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August 19, 2019 ERO Number: 019-0184

John Ballantine, Manager
Municipal Finance Policy Branch
Municipal Affairs and Housing
13th Floor, 777 Bay Street
Toronto, ON MSG 2E5

Dear Mr. Ballantine:

Subject: City of Hamilton Submission on Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of the *More Homes, More Choice Act, 2019*

Thank you for the opportunity to provide comments on the above-referenced proposal (the Proposal) under the *Development Charges Act* related to Bill 108 - *More Homes, More Choice Act, 2019* (the Act). Please accept the following comments for consideration.

First and foremost, the City requests the Province to release the full draft regulations for consultation. The proposed changes to O. Reg. 82/98 posted on the Environmental Registry have been provided in general terms and the full impact of the Proposal is not capable of being fully understood and assessed without the official language that will appear as written in the regulation. The City of Hamilton's (the City's) comments have been prepared based on a general interpretation of the Proposal. The City requests that once any draft regulations are completed they be posted and be subject to comments from all stakeholders.

Among all of the City's comments and requests below, there is one request so significant that the City implores the Province to review the risk to municipalities and work on a strategy to eliminate the risk. The risk being referred to is the risk of a development being sold between building permit issuance and the final DC instalment payment. The Province has not provided municipalities with a tool to ensure that an instrument can be registered on title notifying property purchasers that development on a property was subject to DCs payable through instalments and that instalments remain outstanding. Without such a tool, municipalities will face challenges related to any DC or instalments of a DC due after a sale.

For ease of review, the City's comments respond to the same five categories set out in the Proposal.

1. Transition

The Proposal provides that the prescribed date by which a municipality must adopt a community benefits charges (CBC) by-law by will be January 1, 2021, after which point, a development charge (DC) for soft services may no longer be imposed. However, despite content in Schedule 12 of the Act which indicates a municipality will be required to prepare a strategy before passing a CBC by-law pursuant to prescribed requirements, no such requirements have been described in the Proposal or in the description of the regulation pertaining to the community benefits authority under the Planning Act (ERO Number 019-0183).

The City comments that without a full understanding of what is required in a CBC By-law the timeline proposed may be unachievable. For example, the City commenced the 2019 DC Background Study in January 2018 and it was adopted 17 months later in June 2019. If a similar calculation process is required, or a calculation process is proposed for which existing data is not readily available, there is a concern that the proposed timeline will not be achievable. Municipalities that have recently dedicated resources to a soft service DC calculation will again be required to dedicate resources to the CBC calculation. The cost of undertaking studies and the use of consultants (if necessary) are passed through the DCs, or presumably the CBC and thus, act counter to the Province's goals of reducing costs of development.

The City requests that the prescribed date be set at January 1, 2024 to recognize the cost and efforts spent on recently updated DC studies and allow municipalities to plan for the cost and effort of a CBC calculation at a time that would somewhat align with the next scheduled cycle of DC By-law updates.

2. Scope of Types of Development Subject to Development Charges Deferral

The Proposal contains definitions for non-profit housing, institutional development, industrial development and commercial development.

Non-Profit Housing

The Proposal appears to be attempting to align the payments of DCs for non-profit housing developments with affordable housing programs but currently there appear to be significant gaps that expose municipalities to risk.

> The definition and *Development Charges Act, 1997*, S.O. c1997 c.27 (DC Act) do not appear to contemplate dwellings developed and then sold by non-profit corporations. In other words, what happens if the development is sold by the non-profit corporation prior to the payment of all DC instalments?

There is no ability to register an instrument on title in order to notify and bind future purchasers in respect of unpaid DC instalments or restrict the sale of a property until unpaid DC instalments are paid.

It is unclear who is legally obligated to pay the DC, the developer or the purchaser? Subsections 26.1(1), (2), (3) as added by the Act to the DC Act do not refer to an identified person as having to pay, rather, they provide that the DC is payable in instalments for certain developments. Section 2 of the DC Act imposes the DC on the land and not a person. So, the question becomes who is the "person" legally obligated to pay the DC? If the DC applies to the land, then the ability to register an instrument on title providing notice of DCs payable by instalments should be provided to municipalities.

