



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division
and
Legal and Risk Management Services Division

TO:	Mayor and Members Committee of the Whole
COMMITTEE DATE:	April 15, 2020
SUBJECT/REPORT NO:	Bill 108 " <i>More Homes, More Choice Act, 2019</i> " - Proposed Regulations Comment Submission related to the Community Benefits Authority under the <i>Planning Act</i> , the <i>Development Charges Act</i> , and the <i>Building Code Act</i> (ERO 019-1406) (FCS19057(b) / LS19023(b)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Shivon Azwim (905) 546-2424 Ext. 2790 Lindsay Gillies (905) 546-2424 Ext. 5491 Michael Kovacevic (905) 546-2424 Ext. 4641
SUBMITTED BY: SIGNATURE:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SUBMITTED BY: SIGNATURE:	Nicole Auty City Solicitor Legal and Risk Management Services

RECOMMENDATION(S)

- (a) That Council endorse the comments, recommendations and requests contained within Appendix "A" attached to Report FCS19057(b) / LS19023(b) related to the Province's proposed changes related to the Community Benefits Authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* (ERO 019-1406);

- (b) That the General Manager of Finance and Corporate Services be authorized and directed to submit to the Province, the letter attached as Appendix "A" to Report FCS19057(b) / LS19023(b), as the City's official comments related to the Province's proposed changes to the Community Benefits Authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* (ERO 019-1406);
- (c) That the General Manager of Finance and Corporate Services, in consultation with the City Solicitor, be authorized to make submissions on *Bill 108, More Homes, More Choice Act, 2019* and any associated regulations consistent with the concerns raised in Report FCS19057(b) / LS19023(b) and Appendix "A";
- (d) That the City Clerk forward Report FCS19057(b) / LS19023(b) to the Ministry of Municipal Affairs and Housing, the Ministry of Environment, Conservation and Parks, Hamilton's Members of Provincial Parliament (Donna Skelly - Flamborough—Glanbrook, Andrea Horwath - Hamilton Centre, Paul Miller - Hamilton East—Stoney Creek, Monique Taylor - Hamilton Mountain and Sandy Shaw - Hamilton West—Ancaster—Dundas) and the Association of Municipalities Ontario.

EXECUTIVE SUMMARY

On May 2, 2019, Bill 108, *More Homes, More Choice Act, 2019*, (Bill 108) was introduced at the Ontario Legislature. Bill 108 received Royal Assent on June 6, 2019. Schedule 3 of the Act makes amendments to the *Development Charges Act, 1997*, S.O. 1997 c.27 (DC Act) and Schedule 12 of the Act makes amendments to the *Planning Act*, R.S.O. 1990 c.P.13 (Planning Act). For the purposes of Report FCS19057(b) / LS19023(b), the relevant amendments to the Planning Act are to section 37 (Community Benefits Charges (CBCs)) and section 42 (Parkland Dedication).

The Province has provided multiple consultation opportunities on the proposed changes to Development Charges (DCs) and the proposed CBC regime throughout the phased enactment of Bill 108. The City has provided comments each time the Province has provided an opportunity for consultation.

The Provincial consultations, while being limited in duration, have resulted in many changes from the original proposals contained in Bill 108. These changes are outlined in a summary prepared by Watson & Associates Economists Ltd. attached as Appendix "B" to Report FCS19057(b) / LS19023(b).

On February 28, 2020 the Province released ERO 019-1406 (the Proposal) which provided new information on the proposed CBC regime and a proposal to add some services back to the DC Act which were previously proposed to move to the CBC regime. The Proposal was originally open for commenting until March 30, 2020 and was subsequently extended to April 20, 2020.

The purpose of Report FCS19057(b) / LS19023(b) is to recommend to Council that it endorse and provide to the Province the comments, concerns and requests, in regard to the Proposal, set out in the letter attached as Appendix "A" to Report FCS19057(b) / LS19023(b).

