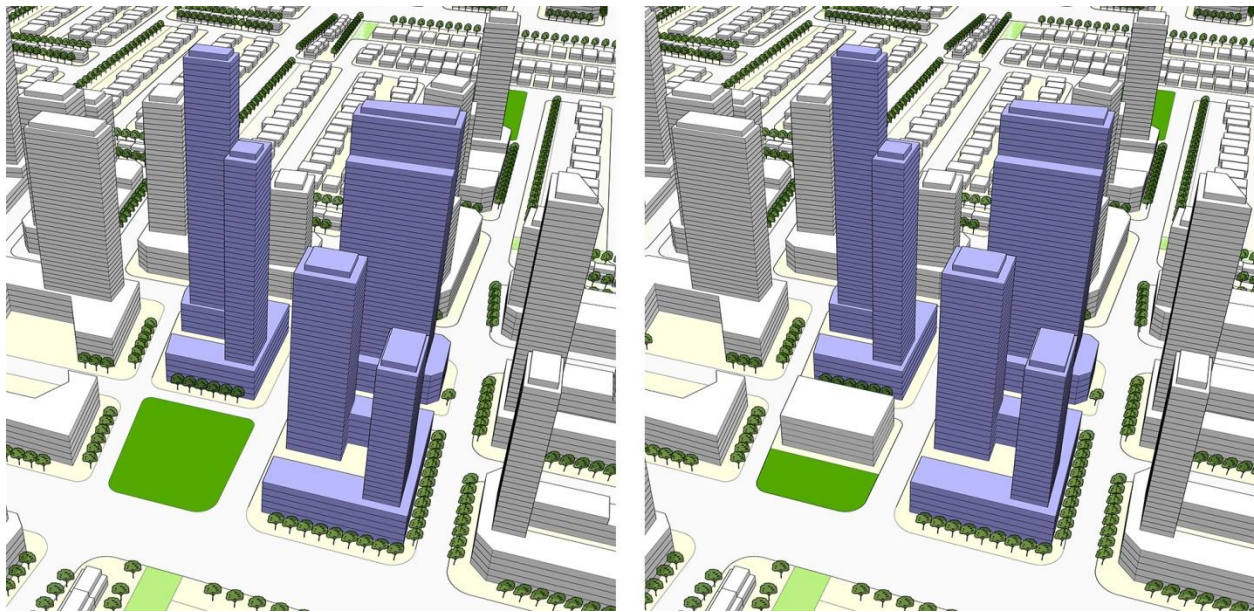
Land-Use	Description	Current Parkland Dedication \$	Current Charge Per Unit	10% CBC Cap	CBC Per Unit (inferred)
High Density Residential	500 Units Downtown Core 1 acre site \$17.5M/acre	\$5M	\$10,100	\$1.75M	\$3,500
Townhouse Development	90 units 2 acre site \$5M/acre	\$909,000	\$10,100	\$1.0M	\$11,100
Single Detached Residential	Lot Value \$750K	\$37,500	\$37,500	\$75,000	\$75,000
Industrial	3 acre site \$2.25M/acre	\$135,000	N/A	\$675,000	NA
Institutional/ Other	1.5 acre site \$4M/acre	\$300,000	N/A	\$600,000	NA

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As shown in Table 1, high density residential, the most common form of new development in Mississauga, would contribute significantly less under a CBC regime – almost 3 times less in the case of a sample downtown development. On a per unit basis, single detached lots could contribute in upwards of 20 times more than a high density unit.

The CBC will have the most significant impact on high density residential communities where charges will drop significantly. However, there is no evidence that reducing the growth related fees for these units will be passed onto the homeowners. Countless studies show developers will price housing at the maximum level the market will support. This fee reduction will likely result in high growth neighbourhoods being less livable with reduced access to parkland and services, but still facing all the same affordability challenges. The shift from per unit charge (current cash-in-lieu of parkland charge) to a land value based charge will likely lead to developers asking for additional density permissions as the marginal inferred CBC charge per unit will become lower with each additional unit added to a development. Approximately 80% of Mississauga's residential growth is high density and this may be particularly evident in the Downtown and Nodes.

