



**SUBJECT: City of Burlington Comments regarding Proposed Bill 108:  
More Homes, More Choice Act, 2019**

**TO: Mayor and Members of Council**

**FROM: City Manager's Office**

Report Number:CM-11-19

Wards Affected:all

File Numbers:155-03-01

Date to Committee:Select date

Date to Council:May 27, 2019

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**Recommendation:**

Receive the comments and feedback contained within this report and forward to the Province of Ontario, Minister of Municipal Affairs and Housing and the Minister of Tourism Culture and Sport, as the City of Burlington's comments on Bill 108 (More Homes, More Choices Act), Housing Supply Action Plan; and,

Request that the Province of Ontario continue to consult with the City of Burlington on Bill 108 (More Homes, More Choices Act), with adequate time provided prior to Royal Assent and finalization of associated regulations.

**Purpose:**

The purpose of this report is to provide Council with an overview of Bill 108, More Homes, More Choices Act, introduced on May 2, 2019 by the Minister of Municipal Affairs and Housing. The proposed Bill amends thirteen acts of which only three acts are subject to comment and review prior to June 1, 2019. The three acts are; the *Development Charges Act, 1997* (ERO Number:019-0017), *Planning Act* (ERO Number 019-0016), and the *Heritage Act* (ERO Number 019-0021).

At the time of writing this report Bill 108 is in second reading (debate). Timelines beyond this are not known, however, the Bill requires third reading and royal assent prior to it becoming Legislation with numerous details to be prescribed by regulation.

Based on our preliminary review it is difficult to ascertain the full impacts of the proposed Bill 108. The lack of clarity in the information released and the fact that many

of the details will be prescribed through future regulations, prevents staff from undertaking a more thorough evaluation. Staff will continue to engage with the Province, the Region and neighbouring municipalities to assess the impact of the proposed legislation and will continue to provide Council with updates as information becomes available.

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## **Background and Discussion:**

Proposed Bill 108 is a full suite of legislative changes which, according to the Province is designed to increase the supply of housing that is affordable and provides families with more choices on where to live, work and raise their families. This report provides preliminary commentary on the impacts on the significant changes proposed and the specific implications for the City of Burlington. As Council is aware, municipalities are expending significant effort to fully understand, assess and deal with Provincial changes including those incorporated in the FY 19/20 Provincial Budget. Staff anticipate more Provincial changes will be forthcoming throughout the remainder of the year including potential municipal governance and service delivery changes related to the Regional Review process.

Recommendations to the Province are contained in Appendix A.

## **Proposed Changes to the *Development Charges Act (DCA), 1997***

- 1) **Changes to Eligible Services:** The proposed Bill will remove “soft services” from the DCA. For the City of Burlington, this translates to the removal of parks and recreation, and library services. The Province is proposing that the soft services will be considered as part of the new Community Benefit Charge (CBC) under the *Planning Act*. Eligible services that will remain under the DCA as it relates specifically to the City of Burlington are as follows;
  - Stormwater drainage and control services;
  - Services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001*;
  - Fire protection services; and
  - Transit services

Soft services currently account for 18 per cent of our total charge for residential. Over the next ten years the city of Burlington forecasted collecting **\$8.3 million** in development charges to spend towards soft services.

- 2) **New Exemption:** The proposed changes include a new exemption for second dwelling units in new residential buildings, including structures ancillary to dwellings. This new exemption would require funding from the tax base.
- 3) **Timing of DC collection:** The Bill proposes that the following types of development will pay their development charges (DCs) over a period of six years;
  - Rental housing
  - Non-profit housing
  - Commercial development
  - Industrial development
  - Institutional development

The six annual payments will commence the date of issuance of an occupancy permit or occupancy of building, whichever is earlier. The municipality may elect to charge interest at a prescribed rate and can add any unpaid amounts including interest to taxes. As a result, this will impact DC cashflows and increase administrative efforts for the City of Burlington.

