

# SECTION 37: WHAT 'BENEFITS' AND FOR WHOM?

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# Introduction

- First discovered Section 37 while researching the role of the OMB in Toronto.
- Similar tools abound in other Canadian and American jurisdictions.
- Currently conducting a comparative study of Density Bonusing in Toronto and Vancouver.
- IMFG Paper with my findings should be available at the end of summer.
- Today, I am focusing on the quantitative research and findings for the use of Section 37 in Toronto

# Section 37

- Section 37 of the Ontario *Planning Act, 1990*
  - ▣ S. 37(1): *The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.*
- ‘Benefits’?
  - ▣ Notably absent from s. 37.
  - ▣ Commonly used in place of “facilities, services or matters.”

# HEIGHT AND DENSITY BONUSING (s. 37)

## For More Information

Ministry of Municipal Affairs and Housing Website:  
[ontario.ca/mah](http://ontario.ca/mah)  
[ontario.ca/e-laws](http://ontario.ca/e-laws)  
 or contact your nearest Municipal Services Office (MSO):

**Central MSO**  
 777 Bay Street, 2nd Floor  
 Toronto ON M5G 2E5  
 General Inquiry:  
 416-585-6226  
 Toll Free: 800-668-0230

**Eastern MSO**  
 8 Estate Lane, Rockwood House  
 Kingston ON K7M 9A8  
 General Inquiry:  
 613-545-2100  
 Toll Free: 800-267-9438

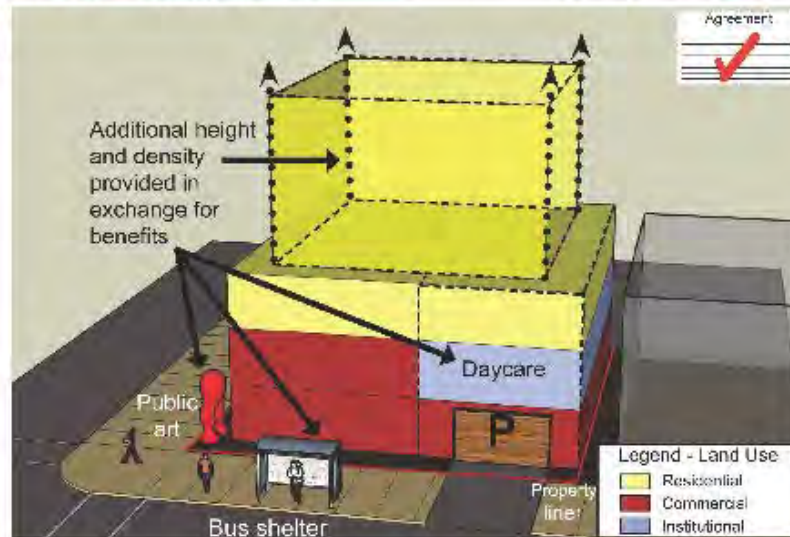
**Northeastern MSO**  
 159 Cedar Street, Suite 401  
 Sudbury ON P3E 6A5  
 General Inquiry:  
 705-564-0120  
 Toll Free: 800-461-1193

**Northwestern MSO**  
 435 James Street South, Suite 223  
 Thunder Bay ON P7E 6S7  
 General Inquiry:  
 807-475-1651  
 Toll Free: 800-465-5027

**Western MSO**  
 659 Eveler Road, 2nd Floor  
 London ON N6E 1L3  
 General Inquiry:  
 519-873-4020  
 Toll Free: 800-265-4736

### DISCLAIMER

This sheet deals in summarized and conceptualized fashion with complex matters that reflect legislation, policies and practices that are subject to change. All illustrations represent hypothetical scenarios of the application of various tools. For these reasons, this fact sheet should not be relied upon as a substitute for the relevant legislation, regulations and policy documents, or for specialized legal or professional advice when making land-use planning decisions.



### Description of Tool

- Process to allow buildings to exceed the height and density of development otherwise permitted by zoning by-laws in exchange for community benefits
- Optional tool, requires additional official plan (OP) policies for set-up
- Often negotiated between a developer and a municipality
- Allows services, facilities or matters to be set out in agreements and registered on title

### Implementation

- To use this tool, a municipality must have approved OP policies related to bonusing
- A municipal council must pass a zoning by-law to authorize increases in height and density of a development in return for the provision of facilities, services, or matters of benefit to the community
- Timeline: when the complete application is received, the approval authority has 120 days to make a decision

### Potential Benefits

- May allow facilities, services, or matters, such as public art or transit improvements to be provided to the community without increasing the financial burden on municipalities or their taxpayers
- May support intensification, growth management, transit supportiveness and other community building objectives
- May provide desirable visual amenities to enhance the development site and the surrounding neighbourhood

# Three Questions

- What ‘benefits’?
  - ▣ What “facilities, services or matters” does the City receive in return for height and density increases?
- Who ‘benefits’?
  - ▣ Where in the city are these benefits distributed?
  - ▣ What residents are benefiting from the facilities and services?
- Why?
  - ▣ What rationale or rationales determine the type of ‘benefits’ the city accrues and their distribution?

# Outline

- Research Methodology
- Overview of s. 37 agreements in Toronto from 2007 through 2011.
- What 'benefits'?
- Who 'benefits'?
- Why?
  - ▣ *Economic Rent*
  - ▣ *Negative Externalities*
  - ▣ *Good Planning*
- What does the 'What' and 'Who' tells us about the 'Why'?
- Conclusion: The future of Section 37 in Toronto

# RESEARCH METHODOLOGY

## Source Material

- Database of Section 37 agreements made by Council – 2007-2011.
- Data derived from:
  - ▣ City Council minutes and decisions;
  - ▣ City Planning's list of 'Cash-in-lieu' benefits;
  - ▣ 2011 Census data;
  - ▣ Projections of walking distance using Google Maps.

# RESEARCH METHODOLOGY

## Database Design

- Database includes:
  - Wards;
  - 'In Kind' and 'Cash-in-lieu' benefits;
  - Value of 'Cash-in-lieu' benefits;
  - Median household income by census tract;
  - Walking distance to benefits;
  - 18 categories of benefits.



# RESEARCH METHODOLOGY

## 18 Categories of Benefits

- 1) **Parks** (Park Improvements, Playing Field, Open Space, Playground)
- 2) **Libraries**
- 3) **Community Improvement** (Community and Public Realm Improvement)
- 4) **Roads & Streetscapes** (Road and Streetscape Improvements, Parking Area, Traffic Calming, Road Allowance)
- 5) **Community and Recreation** (Community, Recreation, and Civic Centres, Onsite Recreational Space, Swimming Pool)
- 6) **Public Housing** (Improvements)
- 7) **Affordable Housing**
- 8) **Design Project & Area Study**
- 9) **Community Services** (Community and Youth Services, Child Care, Senior Facility, Animal Shelter)
- 10) **Three Bedroom Units**
- 11) **Environment Improvements** (Renaturalization, Trail and Path Improvements, Greening Initiatives)
- 12) **Heritage** (Heritage Plaque, Restoration, Train Station)
- 13) **Underground** (PATH, Underground Links to Subways)
- 14) **Rental Replacement**
- 15) **Transit Pass**
- 16) **Arts and Cultural Facilities**
- 17) **Public Art**
- 18) **Other** (Scarborough Walk of Fame, Chinese Archway Reserve Fund, Bicycle Storage, Public and Farmer's Market)

