



Staff Report for Budget Committee of the Whole Meeting

Date of Meeting: October 6, 2020

Report Number: SRCFS.20.028

Department: Corporate and Financial Services

Division: Financial Services

Subject: Update on Bill 197, COVID-19 Economic Recovery Act, 2020, and Results of the LPAT appeal case #DC160010

Purpose:

The purpose of this report is to provide an update to Council on recent changes introduced by Bill 197, *COVID-19 Economic Recovery Act* ("Bill 197"), further proclaimed amendments to the Development Charges Act ("D.C.A.") and the Planning Act, and the initiatives staff are undertaking to respond to the legislation.

In addition, this report will provide an overview of the results of the Local Planning Appeal Tribunal ("LPAT") appeal case #DC160010.

Recommendation(s):

- a) That the update and initiatives outlined in staff report SRCFS.20.028 be received.
- b) That Staff update three Development Charges By-laws, including the amendment of the City-wide Development Charges By-law to incorporate changes to soft services and two Area Specific Development Charges By-laws by July of 2021.
- c) That Staff update the City-wide Development Charges By-law prior to the end of 2023, to reflect the update of various City-wide plans and studies.

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Report Approval:

Submitted by: Sherry Adams, Commissioner of Corporate and Financial Services

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Approved by: Mary-Anne Dempster, City Manager

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner and City Manager. Details of the reports approval are attached.

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Background:

Development charges are imposed against land to pay for increased capital costs required due to increased needs for services arising from development of an area. These charges are collected from development projects and are the primary source of revenue to fund growth-related infrastructure.

In the last year the Province has introduced several legislations with a host of significant changes to the Development Charges Act (D.C.A.) and the Planning Act, these changes were introduced through Bill 108, the "More Homes, More Choice Act, 2019", and Bill 138, the "Plan to Build Ontario Together Act, 2019".

The Province changed municipal funding options related to Development Charges ("DC"), parkland dedication / cash-in-lieu of parkland, and Planning Act - Section 37 agreements, and introduced Community Benefits Charges (CBC). Furthermore, these changes possess implications for the administrative process of collecting development charge revenues.

Through previous communication to Council in SRCFS.20.009, staff provided a detailed overview of the impact of Bills 108 and 138, some of the significant changes include:

- Freezing of development charges rates
- Development charges payment instalments (deferred/phased) for the following types of developments: rental housing, and institutional developments are to be paid out in 5 years through 6 instalments; Development charges for non-profit housing development are to be paid out in 20 years through 21 instalments;
- Interest rate payable on frozen, deferred/phased development charge instalments; and,
- Introduction of a new Community Benefit Charge ("CBC") imposed under the *Planning Act*

As a follow up to the Province's proposed regulatory framework to how municipalities fund growth-related community infrastructure, in Bill 108 and Bill 138 further changes and clarifications have been introduced through Bill 197, the COVID-19 Economic Recovery Act.

Newly Proclaimed Regulations

On September 18, 2020 the Province proclaimed the remaining amendments that were made to the D.C.A. and the Planning Act by Bills 108, 138, and 197. In addition, the Province has made a new regulation under the Planning Act and technical changes to regulations under the Planning Act, Development Charges Act and Building Code Act in order to finalize the framework for development charges, community benefits and parkland dedication.

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Municipalities will have two years to transition to the new regime from the date the legislation was proclaimed. This will enable both the municipalities and the development community to adjust to these changes in light of the pressures of COVID-19.

The CBC authority that will be applied to land values to determine the maximum CBC for any particular residential development is prescribe at 4%. The CBC could be used as an additional tool by local governments to fund capital costs of services that are needed due to higher density development and are not being recovered through other mechanisms. For example, a development site with a land value of \$15 million, would generate a CBC of \$600,000 at 4% or \$3,000 per unit (Assuming 200 units). A more in depth assessment is currently underway, the potential financial impact to Richmond Hill will be provided in a future update.

Bill 197, COVID-19 Economic Recovery Act, 2020 (COVID Act)

The following are key aspects of Bill 197 with a significant impact on the City's funding options related to DC, Parkland dedication, and CBC.

Development Charges

Eligible Services:

Bill 197 has restored additional soft services to be eligible under the D.C.A., and includes services with impact to the City such as:

1. Parks and recreation services, but not the acquisition of land for parks.
2. Library Services

These restored soft services that the City provides will be eligible under the D.C.A. at 100% of the cost, and no longer will be subject to the 10% statutory deduction. This would allow the City to recover the full cost of services provided the residents for these soft services through DC.

