



**Proposed new regulation pertaining to the community
benefits authority under the Planning Act**

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Detailed comments by the City of Brampton on proposed new regulation pertaining to the community benefits authority under the Planning Act.

Transition

The amendments to the Planning Act in Schedule 12 of the More Homes, More Choice Act, 2019 provide transitional provisions for section 37, and section 42 under the Planning Act, and development charges for discounted services (soft services) under the Development Charges Act to provide the flexibility necessary for municipalities to migrate to the community benefits charge authority.

An amendment to the Development Charges Act, 1997 provides for a date to be prescribed in regulation that would effectively establish a deadline as to when municipalities must transition to the community benefits authority if they wish to collect for the capital costs of community benefits from new development. Beyond the date prescribed in regulation:

- Municipalities would generally no longer be able to collect development charges for discounted services
- Municipalities would generally no longer be able to pass by-laws to collect funds under section 37 of the Planning Act

Proposed content:

It is proposed that the specified date for municipalities to transition to community benefits is January 1, 2021.

City of Brampton Comments:

As part of the commentary to Bill 108, the City of Brampton requested a transition period of four years between the former DC regime and the new community benefits charge regime. The reasons are:

- The changes stemming from Bill 108 are significant and drastic. The previous amendment to the DC Act occurred in 1997, and that allowed municipalities two years to transition into the revised regulations (within the same Act). Now municipalities must operate under a completely new regime, under a different Act, within a lesser timeframe. Brampton is concerned that it will not be possible to complete the strategy and adopt a by-law prior to January 2021. This means there will be a significant loss of important revenue.*
- The draft Regulations do not describe any of the requirements that municipalities must follow to complete a Community Benefits Strategy. It is reasonable to assume that it will require the same transparency, effort, detail and public consultation that the DC Background Study requires. Brampton recently completed a DC by-law update and the entire process took roughly 13 months, while operating under the same rules and regulations since 1997.*
- As they do with DC By-law updates, most municipalities will need to retain the professional services of an outside consultant to complete the CBC strategy process. There are currently only two qualified firms in Ontario that could provide such services. There simply are not enough resources given the impending January 1, 2021 deadline.*

An alternative to the January 1, 2021 prescribed date could be:

- the date the DC by-laws come to a natural expiry, or are repealed by Council; or
- 3 years after the Regulations detailing the proposed cap, and the requirements of the Community Benefits Strategy are finalized.

Reporting on community benefits

In order to ensure that community benefit charges are collected and spent on community benefits in a transparent manner, and for greater accountability, the Minister is proposing to prescribe reporting requirements that are similar to existing reporting requirements for development charges and parkland under section 42 of the Planning Act.

Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the community benefits charge special account, such as:

- Opening and closing balances of the special account
- A description of the services funded through the special account
- Details on amounts allocated during the year
- The amount of any money borrowed from the special account, and the purpose for which it was borrowed
- The amount of interest accrued on money borrowed

City of Brampton Comments:

The City of Brampton is generally supportive of this proposal. The City has historically reported on DC and CIL revenue in a transparent and clear manner. The City has no issues with reporting on CBC revenue collected and spent.

Reporting on parkland

In order to ensure that cash-in-lieu of parkland is collected and used in a transparent manner, the Minister is proposing to prescribe reporting requirements for parkland.

Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the special account, such as:

- Opening and closing balances of the special account
- A description of land and machinery acquired with funds from the special account
- Details on amounts allocated during the year
- The amount of any money borrowed from the special account, and the purpose for which it was borrowed
- The amount of interest accrued on money borrowed

City of Brampton Comments:

Section 42 under the Planning Act requires the Treasurer of the municipality to provide Council with a statement relating to the status of the cash-in-lieu of parkland (CIL) reserve. This requirement is a result of the passage of Bill 73, Smart Growth for Our Communities Act.

As such, the City of Brampton has been reporting on cash-in-lieu of parkland collected and used since 2017.

Exemptions from community benefits

The Minister is proposing that the following types of developments be exempt from charges for community benefits under the Planning Act:

- Long-term care homes
- Retirement homes
- Universities and colleges
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion
- Hospices
- Non-profit housing

City of Brampton Comments:

The types of developments are not accompanied by any definitions in the proposed regulations. The lack of clarity surrounding the exemption makes it difficult for municipalities to comment on the proposal and its impact.

Recommendation:

- Non-profit housing developments wishing to receive the deferral must qualify as a non-profit organization as per the Canada Revenue Agency (CRA) tax services offices, which are responsible for deciding if an organization qualifies for tax-exempt status as a non-profit organization.

Community benefits formula

The amendments to the Planning Act in Schedule 12 of the More Homes, More Choice Act, 2019, provide the authority for municipalities to charge for community benefits at their discretion, to fund a range of capital infrastructure for community services needed because of new development.

This capital infrastructure for community services could include libraries, parkland, daycare facilities, and recreation facilities.