There are several statements of support contained within Appendix "A" to Report FCS19057(b) / LS19023(b). The requests are:

- The City requests that the Province (1) add all services back to the DC Act by only specifying ineligible services and (2) permit parkland (through the DC Act) to be planned for on a forward-looking basis as supported by a parks plan, similar to Transit;
- The City requests that the Province release the full draft Regulation related to the CBC for consultation prior to enactment;
- The City requests that a subsection be added to section 37 of the Planning Act which would enable municipalities to require the conveyance of parkland related to development or redevelopment;
- The City requests that a municipality be able to use a local services policy to direct the minimum state of any land that will be conveyed to the municipality;
- The City requests additional regulatory guidance regarding the transition and path forward with regard to the removal of the mandatory 10% deduction;
- The City requests that the Province provide clarification on how the CBC maximum percentages were established and share what factors were considered when determining the percentages;
- The City requests the Province consider different land use categories and residential densities when exploring options for establishing the cap of a CBC as a percentage of land value.
- The City requests that the Province consider redevelopment in the establishment of a CBC regime;
- The City requests that the Minister be provided authority to approve a higher maximum percentage based on the needs of a completed CBC strategy, and that the proposed maximum percentages be reviewed by the Province at least once every five years;
- The City requests that the prescribed date for a CBC by-law be set at the later of two years after the CBC regulation comes into effect or the expiration date of the municipalities current DC by-law;

SUBJECT: Bill 108 "More Homes, More Choice Act, 2019" - Proposed Regulations Comment Submission related to the Community Benefits Authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* (ERO 019-1406) (FCS19057(b) / LS19023(b)) (City Wide) – Page 4 of 12

- The City requests that the Province provide additional information regarding the eligibility of studies, administration, land appraisals and expropriation costs within the context of the CBC regime

The concerns and requests to the Province raised in Appendix "A" to Report FCS19057(b) / LS19023(b), while building on previously endorsed comments, are consistent with the comments endorsed by Council through Report FCS19057 / LS19023 related to the initial Bill 108 consultation and FCS19057(a) / LS19023(a) related to the initial regulation proposals.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There are no financial implications related to the endorsement and submission of comments which is what Report FCS19057(b) / LS19023(b) recommends.

Related to the amendments that Bill 108 makes to the DC Act and the associated proposed regulation content, the impacts are under review and will be reported back to Committee once the full regulation details are released by the Province or earlier, as appropriate.

Staffing: There are no staffing implications related to the endorsement and submission of comments which is what Report FCS19057(b) / LS19023(b) recommends.

Related to the amendments that Bill 108 makes to the DC Act, it is expected that additional administration support will be required to support the effective implementation and management of the amendments made by the Act. The specific details on these costs are under review and will be impacted by the content contained within the final regulations. The impacts will be presented through a staff report or as part of the 2021 budget process.

In the consideration of the overall affect from Bill 108, it is anticipated that additional resources may be required for finance administration, real estate administration, development agreement administration, planning administration and legal administration.

Legal: There are no legal implications related to the endorsement and submission of comments which is what Report FCS19057(b) / LS19023(b) recommends.

Legal and Risk Management Services and the Financial Planning, Administration and Policy Divisions will continue to monitor the status of the regulations associated with Bill 108 and report back to Council, as necessary.

