



**SUBJECT: Bill 197, Covid-19 Economic Recovery Act, 2020**

**TO: Corporate Services, Strategy, Risk & Accountability Cttee.**

**FROM: Finance Department**

Report Number: F-47-20

Wards Affected: All

File Numbers: 460-01

Date to Committee: November 12, 2020

Date to Council: November 23, 2020

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**Recommendation:**

Receive and file finance department report F-47-20 regarding Bill 197, Covid-19 Economic Recovery Act, 2020.

**PURPOSE:**

The purpose of this report is to provide Council with a summary of the amendments to the *Development Charges Act* (DCA), and *Planning Act* as a result of Bill 197, the Covid-19 Economic Recovery Act, 2020 (Bill 197).

**Vision to Focus Alignment:**

- Increase economic prosperity and community responsive city growth

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**Background and Discussion:**

In 2019, the Ministry of Municipal Affairs and Housing introduced Bill 108, *More Homes, More Choice Act*, 2019 (Bill 108), followed by Bill 138, *Plan to Build Ontario Together Act*, 2019 both having significant implications for municipalities through changes to both the *Development Charges Act*, 1997 (DCA) and *Planning Act* among others. Staff reported on those changes through report F-09-20, and noted the following changes to the DCA enacted on January 1, 2020;

- **Timing of development charge collection:** For rental housing and institutional developments, development charges (DC) will be payable in six (6) equal annual

installments. DCs for non-profit housing development will be payable in 21 equal annual installments, each commencing on the earlier of the date an occupancy permit is granted or first occupancy of the building.

- **Freezing of Development Charge Rate:** The development charge rate is determined at the latter date of an application for zoning amendment or site plan application. The development charge rate is frozen for two years following application approval. If the two years has elapsed between application approval and building permit issuance, then the development charge rate is determined at time of building permit issuance.
- **Interest on Development Charges:** The City can charge interest to cover costs associated with the deferral of DCs (installment payments) and the rate freeze. The City will apply the **prime lending rate** of the City's financial institution for any application after January 1, 2020.

### **Strategy/process**

On July 8, 2020, the Province introduced Bill 197 and, the legislation and associated regulations were proclaimed on September 18, 2020. Bill 197 reverses some of the amendments to the DCA, and *Planning Act* introduced through Bill 108 and provides positive changes for municipalities, bringing forward a framework to fund community services.

The following summarizes the changes enacted as it pertains to the *DCA* and *Planning Act*.

### **Development Charges Act (Schedule 3, Bill 197)**

- 1) Exemption for creation of additional dwelling units in prescribed classes of proposed new residential buildings, subject to prescribed restrictions. The purpose of the exemption was to increase rental housing supply in the province. Any development charge exemption results in the city's tax base covering this cost.
- 2) Expansion of the list of services: The following services were added to the DCA in which development charges may be imposed to pay for increased capital costs;
  - Library (reinstated, no impact)
  - Parks & Recreation (reinstated, no impact)
  - Long-term care (regional)
  - Public health (regional)
  - Child care, and early years programs (regional)
  - Housing services (regional)

- Service related to Provincial Offenses Act, including by-law enforcement services and municipally administered court services
- Emergency preparedness

The reinstatement of certain services and the additional services allows a more expansive list of services in which growth-related capital costs may be recovered.

- 3) Removal of soft services deduction: The 10% deduction for capital costs related to soft services is no longer applicable. This deduction is currently applied to park development, recreation, libraries and general studies. In the City's 2019 background study this amounted to \$950,142 over the 10-year forecast period to be funded from the tax base. This changes the extent to which growth pays for growth as growth driven projects in these service areas can now be funded 100% from development charges.
- 4) Bill 197 adds flexibility to the current ability to create categories of "classes" of services for the purpose of tracking and managing reserve funds related to those services. Previously, categories were permitted but could not include both hard services and soft services. Under Bill 197, any combination of services or parts of services will be permitted.

