

Subject: Community Benefits Charge By-law (2022-307) Update

File Number: ACS2024-PDB-GEN-0005

Report to Planning and Housing Committee on 11 September 2024

and Council 18 September 2024

Submitted on August 30, 2024 by Stephen Clark, Manager (I), Business and Technical Support Services, Planning, Development and Building Services

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Ward: Citywide

Objet : Mise à jour – Règlement municipal sur les redevances pour avantages communautaires (n° 2022-307)

Numéro de dossier : ACS2024-PDB-GEN-0005

Rapport présenté au Comité de la planification et du logement

Rapport soumis le 11 septembre 2024

et au Conseil le 18 septembre 2024

Soumis le 30 août 2024 par Stephen Clark, Gestionnaire (I), Services de soutien techniques et aux activités, Direction générale des services de la planification, de l'aménagement et du bâtiment

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Quartier : À l'échelle de la ville

REPORT RECOMMENDATIONS

That Planning and Housing Committee recommend Council:

- 1. Receive this report for information regarding an update on the Community Benefits Charge program.**
- 2. Approve the Community Benefits Charge Capital Program List (Document 2).**

RECOMMANDATIONS DU RAPPORT

Que le Comité de la planification et du logement recommande ce qui suit au Conseil :

- 1. Prendre connaissance du présent rapport en ce qui concerne une mise à jour sur l'entrée en vigueur des redevances pour avantages communautaires.**
- 2. Approuver la Liste des programmes d'infrastructures financées grâce aux redevances pour avantages communautaires (document 2).**

EXECUTIVE SUMMARY

This report provides an update on the implementation of the [Community Benefits Charge \(CBC\)](#) By-law 2022-307, which is monitored by the Business and Technical Support Services within the Planning, Development and Building Services Department. Staff are also seeking the approval of the Community Benefits Charge Capital Program List (so that the projects listed can be implemented). The list reflects the priorities of each ward councillor. This list also highlights projects that can be in-kind contributions. The update also includes the status of the CBC appeals that have been made to the Ontario Land Tribunal (OLT). Outlined in this report are Guidelines for Project Selection (Document 1) which identifies categories and examples of eligible projects; the CBC Capital Program List (Document 2) of prioritized projects; and the list of Ineligible Projects and Projects Under Further Review (Document 3). Since CBC funds can be pooled together with reserve funds for projects conditioned in Section 37 agreements, this report includes funds already available and or allocated in Section 37 Reserve Accounts (Document 4).

RÉSUMÉ

Le présent rapport fait le point sur la mise en œuvre du Règlement 2022-307, [Règlement municipal sur les redevances pour avantages communautaires \(RAC\)](#), dont le suivi est assuré par les Services de soutien technique et aux activités de la Direction générale des services de la planification, de l'aménagement et du bâtiment. Le

personnel demande l'approbation de la Liste des programmes d'infrastructures financées grâce aux redevances pour avantages communautaires (de manière à ce que les projets y figurant puissent être lancés). Cette liste tient compte des priorités de chaque conseillère ou conseiller de quartier. Elle met en évidence les projets qui peuvent faire l'objet d'une contribution en nature. Cette mise à jour porte également sur l'état d'avancement des appels interjetés à propos des RAC devant le Tribunal ontarien de l'aménagement du territoire (TOAT). Le présent rapport décrit en outre les lignes directrices pour la sélection des projets (document 1), qui déterminent les catégories de projets admissibles et fournissent des exemples, la liste des projets d'infrastructures prioritaires financés grâce aux RAC (document 2) ainsi que la liste des projets irrecevables et des projets soumis à un examen complémentaire (document 3). Étant donné que les fonds à consacrer aux RAC peuvent être regroupés avec les fonds de réserve pour les projets soumis à des conditions dans les accords passés en vertu de l'article 37 de la Loi sur l'aménagement du territoire, le présent rapport porte entre autres sur les fonds déjà disponibles ou qui sont affectés dans les comptes de réserve établis dans le cadre des accords passés en vertu de l'article 37 (document 4).

