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## PROVINCE RELEASES DETAILS OF PROPOSED CBC

# OPEN FOR COMMENT

**Andrew Reeves**

Late last month, the provincial government released its highly-anticipated summary of proposed regulatory changes that, if implemented, will overhaul how municipalities and developers agree upon what compensation is appropriate to pay for the need for increased services brought on by new development.

The [summary proposal](#), which is open for public comment on Ontario's Environmental Registry until March 30, details how the provincial government believes a new Community Benefits Charge (CBC) will complement development charges to fund local priorities like building affordable housing or purchasing land for parks.

**Municipal Affairs and Housing** minister **Steve Clark** introduced the proposed changes to the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* in both the *More Homes, More*

*Choice Act* (Bill 108) in May 2019 and the *Plan to Build Ontario Together Act* (Bill 138) in November 2019. Together, these laws and the proposed regulatory changes they entail will, among other things, remove sections 37 and 42 of the *Planning Act* as tools through which municipalities can fund important neighbourhood infrastructure and amenities.

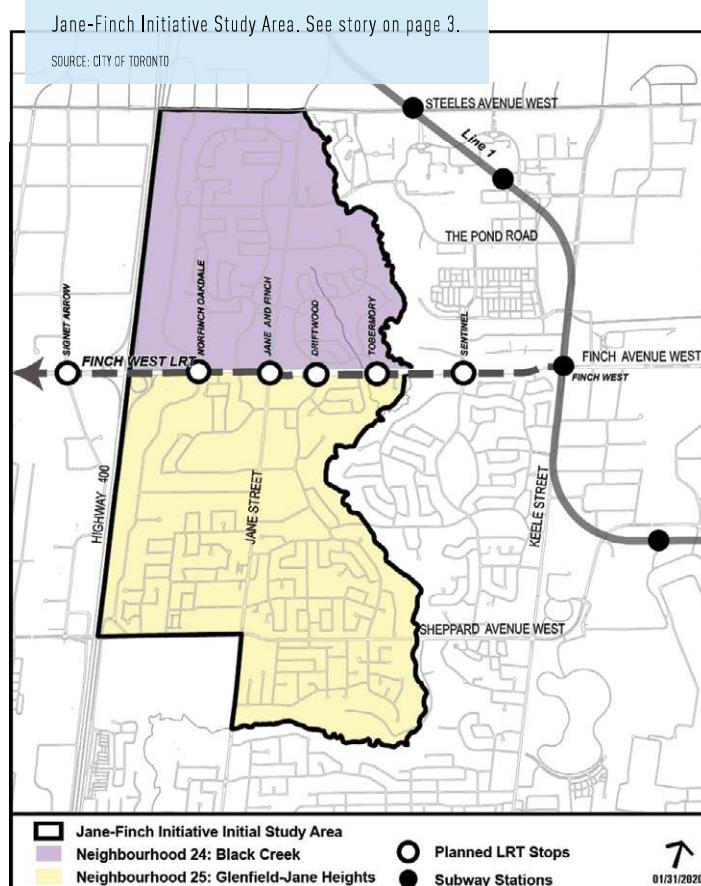
Under the new proposed guidelines, which are not yet in effect, municipalities would be required to submit a Community Benefits Charge Strategy any time developers request to build density beyond what a parcel of land is zoned for. A CBC Strategy would require municipalities to tie any funding requested from a developer to specific needs arising directly from anticipated added pressures on municipal infrastructure and community services brought about by the proposed new development. This includes

any anticipated increase in need throughout the community, related capital costs, and any additional funding sources that the

municipality has sought in support of the project.

**Residential Construction Council of Ontario** (RESCON) president **Richard**

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**Lyall** noted that municipalities already have to provide similar strategies when levying development charges – the new requirement for a CBC Strategy, he feels, will be no different. Ultimately, Lyall told *NRU*, this is about increasing housing stock to address the current housing crisis. Removing *section 37* from the *Planning Act* will reduce the costs paid by home buyers, he told *NRU*, since *section 37* negotiations between developers and municipalities not only prolonged the development of new residential construction, but added enough uncertainty to the process of determining developer contributions that some developers simply walked away from a proposed project. “The uncertainty, the lack of transparency, and the ‘Let’s-make-a-deal’ approach to development under *section 37* were not conducive to investment,” he said.