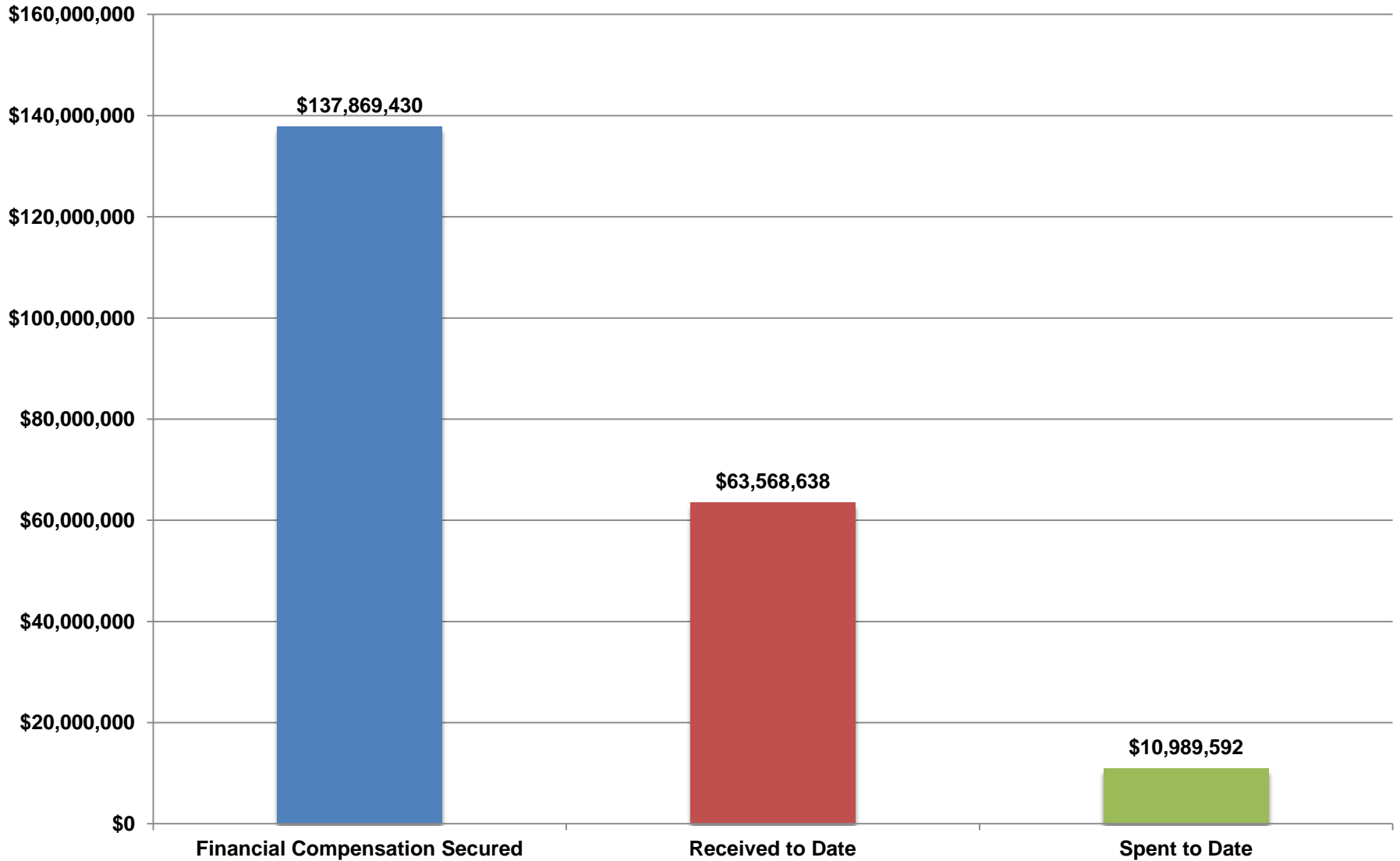
# OVERVIEW

## Section 37 in Toronto: 2007-2011

- Total number of section 37 agreements in Toronto from 2007 through 2011: **159**
- Number of benefits derived from s. 37 agreements from 2007 through 2011: **386**
- Number of 'In Kind' benefits: **179 (46%)**
- Number of 'Cash-in-lieu' benefits: **207 (54%)**

