

**Report to
Rapport au:**

**Planning Committee
Comité de l'urbanisme
27 August 2020 / 27 août 2020**

**Agriculture and Rural Affairs Committee
Comité de l'agriculture et des affaires rurales
3 September 2020 / 3 septembre 2020**

**and Council
et au Conseil
9 September 2020 / 9 septembre 2020**

**Submitted on August 14, 2020
Soumis le 14 août 2020**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2020-PIE-GEN-0005

SUBJECT: Briefing on Planning and Development Charges Aspects of Bill 197, COVID-19 Economic Recovery Act, 2020

OBJET: Informations relatives aux sections du projet de loi 197, Loi de 2020 visant à favoriser la reprise économique face à la COVID-19, touchant l'aménagement et les redevances d'aménagement

REPORT RECOMMENDATIONS

That Planning Committee and Agricultural and Rural Affairs Committee recommend Council receive this report on the planning and development charges implications of Bill 197, COVID-19 Economic Recovery Act, 2020.

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'urbanisme et le Comité de l'agriculture et des affaires rurales recommandent au Conseil de prendre connaissance du présent rapport relatif aux implications du projet de loi 197, Loi de 2020 visant à favoriser la reprise économique face à la COVID-19, quant à l'aménagement et aux redevances d'aménagement.

BACKGROUND

The Government of Ontario introduced [Bill 197, COVID-19 Economic Recovery Act, 2020](#) (hereinafter "Bill 197") for first reading on July 8, 2020, and passed the Bill on July 21, 2020. Royal assent was received the same day.

The omnibus Bill amends 43 separate provincial statutes of varying levels of relevance to municipalities. This report deals only with the changes to the *Planning Act*, the *Development Charges Act*, and the *More Homes, More Choice Act* (Bill 108).

Staff were invited to and attended a virtual briefing by the Ministry of Municipal Affairs and Housing on July 13, 2020 where an overview of the (then) proposed changes was presented.

DISCUSSION

Overview

The main changes as a result of Bill 197 are (1) limiting the scope of a Community Benefits Charge and expanding the scope of Development Charges, relative to that proposed under the earlier Bill 108 (passed during summer 2019 and not yet fully in

effect); (2) continuing the authority to enact a parkland dedication by-law; (3) expanding the scope of Minister's zoning orders. Certain details of how Bill 197 will be implemented will follow in a regulation which has not yet been published.

Context

There have been significant amendments to the *Planning Act* and *Development Charges Act* in the past year, which are summarized in this subsection for context.

On June 6, 2019 Royal Assent was granted to the Government of Ontario's [Bill 108, *More Homes, More Choice Act, 2019*](#). The Bill, among other things, largely reversed certain changes to the process of Planning Act appeals adopted under the previous Governments' [Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*](#) with the stated intent of addressing Ontario's housing crisis.

Notably for the subject matter of this report, Bill 108 introduced a new "Community Benefits Charge" regime, which was conceptualized as a parallel charge replacing aspects of costs of development recovered through Development Charges (primarily, under Bill 108, "soft" costs such as capital). Bill 108 provided that the ability to obtain contribution under s. 37 of the Planning Act for increases in otherwise permitted height and density ("section 37 bonusing") would no longer be available once such a Community Benefits Charge ("CBC") is adopted.

Bill 108 also provided that *Planning Act* s. 42 parkland dedication by-laws would no longer be permitted once a CBC by-law was in force. Such by-laws (including the City's current Parkland Dedication By-law, 2009-95) require dedication of parkland, or cash in lieu of dedication of land, to the municipality upon development of land (subject to certain exceptions) and set out the rules for calculating the amount of land/cash to be provided.

The City of Ottawa submitted comments on the contents of Bill 108 in June 2019, as detailed in report [ACS2019-PIE-GEN-0005](#).

On June 21, 2019, the Ministry of Municipal Affairs and Housing published the proposed content of the regulations of Bill 108, with comments due by August 21, 2019 for the following topics:

1. [Development Charges Act regulations](#)
2. [Community Benefits Authority](#) (under the Planning Act)
3. [Planning Act regulations](#)
4. [LPAT Act regulations](#)

The City of Ottawa submitted comments on the proposed Bill 108 regulations which were attached as [Document 1](#) to report [ACS2019-PIE-GEN-0006](#).