BACKGROUND

On [August 31, 2022](#), Council approved the Community Benefits Charge (CBC) By-law 2022-307, replacing the Section 37 policy. All Section 37 agreements approved, prior to the by-law's passing, remain in effect. The CBC has three components, the [CBC By-law](#), the [CBC policy](#), and a CBC [Strategy](#), which includes the Capital Program List.

The CBC applies to all new residential and mixed used development applications that are five or more storeys in height and have ten or more residential units. The Charge is applied to all development applications that meet this threshold. Funds collected from a ward stay within that ward's reserve account. These funds are allocated to prioritized capital projects identified by the ward Councillor.

The CBC By-law stipulates a variety of clauses including the calculation of the charge. The charge is the maximum of four per cent of the valuation on land where development applies. Other clauses include credits, exemptions, and a transitional clause to exempt all in-stream development applications subject to the charge for up to five years from the by-law's passing (to August 2027), provided a building permit on that development application is issued. The CBC By-law stipulates an additional 10 per cent credit that may apply to redevelopment that incorporates heritage structures. Bill 23, *More Homes Built Faster Act*, allows a reduction in the charge by multiplying the charge by a ratio of the new floor area to the total floor area for any redevelopment. An even further reduction is possible if the development application includes affordable housing units, as their associated floor area will also be factored in.

If a development qualifies for the Pilot Program for Office-to-Residential conversions, it is exempt from the CBC. Also, any exemptions listed within Ontario Regulation 509/20 of the *Planning Act*, and/or if their associated Gross Floor Area exists within a mixed-used development, the corresponding GFA is factored into a reduced CBC. Examples of exemptions within Ontario Regulation 509/20 include long term care homes, retirement homes, expansions of existing Legion Halls, structures intended for use of hospices, indigenous institutions and structures within post-secondary institutions.

The CBC policy also outlines the framework for in-kind contributions as well as the time period for decisions on spending and allocation of funds. The CBC policy and the *Planning Act* stipulate that 60 per cent of funds within ward accounts must be either spent or allocated within a calendar year.

DISCUSSION

Guidelines for Project Selection (Document 1)

Document 1 describes the various categories for eligible projects (Housing, Traffic Calming, Road Safety and Street Lighting, Public Realm, Community Facilities, Active Transportation, Urban Parks). These are the same categories found in Section 37 agreements that were executed prior to creation of the CBC By-law, however, there is an additional category (CBC Administration) which is sourced by 12 per cent of CBCs collected to cover the administration cost of administering the program.

Community Benefits Charge Capital Program List (Document 2)

The CBC Strategy, approved alongside the CBC By-law in 2022, includes a Community Benefits Charge Capital Program List (also known as the CBC project list). This list fulfils a *Planning Act* requirement to identify “the facilities, services and matters that will be funded with community benefits charges”. The applicable regulation (O. Reg. 509/20) further requires that the CBC Strategy “includes estimates of the capital costs necessary to provide the facilities, services and matters” which are “attributable to the anticipated development and redevelopment to which the community benefits charge by-law would relate”. While there is no statutory requirement to update the CBC Strategy prior to spending CBC funds, the process adopted by Ottawa’s CBC By-law does require that Council approve amendments to the CBC Capital Program List before CBC funds may be spent (or in-kind contributions may be credited). The project list can be found in Document 2. The list includes both new projects as well as projects from the original 2022 CBC Strategy. This list will be publicly available once it receives legislative approval and may be updated annually by Council.

Some projects have multiple sources of revenue. Provincial legislation restricts the overlapping of the CBCs with Development Charges (DCs). The CBC Capital Program List shows very few projects that share recoverability with DCs; but if they do, staff will ensure that the various funding sources are separately tracked during implementation. Items identified on the CBC Capital Program List may include a deduction to offset a portion of the capital project cost that benefits existing development.

To qualify for the CBC, the project must be growth-related and permanent, and reviewed by staff to ensure applicability and costed appropriately. The Capital Program List is ongoing and will be updated for Council's approval on an annual basis. Projects with immediate implementation requirements can be added to the Capital Program List by motion at Planning and Housing Committee or Council.

