Attachment 2

PROPOSED REGULATORY FRAMEWORK

Schedules 3 and 12 of Bill 108

ERO #019-0183
ERO #019-0184

York Region

August 21, 2019

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RE: York Region staff comments on proposed regulatory changes to Ontario Regulation 82/98 under the *Development Charges Act, 1997* related to Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* and proposed new regulation pertaining to the community benefits authority under the *Planning Act, 1990*

Please accept this letter and attachment as York Region staff's submission on the proposed regulatory changes to Ontario Regulation 82/98 under the *Development Charges Act, 1997* related to Schedule 3 of *Bill 108, More Homes, More Choice Act, 2019* (ERO #019-0184), and the proposed new regulation pertaining to the community benefits authority under the *Planning Act, 1990* (ERO #019-0183).

Due to the timing and length of the consultation period, it was not possible to bring this submission to York Region Council for endorsement. Should Council have any additional comments, staff will forward them to the Province. Detailed York Region staff comments can be found in the attachment.

Regional staff support Provincial efforts to increase housing supply, and recommend that the regulatory framework to achieve this be developed based on five key principles

York Region staff supports the positive changes within Bill 108, *More Homes, More Choice Act, 2019* ("Bill 108") and the regulatory framework that are premised upon increasing housing supply. In fact, York Region has a healthy housing supply to accommodate growth with a five-year supply of registered and draft approved housing units and 20-23 year supply of designated land.

In working with our Provincial partners to develop and refine the regulatory framework, staff recommends five key principles:

1. Allotting municipalities sufficient time to effectively transition to the new framework
2. Ensuring municipalities can deliver complete communities in a fiscally sustainable way
3. Ensuring municipalities have a clear legislative foundation for implementing the changes
4. Ensuring all stakeholders involved in delivering housing supply, including residents, businesses, municipalities and developers, are treated fairly and equitably
5. Recognizing municipalities are at different stages of growth and development, with different infrastructure requirements

Regional staff are supportive of the Province consulting with municipalities but would recommend the consultation period be extended

York Region staff appreciate the opportunity to provide comments on the proposed regulatory framework. Additional consultation time would be beneficial.

The 61-day commenting period for both postings took place during York Regional Council's summer recess. The legislative changes through Bill 108 and proposed regulatory framework are significant and complex. Any process that seeks to fundamentally change the way growth-related infrastructure is funded should be informed by a municipality's elected Council. Staff request that the Province consider extending the commenting period for ERO #019-0184 and ERO #019-0183 until a date that permits all municipalities to report back to their Councils.

York Region staff support some of the changes in the proposed regulatory framework, including a commitment to revenue neutrality under the community benefits charges regime

York Region staff have reviewed the regulatory framework and are supportive of a number of the proposals. These proposals reflect the aforementioned key principles.

As they relate to the *Development Charges Act,* Regional staff support the following regulatory proposals:

- Two year ‘sunset period’ between site plan or zoning bylaw amendment approval and building permit issuance for those developments that have locked in rates at site plan or zoning bylaw amendment application
- No maximum interest rate being prescribed
- Only one second suite in, or ancillary to, new buildings being eligible for a development charge exemption
- Secondary suite exemption for additional units in, or ancillary to, existing buildings being subject to the same rules/restrictions currently in place

York Region staff are also supportive of a number of proposals that relate to the new community benefits charge regime:

- In determining the percentage for the cap on community benefits charge, one of the goals will be revenue neutrality
- Additional consultation will occur in developing the prescribed percentage to cap the community benefits charge
- Reporting requirements are similar to those that under the *Development Charges Act*

Municipalities would benefit from a longer transition timeframe

The proposed regulatory framework indicates the new community benefits charges regime will be in place on January 1, 2021; however it is silent on when the changes to *the Development Charges Act* will take effect. Municipalities require more time to transition effectively to this new funding regime.

Bill 108 and the proposed regulatory framework fundamentally change the way municipalities pay for growth-related infrastructure. The changes require municipalities to put in place a new administrative apparatus (e.g., tracking applications for those that have frozen their development charge rates, development of the Community Benefits Strategy). These administrative changes would likely be made as part of a municipality’s development charge update process, a process that takes at least 18 months.