Development Charge — Relationship to Community Benefits Charge

CBC may be imposed with respect to services that are eligible under the D.C.A., provided that the capital costs that are intended to be funded by the CBC are not capital costs that are intended to be funded under a DC by-law.

Parkland Dedication

Bill 197 reinstates the existing parkland provisions including the alternative parkland rate as it is currently being utilized by the City, and allows for Parkland contributions and community benefit charges to be applied to the same developments.

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Municipalities that wish to continue to use the alternative rate would need to enact a new Parkland Dedication By-law supported by an updated Parks Plan. This would be subject to appeals to the Local Planning Appeal Tribunal. Public consultation and notice is required (similar to the DC process).

Existing Parkland Dedication By-laws using the alternative rate will expire 2 years after enactment of Bill 197 (September 18, 2022).

Community Benefits Charge

The council of a local municipality may by by-law impose community benefits charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies.

A community benefits charge may not be imposed with respect to,

- a) Development of a proposed building or structure with fewer than five storeys at or above ground;
- b) Development of a proposed building or structure with fewer than 10 residential units;
- c) Redevelopment of an existing building or structure that will have fewer than five storeys at or above ground after the redevelopment;
- d) Redevelopment that proposes to add fewer than 10 residential units to an existing building or structure; or
- e) Such types of development or redevelopment as are prescribed.

Credit under s. 38 of Development Charges Act

If the municipality passes a CBC by-law under section 38 of the D.C.A. before September 18, 2022, any existing DC credits that were held by landowner may be used towards payment of that landowner's C.B.C.

Approach to Amend and Update to the Development Charges By-law:

In April of 2019, staff brought forward SRCFS.19.018 to Council with a framework of the process of updating the DC By-laws. In that report staff proposed a two (2) step approach as follows:

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The “first update”, which has been completed in June of 2019, was to replace the existing By-laws, reflected the Minutes of Settlements (MoS) with the developers, including adjustments to the post period benefit, and updated net developable land areas. In addition, the draft charges incorporated an updated growth forecast, indexed costing, update to the service standards, and removal of capital projects that were completed to date.

The “second update” to occur in 2021, and would incorporate results of the updated Transportation Master Plan (TMP), Urban Master Environmental Servicing Plan (UMESP), and the pending decision from the Ontario Municipal Board (OMB) on the dispute brought forward by the developers in 2016. In addition, the “second update” would include the Region’s revised growth plan to 2041, any potential changes to the Development Charges Act from the current Provincial review, results from the City’s capital sustainability exercise where it impacts DCs, and further consideration of area specific vs. town wide development charges. This later timeframe would have allowed staff to finalize the TMP and UMESP, as well as reflect the pending OMB decision.

Since April of 2019, there have been numerous developments both internal (within the City) and external that have a significant impact on the DC By-law update process, as it was proposed in April 2019. These include: the City’s initiative to update its Official Plan (“OP”) and the corresponding Transportation Master Plan (“TMP”) and Urban Master Environmental Servicing Plan (“UMESP”) as a result of changes to Provincial Growth Plan; the update of the Parks Plan, Recreation and Culture Plan review as well as the new Provincial legislations of Bills 108, 136, and 197.

As staff are committed to prepare a fully informed DC background study. The developments outlined above necessitate a modified two (2) step approach as follows:

Development Charges Update:

The “first update”, to be completed by July of 2021, will update two (2) existing Area Specific Development Charges By-laws, and amend the City-wide Development Charges By-law. These would include two (2) Area Specific By-laws that are due to expire in 2021 (By-laws 30-16 Bayview North East Development Area, and 32-16 Headford-Excluding Storm Development Area). In addition, amend the City-wide DC By-law to reflect legislative changes to soft services, specifically to add back to the eligible DC cost 10% that were previously excluded.

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The “second update” will be informed by the completion of the various studies that the City is undertaking including: City’s Official Plan, Transportation Master Plan, Urban Master Environmental Servicing Plan, the Parks Plan, and the Recreation and Culture Studies. These studies are prepared in a corresponding manner to each other, as Official Plan informs the other City Plans, and are expected to be completed by end of fiscal 2022. Therefore the second update to the Development Charges will occur subsequent to the completion of the plans described above, with a target timeframe of end of fiscal 2023. In addition, the “second update” will include the results from the City’s capital sustainability exercise where it impacts DCs, and further consideration of area specific vs. city wide development charges. This later timeframe will allow staff to finalize the various studies and inform the DC.