Image 1 and 2: Parkland Provided Under Current Regime (left) and Proposed CBC (right)



Images depict 2,000 dwellings (see purple buildings) at 500 units per acre. Estimates are based on land valuations of \$20M per acre, consistent with Mississauga's Downtown Core

The proposed CBC will impact the ability for the City to build complete communities. Under the current regime, the creation of 2,000 dwellings in the Downtown Core would result in the City

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collecting enough cash-in-lieu funding to acquire one acre of parkland.¹ Under the CBC, for the same amount of development the City would collect less than half that amount and these funds will need to support a greater range of infrastructure and services. As shown in Image 2, land that would have been parkland in Image 1 will be subject to development applications and overall development densities will increase.

These impacts will be further compounded, as prior to the Bill 108 announcement, Mississauga was proposing updates to its Parkland Conveyance By-law as the per unit rate of \$10,100 per unit (adjusted twice annually by ~3%) was not reflective of land values in most areas of the city. This was making it difficult to acquire parkland in areas where it was needed most.

Staff Recommendation: The Province Should Establish Different CBC Caps Based on Land Use

Given the large shifts in revenue between land uses illustrated in Table 1, the Province should consider the establishment of separate caps for different land-uses to allow a more equitable distribution of funds collected by different forms of development.

Staff understands that the development industry representing the low density and non-residential sectors has been advocating for caps below the proposed 10% of land value. If the caps for these sectors are reduced, it is essential the Province increase the caps for high density residential uses to maintain similar municipal revenues. This approach would lead to a more equitable *benefits principle* regime than what is currently proposed.

For Mississauga, the following approaches would lead to similar revenue collections and be more equitable:

- The preferred option would involve a 30% cap for high density residential uses, a 10% cap for mid density residential and using the existing rates for low density residential (5%) and non-residential uses (2% non-residential, 5% “other”).
- An alternative option would involve a 20% cap for high and mid density residential and using the existing rates for low density residential and non-residential uses.

Varying rates would be more defensible as these would better align to the population and employment being generated from each land-use type.

Variable CBC caps would require a delineation of the density categories. Mississauga staff suggests building typology is a straightforward method of delineation. Single and semi-detached units are easy to define and could represent the low density category. Apartment buildings over four storeys could represent the high-density category. Other residential units could then occupy

¹ Under the current *Planning Act* municipalities can request 1ha of parkland for every 300 new units (1 acre for every 121 units). In urban settings this was never applied as it would infer 16 acres of parkland being dedicated for a 4 acre 2,000 unit development (Image 1).

the mid density category which would include townhouses, stacked townhouses, back-to-back townhouses, duplexes, triplexes, quadplexes and apartments four storeys or less. Dwelling types are known at building permit issuance (when the CBC is calculated) and would be easier to administer than a unit per land area metric which can be difficult to measure (because of the gross vs. net area take outs). Developments with multiple types of buildings can be pro-rated in the appraisal.

2. Proposed CBC has No Mechanism to Secure Land for Parks

Provincial Proposal

A major concern for staff is that there is no mechanism in the proposed regulation to require parkland dedication, rather than cash. The draft regulation suggests a mutual agreement between the City and the developer would need to be obtained for parkland to be dedicated. Under the present rules municipalities can require parkland conveyance. Under existing rules a blend of both physical parkland dedication and cash-in-lieu is common on larger development sites.

Impact to Mississauga

In practice, developers typically do not want to provide physical parkland unless they have a large site. Tableland is more valuable than cash-in-lieu for both developers and municipalities. Staff could introduce physical parkland requirements into the CBC by-law and the Official Plan but they would be subject to possible appeals.

If the proposed regulation remains as is, City Council would need to determine if it is even worth developing a CBC by-law (at 10% cash for value of land) or if the City is better served under Section 42 of the *Planning Act* (which remains in force) where the City can require a parkland dedication of 5% of the land. This approach would result in less cash-in-lieu being collected (and far less than under the current regime), and limit funding for other infrastructure and/or services collected under the CBC (e.g. parking, animal control etc.) but it would protect the ability for the City to secure physical parkland.

