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April 20, 2020

John Ballantine, Manager
Municipal Finance Policy Branch
Municipal Affairs and Housing
College Park 13th Floor, 777 Bay St
Toronto, ON M7A 2J3

Dear Mr. Ballantine:

RE: Comments to Regulatory Proposal relating to the Community Benefits Authority
(ERO number 019-1406)

On behalf of the City of Toronto, I am pleased to submit comments regarding the proposed regulations relating to the Community Benefits Authority as well as general comments with respect to the proposed changes to municipal growth-related funding tools.

The content for the City's comments include the following:

- A. Introduction and Executive Summary
- B. Key Recommendations
- C. Guiding Principles
- D. Comments & Recommendations on Specific Regulatory Proposal Content
- E. Conclusions

A. Introduction and Executive Summary

The City supports the Province's primary objective through the "Housing Supply Action Plan" (HSAP) to create more housing in Ontario. Housing affordability is a significant challenge for the Province and municipalities and staff commend the Province's efforts to try to address this pressing and complicated issue facing Ontarians today. Mayor Tory has made affordable housing a key priority and Toronto's new HousingTO 2020-2030 Action Plan sets a target of 40,000 new affordable rental housing approvals, including 18,000 supportive housing units, by 2030.

In recent years, Toronto and neighbouring parts of the Province have experienced a combination of rapid population growth, record housing development and rising housing affordability challenges. Toronto creates **over 15,000 residential dwelling units annually** and has the greatest number of high-rise buildings under construction in North America. Despite this, the Province and the City will not be able to meet their shared housing goals unless

municipalities have the tools and resources necessary to deliver affordable homes at the local level.

It is important to note that the record development levels we are witnessing in Toronto – the demand to live and invest here – are a response to the quality of our communities and the strength of our economy. Continued growth in our communities, as envisioned by Provincial plans and legislation, requires investment in new infrastructure, community services and facilities and the availability of housing that is affordable. In addition, funds are needed to repair, replace and operate existing infrastructure and services, including the renewal of parks, facilities and services already under stress from growing demand.

Although we strongly support principled action on housing supply and affordability, we are concerned that the transformative changes to municipal growth-related funding tools resulting from the regulations may be detrimental to quality of life and the prosperity of Toronto and the region over the longer term.

Staff are **encouraged to see positive changes** in the proposed Community Benefits Authority (CBA) including the return of parks development, recreation, public libraries and public health to the *Development Charges Act, 1997* (DCA) framework and removal of the 10% mandatory discount for these services. We thank the province for continuing to engage with municipalities on this important topic.

However, staff maintain that **several challenges remain with elements of the proposed framework and implementation of the CBA and DCA changes**, as summarized in section B below and discussed in more detail in our comments. Further refinements are required to ensure the new tools effectively support municipal infrastructure and sustain quality of life and economic prosperity in our communities.

Given the level of information provided in the proposal, it is difficult to comment on the full financial impact of the proposed regulatory matters as several details remain unspecified. An extensive amount of work is required to determine the reasonability of the maximum percentage of land value cap on a potential community benefits charge, and how that impacts the City's ability to meet growth needs.

However, we have determined that the proposed changes, as currently drafted, do not maintain municipal revenues for the City compared to the previous regime. Based on our analysis, the City will potentially **lose over \$60 million from a sample of 27 known development projects** in varying stages of approvals. This represents approximately a 25-30% reduction in revenues for these projects. While there are some positive changes to a few of the 27, they are smaller in scale and the change is relatively insignificant to the impacts on the majority and the overall changes negatively impact our ability to provide adequate community facilities and increase risks and uncertainty in the funding. In addition, proposed charges result in potential unintended consequences such as inequitable distribution of costs between different land uses and different development forms. These negative potential considerations outweigh the revenue uptick from the removal of the 10% mandatory discount in DC services, which is estimated to provide \$8-9 million annually in additional revenue.