Many stakeholders in the development industry felt the existing *section 37* method for funding community projects was simply no longer working. RESCON regulatory reform and technical standards director **Michael de Lint** told *NRU* that some municipalities were intentionally keeping

zoning densities low in an effort to obtain more money from developers through rezoning.

“The province and industry want municipalities to update their zoning to align it with the *Growth Plan*,” de Lint said, “but [under the *section 37* regime] municipalities were encouraged not to do it.” Development industry stakeholders felt that many municipalities were purposefully out-of-sync with the *Growth Plan*. “And that was a problem,” de Lint said. “Low-density zoning and subsequent rezoning were being used to get *section 37* money. And it was undefined how much that money would be and what it would be used for.”

The province’s CBC proposal also suggests that the services municipalities can fund through development charges to help pay for the capital costs of infrastructure projects arising from new development will expand. Waste diversion and ambulance services, they suggest, could be fully recoverable in future. The province is also seeking feedback on whether development charges should cover the full capital costs of community services like

libraries, recreational facilities, long-term care homes, and park development (but not the acquisition of parkland itself).

Currently, *section 42* of the *Planning Act* allows developers to offer municipalities payment in lieu of parkland. Under the proposed new rules, municipalities looking to enhance greenspace can take one of two approaches: either apply a parkland dedication rate of 5 per cent of the value of the land for residential construction or a 2 per cent rate for commercial or industrial development, or collect funds from a developer through a Community Benefits Charge by-law.

The province is looking to cap what municipal governments can ask developers to pay in support of community projects by tying it to the value of the land as of the day before a work permit is issued. Single-tier municipalities like the **City of Toronto** could request community benefits funding of up to 15 per cent of the land value, while lower-tier municipalities would be eligible to request up to 10 per cent; upper-tier municipalities, meanwhile, could request up to 5 per cent of the value of the land.

**Devine Park** partner **Patrick Devine** noted that when the final version of the regulations is released, the province may want to consider a finer-grained analysis of how land value will be determined

based on whether it’s a residential, commercial, or industrial project. “Different types of development have different needs,” he said, “and currently it’s one-size-fits-all.”

Devine told *NRU* that under the existing regime, negotiations over a development proposal in Toronto always came down to a local councillor and a developer (see Devine’s January 24 op-ed “The Rise and Fall of Section 37”). City planning staff typically have very little say in the dynamics of a particular property, Devine said. “That concerned me, because planners in the City of Toronto are professional land-use planners and their job is to take a broader perspective and evaluate the needs of a community.”

With developers keen to get a project off the ground, he said, many were anxious to pay whatever was necessary to get a councillor’s support for their project. The new system changes this. “I don’t think that asking city councillors to decide on a project-by-project basis what they believe is the best community benefit is better than this new [CBC] system,” he said. “This new system will be a lot better, and I think it will put more control back in the hands of the professional planners.”

Not everyone agrees the proposed changes will benefit

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the city. Ward 12, Toronto-St. Paul's city councillor **Josh Matlow** has been vocal in his support of the previous *section 37* regime to fund infrastructure and amenities around new development in the city. "Eliminating these measures could threaten many projects across Toronto that are currently in the City's 10-year Capital Plan," he wrote in May 2019 in response to the release of Bill 108.

**Toronto Community**

**Benefits Network** executive director **Rosemarie Powell** called the government's use of the term "community benefits" rather "ambiguous" and suggested that, at a time when communities across the city were asking for more opportunities to set local priorities, Bill 108 was a step in the wrong direction. "We see these changes as going backwards by decreasing municipalities' time to assess development applications and

consult with key stakeholders."

The new planning regime will come into effect one year after the regulation is finalized, giving municipalities 12 months to pass by-laws requesting project funds from developers through the new CBC structure.

City of Toronto staff declined to provide comment for this story, noting they are currently reviewing the proposed provincial amendments and will report any recommendations for future action to the city's executive committee at its meeting March 24. 🌸

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