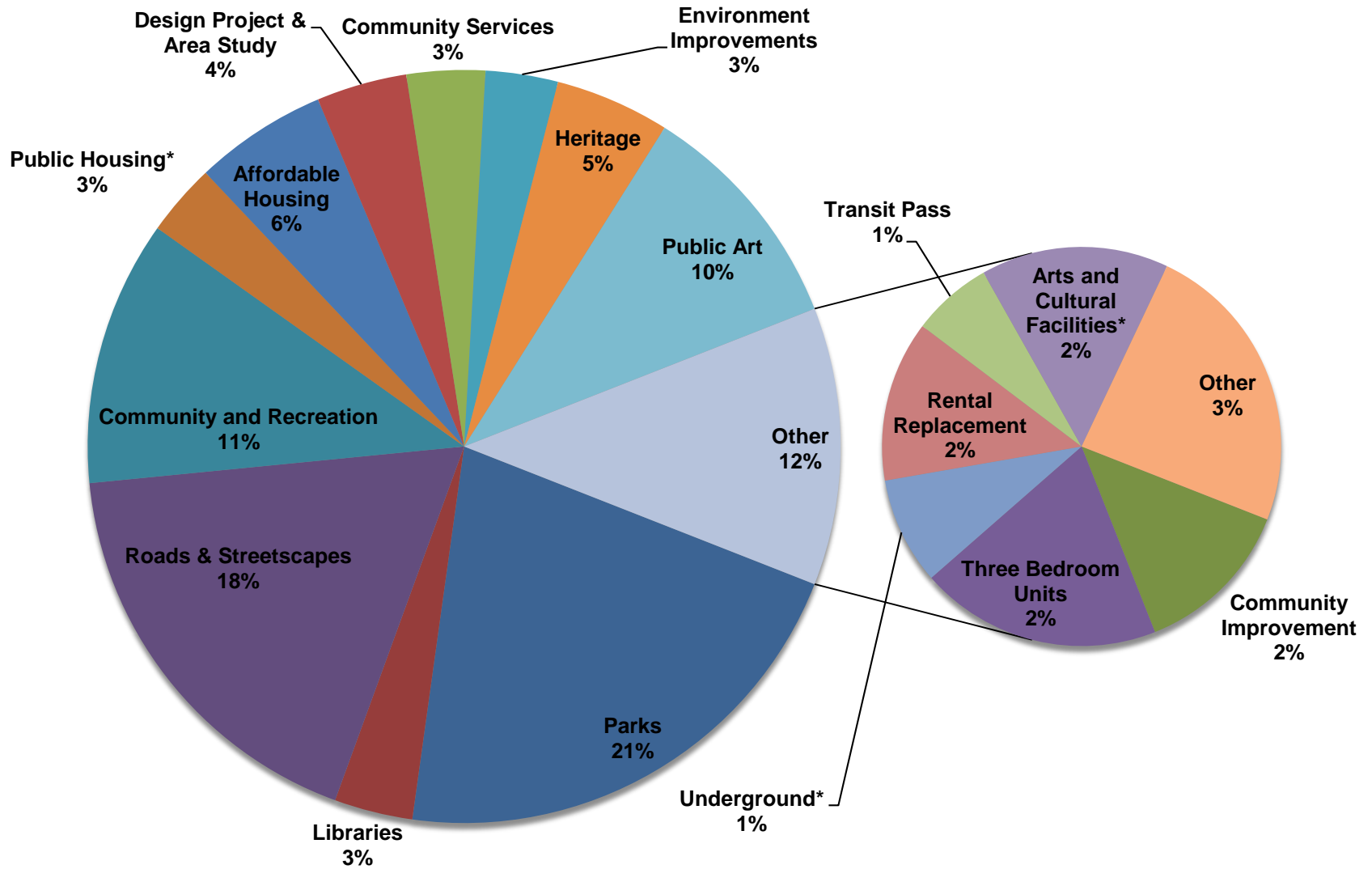
# OVERVIEW

## “Cash-in-lieu” Benefits: Total Financial Compensation Secured, Received, & Spent: 2007-2011



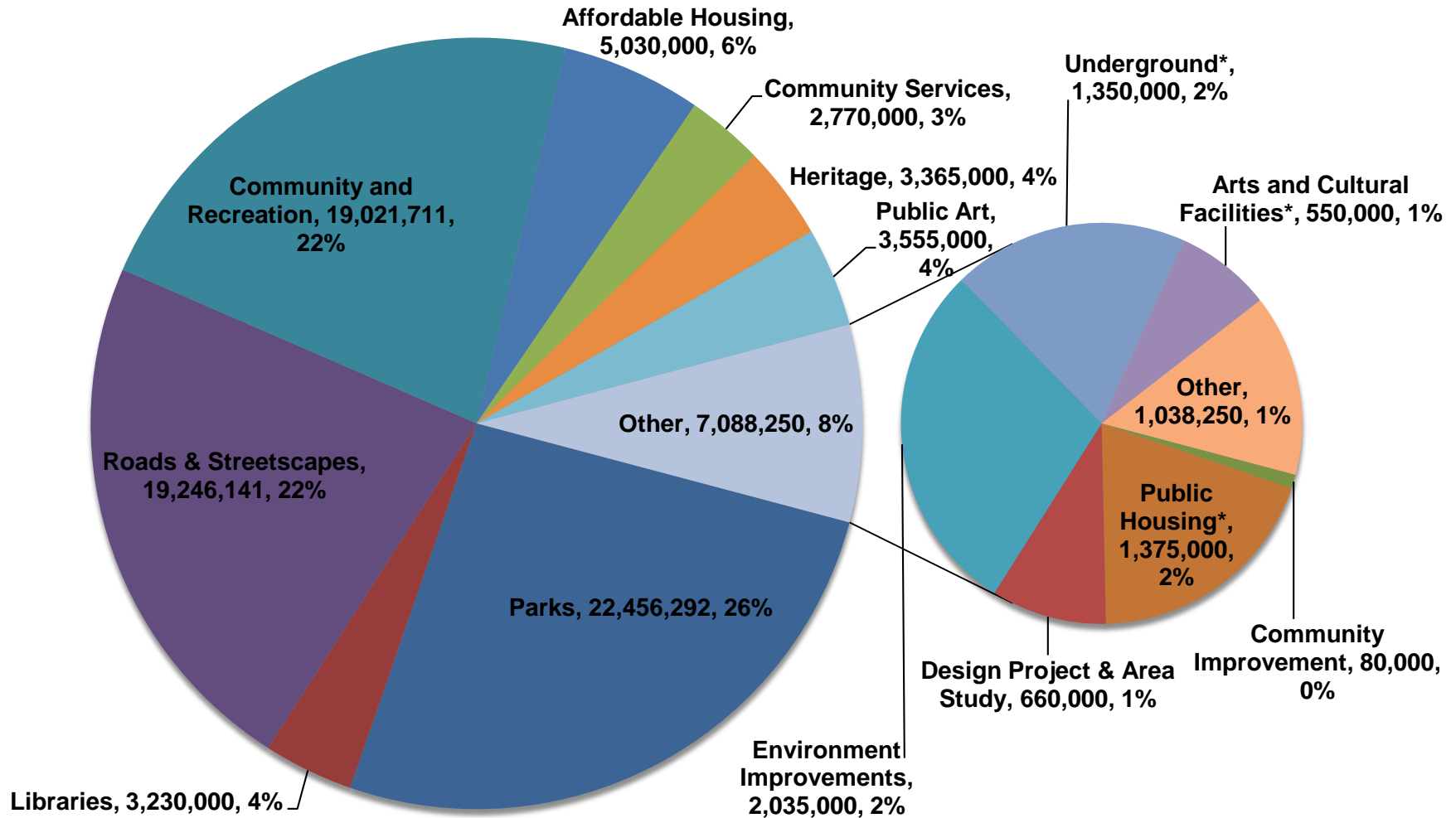
# WHAT BENEFITS?

## Type and Frequency (%) of Benefits Extracted through S. 37 Agreements in Toronto - 2007-2011



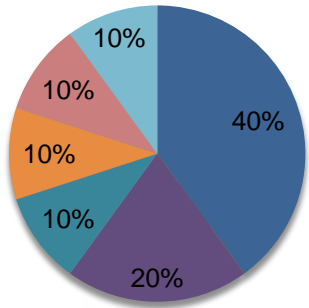
# WHAT BENEFITS?

