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ERO Number: 019-1406

John Ballantine, Manager  
Municipal Finance Policy Branch  
Municipal Affairs and Housing  
13th Floor, 777 Bay Street  
Toronto, ON M5G 2E5

Dear Mr. Ballantine:

**Subject: 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***

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

The City of Hamilton (the City) would like to thank the Province for conducting consultations and listening to the feedback. The City supports moving several services back into Development Charges (DCs), as well as for removing the 10% statutory deduction for all services in the *Development Charges Act, 1997* (DC Act). This change furthers the concept of growth paying for growth.

The City's comments on the Proposal consider the Provincial statements as laid out through the introduction of Bill 108 which are:

- 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 continues to endorse the guiding principles as set out in the City's and the Municipal Finance Officers' Association of Ontario (MFOA's) initial response to Schedule 3 of Bill 108:

- 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.

*The City supports the Proposal’s recommended change of moving some services back into the DC Act and 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 proposed requirements of a CBC strategy largely align with the requirements under the DC Act and the proposed CBC structure (1) lessens the certainty of costs to developers as it is tied to the market value of land which fluctuates across the province, within each municipality and over time, (2) reduces the correlation between growth paying for growth by connecting the charge to land value rather than needs of the population, (3) adds red tape through costs and time for an additional municipal study, land appraisals, additional processes and potentially expropriation needs and (4) adds many questions related to transition and administration. These statements will become clearer through the balance of the City’s response.

The Proposal is a description provided in general terms. The full impact of the Proposal is not capable of being understood or assessed without the official language that will appear as written in the Regulation. 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.

*The City requests that the Province release the full draft Regulation related to the CBC for consultation prior to enactment.*

The Province requested that feedback be submitted by March 30, 2020 which was extended to April 20, 2020 on March 20, 2020. The City appreciates the extended deadline given the challenges and measures that have been taken by workplaces to limit the spread of COVID-19. The City has conducted some preliminary analysis and has not been able to conduct detailed analysis to understand the full impact of the Proposal. For ease of review, the remainder of the City’s comments respond to the same seven categories set out in the Proposal.

## **1. Required Content of a Community Benefits Charge Strategy**

The Proposal provides that the CBC will be capped based on the market value of the land the day before building permit issuance. The maximum percentage that a single tier municipality can impose is 15%. The Proposal also provides that a CBC strategy must be prepared to support the imposed CBC and provides guidance as to what will be required in a CBC study.

The proposed requirements of a CBC strategy have many similarities to the requirements of a DC Background Study. The differences being that there are no identified prescriptions with respect to service levels of the definition of capital cost as well as the addition of a parks plan. While the Proposal may permit greater flexibility in the calculation of the CBC versus the DC regime this flexibility will be limited by the proposed cap.

The administration involved with the creation of a CBC strategy will place an additional burden on resource strapped municipalities. The fact that the required methodology closely aligns with the existing requirements of a DC Background Study raises questions as to what benefit introducing a new regime that reduces the nexus between the capital costs of growth and the population driving those costs will have. It appears that the material difference between the proposed CBC methodology and the existing DC methodology is the requirement of a parks plan.

The proposed CBC strategy does not address the timeframe which is to be considered nor does it require a regular update. In order for the CBC to remain relevant, the connection between the charge and the methodology needs to remain reasonably current. The DC methodology requires a new study every five years, thus maintaining a reasonably current connection between the cost of development and the amount of the charge. The proposed CBC methodology is flawed in that the market value of land is not a direct correlation of the costs required to service growth. The costs of construction are independent of the market value of land.

*The City requests that all services be eligible under the DC Act and that the Province prescribe any excluded services rather than a list of eligible services.*

*The City requests that the requirement of a parks plan be added to the DC Act instead of the CBC regime and that parkland, through the DC Act, be permitted to be planned for on a forward-looking basis, similar to Transit.*

The content of a CBC strategy per the proposal is silent on whether a CBC may be used to collect for the uncollectible portion under the DC Act. For example, where a project would increase the service standard and, therefore, a deduction has to be made under the DC Act, whether that cost could form part of a CBC strategy.

The City requests that municipalities be permitted to use both the DC Act and a CBC strategy together such that any unrecoverable growth amounts under the DC Act may be recovered through a CBC strategy.

The proposed CBC does not permit a municipality to require parkland to be conveyed by a developer. Rather, it places the municipality and the developer in a negotiation regarding parkland and may result in a municipality exploring expropriation methods should the negotiation fail. There is also no clear way for a municipality to require that land be brought to a specific condition prior to sale. Again, it appears that it is left to negotiation between the municipality and the developer to determine what state the land will be in at the time it changes ownership. Referring back to the guiding principle that “complete, vibrant communities are good for everyone”, it is the City’s opinion that the requirement of parkland must remain within the control of municipal authority. The excess cost and administration, should negotiation of parkland fail, will both increase already resource strained municipalities and delay the delivery of dwellings.

*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.*

## **2. Services Eligible to Be Funded Through Development Charges**

The City supports the Province’s proposal to move some services back into the DC Act. Additionally, the City appreciates the removal of the mandatory 10% deduction for all services that remain eligible for DC recovery. This change moves municipalities closer to being able to have growth pay for growth.

