Bill 108: *More Homes, More Choice Act*

Submission to the Standing Committee on Justice Policy

May 31, 2019

Introduction

The Association of Municipalities of Ontario (AMO) is pleased to provide municipal perspectives on Bill 108, the *More Homes, More Choice Act*, 2019 with members of the Standing Committee on Justice Policy. AMO is a non-partisan non-profit representing almost all of Ontario's 444 municipal governments. We appreciate the opportunity to contribute to the committee's deliberations on this Bill which is of significant municipal interest and concern.

Bill 108 is a very broad piece of legislation intended to adjust the framework in which housing development is approved. The need for housing, and in particular, affordable housing is crucial to the wellbeing of our communities. As a matter of principle, AMO welcomes these proposed reforms and supports measures that help our residents find affordable homes and create stability in their lives. While we generally support some of the *More Homes, More Choice Act* reforms, this submission respectfully proposes several key amendments as well as a few recommendations relating to the implementation.

We will focus our comments on:

- Schedule 9 Local Planning Appeal Tribunal Act, 2017
- Schedule 3 Development Charges Act, 1997
- Schedule 12 Planning Act
- Schedule 2 Conservation Authorities Act

Schedule 9 Local Planning Appeal Tribunal Proposals:

Municipal governments strenuously disagree with the Bill which would reinstate the *de novo* hearing approach rather than evaluating a planning decision based on the compliance with provincial plans, provincial policy and the municipal official plan. This in effect removes the value of local planning decisions, it is a big step backward.

Municipal governments take their democratic responsibilities seriously - to create communities based on good planning and community input. Local governments, residents and developers all work to find a way to bring a local vision for the community into existence. The Local Planning Appeal Tribunal (LPAT) was designed to evaluate appeals against the "rules" as to whether an amendment meets the test of being in compliance.

The change proposed in this Bill disrespects local policy and provincial policy. Rather than planning decisions taking place based on full information in keeping with the Official Plan and provincial plans and policy provided to a duly elected local council, developments will become moving targets as altered and new information is brought before a tribunal.

Furthermore, the experience in Ontario is that *de novo* hearings has a legacy of delay. A return to *de novo* hearings will delay housing developments, which goes against the entire purpose of Bill 108. The original Local Planning Appeal Tribunal (LPAT) approach was to conclude hearings within

10 months but it has not been given a fair chance to demonstrate it could speed up valid appeals. To date, LPAT has not been able to clear the backlog of hearings accumulated under the *de novo* approach and has not been able to fully operate as planned. Municipal governments are asking to give the LPAT, as originally designed, a fair chance and do not reinstate *de novo* hearings.

AMENDMENT #1:
That Sections 38 and 40 ***not be repealed*** *such that appeals to municipal planning decisions continue to be evaluated against conformity and consistency with the provincial policy statement, provincial plans and the Official Plan. And that related Sections of the Planning Act also not be amended (e.g. Sections 17.2, 34.11, 24.3, 25 and 37).*

Schedule 3 Development Charges Proposals

AMO's members are very concerned that the legislation as drafted could result in lowering the revenue from development charges that municipalities need to be able to support growth in our communities.

Development charges are a major source of revenue for cost recovery that funds the infrastructure needed for Ontario's growing communities. At present, development charges only cover about 80% of the costs of growth-related capital. That means property taxes are currently subsiding the cost of growth and municipalities are currently falling short of achieving the principle, "growth should pay for growth."

Bill 108 will complicate the local public administration of development charges. There is great concern that these changes will have the effect of decreasing the value of the DCs municipalities receive while at the same time, increase the municipal administrative burden.

AMO supports and affirms the guiding principles articulated in the submission offered by the Municipal Finance Officers Association (MFOA):

1) Growth should pay for growth.
2) Complete vibrant communities are good for everyone.
3) Provincial legislation related to municipal governance should be enabling and permissive.
4) Provincial red tape costs municipalities time and money.

MFOA has completed a detailed review of Bill 108 and Schedule 3 specifically. The development charge related amendments below mirror and reinforce key MFOA recommendations.

Community Benefit Charge

Bill 108 proposes to change the existing rules related to the use of development charges. Many "soft services" (including parks, child-care, libraries, and recreation facilities) will now be financed through a new tool, the Community Benefit Charge (CBC). A new Community Benefit Charge may be a reasonable approach but key questions that need to be answered for successful implementation include:

1) What are the merits of increasing municipal administrative activity to support two development-financing processes (the Community Benefit Charge AND Development Charges)?
2) Will the proceeds of the new charge be sufficiently different or adequate to finance soft services?
3) What is the relationship between land value (which will be used to calculate community benefit charges) and the provision of services? Will the community benefit charge appropriately finance community services in areas of the province with lower or volatile land values?