Under the CBC, the City expects there will be frequent disagreements between developers and municipalities about whether physical parkland should be dedicated as part of individual applications. The CBC's move to a cash focused system may also cause lags bringing parkland on stream. The City will have to find landowners willing to sell land and they could demand above market rates at many strategic locations, since they have no obligation to cooperate. Receiving land during the development approval process eliminates the uncertainty over whether a landowner will sell land and the rapid escalation in land costs that commonly occurs between when cash is provided and when the City can find a viable plot of land on the open market.

Staff Recommendation: The Province Should Give Municipalities the Option of Requiring Parkland Conveyances or Receiving Cash

The Province should update the regulation to allow municipalities to decide if they want a parkland dedication, based on the location of the development and park needs in the area. The Province could also consider a hybrid option where the City could opt for the 5% parkland dedication in some local areas, and the CBC in other areas.

3. Loss of Section 37 Will Affect Affordable Housing, Public Art, Cultural Infrastructure and Other Services

Provincial Proposal

Section 37 of the *Planning Act*, which allows for cash or in-kind contributions for added services associated with increased density, is eliminated.

Impact on Mississauga

The removal of Section 37 will have a significant impact on the provision of affordable housing in Mississauga. The City frequently used Section 37 to secure affordable housing, for example as part of the West Village development the City was able to secure an almost one acre site for Regional affordable housing. It will also make it hard to provide local investments in high growth communities, as the CBC is applied city-wide. Staff also has concerns that the Region will have difficulty allocating funds for affordable housing from the 5% Regional CBC cap, since this service is no longer eligible for DC funding.

Mississauga has applied Section 37 density bonusing to fund community benefits through various developments across the City, such as the preservation and adaptive reuse of the historic Small Arms Inspection Building as cultural infrastructure. Section 37 is also noted in the Mississauga's Public Art Master Plan as a key funding mechanism for public art across the City. The elimination of Section 37 has put potential funding for these types of Community Benefits, or "soft services" in limbo.

Staff Recommendation: The Province Ensure Lost Section.37 Revenue is Captured in DCs or CBCs

Staff recommend that all community services outside of parkland acquisition be DC eligible or the CBC cap for high density residential uses be set higher than 10% to capture the increased infrastructure associated with the additional population.

Additionally, staff supports the request by Regional governments to have shelters and affordable housing be a 100% DC eligible service.

4. Expanded List of Eligible Services For DCs will Help Growth Pay for Growth

Provincial Proposal

In earlier proposals the CBC would have financed a much broader range of “soft services.” The new regulation proposes that the city services of public libraries, recreation facilities, park development (other than acquiring land for parks) and the regional services of long-term care and public health remain as DC eligible services with the current 10% statutory discount removed.

Impact to Mississauga

The changes in the legislation would allow for the City to recover approximately \$22.6M in DC revenues for growth related costs for libraries, recreation and parks. Conversely, parking, general government (animal control and provincial offences courts) services and discounted growth related studies will shift \$24.2M over to the CBC by-law for cost recovery.

However, services shifting from the DC regime to a CBC by-law will be competing with other service areas such as the acquisition of parkland for funding (where significant shortfalls have been identified in this report) for a portion of the 10% CBC cap under the new Provincial proposal.

It is noted that previously 40% of cash-in-lieu funds (projects to \$86M - \$102M over 10 years) were allocated to buildings for recreational purposes, and this will now have to be exclusively funded by DC collections. The increase in DCs is not large enough to offset this gap. This means that improvements in recreational facilities in growing areas (such as new bathrooms) may require funding from other sources or project deferrals.

Staff Recommendation: Staff Support Park Development, Library and Recreation Being 100% DC Services

Staff would like the Province to go further and move all community services besides parkland acquisition back into the DC regime.

Staff are also concerned that the Province has provided no direction with regards to DC reserve funds that are in a negative balance for service areas that are transferring to the CBC regime. The Province should provide a mechanism to allow for the full recovery of these balances without applying a CBC cap. The most recent consultation held by the Province in March did not address this issue.

5. Proposed CBC Will be Complicated and Expensive to Administer

Provincial Proposal

The regulation requires a CBC Strategy be developed to underpin the by-law. The Strategy is proposed to have many of the same requirements as a DC Background Study, as well as detailed information on parkland needs. The regulation indicates the CBC is to apply at building permit issuance but there are likely to be many situations where disagreements will occur between City staff and applicants due to limited statutory guidance.