In order for municipalities to better transition, staff strongly recommend the Province extend the transition period for both the changes to the *Development Charges Act* and the community benefits charges regime, until the date that is two years after the date Bill 108 received Royal Assent.

The regulatory framework related to the amended *Development Charges Act, 1997* should be revisited and further refined

While York Region staff support elements of the proposed regulatory framework pertaining to development charges, there remain a number of questions and concerns. First, Regional staff are concerned that there is no ‘sunset period’ between application and approval as was done between approval and building permit. While allowing developers to lock in rates helps address the goal of providing cost certainty, it also decouples the infrastructure costs to service growth and the rate charged. This could result in significant revenue shortfalls and debt risks to municipalities. A “sunset period” helps to achieve a fairer allocation of risks between municipalities and developers. York Region staff firmly believe that a further ‘sunset period’ between application submission and approval could help incentivize the timely delivery of housing supply, and prevent frivolous applications, submitted solely to lock in development charge rates.

York Region staff are concerned with the inability to ensure and secure payment for those types of development that qualify for phased and delayed development charges under section 26.1. To maintain service levels, potential lost revenues would need to be recovered from the tax base and future development where possible.

In addition, the defined types of development eligible for phasing of development charge payments appear to be too broad, such as the definitions of office and institutional development. Still others may be unworkable, such as the definition of shopping centre and the reference to subsection 12(3) in Ontario Regulation 282/98 under the *Assessment Act, 1990*.

Municipalities play an important role in helping to grow the economy and create jobs. York Region is one of Canada’s fastest growing municipalities, both in terms of employment and number of businesses. From 2013 to 2018, York Region saw annual employment growth of 2.6 per cent, far above the GTA average of 1.6 per cent. While the phasing of development charge payments helps reduce costs for developer, it also creates a significant cash flow challenge and debt pressure for municipalities. Narrowing the types of development eligible for phasing of charges can help to target assistance to the types of development that need it most, while also limiting municipal financial risks.

York Region staff recommend the regulatory framework pertaining to the amended *Development Charges Act,* be revisited and refined and the Province consult further with municipalities during this process.

The community benefits charge framework requires additional regulatory guidance in order for it to be implemented effectively

The proposed community benefits charge framework, replaces a number of development charge soft services, parkland dedication and density bonusing. There are still many issues that were either insufficiently addressed in the regulatory framework or not addressed at all. Regional staff are concerned this funding mechanism, important as it is, is still unclear. Some areas York Region staff have identified as requiring refinement and/or clarification include:

- Use of 'historically collected' revenues to determine revenue neutrality
- Types of development exempt from the community benefits charge
- Services ineligible for community benefits charge funding
- Treatment of the charge in a two-tier jurisdiction
- Requirements of the Community Benefits Charge Strategy and consultation

Community benefits charges are to be a vital tool for municipalities to fund the necessary infrastructure to support inclusive, vibrant and complete communities. Regional staff believe that this regulatory framework must provide municipalities and stakeholders with necessary clarity they need, which the current framework does not.

The many questions and concerns staff have identified need to be addressed in a thorough and holistic fashion. Failure to do so would be detrimental for all stakeholders. Staff urge the Province to consult with municipalities in addressing the concerns raised herein and release a subsequent regulatory framework for further comment.

York Region staff welcome additional consultation and collaboration with our Provincial partners. For questions regarding the above and attached comments, please contact me at Laura.Mirabella@york.ca or Paul Freeman Paul.Freeman@york.ca.

Yours truly,

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The Regional Municipality of York

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Chief Planner
The Regional Municipality of York

Attachments (1)

Attachment 1

York Region Staff Comments on proposed regulatory changes to Ontario Regulatory 82/98 under the *Development Charges Act, 1997* related to Schedule 3 of Bill 108, *More Homes, More Choice Act, 2019* and proposed new regulation pertaining to the community benefits authority under the *Planning Act, 1990*

General Comments

York Region is one of the fastest growing municipalities in Ontario, and is anticipated to be home to 1.79 million people by 2041

The Growth Plan mandates York Region grow by 716,000 people and 358,000 jobs from 2011 to 2041. This is the highest level of growth anticipated in the GTHA for any upper or single-tier municipality. Meeting the needs of growth requires significant capital investment. York Region's capital budget is more heavily focused on growth-related investments, with approximately 57 per cent of York Region's 2019 ten-year capital plan being growth related.