## Type and Value (\$) of 'Cash-in-lieu' Benefits in Toronto – 2007-2011

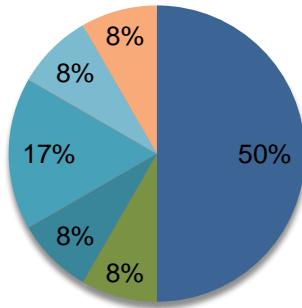


# WHAT BENEFITS? Type and Frequency of Benefits by Select Wards in Toronto – 2007-2011

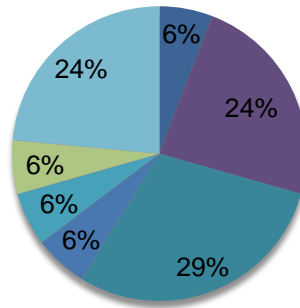
## Ward 5



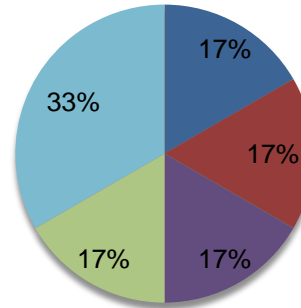
## Ward 6



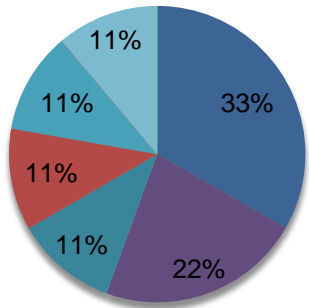
## Ward 10



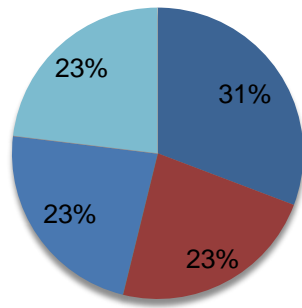
## Ward 15



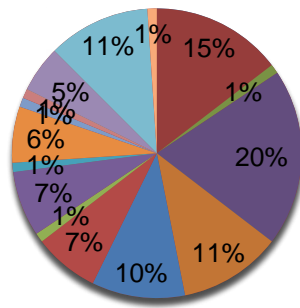
## Ward 16



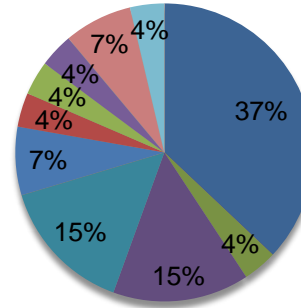
## Ward 18



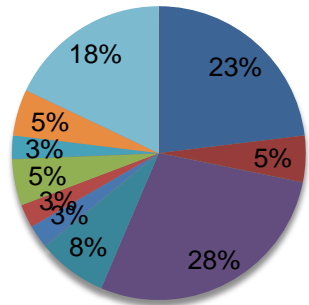
## Ward 20



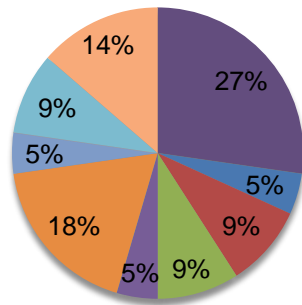
## Ward 22



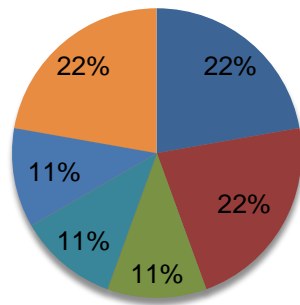
## Ward 27



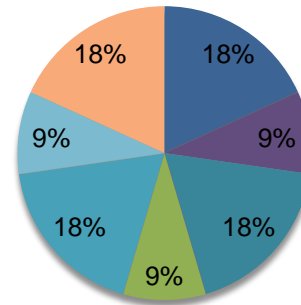
## Ward 28



## Ward 34



## Ward 38



- Parks
- Libraries
- Community Improvement
- Roads & Streetscapes
- Community and Recreation
- Public Housing\*
- Affordable Housing
- Design Project & Area Study
- Community Services
- Three Bedroom Units
- Environment Improvements
- Heritage
- Underground\*
- Rental Replacement
- Transit Pass
- Arts and Cultural Facilities\*
- Public Art
- Other

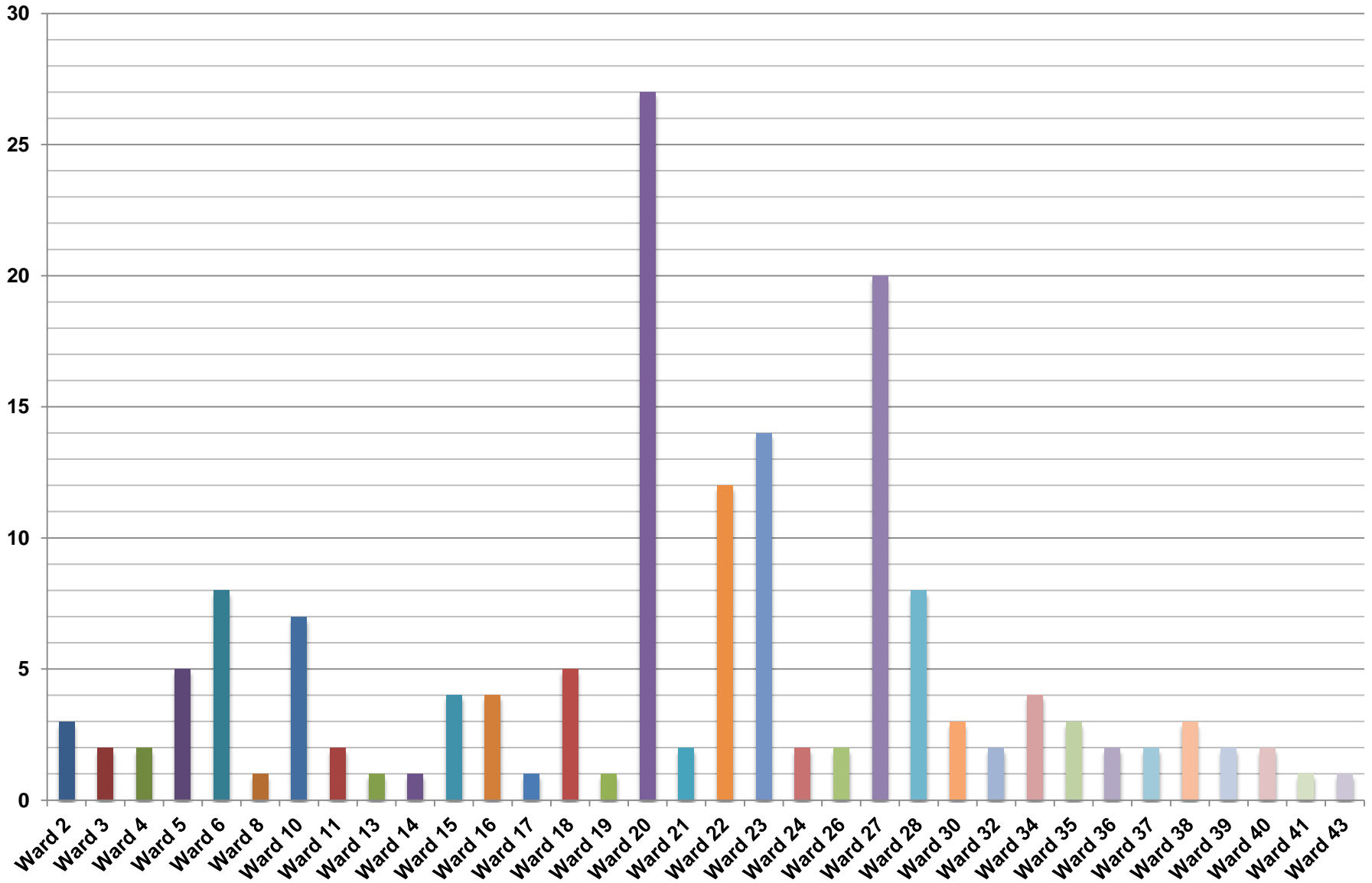
# WHAT BENEFITS?

## Summary of Findings

- As a whole, city focused on extracting capital improvements and investments.
- Particular focus on visual amenities
- Very limited focus on benefits to support intensification
- Despite this, applications of section 37 agreements across city is idiosyncratic.
- This is largely reflective of the fact that benefits are determined by ward.

