Cassels

What You Need to Know About the Proposed Community Benefits Charge Regulation

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On June 6, 2019, Bill 108, the *More Homes, More Choice Act, 2019* received Royal Assent. Summaries of Bill 108 at first reading can be found here (The Pendulum Swings Back) and here (Government Looking for Balance). Schedule 12 of the Act introduced a new authority under the *Planning Act* for municipalities to charge for community benefits to fund community services, such as parks, affordable housing and childcare facilities. The new community benefits charge system will replace the Section 37 bonusing provisions under the *Planning Act*.

On February 28, 2020, the Province released the proposed regulatory content to guide the development and application of the new community benefits charge for consultation. The proposed regulation can be found here. Comments on the proposal may be made through the Environmental Registry until March 30, 2020.

To implement the new community benefits charge authority, the Province is proposing that the following components be included in regulations under the *Planning Act*, *Development Charges Act* and *Building Code Act*.

Required Content of a Community Benefits Charge Strategy

Before passing a community benefits charge by-law, a municipality must prepare a community benefits charge strategy. The strategy must identify the items that a municipality intends to fund through community benefits charges. The requirements of this proposed strategy are similar to that required for a development charge background study. In particular, the strategy will include:

- the anticipated type, amount and location of development that would be subject to a community benefits charge;
- the anticipated increase in need for a specific community service resulting from new development;
- a parks plan that examines the need for parkland;
- an analysis of parkland per person being provided in the municipality;
- capital costs associated with the increased need for a specific community service resulting from new development;
- whether excess capacity for such services exist;
- any benefit to existing residents; and

- any other grants or financial contributions anticipated to be made that would support such services.

Services Eligible to be Funded Through Development Charges

While soft services were initially anticipated to be included within a community benefits charge, the Province is proposing that soft services such as public libraries, long-term care, parks development, public health and recreation be eligible for full cost recovery under the *Development Charges Act* and not permitted to be funded by the community benefits charge system.

To acquire the land needed to build new parks, municipalities will have the option of either applying the basic parkland dedication rates of 5% (residential) or 2% (non-residential) or establishing a community benefits charge by-law to collect funds to acquire the land for parks. If a municipality has a community benefits charge by-law in place it cannot apply the basic parkland dedication provisions of the *Planning Act*.

Percentage of Land Value for Determining a Maximum Community Benefits Charge

The community benefits charge regime provides that a charge cannot exceed a prescribed percentage of the value of the land subject to development. The Province is proposing to prescribe the following maximum percentages of land value:

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

The Province has indicated that different percentages are being proposed for single, upper and lower-tier municipalities to reflect the varying service delivery requirements of each tier of municipality to service new growth with community amenities. Land value is calculated as of the day before the date of building permit issuance.

Timeline to Transition to the New Community Benefits Charge Regime

The proposed date for municipalities to implement the community benefits charge regime has been extended to one year after the date the proposed community benefits charge regulation comes into effect.

Community Benefits Charge By-law Notice

Further amendments to the *Planning Act* made by Bill 138, the *Plan to Build Ontario Together Act, 2019*, established a mechanism by which a community benefits charge by-law could be appealed to the Local Planning Appeal Tribunal. To implement the appeal mechanism, detailed notice requirements have now been proposed.

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

The mechanism to appeal a community benefits charge by-law includes a requirement for municipalities to provide full or partial refunds in the event of a successful appeal. The interest rate paid on amounts refunded must not be less than the prescribed minimum interest rate, which is proposed to be the Bank of Canada rate on the date the community benefits charge by-law comes into force. Alternatively, the municipality's by-law can provide that the minimum interest rate would be the Bank of Canada rate updated on the first business day of every January, April, July and October.

Building Code Applicable Law

Amendments to the Building Code are proposed to add the community benefits charge authority to the definition of Applicable Law. This amendment would ensure that community benefits charges are paid prior to the issuance of a building permit.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.