Significant capital infrastructure is required to support growth in York Region

York Region is making significant infrastructure investments to support growth. In February of this year, York Region Council approved a 10-year $6.6 billion capital plan, of which $3.76 billion is for growth-related infrastructure. This includes $705 million on road widening and approximately $1.4 billion in water and wastewater projects over the 2019 to 2028 period. These investments are substantially funded through development charges.

York Region has taken on significant debt to fund growth-related infrastructure to be paid back through development charge collections

Most growth-related Regional infrastructure is paid for and built many years before benefiting development arrives. This means that debt is a necessary financing tool.

Over 90 per cent of York Region's outstanding debt will be serviced and repaid through development charges. This debt has enabled construction of infrastructure needed to support growth. The Region invested approximately $1.85 billion in water and wastewater infrastructure from 2012 to 2016. This large investment increased debt by 27 per cent during this period. In addition, the higher debt level is a result of the pace of growth in York Region being slower than anticipated in recent years, resulting in fewer development charge collections to pay for capital projects directly. Because development charges are a volatile source of revenue the Region is taking on significant financial risks when building and financing growth-related infrastructure.

Prior to 2014, York Region's peak outstanding debt was on a trajectory to be over $5.0 billion by 2020. However, as a result of measures adopted by Regional Council over the last five budget cycles, total outstanding debt peaked at $2.9 billion in 2017 and is now falling. Changes under Bill 108, and its regulatory framework could adversely impact this trend.

Bill 108 constrains ability to pay for vital growth-related infrastructure

York Region staff reiterates that the proposed changes to the growth funding mechanism through Bill 108, and its proposed regulatory framework, could place a significant financial risk and administrative burden on the Region[1]. Bill 108, and proposed regulatory framework, will create a structural disconnect between growth-related costs incurred by the Region and revenues received. Specific Regional staff concerns are:

- As a result of phased and delayed payments under section 26.1, approximately $300 million in reduced development charge collections is expected over the next five years (2019 to 2023)
- Credit rating agencies have warned that an increase in the Region's debt burden could lead to a rating downgrade, which would result in a higher cost of finance
- Significant challenges to fund the Region share of the Yonge Subway Extension, a priority rapid transit project of Region-wide importance.

[1] Note: Upon the tabling of Bill 108, the Province provided municipalities with an opportunity to provide comments on Schedules 3 and 12 as they respectively relates to the *Development Charges Act, 1997* and the *Planning Act, 1990* (community benefits charges). These comments were endorsed by Regional Council on June 27, 2019 in a report entitled, "Bill 108, More Homes, More Choice Act, 2019: Implications for the Development Charges Act and the Planning Act".

York Region staff recommend the province consider a number of key principles when developing the regulatory framework

In refining the regulatory framework to accompany changes to the *Development Charges Act* as well as the community benefits charge regime, staff recommend five guiding principles be used by the Province:

1. Allotting municipalities sufficient time to effectively transition to the new framework
2. Ensuring municipalities can deliver complete communities in a fiscally sustainable way
3. Ensuring municipalities have a clear legislative foundation for implementing the changes
4. Ensuring all stakeholders involved in delivering housing supply, including residents, businesses, municipalities and developers, are treated fairly and equitably
5. Recognizing municipalities are at different stages of growth and development, with different infrastructure requirements

Below is additional analysis of the proposed regulatory framework:

- Transition provisions
- Development charges framework
- Community benefit charges framework

Transition

Municipalities should be given until their next development charge bylaw update to transition to the new framework

York Region is a fast growing municipality. In 2018, a total of 7,902 new residential building permits were issued in York Region, representing a 30.7 per cent increase from the 2017 permit total of 6,048. York Region accounted for 16 per cent of the GTHA's residential building permit activity, second to the City of Toronto's 47 per cent share and equal to Peel Region. Across Canada, York Region continues to be a major contributor of new residential development, ranking 8th for building permits issued. On the non-residential side, total Industrial, Commercial and institutional (ICI) construction in 2018 had a combined construction value of $987 million, a decrease from the 2017 value of $1.44 billion. However this is on par with the strong ten year average of $985 million[2].

With growth like this, York Region, like many of its neighboring municipalities, will be severely challenged to have the necessary processes established in time to deal with this new regime; such as the ability to track applications and subsequent amendments to ensure the correct rates are being levied (new section 26.2).