In the above case of a dwelling developed and sold by a non-profit, if the non-profit corporation is responsible for the instalments then there is a risk of non-payment without any security as the asset is no longer owned. Through the Act, any unpaid instalments shall be added to the tax roll which suggests that the current owner of the property is responsible for instalments. However, under the Act, the DC Act, and the Proposal, an owner is under no obligation to notify the City of a sale or a purchaser of remaining DC instalments. If the current owner is responsible for the instalments, then a purchaser may be required to pay DC instalments without previous notice.

As stated above, the Act does not provide for any type of DC notice to be registered on the property. There is a risk that a purchaser could be unaware of DCs deferred and not have budgeted accordingly. This situation could be counter to the goal of increasing the affordability of housing as it will be a payment required in addition to a mortgage and property taxes at an interest rate that the individual purchaser was not able to negotiate, for a term that may be less than their mortgage term.

The City requests the Province define "person", e.g. the person required to pay a DC and the person required to provide notice of occupancy.

The City requests the Province provide a tool to allow municipalities to register notice of deferred DCs on title, prior to issuance of the building permit and require full payment of any unpaid DCs, including interest, prior to any sale.

The City requests the Province to further define non-profit housing to apply only to developments that are receiving construction or on-going operating funding through a government housing affordability program.

Institutional Development

The Proposal has defined institutional development with terms that require further definition.

Long-term Care Homes

The City requests that the Province define "long-term care home" as "a long-term care home as defined in the *Long-Term Care Homes Act, 2007,* S.O. 2007, c.8".

Retirement Homes

The City comments that there is a wide spectrum of developments that can fall under this general term and it can sometimes include 55+ buildings that essentially are just luxury condos for a specific age group but function and have impacts just like any other condo building. An example from downtown Burlington can be reviewed at the following link: https://www.pearlandpineretirement.com/.

The City requests that the Province define "retirement home" as "a retirement home as defined in the *Retirement Homes Act, 2010*, S.O. 2010, c. 11".

Universities and Colleges

The Proposal includes "universities and colleges" as "Institutional Development".

The City comments that "universities and colleges" appears to be a broad category without any guidance provided as to the scope of the intent of the meaning of "universities and colleges". Are the following included within the meaning of "universities and colleges": privately funded colleges and universities, developments which are public-private partnerships, i.e., university / college partnerships with private developers, developments owned by others but used by a university or college? Is the meaning of "universities and colleges" restricted to certain types of development such as academic facilities, research facilities, student residences or facilities which have mix of the foregoing?

The City comments that the courts have confirmed that colleges established under the *Ministry of Colleges and Universities Act, R.S.O.* 1990, c. M.19 are crown agents and unless explicitly stated in legislation, they are not bound by it. The Planning Act and the amendments thereto found in the Act do not appear to expressly bind colleges, the Crown or any Crown agents and therefore, colleges would not be obligated to pay a DC. Accordingly, it is unclear why colleges are listed as exempt.

The City requests that the Province define "universities and colleges" and that it only apply to developments solely owned by such organizations for the specific uses that the Act intends to include.

Memorial Homes, Clubhouses or Athletic Grounds of the Royal Canadian Legion

The City comments that it is unclear if memorial home and clubhouses by groups other than the Royal Canadian Legion are intended to be included in the definition. It is unclear what a memorial home or clubhouse is.

The City requests that the Province define and provide clarity for "memorial homes, clubhouses, or athletic grounds of the Royal Canadian Legion".

Hospices

The City requests that the Province define "hospice".

Industrial Development

The City comments that the definition of industrial development differs from the existing definition of "existing industrial building" contained within O. Reg. 82/98. Two definitions related to industrial within the same Act may be confusing to the development community and municipalities. The definition of industrial development within the Proposal excludes storage and distribution compared to the existing definition of "existing industrial building" contained within O. Reg. 82/98. The City is supportive of storage and distribution buildings being excluded from the definition.

The City requests that the definition of "existing industrial building" contained within O. Reg. 82/98 be updated to align with the proposed definition of "Industrial development".

