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**SUBJECT:** City of Markham Comments on Bill 108 Proposed Regulatory Matters – Community Benefits Authority, Development Charges Act and Building Code Act

**PREPARED BY:** Planning and Urban Design Department  
Financial Strategy and Investment  
Legal Services  
Contact: Kevin Ross, Manager, Development Finance & Payroll, ext. 2126

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**RECOMMENDATION:**

- 1) That the report entitled, “*City of Markham Comments on Bill 108 Proposed Regulatory Matters – Community Benefits Authority, Development Charges Act and Building Code Act*”, dated April 20, 2020, be received; and,
- 2) That this report, including the recommendations from the City of Markham on Bill 108 Proposed Regulatory Matters, be forwarded to the Minister of Municipal Affairs and Housing and to the Regional Municipality of York; and,
- 3) That the City of Markham supports the following:
  - a) The proposal for the regulation under the *Development Charges Act, 1997*;
  - b) The community benefits proposed to be included within the community benefits charge regulation;
  - c) The proposal for a public notice to be provided prior to the enactment of a community benefits by-law;
  - d) The proposed application of an interest rate on refunds in the event of a successful appeal to a community benefits by-law; and,
  - e) The proposal to add the community benefits charge authority to the applicable law list under the Building Code; and,
- 4) That the City of Markham request that the Province:
  - a) Provide municipalities with wide latitude to determine what community facilities can be supported through community benefits charges;
  - b) Amend the Community Benefits Charge legislation to allow a municipality to require the conveyance of parkland in lieu of payment of a community benefits charge;
  - c) Implement an escalating Community Benefits Charge collection limit tied to density to allow municipalities to be able to provide a minimum of 0.8 hectares of parkland per 1,000 residents, and that the maximum limit of the Community Benefits Charge eligible to be collected be set at 50% of the value of the fully developed land;
  - d) Given the ongoing emergency situation and scale of work required to implement a Community Benefits Charge regime, increase the timeline for implementation of a Community Benefits Charge by-law to be the later of, (1) two years from the date the

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- community benefits regulation comes into effect or, (2) the expiration of the current Development Charge by-laws;
- e) Allow municipalities to fully recover the capital cost of Development Charges without the requirement of preparing a background study until the development charge by-law is next updated; and,
  - f) Allow municipalities to utilize the community benefits charge by-law and the parkland dedication provisions of the *Planning Act* for specific types of developments, i.e. allow the municipality to specify the types of development that would be subject to a CBC vs. parkland dedication provisions; and further,
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**EXECUTIVE SUMMARY:**

On February 28, 2020, the Province released a regulatory proposal for the Community Benefits Charge which outlines additional matters and changes and seeks input to inform the further development of the Community Benefits Charge authority and regulation under the *Planning Act*. There is a 52-day consultation period to elicit feedback, closing on April 20, 2020.

The proposed regulatory changes return the soft services such as library, park development and recreational services to development charges from the initially proposed Community Benefits Charge authority. The 10% discount on growth-related soft services is also being removed under the proposal to allow for the full recovery of capital costs.

Under the proposal, the Community Benefits Charge will fund infrastructure for community services such as land for parks, affordable housing and childcare facilities that are required to support growth. These proposed amendments are in addition to the mechanism that allows a Community Benefits Charge by-law to be appealed to the Local Planning Appeal Tribunal, which received Royal Assent on December 10, 2019.

Additional proposals by the Province include:

- a) *Limit on amount of Community Benefits Charge payable* – Amount payable cannot exceed the prescribed percentage of land value as follows:
  - a) Single-Tier Municipalities: 15%
  - b) Lower-Tier Municipalities: 10%
  - c) Upper-Tier Municipalities: 5%
- b) *Required content of the Community Benefits Charge strategy* – Identifies the items to be funded through the charge, as well as others items such as the requirement for a parks plan, the current parks service level and the capital costs associated with the increased need for a particular community service;
- c) *Transition timeline* - Municipalities to transition to the Community Benefits Charge authority one-year after the date the proposed Community Benefits Charge comes into effect;

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- d) *Requirement for a Community Benefits Charge by-law notice* – Similar to notice requirements for a development charges by-law;
  - e) *Interest rate for Community Benefits Charge refund* – Bank of Canada rate to be applied for refunds due after successful appeal of the by-law. This is similar to the manner in which development charge by-law appeals are handled; and
  - f) *Building Code Amendment* – Addition of Community Benefits Charge authority to list of applicable law items.