During the initial commenting period on Bill 108, York Region staff recommended the transition period for all parts of Schedule 3 and those parts of Schedule 12 that relate to community benefits charges be on the date a municipality's next development charge bylaw comes into force.

The regulatory framework is silent on transition for most of the changes under the *Development Charges Act*. However, the proposed regulatory framework does provide municipalities until January 1, 2021 to transition to the community benefits charges regime. If 'freezing' of development charges and delayed and phased payments are permitted at a time prior to a municipality's new development charge bylaw being in place, municipalities could suffer financially. In York Region, the typical development charge bylaw update takes 18 months to two years to complete. In addition, there continue to be many uncertainties relating to changes under Bill 108.

[2] Source: York Region, Growth And Development Review, 2018.

In order to address these concerns, York Region staff recommend the following:

- The Province provide that the transition period for all parts of Schedule 3 and Schedule 12 (as it related to community benefits charges) to the *More Homes, More Choice Act, 2019* be on the date that is two years after the date Bill 108 received Royal Assent

Development Charges

In order to ensure municipalities are able to deliver complete communities in a fiscally sustainable way the proposed regulatory framework governing the ability to freeze, or lock in, rates should be revised

During consultation on Bill 108 staff recommended two 'sunset periods' be provided for those developments that can freeze, or lock in, their rates at either site plan or zoning bylaw amendment application (it is also unclear what constitutes an application for the purposes of this section);

1. Application to approval – 3 year 'sunset period'
2. Approval to building permit – 2 year 'sunset period'

The proposed regulatory framework does provide a two year 'sunset period' between approval and building permit issuance and staff are supportive of this. However, the regulatory framework does not address the time between application and approval. An additional 'sunset period' between application and approval would help prevent the filing of frivolous applications that are submitted solely to freeze, or lock in, rates. Preventing frivolous applications helps ensure municipalities continue to deliver services in a fiscally sustainable way. Additionally, a 'sunset period' between application and approval helps reduce the extent to which future development would pay for growth-related costs not recovered as a result of frozen rates.

Not all municipalities are at the same stage of growth, such as a high growth municipality like York Region, who is heavily reliant on development charge funding to build the infrastructure to accommodate growth. Any delay in payment could impact York Region's ability to deliver those services.

In addition, subsection 26.2(1) of Bill 108 notes:

> The total amount of a development charge is the amount of the development charge that would be determined under the by-law on,

(a) the day an application for an approval of development in a site plan control area under subsection 41 (4) of the Planning Act or subsection 114 (5) of the *City of Toronto Act, 2006* was made in respect of the development that is the subject of the development charge;

(b) if clause (a) does not apply, the day an application for an amendment to a by-law passed under section 34 of the Planning Act was made in respect of the development that is the subject of the development charge

It remains unclear what is meant by, 'total amount of the development charge'; this could imply that the total amount that is owed is being frozen, it could also imply that the rate that is charged is what is being frozen. Further clarification could resolve unnecessary confusion.

Finally, the proposed regulations do not prescribe a maximum interest rate that may be charged between applications (when development charge rates may be frozen) and when development charges are ordinarily payable (including section 26.1 for developments that can phase in and delay their development charge payments). Staff support the minister not prescribing a maximum rate. However, it remains unclear what is meant by subsections 26.1(7) and subsection 26.2(3) which speak to "a rate" being charged:

26.1(7): A municipality may charge interest on the instalments required by subsection (3) from the date the development charge would have been payable in accordance with section 26 to the date the instalment is paid, at **a rate** not exceeding the prescribed maximum interest rate [emphasis added]

26.2(3): Where clause (1) (a) or (b) applies, the municipality may charge interest on the development charge, at **a rate** not exceeding the prescribed maximum interest rate, from the date of the application referred to in the applicable clause to the date the development charge is payable [emphasis added]

Municipalities must have a clearly legislated foundation. Currently, there is a lack of clarity regarding the ability to charge "a rate" (e.g., does the requirement to charge interest at "a rate" permit municipalities to employ a schedule of rates or must the actual rate be stipulated).