Impact to Mississauga

Much of Mississauga's development is large scale and multi-phased, with applicants routinely coming back to the City to vary/increase their approvals. The current process to collect cash-in-lieu for these projects is straight forward.

A land value based approach will be more complex to administer for these types of urban developments. Staff seeks clarification on how the CBC would be charged on a site that is only being partly redeveloped, redeveloped in phases and/or approvals are being incrementally increased.

Costs and administration to repeat the three stage appraisals process in response to each stage of a development and/or an incremental change will be a significant burden for both municipalities and developers. This will instigate more conflict and friction within the new system, as delays and disagreements around appraisal processes are common. The City will build any additional costs for appraisal processes into its development fees.

The City will also be challenged to determine how existing parkland and demolition credits would translate under the proposed CBC regime. These are all based on unit counts/floor space; given the CBC is based on land value, it is unclear how these would be applied or if they are still valid.

It is proposed that the Building Code be amended to add the CBC authority as applicable law. Administration of CBC and the DC by-law at the time of building permit application and issuance will create an increased demand for staff resources. Staff expect that the complexities of the CBC system, which will be similar in complexity to the DC by-law, will result in delays issuing building permits. Staff and Council will likely face significant pressure from landowners when this occurs.

Additional staff costs required to administer the proposed new system has not been included in any of the financial projections provided in this report. A proposal for additional staff resources

and technology (both software and hardware) is being made to address recent changes to the *Development Charges Act*. Additional requests may be needed to address a new CBC system.

Staff Recommendation: Province Should Provide More Clarity on Administrative Elements

In the absence of further guidance, staff will incorporate appropriate administrative provisions into future CBC by-laws for Council consideration.

6. A Two Year Window to Transition to Proposed CBC Would be More Reasonable

Provincial Proposal

The regulation requires a 30-day notice period for a new CBC by-law. This allows for appeals to the Local Planning and Appeals Tribunal (LPAT). The regulation also has extended the time a municipality has to transition to a CBC by-law from January 1, 2021 to one-year from the time the CBC legislation is enabled.

Impact to Mississauga

There are significant studies, by-law changes and business process changes that will be required to support the implementation of the CBC. For example, the City will need to develop its first Park's Plan and incorporate these policies into its Official Plan, which will be difficult to do in less than a year based on mandated processes. There are also over 200 municipalities in Ontario and a very limited number of consultants that will be able to support municipalities with the development of a CBC Strategy/by-law.

Under the transition provisions for Section 37, any zoning by-law passed which provides for Section 37 bonus density benefits prior to the required transition to the CBC regime will continue to be subject to the Section 37 and *Development Charges Act* as they read today.

Staff Recommendation: A Two Year Transition is More Reasonable

Given the significant background and administrative work required and the limited number of consultants in Ontario to assist, Staff recommends a two year transition be considered.

Financial Impact

The proposed regulation will impact the City financially in three ways:

- Change in services permitted to be recovered by DCs
- Removal of Section 37 revenue
- Shift from current parkland dedication and cash in-lieu regime to CBCs

As the regulation is currently drafted, the three noted changes could lead to similar overall revenue collections. However, the new CBC revenue would be subject to a much higher degree of risk. This is because the City would need to rely on much higher charges for low density residential and non-residential development to offset lower revenues for high density residential development – which represents the majority of new growth in Mississauga.

Proposed Changes to DCs Result in Shifts Between Services with Minor Overall Impact

As a result of the proposed regulation, the City may expect to recover an additional \$23M in DCs over ten years for Library, Recreation and Park development with the elimination of the 10% DC discount. However, \$24M in forecasted DC recoveries for General Government Development Related Studies and Parking would no longer be DC eligible. The overall net impact is relatively small at a loss of \$1M over ten years.

An amendment to the 2019 DC by-law will be required to capture the additional 10% for the three services. Any amendment to the existing DC by-law could be subject to an appeal to LPAT by external stakeholders.

