

The Regional Municipality of York

Committee of the Whole
Finance and Administration
March 12, 2020

Report of the Commissioner of Finance

Community Benefits Charges – Proposed Regulatory Framework

1. Recommendations

The Regional Clerk circulate this report to the local municipalities, the Building Industry and Land Development Association – York Chapter (BILD) and the Ministry of Municipal Affairs and Housing (MMAH).

2. Summary

On February 28, 2020, the Province released additional regulatory guidance to underpin the new community benefits charges framework, as well as further guidance for development charge-eligible services. This report summarizes staff comments on the proposed regulatory guidance.

Key Points:

- Staff support the provincial regulatory proposals, which are positive and largely reflect previous submissions and recommendations
- The proposed changes may impact the local municipalities differently than the Region
- The Region will continue to work with the Province in the development of the regulatory framework underpinning Bill 108, *More Homes, More Choice Act, 2019* (“Bill 108”)

3. Background

Bill 108 introduced changes to how municipalities fund growth-related community infrastructure

Bill 108, the cornerstone of the Provincial Housing Supply Action Plan, was tabled on May 2, 2019 and received Royal Assent in early June. One change the Bill introduced was the new community benefits charge regime under the new section 37 of the *Planning Act*. This new tool is to be used to fund community infrastructure such as acquiring land for parks, affordable housing and building child care facilities.

Under the new funding regime, municipalities have flexibility in determining the methodology for the charge. However, to provide cost certainty to stakeholders, the community benefits charge will be capped at a prescribed percentage of the land value on the day before the date of the building permit issuance for a development (also known as the “valuation date”).

In terms of the process for passing a community benefits charges bylaw, the legislation is somewhat less prescriptive than the *Development Charges Act, 1997*. For example, municipalities are only required to give notice after the passing of a community benefits charge bylaw. While municipalities are required to consult on their Community Benefits Charges Strategy, it is at their discretion to determine the level of consultation.

Finally, changes to the *Planning Act*, through Bill 138, *Plan to Build Ontario Together Act, 2019* (“Bill 138”), has provided developers with a right to appeal a community benefits charges bylaw to the Local Planning Appeal Tribunal (LPAT) .

During the summer of 2019, the Province released proposed regulations for the changes to the *Development Charges Act, 1997* and the new community benefit charge regime

On June 21, 2019, the Province released the proposed regulatory framework supporting changes to the Act (Environmental Registry of Ontario posting # 019-0184) and the community benefits charge regime under the *Planning Act* (Environmental Registry of Ontario posting #019-0183). Staff submitted [comments](#) under both postings, both of which were later approved by Council.

While these postings addressed a number of areas, further clarification was requested from the Province regarding the proposed community benefits charges regime, including:

- Whether the transition deadline of January 1, 2021 could be extended
- The prescribed percentage cap on the community benefits charge payable
- Services eligible for the charge
- Treatment of the cap in a two-tier jurisdiction
- Contents of the Community Benefits Charge Strategy and the requirements of the associated consultation

On February 28, 2020 the Province released further regulatory guidance for the community benefits charges regime and the *Development Charges Act, 1997*

On February 28, 2020, the Ministry of Municipal Affairs and Housing released [Environmental Registry of Ontario posting number 019-1406](#), entitled, “Proposed Regulatory Matters Pertaining to Community Benefits Authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act*”. The Province has provided stakeholders with a 31 day commenting period for the proposals, ending on March 30, 2020.

Key areas covered in this posting include:

- Transition matters related to the community benefits charges regime
- Eligible services under the *Development Charges Act, 1997*
- Prescribed percentage cap for the community benefits charge and treatment of the charge in a two-tier jurisdiction
- Contents of the Community Benefits Charges Strategy
- Other administrative matters (e.g., guidance on the of notice of passage of a community benefits charges bylaw)

4. Analysis

Staff support the proposed regulations as they are reflective of previous consultation and recommendations

The regulatory framework on the community benefits charges proposes additional guidance that largely reflects previous staff position and/or recommendations made through the previous commenting periods. Previous staff recommendations included:

- Extending the transition period from the previous proposal of January 1, 2021
- Reviewing the list of services eligible for development charge funding
- Clarifying that, in a two-tier jurisdiction, the community benefits charges for each tier are capped and levied independently to one another
- Clarifying that municipalities can determine the consultation required for the Community Benefits Charges Strategy

Table 1 summarizes the key changes being proposed.

Table 1
Summary of Key Proposed Changes/Guidance

Area	Bill 108 or Previous Regulatory Framework	Changes/Guidance Being Proposed
Transition	January 1, 2021	Extended to, at minimum, second quarter of 2021*
Eligible services under the <i>Development Charges Act, 1997</i>	Public health and senior services (long term care) ineligible for development charges recovery	Public health and senior services (long term care) eligible for development charges recovery Neither would be subject to a 10% statutory deduction** and 10 year planning horizon

Area	Bill 108 or Previous Regulatory Framework	Changes/Guidance Being Proposed
Prescribed cap as a % of land value	No guidance provided	Caps applied separately based on municipal structure: <ul style="list-style-type: none"> • Upper-tier municipalities: 5%*** • Lower-tier municipalities: 10% • Single-tier municipalities: 15%
Requirements of the Community Benefits Charge Strategy and of consultation	No guidance provided	<ul style="list-style-type: none"> • Requirement for the Strategy are similar to those for a background study under the <i>Development Charges Act, 1997</i> • Consultation determined by the municipality
Administrative changes	No guidance provided	<ul style="list-style-type: none"> • Guidance related to notice of passage of a community benefits charges bylaw and refunds upon successful appeal of a bylaw • Change to <i>Building Code</i> requiring payment prior to building permit issuance