Of particular importance, is the fact that if the City has a Community Benefits Charge by-law in place, it cannot apply the basic parkland dedication provisions of the *Planning Act*.

This report explores each of these proposals and makes recommendations to the Province. It is recommended that this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham's comments on Bill 108, *More Homes, More Choice Act, 2019*, prior to the April 20, 2020 commenting deadline.

#### **PURPOSE:**

This report provides staff comments and recommendations in response to the Province's proposed regulatory framework for the Community Benefits Authority, *Development Charges Act, 1997* and *Building Code Act, 1992*.

#### **BACKGROUND:**

On May 2, 2019 the Province released the More Homes, More Choice: Ontario Housing Supply Action Plan (the "Housing Supply Action Plan") and introduced Bill 108, the *More Homes, More Choice Act, 2019* ("Bill 108") with the aim of making it faster and easier for municipalities, non-profits and the private sector to build housing. Staff provided updates to Council in [May 2019](#) and [July 2019](#) outlining the impacts to Markham and providing recommendations to the Province on the proposals under the Housing Supply Action Plan. The City's main concern was the proposal to change the current Section 37 and Parkland regimes to a new Community Benefits Charge ("CBC"). The initial proposal provided by the Province was proposed to take the place of certain soft service development charges, parkland dedication and Section 37. The proposal to cap the amount of the CBC that may be collected was also a concern for the City along with other Ontario municipalities.

The City provided feedback to the initial regulatory CBC proposal, which was posted on the Environmental Registry of Ontario on June 21, 2019 (ERO 019-0183) with comments required by August 21, 2019. The staff report to a Special Council meeting (Items 4.1 and 4.2) on [July 26, 2019](#) included the City's comments and recommendations on the initial CBC regulatory proposals.

On November 6, 2019, amendments to the CBC provisions under the *Planning Act* were introduced through the *Plan to Build Ontario Together Act, 2019*. The Bill received Royal Assent on December 10, 2019. The amendments include new transition provisions for

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alternative parkland dedication and a mechanism to allow the development industry to appeal a municipality's CBC by-law to the Local Planning Appeal Tribunal ("LPAT"). The CBC authority has not been proclaimed and is not in effect at this time.

On February 28, 2020 the Province released a second regulatory proposal for the CBC (ERO 019-1406) which outlines some of the implementation details and changes to the initial June 21, 2019 proposal and seeks public input to inform the further development of the CBC authority and regulation under the *Planning Act*. There is a 52-day consultation period to elicit feedback which closes on April 20, 2020.

#### Development Charges Act ("DCA") Regulatory Proposal

The most significant change in this proposal is that many of the soft services that were to be transferred from the DCA to the new CBC regime are now proposed to remain under the DCA funding framework. These services include:

- a) Public Libraries (including library resources)
- b) Long-Term Care
- c) Park Development (but not parkland acquisition)
- d) Recreation (including community centres and arenas)
- e) Public Health

Another significant change is that the growth-related capital costs for these services will now be completely recoverable through development charges as the 10% discount under the previous legislation will no longer apply.

These proposed changes to the regulation are positive for municipalities as the DCA regime is preferred (as opposed to the CBC) to recover growth-related capital related cost.

#### CBC Regulatory Proposal

Bill 108 proposes that CBCs can be utilized to fund the development-related costs of services that would benefit the community that are ineligible for funding under the DCA. The Province has identified what services will be included within a CBC funding framework. They include:

- a) Parkland Acquisition
- b) Parking and By-law Enforcement
- c) Supporting Affordable Housing and Shelters
- d) Childcare

It is currently unclear if this will be a complete list of eligible community benefits, or if municipalities will have a broad authority to apply the monies collected to a variety of community benefits. Under the proposal, services that are excluded from the CBC will be similar to those under the DCA and include municipal administration buildings, tourism facilities, landfill sites and services, facilities for treatment of waste and hospitals.

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For *any* particular development, the amount of CBCs payable cannot exceed a prescribed percentage of land value determined on the day before a building permit is issued. The following percentage caps have been proposed by the Province:

1. Single-Tier Municipalities: 15%
2. Lower-Tier Municipalities: 10%
3. Upper-Tier Municipalities: 5%

It is important to note that if a municipality chooses to utilize the CBC, then it cannot apply the amended parkland dedication and cash-in-lieu of parkland provisions under the *Planning Act*, and vice-versa. Bill 108 changed the parkland and cash-in-lieu provisions to remove the alternative parkland rate for dedication (1 ha per 300 units) and cash-in-lieu (1 ha per 500 units) for high density residential developments, while the 2% of land area for commercial/industrial uses, and 5% for all other uses (including residential) remains the same. The usage of these tools (i.e. parkland dedication and/or cash-in-lieu vs. the new CBC) are mutually exclusive.

