

Bill 197 and Growth-Related Funding Tools Update

Date: May 17, 2021

To: Executive Committee

From: Chief Financial Officer and Treasurer, Deputy City Manager, Community and Social Services, Deputy City Manager, Infrastructure and Development Services

Wards: All

SUMMARY

This report provides an update on the City's approach to legislative changes to the City's growth-related funding tools enacted through the *COVID-19 Economic Recovery Act, 2020* (Bill 197) and outlines a work plan to deliver updated City bylaws for Council consideration in Q2 2022.

The sweeping changes originally introduced in Bill 108 were largely rolled back in September 2020. The new legislation addresses many of concerns raised by municipalities during the consultation period, and in general, is more aligned with the "growth pays for growth" principle. This will be evaluated and reported on as part of this initiative.

At a high level, the City's three growth-related funding tools are impacted by the legislative changes as follows:

- *Development Charges Act* (DCA) – The legislation now has a prescriptive list of eligible services and most of the City's current development charges services remain eligible under this tool. The mandatory 10% deduction has been removed for soft services, resulting in a higher recovery for eligible services. The legislation also introduces new exemptions.
- *Alternative Parkland Dedication Bylaw (Planning Act, Section 42)* – Parkland dedication remains largely unchanged, including the ability to levy alternative rates. In addition to new reporting requirements, a park plan must be in place before a bylaw is passed, which can now be appealed to the Local Planning Area Tribunal (LPAT).
- *Planning Act, Section 37* – This tool has the most significant changes. The current "density bonusing" regime is replaced with the new Community Benefit Charges (CBC) that is capped at 4% of land value. A CBC strategy must be prepared and the bylaw for this tool, like the others, can be appealed to LPAT.

As a result of the above changes, the City is required to update its bylaws to meet the two year transition timeline set out in the provincial legislation (i.e. by September 2022).

Given the municipal election in October 2022, the plan is to bring forward bylaws for Council consideration in Q2 2022. Without new bylaws in place by the deadline, the City's ability to collect growth-related funding will be restricted to development charges for eligible services and the fulfillment of executed density bonus agreements.

Work on this initiative is currently underway. In addition to an inter-divisional City team, a professional consulting team – Hemson Consulting Ltd., N. Barry Lyon Consultants and O2 Planning + Design – has been retained to lead the technical components of the project, notably the required background studies and strategies that underpin the determination of reasonable and defensible charges as required by provincial legislation, as well as an impact analysis. The review will include a comprehensive stakeholder engagement process that is supported by an external consultant. This review is a collaborative effort and is supported by staff leads and teams in all impacted agencies, boards, commissions and divisions across the City.

The requirement to update all three bylaws concurrently over the next 12 months makes this initiative significantly more complex and time consuming than similar efforts in the past. This will be a large undertaking for divisions across the City and particularly for the core team advancing this work.

An interim report will be brought forward to Council in fall of 2021, including updates on the engagement efforts and technical studies, prior to the statutory public meeting and Council consideration in 2022.

RECOMMENDATIONS

The Chief Financial Officer and Treasurer, Deputy City Manager, Community and Social Services and Deputy City Manager, Infrastructure and Development Services recommend that:

1. The Executive Committee receive this report for information.

FINANCIAL IMPACT

Further analysis is required to understand the financial impact of the new legislation on the City's ability to provide services for growth.

The analysis will focus on the funding impacts of the new legislation. The studies will determine whether the revised tools allow the City to attain an acceptable level of funding to continue paying for growth.

There may also be additional administrative costs resulting from the new legislation. Resources required to implement new systems and maintain new policies, processes, communication, engagement and defense of bylaw appeals will be estimated.

DECISION HISTORY

At its meeting on May 14, 2019, City Council considered the report *CC7.3 Proposed Bill 108 (More Homes, More Choice Act, 2019) and the Housing Supply Action Plan - Preliminary City Comments*, which highlighted the proposed changes to the *Planning Act, Local Planning Appeal Tribunal Act, Ontario Heritage Act* and the *Development Charges Act*. The report provided preliminary comments on the potential impact on municipal land use planning, the development approval process, heritage conservation and funding for community facilities and infrastructure.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC7.3>

At its meeting on July 16, 2019, City Council considered the report *CC9.7 More Homes, More Choice Act - Budgetary Considerations*, which identified the budgetary considerations related to the implementation of Bill 108 and the measures staff were taking to work with the Province to ensure appropriate regulations are adopted. The report also communicated to program areas what may be reasonable assumptions for 2020 budget purposes.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC9.7>

At its meeting on November 26, 2019, City Council considered the report *MM12.29 Bill 138 - Preliminary City Comments*, which summarized amendments to Bill 108 proposed through the *Plan to Build Ontario Together Act* (Bill 138).