To address these concerns, York Region staff recommend the following:

- The Province prescribe a time period of five years between the applications referred to in subsection 26.2(1)(a) and (b) and building permit issuance and when that five year time period is not met, development charges be payable in accordance with section 26
- The Province expressly indicate that only a 'complete' application shall be accepted for the purposes of section 26.2 and that it is within the municipality's discretion to decide when an application is 'complete'
- The Province clarify that any major revisions to an application shall require a recalculation of the applicable development charges from the date the major revision is accepted by the municipality, or the date such revision is deemed major by the municipality
- The Province clarify that it is the development charge rates that are being frozen, as it relates to new subsection 26.2(1)
- The Province expressly indicate that it is within the municipality's discretion to decide what is meant by "a rate", as it relates to new subsection 26.2(3) and 26.1(7)
- The Province prescribe that additional administrative costs required to track applications, in order to ensure correct rates are charged, be an eligible cost for development charge recovery

For municipalities to continue to deliver complete communities and maintaining fairness and equity for all partners involved, the regulatory framework should provide the ability to ensure payment and secure interests when developers phase in and delay development charge payments under section 26.1

Under the new section 26.1, non-residential, rental and non-profit developers can phase in and delay payments. While there is a requirement to pay the first installment at occupancy permit or first occupancy, there does not appear to be anything in Bill 108 or the regulatory framework that would compel subsequent payments, other than eventually placing unpaid charges on the tax roll. Unfortunately, placing unpaid development charges on the tax roll does not guarantee they are collected. If a municipality does not collect all the development charges owed, financial capacity to deliver complete communities is compromised. In addition, it is unfair to require the homeowner/title holder to pay outstanding charges that the developer failed to pay.

Currently, Bill 108 and proposed regulatory framework does not provide municipalities with a mechanism to secure/protect their interests. This challenges a municipality's ability to recover development charges in instances where the subsequent payments are not made or where the property is sold/transferred (or the developer ceases operations). It is possible that a developer could build and then sell to another entity, prior to occupancy. The new owner/purchaser may be unaware of the outstanding development charge obligation without a registered agreement. Under this scenario, while the municipality could put the development charges on the tax roll, there is no guarantee they would be collected.

If development charges are not collected the municipality is put at financial risk and additional pressures are placed on the tax levy and user rate. In addition, administration requirements and costs of monitoring and tracking the developments will also be significant.

Municipalities must have the tools to ensure they can provide complete communities in a fiscally sustainable way. Furthermore, when development charges or increased costs are not paid for by growth, existing residents and businesses bare the financial burden, which is neither fair or equitable.

To address these concerns, York Region staff recommend the following:

- The Province prescribe that all section 26.1 payments require an agreement and that the municipality can take security
    - The Province prescribe that these agreements be registered on title
    - Municipalities be allowed to register a priority lien on the tax roll of properties that qualify under section 26.1, for the entirety of the development charges payable
- The Province clarify that that all section 26.1 payments require an agreement and that the municipality can take a security
- The Province prescribe an express obligation, on the part of the developer, to make all subsequent payments under section 26.1 and that failure to do so would result in additional financial consequences which are at the discretion of the municipality

The types of development eligible for the delayed and phased development charge payment should be scoped for fairness and equity and to ensure fiscal sustainability for municipalities

Under the new section 26.1 rental housing, non-residential development and non-profit housing are permitted to phase in payment of development charges, beginning at occupancy permit or first occupancy (whichever is earlier). During the commenting period on Bill 108, York Region staff recommended that only developments that are registered as rental developments can qualify for deferred and phased payments. This was recommended to ensure rental buildings stay as rental over the long term, rather than converting into condominiums. York Region staff also raised concern that Commercial development be eligible for this treatment.

Under the proposed regulatory framework, there is no requirement that rental developments are registered as a rental and no ability to ensure the development operates as a rental.

On the non-residential side, the types of development defined as eligible should be further scoped. Currently, virtually all office buildings are eligible for this treatment (without regard to size). The regulatory framework has also prescribed that shopping centres be eligible and has referenced subsection 12(3) in Ontario Regulation 282/98 under the *Assessment Act, 1990*, which provides that a shopping centre is:

> "a structure with at least three units that are used primarily to provide goods or services directly to the public and that have different occupants"

Regional staff notes that, at site plan application, the occupants of a shopping centre may not be known and if known, it is unclear what constitutes as "different". The unintended consequence is that, if the occupants are unknown, the shopping centre would be unable to qualify for this treatment. Furthermore, this definition does not distinguish based on any size criteria.