# WHO BENEFITS?

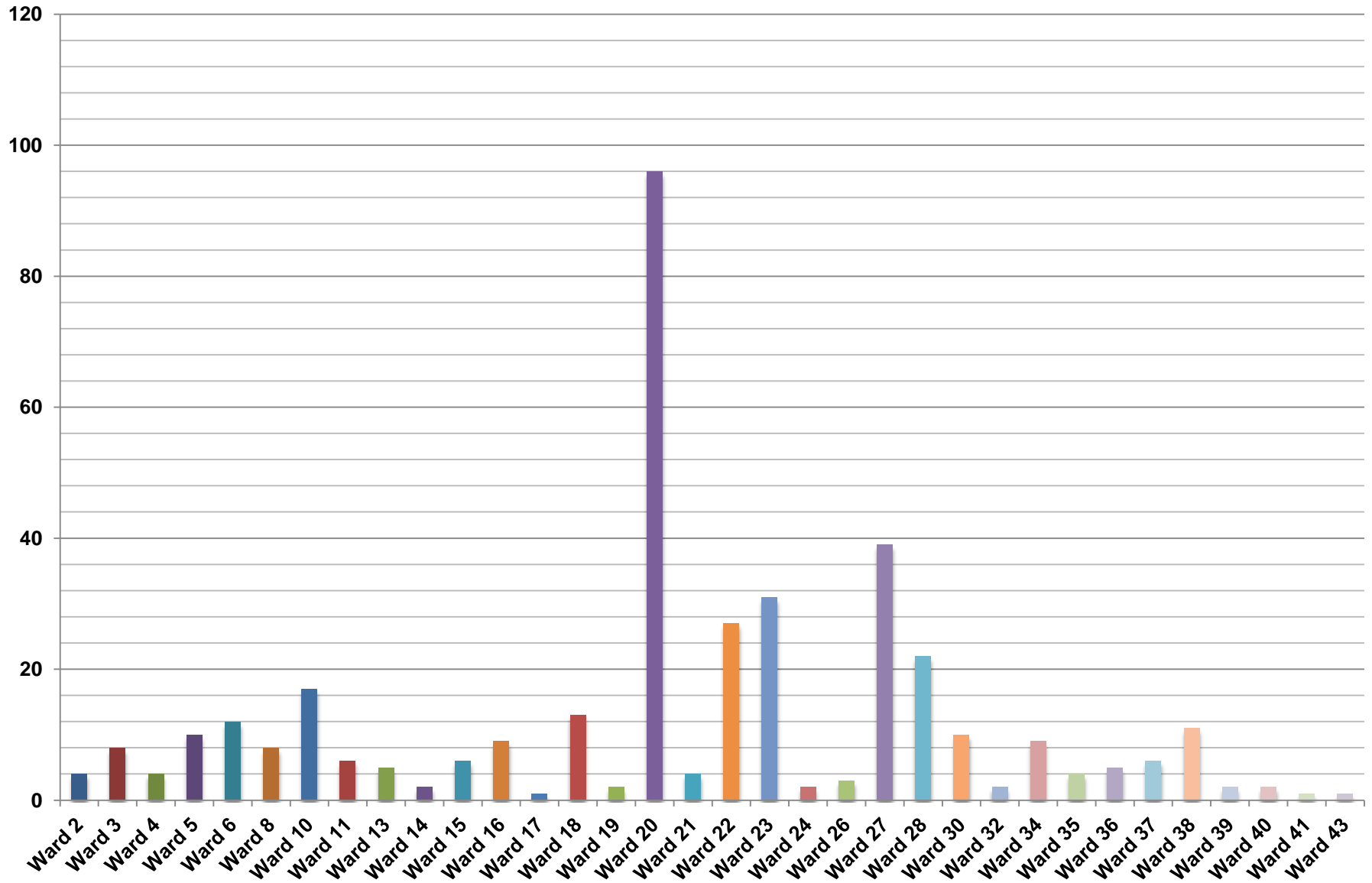
## Number of Section 37 Agreements by Ward - 2007-2011





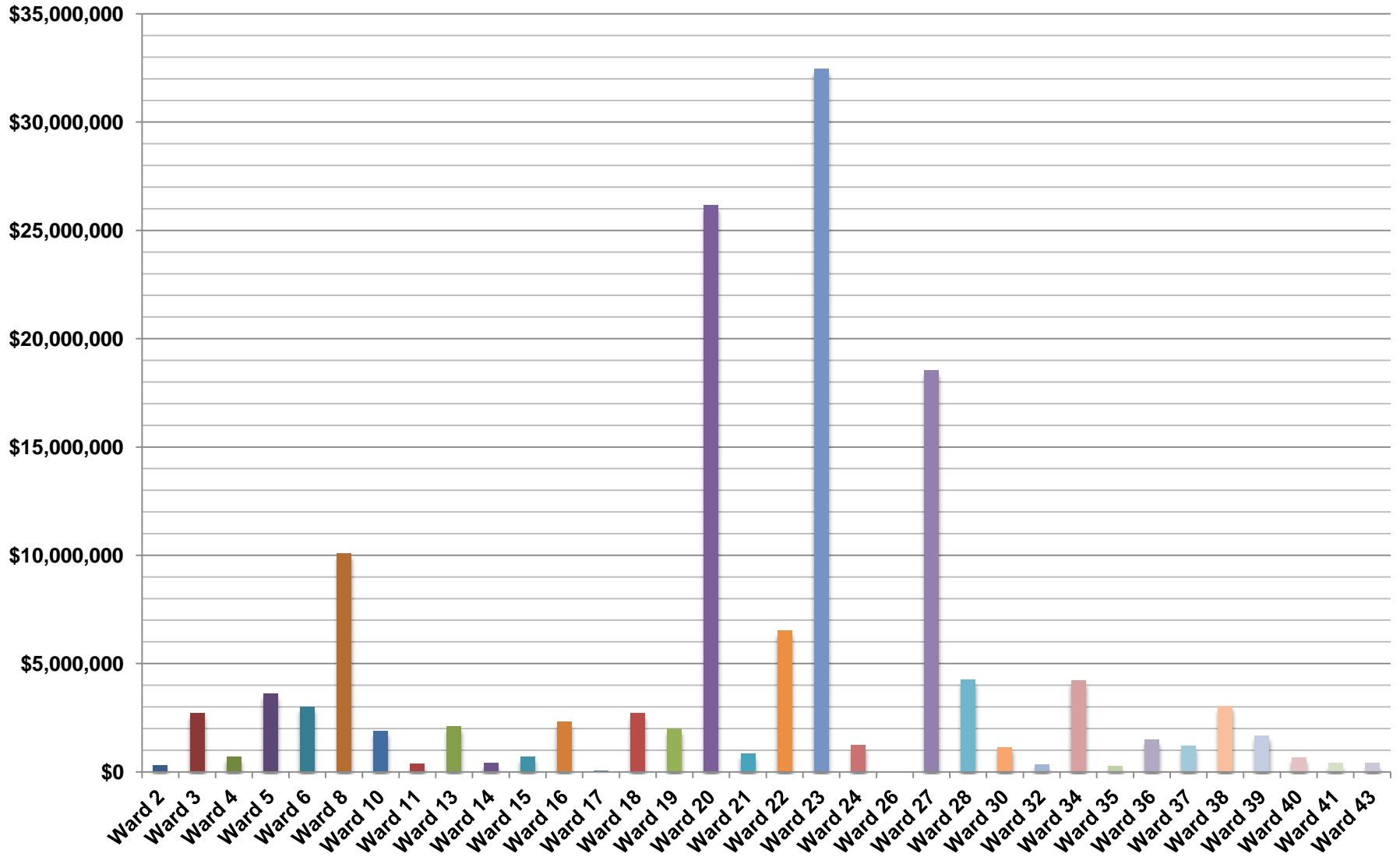
# WHO BENEFITS?