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.MM12.29>

At its meeting on December 17, 2019, City Council adopted MM13.27 "Response to Proclamation of *Development Charges Act* changes effective January 1, 2020" and adopted interest policies that apply to the development charges "frozen" at Site Plan and Rezoning Bylaw application and to the new statutory deferral and instalment payments for rental, institutional and non-profit housing.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.MM13.27>

At its meeting on January 19, 2020, City Council adopted MM14.18 "Re-opening of MM13.27 Response to Proclamation of *Development Charges Act* changes effective January 1, 2020" to clarify how the interest charges would be calculated for the "frozen" development charges at the time of planning application and directed staff to report back on any modifications to the interest rates or development charges policies, once there is an opportunity to more fully assess changes to development charges legislation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM14.18>

COMMENTS

The purpose of this report is to: (1) provide an update on the recent legislative changes that affect the City's growth-related funding tools; and (2) outline a work plan for updating the existing bylaws and policies to comply with the provincial legislative changes.

The Province's amendments to the *Planning Act* through Bill 197 that came into effect in September 2020 require municipalities to adopt new bylaws by September 2022, in order to continue levying the alternative parkland rate and the new Section 37 Community Benefit Charge. In addition, updates to the DC bylaw are required to account for the elimination of the mandatory 10% deduction and to align it with the new funding tools. Over the next year, background studies will be conducted and stakeholders will be engaged before updating the three bylaws to comply with the new legislation.

Although the statutory deadline is September 2022, the plan is to present the report and bylaws to Council for approval by Q2 2022. This ensures that the bylaws are approved before Council breaks for the municipal elections to be held in October 2022.

CONTEXT

Growth-related funding tools allow municipalities to levy charges on new development (or redevelopment) in order to pay for the new municipal infrastructure required as a result of growth in population and employment. In 2020, the City received about \$750 million collectively from the three funding tools – development charges, Section 37 density bonusing and Section 42 parkland dedication – which partially fund growth-related services, facilities and infrastructure. All three of these are impacted in varying degrees by the new legislation.

These three tools are necessary for creating complete, inclusive and environmentally sustainable communities that contribute to making Toronto an attractive city to live, work and play in. They support the principle that "growth pays for growth". The rapid pace of growth in Toronto – the population is expected to increase by 22% to 3.65 million and employment is expected to increase by 27% over the next 30 years – makes the role of these tools even more critical. This rate of growth, and the mandatory need to plan for it, and provide the infrastructure and services to accommodate it, is set out in the Province's Growth Plan for the Greater Golden Horseshoe. Without funding tools that ensure recovery of growth-related costs, the achievement of these outcomes is at risk.

Integrating these three funding tools to address the City's growth along with the need to align the timing of the required infrastructure and planning approvals are part of the work plan. The three tools being discussed have limitations, strengths and weakness, and their application varies across the City, as does the nature of growth and intensification. Developing a coordinated framework of growth-related tools to support future growth and change across the city will be a complex task requiring significant staff effort across the City.

LEGISLATIVE CHANGES

The current legislative framework is the result of a significant and iterative process of provincial bills and regulatory proposals which began in May 2019 with the Province's introduction of Bill 108 (*More Homes, More Choice Act*). This Bill proposed sweeping changes to the current regime – the most contentious being the Community Benefits Charges (CBCs) that was intended to combine the provisions for parkland and density

bonusing, and replace the "soft services" included in the development charges into one capped charge.

Many Ontario municipalities were concerned that this new amalgamated tool did not allow them to fully recover the infrastructure costs of growth and thereby contravened the principle that "growth should pay for growth", which is important for the long-term financial sustainability of municipalities. The City of Toronto provided comments in 2019 and 2020 through the Province's consultation process as well as additional input through inter-municipal efforts, provincial working groups and direct meetings with provincial staff. Following these consultations, the Province removed many of the proposed changes and they did not come into effect.

Instead, Bill 197 (*COVID-19 Economic Recovery Act*) came into effect in September 2020 and amended the *Planning Act*, the *Development Charges Act* and other legislation. Through its statements, the Province has assured municipalities that their funding will be maintained and that "growth will pay for growth".