#### **OPTIONS/ DISCUSSION:**

The changes made by Bill 108 will mean that municipalities will have two primary funding streams to pay for the increased need for service due to new development – development charges and community benefits.

To implement the new CBC authority, the Province is seeking feedback on the following regulatory matters under the *Planning Act*, the *DCA* and the *Building Code Act*:

1. Required content of a CBC strategy;
2. Services eligible to be funded through development charges;
3. Percentage of land value for determining a maximum CBC;
4. Timeline to transition to the new CBC regime;
5. CBC by-law notice;
6. Minimum interest rate for CBC refunds where a by-law has been successfully appealed;  
and
7. Building code applicable law.

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

Before passing a CBC by-law, a municipality must prepare a CBC strategy. The strategy must identify the items that a municipality intends to fund through CBCs. It must also comply with any mandatory requirements of the strategy that may be prescribed in the regulation. In preparing a CBC strategy, a municipality must consult, but has the flexibility to determine their consultation approach.

#### **Provincial Proposal**

To provide greater clarity about the components of a CBC strategy, the Province has proposed that a municipality would need to include the following content in their strategy:

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1. The anticipated type, amount and location of development or redevelopment that would be subject to a CBC;
  2. The anticipated increase in the need for a specific community service (for example, the acquisition of land for parks, affordable housing, child care, etc.) resulting from new development or redevelopment;
  3. A parks plan that examines the need for parkland in the municipality;
  4. The amount of parkland per person currently being provided in the municipality, and if this is planned to increase, decrease or stay the same;
  5. The capital costs associated with the increased need for a specific community service resulting from new development or redevelopment;
  6. The excess capacity that exists in those specific services (for example, the extra capacity that exists in a service that is not currently being used);
  7. Whether the increased provision of those specific services would also serve existing residents (for example, existing residents may also benefit from new child care facilities that are needed as a result of new development or redevelopment); and
  8. Any capital grants, subsidies or contributions from other levels of government or other sources like donations that are anticipated to be made to support those specific services.

#### Comments

While the proposed regulations offer further details on what could be included in a CBC, and what can still be collected through a development charge, there are some key points that require clarification before staff can fully assess the potential implications related to the development of a CBC Strategy.

It is clear that the acquisition of cash-in-lieu of parkland must be included in the CBC, and reference is made to the inclusion of affordable housing in the CBC Strategy.

Amendments to the *Planning Act* under the Bill 108 limited the application of inclusionary zoning to Major Transit Station Area (“MTSA”), and a CBC cannot be collected where inclusionary zoning is applied. Staff are unclear if it is the intent of the regulation to have municipalities complete a review and assessment of all affordable housing options, and consider the need for inclusionary zoning instead of applying a CBC.

Staff are not clear whether the list of eligible services that the Province has indicated could be included in a CBC is a comprehensive list. Staff are reviewing various services that may be eligible to be included in a future CBC or development charge by-law (e.g. parking enforcement).

The City is reviewing MTSA's and developing an affordable housing strategy. Further, the City is in the early stages of developing a Parks Plan to review and assess parkland needs and priorities that could be used to inform the CBC Strategy.

#### ***Recommendation:***

**It is recommended that the Province provide municipalities with wide latitude to determine what community facilities can be supported through CBCs.**

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At present, the City does not collect development charges to fund affordable housing, or to fund Parking Enforcement. A decision of Council is not required at this time to determine if CBC funds will go to either of these services, however through the CBC strategy, these issues may need to be addressed.

## **2. *Services Eligible to be funded through Development Charges***

The DCA provides authority for municipalities to impose development charges to pay for the increased capital costs of specific services that are needed as a result of new growth.

The services that are eligible to be funded through development charges are listed under subsection 2(4) of the DCA. The list includes a provision for other services that may be prescribed in regulation. The *Planning Act* stipulates that services funded by development charges may not be funded by CBCs.

When proclaimed, Bill 108 will make waste diversion and ambulance services fully recoverable through development charges.

The government is proposing to prescribe additional services to be funded through changes to the regulations under the DCA.

