



Hamilton

INFORMATION UPDATE

TO:	Mayor and Members City Council
COMMITTEE DATE:	May 14, 2019
SUBJECT/REPORT NO:	Bill 108 (Schedule 3) Amendments to the Development Charges (DC) Act, 1997 and Associated (Schedule 12) Amendments to Section 37 of the Planning Act (City Wide)
WARD(S) AFFECTED:	City Wide
SUBMITTED BY:	Brian McMullen, Acting General Manager, Finance and Corporate Services Corporate Services Department
SIGNATURE:	

On May 2, 2019, the Minister of Municipal Affairs and Housing announced the Province's Housing Supply Action Plan and introduced Bill 108, More Homes, More Choices Act (Bill 108) in the Legislature, which proposes to amend 13 different statutes that directly impact municipalities. The Provincial commenting period closes on June 1, 2019.

This Information Update focuses only on the proposed changes impacting the fees currently levied under the *Development Charges Act, 1997*, S.O. 1997, c. 27 (DC Act). Specifically, the proposed changes contained in Bill 108 through Schedule 3, Amendments to the DC Act and the associated amendments through Schedule 12 to Section 37 of the *Planning Act*, R.S.O. 1990, c.P.13 (Planning Act).

The deadline for comments to be submitted is June 1, 2019. A cross-departmental review is underway to examine proposed changes contained in Bill 108 through Schedule 3, Amendments to the DC Act and the associated amendments through Schedule 12 to Section 37 of the Planning Act. Given the very short commenting deadline and consistent with past practise in these circumstances, to ensure that City of Hamilton comments and concerns on Bill 108 are submitted by the June 1, 2019 deadline, staff will be submitting staff-level comments directly. Staff will be bringing forward a report to Audit, Finance and Administration Committee (AF&AC) containing staff's submission.

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Schedule 3 – Development Charges Act

Bill 108 contains significant changes to the DC Act. Most of Schedule 3 (DC Act amendments) will come into force on a day to be proclaimed by the Lieutenant Governor. No indication by the Province has been provided as to this date. Schedule 3 of Bill 108 contains a number of transition provisions that will apply to DC By-laws that expire after May 2, 2019.

The proposed amendments to the DC Act through Bill 108 can be summarized as service changes, calculation changes and payment changes.

Bill 108 DC Service Changes

The current DC Act places services into two categories. Hard services, which are not subject to a 10% mandatory deduction of the growth costs in the DC calculation, such as highway (roads and active transportation), public works (fleet and domes), transit, water, wastewater, stormwater, fire, police and administrative studies related to any of the above will continue to be included in the DC Act. Bill 108 adds waste diversion to this category with the result being it will no longer be subject to a 10% statutory deduction, thereby allowing the City to charge for full capital costs within the calculation of DCs (excluding landfill sites, landfill services or incineration).

Soft services (subject to a mandatory 10% deduction of the growth costs in the DC calculation) such as parkland development, recreation facilities, library services, ambulance / paramedic, long term care, health services, social and child services, social housing, airport services, parking services, provincial offences administration and administrative studies related to any of the above will no longer be eligible service under the DC Act.

These soft services may be eligible for inclusion in a Community Benefits Charges (CBC) By-law which is a new Planning Act By-law that is proposed through Schedule 12 of Bill 108. Once a CBC By-law is enacted by a municipality, any By-Law passed by the municipality pursuant to Section 42 (Parkland Dedication) of the Planning Act will be of no force or effect. The ability to charge for specific types of services through a CBC by-law will be restricted by the regulations and not expressly stated in the amended Section 37. No draft regulations have been released by the Province and the Province has not communicated when they will be released.

Bill 108 DC Calculation Changes

Currently, the DC rate is the rate in effect at building permit issuance unless the By-law provides otherwise. Under Bill 108, the DC rate will be set at the later of site plan or zoning application, subject to a prescribed amount of time which is unknown at the time of writing.

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If there is no site plan or zoning application or the prescribed amount of time has passed, then the building permit issuance date sets the DC rate.