The new framework seems to be better aligned with this principle. Improvements to the legislation include: return of additional services to the development charges regime; the removal of the statutory 10% discount for soft services; the flexibility to use the funding tools together; and the substantial reversion back to the status quo regarding Section 42 of the *Planning Act*.

However, several challenges remain with the new legislation, including whether the changes maintain municipal revenues and the extent to which the tools cover the full costs associated with growth. The in-depth technical studies that are underway will determine the potential financial impact on the City and its ability to provide the needed infrastructure and services to support the provincially mandated growth projections and to create complete, vibrant and livable communities for Toronto residents and businesses.

The key legislative changes for each of the tools, as well as the remaining challenges, are highlighted in the sections below.

Development Charges (DC)

Development charges are used to fund the initial round of growth-related capital infrastructure, and are set out in the *Development Charges Act* (DCA) and the accompanying municipal bylaw. Development charges do not pay for non-growth costs, operating costs, state of good repair or replacement costs. Those costs must be funded from other sources, such as property taxes or utility rates.

With the new legislation, most of the DCA remains the same. The key changes are outlined below:

- The approach to levying DCs on services has changed. In the past, all services were considered eligible, except for the six listed as ineligible. The new legislation takes the inverse approach – it prescribes a list of services that municipalities can levy a fee for, and all other services are considered ineligible.

- Certain "soft services", such as parking, cemeteries and airports, are no longer eligible for DC charges.
- A list of the above eligible and ineligible list of services that can be funded through DCs is outlined in Attachment 1.
- Eligible "soft services" (e.g. childcare, parks and recreation, affordable housing and shelters) are no longer subject to the 10% discount as they were in the past, thereby increasing the costs that are now potentially recoverable.
- There is no longer a mandatory 10-year planning period for "soft services". However, this 10-year planning period continues to be applied to Transit.

Requirement: To fully utilize the changes listed above, municipalities must adopt a development charge and enact an implementing bylaw by September 18, 2022. Prior to adopting a new bylaw, a comprehensive DC Background Study must be completed and at least one public statutory meeting must be held.

Community Benefits Charges (Section 37 – Planning Act)

The major legislative change is to Section 37 of the *Planning Act*, where the existing "density bonusing" provision is replaced with the new Community Benefits Charges (CBC). Key elements of the CBC are:

- It is imposed only on developments with five or more storeys and 10 or more residential units.
- The charge is capped at 4% of the entire land value (and not just the increased value based on density bonusing).
- In-kind contributions continue to be permitted, but the agreements can no longer be registered on title to bind future owners, making it more difficult to take in-kind contributions for services such as daycares and community centres.
- Only local municipalities can apply this charge.

The impact to potential funding will be assessed as part of the review.

Similar to the other two bylaws, the CBC bylaw is appealable to Local Planning Appeal Tribunal (LPAT). Once a bylaw is in place, applicants cannot appeal the charge and are required to pay the levied amount. However, they can challenge the land valuation to recover a part of the amount paid.

Requirement: Municipalities must prepare a CBC strategy that identifies the facilities, services and matters that will be funded before passing the bylaw. Municipalities must also adopt a CBC bylaw by September 18, 2022, after which existing bylaws may not be applied. Executed or signed Section 37 agreements will remain valid post CBC bylaw adoption. Updates to the Official Plan policies are not a statutory requirement but will be completed as part of the project.

Alternative Parkland Dedication Rate (Section 42 – Planning Act)

Section 42 of the *Planning Act* allows the City to require the dedication of parkland (or cash in lieu) as a condition of development or redevelopment, and to establish an

alternative parkland dedication rate. While this tool was originally to be eliminated, Bill 197 confirms that the tools in Section 42 will continue to be available to municipalities.

The key change resulting from Bill 197 is a new right of appeal, whereby the Local Planning Appeal Tribunal (LPAT) now has the authority to amend a bylaw, but not the Park Plan, established by a municipality.

Requirement: Municipalities must prepare a Park Plan before adopting an alternative parkland dedication rate, enacting a bylaw, and adopting the supporting Official Plan policies by September 18, 2022, after which existing bylaws may not be applied.