### **Provincial Proposal**

It is proposed that the following services would be identified in regulation under subsection 2(4) of the DCA:

1. Public libraries, including library materials for circulation, reference or information purposes;
2. Long-term care;
3. Parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks);
4. Public health; and
5. Recreation, such as community recreation centres and arenas.

Development charges may be imposed to fully recover the capital costs related to the provision of these proposed services due to new growth. These proposed services would be ineligible to be funded through CBCs.

### **Comments**

The CBC as proposed in May 2019 was to recover the cost of certain soft services, parkland dedication and Section 37. In the City's comments to the Province in May 2019 regarding the initial Bill 108 proposal, Markham recommended that the soft services be included as a part of the CBC, be fully recoverable, and not subject to a cap. Further, in the comments and recommendations to the Province in August 2019, the City recommended that the soft services remain in development charges to recover the capital cost of services resulting from growth.

This current proposal by the Province has addressed those comments and proposes to return soft services, such as library services, parkland development and recreation services, to the DCA. This proposal is supported by staff.

The proposed elimination of the 10% discount on these services to allow for the recovery of 100% of capital cost is also supported by staff. In the City's 2017 DC Background Study, the 10% discount represented \$30.5M in growth-related capital cost that was ineligible for development charge recovery. These funds would need to be recovered through other revenue sources, including the City's existing tax base. Given that Markham has already conducted its background study to determine the total value of the growth related capital works to the expiry of the current by-law in December 2022, staff further seek that the Province allow for the additional 10% to be collected on a go-forward basis without having to amend the City's development charges by-law.

***Recommendations:***

**That the City of Markham support the Province's proposal for the development charge regulation.**

**That the Province allow municipalities to fully recover the capital cost of development charges without the requirement of preparing a background study until the development charge by-law is next updated.**

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

The CBC authority proposes to include a mechanism to determine the maximum CBC payable for any particular development. The CBC payable cannot exceed the amount determined by applying a prescribed percentage to the value of the land under development.

**Provincial Proposal**

The proposed percentages of land value that would be prescribed in regulation under the *Planning Act* would be structured as follows:

- a) single-tier municipalities: 15%
- b) lower-tier municipalities: 10%
- c) upper-tier municipalities: 5%

In any particular case, the CBC levied by a municipality could not exceed the amount determined by applying the applicable proposed percentage to the value of the land that is subject to development. The land value would be calculated as of the valuation date, which is the day before the building permit is issued in respect of the development or redevelopment.

The CBCs levied by municipalities would support the growth- related capital costs of acquiring land for parks, and other community benefits required because of development,



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such as child care facilities, affordable housing, social services, parking and by-law enforcement. There would need to be a connection between the CBC levied and the increased need for community services associated with new development.

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. This percentage structure ensures that the combined percentage for upper and lower-tier municipalities would be equal to the percentage for single tier municipalities.

#### Comments

Staff would like to acknowledge some positive aspects of the draft regulations, particularly as they relate to development charges. Firstly, keeping the traditional development charges services such as park development, recreation, and library services within the development charge framework, as opposed to within a CBC regime, is a positive change. Secondly, the elimination of the mandatory 10% reduction for these services will be beneficial. While it still may not allow municipalities to fully recover the growth-related capital costs for these services (as municipalities can still only collect based on a 10-year historic service level, as opposed to a forward looking approach based on planned service levels), it assists in reducing the gap.

However, with respect to the CBC, capping the charge at 10% of the developed land value will have a significant negative financial impact to Markham, and other municipalities that have high-density development.

The Province's intention with Bill 108 and the implementation of a CBC regime was to help create complete communities, while attempting to allow municipalities to remain revenue neutral. By implementing a CBC capped at 10% of land value (for lower tier municipalities), neither of these goals will be achieved.

The existing parkland dedication formulas result in the City acquiring, as a result of new development, approximately 1.0 hectare per 1,000 people, either in the form of land, or cash-in-lieu as an average across the City. The rate may differ in areas of the City. Markham's Official Plan targets approximately 1.2 hectares of parkland for every 1,000 people.

Staff have prepared a simplified analysis to measure the impacts on Markham based on the following assumptions (these assumptions are only for the purposes of this analysis):

- A. The City collects parkland from low-density developments and cash-in-lieu from high density developments;
- B. All CBC collections will be directed towards the acquisition of parkland; and
- C. The City will opt into the CBC regime and charge the full 10% of land value. (If the City chooses to not have a CBC by-law, the City can only collect up to 5% of the land as parkland – this would result in even greater shortfalls than indicated in the following analysis).