Bill 108 DC Payment Changes

Bill 108 contains changes to the statutory exemption for secondary dwellings (residential intensification). Currently, only additional dwellings within prescribed classes of residential buildings are exempted from DCs subject to prescribed restrictions. Bill 108 adds language to exempt additional dwellings that are ancillary to existing residential structures subject to prescribed restrictions that have not yet been published.

Payment of DCs for rental and non-profit housing and for commercial, industrial or institutional development will be due at occupancy and paid in six annual instalments. Instalments will be subject to a prescribed interest rate. Payment of all other DCs will still be required at building permit issuance unless the By-law provides otherwise.

Appendix "A" and Appendix "B" attached to this Information Report provide a summary of the changes to the DC Act and as well as the associated amendments to Section 37 of the Planning Act.

Schedule 12 – Planning Act (associated with Schedule 3)

As stated above, through Bill 108, the soft services that are currently included with a DC By-law may be eligible for inclusion in a CBC By-law. Schedule 12 of Bill 108 amends Section 37 of the Planning Act to remove the height and density bonusing By-law provisions and provide the authority to pass a CBC By-law. A CBC By-law may impose CBCs against land to pay for the capital costs of facilities, services and matters required because of the development or redevelopment in the area to which the By-law applies. These capital costs may be the soft services that will no longer be permitted to be charged through a DC By-law. Bill 108 does not expressly exclude any services from being included in a CBC other than the hard services which are included in DC By-laws. However, Bill 108 does provide for the Province, by regulation, to restrict what services can be included in a CBC. No draft regulations have been released by the Province and the Province has not communicated when they will be released.

Bill 108 requires that public consultation will be required prior to the passage of a CBC by-law but Bill 108 does not permit any appeal to the passage of a CBC By-law. A CBC cannot be imposed with respect to types of development which are prescribed. No draft regulations have been released so these types of development are unknown. In addition, there are no provisions in the new s.37 providing for a municipality to exempt any types of development. The lack of the power to provide exemptions contrasts with that express power provided in s.5(1)10 of the DC Act. Accordingly, many of the discretionary

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exemptions provided for in the current and proposed Hamilton DC By-laws will not be able to be applied in a CBC By-law.

In order to pass a CBC By-law, a municipality will need to prepare a CBC strategy that identifies the facilities, services and matters to be funded through the CBC. The content and rules for preparing a CBC strategy will be set out in regulations which have not been released by the Province. The quantum of a CBC in the By-law will not be limited but Bill 108 creates a payment cap for any individual CBC payment that will be based on a prescribed percentage of land value generally applicable on the day prior to building permit issuance. The cap amount is not yet known because no draft regulations have been released. The effect is that the greater the land value the more or all of the CBC that may be payable in any given circumstance.

In addition, all CBC funds collected via a CBC By-Law will be consolidated into one reserve and the City would be required to spend or allocate at least 60 percent of the funds that are in the reserve at the beginning of the year. There is no detail as to what “allocate” means. Bill 108 identifies that a CBC By-law will be subject to annual reporting requirements, however, details on this obligation are not currently available.

A CBC By-law can apply to all of a municipality or only to a certain area within it. A municipality is only permitted to have one CBC By-law and Bill 108 is unclear whether a municipality can charge different CBCs for different zones within the area to which it applies. If a municipality adopts a CBC By-law, any parkland dedication By-law that it has passed pursuant to Section 42 of the Planning Act that is in force will be of no force and similarly, if there is a condition for parkland dedication, pursuant to Section 51.1 of the Planning Act in a subdivision approval, the CBC By-law would not apply to the subdivision. Therefore, in order for a CBC By-law to apply to subdivision approvals, any conditions for parkland dedication should not be included. However, a CBC By-law could include charges for parkland. The intention of Section 37 as amended by Bill 108 is to replace the soft services collections through a DC By-law and a height and density bonusing By-law with the CBC and provide a choice between parkland dedication and CBCs.

