

February 28, 2020

To Our Development Charge Clients:

Re: Draft Regulations for the Development Charges Act and Planning Act
(Community Benefits Charge Related)

On behalf of our many municipal clients, we are continuing to provide the most up to date information on the proposed changes to the *Development Charges Act* (D.C.A.) as proposed by Bill 108. As of this morning, the Province released updated draft regulation related to the D.C.A. and the community benefits charge (C.B.C.). This regulation is posted on the Environmental Registry of Ontario for public comment which is open until March 30, 2020. Comments may be made at the following website:

- Community Benefits Charge Regulation – <https://ero.ontario.ca/notice/019-1406>

As we have noted in prior mailings, our firm is a member of the Provincial Technical Working Committee and provides advice on the methodological approach for the development of a proposed formula to be used in the C.B.C. calculation. As we understand, the Province will continue to receive input from this Committee over the coming weeks.

This letter provides a high-level overview of the regulation proposed for the D.C.A. and the *Planning Act* (as it relates to the C.B.C.). This draft regulation is included in the attached Appendix. Our firm will subsequently provide to you an evaluation of the draft regulation as well as our formal response to the Province.

Proposed Changes to the Development Charges Act

- The prior draft regulations allowed for the following services to remain within the D.C. :
 - Water
 - Wastewater
 - Storm Water
 - Roads
 - Fire
 - Policing
 - Ambulance
 - Waste Diversion
- The new draft regulation will also allow the following services to continue with the D.C.:
 - Parks Development (not including land)
 - Recreation



- Public Libraries
 - Long-term Care
 - Public Health
- The mandatory 10% deduction is removed for all services that remain eligible in the D.C.
- Timing regarding payment of D.C.s remains unchanged (i.e. six installments for rental housing and institutional developments, 21 installments for non-profit housing)
- Requirement to freeze D.C. amounts for site plan or zoning applications remains unchanged

Proposed Changes to the Planning Act re: Community Benefits Charges

- The community benefits charge will include formerly eligible D.C. services that are not included in the above listing, parkland dedication and bonus zoning contributions
- The C.B.C. will be imposed as a percentage based on the market value of the land the day before building permit issuance. The maximum percentages for the C.B.C. are as follows:
 - Single Tier municipalities: 15%
 - Lower Tier municipalities: 10%
 - Upper Tier municipalities: 5%
- A C.B.C. strategy must be prepared to support the percentage to be imposed. Elements of the strategy include:
 - The C.B.C. strategy will have to set out the amount, type and location of growth (similar to D.C.)
 - There will need to be a parks plan included. This plan will need to identify the amount of parkland needed for growth
 - The strategy will need to identify the amount of parkland per person currently being provided in the municipality
 - The strategy will need to identify the anticipated increase in need for the service (similar to D.C.)
 - There will need to be deductions for excess capacity (similar to D.C.)
 - The strategy will need to consider benefit to existing development (similar to D.C.)
 - Grants, subsidies & other contributions will need to be deducted (similar to D.C.)
- Transitional timelines have been modified (i.e. January 1, 2021 is no longer the deadline). The deadline will be one year after the C.B.C. authority is in effect
- C.B.C. Appeal Mechanism – Public notice of C.B.C. by-law passage will be required (same as rules for D.C. by-law passage notice)
- Interest Rate for C.B.C. refunds upon successful LPAT appeal will be the Bank of Canada rate on the date the by-law comes into force or quarterly (same as D.C.)



- Building Code Act will be amended to include section to ensure C.B.C. payment must take place prior to building permit issuance.

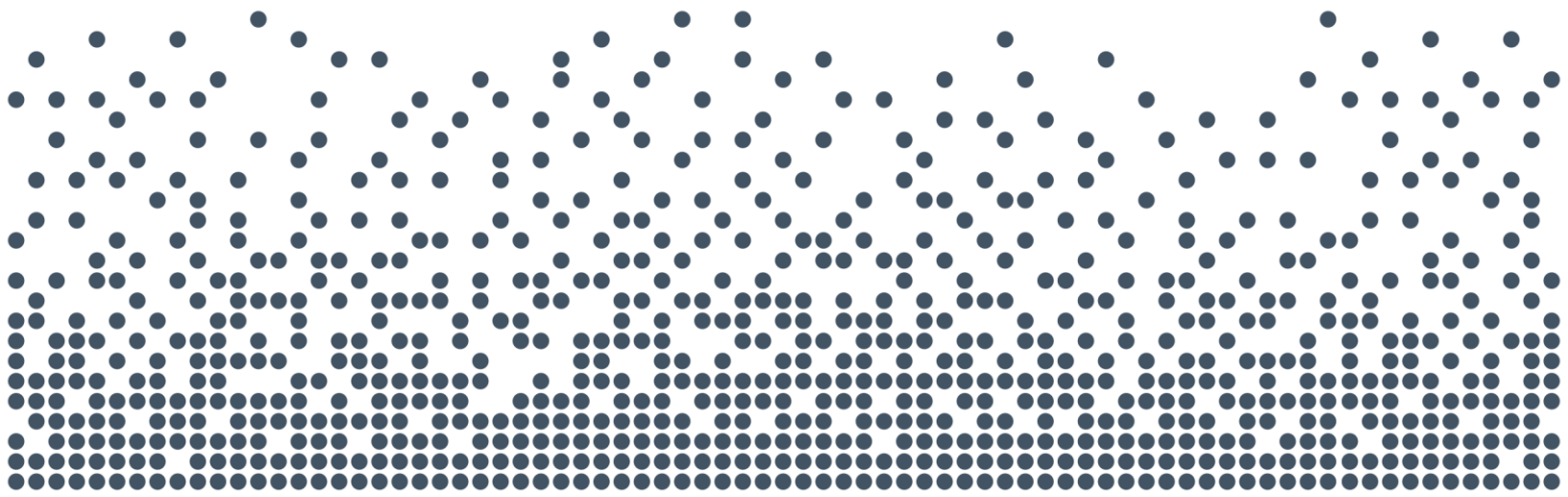
We trust that this high-level summary is informative. As noted earlier, our firm will subsequently provide to you an evaluation of the draft regulations in more detail, as well as provide you with our formal response to the Province. In the interim, if you have any questions regarding the draft legislation, we would be pleased to discuss them with you further.