### Impacts on Low Density Residential Development

The City's current parkland dedication practice for low density residential development is to collect either 5% of land area, or 1 hectare per 300 units, whichever is greater. For most developments, the 1 hectare per 300 units is the greater number.

The implementation of a 10% CBC would generally make Markham neutral in terms of amount of the land conveyed to the City for parks, or revenue in the form of cash-in-lieu for single/semi-detached developments, but results in a reduction in revenues/ parkland for townhouse developments.

As noted above, the 10% CBC would not guarantee that the City would be able to purchase the desired parkland parcel within a subdivision. If the City opts to collect parkland instead of a CBC, the amount is capped at 5%, which would further exacerbate the shortfall.

<b>Assumptions</b>	<b>Single/Semi</b>	<b>Towns</b>	
PPUs	3.8	2.9	
Units per Ha	30	50	
People per Ha	114	145	
<u>Current Methodology</u>	1 Ha./300 units	1 Ha./300 units	
Parkland Dedication (Ha)	0.10	0.17	
Ha per 1,000 people	<b>0.88</b>	<b>1.15</b>	<b>AVG= 1.0</b>
<u>New Methodology (CBC)</u>	10% land value	10% land value	
Parkland Equivalent (Ha)	0.10	0.10	
Ha per 1,000 people	<b>0.88</b>	<b>0.69</b>	<b>AVG = 0.8</b>
Percentage Reduction	<b>0%</b>	<b>40%</b>	

**Table 1:** Impact of CBC implementation on amount and rates of parkland for low-density residential development.

### Impacts on High Density Residential Development

To simplify the analysis, it is assumed that all parkland requirements for high density residential development are satisfied through cash-in-lieu, at a rate of 1 hectare for every 500 units.

For high density residential development, the problem is magnified as the 10% cap does not address a core principle of planning for parks in a municipality: that people, not land, drive the need for parks. In past reports, staff used examples of 14-storey and 40-storey residential buildings to illustrate the potential impacts. Using those same examples, a 14-storey condo could have approximately 350 units, or house approximately 700 people per hectare and a 40-storey condo could have 1,000 units, or house approximately 2,000 people per hectare. A 10% cap on the value of land essentially means that for every 1 hectare of development, the City receives cash to acquire approximately 0.1 hectare of parkland, regardless of how many people reside in that development. At this rate for high density

developments, 1 hectare of parkland would have to service approximately 7,000-20,000 people in the surrounding area. This represents a much lower level of service than permitted in low density developments. This does not meet the principle of allowing municipalities the ability to create complete communities, and risks creating “have” and “have not” communities with respect to access to parks and other community facilities.

Assumptions	14-storey Condo	40-storey Condo
PPUs	2.0	2.0
Units per Ha	350	1,000
People per Ha	700	2,000
<u>Current Methodology</u>	1 Ha./500 units	1 Ha./500 units
Parkland Equivalent CIL (Ha)	0.70	2.00
Ha per 1,000 people	<b>1.00</b>	<b>1.00</b>
<u>New Methodology (CBC)</u>	10% land value	10% land value
Parkland Equivalent (Ha)	0.10	0.10
Ha per 1,000 people	<b>0.14</b>	<b>0.05</b>
Percentage Reduction	<b>86%</b>	<b>95%</b>

**Table 2:** Impact of CBC implementation on amount and rates of parkland for high-density development.

#### Financial Impact

The growth forecast, as detailed in Markham’s Development Charges Background Study that was approved in 2017, assumed the following average growth per unit type from 2017-2026:

Singles/Semis: 855

Townhouses: 718

Apartments: 1,076

For the purpose of this analysis, it is assumed that Markham will take the 10% CBC charge for all developments. The analysis also assumes that condo buildings built during this time will be approximately 25-30 floors.

	<b>Singles</b>	<b>Towns</b>	<b>Apt/Condo Units</b>
<b>Average volume per year</b>	<b>855</b>	<b>718</b>	<b>1076</b>
Additional DC Collections per Unit (approx.)	\$1,583	\$1,211	\$823
Elimination of Section 37 cash equivalent per Unit	(\$1,400)	(\$1,100)	(\$2,600)
Change in Parkland/Cash-in-lieu Per Unit	\$0	(13,333)	(\$80,857)
<b>Total Change in Revenue/Unit</b>	<b>\$183</b>	<b>(\$13,223)</b>	<b>(\$82,635)</b>

Total Annual Impact per building type	\$156,495	(\$9,493,803)	(\$88,914,754)
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<b>Total Annual Impact</b>	<b>(\$98,252,062)</b>
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**Table 3:** Annual financial impact of implementation of CBC regime.