Instead of paying a CBC, a municipality may allow an owner of land to provide to the municipality a service required because of the development to which the CBC By-law applies. Before the owner provides the service, the municipality must advise the owner of the value attributed to them and the value attributed will be deducted from the amount of the CBC the owner has to pay. A municipality cannot require the owner to provide the service in lieu of the CBC payment. This may have a significant impact on parkland dedication. If an owner does not wish to dedicate, the City cannot force the dedication if a CBC By-law is in effect.

Transition provisions apply that would permit a municipality to continue collecting for soft services through the DC By-law until a prescribed date or until a CBC By-law is adopted, whichever comes first.

Impact of Schedule 3 and Associated Schedule 12 Amendments

The impact of the changes contained in Bill 108 has the potential to be significant. Until the regulations are released, staff are not able to estimate financial impacts.

Bill 108 introduces several complexities that will require staff to review processes and policies around the development systems and processes, DC administration, DC deferral policy, DC exemption policy and the new CBC By-law strategy, calculation, adoption and administration. The transition of winding down the soft services from the DC By-law and Parkland Dedication By-law to a CBC By-law will need to be carefully monitored and the options for the City will need to be assessed.

At a high level, Bill 108 is expected to:

- Require an increase in debt – as a result of receiving DC cash flow for several forms of development at a later date than current legislation
- Require an increase in administrative systems and support – as a result of varying dates for the DC Rate being set, interest calculations and varying payment schedules
- Limit the impact of the DC Deferral Program – as a result of mandated instalments to be paid over six years following occupancy for rental and non-profit housing and for commercial, industrial or institutional development.

Staff is monitoring Bill 108 as it passes through the legislature and will report to AF&AC and Council, as appropriate, and as additional information is available.

It is expected that additional administration support, in the form of full-time equivalent positions (FTEs), will be required to support the effective implementation and management of the proposed Bill 108 changes. The details on these costs have yet to be determined and will be presented as part of the 2020 budget process.

Related to the City's 2019 DC By-law, staff is not proposing a change to the 2019 DC By-law adoption process. The Bill has not yet received Royal Assent and contains transition provisions related to active DC By-laws. How a By-law passed after May 2, 2019 and before Bill 108 receives Royal Assent is not specifically addressed in Bill 108. This will be part of the concerns that staff raise in the comments returned to the Province by the June 1, 2019 deadline.

If you have any questions about the information contained in this update, please contact Acting Director of Financial Planning and Policy, Cindy Mercanti at 905-546-2424 x2654 or by e-mail at Cindy.Mercanti@hamilton.ca

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APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – May 6, 2019 Letter from Watson & Associates Economists Ltd.

Appendix "B" – Bill 108 Overview prepared by Watson & Associates Economists Ltd.

LG/MK/dt

May 6, 2019

To Our Development Charge Clients:

Re: Proposed Changes to the Development Charges Act

The letter is to advise that on May 2, 2019, the Province introduced Bill 108 which proposes changes to the *Development Charges Act, 1997* (D.C.A.). The Bill has been introduced as part of the Province's "*More Homes, More Choice: Ontario's Housing Supply Action Plan*." The Bill has been given first reading and is expected to be debated over the coming months.

The Act proposes that any development charge (D.C.) by-laws passed after May 2, 2019 will be affected by these proposed changes. Any by-laws that were passed prior to this date will remain in effect until the by-law either is repealed or expires. A summary of the proposed changes to the D.C.A. is provided below.

Changes to Eligible Services – The Bill will remove "soft services" from the D.C.A. These services will be considered as part of a new Community Benefit Charge (discussed below) imposed under the *Planning Act*. Eligible services that will remain under the D.C.A. are as follows:

- Water supply services, including distribution and treatment services;
- Wastewater services, including sewers and treatment services;
- Stormwater drainage and control services;
- Services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001* or subsection 3 (1) of the *City of Toronto Act, 2006*, as the case may be;
- Electrical power services;
- Policing services;
- Fire protection services;
- Toronto-York subway extension, as defined in subsection 5.1 (1);
- Transit services other than the Toronto-York subway extension;
- Waste diversion services; and
- Other services as prescribed.

Waste Diversion – The Bill will remove the mandatory 10% deduction for this service.