Community Benefit Charges:

The potential establishment of the City’s CBC By-law will be a parallel process as the update of the Parkland Dedication by-law. This proposed timeframe will allow staff to consider the CBC in the various studies, and ensure that the potential CBC By-law is in line with the most current legislation, and within the transition period to the new DC regime set to September 18, 2022.

LPAT Results of Case #DC160010

On July 7, 2020 the City, received LPAT order on case #DC160010. The order came subsequent to the hearing held on November 9th to 27th, 2017, where the Development Charges By-laws: No. 35-16 (West Gormley Development Area), No. 33-16 (North Leslie West Development Area), No. 71-16 (City-wide Development Charges).

This was a hearing into consolidated appeals of three development charge bylaws passed by the City in July 2016. A Procedural Order issued prior to the hearing set out 18 such issues, ranging from the inputs and assumptions made in calculating the development charges to the by-law rules for determining how the charges are imposed.

LPAT approved the settlement the City had reached with Leslie Elgin Development Inc. and 775377 Ontario Ltd., and North Leslie Residential Landowners Group Inc., and dismissed the appeals by the remaining appellants.

In accordance to the terms of settlement and the LPAT order #DC160010, the City is issuing a partial refund of DC to those parties that are impacted by the amendments to Development Charges By-laws 33-16, 35-16, and 71-16.

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Section 18 of the Development Charges Act, 1997 requires payment of DC refunds, together with accrued interest, within 30 days of an OMB/LPAT Order amending the DC by-law. However, the Provincial emergency order relating to COVID-19.O.Reg. 73/20, suspended such legislation until September 14, 2020. As a result, the City has deferred the partial refund of DC from September 14, 2020 to allow for 30 day period for the appellants to further appeal or request for motion to leave in order to appeal LPAT's decision.. Based on preliminary analysis, City staff estimates approximately 140 parties will receive a refund payment for an approximate total of \$1,779,496 in Development Charges, and approximately total \$56,046 in interest.

Financial/Staffing/Other Implications:

Development charges are the primary source of funding for growth related capital infrastructure.

Removal of the mandatory 10% deduction from “soft services” from the DCA such as outdoor recreation, indoor recreation and library services would result in the City's ability to collect 100% of the capital costs through development charges instead of 90%. Based on the 2019 Development Charges Background Study, the removal of the 10% statutory deduction would result in approximately \$14 million greater funds that would be eligible to be funded through development charges.

Extending the transition to adopt the new CBC regime from 1 year to 2 years from September 18, 2020 will allow the City to adjust to these changes in light of the pressures of COVID-19. The 2 year transition period will allow the City to fully assess the potential financial benefit of the CBC, and prepare the necessary studies and update the Parkland Deduction By-law.

Amending the City-wide Development Charges By-law and adopting a Community Benefits Charge By-law will provide additional funding to help the City recover growth related capital costs as permitted under the new legislation.

Bill 197 provides the City the option to continue the existing parkland collection process and allows more flexibility with respect to options of how the City chooses to fund parkland in the future.

Relationship to the Strategic Plan:

Presenting the updates on initiatives staff plan to undertake in 2020 to respond to recent changes introduced by Bill 197 demonstrates responsible municipal management in which the following objectives are being met:

- a) Reinforce the commitment to maintain sound fiscal management;
- b) Wise management of resources in Richmond Hill; and

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- c) Ensure open information flow and accessible decision-making.

Conclusion:

Overall Bill 197, and the proclaimed regulations associated to Bill 108 and 197, provide the City with flexibility with respect to DCs and the CBC, as it enables the City to fund growth-related, capital costs of any potential service, including services recovered partially through DCs or parkland dedication with the CBC.

Given the recent developments in the legislation of D.C.A and the Planning Act, as well as the numerous City-wide plans and studies that are ongoing, staff recommend a modified two (2) step approach to update the Development Charges.

Given the extended transition timeframe to the new CBC regime, staff will assess the full implication of the CBC in parallel to the timeframe of the preparation of the Parkland Dedication By-law.