We urge the Province to **pause consideration of these changes** during the state of emergency, where government resources are redeployed to address essential services to manage the public health issues related to COVID-19. Once the state of emergency has been lifted, staff maintain that **additional consultation is needed with municipalities** to more fully

assess the short and long-term implications of changes of this magnitude, as well as the economic impacts to government, individuals and businesses resulting from COVID-19. The City is already experiencing financial pressure of \$65 million a week during the emergency and cannot afford to lose critical growth-related capital funding. Staff maintain that municipalities should be afforded the opportunity to bring this matter forward for Council consideration and public input, which is not possible given that Council meetings have generally been suspended.

B. Key Recommendations

The following highlights key comments and recommendations on the regulatory proposal and municipal funding tools that are discussed in more detail in our submission.

- **Changes should maintain municipal revenues.** Our analysis indicates that the proposed changes, as currently drafted, will significantly reduce revenues to support growth. This does not reflect with the Minister's commitment on this matter nor the principle that growth pays for growth. The Province is requested to enshrine revenue neutrality in the proposed legislation, and modify the regulations accordingly and, if not, create a municipal compensation fund to support municipalities whose revenues decline under the proposed CBC regime, consistent with previous City of Toronto Council position on this matter.
- **Pause consideration of CBA changes during the state of emergency.** During this unprecedented time, when governments, the general public and businesses are addressing key priorities related to COVID-19, the Province is requested to pause consideration of CBC changes until after the state of emergency has been lifted. Land values may be impacted by any economic slowdown and these impacts should be considered in the proposal.
- **Recognize that a uniform province-wide cap does not address municipal diversity across the Province.** The City of Toronto is the economic engine of Ontario. Negative impacts to the quality and condition of its communities through the introduction of provincial wide legislation must be minimized or eliminated. The legislation should provide for a variation in the cap rate to reflect the different needs of various community types across the province. A uniform cap also contradicts the principle of growth paying for growth and will result in negative impacts on specific land use, development and community types. The legislation and regulations should provide for municipalities to alter or exceed the proposed cap to reflect the real and varied needs of diverse communities across the province.
- **Provide flexibility to use CBCs and DCs together.** Municipal funding tools should work together to support the creation of complete communities. CBCs and DCs will not fully recover the costs of growth for various reasons, including service level or land value caps. It is important that municipalities have the flexibility needed to provide municipal services commensurate with growth. The legislation should allow unrecoverable costs under the DCA (instead of services) be recoverable through a CBC.
- **Return childcare, subsidized housing and shelters to the list of DC services.** As with many other DC-eligible services, the costs of providing childcare spaces, subsidized housing and shelters bear no relation to variable land values. Funding to support these

crucial services would be unnecessarily constrained and made unpredictable by their inclusion in the CBC By-law.

- **Restore municipalities' ability to require in-kind parkland.** The proposed regulations provide the applicant with the option to provide cash-in-lieu or in-kind, which will result in a marked increase in municipalities receiving cash-in-lieu of parkland. Compared to in-kind parkland delivered in parallel with development, cash-in-lieu shortchanges growing communities, a development's marketability, and a municipality's purchasing power.
- **Include provisions to register in-kind community benefits agreement on title.** As proposed, there is no mechanism available in the legislation, as in the current Section 37 of the *Planning Act*, to permit municipalities to secure the commitment by an agreement that can be registered on title.
- **Amend the inclusionary zoning policies in the Planning Act.** Inclusionary zoning is a useful tool to support creation of affordable housing. The Province is requested to expand its use beyond protected major transit station areas or areas which a development permit system is adopted.
- **Allow municipalities to fund planned levels of service.** The proposed regulations partially support forward-looking capital planning for parkland. This perspective should guide planning and charges related to all services in the CBA as well as infrastructure presently underfunded due to historic service level caps in the DCA.
- **Extend the prescribed transition deadline for the CBA.** The proposed one-year transition period is insufficient time for analysis, consultation and development of a complex, new funding tool. The transition should be extended to the *later of* two years from the date that CBA regulations come into effect or the date of expiry of a municipality's DC bylaw.