### **Parkland Dedication, Planning Act (Schedule 17, Bill 197)**

Bill 197 proclaimed positive changes to the collection of park dedication funds, and maintains the current principles of section 42 which establishes conveyance of land for park and other recreation purposes as follows:

- Not exceeding 2% of the land area in the case of commercial or industrial development
- Not exceeding 5% of land in the case of all other types of development
- For residential purposes, the Act permits municipalities to utilize an alternative rate of conveyance for parkland based on a maximum rate of 1 hectare for every 300 dwelling units, subject to enabling policies within the approved local Official Plan

Bill 197 restores the ability to use the alternative rate subject to additional procedural requirements including public consultation and a right of appeal to LPAT of by-laws under section 42 of the Planning Act relating to any proposed use of the alternative rate. Details of the consultation process are at the discretion of the municipality. If LPAT requires amendments to the parkland dedication by-law as a result of an appeal, these amendments would be retroactive to the date of passing of the by-law. Compensation for excess parkland or refunds of excess cash-in-lieu of parkland would be required and subject to the Bank of Canada interest rate.

The City's current parkland dedication by-law (57-2005) includes alternative rates and will need to be updated no later than two years from proclamation date of Bill 197 (September 18, 2020). The City is currently working towards developing scope and assessing next steps to complete a parks and recreational assessment study in light of changes to the legislation. The study will be an integral component to determine parkland requirements in the future and substantiate alternative parkland rates.

Lastly, previously under Bill 108, a municipality had to choose between parkland or using the community benefit charge authority under the revised section 37. This is no longer applicable, and a municipality can apply both parkland dedication provisions and community benefits charges in respect of the same development, provided they do not cover the same capital costs. This is a positive change and allows the parkland dedication and community benefits charge to work in concert to recover growth related capital costs.

### **Community Benefits Charges, (Schedule 17, Bill 197)**

Under Bill 197, Community Benefit Charges (CBC) will continue to replace Section 37 bonusing provisions in the Planning Act. Previously Bill 108 would have allowed for collection of CBC funds for capital associated with growth including services that were no longer DC eligible, parkland acquisition costs, and public benefits previously achieved under section 37. However, under the Bill 197 framework greater flexibility is provided to municipalities to use the funding mechanisms and better enable growth to pay for growth.

Bill 197 carries forward previous provisions requiring the preparation of a community benefits strategy prior to passing a community benefits by-law. The community benefits strategy identifies the capital costs to be funded from community benefits charges and complies with prescribed requirements as per the Planning Act, and other associated regulations. The community benefits by-law;

- Is completed in consultation with persons and public bodies as the municipality considers appropriate
- Is subject to appeal to the LPAT

The community benefit charge is available only to lower-tier and single-tier municipalities and applicable only to high density residential developments as follows;

- 1) Community benefits charges may **not** be imposed with respect to the following;
  - a. (Re)/development of a proposed building or structure with **fewer** than five (5) storeys at or above ground; **and**
  - b. (Re)/Development of a proposed building or structure with **fewer** than 10 residential units

- c. Development or redevelopment of long-term care homes, retirement homes, hospices, buildings intended for use by the Royal Canadian Legion, and not-for-profit housing
- 2) The maximum community benefits charge payable for applicable developments is prescribed at 4% of land value. Bill 197 outlines dispute mechanisms and timelines when it is alleged that the CBC exceeds the prescribed maximum (4%).

### **Relationship**

Bill 197 establishes a framework in which the above three funding mechanisms work together to assist with the principle that growth pays for growth. The Planning Act does not prevent a CBC from being imposed with respect to land for parks or recreation purposes, or with respect to the services eligible under the DCA, as long as, the capital costs to be funded by the CBC are not funded by development charges. Furthermore, parkland dedication requirements and CBC can also be applicable to the same development.

### **Transition**

Bill 197 provides a transition period for two years from the date of proclamation (September 18, 2020) for each of the funding mechanisms discussed above. As such, the City will require updated development charge, alternative parkland dedication and community benefits charge by-laws prior to September 18, 2022.

### **Financial Matters:**

The city has the following three funding mechanisms to recover growth related capital costs.

- Development Charges
- Community Benefits Charge; residential high-density developments only.
- Conveyance of parkland or cash-in-lieu of parkland

To illustrate at a high level the changes that we can expect to see on a residential high-density development as a result of Bill 197, and Bill 108 we will use the following example that was brought forward in 2019 with the introduction of Bill 108.

**Property:** 472 Brock Street (14 storeys, 115 residential units, ground floor commercial)

- Site Plan Application: January 2011
- Building Permit Issued: March 2013

The impact resulting from this property due to Bill 197 changes is an overall financial loss of (\$421,056) as per the table and further described below.