## Number of Benefits Extracted by Ward - 2007-2011



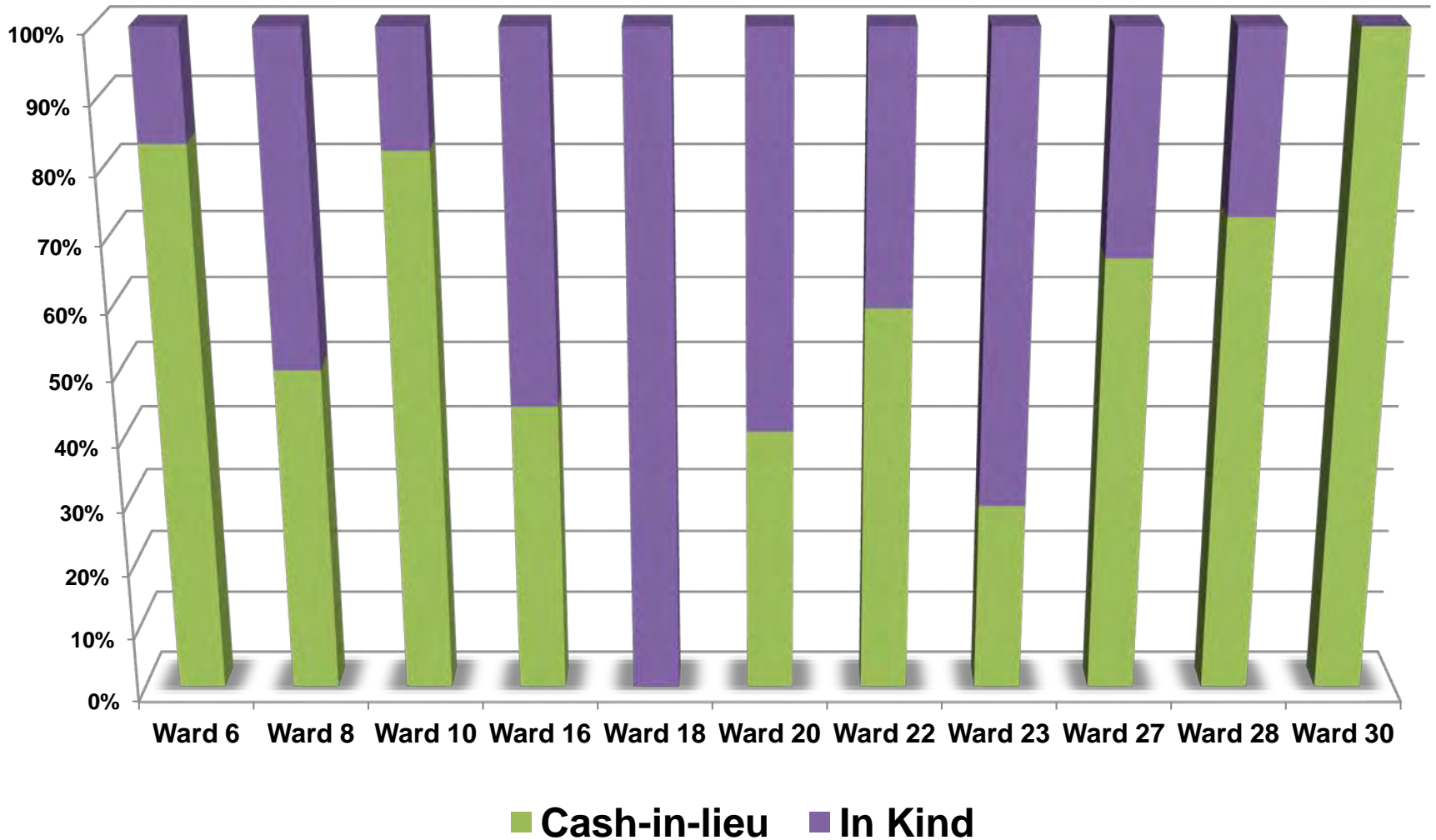
# WHO BENEFITS?

## Financial Compensation for 'Cash-in-lieu' Benefits Secured by Ward



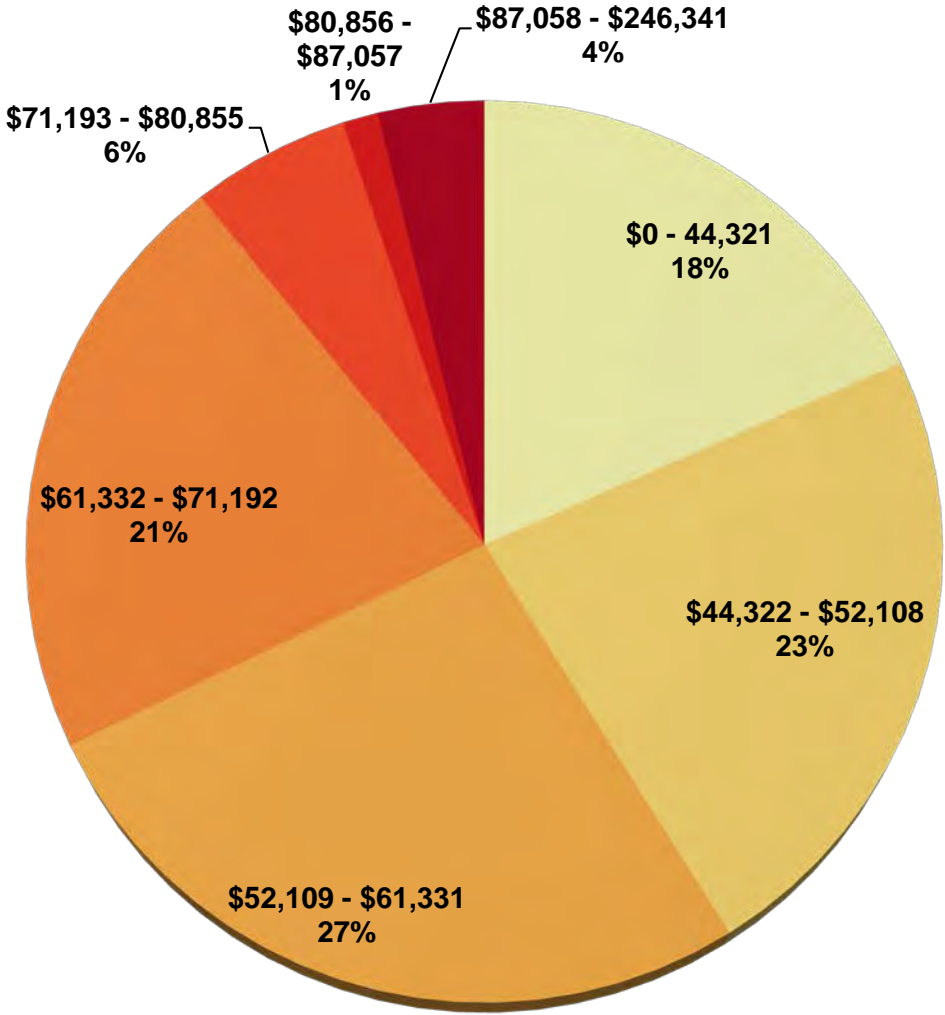
# WHO BENEFITS?