C. Guiding Principles

Our comments on Bill 108 and the regulatory proposal are guided by the following general principles:

1. **Growth should pay for growth** – The Provincial legislative framework should allow for the potential full recovery of infrastructure costs needed to support growth. There should be no mandatory service exclusions, discounts, historic service level caps, percent of land value caps or exemptions.
2. **Complete and vibrant communities are vital for everyone** – Complete communities, with adequate parks, recreation space, libraries, childcare facilities and other facilities and services are needed to ensure the continued health and prosperity of Ontarians.
3. **Municipal tools should allow for flexibility to meet the needs of local municipalities** – Municipal tools should not be overly prescriptive and must allow for the opportunity to provide for both in-kind and financial contributions.

4. **Changes should be revenue neutral to municipalities and consider revenue potential under the previous regime, not just historic revenues** – Municipalities cannot afford to lose vital growth-related infrastructure funding needed to provide infrastructure and services to support new population and employment.
5. **Administrative burden and red tape should be minimized** – Revenue tools should be efficient to implement and administer.
6. **Adequate time should be provided for consultation and analysis to mitigate potential unintended consequences and facilitate an orderly transition to the new regime** – Time should be provided for additional consultation with municipalities, including an assessment of the financial impact analysis to ensure there are no unintended consequences of potential changes.

D. Comments and Recommendations on Specific Regulatory Proposal Content

1. Required Content of a Community Benefits Charge Strategy

The required content of the community benefits strategy, as outlined in the draft regulation, is similar to requirements under the DCA to calculate development charges, except for the development of a parks plan and the ability to examine the planned level of service.

The evaluation of excess capacity and benefits to existing residents are unnecessary and prescriptive requirements for the development of a CBC Strategy and, in part, duplicate requirements under the DCA. Streamlined and less prescriptive requirements will reduce the administrative burden of preparing a new set of strategies and by-laws, allow municipalities to more directly plan for and provide infrastructure and provide certainty to the development industry more quickly.

Staff support the use of planned service levels as a basis for establishing the level of a community benefit charge. This approach is more responsive to the municipal infrastructure needs of future development than the charges are intended to fund. Staff recommend clarifying that the planned service level provision for parkland extends to other services. Similarly, as outlined in the following section, staff recommend that the Province, through amendments to the DCA, remove the historic service level cap on DCs to enable infrastructure provision equivalent to the contemporary needs of our communities and advance a balanced and comprehensive transformation of the DC and CBC authorities.

Recommendations

- 1.1 **That the Province allow for the CBA to be based on planned level of service for all services to be included in the CBA.**
- 1.2 **That the Province generally streamline requirements for a CBC Strategy and remove specific requirements for the evaluation of excess capacity and benefit to existing residents.**

2. Services Eligible to be Funded through Development Charges

Staff commend the province for including – in most cases, returning – libraries, long term care, parks development, public health and recreation as services eligible to be funded through development charges. Staff also support the proposal to no longer require a 10% municipal co-payment (10% mandatory discount) for these services, which is in keeping with the principle that growth pays for growth.

However, we are concerned about the impact to funding sources for these services and the overall negative impact to municipal revenues. Staff's concerns regarding the constraints imposed by a 15% land value cap are outlined further below.

Additional Services to be Returned to the DCA

Specific to the services eligible for DCs, childcare, affordable or subsidized housing and shelters should be moved back to the DCA. As with other capital infrastructure, the costs of providing these facilities are generally consistent across the Province and should not be correlated to land values. Funding to support these crucial services would be made unpredictable by their inclusion in the CBC By-law due to the link to land values, and their need to compete for funding under the proposed 15% cap. The inclusion of affordable housing and shelters in the capped CBC is especially limiting for Toronto, as the City traditionally carries an oversized burden in the funding and provision of these services for the region and Province, yet would face the same 15% cap as other single-tier municipalities.