Key Outstanding Provincial Requests

While many of the changes requested by the City were provided in Bill 197, several issues remain with elements of the legislation, including the following:

- **Registration on Title:** Under both the previous and new legislations, municipalities are allowed to enter into agreements for in-kind community benefits and for DC payments. However, there is no legal mechanism to register the agreements on land title such that it “runs with the land”, which would automatically bind future owners of the land. This authority has been requested several times and is necessary to enforce agreements regardless of a change in ownership.
- **Priority Lien Status:** Another long-standing request is the ability to place a priority lien status on the outstanding development charges added to the property tax roll. Without this, the City's collection risk is high, particularly for the new DC payments collected over 5 and 20 years from occupancy. In the event of default and disposition of the property, without priority lien, DCs fall behind all other claims on the property.
- **DC payment timing:** The changes that came into effect in January 2020 remain problematic, namely the “freezing” of development charges at the time of planning application and extending the collection timing to 5 and 20 years. These may result in a misalignment between the basis of the fees and the servicing needs of the new population and employment in the future. The changes may also result in a cash flow and revenue impact, and increases the time and complexity to administer the DC bylaw.
- **Caps and restrictions:** While removal of the 10% deduction to DC soft services appears to be a positive change, various other caps and restrictions – such as the 4% land value cap for CBCs, historic service level cap for the DCs, ineligible capital costs and statutory exemptions – remain in place. These restrictions may impact the City's ability to pay for growth, and will be evaluated as part of this initiative and reported to Council.

WORK PLAN

The work on this initiative commenced late last year and is underway as outlined in Attachment 2.

Principles: The principles for this initiative are the same ones that guided previous bylaw updates of growth-related funding tools:

- Growth should pay for growth
- Complete and vibrant communities are good for everyone
- Municipal tools should allow for flexibility to meet the needs of local municipalities, including the opportunity to provide for both in-kind and financial contributions
- Changes should be revenue neutral to municipalities and should consider revenue potential under the previous regime, not just historic revenues
- Administrative burden should be minimized

Timeline: The City is required to update its bylaws by September 2022 to comply with the new legislation and to continue using the growth-related funding tools. Given the municipal election in October 2022, the plan is to bring forward bylaws for Council consideration in Q2 2022.

The time to complete concurrent updates of the three funding tools is tight and will require significant staff time and effort over the next 12 months. This will require staff to prioritize this project.

Deliverables: The scope of work includes background and supporting studies, stakeholder consultation, and developing and implementing bylaws and Official Plan policies. The table below lists the deliverables for each of the three funding tools.

| Development Charges (DC) | Alternative Parkland Dedication Rate (Section 42) | Community Benefits Charge (Section 37) |
|---|--|--|
| <ul style="list-style-type: none"> • DC Background Study • DC Bylaw | <ul style="list-style-type: none"> • Parks Plan • Parkland Bylaw • Official Plan Policies | <ul style="list-style-type: none"> • CBC Strategy • CBC Bylaw • Official Plan Policies • Implementation framework, with supporting IT, guidance materials and resourcing |

Resources: The successful completion of the proposed work plan will require the collaboration of staff across all Divisions to ensure the new funding tools properly address all of the City's growth-related needs, and that the deliverables and data needed are provided as efficiently as possible.

In addition to an inter-divisional team, a professional consulting team – Hemson Consulting Ltd., N. Barry Lyon Consultants and O2 Planning + Design – has been retained to lead the technical components of the project, notably the required background studies and strategies that underpin the determination of reasonable and defensible charges as required by provincial legislation, as well as an impact analysis.

Stakeholder Engagement: The review will include a comprehensive stakeholder engagement process that is supported by an external consultant. A broad and inclusive

engagement on both policy and technical matters will be carried out over the next 12 months, and will include the development industry, business associations, community associations, the general public, and equity-seeking groups, such as urban Indigenous and Black communities. City Councillors will also be offered the opportunity to participate in the consultations.

The guiding principles for the stakeholder engagement are outlined in Attachment 3.

CONCLUSION

The sweeping changes introduced by Bill 108 to growth-related funding tools in 2019 were largely rolled back in Bill 197 that came into effect in September 2020. Work is underway to ensure compliance with this new legislation. The relevant bylaws and policies will be updated and supported by technical studies. The impact on the revenue generating capability of the three funding tools will be assessed to determine whether "growth pays for growth" and the City remains revenue neutral after the changes are implemented.

An interim report will be brought forward to Council in fall of 2021, and the technical studies and strategies, along with the proposed bylaws for Council consideration in Q2 2022.