HISTORICAL BACKGROUND

Table 1: Historical Background relating to DCs/CBCs under Bill 108, *More Homes, More Choice Act, 2019*

Date	Action
May 2, 2019	Bill 108, <i>More Homes, More Choice Act, 2019</i> , (Bill 108) was introduced at the Ontario Legislature.
May 29, 2019	The City of Hamilton's draft comments on Bill 108 were submitted to the Province.
May 29, 2019	Bill 108 completed its second reading at the Ontario Legislature.
June 1, 2019	The Provincial deadline to submit comments on Bill 108.
June 6, 2019	The City's Audit, Finance and Administration Committee endorsed the City's draft comments as the City's official comments. Council ratified this decision at the June 12, 2019 Council meeting.
June 6, 2019	Bill 108 completed its third reading at the Ontario Legislature.
June 21, 2019	The Province released proposed regulation content.
August 19, 2019	The City of Hamilton's comments on the proposed DC / CBC regulation content were submitted to the Province (endorsed by Council at its meeting of August 16, 2019).
December 19, 2019	The Province announces changes to the DC Act General Regulation 454/19.
January 1, 2020	Sections 8(1), 9, 12, and 13(6) of Schedule 3 of the <i>More Homes, More Choice Act, 2019</i> (Bill 108) come into force. These are the sections which prescribe that DCs are payable in instalments for certain types of development and also the section that freezes, or locks-in, DCs as of site plan or zoning amendment application date along with the sections that allow municipalities to charge interest related to each.
February 28, 2020	The Province releases additional proposed CBC regulation content.
March 30, 2020 Extended to April 20, 2020	Deadline for municipalities to provide comment on the additional proposed CBC regulation.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Appendix “B” to Report FCS19057(b) / LS19023(b) provides further detail on the changes to the DC Act and the Proposed CBC regime since the introduction of Bill 108.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

There are no policy implications or legislative requirements related to the endorsement and submission of comments attached as Appendix “A” to Report FCS19057(b) / LS19023(b) which is what Report FCS19057(b) / LS19023(b) recommends.

The City is undertaking a cross-departmental approach in reviewing the impacts of the legislation as information is released to determine how to support the effective implementation and management of the changes arising through the Act.

RELEVANT CONSULTATION

- Planning and Economic Development Department
- Public Works Department

As additional information related to DCs and CBCs through the enactment of Bill 108 is released, further cross-departmental reviews and assessments will be required in order to assess and quantify the impacts of the proposed changes.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

The changes proposed in Bill 108 are a significant departure from the previous legislative framework. Staff comments and concerns related to the February 28, 2020 Proposal are detailed in the comments, attached as Appendix “A”, to Report FCS19057(b)/LS19023(b).

The Provincial goals announced alongside the introduction of Bill 108 were as follows:

- Support a range and mix of housing options, and boost housing supply;
- Increase the certainty of costs of development;
- Make housing more attainable by reducing costs to build certain types of homes; and
- Make other complementary amendments to implement the proposed reforms, including in relation to transitional matters.

The City’s comments, to date, and the comments included in Appendix “A” to Report FCS19057(b) / LS19023(b) are inline with the guiding principles included in the Municipal Finance Officers’ Association of Ontario (MFOA’s) initial response to Schedule 3 to Bill 108 which are as follows:

- Growth should pay for growth;
- Complete, vibrant communities are good for everyone;
- Provincial legislation related to municipal governance should be enabling and permissive; and
- Provincial red tape costs municipalities time and money.

In general, staff is supportive of the changes contained in the Proposal. The principle that growth should pay for growth is being enhanced through the addition of the following services back into the DC Act and the removal of the statutory 10% deduction:

- Parks Development (not including land)
- Recreation
- Public Libraries
- Long-term care
- Public Health

The removal of the statutory 10% deduction means that the above services will be able to recover a greater share of the capital cost required to service growth from development. Due to other limitations and statutory exemptions in the DC Act growth will still not fully pay for growth but this step will reduce the burden on existing tax payors for these specific services.

The relief that can be expected on these services is not a windfall to taxpayers. The changes to other services and changes to the parkland dedication regime through the proposed CBC regime are expected to work counter to this relief. The extent that municipalities will be able to remain cash-flow neutral is questionable and will vary from one municipality to the next and possibly one year to the next within a municipality.