Minister Clark has repeatedly assured municipal governments and the public that growth will pay for growth. The introduction of the Community Benefit Charge (CBC) in this Bill has been suggested as a more comprehensive and transparent way for growth to pay for growth. However, it is difficult to be fully supportive of this proposed regime until the regulatory framework indicating what costs (services) are eligible, and the methodology for calculating the charge and caps on the charges is completed.

Service eligibility, methodology, and capping are very significant factors in determining whether the use of Community Benefit Charges will adequately finance service needs. There must be a robust consultation with municipal governments on the CBC regulations.

AMENDMENT #2:
Amend Bill 108 Schedule 12 to provide that the methodology to calculate the CBC in the regulation preserves the link between growth related costs and revenues.

AMENDMENT #3:
Clarify the language in Bill 108 Schedule 12 to provide municipal governments with the flexibility to pass area specific CBCs.

Development Charge Payment Schedule

Proposed changes also affect rules on when development charges are payable to the municipality if the development is rental housing, institutional, commercial, industrial or non-profit housing. In these cases, development charge payments to the municipality will now be made as six annual instalments commencing upon occupancy.

Municipal governments may charge interest from the time of building permit issue and the interest rate will be determined by regulation, however, this new payment schedule will require significant debt financing for the municipality resulting in added cost and risk.

The proposed payment schedule for development charges, which delays payments until occupancy, is problematic.

These changes will have cash flow impacts for municipal governments. As MFOA and others in the municipal sector have noted, the inclusion of a delayed payment schedule for non-residential properties does not increase the supply of housing - the key legislative objective- and means that taxpayers will be subsidizing the financing of corporations. The delayed payment schedule represents a collection risk for municipal government.

AMENDMENT #4:
Delete proposed ss8(1) of Schedule 3 of Bill 108.

Should ss8(1) not be deleted in its entirety: then
(a) remove paragraphs 2, 3 and 4 from the proposed new ss26.1(2) of the DCA as found in ss 8(1) of schedule 3 of Bill 108 to remove the inclusion of non-residential development with respect to the proposed DC payment plan, and
(b) if the proposed payment plan goes ahead, then the first payment should start at the issuance of the building permit, not at occupancy.

Supporting the Key Principle

Shortchanging the public services that the people of Ontario depend on is not a way to build the communities people want to live in. Development charges are the right tool to fund the services needed for growth in Ontario. In that context, AMO appreciates increasing the ability to charge for waste costs, from 90% to 100%.

A full list of services is required to build a successful community. AMO is concerned that if changes related to the collection of "soft service" costs are inadequate, this will disproportionately affect single and lower tier municipalities. If more municipal operating revenues are needed to cover the cost of growth, it will be at the expense of maintaining existing capital assets, services, or current property tax and user rates.

A service is a service. There should be no restrictions on eligible services.

AMENDMENT #5:
Repeal amendments to ss2(4) of the DCA such that all services are eligible for inclusion in the development charge calculation so long as they are not expressly excluded by regulation.

AMENDMENT #6:
Should ss2(4) under the DCA remain despite the previous recommendation, then the list of eligible services should be amended to include paramedic services.

Schedule 12 Planning Act Proposals

The proposed changes to the *Planning Act* will open doors for additional second units and could spur on a greater mix of housing options. We ask that the regulations will clarify that a second unit could be either in a main dwelling **or** an ancillary building and that the municipal government be able to choose which.

The increased role of the Minister to be more actively involved in identifying inclusionary zoning areas and implementing the community planning permit process in areas identified as strategic for housing, such as major transit stations may be helpful in some circumstances. However, targeting inclusionary zoning to transit areas will limit application in cities and disproportionally impact smaller urban and rural communities. These changes will continue to allow municipal governments the ability to enact inclusionary zoning but will restrict the application of this affordable housing tool.

One of the goals of this Bill it to speed up the time it takes to process an application. The proposals in the Bill will shorten the timeframe from the receipt of a complete application to the council decision. AMO is concerned that shortening timelines could result in difficulty to process larger complex applications. We will be urging our members to ensure that only fully complete applications for planning and development be received to avoid appeals based on the inability to make a decision before times lapse. The onus is on applicants to ensure their proposals are complete.

As well, there needs to be greater clarity around the provisions for parkland as there is confusion on its application. Many have interpreted the Bill to fully phase out the use of actual parkland dedication or cash in lieu in favour of the Community Benefits Charge.