Impact of Removing Section 37 from the *Planning Act* is \$30M over ten years

The City's Section 37 revenue tends to vary from year to year. These community benefits are determined on a case by case basis in consultation with the area Councillor. In the absence of the proposed regulation, staff assumed Section 37 recoveries would have been \$3M per year or \$30M over a ten year period based on average collections from the last several years.

Shifts in Parkland Revenue and Overall Impact of Proposed CBC

Parkland dedication and related cash-in-lieu revenue is the largest variable. Parkland acquisition revenue based on the City's current rates would be in the order of \$215M - \$256M over ten years for all land uses (see Table 2). Adding in Section 37 and the new DC rules discussed above brings the total to approximately \$247M - \$287M over ten years. This is the amount the CBC would need to generate for the City to be made whole based on 2020 rates.

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An estimate of the potential revenue generated from a 10% CBC applied to all land uses is \$205 - \$354M over ten years. A range was used due to the variability of land costs and development densities across the City. As shown in Table 2, just under \$200M in revenue would come from high and mid density development under current rules; this would drop to \$76M - \$110M applying a 10% CBC cap.

Table 2: 10 Year Forecast of Revenue Based on Current Collections and Possible CBC Rates

Development Type*	Revenue for Current Approach	Revenue at 10% Proposed CBC Cap	Revenue at 30% CBC Cap	City of Mississauga Proposal	
High-Density Residential Parkland Contribution	\$143M	\$48M - \$68M	\$143M - \$204M	30% Cap	\$143M - \$204M
Rows, Towns, Stacked, Back-to-Back Parkland Contribution	\$24M	\$28M - \$42M	\$85M - \$127M	10% Cap	\$28M - \$42M
Section 37 (estimated value)	\$30M	n/a	n/a		n/a
DC Service Shifts (net loss)	\$1M	n/a	n/a		n/a
Sub-total Mid-to-High density	\$199M	\$76M - \$110M	\$228M - \$331M		\$171M - \$246M
Singles & Semis Parkland Contribution	\$33M - \$54M	\$66M - \$109M	n/a	Current 5%	\$33M - \$54M
Non-Residential Parkland Contribution	\$15M - \$34M	\$63M - \$134M	n/a	Current 2% Non-Residential, 5% Other	\$15M - \$34M
Sub-total Low-density, Non-Residential	\$48M - \$88M	\$129M - \$243M			\$48M - \$88M
TOTAL	\$247M - \$287M	\$205M - \$354M			\$219M - \$334M

Based on 10 Year Historical Average of Residential Units Absorbed

Staff are suggesting to the Province that much more equitable model for a municipality with all types of development like Mississauga would involve a 30% cap for high-density residential uses, 10% cap for mid-density residential, and existing rates for low density residential (5%) and non-residential uses (2% industrial & commercial, 5% "other"). If this approach was followed, the City would collect approximately \$219M - \$334M over ten years, which is similar to existing collections. Staff's proposal would not lead to the pronounced swings in rates for each land use, unlike the uniform 10% land value cap proposed in the regulation.

The key inputs of this model - projected growth, density of development and land values - have all been generalized and all inputs could be subject to both macro and micro market shifts. In particular, if the current Covid 19 public health emergency leads to a recession, this could impact the amount of development coming online, land values and the need for additional services.

Conclusion

The proposed CBC regime is expected to result in high density development contributing far less funding than is required to obtain adequate parkland to service their associated population. Staff question that any of the savings obtained by high density developers will be passed on to future home owners, potentially making Mississauga's communities less livable but with the same affordability challenges.

To be revenue neutral under the CBC, the City would need to at least double many of its existing parkland fees, which would lead to equity issues, developer opposition, and disincentives for non-residential development. The loss of Section 37 and lower parkland fees (CBC) for high density development will likely encourage developers to apply for even higher densities than the City is already experiencing. Ultimately, the proposed CBC will leave Council needing to make difficult decisions on whether it should increase current charges on other land uses, increase property taxes, and reduce service levels or lower development densities.

The Province needs to ensure municipalities can require parkland be dedicated rather than negotiated. No matter what percentage is enacted, the CBC will be complex and costly to administer. There will likely be more disagreements and delays in the building permit process especially in the short term.

Andrew Whittemore, M.U.R.P., Commissioner of Planning & Building

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