Minor changes to the proposed Bill 108 amendments were made in [Bill 138, Plan to Build Ontario Together Act 2019](#), which received Royal Assent on December 10, 2019. Bill 138 included amendments, which permitted appeal of a community benefits by-law to the Local Planning Appeal Tribunal and allowing parkland dedication by-laws to remain in force during the proposed transitional period to the new regime. Staff advised the Mayor's office and Chair of the Planning Committee about these changes but did not bring forward an IPD report at that time as the changes were minor and regulations implementing them were not yet proposed.

Finally, the Ministry posted a [revised proposal for the Development Charges Act and community benefits charges regulations](#) online on February 28, 2020. Most significantly for the purposes of this report, the proposal indicated an intent to apply a "cap" of 15% to community benefits charges for single-tier municipalities (such as Ottawa). Staff were preparing an update to Council on these matters until it became clear, when the Ministry extended the comment period and the COVID-19 emergency developed, that the Ministry was re-visiting the proposal and likely to change its approach.

While aspects of Bill 108 have already come into force, the majority of the changes to the *Development Charges Act* and certain changes to the *Planning Act* with respect to "community benefit charges" have not yet come into force. The aspects of Bill 197 covered by this report alter or replace these as-yet not in-force provisions of Bill 108.

Bill 197 – Discussion of Changes in Detail

Unless addressed in this section, Council may assume that Bill 108 changes to the *Planning Act* and *Development Charges Act* remain in effect in Bill 197. For example, the repeal of "section 37 bonusing" under Bill 108, the exemption of secondary dwelling units from development charges in new residential construction, deferral of development charges for certain types of construction, and the new processes for *Planning Act* appeals still apply following Bill 197.

1. Relative scope of Community Benefits Charge is limited, Development Charges are expanded

Under Bill 108, services were stated to be recoverable under either "Community Benefits" charges (under the *Planning Act*) or development charges (under the *Development Charges Act*).

Bill 197 expanded the list of services which are recoverable under development charges relative to the original Bill 108 list (re-instating services that would have been recoverable prior to Bill 108), and replaced the community benefits charges provision which previously defined specific types of services with a “catch all” category – i.e. all services and matters required as a result of development which are not already captured under a development charge by-law and which relate to high-density residential development (five storeys or greater, and ten or more residential units added).

The allocation of services, as it stands under Bill 197, is now as outlined in Table 1, below (following page):

Table 1

Charge (Statute):	Development Charges (under the <i>Development Charges Act</i>)	Community Benefits Charges (under the <i>Planning Act</i>)
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Types of Increased Costs for Services Recoverable	<p>Increased capital costs required because of increased needs for the following services, only:</p> <ul style="list-style-type: none"> ▪ Water supply services, including distribution and treatment services. ▪ Waste water services, including sewers and treatment services. ▪ Storm water drainage and control services. ▪ Services related to a highway as defined in the <i>Municipal Act, 2001</i> ▪ Electrical power services. ▪ Waste diversion services. ▪ Policing services. ▪ Fire protection services. ▪ Ambulance services. ▪ Services provided by a board within the meaning of the Public Libraries Act. ▪ Services related to long-term care. ▪ Parks and recreation services, but not the acquisition of land for parks. ▪ Services related to public health. ▪ Child care and early years programs and services ▪ Housing services. ▪ Services related to proceedings under the Provincial Offences Act, including by-law enforcement services and municipally administered court services. ▪ Services related to emergency preparedness. ▪ Additional services as prescribed. 	<p>“Capital costs of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies” but only in respect of development of five or more storeys with ten or more residential units (or redevelopment of a five or greater storey structure which will add ten new residential units).</p>
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Omitted from the above table are categories of services which apply only to the Greater Toronto Area or other areas outside of Ottawa.