RECOMMENDATION #1:
That an explanation of the provisions of the Bill around the use of Section 42 of the Planning Act (where there is no community benefits regime) be provided immediately.

Schedule 2 Conservation Authority Act Proposals

The Bill proposes to define core services for a conservation authority and introduce a regime of memoranda of understanding between conservation authorities and municipal governments. The intent is to create greater clarity as to roles and responsibilities with performance standards that should facilitate processing development approvals. AMO believes this approach makes sense. The regulatory details and sufficient time to move to this new regime will be critical to its success.

There is a concern that some conservation authorities are unable to successfully deliver on core services with their current fiscal capacity. Furthermore, municipal governments are unlikely to be able to increase financial supports. While the framework is helpful, it will need additional provincial supports, including up to date mapping.

The Bill also proposes to proclaim sections of the *Conservation Authorities Act* which give the Minister the right to oversee board qualifications, and fees.

AMENDMENT #7:
It is recommended that the Schedule 2 part 4, pertaining to Conservation Authorities Act section 21.1.3 specify sufficient time (e.g. at least 18 months) for agreements between municipal governments and conservation authorities for memoranda of understanding to be executed to

allow for an orderly transition.

RECOMMENDATION #2:

While no language change in the Bill is required, it is recommended that the province continue to support conservation authorities financially and by the provision of mapping tools, and technical expertise.

RECOMMENDATION #3:
It is recommended that a provincial-municipal working group be assembled to address instances where a Conservation Authority cannot fulfil its mandatory core obligations within the current funding framework.

The Bill offers a number of positive directions on other land use matters which are mentioned in brief below:

Schedule 1: AMO welcomes the changes in the Bill which clarify elements under the *Cannabis Control Act.*

Schedule 5: Broadening the context in which species would be considered at risk is a welcomed change, although the province needs to offer more complete information on how this will unfold. The Bill opens an opportunity to be more proactive in protecting species at risk by expanding a landscape agreement approach under the *Endangered Species Act*. The current process is reactive and incremental. While the Bill sets the framework, substantial work and leadership from the province will be required to make this concept effective in protecting species at risk.

Schedule 6: Also welcomed is the increased exemptions for low risk activities under the *Environmental Assessment Act.* Again, more details on what is exempted are required. AMO agrees that greater scoping of appeals is required. While the framework this Bill would set up allows all parties to focus resources on issues of greatest importance, there are a significant number of operational issues that need further attention in order for this direction to meet intended outcomes.

Schedule 11: Creating more clarity around the process of designating under the *Ontario Heritage Act* is welcomed. More proactive information being available to land owners is important. However, there is mixed evaluation as to whether these changes will indeed both protect heritage features in Ontario and facilitate housing. Additionally, we trust that the LPAT will hire members with heritage expertise to address any appeals under this Act.

Conclusion

AMO appreciates the Standing Committee on Justice Policy's consideration of our proposed municipal amendments and actions relating to Bill 108. Although there are some areas of agreement, major amendments of fundamental municipal interests are needed.

Without these changes, Bill 108 will not meet its shared objective of developing a greater housing mix at a faster pace across Ontario while also addressing the valid concerns raised by Ontario's municipal order of government on behalf of tax payers.

APPENDIX: LIST OF PROPOSED AMENDMENTS

AMENDMENT #1:
That Schedule 9 part 8, pertaining to Sections 38 and 40 of the *Local Planning Appeal Tribunal Act* not be repealed such that appeals to municipal planning decisions continue to be evaluated against conformity and consistency with the provincial policy statement, provincial plans and the Official Plan. And that related Sections of the Planning Act also not be amended (e.g. Sections 17.2, 34.11, 24.3, 25 and 37).

AMENDMENT #2:
Amend Bill 108 Schedule 12 to provide that the methodology to calculate the CBC in the regulation preserves the link between growth related costs and revenues.

AMENDMENT #3:
Clarify the language in Bill 108 Schedule 12 to provide municipalities with the flexibility to pass area specific CBCs.

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AMENDMENT #5:
Repeal amendments to ss2(4) of the DCA such that all services are eligible for inclusion in the development charge calculation so long as they are not expressly excluded by regulation.

AMENDMENT #6:
Should ss2(4) under the DCA remain despite the previous recommendation, then the list of eligible services should be amended to include paramedic services.

AMENDMENT #7:
That Schedule 2 part 4, pertaining to *Conservation Authorities Act* section 21.1.3 specify sufficient time (e.g. at least 18 months) for agreements between municipal governments and conservation authorities for memoranda of understanding to be executed to allow for an orderly transition.