<b>Funding Mechanisms</b>	<b>March 2013, Receipts</b>	<b>Bill 197 Changes</b>	<b>Change</b>
Development Charges (City)	\$409,054	\$403,189	(\$5,856)
Parkland dedication	\$616,000	\$616,000	\$0
Section 37 (Public Benefits)	\$500,000	\$84,800	(\$415,200)
Section 37 (Public Benefits) in-kind contributions	25% of units at affordable levels, and building constructed to LEED standards	\$0	not quantifiable

**Development Charges Impact:** The application would be subject to the following changes;

- Freezing of Development Charge Rate with interest
- Removal of 10% soft service discount

As described earlier in the report the development would have the ability to freeze the rate applicable in 2011 at the time of site plan application. This would yield a DC payable in the amount of \$384,742. Including interest, the total DC payable is \$403,189. (interest is charged until a building permit is issued in this case March 2013).

It is more difficult to quantify the impact of the removal of the soft service discount, however the 10% deduction accounts for less than 2% of the total DC recoverable cost so the impact would not be significant.

**Parkland Dedication Impact:** Based on the changes there would be no impact to the park dedication paid, based on the city's current by-law. The park dedication payable of \$616,000 would still be applicable with the new legislation.

**Section 37 Impact:** The application would be subject to the following change;

- 4% Community Benefit Charge

The provision now allows a maximum community benefits charge of 4% of land value. This development is applicable for community benefits as it meets both required conditions for a high-density residential development. Based on an assigned (2013) land value of \$2.12 million, the City could receive up to a maximum of \$84,800 under this funding mechanism. Furthermore, the City would no longer be receiving any value through in-kind benefits through the revised section 37 provisions.

### **Total Financial Impact**

The above example illustrates that the development charges and parkland dedication requirements stay relatively intact with no material change occurring as a result of the legislation. However, it is important to note that the above is just one example and it is possible for the financial impact resulting from the change in legislation to have either a positive or negative impact on revenues especially as it relates to development charges.

A negative financial impact on total development charges collected will occur in the following scenarios;

- In an increasing interest rate environment, where the city's cost of borrowing increases, however the interest rate set on development charges is fixed.
- When the city indexes development charge rates every year on April 1<sup>st</sup> if the indexing is higher than the fixed interest rate set on the development charges freeze period
- Every five years the city undertakes a development charge background study where new rates are established. If the new rates increase by more than the set fixed rate for developments where the rate is frozen.

In terms of community benefits charge, this area represents a more significant change to the City. The purpose of the CBC is to provide consistency and transparency of costs to developers as it pertains to high density development. Much like the DC, the CBC is prescriptive and will not be subject to negotiated agreements under current section 37. Based on the example above the greatest financial impact will be experienced through the replaced section 37 provisions.

### **Other Resource Impacts**

Staff will be reporting back in early 2021, with the required process, timelines, resources and estimated cost to update the three by-laws in order to meet the provincial transition timelines. The City will be undertaking the following;

- complete a development charges background study to incorporate the required legislative changes as well as update the capital need requirements based on the anticipated completion of associated business and master plans (transit, integrated mobility, cycling etc.).
- Update the City's parkland dedication by-law (57-2005); requiring the completion of a parks and recreation needs assessment study to determine future parkland requirements
- Develop a Community Benefits Strategy

Based on the relationship established between the three funding mechanisms and how integrated they are in their ability to recover growth related capital costs, it is important that the by-laws are updated and approved concurrently.

## **Climate Implications**

Not applicable.

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## **Engagement Matters:**

Over the course of Bill 108 and Bill 138, the province indicated they held several technical consultations with municipal and non-municipal working groups in response to the multiple Environmental Registry of Ontario (ERO) postings related to proposed regulatory matters pertaining to Community Benefits Authority and Park Dedication under the Planning Act, and the Development Charges Act. Throughout the process the City of Burlington submitted comments to the proposed legislation. The outcome has been some positive changes for municipalities that resulted in maintaining previous municipal revenues to enable the principle of growth pays for growth and support of complete communities.

The City is also a member of the MFOA working group and throughout this process participated in many roundtable discussions on the Provinces' proposals.

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## **Conclusion:**

Overall the changes resulting from Bill 197 are positive and reflect the feedback that was provided through the ERO consultation process. The restoration of the development charges and parkland dedication provisions will allow greater recovery of costs related to development. As staff work through development of the Community Benefits Strategy, it will further clarify the true impact to the city as staff determines how the city's strategy fits within the prescribed maximum percentage allowed.

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Respectfully submitted,

Reena Bajwa

Coordinator of Financial Strategies and Business Consulting

## **Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.