Additional Flexibility Needed

The proposed CBC authority eliminates important municipal tools (Sections 37 and 42 of the *Planning Act*) without replacing the existing tools' revenue potential or flexibility. These tools have been crucial to the provision of infrastructure in Toronto's dynamic, high-growth environment.

Historically, Toronto has used Section 37 and Section 42 funding together with DCs to wholly implement Council-approved plans and to support growth. The City seeks clarification on how DCs and CBCs can continue to work together and complement each other as complete funding tools to continue to fully support growth. This is particularly relevant to the extent that DCs are constrained by historic service levels and therefore do not fully recover for the cost of growth.

The mix of tools has also allowed the City to respond to shifts in the growth cycle patterns outside of the five-year development charges review cycle. Where unanticipated growth emerges due to changes in the pace, intensity and location of development, the current instruments allow municipalities to access funding to adapt service planning and permit development to proceed.

Remove the Historic Service Level Cap Restriction in the DCA

Staff recommend that the Province, through amendments to the DCA, remove the historic service level cap to enable infrastructure provision equivalent to the contemporary needs of our communities and support the principle that growth pays for growth. The cap restricts a municipality's ability to improve service level standards, address geographic inequities and balance investments between ageing and new infrastructure. The nature of development in the City of Toronto has seen a shift from ground related housing to vertical living yet service levels have not been able to change as they are required to account for the 10 year historic service

levels. This limitation has had a significant impact to meeting the true required service levels in the City. In a rapidly-changing city, the existing Section 37 and 42 funding tools, given their flexibility, have helped to alleviate some of the limitations of the DCA and provide true required service levels. The removal of these tools and the restrictions on joint funding through the CBC and DC authorities create a highly inflexible new funding framework. Ultimately, the service level cap and other limitations will lead to deteriorating infrastructure and diminished service levels as a result of growth.

Recommendations

- 2.1 That childcare, subsidized housing and shelters be returned to the list of eligible services under the DCA.**
- 2.2 That the Province allow unrecoverable costs under the DCA (instead of services) be recoverable through a CBC.**
- 2.3 That the DCA be amended to remove the 10-year average level of service cap and permit DCs to be determined by the planned level of service.**

3. Percentage of land value for determining a maximum community benefits charge

Impacts and Risks of a Uniform Land Value Cap

Given the level of information provided in the proposal, it is difficult to comment on the full financial impact of the proposed regulatory matters as several details remain unspecified. An extensive amount of work is required to determine the reasonability of the maximum percentage of land value cap on a potential community benefits charge, and how that impacts the City's ability to meet growth needs.

However, staff have determined that the proposed CBC authority does not achieve revenue neutrality for the City and increases revenue risk and uncertainty. The result will be uncertain capital planning and reduced service levels for crucial municipal infrastructure. Moreover, the proposed CBC structure risks creating additional costs and impacts for specific land uses, namely employment-generating (non-residential) uses, that are key to our Province's prosperity.

Based on an analysis of the proposed changes, the City anticipates an overall potential revenue loss of over \$60 million on a sample of just twenty-seven known development projects in varying stages of approvals. This represents approximately a 25-30% shortfall from potential revenues under existing tools.

The analysis has identified distinct impacts for development forms depending on the land use, density and land values. In particular, the proposed CBC will restrict the potential revenue generated by high-density development. In Toronto and elsewhere, as required by the Growth Plan and other Provincial policies, most future growth will be in the form of intensification. In higher-density developments, land value is generally less aligned with the number of units generated by a development. The proposed CBC will diminish the amount of revenue the City is able to generate per unit and, accordingly, lessen the service the City is able to provide per resident. In contrast, the current DC and Section 37 regimes have been used together and consider the number of units and density as the drivers behind the City's revenue requirements for community services.

Given the revenue shortfall and the level set for the capped CBC, municipalities may be forced to apply elevated rates on specific development forms, above what is typically charged today through the Section 37 and 42 instruments. For example, non-residential uses and low-rise residential development – central features of our economic and housing diversity goals respectively – may face an increased cost burden or development disincentives as a result.