Payment in Installments Over Six Years – The Bill proposes that rental housing, non-profit housing and commercial/industrial/institutional developments pay their D.C.s in six equal annual payments commencing the date of issuance of an occupancy permit or occupancy of the building, whichever is earlier. The municipality may elect to charge interest (at a prescribed rate) for each payment, commencing the date of the first



payment. If payments are not made, interest may continue to be charged and may be added to the property and collected as taxes.

When D.C. Amount is Determined – The Bill proposes that the D.C. amount for all developments proceeding by site plan or requiring a zoning amendment shall be determined based on the D.C. charge in effect on the day of the application for site plan or zoning amendment. If the development is not proceeding via these planning approvals, then the amount is determined at the earlier of the date of issuance of a building permit or occupancy.

Soft Services to be Included in a New Community Benefit Charge Under the Planning Act – It is proposed that a municipality may, by by-law, impose community benefits charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies. These services may not include services authorized by the D.C.A. Various provisions are provided as follows:

- Before passing a community benefits charge by-law, the municipality shall prepare a community benefits charge strategy that (a) identifies the facilities, services and matters that will be funded with community benefits charges; and (b) complies with any prescribed requirements.
- The amount of a community benefits charge payable shall not exceed an amount equal to the prescribed percentage of the value of the land as of the valuation date.
- The valuation date is the day before building permit issuance.
- Valuations will be based on appraised value of land. Various requirements are set out in this regard.
- All money received by the municipality under a community benefits charge by-law shall be paid into a special account.
- In each calendar year, a municipality shall spend or allocate at least 60 percent of the monies that are in the special account at the beginning of the year.
- Requirements for annual reporting shall be prescribed.
- Transitional provisions are set out regarding the D.C. reserve funds and D.C. credits.

Remarks

The proposed legislative changes noted above will require a more detailed review to consider the impact to the D.C. and *Planning Act* matters including methodology, collection policies and transition policies. As we have done in the past, our firm will be engaging with legal advisors to further consider the full implications of the Bill and potential Regulations. We will be providing a submission on the Bill to the Province on behalf of our D.C. clients. A few direct comments are made at this time for consideration of the reader, as follows:



Payment in Installments Over Six Years

- The delay in receiving the D.C. revenue will impact the D.C. cashflow. As most of these "hard services" must be provided in advance of development occurring, it will require increased debt borrowing. Added debt interest will have upward pressure on the D.C. quantum.
- As the proposed changes to the Act are to facilitate the Province's housing agenda, it is unclear why these installment payments are to be provided to commercial, industrial and institutional developments.
- The requirement to manage multiple-year collections for each building permit issued for each rental housing, non-profit housing and commercial/industrial/institutional development building permit will cause a tremendous administrative burden on municipalities. This will add to staffing requirements and be reflected in higher planning and building permit fees.

When D.C. Amount is Determined

- Locking in the D.C. rates well in advance of the building permit issuance would produce a shortfall in D.C. revenue, as the chargeable rates will not reflect the current rate as of the time the development proceeds to be built.
- There should be a time limit on how long the development takes to move from site plan approval, or zoning change, to the issuance of a building permit. There is no financial incentive for the development to move quickly to building permit. This may induce speculation to change the land use and then market the lands. (Note: There is an opportunity for a time limit to be prescribed by regulation; however, there are a number of references currently in the D.C.A. that "the Minister may prescribe" which have not been acted upon.)

Soft Services to be Included in a New Community Benefit Charge Under the *Planning Act*

- More information is needed, as there are several key items to be included as part of the regulations. That is, what items are to be included in the community benefits charge strategy and what percentage of the "value of land" is to be eligible for collection?
- Depending on what is to be included in the community benefits charge strategy, this may be undertaken at a similar time as the D.C. background study. As noted, however, it is unclear as to the prescribed items to be included along with the process required to adopt the strategy and the by-law.
- Concern is raised regarding what prescribed percentage of the land value will be allocated for the charge. If the same percentage is provided for all Ontario, then a single-family lot in Toronto valued at \$2 million will yield 20 times the revenue of a \$100,000 lot in eastern Ontario. Given that building costs for the same