Ineligible Projects and Projects Under Further Review for the Capital Program List (Document 3)

From the list of projects submitted to staff, some were deemed ineligible, and these are shown in Document 3. Reasons for ineligibility are: not a capital project, not related to growth, not permanent, is funded as part of another project that is already being implemented or underway, low priority, etc.

Document 3 also includes projects which are still being evaluated since scope review and costing are ongoing. Depending on the outcome of the review, these projects may be added to the CBC Capital Program List at a future date.

In-Kind Contributions

The CBC By-law permits in-kind contributions to offset the cost of the charge (four per cent of land value, subject to some exceptions). However, the City will still collect twelve per cent of the total collectable charge (in cash) to cover the administration cost of the program. As per the CBC policy, in-kind contributions are to be determined within a set timeline of 50 days and can be determined in the early phases of development review. If no valuation of in-kind contribution can be agreed upon by the City or the applicant/owner of a development, the full payment of the charge will be required. Agreed-to in-kind contributions must be included in the CBC Capital Program list and be identified as a condition of approval within a site plan agreement or stand-alone development agreement.

Status of the CBC Program:

- Since passing the CBC Strategy in 2022, within the ten-year horizon between 2022-2031, the revenue projection on the collection of the charge is approximately \$35 million.

- The following are funds either collected or conditioned within development review since the CBC By-law's approval by Council:
 - \$765,600 has been collected prior to three development application's building permit issuances.
 - Calculations have been made to in-stream development applications by the City's real estate team, totaling approximately \$3.8mMillion.
 - Since the implementation of the by-law, over 70 separate development applications are subject to the charge.
 - The exemption clause (clause 26) of the by-law, currently applies to 16 development applications.

Section 37 Reserve Accounts/CBCs

- Section 37 reserve accounts are provided as of December 2023 in Document 4.
- Staff will provide an annual update to Council on the collection of funds within ward accounts for the CBCs and the Section 37 reserve accounts.
- With the Councillor's direction and approval, funds collected from CBCs can be pooled together with existing projects within Section 37 agreements and reserve accounts and allocated to specific projects. CBC funds must be spent on projects that have a reasonable planning relationship to the original Section 37 agreement that contributed the money.
- Councilors may also pool CBC funds to implement eligible projects in adjacent wards if there is agreement with the respective ward Councillor(s). There is no deadline for transfers in between ward accounts, so long as each ward account meets the requirement of 60 per cent of its funds being either allocated or spent on projects.

Ontario Land Tribunal (OLT) Appeal Update

After the passing of the CBC By-law in August 2022, twenty-two appeals were filed with the Ontario Land Tribunal (OLT), including appeals by the Greater Ottawa Homebuilders Association (GOHBA) and the Building Owners and Managers Association of Ottawa (BOMA), as well as by multiple developer corporations. Other than site-specific issues raised by some appellants concerning whether transition provisions should apply to their individual sites, the appeals overlap on most issues. The main issues common to most appeals are:

- The sufficiency of the CBC Strategy as justification for the charge, and the accuracy and contents of the project list contained in the charge;
- Whether the rate imposed (four per cent of land value subject to statutory exemptions and deductions) is justified or another method of calculating the rate should be used;
- How obligations to provide community benefits under existing CDP or secondary plans, through “landowner groups” should be accounted for or credited under the by-law;
- Whether the definition of “gross floor area” in the by-law is overly inclusive of parts of buildings that may be exempt from CBC;
- Whether exemptions provided to “Newly Designated Heritage Structures” should apply more broadly to all heritage structures;
- The adequacy of the transition provision in the by-law (s.26).

Legal Services is working toward a holistic resolution of the appeals. While Legal Services is optimistic that a settlement will be reached soon, no settlement has been reached as of the date of writing this report. A separate report will be circulated to members of Council regarding the outcome of the appeal process and any recommended settlement requiring Council approval (including any settlement involving substantive changes to the By-law).