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ATTACHMENTS

Attachment 1: Eligible and Ineligible Development Charges
Attachment 2: Work Plan for Updating Growth-Related Funding Tools
Attachment 3: Guiding Principles for Stakeholder Engagement

Attachment 1: Eligible and Ineligible Development Charges

| Previous DCA | | |
|---|---|---|
| <p>The previous DCA allowed for all services to be included, except for the following six ineligible services:</p> <ul style="list-style-type: none"> • Cultural or entertainment facilities • Tourism facilities • Acquisition of land for parks • Hospital • Waste Incineration | | |
| Bill 197 Changes | | |
| <p>Instead of excluding services as the previous DCA did, the new DCA prescribes a list of services that are eligible.</p> | | |
| Eligible Services – Currently Charged in Toronto | Eligible Services – Not currently charged in Toronto | No Longer Eligible - Currently charged but will be removed |
| <ul style="list-style-type: none"> • Water • Wastewater • Storm water • Roads and related • Transit • Police • Fire • Ambulance services • Public Libraries • Parks and recreation (but not parkland acquisition costs) • Health • Child Care • Affordable Housing • Shelters | <ul style="list-style-type: none"> • Waste Diversion • Long-term Care • Bylaw Enforcement • Emergency Preparedness • Electrical Power Services | <ul style="list-style-type: none"> • Pedestrian Infrastructure • Civic Improvements |

Attachment 2: Work Plan for Updating Growth-Related Funding Tools

The high level work plan is set out below.

| Timeline | Milestone and Activity |
|------------------------------|---|
| Q4 2020 (complete) | Project Planning <ul style="list-style-type: none"> • Review legislative changes, develop strategic approach & complete project planning, issue technical consultant RFP • Project management and coordination |
| Q1 2021 (complete) | Project Initiation <ul style="list-style-type: none"> • Retain technical consultant, issue engagement and communication RFP, form inter-divisional team • Initiate data collection |
| Q2 – Q3 2021 | Staff Report to Executive Committee <i>Data Collection and Analysis</i> <ul style="list-style-type: none"> • Collect data, undertake research and analysis to support technical studies, bylaws, and policy reviews. Initiate implementation planning. Coordinate with corporate initiatives. • Complete preliminary rate calculations • Undertake market review and modelling for impact analysis <i>Stakeholder Engagement - throughout</i> <ul style="list-style-type: none"> • Retain engagement and communication consultant, develop engagement plan, undertake engagement activities |
| Q4 2021 | Stakeholder Engagement Cont'd: <ul style="list-style-type: none"> • Continue engagement activities • Prepare interim engagement report Staff Interim Report to Executive Committee <i>Technical Studies and Strategies</i> <ul style="list-style-type: none"> • Prepare draft DC Background Study, CBC Strategy and Alternate Parkland Dedication Rate Bylaw Study |
| Q1 2022 | Technical Studies and Strategies and Bylaw <ul style="list-style-type: none"> • Release of DC Study, CBC Strategy and Parks Study • Release proposed bylaws Stakeholder Engagement Cont'd <ul style="list-style-type: none"> • Continue engagement activities Hold statutory public meeting |
| Q2 2022 | Publish final engagement report <i>Table technical studies and bylaws for Council consideration</i> |
| Q2-Q4 2022 | Implementation |

Attachment 3: Guiding Principles for Stakeholder Engagement

The following guiding principles support the proposed engagement and communication strategy:

- **Transparent** - Engagement processes should be transparent by providing clarity on the level of engagement residents can expect, making records of consultation processes available to the public in a timely manner, and clearly indicating how feedback was considered and incorporated.
- **Timely** - Engagement processes should be designed to ensure that feedback is sought at appropriate and meaningful times in the planning process.
- **Consensus Building** - Engagement processes should be iterative, providing more than one opportunity for participants to offer feedback and to see how their feedback has been used. In particular, engagement activities should be designed with regard to the multiple lenses and divergent viewpoints related to funding derived from development activities.
- **Inclusive** - Engagement processes must be designed to engage the widest possible audience, and must include strategies to reach Indigenous and Black communities and under-represented groups.
- **Accessible** - Applying easy-to-understand, accessible, and non-jargon language that can translate technical and complex information for a non-expert audience and which can be made available to speakers of many languages (as determined by the City) with limited technical terms and phrases that are AODA compliant.
- **Innovative** - Engagement processes should be designed using innovative methodologies in order to achieve the highest level of engagement possible.
- **Respectful** - Engagement processes should be respectful of the expert knowledge that residents have of their communities, and should promote a respectful and positive environment where people feel comfortable voicing constructive opinions.
- **Educational** - Engagement processes should seek to improve the public's understanding of planning issues, with clear objectives to improve planning literacy.