- 4) **Timing of DC Amount:** Bill 108 proposes that the timing of when the DC amount is determined for all developments proceeding by site plan or requiring zoning amendment be based on the DC charge in effect at the time of application for site plan or zoning amendment. If developments do not require the aforementioned planning approvals, the amount will be determined at the earlier date of issuance of a building permit or occupancy. As a result, this will impact the city's ability to tie growth related costs to revenue.
- 5) **Transition:** Bill 108 considers transition provisions for by-laws set to expire after May 2, 2019. For the City of Burlington, at the time the new legislation is enacted, our by-law will need to be amended within a prescribed period to satisfy the amended legislation. At this time the prescribed date is not known.

### **Proposed changes to the *Planning Act***

- 1) **Reduction of decision timelines:** Bill 108 is proposing shorter timelines for the processing of development applications before they can be appealed to the Local Planning Appeal Tribunal (LPAT) for a non-decision.
  - For Official Plans, from seven months (210 days) to four months (120 days);
  - For Zoning By-laws, from five months (150 days) to three months (90 days);

- For Plans of Subdivision, from six months (180 days) to four months (120 days).

With respect to giving notice of and circulating applications, the shorter timelines will result in a limited window for the public to provide written submissions on an application.

The timelines to complete a technical review of the application by internal staff, agencies and provincial ministries will also be impacted by the shorter times. No longer will it be feasible for an applicant to respond to technical comments prior to a decision having to be made on an application. This would result in an increase in recommended denials based on prematurity.

The ability to conduct meaningful, thorough public engagement will be impacted, as will an applicant's ability to incorporate changes to the application based on public input. Two-stage reporting is not feasible based on the proposed new timelines. The Statutory Public Meeting and recommendation reports will need to be combined into one Planning and Development Committee meeting thereby limiting Council's opportunity to hear from the public before making a decision.

The shorter time lines may result in an increase in the number of appeals to LPAT, which in turn means that it will take longer to get decisions made on those applications.

The reduced decision timelines appear arbitrary and give no consideration to what internal changes will be required to the City of Burlington Development Application Approval Process (DAAP) business process. DAAP is comprised of a set of fully documented and integrated workflow steps that cross a number of City functions. In order to achieve the new timelines, ideally a detailed business process review of the City's DAAP should be undertaken.

- 2) **Additional residential units:** Bill 108 authorizes the use of two residential units in a detached, semi-detached or row house and a residential unit in an ancillary building or structure.

The City will be required to update our Official Plan policies to permit two residential units in a house and an additional residential unit in an ancillary building or structure. This could be achieved through modifications to the City's adopted new Official Plan. The City will also need to undertake a study to assess the feasibility of accommodating these additional units as it relates to standards and conditions, such as parking. This study would help to inform updates to the City's Zoning Bylaw.

- 3) **Inclusionary Zoning:** Proposed changes to the *Planning Act* appear to limit the ability to implement Inclusionary Zoning to two areas: within a Protected Major Transit Station Area delineated area or where a community planning permit

system formerly known as a development permit system is adopted or established. The proposed changes are clear that municipalities would not be required to adopt an Inclusionary Zoning by-law.

- 4) **Community Planning Permit System:** The City may be required, through an Order from the Minister, to adopt or establish a community planning permit system that applies to a specific area or to an area surrounding and including a specified location, as outlined in the Order. A time period to adopt or establish a community planning permit system may also be specified in the Order. Official Plan policies adopting a community planning permit system, in response to an Order, are sheltered from appeal.
- 5) **Community Benefits Charges (CBC):** The CBC consolidates the following financing tools, parkland dedication, public benefits through density and specified soft services currently financed through DCs. The city will be required to prepare a CBC strategy, before passing a CBC by-law. The following are various provisions regarding the new community benefit charge.
  - The CBC payable cannot exceed an amount equal to the prescribed percentage of the value of the land as of the valuation date.
  - The valuation date is the day before building permit issuance.
  - Valuation will be based on appraised value of land.
  - In each calendar year, a municipality shall spend or allocate at least 60 percent of the funds

Based on the above, the exact amount payable under the CBC is unknown at this time, as it is based on percentage of land value. As such, it will be extremely difficult for the City to discern the true impact of the change, and it creates uncertainty in forecasting funding for growth. The provision to allocate or spend 60 percent of funding in a given year makes it very difficult to plan for large scale multi-year projects.