Finally, the types of institutional developments eligible for phased and delayed payment under section 26.1 include retirement homes, without regard to size or charitable/for-profit status. It is unclear why this type of institutional development has been included.

In order to ensure fairness and equity and ensure municipalities can deliver complete communities in a fiscally sustainable way, the guidance on those developments eligible for phased and delayed development charge payment under section 26.1 should be further scoped.

To address these concerns, York Region staff recommend the following:

- The Province define rental to be a registered rental development and that it be operated as a rental for a minimum of 25 years
  - The Province prescribe that municipalities may register a restrictive covenant on title, requiring the development be operated as a rental
- The Province amend the guidance for defining office buildings and shopping centres, such that:
  - **office buildings** as defined under subsection 11(3) in Ontario Regulation 282/98 under the Assessment Act and Municipal Property Assessment Corporation (MPAC) property codes 402 and 403:
    - "office building" means, a building that is used primarily for offices, the part of a building that, but for this section, would otherwise be classified in the commercial property class if that part of the building is used primarily for offices and are either a
    - 402 - Large office building (generally multi-tenanted, over 7,500 sq. ft.)
    - 403 - Large medical/dental building (generally multi-tenanted, over 7,500 sq. ft.)
  - **shopping centres** be defined as those under MPAC property codes 427 – 429:
    - 427 - Big box shopping/power centre – two or more main anchors (such as discount or grocery stores) and a collection of box or strip stores in a commercial concentration concept, generally greater than 100,000 square feet
    - 428 - Regional shopping centre – at least one department store or anchor of at least 100,000 square feet, a large population base, generally greater than 300,000 square feet
    - 429 - Community shopping centre – clusters of attached retail units (open-air and/or enclosed) with significant off-street paved parking surrounding the building(s) and with access from two or more sides. They typically offer products and services focused on daily shopping needs but also offer a wider range of soft goods and services than smaller neighbourhood centres. These centres are generally between 100,000 and 400,000 square feet.
- The Province amend the guidance for defining institutional development, requiring that retirement homes be non-profit

While the regulatory framework provides guidance on secondary suite exemptions, the Province should clarify the exemption applying to the creation of additional units comprising 1 per cent of existing units

The regulatory framework clarifies that additional units in, or ancillary to, existing buildings be subject to the same rules/restrictions currently in place. The framework also clarifies that only one second suite in, or ancillary to, new buildings be eligible for a development charge exemption. While staff are supportive of both of these clarifications, there remains concern that the exemption for secondary suites in new buildings can apply to row dwellings. It is possible that this exemption could be advantaged by stacked townhome and duplex developments to avoid development charge obligations, making it more challenging for municipalities to deliver the necessary services.

The regulatory framework should provide municipalities with a clear legislative foundation to implement the changes. Under the proposed regulatory framework there is the provision that, within other existing residential buildings, the creation of additional units comprising 1 per cent of existing units would be exempt from development charges. It is unclear if this new exemption applies to existing condominium buildings (non-rental). Applying this exemption to existing condominium buildings (non-rental) could allow developers to phase their development and build in additional common element areas with the intention of later 'converting' those areas into new units and avoid paying development charges (so long as they do not exceed the 1 per cent threshold). While there may be good policy rationale to afford this development charge relief to existing purpose-built rental buildings, no such rationale can be found for existing condominium buildings (non-rental).

Municipalities require a clear legislative framework in order to implement the changes in Bill 108 and further clarifying the details relating to developments that are eligible for the secondary suite exemption will assist in doing this.

To address these concerns, York Region staff recommend the following:

- The Province exclude row dwellings from the prescribed class of new residential buildings for which a development charge exemption applies
    - The Province prescribe that the second dwelling unit be subordinate, in gross floor area, to that primary dwelling unit, and that it be up to a municipality to determine this threshold. And that this threshold be established as part of a municipality's development charge bylaw

- The Province prescribe municipalities with ability to ensure, through security/agreement, that these units are in fact second suites

- The Province prescribe that the exemption for creation of additional units comprising 1 per cent of existing units only applies to purpose-built rental buildings

Community Benefits Charges

To maintain fiscal capacity required to deliver complete communities, the percentage cap on community benefits charges must ensure revenue neutrality

New subsection 37(12) of the *Planning Act* notes that a community benefits charge payable will not exceed an amount equal to the prescribed percentage of the value of the land as of the valuation date (valuation date being the day before the day the building permit is issued in respect of the development or redevelopment).