Yours very truly,

WATSON & ASSOCIATES ECONOMISTS LTD.

Gary D. Scandlan, BA, PLE
Director

Andrew Grunda, MBA, CPA, CMA
Principal



Appendix A

Draft Regulation

Proposed Regulatory Matters Pertaining to Community Benefits Authority Under the Planning Act, the Development Charges Act, and the Building Code Act

ERO (Environmental Registry of Ontario) number	019-1406
Notice type	Regulation
Act	Planning Act, R.S.O. 1990
Posted by	Ministry of Municipal Affairs and Housing
Notice stage	Proposal
Proposal posted	February 28, 2020
Comment period	February 28, 2020 - March 30, 2020 (31 days) Open
Last updated	February 28, 2020

This consultation closes at 11:59 p.m. on:

March 30, 2020

Proposal summary

Proposed Regulatory Matters Pertaining to Community Benefits Authority Under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act*

Proposal details

I. INTRODUCTION

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 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. Community benefits charges are intended to fund municipal infrastructure for community services, such as land for parks, affordable housing and child care facilities, that are needed to support new residents and businesses associated with new development.

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 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.

The community benefits charge authority has not been proclaimed and is not in effect at this time.

This is the second regulatory proposal that the government has posted for public feedback on the proposed components of a new community benefits charge authority. The initial regulatory proposal was posted on the Environmental Registry of Ontario on June 21, 2019 ("Proposed new regulation pertaining to the community benefits authority under the Planning Act", ERO 019-0183).

This proposal outlines additional matters for public input to inform the further development of the community benefits charge authority and regulation under the Planning Act.

II. PROPOSAL FOR PUBLIC COMMENT

This proposal outlines several matters related to the community benefits charge authority under the Planning Act.

The changes made by the More Homes, More Choice Act, 2019 will mean that municipalities will have two primary funding streams to pay for the increased need for services due to new development.

Development charges are a mechanism for municipalities to pay for the capital costs of infrastructure like roads and sewers associated with new development. The government is also seeking feedback in this proposal on changes to the types of services that could be funded through development charges. It is

proposed that development charges 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 (see Section #2).

The new community benefits charge would complement development charges by giving municipalities the flexibility to fund growth-related capital infrastructure costs of other community services. For example, funds generated through community benefits charges could be used to support community priorities such as acquiring land for parks, supporting affordable housing or building child care facilities which will be needed due to growth.

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 new community benefits charge authority, the province is seeking 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 community benefits charge by-law, a municipality must prepare a community benefits charge strategy. The strategy must identify the items that a municipality intends to fund through community benefits charges. 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 community benefits charge 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); and,

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.

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) of the Development Charges 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.

When proclaimed, the More Homes, More Choices Act, 2019 will make waste diversion and ambulance services fully recoverable through development charges.

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; and,
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.

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

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:

- 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.

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

The date by which municipalities must transition to the community benefits charge authority, if they wish to collect funds for community benefits, would be prescribed in regulation under the Development 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 community benefits charges.

The community benefits charge 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 community benefits charges regime would be one year after the date the proposed community benefits charge regulation comes into effect.

This transition period would allow municipalities to prepare community benefits charge strategies and pass by-laws if they choose to implement a community benefits charge regime.

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:

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, and
- The date the notice is mailed, if the notice is sent by mail.

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.

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.

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.

III. PUBLIC COMMENT

Your feedback on the implementation of the community benefits charge authority will inform government decisions on the development of a new community benefits charge regulation under the Planning Act and amendments to regulations under the Development Charges Act and Building Code Act.

Submissions may be made online or provided via email to the contact below.

Supporting materials

Related links

Planning Act (<https://www.ontario.ca/laws/statute/90p13>)

Development Charges Act, 1997
(<https://www.ontario.ca/laws/statute/97d27>)

Building Code Act, 1992 (<https://www.ontario.ca/laws/statute/92b23>)

Related ERO (Environmental Registry of Ontario) notices


Proposed new regulation pertaining to the community benefits authority under the Planning Act (</notice/019-0183>)

View materials in person

Some supporting materials may not be available online. If this is the case, you can request to view the materials in person.

Get in touch with the office listed below to find out if materials are available.

Municipal Finance Policy Branch
College Park 13th flr, 777 Bay St
Toronto, ON
M7A 2J3
Canada

 [416-585-6111](tel:416-585-6111)

Comment

Let us know what you think of our proposal.

Have questions? Get in touch with the contact person below. Please include the ERO (Environmental Registry of Ontario) number for this notice in your email or letter to the contact.

[Read our commenting and privacy policies.](/page/commenting-privacy) (</page/commenting-privacy>)

Submit by mail


John Ballantine

Municipal Finance Policy Branch
College Park 13th flr, 777 Bay St
Toronto, ON
M7A 2J3
Canada

Connect with
us

Contact

John Ballantine

 [416-585-6348](tel:416-585-6348)

 john.ballantine@ontario.ca