



**City of Kingston
Information Report to Council
Report Number 20-112**

To: Mayor and Members of Council
From: Paige Agnew, Commissioner, Community Services
Resource Staff: Same as above
Date of Meeting: April 21, 2020
Subject: Municipal response to the Community Benefits Authority under the *Planning Act*, the *Development Charges Act* and the *Building Code Act*

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

In May 2019, the Minister of Municipal Affairs and Housing introduced the *More Homes, More Choice Act, 2019* (Bill 108) which received Royal Assent on June 6, 2019. Schedule 12 of the Act, once proclaimed, establishes a new authority under the *Planning Act* for municipalities to charge for Community Benefits with respect to land to be developed or redeveloped.

On November 6, 2019, amendments to the community benefits charge provisions under the *Planning Act* were introduced. The Bill received Royal Assent on December 10, 2019. The amendments 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.

This report is intended to outline the regulatory proposal the government is recommending on components of a new Community Benefits charge authority and the City's response to the proposal. City staff continue to be actively engaged with the consultation on various components of Bill 108. Staff have participated in the previous consultation opportunities related to Bill 108 through Council Report Numbers [19-156](#), [19-226](#), and [19-251](#).

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City staff have prepared these comments and have provided a submission to the Ministry of Municipal Affairs and Housing on the proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act ([Environmental Registry of Ontario Number 019-1406](#)).

Recommendation:

This report is for information only.

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Authorizing Signatures:

**Paige Agnew, Commissioner,
Community Services**

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Acting Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

On May 2019, the Honourable Steve Clark Minister of Municipal Affairs and Housing released *More Homes, More Choice: Ontario's Housing Supply Action Plan*. As part of this plan, the Minister introduced Bill 108 – the *More Homes, More Choice Act, 2019* which received Royal Assent on June 6, 2019. Schedule 12 of the Act, once proclaimed, establishes a new authority under the *Planning Act* for municipalities to charge for community benefits with respect to land to be developed or redeveloped. Community benefits charges (CBC's) are intended to fund municipal infrastructure for community services, like land for parks, affordable housing and child care facilities needed to support new development.

On November 6, 2019, amendments to the CBC 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 in Schedule 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 (LPAT). The CBC authority has not yet been proclaimed and is not in effect at this time.

The provincial government has been seeking feedback on the components of a new CBC authority. The initial regulatory proposal was posted on the Environmental Registry of Ontario (ERO) on June 21, 2019 ("Proposed new regulation pertaining to the Community Benefits authority under the *Planning Act*", ERO 019-0183). The second regulatory proposal posted on the ERO outlines additional considerations to inform the further development of the CBC authority and regulation under the *Planning Act*. The changes made by the *More Homes, More Choice Act, 2019* will mean that municipalities will now have two primary funding streams to pay for the increased need for services due to new development.

Development charges (DCs) are still a mechanism to help pay for the capital costs of infrastructure like roads and sewers associated with new development. In a positive shift from when Bill 108 was initially introduced, the government is now proposing that DCs 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.

The new CBC is intended to complement DCs by giving municipalities the flexibility to fund growth-related capital infrastructure costs of other community services. Funds generated through CBCs could be used to support land acquisition for parks, supporting affordable housing or building child care facilities needed due to growth.

A municipality could choose to collect DCs 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

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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 CBC by-law in place it cannot apply the basic parkland dedication provisions of the *Planning Act*. To implement the new CBC authority, the province has been seeking public feedback on the following regulatory matters under the *Planning Act*, the *Development Charges Act* and the *Building Code Act*:

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

1. Required content of a Community Benefits charge strategy

Before passing a CBC by-law, a municipality must prepare a CBC strategy. The strategy must identify the items that a municipality intends to fund through CBCs. It must also comply with any requirements that may be prescribed in regulation regarding the mandatory content that a strategy should address. In preparing a community benefits charge strategy, a municipality must consult, but has the flexibility to determine their consultation approach.

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

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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

The *Development Charges Act* (DC 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. Eligible services funded through development charges are listed under subsection 2(4) of the DC Act. The list includes a provision for other services that may be prescribed in regulation. The *Planning Act* stipulates that services funded by development charges may not be funded by community benefits charges.

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When proclaimed, the *More Homes, More Choices Act, 2019* will make waste diversion and ambulance services fully recoverable through development charges by removing the mandatory 10% deduction for these services. The government is proposing to prescribe additional services to be funded under the *Development Charges Act*, through regulation.

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 CBC

The Community Benefits charge authority established through the *More Homes, More Choice Act, 2019*, includes a mechanism to determine the maximum Community Benefits charge payable for any particular development. The Community Benefits charge payable cannot exceed the amount determined by applying a prescribed percentage to the value of the land under development. The ministry is seeking feedback on the proposed prescribed percentages through this posting.

Proposal

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

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- 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

The date by which municipalities must transition to the CBC authority, if they wish to collect funds for Community Benefits, would be prescribed in regulation under the *Development*

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Charges Act, 1997. The prescribed date would be the deadline for establishing a Community Benefits charge strategy and by-law in order to charge for the capital costs of services funded through CBCs. The CBC by-law would set out the charge payable in any particular instance, any municipal exemptions, and other details.

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

The *Plan to Build Ontario Together Act*, 2019 amended the *Planning Act* to establish a mechanism by which a municipality's Community Benefits charge by-law could be appealed to the Local Planning Appeal Tribunal. A municipality would be required to provide notice to the public when it passes a Community Benefits charge by-law. To implement the by-law appeal mechanism, requirements associated with how to provide public notice would be prescribed in regulation.

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:

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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

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.

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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

The Building Code is a regulation under the *Building Code Act, 1992*. The Building Code sets out minimum administrative and technical requirements for the construction, renovation, demolition and change of use of buildings. It also establishes a list of applicable law that must be satisfied in order to receive a building permit. Municipalities enforce the Building Code and are responsible for issuing building permits for the construction, renovation, demolition or change of use of buildings.

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.

Next Steps

Comments on the proposed regulatory matters pertaining to Community Benefits authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* were submitted to the Province prior to the April 20, 2020 commenting deadline. Staff will continue to monitor the Bill 108 regulations and implementation, and provide further updates to Council as new information becomes available.

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Existing Policy/By-Law:

Provincial

Planning Act

Development Charges Act

Municipal

City of Kingston Official Plan

By-Law Number 2014-135, A By-Law To Establish Development Charges For The City Of Kingston

By-Law Number 2009-138, A By-Law To Impose Water Rates And Sewer Rates To Recover The Capital Cost Of Installing Water And Sanitary Sewer Services Necessary To Benefit Users Of The System

By-Law Number 2013-107, A By-Law To Provide For The Conveyance Of Land For Park Purposes, Or Cash-In-Lieu Of Parkland Conveyance

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

It is expected that there will be financial implications as a result of the changes to the *Development Charges Act* and the creation of a Community Benefit Charge strategy however, further analysis is dependent on additional details to be received from the province.

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Other City of Kingston Staff Consulted:

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Exhibits Attached:

None