York Region staff have consistently maintained that whatever this cap is, it must ensure revenue neutrality for municipalities. The proposed regulatory framework indicates that the Ministry is not providing prescribed percentages at this time and will consult further on this matter; Regional staff are supportive of further consultation. The framework does however indicate that in determining the prescribed percentages, there are two goals:

1. To ensure that municipal revenues historically collected from development charges for "soft services", parkland dedication including the alternative rate, and density bonusing are maintained.
2. To make costs of development more predictable

It is unclear what 'historically collected' means. Some municipalities have not used S.37 historically or used it very little and some are just starting to use density bonusing. It is more appropriate to use forward looking service levels and revenue as opposed to historic, as these costs are used to fund future, anticipated capital costs required to deliver complete communities.

Bill 108 also indicates that in determining the valuation date for the purposes of the cap, a municipality is to use the first building permit issued, but it is unclear what that permit is. The first building permit can be interpreted to be an excavation permit, a plumbing permit, a shoring permit or a foundation permit. The type of permit is important because a permit chosen too early in the process could result in a lower land valuation and reduce what a municipality can collect under this regime.

A guiding principle in *A Place to Grow 2019* is to support the achievement of complete communities. In order to do this, municipalities must be given the tools to grow in a fiscally sustainable way. The methodology for determining the cap on community benefits charges should not adversely affect this important objective.

In addition, municipalities are at different stages of growth and development, with different infrastructure requirements. The use of historically collected revenues disadvantages municipalities that are just beginning to grow.

To address these concerns, York Region staff recommend the following:

- The Province look at projected revenues as opposed to "historically collected" revenues, in order to ensure revenue neutrality, when determining the prescribed percentages
- The Province prescribe that the building permit to be used for the purposes of the valuation date be building permit issued under the *Building Code Act, 1992*, which permits the construction of the foundation of a building or structure

The list of services that are ineligible for community benefits charge funding and the types of development exempted from the charge should be revisited

Through the commenting period on Bill 108, York Region staff requested the Province clarify what services are ineligible for community benefit charge funding and what types of development and redevelopment are exempt from the charge. York Region staff appreciate the guidance provided in the regulatory framework. However, the guidance should be revisited.

Those services prescribed as ineligible for community benefits charge funding includes: cultural or entertainment facilities, tourism facilities, hospitals, landfill sites and services and municipal administrative buildings. Any capital costs for services required to accommodate growth that are not collected from new development creates additional tax levy pressures and is not fair or equitable.

The regulatory framework also prescribes a list of the types of development and redevelopment that are exempt from the community benefits charge, including retirement homes (be them for profit or otherwise). Retirement homes require infrastructure servicing and providing them with an exemption necessarily means that the burden of those costs fall onto other residents and businesses. York Region staff also acknowledge that municipalities must play a role in ensuring sufficient housing options for all stages of life. Retirement homes are an essential component of the Region's housing supply. Regional staff believe that the proposed regulatory framework can achieve a better balance by providing the exemptions to non-profit retirement homes only.

Municipalities require revenues to grow in a fiscally sustainable way and further scoping the list of ineligible services and types of development exempt could help work towards this. All stakeholders involved in delivering housing supply must be treated fairly and equitably. Any growth-related costs not recovered from growth must necessarily be recovering from existing residents and business is counter to a principle of fairness and equity

To address these concerns, York Region staff recommend the following:

- The Province strike the list of ineligible services for community benefits charge funding
- The Province amend the guidance on the types of development and redevelopment that are exempt from the charge and require retirement homes be non-profit

York Region staff are supportive of the prescribed reporting requirements for community benefits charges

The regulatory framework indicates that reporting requirements for community benefits charges would be similar to those currently in place under the *Development Charges Act.* This is consistent with initial York Region staff recommendations submitted during the consultation on Bill 108; as such Regional staff are supportive of this proposal.