In summary, if the Proposal passes, the following services collected through the City's existing DC by-law would remain in the DC Act and none would require a statutory 10% deduction when determining how much of the growth-related capital costs may be funded through DCs:

- Water
- Wastewater
- Storm Water
- Roads
- Fire
- Policing
- Ambulance
- Waste Diversion

- Parks Development (not including land)
- Recreation
- Public Libraries
- Long-term care
- Public Health

In contrast the following services which are collected through the City's existing DC By-law would no longer be able to be collected through DCs:

- Social and Child Services
- Social Housing
- Airport lands
- Parking services
- Provincial Offences Administration

There are several costs that a municipality may incur which require further clarification regarding the ability to levy a charge using either the DC Act or CBC regime, or if they would fall to the tax base:

- Cost of studies related to planning of a municipality (Official Plans, Zoning By-law reviews, etc.)
- Costs of studies related to social and child services, social housing, airport lands, parking services and provincial offences administration
- Costs of land appraisals related to the CBC regime
- Costs of expropriation (if required) related to acquiring parkland
- Costs of LPAT appeals related to a CBC
- Whether costs unable to be recovered through limitations in the DC Act would be eligible to be recovered through a CBC

Other key changes presented in the Proposal include:

- The cap of a CBC stated as a percentage of the market value of the land the day before building permit issuance. For single tier municipalities such as the City, the maximum percentage is 15%. Upper and lower tier municipalities have been presented with maximums of 5% and 10%, respectively.
- Details regarding what must be included in a CBC strategy which will be required to support the CBC to be imposed by each municipality
- The prescribed date by which a municipality must adopt a CBC by-law will be one year after the CBC authority comes into effect.

Staff's position on these key changes is contained within Appendix "A" to Report FCS19057(b) / LS19023(b) and additional information is provided in the forthcoming analysis.

The Proposal also includes public notice requirements related to a CBC, interest rates to be applied in the event of a successful CBC by-law appeal and an amendment to the *Building Code Act, 1992* which would allow a municipality to ensure collection of a CBC prior to the issuance of a building permit. Staff is supportive of these inclusions within the Proposal.

Staff comments that the Province's chosen methodology to calculate the CBC using 15% of land value is not likely to align with the Provincial goal, as communicated through a June 7, 2019 letter from the Ministry of maintaining revenue neutrality for municipalities.

Staff reviewed the data for the 2019 cash-in-lieu of parkland dedication (CIL) calculations alongside the proposed CBC regime. Table 2 summarizes the insight gained from this review. Note that industrial development was not considered as the City does not currently levy CIL on industrial development and that the discretionary reduction applied in the Downtown Hamilton Community Improvement Project Area (CIPA) was assumed to not apply for this analysis.

Table 2: Review of previous legislation versus Provincial changes using 2019 development data

Max CIL considering alternative rate	Max CIL without the alternative rate	15% of land value
This is the rate the City was able to charge prior to Bill 108 changes	Bill 108 removed the municipal ability to levy the alternative	This is the maximum a municipality could collect under the proposed CBC regime
Base	~1/5 Base	2/3 to 3/4 Base

How each municipality experiences differences from the "Base" will fluctuate depending on the density and type of development, as well as land values. These same factors can change year to year within a municipality and, therefore, it is difficult to say with certainty what financial impact the Proposal will have.

It is important to note that Table 2 compares the maximum CBC cap to CIL only. The 15% cap would need to be supported by a CBC strategy and is also intended to cover the capital costs of the services which will no longer be eligible under the DC Act.

