



**SUBJECT: City of Burlington comments regarding ERO 019-1406
(Bill 108)**

TO: Mayor and Members of Council

FROM: Corporate Communications and Government Relations

Report Number: CC-03-20

Wards Affected: All

File Numbers: 155-03-01

Date to Committee: n/a

Date to Council: April 20, 2020

Recommendation:

Receive the comments and feedback contained in Appendix A of corporate communications and government relations report CC-03-20 and forward to the Province of Ontario, Minister of Municipal Affairs and Housing, as the City of Burlington's response to the consultation on the Proposed Regulatory Matters Pertaining to Community Benefits Authority under the Planning Act, the Development Charges Act, and the Building Code Act, ERO 019-1406.

PURPOSE:

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth
- Support sustainable infrastructure and a resilient environment
- Building more citizen engagement, community health and culture

Background and Discussion:

On June 6, 2019 the *More Homes, More Choice Act, 2019* received Royal Assent. 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 and redeveloped. Community benefits charges would help municipalities fund municipal infrastructure such as land for parks, affordable housing and child care facilities.

The Fall Economic Forecast (Nov. 2019) introduced several amendments to the community benefits charge provision, including 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 City submitted comments in June 2019 to the proposed Bill 108 and in August 2019 regarding the initial proposed regulations pertaining to the Community Benefits Authority as well as proposed changes to the Development Charges Act.

On September 3, 2019 all changes to the Planning Act, except for those related to the Community Benefits Charge authority came into force. Parts of schedule 3 of Bill 108 were proclaimed on January 1, 2020 relating to the Development Charges Act. The changes impacted development charge rates and timing and collection of development charges for certain types of development (Report F-09-20).

On Feb. 28, 2020 the Ministry of Municipal Affairs and Housing posted a regulatory proposal for public comments to ERO 019-1406, Proposed Regulatory Matters Pertaining to Community Benefits Authority under the Planning Act, the Development Charges Act, and the Building Code. Municipalities across the province were invited to participate in a technical briefing, via teleconference, on the afternoon of February 28, 2020. Comments were originally due on March 31, but the Province extended the deadline to April 20, 2020.

As it pertains to the Development Charges Act, this new posting includes changes to the regulations that were posted in June 2019. The new draft regulation will allow for "soft" services to continue under the Development Charges Act funding framework. The services include: public libraries (including library resources), long-term care, park development (not parkland acquisition), recreation facilities (including arenas and community centres) and public health. Another important change is that the growth-related capital costs for these services would now be eligible for 100 per cent development charge funding; mandatory 10 per cent discount is removed. Both changes are considered positive.

Bill 108 provides municipalities with option of acquiring land needed to build new parks using one of the following tools under the Planning Act:

1. Applying a basic parkland dedication rate in which a maximum of either 5 per cent (for a residential development) or 2 per cent (for a commercial or industrial) of a proposed development is dedicated as parkland or cash-in-lieu.

2. Alternatively, a municipality can establish a community benefits charge by-law to collect funds to acquire land for parks as well as other community benefits (see Appendix A, proposed change 3 for a further listing of benefits). If both a municipality and developer agree, a developer could provide land for parks, rather than a payment.

If a municipality has a community benefits charge by-law in place it can no longer apply the basic parkland dedication provisions of the Planning Act.

Furthermore, Section 37 of the Planning Act allowing Council to permit an increase to the height and density of a development in return for the provisions of facilities, services, or other amenities that benefit the surrounding community will no longer be available upon proclamation of Schedule 12 to the *More Homes, More Choice Act*. The existing s. 37 of the Planning Act will be repealed and the new s. 37 (community benefits charges) will be in force.

If a municipality implements a community benefits charge by-law the amount of community benefits charges a municipality can collect on any development cannot exceed a prescribed percentage of the land value determined on the day before a building permit issued. The proposed percentages are:

- Single-Tier Municipalities 15%
- Lower-Tier Municipalities 10%
- Upper-Tier Municipalities 5%

For the City of Burlington, the proposed percentage would be 10 per cent. It is unclear how the community benefits charge cap was determined and what financial analysis supported it. There are varying land values across the Province, as well as within the City of Burlington. The form of development has a significant impact on the percentage of land value calculation. At this time, it is too soon to quantify the impact of the 10 per cent cap as there are a number of variables that will take time to analyze, including a parks study and assessment of future development. Having one cap across the province and for all types of development (high vs low density, residential vs non-residential) is not reasonable. Staff are of the opinion that the Province will need to undertake further consultation with municipalities in order to determine the feasibility of a singular cap or multiple caps that will allow for municipalities (both single and two-tier) to meet the service needs under the community benefits charge authority. Appendix A of this report includes details of the staff review, interpretations and impacts of the 10 per cent cap.