## Proportion of 'Cash in Lieu' vs. 'In Kind' Benefits by Select Wards



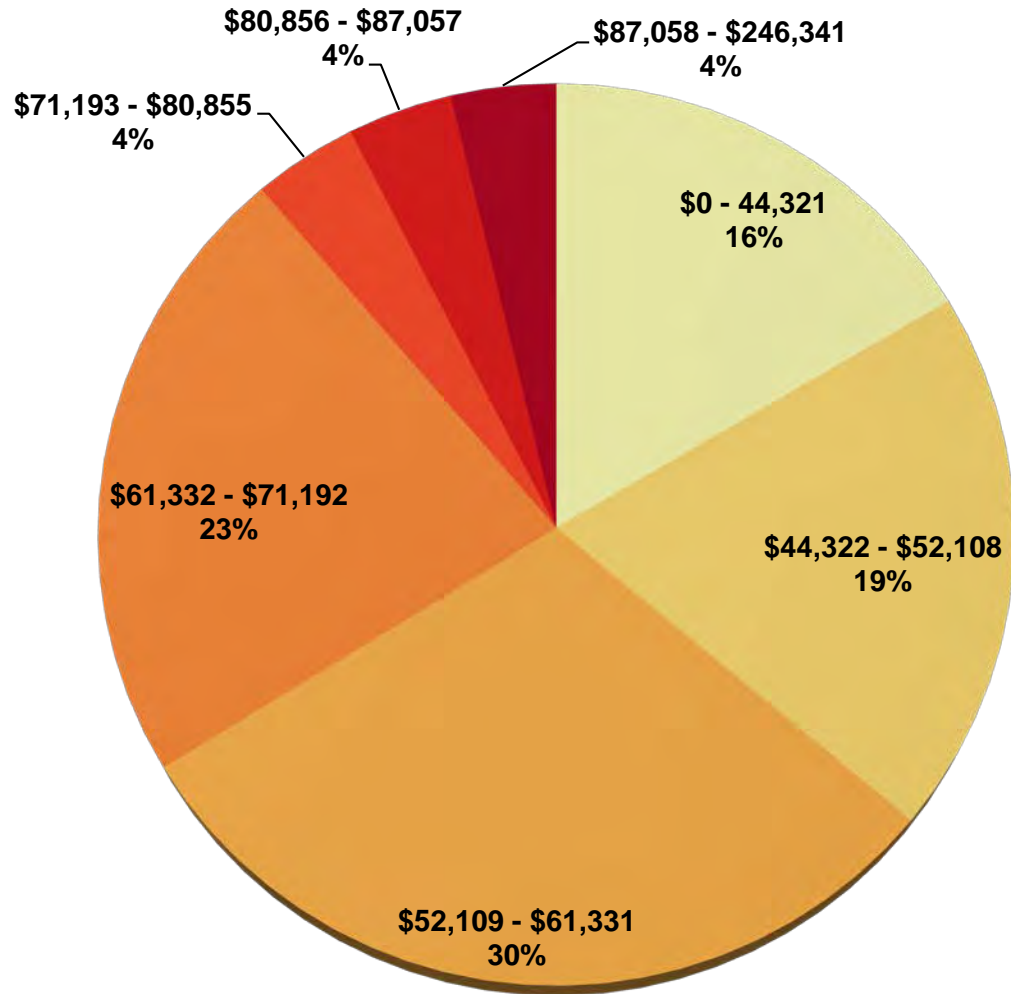
# WHO BENEFITS?