Table 3: Sample cash flow impacts assuming 1,800 Single Detached Equivalents and 1 M square feet of non-res gross floor area

Sample increase in DC cash-flow due to removal of statutory 10% deduction	Sample cash flow required from CBC to offset services being removed from DC Act	Sample net cash flow required from CBC for the City to 'break even' on non-parkland components of a CBC
\$1.4 M	\$4.1 M	\$2.7 M

Table 2 and Table 3, when read together, suggest that the City's preliminary analysis is that the proposed CBC regime will not maintain municipal revenue neutrality. This conclusion is not surprising as the City, along with other municipalities, had calculated that in order to break even on high density developments, a percentage cap of in excess of 100% of land value would be required. Even with the services proposed to be moved back to the DC Act, a 15% cap is insufficient to break even on high density developments. Table 4 illustrates a real example of a property that was assessed CIL and DCs in 2019 and calculates that a 64% cap would be required if this development were to remain revenue neutral to the City under the future CBC regime.

Table 4: Sample High Density Development

	117 unit new multi-residential development on a 1.2 acre site
Land value @ May 2019	\$1,450,000
CIL collected (using alternative rates)	\$856,791 – 59% of land value
DC collected for services being moved to CBC	\$126,826 – 9% of land value
Recognize removal of statutory 10% deduction	(\$51,083 – 4% of land value)
Net cash flow required for CBC to breakeven with previous regime	\$932,534 – 64% of land value

In general, if the City were to apply a 15% cap to all forms of development, lower density developments and non-residential developments would pay more than they do under the previous regime, mid density developments would pay slightly less and high density developments would pay significantly less. Generally, as the density increases so would the financial gap to municipalities.

Applying a CBC based on a percentage of land value does not create a nexus between the capital cost of servicing growth with the population that will use those services. In summation, the proposed 15% cap would shift costs to non-residential development and low density residential development while likely leading to an overall reduction in cash flow to the City. Staff requests through the commentary in "Appendix A" to Report FCS19057(b) / LS19023(b) that the Province reconsider the land percentage cap system and failing that, that the Province consider different land use categories and residential densities when moving forward with establishing the cap of a CBC as a percentage of land value.

If a municipality adopts a CBC by-law, a municipality is no longer be able to enforce a parkland dedication by-law. This is concerning as it restricts a municipality from being able to require parkland to be dedicated within new subdivisions and collect for the soft service to be considered in a CBC. In order to collect a CBC, the developer and a municipality would need to negotiate land to be dedicated and the value of that land which would apply as a credit to future CBC payments. This restriction could lengthen the development approval process and may require a municipality to explore expropriation of land in order to secure parkland. Appendix "A" to Report FCS19057(b) / LS19023(b) requests that the Province provide enabling legislation to require parkland to be dedicated.

Staff also presents concerns about the prescribed date at which the CBC by-law must be passed. Rather than one year which was proposed by the Province, the City has requested that the prescribed date be set at the later of two years after the CBC authority comes into effect or the expiration date of a municipalities current DC by-law. This same time period is being requested by many municipalities and will allow municipalities to plan for the cost and effort involved with a CBC study and changes to existing business practices. In order to comply with the requirements of the proposed CBC strategy, a parks plan is also required. The City does not have a current parks plan in place, thus the requested timeline incorporates the time it would take for the City to complete a parks plan in addition to a CBC study.

Staff have prepared comments and requests included as Appendix "A" to Report FCS19057(b) / LS19023(b). Once endorsed, these comments will be submitted as the City's comments through the Environmental Registry of Ontario portal.

ALTERNATIVES FOR CONSIDERATION

None

SUBJECT: Bill 108 "*More Homes, More Choice Act, 2019*" - Proposed Regulations Comment Submission related to the Community Benefits Authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* (ERO 019-1406) (FCS19057(b) / LS19023(b)) (City Wide) – Page 12 of 12

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report FCS19057(b) / LS19023(b) - City of Hamilton Submission on Proposed Regulatory Matters Pertaining to Community Benefits Authority Under the *Planning Act*, the *Development Charges Act* and the *Building Code Act*

Appendix "B" to Report FCS19057(b) / LS19023(b) - Summary of Changes for Development Charges and Community Benefits Charges, Prepared by Watson & Associates Economists Ltd., March 18, 2020

SA/LG/MK/dt