Based on this analysis, it is clear that the CBC's 10% land value cap does not leave Markham (and likely other municipalities) in a revenue neutral position after the implementation of CBCs, especially with respect to high density residential development.

The proposed CBC regime and 10% cap will result in reduced parkland service levels, especially in high density areas, and greatly reduce municipal revenues. While the Province has not advanced the implementation of the Bill 108 changes in the timeframe it had initially indicated, we have not received any further indication that it is seeking to revisit those changes.

As a result of these significant impacts, it is recommended that the Province re-evaluate the 10% cap with respect to high density development, ideally to allow for the municipality to obtain the same amount of parkland per 1,000 residents that low density developments are permitted. For Markham, it would be the equivalent of 0.80 hectares per 1,000 residents, based on our development forecasts.

In order to accomplish this same level of service of 0.80 hectares of parkland per 1,000 residents within high-density areas, the CBC cap would have to increase as densities increase. For example, a 14-storey condo building would require a CBC equal to 56% of the land value in order to allow for 0.8 ha of parkland per 1,000 people. Meanwhile, a 40-storey condo building would require a CBC equal to 160% of the land value in order to achieve the same service level. Staff believe these percentages may not be feasible, and as a result recommend a maximum percentage limit of 50%, which would greatly assist in meeting Markham's goals, while having an unfortunate, but more manageable impact on the provision of complete communities.

This would still not result in revenue neutrality for Markham, however it is an approach that would allow residents of our high density residential communities enjoy the same level of service as those that reside in low density developments.

	14-storey Condo	40-storey Condo
Units per Ha	350	1,000
Land Value/Ha	\$25,000,000	\$60,000,000
1) Current CIL (@ 1 Ha per 500 units)	\$17,500,000	\$120,000,000
2) CBC (10% cap)	\$2,500,000	\$6,000,000
3) CBC (to achieve 0.8 Ha of parkland per 1,000 people)	\$14,000,000 (CBC @ 56%)	\$96,000,000 (CBC @ 160%)
4) CBC (to achieve 0.8 Ha of parkland per 1,000 people) – capped at 50%	\$12,500,000	\$30,000,000

**Table 4:** Analysis of cash collected under different cash-in-lieu and CBC scenarios for high-density residential development.

If the Province implemented an escalating CBC for high density residential development to allow for 0.8 hectares of parkland per 1,000 people, with a cap of 50% of land value, the impact to Markham would be reduced from \$98 million to \$72 million.

***Recommendation:***

**That the Province implement an escalating CBC collection limit tied to density to allow municipalities to be able to provide a minimum of 0.8 hectares of parkland per 1,000 residents, and that the maximum limit of the Community Benefits Charge eligible to be collected be set at 50% of land value.**

Application of CBCs to Different Types of Development

It is also unclear whether a CBC by-law could specify that CBCs be collected for certain types of development (e.g. high rise residential development) and parkland dedication be provided for other types of development (e.g. low density residential development). As the details of the CBC regime are not yet known, it may be beneficial to apply the CBC selectively to specific types of development.

***Recommendation:***

**That municipalities be permitted utilize the community benefits charge by-law and the parkland dedication provisions of the Planning Act for specific types of developments, i.e. allow the municipality to specify the types of development that would be subject to a CBC vs. parkland dedication provisions.**

Mandatory Conveyance of Parkland at Election of Municipality

As has been previously noted in the previous staff reports related to Bill 108, if the municipality chooses to collect CBCs, it is not permitted to require a landowner to convey parkland to the municipality. If CBCs are collected, the municipality and the landowner may make arrangements for the municipality to purchase the land in lieu of payment of CBCs. Conversely, as a result of Bill 108, a municipality may require 5% of the land area

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of the application to be conveyed as parkland, but will not be able to collect CBCs. The two options are mutually exclusive.

The requirement to convey parkland to the municipality has been a powerful tool that the City has used to ensure that new and evolving communities have sufficient park and recreation space to meet its needs, and to mitigate the effects of urbanization.

