

Proposed new regulation respecting community benefits authority under the *Planning Act*

March 11, 2020

Background

Bill 108, the *More Homes, More Choice Act*, received Royal Assent on June 6, 2019. The Act amended 13 different pieces of legislation respecting municipalities and the land use planning process, including the various charges imposed on development, new rules respecting affordable housing, heritage buildings, and more.

Bill 138, the *Plan to Build Ontario Together Act, 2019*, received Royal Assent on December 10, 2019, and set out a requirement that a municipality provide notice of the enactment of a by-law to put in place a community benefits charge system, and a 40-day period in which any person or public body could appeal the charge to the Local Planning Appeal Tribunal. The requirements for studies to support a Community Benefits Charge and the appeal, is consistent with the studies requirement and appeal of a Development Charges By-law. The Community Benefits Charge will replace the s.37 bonusing provisions of the *Planning Act*. Municipalities that opt to introduce a Community Benefits Charge cannot charge for parkland dedication under s. 51 of the *Planning Act*. The Community Benefits Charge authority has not yet been proclaimed.

On February 28, 2020, the Province posted, “*Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act.*” The draft regulation sets out mandatory requirements before Bill 138 can be proclaimed law. It is available for public comment until March 30, 2020.

The proposed regulation is generating discussion from municipalities that are concerned about ensuring the changes are revenue neutral, and from the development community, which sees the benefits of shorter timelines for municipal approvals and changes that support the Province’s Housing Supply Action Plan.

The following is a summary of the proposed regulation:

1. Required content of a Community Benefits Charge strategy

Similar to Development Charges, municipalities will be required to prepare a Community Benefits Charge strategy, and consult with the public before enacting a Community Benefits Charge By-law, identifying what will be funded through the charge.

It is proposed that the strategy include:

- The proposed type, amount and location of development to be subject to a Community Benefits Charge;
- The anticipated increase in need for specific community benefits (e.g., affordable housing, land for parks) as a result of development;

- A parks plan that examines the need for parkland;
- An analysis of the amount of parkland currently provided per person, and any recommended changes (increase / decrease / remain the same);
- Capital costs associated with the increased need for a specific community benefit resulting from development;
- The excess capacity that exists in the municipality for the specific community benefits/services;
- The extent to which existing residents would benefit from the community benefits provided as a result of the charge; and
- The anticipated impact of any potential capital grants or contributions from other levels of government or other sources, to support the proposed community benefits.

2. Services eligible to be funded through Development Charges

It is proposed that public libraries (including materials for circulation and reference), long-term care, parks development (splash pads, playgrounds, etc.), and public health and recreation facilities (including arenas and community centres), be funded at 100 percent through Development Charges and not be eligible as community benefits.

3. Percentage of land value for determining a maximum Community Benefits Charge

The Community Benefits Charge is to be calculated based on a percentage of the land subject to development, so in this respect, is similar to the existing s.37, which is calculated as a percentage of land value uplift. It will be calculated on the land value the day before the building permit is issued for the development.

The Province has proposed the following maximum percentages of land value, depending on the municipality's tier level:

- Single tier municipalities: 15 percent
- Lower tier municipalities: 10 percent
- Upper tier municipalities: 5 percent

The proposal states that the different percentages are intended to reflect the varying service level requirements of each level of municipal government, in providing community amenities to new developments.

4. Timelines for transitioning to the new Community Benefits Charge regime

Municipalities will have one year from the date the regulation comes into effect to prepare Community Benefits Charge background studies and pass the required by-laws, if they choose to implement a Community Benefits Charge regime. This will be set out in a regulation under the *Development Charges Act*.

5. Community Benefits Charge By-law notice requirements

Municipalities will be required to provide notice to those who could be impacted, of the intent to enact a Community Benefits Charge By-law, similar to the notice requirements that apply to Development Charges By-laws. It can be anticipated that many municipalities will follow similar processes to development charges in terms of public meetings and input before a by-law is enacted.

The regulation proposes that notice be given following the enactment of a Community Benefits Charge By-law that

would explain the charges and lands impacted (including a map), as well as advise how to appeal the by-law and the deadline to do so. Appeals will be filed with the Clerk of the municipality.

6. Minimum interest rate for Community Benefits Charge refunds where a by-law has been successfully appealed

Municipalities will be required to provide full or partial refunds where an appeal of the Community Benefits Charge By-law is successful. The Province will prescribe a minimum interest rate on monies held that municipalities will have to pay on any refunds.

7. Building Code: Community Benefits Charge is applicable law

Payment of an applicable Community Benefits Charge will constitute applicable law for purposes of obtaining a building permit under the *Building Code Act*. This will ensure payment to the municipality. In two-tier municipalities, steps are currently taken to ensure payment of upper tier Development Charges before a building permit is issued, and this will be one more thing to coordinate.

Dentons will continue to analyze the proposed new regulation respecting Community Benefits authority under the *Planning Act*. If you have any questions about the Community Benefits Charge, or its impact on your land, please contact Mary Ellen Bench, Katarzyna Sliwa, Mariam Awan or another member of Dentons' Municipal, Land Use Planning and Development Law group.

Your Key Contacts



Mary Ellen Bench
Counsel, Toronto
D +1 416 863 4724
M +1 416 409 5607
maryellen.bench@dentons.com



Katarzyna Sliwa
Partner, Toronto
D +1 416 863 4628
kat.sliwa@dentons.com