## Distribution of S. 37 Agreements by Median Household Income (2011 Census) - 2007-2011

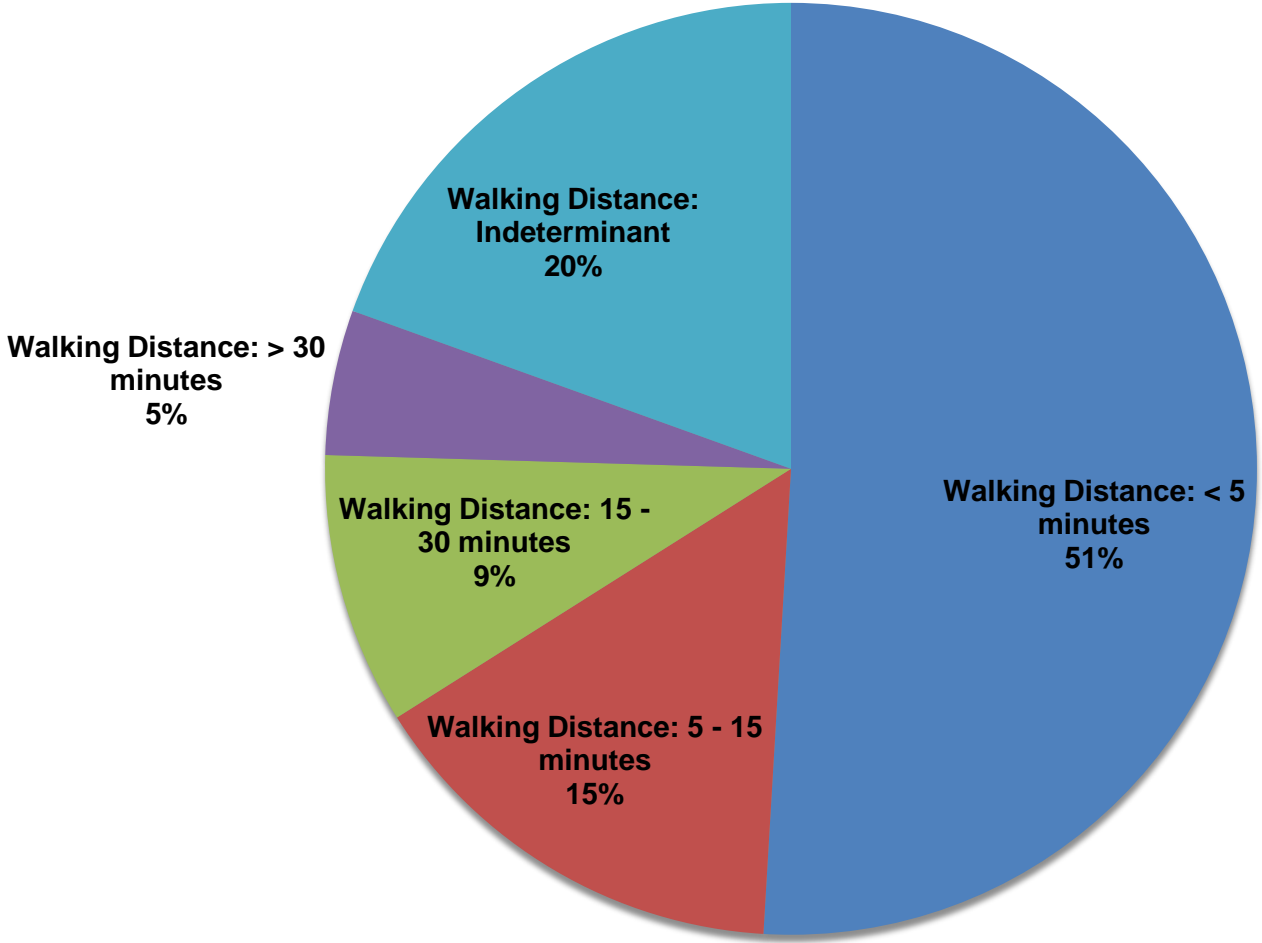


# WHO BENEFITS?

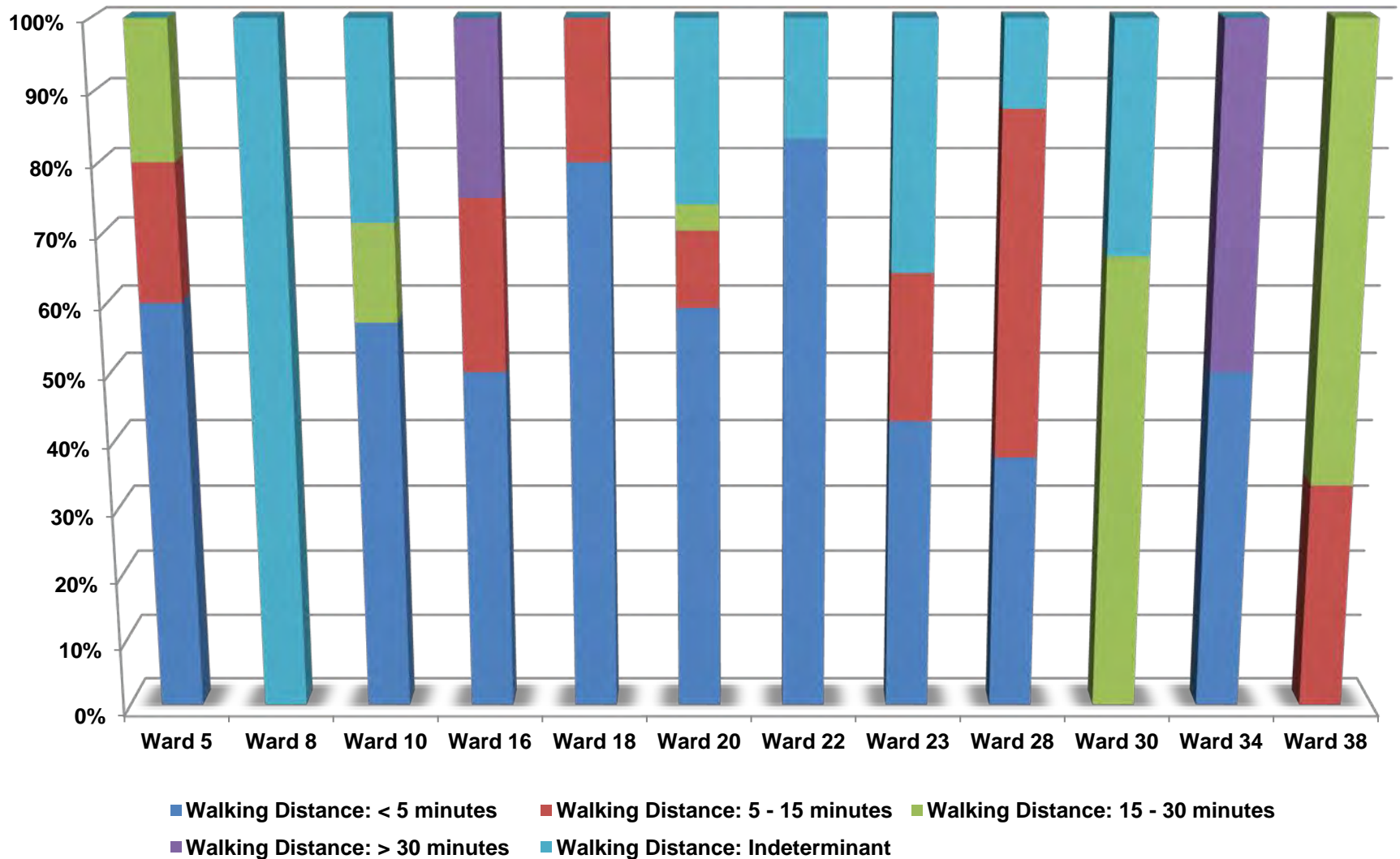
## Distribution of S. 37 Benefits by Median Household Income (2011 Census) - 2007-2011



**WHO BENEFITS?:  
Proximity of Benefits to Development in Toronto by Walking  
Distance in Minutes – 2007-2011**



## WHO BENEFITS?: Proximity of Benefits to Development for Select Wards by Walking Distance in Minutes – 2007-2011



# WHO BENEFITS?

## Summary of Findings

- Wards with most high-rise development have most Section 37 agreements.
- The value of 'benefits' being extracted appears to vary by ward, however.
- The 'benefits' are *not* being redistributed to wealthier or poorer areas within wards.
- Most benefits are within the immediate vicinity of their development.
- But many bear no relationship to the development or neighbourhood it is located in.



# WHY?

## Economic Rent

- Rationale:
  - ▣ Developers receive a 'windfall' (a profit above and beyond what they would otherwise receive) from increased density.
  - ▣ The City, in providing the extra density, should share the 'windfall'.
- Use:
  - ▣ In the US, the economic rent rationale was/is used as an argument supporting the practice of *inclusionary zoning* through density bonusing.
  - ▣ Toronto's official plan lists affordable housing as a potential benefit.
- Criticism:
  - ▣ Land value already factors in the possibility of additional density/height allowance.
  - ▣ As a result, there is no 'windfall' for developers.

# WHY?

## Negative Externalities

- Rationale:
  - ▣ Increased density causes negative externalities (e.g. traffic congestion).
  - ▣ Developers should compensate residents through benefits.
- Use:
  - ▣ OMB ruled that nexus must exist between a development and benefits.
  - ▣ MMAH suggests some such uses (e.g. “visual amenities to enhance the development site and the surrounding neighbourhood.”)
  - ▣ Toronto’s s. 37 implementation guidelines focuses on benefits to the community where the development is located.
- Criticism:
  - ▣ Ignores value of positive externalities of intensification
  - ▣ If the development is poorly planned, it shouldn’t be built
  - ▣ Used primarily to appease local residents

# WHY?

## Good Planning

- Rationale:
  - ▣ High density development introduces new residents to a neighbourhood.
  - ▣ Developers must provide necessary facilities and services to accommodate the new residents (e.g. new or expanded schools).
- Use:
  - ▣ ‘Vertical’ equivalent to subdivision (Devine)
  - ▣ The MMAH suggests some such uses (e.g. “support intensification, growth management, transit supportiveness.”)
  - ▣ Notably, Toronto’s implementation guidelines explicitly state that s. 37 agreements are *NOT* intended to ensure good planning, as proposed developments should already constitute good planning.
- Criticism:
  - ▣ If equivalent to subdivisions, required for all new high-rise development.
  - ▣ DCs and other fees extracted for similar reasons.

# What does the 'WHAT' and 'WHO' tells us about the "WHY"?

- No rationale prevails
- Negative Externalities is the most common one.
- Economic Rent rationale is also commonly at play.
- Good Planning is rarely relied upon.
- Rationales vary significantly by ward.
- Inner city wards opt more often for benefits in keeping with Economic Rationale than suburban wards.

# CONCLUSION

## The future of Section 37 in Toronto

- ❑ The most prevalent rationale, Negative Externalities, is also the weakest.
- ❑ Given that it is Section 37 of the *Planning Act*, benefits should relate to planning.
- ❑ City already has tools to meet the needs of new development.
- ❑ Increased density can lead to ‘windfalls’
- ❑ Section 37 should be used for broader planning purposes that related to specific developments.
- ❑ E.g. The provision of affordable housing.