Commercial Development

The Proposal has defined commercial development to include only office buildings and shopping centres as defined in specific sections of O. Reg 282/98 under the *Assessment Act*.

The City comments that the office building class and the shopping centre class of O. Reg 282/98 under the *Assessment Act* only apply to the portion of a building in excess of 25,000 square feet but the proposed change to O. Reg 82/98 appears to refer to the entire building.

The City comments that shopping centres follow the population, meaning that once there is sufficient population to support the business, shopping centres will be constructed. Shopping centres do not require DCs to be deferred.

The City requests the Province to edit the definition of office development within the definition of "commercial development" to only include the portion of an office building in excess of 25,000 square feet.

The City requests the Province remove shopping centres from the definition of commercial development.

Rental Housing

The Proposal has not defined rental housing which is another use that the Act requires DCs to be paid through six annual instalments.

The City comments that a definition is required to determine if condominium buildings wherein all units are owned by one entity or related entities and which are built for rental purposes would fall into the definition of rental housing. This situation is common with new rental construction and allows the owner to easily sell off units or convert the building to ownership with little control from the City.

The City comments that where a project may be converted to a condominium occurs after building permit issuance, meaning that a developer may proceed with a "rental" project and effectively defer DCs until a condominium conversion occurs.

The City requests the Province to define "rental housing" to exclude any project which is subject of an application for approval of a condominium, or that is registered as a condominium, and to provide a punitive tool for developments that identified themselves as rentals and later register as a condominium.

Other Comments Related to Instalment Payments

The City comments that the provision for the payment of DCs by instalments for each of industrial, institutional and commercial development has not appeared to contemplate developments that are sold between building permit issuance and the final DC instalment due date.

The City comments that the administration of DC instalments plans will be an additional function and cost that will be required of municipalities. This cost will need to be covered by existing taxpayers since general administration is an ineligible cost under the DC Act. This additional cost through property taxes is inconsistent with the goal of increasing housing affordability.

The City requests the Province define "person", e.g. the person required to pay a DC and the person required to provide notice of occupancy.

The City requests the Province provide a tool to allow municipalities to register notice of deferred DCs on title, prior to issuance of the building permit and require full payment of any unpaid DCs, including interest, prior to any sale of the building.

3. Period of Time for Which the Development Charge Freeze Would be in Place

The Proposal provides that DCs would be frozen at the later of site plan or zoning application date for two years after the approval of said application.

The City comments that the majority of proposed developments within the City move from approval to building permit in under a year. In order to meet the goal of encouraging developments to proceed to building permit stage faster than they are currently developing, the time period that the rates are frozen must be less than the time period currently experienced.

The City comments that the time between site plan or zoning application and approval of that application is not entirely within the control of municipalities. A municipality's tools are limited in respect of enforcing developers to proceed in a timely manner to the approval stage. This creates a risk for municipalities. An applicant may rush submitting their application pre-maturely in order to "lock in" the DC rate, despite not being ready to finalize their plans and proceed to building. There is then no impetus on the applicant to move quickly to satisfy any conditions of approval. In fact, it may be in the applicant's best interest to delay approval, so that the two-year post-approval clock does not start ticking.

For example, a developer may know they want to build something in five years, so they apply for a zoning now and that sets the DC at today's rate. As the City requests information or additional studies in order to be in a position to approve the zoning application, a developer could be non-responsive for a couple of years because they don't actually want approval yet. Municipalities will be faced with a choice of allowing this to continue indefinitely or proceeding with a refusal to Council in order to protect the City's financial interests and such refusal would be appealable to LPAT.

To address this concern, the City requests a number of changes.

The City requests that the Province define the application date for site plan and zoning amendment as the date that the application is deemed a complete application.

The City requests that the Province prescribe the period that DC rates would be frozen as nine months from site plan or zoning approval to encourage developments to move through the building permit state faster while providing the predictability of costs.

The City comments that the concept of holding provisions, site plan amendments and minor variances in relation to the approval date has not been addressed in the Proposal. The City requests that the Province clarify that the approval date is the first date of approval and that the lifting of holding provisions, site plan amendments or minor variance requests have no impact on the approval date.