Financial Matters:

At this time based on the information provided by the Province staff are unable to comment on the full financial impact of the proposed regulatory matters as a number of details remain unspecified. Further, an extensive amount of work is required to determine the reasonability of the maximum percentage of land value cap (10 per cent for Burlington) on a potential community benefits charge, and how that may impact the City's ability to meet growth needs. Additional consultation with municipalities will be required to determine the feasibility of a single cap to allow for municipalities to meet growth related parkland needs.

Analysis

The chart below provides a sample of nine (9) properties in Burlington, to demonstrate the range of variability between the maximum community benefits charge compared to the existing per unit charge for park dedication, based on site density and property location. All site locations are situated in the Burlington's downtown two (2) are constructed and the remaining sites are in various stages of the planning process. The approximate density per ha derived from each site range from 256 to 1766 (6-27 stories).

	Property A	Property B	Property C	Property D	Property E	Property F	Property G	Property H	Property I	Total
C.B.C. Cap @10%	\$ 0.600	\$ 1.280	\$ 0.320	\$ 0.535	\$ 0.850	\$ 0.529	\$ 0.366	\$ 0.600	\$ 0.212	\$ 5.292
\$5,500 per unit cap	\$ 0.935	\$ 1.249	\$ 0.215	\$ 1.320	\$ 1.705	\$ 0.902	\$ 0.352	\$ 1.007	\$ 0.633	\$ 8.316

(Millions)

With the community benefits charge maximum of 10 per cent applied to these select properties the City can expect to achieve a maximum of \$5.3 million. This falls short of the \$8.3 million we would receive under the previous \$5,500 per unit park dedication cap - resulting in an overall revenue loss to the City of approximately \$3 million. The previous per unit park dedication cap considers density as the driver behind the City's revenue requirements for parkland and as such is more aligned with servicing anticipated growth resulting from the increased density.

It is important to note that the comparison only includes park dedication versus the community benefits charge and does not consider existing Section 37 height and density provisions that are currently imposed by the City. These Section 37 agreements would no longer be allowable with the new regulation, further impacting the revenue neutrality. The lack of clear definitions of capital costs and eligible services in the community benefits charge raise doubt in the City's ability to collect for public benefits in the same manner it has in the past.

Staff is of the opinion, as detailed in the attached appendix, that the objective of revenue neutrality for municipalities will not be achieved, and as such growth will not pay for growth.

Total Financial Impact

Bill 108 introduces significant changes which are anticipated to impact the City's ability to ensure that "growth pays for growth" to the maximum extent possible. The changes that have already been proclaimed and those that are open to comment will increase administrative costs and financial risk. Proposed regulatory matters pertaining to the community benefits authority may further impact the revenue neutrality of Bill 108.

Climate Implications

Not applicable.

Engagement Matters:

The City, the Region and the local area municipalities have discussed the ERO 019-1406, Proposed Regulatory Matters Pertaining to Community Benefits Authority under the Planning Act, the Development Charges Act, and the Building Code. The City is also a member of the MFOA working group. Staff participate in weekly roundtable discussions with other participating municipalities and regions throughout Ontario to and share comments and discuss the impacts of Bills 108 and 138.

Conclusion:

The comment period for ERO No. 019-1406 expires on April 20, 2020. Staff are recommending that this report and related appendices be endorsed by Council and submitted to the Province, as the City of Burlington's comments on the proposed regulations related to Bill 108.

Respectfully submitted,

Reena Bajwa

Coordinator of Financial Strategies and Business Consulting

905-335-7600, ext. 7896, and

Helen Walihura

Government Relations Manager

905-335-7600, ext. 7895

Appendices:

A. ERO 019-1406 City of Burlington Comments

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council. Final approval is by the City Manager.