For any particular development, the community benefits charge payable could not exceed the amount determined by a formula involving the application of a prescribed percentage to the value of the development land. The value of land that is used is the value on the day before the building permit is issued to account for the necessary zoning to accommodate the development.

Proposed content:

It is proposed that a range of percentages will be prescribed to take into account varying values of land.

In determining the prescribed percentages, there are two goals.

- Firstly, to ensure that municipal revenues historically collected from development charges for “soft

services", parkland dedication including the alternative rate, and density bonusing are maintained.

- Secondly, to make costs of development more predictable.

This Ministry is not providing prescribed percentages at this time. However, the Ministry would welcome feedback related to the determination of these percentages. There will be further consultation on the proposed formula in late summer.

City of Brampton Comments:

To prevent a future reduction in service level and/or an increase in property taxes, the City of Brampton is relying upon the CBC to recover the same amount of revenue as the former soft service DCs and parkland dedication regime, keeping with the "Growth pays for growth" philosophy. As such, the Province must carefully consider the prescribed percentages of the CBC formula to mitigate any unintended consequences. The prescribed cap will be problematic if it is too low to enable municipalities to capture all of the eligible growth-related capital costs or if, over the period of the by-law there are fluctuations in the land values.

While it has already been entrenched into the Planning Act that the CBCs would be determined based on a percentage of the value of the land, it merits once again to reiterate that land values have little to no correlation to the cost of providing the service (i.e. - construction cost of a library, community centre, or sports field). Basing this revenue tool on the value of land automatically creates "winners" and "losers" between municipalities, and between neighbourhoods within a municipality. Another issue arising from land valuations is that it provides for unpredictable revenue streams which makes long term financial planning extremely difficult. It will be hard for Finance Officers to commit to growth-related capital projects in the absence of being able to forecast the revenue streams, even in the short-term, let alone long-term with any level of confidence.

In terms of feedback related to the determination of the percentages, City of Brampton staff have developed a financial sensitivity model to test recently constructed subdivisions and site plans to understand what the CBC percentage would need to be to remain revenue neutral. While our analysis is still ongoing and in draft form, some trends have begun to emerge. It appears that there is a distinct difference in the percentages between low-rise developments and high density developments. To remain revenue neutral, the CBC percentages low-rise subdivisions were lower than the high density developments.

Therefore, the CBC needs to allow for flexibility not only to take into account the varying land values, but between built form as well. If the CBC is capped at the low-rise percentage, then all high rise development would be under-paying in CBCs.

Appraisals for community benefits

The Minister is proposing the following:

- If the owner of land is of the view that the amount of a community benefits charge exceeds the amount legislatively permitted and pays the charge under protest, the owner has 30 days to provide the municipality with an appraisal of the value of land.
- If the municipality disputes the value of the land in the appraisal provided by the owner, the

municipality has 45 days to provide the owner with an appraisal of the value of the land.

- If the municipality's appraisal differs by more than 5 percent from appraisal provided by the owner of the land, the owner can select an appraiser from the municipal list of appraisers, that appraiser's appraisal must be provided within 60 days.

City of Brampton Comments:

Recommendation:

- *Appraisals under Section 6 of the regulation must be completed by appraisers holding the Accredited Appraiser Canadian Institute (AACI) designation from the Appraisal Institute of Canada (AIC), and all appraisals must conform to the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP).*
- *In the event a landowner does not agree with the initial CBC, the cost of any appraisals required by the owner and/or the municipality shall be at the expense of the landowner.*

Excluded services for community benefits

The Minister is proposing to prescribe that the following facilities, services or matters be excluded from community benefits:

- Cultural or entertainment facilities
- Tourism facilities
- Hospitals
- Landfill sites and services
- Facilities for the thermal treatment of waste
- Headquarters for the general administration of municipalities and local boards

This would be consistent with the ineligible services list currently found under the Development Charges Act.

City of Brampton Comments:

Recommendation:

- *Public facilities such as hospitals, municipal headquarters and landfill sites have a direct correlation to the size and growth of a municipality; as a municipality grows larger, it requires expansions of such infrastructure. As such, the City is respectfully requesting the inclusion of these facilities for the recovery through CBCs.*
- *Similarly, cultural and entertainment facilities, and tourism facilities add vibrancy to municipalities and provide for complete communities. The City respectfully requests the ability to recover for these costs through the CBC.*

Community planning permit system

Amendments to the Planning Act in the More Homes, More Choice Act, 2019 establish a new authority for municipalities to levy charges for community benefits to make requirements in this regard more predictable. As the community planning permit system also allows conditions requiring the provision of specified community facilities or services, it is proposed that a community benefits charge by-law would not be available for use in areas within a municipality where a community planning permit system is in effect.

In considering making a proposed new regulation and changes to existing regulations under the Planning Act, the government will continue to safeguard Ontarians' health and safety, support a vibrant agricultural sector, and protect environmentally and culturally sensitive areas, including the Greenbelt.

City of Brampton Comments:

City of Brampton recommends that municipalities be allowed to choose between imposing CBCs or imposing conditions for specific community, benefits within a CPPS area.