The City requests the Province to close the loop-hole that could promote application for site plan or zoning years before a project is realistically ready to proceed through the development process by either amending the DC Act or by the Planning Act. For example,

prescribe a maximum period of time (one year) that can elapse between site plan / zoning application date and Building Permit approval before triggering an adjustment to the DC rate or provide for the expiration of applications if they are not finalized within a prescribed period of time.

4. Interest Rate During Deferral and Freeze of Development Charges

The Proposal specifies that no maximum interest rate will be prescribed.

The City comments that the flexibility to establish an appropriate interest rate is a reasonable and desired approach.

5. Additional Dwelling Units

The Proposal provides that the "exception relating to the creation of additional dwelling units" in O. Reg 82/98 be amended:

- so that units could also be created within ancillary structures to these existing dwellings without triggering a development charge (subject to the same rules / restrictions).
- so that one additional unit in a new single-detached dwelling, semi-detached dwelling and row dwelling, including in a structure ancillary to one of these dwellings, would be exempt from development charges.
- so that within other existing residential buildings, the creation of additional units comprising 1% of existing units would be exempt from development charges.

The City comments that previously, through the comments to Schedule 3 of the Act, the City requested that the regulation expressly:

(1) limit the number and size of additional / secondary dwelling units; and
(2) limit the classes of housing types that they can be located in; and
(3) prevent unintended units from qualifying (e.g. ensuring that stacked townhouses continue to be charged per dwelling and are not captured in the "one additional dwelling per row dwelling" statutory exemption category). Without the full draft regulation, the City is not assured that this request has been met.

The City comments that additional statutory exemptions do not reduce the costs necessary to provide infrastructure. If municipalities are not able to collect for DC eligible growth infrastructure on a "growth pay for growth" basis, the cost that cannot be collected through the DC will be added to property taxes or service levels will decrease. An increase in property taxes is counter to the goal of increasing housing affordability.

The City requests the Province to release the full draft Regulation for consultation.

The City requests the Province permit a DC to be charged when a lot is severed after having received a DC exemption for a dwelling unit ancillary to another dwelling. This

request is to address the risk that a lot which is developed with two dwellings which will ultimately be on their own lots is not able to benefit from the statutory additional dwellings exemption.

The City requests the Province to clarify how stacked townhouses and back-to-back townhouses will be dealt with in the regulation regarding additional dwelling units.

The City requests the Province to permit statutory exemptions to be adjusted for through the calculation of the per-unit DC.

Notwithstanding the above and to reiterate the City's opening comment, the Province has not yet released full draft regulations. The City's comments have been prepared based on limited interpretations of the proposed regulation content. The full impact of the Proposal cannot be understood and assessed without the official language that will appear as written in the regulation. The City requests further consultation to provide feedback on the full draft regulations.

The City remains concerned with changes imposed by the Act and submits that at this point, absent the release of the draft regulations, the Act and Proposal do not ensure the promise of revenue neutrality. The changes are a significant departure from the current legislative framework and undermine an effective tool for creating vibrant communities. Reducing development charges will not make housing more affordable. Restricting cost recovery tools does not guarantee lower house prices. House prices are set by the market. The changes through the Act will require extensive administration, delay cash flow needed to install infrastructure and expose municipalities to collection risks. If more municipal operating revenues are needed to cover the cost of growth, it will be at the expense of maintaining existing capital assets, levels of services or current property tax rates.

For greater emphasis, the City submits that purchase price is only one element of affordability. Property tax rates factor into the carrying costs of a property and hence, its affordability. The changes proposed by the Province may result in increased property taxes, making it less affordable for residents to live in their homes or for businesses / industries to stay in their locations or expand their operations.

Thank you again for the opportunity to provide meaningful input into this review. The City looks forward to further review and consultation towards the development of the final Regulations. City of Hamilton staff would be pleased to meet with you to discuss these comments in greater detail.

Yours truly,

Mike Zegarac
General Manager
Corporate Services Department