***Recommendation:***

**That the Province amend the legislation related to the Community Benefits Charge to allow a municipality to require the conveyance of parkland in lieu of payment of the Community Benefits Charge.**

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

The date by which a municipality must transition to the CBC authority (should it wish to do so) would be prescribed in regulations under the DCA. The prescribed date would be the deadline for establishing a CBC strategy and by-law in order to charge for the capital costs of services funded through CBCs.

The CBC by-law would set out the charge payable in any particular instance, any municipal exemptions, and other details. Should a municipality fail to, or decide not to, pass a community benefit charge by-law, then the current Section 37 provisions will no longer be applicable, and the municipality may only require the conveyance of 5% of the land area, or the payment of a cash in lieu for the area.

**Provincial Proposal**

It is proposed that the specified date for municipalities to transition to the CBCs regime would be one year after the date the proposed CBC regulation comes into effect.

This transition period would allow municipalities to prepare CBC strategies and pass by-laws if they choose to implement a CBC regime.

**Comments**

The City will require time to assess the benefits of instituting a CBC by-law as it will eliminate the City's ability to use the parkland dedication requirements under the *Planning Act*. In order to allow for this analysis to be undertaken, the City would like the timeline for implementation of a CBC by-law to be at least 2 years from the date the community benefits comes into effect or the expiration of the current development charge by-laws, whichever comes first.

While components of the CBC strategy and by-law requirements are already underway (e.g. an updated Parks Plan for Markham), any work completed to date will need to be updated with further analysis required to analyze the need related to other community benefits. Given the relatively few number of consultants who are able to undertake this type of work, and the number of municipalities that will be seeking to undertake this work,

staff believe it will be a challenge to implement a CBC by-law within a year of the regulation coming into force. Further, the ongoing COVID-19 emergency, and the resulting suspension of various commercial, legal and government services, adds to the challenges that municipalities face in implementing a CBC regime within the next 12 months.

***Recommendation:***

**That given the ongoing emergency situation and scale of work required to implement a CBC regime, the timeline for implementation of a CBC by-law be the later of (1) two (2) years from the date the community benefits comes into effect or, (2) the expiration of the current development charges by-laws.**

**5. *Community Benefits Charge By-Law Notice***

The *Plan to Build Ontario Together Act, 2019* amended the Bill 108 changes to establish a mechanism by which a municipality's CBC by-law could be appealed to LPAT. A municipality will be required to provide notice to the public when it passes a CBC by-law. To implement the by-law appeal mechanism, requirements associated with how to provide public notice will be prescribed in regulation.

**Provincial Proposal**

To implement the appeal mechanism, it is proposed that upon passage of a CBC by-law, a municipality would be required to comply with the following notice provisions. These provisions are similar to the notice provisions under the DCA regarding the passage of a development charges by-law:

1. Notice would be required to be given through newspaper or to every land owner in the area covered by the by-law through personal service, fax, mail or email;
2. Notice would also be required to be provided by personal service, fax, mail or email to those individuals who specifically request notice, the clerk of the lower or upper-tier municipality (if and as applicable), and the secretary of every school board having jurisdiction in the area covered by the by-law;. And
3. In order to facilitate public awareness of the passage of a CBC by-law, notice would include the following:
  - a) A statement that the council of the municipality has passed a CBC by-law;
  - b) A statement setting out when the by-law was passed;
  - c) A statement that any person or public body may appeal the by-law to the Local Planning Appeal Tribunal by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons supporting the objection;
  - d) A statement setting out the last day for appealing the by-law;
  - e) An explanation of the charges imposed by the by-law;
  - f) A description of the lands to which the by-law applies, a key map showing the lands to which the by-law applies, or an explanation why no description or key map is provided; and
  - g) An explanation of where and when persons may examine a copy of the by-law.

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4. The date on which notice would be deemed to have been given would be:
- a) the newspaper publishing date if the notice is published by a newspaper
  - b) the date the fax is sent, if the notice is faxed
  - c) the date the email is sent, if the notice is emailed
  - d) the date the notice is mailed, if the notice is sent by mail

#### Comments

In the comments forwarded to the Province in May 2019, the City requested that an appeal mechanism be introduced for the determination of a CBC by-law. The notice provisions align with the City's comments, and are supportable.

The City consults with the development industry during the preparation of Development Charges Background Studies where discussions include policies, capital costs and project timing. The consultation group is also advised of the timing of when a by-law is proposed to be enacted. With the benefit of this type of consultative practice, which will likely be followed for a CBC by-law, the proposal for a public notice to be done before the City enacts a CBC by-law is acceptable.

