

Six Things You Need To Know About the New Community Benefits Charge Regime: 4% Cap, Two Years to Implement, and More

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A hotly-anticipated regulation under the *Planning Act* (O. Reg. 509/20, the Regulation) came into force on September 18, 2020, following on the heels of two recent amendments to the *Planning Act*:

(1) Bill 108, the *More Homes, More Choices Act, 2019*, which introduced the Community Benefits Charge (CBC) authority upon royal assent on June 6, 2019, and

(2) Bill 197, the *COVID-19 Economic Recovery Act, 2020*, which expanded on and clarified the regime changes introduced through Bill 108, receiving royal assent on July 21, 2020.

Alongside the Regulation, the Province proclaimed into force the remaining Bill 108 and Bill 197 amendments to the *Development Charges Act* and *Planning Act*, meaning subject to the transition provisions, the new development charges, parkland dedication, and Section 37 regimes are now in place.

Here are six things you need to know:

1. CBCs will be capped at 4%, but could be even lower

Although early proposals and discussions suggested a cap anywhere between 2% and 15%, the Regulation has confirmed that the maximum CBCs payable amounts to 4% of land value calculated the day before building permit issuance. We understand a guidance document for municipalities is forthcoming, and may establish circumstances in which an even lower or variable cap is appropriate, to stimulate economic growth.

2. Municipalities have until September 18, 2022 to pass a CBC by-law and transition away from the previous Section 37 regime

Municipalities will have two years to transition to the new development charges, community benefits, and parkland dedication regimes brought in through Bill 108 and Bill 197. With CBCs capped at a lower rate than some municipalities might have hoped (and parkland by-laws now subject to appeal), we do not anticipate that many will rush out to implement the new regime faster than necessary.

3. Certain types of development are exempt from CBCs

In a stated effort “to help reduce the costs to build certain types of development that are in high demand/high need,” the Regulation exempts the following types of developments:

- Long-term care homes
- Retirement homes
- Universities, colleges, and Indigenous Institutes
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion
- Hospices
- Non-profit housing

CBC by-laws have been confirmed to not apply in areas in which a community planning permit system is in effect.

4. No double dipping

The introduction of CBCs into the already-complicated regime of development charges, Section 37, and parkland dedication had many scratching their heads trying to figure out where this new charge would fit in. While the Regulation does not provide further clarity, the Province’s decision posted on the Environmental Registry of Ontario has offered that CBCs are intended to work alongside development charges and parkland dedication to ensure municipalities have a complete funding source, with CBCs covering some of that gap, being chargeable to recover the capital cost of any service needed due to development. As provided in Bill 197, eligible development charge services or parkland can be recovered through CBCs, so long as the capital costs that would be funded by the CBC are not the same costs funded by development charges or parkland contributions.

5. Transparency is everything

The Regulation requires municipalities to annually prepare reports for the preceding year accounting for the amounts in the CBC and parkland dedication accounts, including the opening and closing balances, transactions, descriptions of capital acquired during the year with funds from the accounts, details on amounts spent and borrowed throughout the year, and for each asset acquired with funds an account of how the asset was funded or will be funded if funds outside the account are used.

6. A CBC strategy requires specific content and notice

Mimicking the development charges regime, CBC strategies implemented by municipalities must, per the Regulation:

- Include estimates of the anticipated amount, type and location of development and redevelopment with respect to which CBCs will be imposed;
- Include estimates of the increase in need for facilities, services, and matters attributable to the anticipated development and redevelopment to which the CBC by-law would relate;
- Identify the excess capacity that exists in relation to these facilities, services etc.;
- Include estimates of the extent to which an increase in a facility, service etc. would benefit from existing development;
- Include estimates of the capital costs necessary to provide the facilities, services etc.; and
- Identify any capital grants, subsidies and other contributions made to the municipality or anticipated to be made in respect of the capital costs referenced above.

Similarly, notice of passage of a CBC by-law is subject to strict requirements set out in the Regulation.

While this news won't be positively received by all, after many months of staring at question marks in municipal budgets and developer *pro formas*, at a minimum the clarity provided around the CBC cap and regime change timing provides much-needed certainty.

For other insight into these regime changes, please see our team's earlier articles:

- [What You Need to Know about the Proposed Community Benefits Charge Regulation](#)
- [Bill 108 and the New Planning and Development System: Regulations, Transition & Royal Assent](#)
- [The Pendulum Swings Back: Ontario Announces Changes to Planning and Development System](#)

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