To ensure municipalities can continue to have the fiscal resources to deliver complete communities, it is recommended that applicability of the community benefits charge in a Community Planning Permit System (CPPS) area be revisited

The Community Planning Permit System (CPPS) is a framework that combines and replaces individual zoning, site plan and minor variance processes in identified areas with a single application and approval process. A CPPS area allows for official plans to contain policies allowing the provision of specified facilities, services and matters in exchange for a specified height or density of development. The proposed regulatory framework indicates that a community benefits charge is not permitted in an area where a CPPS is in effect.

Prohibiting the use of a community benefit charge in a CPPS area could potentially result in municipal revenue loss.

To address these concerns, York Region staff recommend the following:

- The Province provide municipalities with the flexibility to apply a community benefits charge in a Community Planning Permit System (CPPS)

There remain a number of areas under the community benefits charge regime that would benefit from further clarification

Notwithstanding the regulatory framework there remain a number of areas that still require further clarification. Clarification will help ensure municipalities can deliver complete communities, ensure municipalities have clearly legislated tools to implement the changes and will go towards fair and equitable treatment for municipalities, developers and taxpayers. These areas are:

- Treatment of the charge in a two-tier jurisdiction
- Timing for remittance of the community benefits charge to the upper-tier municipality in a two-tier jurisdiction
- Methodology for calculating the community benefits charge (e.g., required deductions)
- Requirements of the Community Benefits Charge Strategy and consultation
- Clarification of eligible capital costs including cost recovery for the preparation of the Strategy and consultation
- Treatment of existing reserves related to CBC-eligible services (e.g., parkland, development charge soft services)

- Clarification of what is meant by the requirement under subsection 37(27) that a municipality spend or allocate at least 60 per cent of the monies in the special account at the beginning of the year (and what happens when there is non-conformity)
- Clarification of how municipalities treat collections shortfalls (e.g., as a result of the cap on the charge)
- Clarification that when arrangements for the payment of the charge are made that are satisfactory to the Council under subsection 37(24)(a), such as the deferral of the charge, a municipality can charge interest on the deferred amount, and any unpaid charges can be added to the tax roll
- Clarification if developers can still provide Service Managers with new affordable units within a private development as a community benefit (as was done under previous section 37)
- Confirmation that the community benefits charge regime is within Provincial jurisdiction

The preceding areas York Region staff have requested further clarification on will help municipalities deliver complete communities in a fiscally sustainable way, provide a clear legislative foundation for implementing the new community benefits charge regime, and ensure fairness and equity amongst all stakeholders involved in delivering housing supply.

To address these concerns, York Region staff recommend the following:

- The Province prescribe that in a two-tier jurisdiction the community benefits charges of the upper and lower tier municipality be capped, and levied, independently of one another
- The Province prescribe that in a two-tier jurisdiction, the treasurer of the area municipality shall collect the community benefits charge when it is payable and shall, unless otherwise agreed by the upper-tier municipality, pay the charge to the treasurer of the upper-tier municipality on or before the 25th day of the month following the month in which the charge is received by the area municipality
- The Province expressly indicate that the methodology to determine the community benefits charge, including any deductions, be solely within the municipality's discretion
- The Province expressly indicate the Community Benefits Charge Strategy and consultation be solely within the municipality's discretion
- The Province expressly indicate that eligible capital costs be, at a minimum, similar to those in section 5(3) of the *Development Charges Act*, *1997* and that all costs required to develop and consult on the Community Benefits Strategy be eligible for community benefits charge recovery

Continued:

- That the Province expressly indicate that existing reserves for CBC-eligible services not be required to be used in the special account under subsection 37(25))
- The Province clarify what is meant by ‘allocate’ and what is the result of non-conformity with subsection 37(27)
- The Province clarify that any collection shortfalls be recoverable in subsequent community benefits charge bylaws through the community benefits charge rate
- The Province clarify that when a community benefits charge is deferred a municipality can charge interest, at a rate stipulated in an agreement, and in the event that any part of it remains unpaid after it is payable, the amount unpaid shall be added to the tax roll and shall be collected in the same manner as taxes
- The Province consult further with Service Managers on the impacts of the new section 37
- The Province clarify that the community benefits charge is within provincial power as a component of land use planning, pursuant to subsection 92(9) of the (licences to raise revenue), (13) (property and civil rights) and (16) (matters of a local nature) of the *Constitution Act, 1867*