FINANCIAL IMPLICATIONS

The estimated revenue is \$35 million within the ten-year horizon between 2022-2031, less the value of the exemptions/transition provisions provided in the By-law. Funds will be collected, allocated and reported as outlined within the report.

To date \$765,600 has been collected since the CBC By-law’s approval by Council.

Calculations have been made to in-stream development applications by the City’s real estate team, totaling approximately \$3.8 million. An exclusionary clause in the By-law stipulates that any in-stream complete development application that meets the CBC threshold will be exempt from the charge, permitted that these development applications have a building permit issued within five years of the By-law being passed (to August 2027). The CBC policy and the Planning Act stipulate that 60 per cent of funds within ward accounts must be either spent or allocated within a calendar year.

The Policy stipulates that in circumstances where the 60 per cent threshold is not met within ward accounts, funds collected in that ward can be allocated to projects in an

adjacent ward, at the discretion of the General Manager, Planning, Development and Building Services or the Chief Financial Officer. The CBC By-law remains under appeal and in the event of a successful appeal, refunds of monies already collected may be required. Funds collected may be allocated but may not be spent until the appeals are fully resolved.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the report recommendation. Document 2 updates the list of approved projects for the CBC funding or in-kind contributions. The CBC By-law remains under appeal, as discussed above. The *Planning Act* provides that, in the event of a successful appeal, the City must refund of any monies collected in error. Therefore, spending any funds collected prior to the appeals being fully resolved would expose the City to the risk of having insufficient funds in the CBC account(s) for repayment.

CONSULTATION

Extensive consultation with members of Council, key stakeholders, industry, City staff, and the public took place for the creation of the CBC Capital Program List that was originally approved in 2022 as part of the Community Benefits Charge Strategy. The update to the CBC Capital Program List (Document 2) has been an ongoing engagement with members of Council and City staff since Q4, 2023. Upon Council approval of the report and Document 2, these documents will be made available to the public on the Engage Ottawa website.

ACCESSIBILITY IMPACTS

Decisions on projects will be assessed using the City of Ottawa's Accessibility Design Standards, as projects are selected with development applications. The Accessibility Office will be consulted as required.

ASSET MANAGEMENT IMPLICATIONS

The recommendations documented in this report are consistent with the City's Comprehensive Asset Management (CAM) Program objectives. The implementation of the Comprehensive Asset Management program enables the City to effectively manage existing and new infrastructure to maximize benefits, reduce risk, and provide safe and reliable levels of service to community users. This is done in a socially, culturally, environmentally, and economically conscious manner.

When the City commits to the acquisition of new assets, consideration must also be given to the City's commitment to fund future operations, maintenance, and renewal costs. It must also account for future depreciation when reviewing long-term financial

sustainability. When reviewing the long-term impacts of asset acquisition, it is useful to consider the cumulative value and lifecycle costing of the acquired assets being taken on by the City. Any assets acquired in future through the implementation of the CBC capital program would be added to the inventory of assets and financial forecasts in the appropriate Asset Management Plan (AMP).

INDIGENOUS, GENDER AND EQUITY IMPLICATIONS

The provisional amount attributed to public art within the Capital Program List highlights projects featuring artists from the Anishinabe Algonquin Nation (Host Nation of Ottawa), other First Nations, Inuit, Métis artists, and Canadian artists. If projects are selected under this category, they may require Indigenous consultation on a case-by-case basis.

RURAL IMPLICATIONS

The collection of CBC's will apply city-wide.

SUPPORTING DOCUMENTATION

Document 1 Guidelines for Project Selection

Document 2 Community Benefits Charge Capital Program List

Document 3 Ineligible Projects and Projects Under Further Review for the Capital Program List

Document 4 Section 37 Reserve Accounts as of December 31, 2023

DISPOSITION

Negotiation and resolution of appeals to the CBC By-law (2022-307) to be conducted by Legal Services and monitored by the Business and Technical Support Services of the Planning Development and Building Services Department.

Ongoing monitoring, implementation and collecting of CBC funds from development-related files will be conducted by the Business and Technical Support Services of the Planning, Development and Building Services Department.