Under the proposed CBC, potential benefits become limited.

The proposed changes remove the ability for municipalities to obtain land for parks within growth areas to support the residents in these areas. As Burlington is at full build-out, taking parkland enables public access to open space where it would otherwise be cost prohibitive for the municipality to purchase land at market rate for parkland.

- 6) **Changes to the Appeals Process:** With the shortened decision timeframes and the basis of an appeal are no longer limited to a test of consistency and conformity with provincial policies and plans and applicable official plan policies,

the City can expect to receive more appeals of decisions and non-decisions to LPAT. LPAT's ability to overturn decisions made by City Council is no longer limited to consistency/conformity with Provincial policy standard. Even with updated planning documents, which are deemed to be in conformity with provincial and regional policy, the proposed changes will require the City to defend decisions based on good planning in the context of a hearing de novo.

- 7) **Final Decision on Appeals:** The City will no longer be given the opportunity to make a new decision on a matter if LPAT determines that a municipal decision did not follow local/ and or provincial policies. Final decisions on appeals now rests with LPAT.
  
- 8) **New Evidence and Examination of Witnesses at LPAT Hearings:** New information and materials may be presented at an LPAT hearing and Council may be given the opportunity to reconsider and make a recommendation to the Tribunal on the matter within a prescribed period of time. Furthermore, witnesses may be called by parties and examined as part of the hearing process. All these changes are likely going to result in longer, more expensive LPAT hearings.
  
- 9) **Limiting Third Party Appeals:** Limiting who can appeal an approval-authority non-decision on an Official Plan or an amendment to an Official Plan greatly reduces the risk of such an appeal for a proponent. In the case of the City's adopted Official Plan, this would mean only the Minister, or the City would be able to appeal, following the 120-day decision period.

For Plans of Subdivision, the proposed amendment includes a list of persons who may appeal a decision, the lapsing provision or any of the conditions. This could result in less appeals and the application moving through the process quicker. It does, however, preclude members of the public who participated in the process, from appealing.

The above changes represent a significant step backward in the local municipal control over land use planning and call into question the fundamental responsibility of the Province, to enable through delegated legislative authority, the City of Burlington's ability to manage growth and protect the broader public interest.

### **Proposed changes to the *Ontario Heritage Act***

- 1) **Introduction of "prescribed principles":** The nature of the new prescribed principles that Council must consider when designating property or making decisions related to designated properties will not be known until they are set out by the province in new regulations. The introduction of prescribed principles may

limit Council's discretion in making decisions under Part IV of the *Ontario Heritage Act*, including designating property of cultural heritage value or interest.

- 2) **Provisions for provincial heritage properties:** Bill 108 repeals a provision allowing municipal decisions to prevail over provincial heritage standards and guidelines, in respect of a designated heritage property that is occupied, but not owned, by the province or prescribed public body, including the Royal Botanical Gardens.
- 3) **Listing non-designated properties on the Municipal Register:** The new process for listing non-designated properties on the Register introduces requirements for the City to provide notice to the property owner and explain the reasons for listing the property and allows property owners to object to the property being listed. The owner's objection does not trigger a hearing at LPAT, but Council must consider the objection and decide whether to uphold or withdraw the listing.
- 4) **Introduction of "prescribed events":** Bill 108 introduces "prescribed events" and states that when a prescribed event occurs in respect of a property, the Council cannot state an intention to designate the property after 90 days have passed from the occurrence of the prescribed event, subject to exceptions. The nature of the prescribed events and the exceptions from this policy will not be known until they are set out by the province in new regulations, but it is anticipated that prescribed events will include the submission of a complete development application under the *Planning Act*. The introduction of prescribed events and associated policies will force the City to make "now or never" decisions on designating a property when a prescribed event occurs. The City may be prevented from designating a property of cultural heritage value after the 90-day period has ended, even if the property's cultural heritage value changes in the months or years after the period ends.

The City may struggle to allocate resources to study a property's cultural heritage value and decide whether to designate it within the 90-day period after the prescribed event occurs, especially if prescribed events occur in respect of numerous properties at the same time.