Services in **bold** in Table 1, above, are services which are newly added to the legislation as fully recoverable under development charges – i.e.; which would not have been recoverable as development charges under Bill 108 as originally drafted. The regulations proposed in February 2020 (but not yet passed) would have restored the ability to make some, but not all, of the bolded services recoverable as development

charges. Thus, the Bill 197 amendment replaces that aspect of the proposed February 2020 regulation and represents a significant expansion of the types of services which are development charge (DC) recoverable relative to the Bill 108 model.

Further, note that the bolded service types in Table 1, along with “Waste diversion services” and “ambulance services” (often collectively termed “soft services”), are those which, before Bill 108, would possibly have been recoverable through DCs but which would have been subject to a 10% reduction. Not yet in effect provisions of Bill 108 remove the 10% reduction provision and Bill 197 does not re-introduce that provision; thus once these provisions of Bill 108 and 197 come into effect there will no longer be a reduction when calculating the capital costs charged for “soft” services. Furthermore, explicitly listing these formerly “soft” services (which were not specifically enumerated under the *Development Charges Act* prior to Bill 108) means that there is much less ambiguity as to whether or not these services are of a type that can qualify as development charge recoverable. (though a background study must still tie these newly listed services to capital costs which result from growth).

After Bill 197 comes into force, community benefits charges will remain a possible legislative tool, though somewhat diminished in importance as they may only apply to medium to high density residential/mixed-use development. Subsection 37 (4) will be amended to state that a community benefits charge may not be imposed with respect to development of (a) fewer than 10 residential units or (b) in respect of buildings or structures with fewer than five storeys.

Other limitations on community benefits charges (CBCs) which were first proposed in Bill 108 were carried forward into Bill 197 will continue to apply under Bill 197. Specifically, the Minister may prescribe by regulation a “cap” on the total CBC, which is to be calculated on the basis of a percentage of the appraised value of land. An appeal process would continue to apply where the landowner contests the CBC on the basis that the cap is exceeded. As mentioned above, a regulation imposing a “cap” of 15% of land value was proposed in February 2020, prior to Bill 197 being enacted. That proposed regulation would need to be amended in light of Bill 197 if the Province still intends to proceed in that manner. An amended proposal has not yet been publicly circulated or enacted by the Province.

Note that Bill 197 states that nothing prevents a community benefits charge under section 37 of the *Planning Act* from being imposed with respect to the services to which the *Development Charges Act* states a development charge may apply, provided that there is no double recovery under development charge and community benefits by-

laws. Thus, while applying only to dense residential or mixed-use development, the community benefits charge can theoretically be applied to a broader range of capital costs for services associated with development than can development charges which are limited to the enumerated services in subsection 2(4) of the *Development Charges Act* (set out in Table 1 above).

2. Parkland dedication provisions are retained, with amendments

Had the relevant provisions of Bill 108 gone into effect, without Bill 197, the City would no longer have had authority to enact a new parkland dedication by-law and would have had to replace its parkland dedication by-law with a “community benefits charge” by-law within a prescribed period of time.

Bill 197 reverses this by permitting municipalities to continue to enact and enforce parkland dedication by-laws, with some changes.

Most notably, Parkland Dedication By-laws which include an “alternative requirement” for calculation of parkland dedication based on the number of residential units (as opposed to the lot size), which Ottawa’s by-law does, will be subject to appeal to the Local Planning Appeal Tribunal pursuant to Bill 197. Any person or public body may appeal such an “alternative requirement” parkland dedication by-law by filing an appeal within 40 days of receiving notice of the passage of the by-law. The LPAT may not increase the amount payable under the by-law on such an appeal. Refunds would be required for overpayment under a by-law amended by the LPAT on appeal.

Notably, a new subsection 42 (4.26) would make all current parkland dedication by-laws that calculate dedication on the basis of the number of dwelling units (an “alternative requirement”) expire within two years of the date on which the relevant provisions of Bill 197 are declared into force (specifically subsection 1 (2) of Schedule 3 to Bill 197). This effectively forces all “alternative requirement” parkland by-laws to be re-enacted within 2 years of the date of this section of Bill 197 being declared into force and thus open to appeal at that time.

3. Expanded powers with respect to Minister’s zoning/subdivision orders

Section 47 of the *Planning Act* permits the Minister of Municipal Affairs and Housing to make orders that function as and are (legally) deemed to be zoning by-law amendments and exercise subdivision control powers afforded to a municipality. These Minister orders/approvals are not subject to appeal, and an order under this section prevails over a zoning by-law in the event of any conflict between the two.