#### ***Recommendation:***

**That the proposal for a public notice to be provided prior to the enactment of a community benefits by-law be supported.**

#### ***6. Minimum Interest Rate for CBC Refunds Where a By-Law Has Been Successfully Appealed***

The mechanism to appeal a CBC 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.

#### Provincial Proposal

It is proposed that the minimum interest rate a municipality would be required to pay on amounts refunded after successful appeals would be the Bank of Canada rate on the date the by-law comes into force. Alternatively, if the municipality's by-law so provides, the minimum interest rate would be the Bank of Canada rate updated on the first business day of every January, April, July and October.

This proposal aligns with the prescribed minimum interest rate for refunds of development charges after successful appeals under the DCA.

#### Comments

The City is currently required to pay interest on refunds in the event of a successful appeal to a development charge by-law. The proposal for refunds on successful appeals to a CBC by-law to attract the Bank of Canada rate, as well as the methodology on the timing of the interest calculation, is currently utilized for development charges and is therefore supported by the City.



***Recommendation:***

**That the City supports the application of interest on refunds in the event of a successful appeal to a community benefits by-law.**

**7. *Building Code Applicable Law***

The Building Code is a regulation under the *Building Code Act, 1992*. The Building Code sets out minimum administrative and technical requirements for the construction, renovation, demolition and change of use of buildings. It also establishes a list of applicable law that must be satisfied in order to receive a building permit. Municipalities enforce the Building Code and, through Chief Building Official, are responsible for issuing building permits for the construction, renovation, demolition or change of use of buildings.

**Provincial Proposal**

It is proposed that the Building Code 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 would establish a mechanism for ensuring the payment of CBCs prior to the issuance of a building permit.

**Comments**

Inclusion of the CBC as an applicable law under the Building Code would be consistent with the inclusion of the conveyance of parkland and development charges as applicable law. The proposal for CBCs to be collected in a similar manner will provide a defined timeline for collection and allow for the new regime to be integrated into the current development charge administration process. This ensures that construction cannot proceed until the CBC payment is made, and that the funds may be utilized as the need for those community services arises.

Under the DCA, a municipality has the authority to defer payment of development charges however, there does not appear to be a mechanism to defer a CBC, so those fees would need to be paid in full prior to the issuance of a building permit.

***Recommendation:***

**That the City supports the proposal to add the CBC authority to the applicable law list under the Building Code.**

**NEXT STEPS:**

It is recommended that this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham's comments on Bill 108, prior to the April 20, 2020 commenting deadline.

The Province is expected to review comments from municipalities and utilize them to inform the final version of the regulations.

**FINANCIAL CONSIDERATIONS**

The proposed elimination of the 10% discount on soft services will enable the City to recover the full capital cost of services required as a result of growth. The amount that can be recovered by the City on the next Development Charge Background Study update is not known at this time however, the 10% discount on services from the 2017 study totaled \$30.5M.

The proposal to cap the CBC at 10% of developed land value will have a significant negative financial impact to Markham, and other municipalities that have high density residential development. While low density residential development is also impacted, the major impact to Markham is high density residential development which comprises approximately 41% of anticipated growth to 2031. The proposed 10% cap will have a negative annual financial impact of up to \$98M on the City, with high-rise residential development accounting for \$89M of this amount. One of the most significant negative impacts of this cap relates to the City's ability to fund and acquire parkland, which is a necessary component to achieving complete communities.

The City has proposed a cap of 50% of developed land value for high rise residential development which will reduce the annual financial impact by \$26M.

**HUMAN RESOURCES CONSIDERATIONS**

Not applicable

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

The comments in this report support the City's efforts to enable a strong economy, manage growth, protect the natural environment, and ensure growth related services are fully funded, which are the key elements of the Engaged, Diverse and Thriving City; Safe and Sustainable Community; and Stewardship of Money and Resources strategic priorities.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Comments from the Planning & Urban Design, Building, Finance, and Legal Departments are included in this report.

**RECOMMENDED BY:**

Joel Lustig  
Treasurer

Trinela Cane  
Commissioner, Corporate Services

Biju Karumanchery  
Director, Planning and Urban Design

Arvin Prasad  
Commissioner, Development Services

Claudia Storto  
City Solicitor and Director of Human Resources

**ATTACHMENTS:**

None.