Furthermore, the restriction prohibiting the City from stating an intention to designate after the 90-day period has elapsed may prevent the City from using more innovative approaches to achieve better heritage conservation outcomes, for example the approach of entering into a heritage conservation easement agreement under section 37 of the *Ontario Heritage Act* prior to approving

redevelopment, and later stating an intention to designate the same property after redevelopment of said property is complete.

5) **Decision-Making Process and Appeals Process for Designations, Designation Amendments, Designation Repeals, and Heritage Permits (Municipal Consent for Alterations or Demolition to Designated Property):**

Bill 108 introduces new processes and time limits for municipal decisions to enact, amend, or repeal by-laws that designate properties of cultural heritage value or interest under Part IV of the *Ontario Heritage Act*. New processes and timelines are also introduced for municipal decisions to consent to proposed alterations or demolitions in respect of designated properties.

The appeal body for such decisions is changed from the Conservation Review Board (CRB) to the LPAT. Unlike the CRB, LPAT may overturn Council decisions. LPAT may also lack cultural heritage expertise to inform its decisions.

Furthermore, the definition of “alter” is amended such that requests to remove a heritage attribute now follow the process for demolition rather than the process for alteration of the property. This removes the municipality’s discretion to determine what constitutes alteration vs demolition and may cause unnecessary procedural red tape in some instances.

6) **Heritage Districts:** There are currently no Heritage Districts in Burlington; however, Bill 108 may affect the process for the City to establish a District in future. Notably, new provisions appear to indicate that a District Plan must identify the attributes of every individual property within a District, rather than the attributes of the overall District. This may add prohibitive complexity and cost to the development of a District Plan.

### **Observations and Preliminary Implications for Burlington**

Staff have collectively reviewed the proposed changes and provide the following together with the recommendations in Appendix A as our concerns and comments for submission to the Province. Individually, many of the changes proposed in Bill 108 would be concerning for the City. Considered collectively, the proposed changes would have significant negative financial, land use planning and administrative process impacts on the City.

#### **Lack of Clarity**

Overall, there is a lack of clarity and further detail and information is required in order to provide more informed feedback through the consultation process. The *More Homes, More Choice Act* is provincially lauded as an Act that will facilitate the goals of providing greater housing opportunities in Ontario. The proposed changes do not all appear to

lend to that objective. For example, how will proposed changes such as deferral of DC payments to commercial and industrial development increase housing supply? Furthermore, housing prices are largely market driven, and it remains to be seen if the proposed changes will translate into direct benefits to residential consumers.

Further context is required regarding the Community Benefits Charge as currently it is unclear as to the prescribed percentage of land value that will be used. Additionally, basing the CBC on the value of land does not connect to the cost to service the related growth. The City of Burlington operates in a two-tier municipal system and there is no guidance on how the percentage of the land value will be allocated.

### **Diminished Public Consultation**

Bill 108 is proposing shortening the timelines for planning decisions making it difficult to conduct meaningful, thorough public engagement and be able to incorporate changes to the application based on public input. The proposed reduction to appeal rights to the LPAT further limits the opportunity for the local community to participate in the planning process.

### **Administrative Challenges**

The proposed changes have significant administrative impacts to the City's planning and development approval process. Calculating DCs at various stages of development, applying interest charges, tracking payments, as well as changes in occupancy during the proposed six-year period will require changes in technology and additional administrative resources. Also, the costs and resources involved in creating and implementing a Community Benefits Strategy and by-law may be significant.

The reduction in the timeframes for planning applications will require significant changes to our current process. Time to work through the technical review with applicants will be reduced, as will our ability to conduct meaningful public consultation and to report to Council.

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### **Delay in Cash Flow**

Bill 108 proposes a number of changes to the timing and collection of DC revenues, resulting in a large impact on DC payments that municipalities will receive. Most infrastructure as it relates to "hard services" must be provided in advance of development increasing the potential for increased debt borrowing to pay for the required capital infrastructure. Spreading the collection over multiple years inhibits the

municipality from collecting in advance of the development, as such DC revenues and capital servicing costs are not matched.