There is uncertainty about whether work-in-progress (WIP) projects that are currently funded based on the 10% deduction would continue with the same funding method, or whether they will transition to the 100% DC funding for the remainder of the project.

*The City requests additional regulatory guidance regarding the transition and path forward with regard to the removal of the mandatory 10% deduction.*

## **3. Percentage of Land Value for Determining a Maximum Community Benefits Charge**

Under the proposed funding regime, the CBC will be capped as a percentage based on market value of the land the day before building permit issuance.

- Single Tier municipalities: 15%
- Lower Tier municipalities: 10%
- Upper Tier municipalities: 5%

The City is a single tier municipality and thus the cap of 15% will apply. With the proposed 15% cap, the City is unlikely to achieve revenue neutrality for those services recovered through this charge. The City performed a review of the 2019 cash-in-lieu of parkland dedication and an analysis of the current revenue generated compared to a situation in which a 15% CBC charge is imposed. The insights gained from this review are that there will be clear winners and clear losers when comparing previous legislation, inclusive of the alternative rate for parkland, to the proposed legislation.

A simple 15% of market value of land methodology will result capital costs being shifted to non-residential and low density residential development. For high density developments, the contribution to capital costs will not only be reduced, but also capped. This cap means, depending on the mix of density being developed, the City does not expect that the additional cost that could be transferred to non-residential and low density development would be able to cover the shortfall on high-density development.

Land values vary significantly across the Province and within each municipality. The cost of construction, however, is more stable. This concern was included in the City's comments respecting Bill 108 and the same concern was echoed by the submission of other municipalities regarding Bill 108. There can be significant differences in land values due to location, density, land size and land use. Within the City, the value per acre is between \$400,000 per acre to \$12,000,000 per acre when adjusting for each of the factors. This variance still exists, but to a lesser extent, if the land use is taken into consideration:

Residential\* - \$750,000 to \$12,000,000 per acre

- Low density residential - \$750,000 to \$1,200,000 per acre
- Medium density residential - \$800,000 to \$3,000,000 per acre
- High density residential, downtown - \$4,000,000 to \$12,000,000 per acre
- High density residential, not downtown - \$1,250,000 to \$7,000,000 per acre

Industrial - \$400,000 to \$1,500,000 per acre

Commercial - \$750,000 to \$3,000,000 per acre

\* *Excludes single-detached dwelling building lots, which can vary from \$5,000 to \$11,000 per front foot*

*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.*

While the methodology of cap based on land value is flawed, the flaw is even more pronounced when considering expansions of existing developments and redevelopment of land. The land value encompasses the entire site and may discourage expansions of existing non-residential developments or redevelopments of residential land if the existing and former uses are not factored into the calculation and cap. These outcomes are counter to the goals of increasing housing supply and would encourage sprawl over redevelopment of underutilized lands. In order to encourage redevelopment, the existing land use needs to be considered in a CBC calculation and cap.

*The City requests that the Province consider redevelopment in the establishment of a CBC regime.*

The City comments that the deadline to provide feedback to the Province is insufficient to conduct meaningful analysis that will incorporate all factors needed to understand the full impact of the CBC. It is also possible that information may arise through the completion of a CBC strategy that could add additional insights into the City's analysis and appropriateness of the 15% CBC cap.

*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.*

#### **4. Timeline to Transition to the New Community Benefits Charge Regime**

The Proposal identifies that the prescribed date by which a municipality must adopt a CBC by-law will be one year after the CBC authority comes into effect.

The prescribed date by which a CBC by-law must be passed may be unachievable for many municipalities. For example, the City commenced the 2019 DC Background Study in January 2018 and it was adopted 17 months later in June 2019. Municipalities will need to undertake a CBC study to meet the requirements of a CBC strategy. It is unclear if the cost of undertaking studies and the use of consultants (if necessary) can be included in the CBC strategy. The administration of a new CBC by-law will require substantial municipal resources, which are limited, and it is also unclear if these can be included in a CBC strategy. The City requires time to prepare a parks plan prior to undertaking a CBC study. It is unlikely that both a parks plan and a CBC strategy can be completed in the proposed timeframe.

*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.*

*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.*

#### **5. Community Benefits Charge By-law Notice**

The Province proposes notice requirements related to a CBC by-law which are similar to the notice provision under the DC Act. The City considers the notice requirements to be reasonable.

*The City supports this section of the proposal.*

#### **6. Minimum Interest Rate for Community Benefits Charge Refunds Where a By-law Has Been Successfully Appealed**

The Proposal includes the requirement for municipalities to provide full or partial refunds in the event of a successful appeal. Since a CBC by-law has been made appealable, it is reasonable to have an interest policy for refunds due to successful appeal. The interest rate suggested in the Proposal is consistent with the interest rate in the DC Act.

*The City supports this section of the Proposal.*

## 7. Building Code Applicable Law

The Province proposes in the draft regulation that the Building Code under the *Building Code Act, 1992* be amended to add the CBC authority to the list of items under Division A – Article 1.4.1.3. Definition of Applicable Law. This amendment ensures the collection of CBC payment prior to the issuance of a building permit.

*The City supports this section of the Proposal.*

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 Regulation. City of Hamilton staff would be pleased to meet with you to discuss these comments in greater detail.

Yours truly,

Mike Zegarac  
General Manager, Finance and Corporate Services