*Note: Based on the indication 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 force (after the commenting deadline closes on March 30, 2020)

**Note: Other services that were made development charge eligible, but which the Region does not currently provide are public libraries, parks development (e.g., playgrounds, equipment and other park amenities) and recreation (e.g., community centres and arenas)

***Note: Based on the proposed regulatory framework it would appear that, in a two-tier jurisdiction, the community benefits charges for each tier would be capped and levied independently to one another

Since the tabling of Bill 108, the Province and the municipal sector have engaged in meaningful consultations

Since the tabling of Bill 108 staff have submitted comments and made recommendations to the Province through the Environmental Registry of Ontario during all consultation periods. The Region has also actively worked with its Provincial counterparts through the provincially established 'Bill 108 Technical Working Group'. Finally, Regional staff have also engaged in bi-monthly consultations with Provincial staff (beginning in May 2019) as well as consultation with Ministry staff.

As a result of these engagements, the Province has taken positive steps to address concerns from municipalities. These include:

- Removing commercial and industrial development as eligible for phased development charge payments through Bill 138;

- Not prescribing a cap on interest charges for frozen and phased development charges;
- Moving paramedic/ambulance services back to the list of development charge-eligible services (through the Standing Committee process); and
- Clarifying that the exemption for additional units comprising less than 1% of existing units applies to rental only.

Pending further regulatory change, staff work on a Community Benefits Charges Strategy and Bylaw is expected to proceed in 2020

The commenting period for this regulatory proposal expires on March 30, 2020. Assuming the Province finalizes and enacts the regulation as proposed, and fully proclaims Bill 108 in a timely fashion, staff expect to begin work on a new Community Benefits Charge Strategy and Bylaw in the second quarter of 2020.

If possible, and in recognition of feedback from the Building Industry and Land Development Association – York Chapter (BILD), staff will endeavour to align these timelines with the Region’s [2020 Development Charge Bylaw amendment](#).

Providing an update on the proposed regulatory framework aligns with Vision 2051

Providing an update on the Province’s proposed regulatory framework relating to community benefits charges, as well as staff efforts at consultation and engagement, aligns with the Vision 2051 Goal Area of ‘Open and Responsive Government’, including:

- Open government
- Service delivery through collaboration and partnerships
- Operational excellence

5. Financial

The Province proposed a prescribed percentage cap of 5% of land value on the Regional community benefits charges

The Province has proposed that the cap on the Region’s community benefits charge be set at 5% of the value of the land on the day before the day of building permit issuance for the proposed development. As a result of the proposed changes, the only Regional services that remain under the community benefits charge framework will be court services and social housing. Currently these services account for approximately \$270 or 0.43% of the development charge rate for a single-family detached dwelling unit, and approximately 3 cents per square feet or 0.05% of the current retail development charge rate.

With the proposed 5% cap, the Region is likely to achieve revenue neutrality for those services recovered through this charge. There may be rare site-specific instances where the entirety of the Region’s community benefits charge is not collected as a result of the 5% cap.

Removing the 10% statutory deduction from waste diversion, paramedics and public health could increase the development charge-recoverable share

While, yet to be proclaimed, Bill 108 and the proposed regulatory framework would remove the 10% statutory discount for all services eligible for development charge recovery. This change would improve the growth-related cost recovery of waste diversion, paramedics/ambulance services, public health, and long-term care/senior service. Based on the 2017 Development Charge Background Study, just over \$7 million in growth-related projects were ineligible for development charge recovery as a result of the 10% statutory deduction being applied to these services.

6. Local Impact

The proposed community benefit charges framework will likely impact local municipalities more significantly

Under the proposed regulatory framework, community benefits charges are proposed to replace density bonusing (section 37 contributions), parkland dedication (if the basic parkland dedication provisions of the *Planning Act* are not used) and other development charge-ineligible services such as those for child-care facilities. Public libraries, parks development (e.g., playgrounds, equipment and other park amenities), and recreation (e.g., community centres and arenas) have moved back to the development charges framework.

The proposed cap on the charge for local municipalities is 10% of land value. This may prove to be restrictive and may not provide for revenue neutrality. This cap may have a direct impact on how local municipalities continue to grow and how they are to fund vital infrastructure required to accommodate that growth. Staff will continue to work with the local municipalities as the transition to this new regime occurs.

7. Conclusion

Staff support the proposed regulatory framework underpinning the community benefits charges regime

In [June of 2019](#) staff indicated a hope to work with the Province in order to develop a regulatory framework that struck an equitable balance between the needs of development industry and the concerns of municipalities. The largely positive proposals in the regulatory framework reflect that equitable balance.

Staff will continue to work with the Province as these regulations are finalized and will report back to Council should any subsequent proposals be deemed necessary.

For more information on this report, please contact Edward Hankins, Director, Treasury Office and Deputy Treasurer at 1-877-464-9675 ext. 71644. Accessible formats or communication supports are available upon request.

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