Additionally, locking in DC rates in advance of permit issuance produces a shortfall in DC revenue as the charge will not reflect the current rates at the time of development. The change represents another instance where the city is unable to tie revenues to costs further contributing to the challenge of growth not paying for growth. The time limit between site plan approval and zoning changes to issuance of building permit can vary substantially, as there is no financial incentive for development to proceed quickly. In both instances there is upward pressure on the DC quantum.

With respect to the CBC, combining park dedication funding, soft services and public benefits further and likely significantly limits the funding available to the City to acquire and develop new parks, recreation facilities and libraries. Instead, the City will be limited to implementing and apportioning a community benefits charge among a list of eligible services.

The uncertainty makes long term financial forecasting extremely challenging and is contrary to the fundamental principle of growth pays for growth.

### **Transition Period**

There is uncertainty on the transition period that the Province will provide municipalities to react to the changes. Ample time will be required to communicate changes, adjust policies, consult and implement the required processes to ensure appropriate application of the legislation. The changes are broad sweeping impacting multiple facets of the organization.

### **Growth Pays for Growth**

The proposed changes essentially remove the ability for municipalities to obtain sufficient public lands for parks within growth areas to support the residents in these areas. Removing the density provisions drastically reduces Burlington's ability to obtain parks or cash-in-lieu especially on high density developments (condos and apartments).

Effectively, community benefits are being capped based on a percentage of the land value of the development site.

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### **Financial Matters:**

Overall there are significant financial implications to the City of Burlington as a result of the proposed changes however, it is difficult at this time to quantify the true impact with the limited information and lack of clarity currently provided. At a high level, we can state the following as areas where there will be a definitive and negative financial impact:

- Administrative costs related to changes in technology, increased staffing to administer the process, and appraisal costs for land values
- Increased use of debt financing for growth infrastructure, impacting the city's debt capacity and the DC quantum
- Changes to the collection of the CBC due to changes in land values, that cannot be predicted or forecasted
- Increased exemptions will result in increased costs to the taxpayer to the growth-related cost
- Reduced funding available to "soft services" such as parks, recreations centres and libraries as a result of their exclusion from the DCs and dependant on the calculation of the CBC
- Increased risk of appeals for non-decision will result in increased legal costs.

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### **Connections:**

The City is working closely with Halton Region, the other area municipalities as well as members of Large Urban Mayors' Caucus of Ontario and Mayors and Regional Chairs of Ontario regarding Bill 108 and the impact of the proposed changes on municipalities. Significant concern has been raised regarding the lack of clarity and details surrounding the changes proposed by Bill 108. Municipalities are also concerned about the timing of the introduction of this legislation.

The Province has recently introduced changes to public health, ambulance services and is in the middle of a review of Regional Government. Municipalities are being asked to respond to several significant service delivery and financial changes, at the same time, after their municipal budgets have been approved.

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### **Public Engagement Matters:**

The City of Burlington is committed to being a municipal leader in community engagement and collaboration. As highlighted above, Bill 108 is proposing shortening the timelines for planning decisions making it difficult to conduct meaningful, thorough public engagement and be able to incorporate changes to the application based on public input.

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## **Conclusion:**

Bill 108 proposes full range of legislative changes intended, by the Province, to increase the supply of housing that is affordable for Ontario families while providing them with more choices on where to live, work and raise their families. Providing residents with affordable housing options within Burlington, is something the City supports. However, our review of the Bill 108 and the proposed changes do not clearly indicate how the Provincial objectives will be achieved.

While, there is limited details on how the changes will be implemented our review clearly indicates that there will be significant impacts to the City of Burlington; financially; our ability to secure parkland and community services and facilities; the opportunity to conduct meaningful consultation with community and conservation of heritage resources. Overall the changes proposed in Bill 108 are unsubstantiated and largely disconnected from the underlying intent of the legislation to create more housing supply and choice in the GTHA.

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Respectfully submitted,

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## **Appendices:**

- A. City of Burlington Recommendations Regarding Proposed Bill 108: More Homes, More Choice Act, 2019

## **Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.