Given that municipalities must justify the rates set out in the CBC, including potentially at the Local Planning Appeal Tribunal (LPAT), the prescribed percent of land value for a CBC should be set at a level that is sufficiently high to ensure that growth-pays-for-growth and reduce market distortions and impacts to the delivery of municipal services. Staff recommend that the Province either raise the cap provincially or provide capacity to municipalities to adjust or exceed the cap should the need to do so be adequately demonstrated as part of the development of a Community Benefits Strategy. This could be done in a similar manner as to variations in density and intensification requirements under the growth plan, through which a municipality makes an evidence based submission to the province for the change and the Minister through regulation supports that change. The requirements set for a CBC Strategy, including public consultation, the identification of levels of service and capital costs and the right of appeal, ensure that the Strategy itself is the appropriate arbiter of a fair CBC rate, including those that exceed the cap.

Maintain Municipalities' Ability to Provide Adequate and Timely Parkland

As proposed, municipalities can no longer require on-site conveyance of parkland as a condition of development. Instead, it will have to be negotiated on a site-by-site basis. Moving to a model of more cash-in-lieu of parkland dedication and less in-kind dedication will mean less overall parkland in Toronto. This is a loss not only to communities and strained parkland systems but also to developments themselves, which directly benefit in terms of value and marketability from the inclusion of new parkland on-site or nearby.

Acquiring parkland through cash-in-lieu costs the City more than on-site dedication for several reasons. First, the City often cannot afford to purchase land in competitive bidding situations and is constrained by policies which tie City bids to a percentage over fair value. Second, land valuation occurring early in the development process hinders the City's buying power in the marketplace. The monetary value of the CBC is proposed to be calculated at the time of the first building permit, but the City is buying parkland at a later date and, therefore, at a higher cost. This "time lag", often extended while the City collects sufficient funds, will result in a significant decrease in the actual purchasing power of the dollars collected, particularly in high growth areas where the new park space is most acutely needed to sustain complete communities as per Provincial Policy.

The proposed changes to the *Planning Act*, once proclaimed, do not provide authority, as in the current Section 37, for agreements between municipalities and landowners to provide facilities, services or matters in lieu of payment of a CBC payment to be registered against the land to which it applies. The existing provisions in Section 37 of the *Planning Act* have been an important tool to ensuring the predictable implementation of infrastructure and service plans over the long term.

Other comments related to calculating the community benefit charge include:

- It is anticipated that using land values will produce less predictable forecasts than the per unit development charge. Such an approach exposes municipalities to significant risks when

forecasting revenues, establishing predictable budgets, and planning and delivering capital projects over the long term.

- The methodology for valuing land is currently undetermined and will have to be very clear to avoid confusion and delays at the time of municipal building permit issuance. Given that many details are yet to be specified, evaluating the financial impact of the proposed regulatory changes is challenging.
- The land appraisal process will add both additional costs and administrative time to the development approval process.
- The timing of the land value appraisal may impact municipal revenues and the ability to secure land and facilities.
- It is unclear how phased developments will be treated.
- It is unclear how redevelopment credits apply.
- It is unclear how frequently the cap will be reviewed and updated. The current proposal likely does not consider any impacts from the emerging public health situation.
- It is unclear that proposed changes will improve housing affordability to the extent that the More Homes More Choice Act does not require home prices to be reduced commensurately with a reduction in input costs, if any.

Recommendations

- 3.1 That the Province provide the Minister of Municipal Affairs and Housing the authority to permit exceptions to the land value cap for a given municipality, subject to evidence to support the alternate maximum CBC.**
- 3.2 That the Province amend the regulations to provide a higher and/or scalable maximum percent land value for the CBC, in consultation with municipalities.**
- 3.3 That the Province formally review the maximum percent of land value no later than two years after the CBA regulation comes into effect, and at a minimum of every five years, and that such a review includes comprehensive consultation with municipalities.**
- 3.4 That the Province restore the ability for municipalities to require in-kind parkland as a condition of development.**
- 3.5 That the Province clarify the timing of land valuation to occur later in the development process, such as first above grade building permit, so that municipalities' funding, for example for parkland acquisition, is not hindered by the community benefit charge being capped at a lower land value at an earlier stage in the process.**