- facilities may only vary by, say, 15%, the community benefits charge could yield nominal funds to pay for required services for municipalities outside the G.T.A.
- It is unclear how the community benefits charge will be implemented in a two-tier municipal system. Given that both the upper and lower tiers will have needs, there is no guidance on how the percentage of the land value will be allocated, or how the process for allocating this would occur. Obviously, land values will vary significantly in urban vs. semi-urban communities (e.g. in York Region, land value in Markham is significantly higher than in Georgina), so the upper-tier needs may only take, say, 30% of the allotted value in the urban areas but 75%-90% of the allotted semi-urban or rural values.
 - Given the need for appraisals and the ability of the applicant to challenge the appraisal, a charging system based on land values will be extremely cumbersome and expensive. It is unclear how appraisal costs are recovered, and the appraisals may become a significant cost on each individual property.

We trust that the above information is helpful. For those clients who are in the midst of a background study process, we would be pleased to further discuss this with you and Council shortly. For our other clients, we would be pleased to arrange a time to discuss this further. As noted above, we will be providing further feedback to the Province during this legislative process.

Yours very truly,

WATSON & ASSOCIATES ECONOMISTS LTD.

A handwritten signature in black ink, appearing to read "G. Scandlan". The signature is fluid and cursive.

Gary D. Scandlan, BA, PLE
Director

A handwritten signature in black ink, appearing to read "A. Grunda". The signature is fluid and cursive.

Andrew Grunda, MBA, CPA, CMA
Principal



 **Watson
& Associates**
ECONOMISTS LTD.

Bill 108 Overview

May 8, 2019



Bill 108 – Amendments to the Development Charges Act

Services no longer eligible for DC funding:

- Ontario Works, Childcare, Health, EMS
- General Government (planning studies and other soft service studies)
- Recreation & Leisure, Parks, Parking, Cemeteries, Library (local municipality)
- Roads & Public Works
- Water & Wastewater
- Public Transit (local municipality)
- Stormwater (local municipality)
- Waste Diversion (10% reduction eliminated)
- Police
- Fire (local municipality)



Bill 108 – Amendments to the Development Charges Act

Second dwelling unit in residential development now exempt

- If neither apply, then Building Permit
- Interest can be charged as prescribed by the Regulation
- No longer subject to indexing or new by-laws
- Currently all DC amounts are determined at Building Permit



Bill 108 – Amendments to the Development Charges Act

Payment of DCs made in 6 installments starting at occupancy and then annually for 5 years for the following developments (currently all payments due at Building Permit)

- Rental and Non-Profit housing
- All commercial, industrial or institutional development



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- Ontario Works, Childcare, Health, EMS
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Bill 108 – New Community Benefits By-law

Community Benefits By-law (Sec 37 Planning Act)

- A municipality may impose community benefits charges (CBC) to pay for capital costs of facilities, services and matters required due to development or redevelopment
- Proposed CBC would be for soft services previously allowed under DCA
- Consultation required

CBC will be capped

- Cannot exceed prescribed % of appraised value of land at BP
- Owner to provide appraisal
 - Municipality can provide as well if disagreement
 - If not within 5%, a third appraisal will be obtained



Community Benefits By-law

CBCs must be set aside in a reserve fund

- Must spend or allocate 60% of the funds each year
- "Allocate" to be determined

- If no CBC, then transferred to a general capital reserve for the same purpose

Reporting requirements to be prescribed

Regulation expected later this year



Transition

Staff are currently discussing the transition rules with the Province

- Municipality's new DC By-law is approved prior to Bill 108 becoming law
- Municipality's new DC By-law is approved after Bill 108 becomes law



Transition

If Municipality's new RDC By-law is approved prior to Bill 108 becoming law:

- CBC By-law is approved
- By-law is repealed
- Prescribed Date



Transition

If Municipality's new RDC By-law is approved after Bill 108 becoming law:

- CBC By-law is approved
- By-law is repealed
- Prescribed Date