Bill 197 retains section 47 of the *Planning Act* and adds new provisions which allow the Minister to, by an order under this section, provide the specific lands are not subject to a municipality's site plan control and instead require the owner(s) of such lands to enter into a site plan agreement with the municipality that complies with a direction from the Minister as to what may or may not be included in the agreement.

Minister zoning/subdivision orders have not been commonly used in the past. This addition of specific site plan control authority increases the ability of the Minister to be involved in detailed development regulation addressed at the site plan stage. It is currently unknown whether this also signals an intent by the Ministry to make use of this regulatory tool more frequently.

4. Transition timeline and anticipated regulations

The amendments to the Minister's zoning order provisions of the *Planning Act* (s. 47) came into force immediately upon Royal Assent on July 21, 2020.

The other changes to the *Planning Act* are not yet in force but will come into force on "a day to be named by the Lieutenant Governor"

The changes to the *Development Charges Act* are not yet in force but will come into force on "a day to be named by the Lieutenant Governor"

The date on which the Lieutenant Governor will declare the Bill 197 changes into force is not yet known.

Development charges by-laws enacted under the legislation as it existed prior to the coming into force of the Bill 197 section related to the *Development Charges Act* (specifically subsection 1 (2) of Schedule 3 to Bill 197) will continue to remain in force for two years from the date the Lieutenant Governor in Council declares that section of Bill 197 into force, or until a community benefits charge by-law is adopted by the relevant municipality, whichever is earlier. After the said two-year period, development charges by-laws which include charges with respect to items not included in subsection 2(4) of the Act (see Table 1 above) would not be enforceable. All of the services in Ottawa's 2019 Development Charges Background Study will continue to be eligible services under the amended Development Charges Act, so this transition provision is not anticipated to limit collection of development charges under Ottawa's current development charges by-laws.

Finally, it has already been noted above that parkland dedication by-laws, like Ottawa's, which rely on a calculation of parkland dedication for certain development based on the

number of dwelling units will expire within two years of the relevant section of Bill 197 being declared into force, necessitating Council to consider re-enacting that by-law within that two year period.

It is further anticipated that a regulation under the *Planning Act* will be proposed which would address:

- The percentage of land value used to calculate the “cap” on Community Benefits Charges
- Reporting requirements for CBC and parkland receipts
- Contents of the CBC “strategy”
- Notice requirements for CBC and parkland dedication by-laws
- Interest on refunds payable for CBC and parkland dedication amounts which are amended following an appeal

The timeline for the release of such a regulation is not currently known.

RURAL IMPLICATIONS

The proposed content of Bill 197 Regulations proposes changes to multiple statutes which, if adopted, would have City-wide impacts on City operations, including rural areas.

CONSULTATION

Other than the above-mentioned virtual briefing provided by the Minister, the Ministry of Municipal Affairs and Housing did not solicit comments on Bill 197 prior to passage, so there was no opportunity for consultation prior to its passage into law.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations of this report. Council is permitted to receive a statement on changes to these statutes.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with receiving this information report.

ASSET MANAGEMENT IMPLICATIONS

Development Charges and Community Benefits Charges allow the City to collect funds to pay for new infrastructure to provide increased capacity and support growth. These mechanisms ensure that growth pays for growth and that renewal budgets are spent on renewing existing infrastructure.

Bill 197 increases the number of services where development charges can be collected. It also repeals the 10% reduction for “soft” services that was to be introduced through Bill 108. Both of these changes are advantageous from an Asset Management perspective.

Community Benefit Charges represent an opportunity for further cost recovery. The “cap” on such charges is calculated based on the appraised value of land, which is not necessarily representative of the level of impact on the infrastructure. A more representative approach could be to base the charge on a metric that better reflects the increased demand on the existing infrastructure.

ACCESSIBILITY IMPACTS

There are no anticipated accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

Not applicable.

DISPOSITION

There are no further steps required after this report is received. Staff will continue to monitor legislative developments including expected regulations related to the Community Benefits Charges.