- 3.6 That the Province enshrine revenue neutrality in the proposed legislation and, if not, create a municipal compensation fund to support municipalities whose revenue decline under the proposed CBC regime.**

4. Timeline to transition to the new community benefits charge regime

The proposed process to establish a community benefits strategy and by-law are very similar to the process to undertake a development charge background study and by-law review, which typically takes about 18 months to complete for a large and complex municipality like Toronto.

Staff are concerned that establishing a one-year mandatory transition timeline is insufficient for municipalities across the Province to transition to the CBA with the appropriate level of planning, analysis and stakeholder engagement, not to mention the time needed to establish new business process and develop IT systems.

Recommendations

- 4.1 That the Province pause work related to the CBC until after the Emergency Response has been lifted to allow for government resources to be directed to essential services and additional time to assess the economic impact of COVID-19, including impacts on land values and that the work include a comprehensive consultation with municipalities;**
- 4.2 That the Province extend the transition for the CBA be extended to later two years from the CBA regulations come into effect or the date of expiry of a municipality's DC bylaw (Toronto's by-law expires in October 2023) in order to align the timing of a DC background study and CBA strategy preparation.**
- 4.3 That the Province provide additional time for the stakeholder consultation process in the development of the regulations associated with the CBC and DC changes.**

5. Community benefits charge by-law notice and appeal

Staff are concerned that the LPAT powers only allow for a downward adjustment to the CBC. Under the *Planning Act*, the LPAT may dismiss the appeal, reduce the charges, or repeal certain sections of the by-law. This may spur costly and unnecessary appeals as there is little downside risk in appealing a CBC by-law. It undermines the revenue predictability and municipal autonomy, and ultimately, could delay the emplacement of growth-related infrastructure.

The provision providing for a municipality to continue to collect the CBC and to have to allocate it in the next year, while under appeal, with the risk of repayment of a portion or all of the charge if unsuccessful before LPAT creates an unreasonable financial risk for a municipality. The CBC is a new planning tool that is untested and does not have the history of the DC before the tribunal or courts, and the City is certain that it will be tested by the development industry. Staff expect the initial hearing of these matters will be complex and lengthy.

The specific notice provisions, as set out in the draft regulations, are similar to those provided in the DCA for appeals and are not a cause of concern at this point.

Recommendation

- 5.1 That the Province reconsider amendment to the Planning Act that will, once proclaimed, establish a mechanism by which a municipality's CBC by-law could be appealed to LPAT.**
- 5.2 That the Province provide compensation to municipalities for the increased number of appeals and litigation if the proposed LPAT appeal processes are implemented.**

6 and 7. Minimum interest rate and Building Code Applicable Law

Staff have no immediate concerns with the proposed interest rate. The proposed rate aligns with the prescribed minimum interest rate for refunds of development charges under the DCA.

Staff are supportive of the Province's proposed amendment to the Building Code to establish a mechanism for ensuring payment of community benefits charges prior to the issuance of a building permit.

E. Conclusions

The City supports the principled action by the Province on addressing housing supply and affordability. We thank the Province for continuing to engage on this important topic. Staff are encouraged to see positive changes in the proposed CBA regulation including the return of services to the DCA framework and removal of the 10% mandatory discount for these services. However, staff maintain that several challenges remain with elements of the proposed framework and implementation of the CBA and DCA changes, including the financial impact of the change that may impair the ability for municipalities to provide services for growth.

We urge the Province to pause consideration of these changes during the state of emergency and continue to consult with stakeholder to refine the proposal before releasing final regulations.

Sincerely,



/for
Heather Taylor
Chief Financial Officer and Treasurer

Copy: City Manager
Deputy City Manager, Community & Social Services
Deputy City Manager, Infrastructure & Development Services
Deputy City Manager, Corporate Services
City Solicitor