

Servicing Agreement Fee and Development Levy Policy Review

Date	April 21, 2021
To	Executive Committee
From	City Planning & Community Development
Service Area	Planning & Development Services
Item No.	EX21-33

RECOMMENDATION

The Executive Committee recommends that City Council:

1. Approve the *Development Charges Policy (Schedule A to The Development Levy Bylaw, 2011)* attached as Appendix A.
2. Instruct the City Solicitor to prepare the necessary bylaw to give effect to the recommendations, to be brought forward to the meeting of City Council following approval of the recommendations by Council and the required public notice.
3. Authorize Administration to update the name of this Policy wherever it appears in other City policies or bylaws.
4. Approve these recommendations at its meeting on April 28, 2021.

ISSUE

The City of Regina uses Servicing Agreement Fees (SAF) and Development Levies (DL) to fund major infrastructure investments required for new growth and development, as provided for in *The Planning and Development Act, 2007* (the Act).

The *Administration and Calculation of Servicing Agreement Fees and Development Levies Policy* and the *Administration of Servicing Agreements and Development Levy Agreements Policy* (development charges policies) both provide direction from Council on how to collect, spend and financially manage the development charges collected to provide for investment in infrastructure required for growth.

Administration has conducted a policy review with input from internal and external stakeholders and proposes amendments based on risk, clarity and stakeholder feedback.

IMPACTS

Financial Impact

Although the content related to the policy can have significant implications to the City finances, the proposed changes only provide for minor impacts.

The most impactful are the changes to the 10-year time limit for the Intensification Levy credit, which may result in less revenue collected by the Intensification Levy. The proposed policy will result in more credits being applied to development in the Established Area. The reason for the recommended change is to be fair and consistent as the original development did, at some point, pay a fee. In addition, it will lift a potential barrier to intensification.

Environmental Impact

City Council set a community goal for the City of Regina of achieving net zero emissions and sourcing of net zero renewable energy by 2050. In support of this goal, City Council asked Administration to provide energy and greenhouse gas implications of recommendations so that Council can evaluate the climate impacts of its decisions. The report has limited direct impacts on energy consumption and greenhouse gas emissions.

Policy/Strategic Impact

Adopting the proposed policy will consolidate and replace both the *Administration and Calculation of Servicing Agreement Fees and Development Levies Policy* and the *Administration of Servicing Agreements and Development Levy Agreements Policy*. The intention is to create a single policy that will clarify all related matters of Servicing Agreements and Development Levy Agreements.

The proposed *Development Charges Policy (Schedule A to The Development Levy Bylaw, 2011)* (Policy) results in a more general alignment with all sections of *Design Regina: The Official Community Plan Bylaw 2013-48* (OCP). The current *Administration and Calculation of Servicing Agreement Fees and Development Levies Policy* directly refers to Section B, Financial Policies, Goal 4 Revenue Sources section 1.16, which is:

- 1.16 *Ensure that growth pays for growth by*
 - 1.16.1 *Ensuring Servicing Agreement Fees charges are based on full capital cost;*
 - 1.16.2 *Regularly reviewing the rate and rate structure for Service Agreement Fees;*
 - 1.16.3 *Reviewing the areas to which Service Agreement Fees apply, including the possibility of fees varying with location, density and use as necessary, except where specific and deliberate subsidies are approved to support public benefits;*

- *1.16.4 Aligning the City's development fees, property taxes and other charges with the policy and intent of this Plan; and*
- *1.16.5 Achieving balance of employment and residential lands*

This section is highlighted as it is related to the express requirement in The Act that development charges may only be imposed by bylaw if Council has adopted an OCP that authorizes them to be utilized. Stakeholders have provided feedback that many other sections of the OCP apply and would prefer to see within the Policy these other references as well.

The proposed policy will allow for consideration of the other applicable sections of the OCP. In addition to the above reference, the proposed policy will also refer to Section B that contains Goal 2 Sustainable Services and Amenities and Goal 3 Financial Planning, both of which have relevant sections pertaining to this policy. Goal 2 Sustainable Services and Amenities section 1.4 states:

- *1.4 Develop infrastructure in accordance with the phasing and financing policies adopted in Section E, Goal 5 of this Bylaw and Map 1b - Phasing of New Neighbourhoods.*

Goal 3 Financial Planning states:

- *1.7 Align capital development plans with the policies of this Plan:*
 - *1.7.1 Coordinate capital plans with phasing of growth and development in accordance with the phasing and financing policies adopted in Section E, Goal 5 of this Bylaw and Map 1b - Phasing of New Neighbourhoods;*
 - *1.7.2 Update capital plans annually to account for changes in the timing and location of development;*
 - *1.7.3 Identify and evaluate each capital project in terms of the following, including but not limited to:*
 - *Costs;*
 - *Timing and phasing in accordance with the phasing and financing policies adopted in Section E, Goal 5 of this Bylaw and Map 1b - Phasing of New Neighbourhoods;*
 - *Funding sources;*
 - *Growth-related components;*
 - *Required financing and debt servicing costs;*
 - *Long-term costs, including operations, maintenance and asset rehabilitation costs;*
 - *Capacity to deliver; and*
 - *Alternative service delivery and procurement options.*

Many other sections of the OCP can be related to the proposed Policy, notably Section C of the OCP that contains the Growth Plan and Section E: Realizing the Plan that contains specific guidance for the phasing and financing of growth.

The City's growth is a complex, risk-taking enterprise and is not singularly represented by a standalone section of the OCP. All these sections of the OCP considered together drive the need for the proposed policy and provide the content's direction to develop a complete functional community.

Risk/Legal Impact

The City Solicitor's Office has been involved in the Policy review. The proposed Policy is incorporated in and adopted as part of *The Development Levy Bylaw, 2011*. The documents consider the various legal and risk related components of development and, together, are intended to establish how and when development charges are to imposed and to satisfy the legislative requirements of the Act Generally, the changes to the proposed Policy provide further clarity in its application and ensure that its application is appropriate and in accordance with the legislation.

The most impactful proposed change is the establishment of revised requirements imposed on Developers related to financial assurances for performance of work found in Section 7.B.3 of the proposed *Development Charges Policy (Schedule A to The Development Levy Bylaw, 2011)* which is attached as Appendix A. As noted in the discussion, these proposed changes will alter how the City manages risk-related performance securities. In general, the value of securities required will be more for higher risk Developers and less for lower risk Developers as determined by the City.

All other proposed modifications were considered low in terms of risk to the City or are simply intended as clarifications of existing policy.

OTHER OPTIONS

Based on the review and resulting revisions to the development charges policies, Administration intends to create new operating procedures to support these changes, in accordance with the Act.

Alternative options that Council can consider are:

1. Direct Administration to reconsider some or all the updates made to the development charges policies and refer back with a report on the related findings.
2. Deny the proposed Policy.

Alternative option 1 would have variable impacts depending on the related Council direction. It would require that the existing policies be utilized until the tasks are completed for Council.

Alternative option 2 would require that Administration continue to utilize the existing policies related to SAFs and DLs.

COMMUNICATIONS

The City's engagement objective was to work collaboratively with the development community and related stakeholders to explore changes to both *Administration and Calculation of Servicing Agreement Fees and Development Levies Policy* and the *Administration of Servicing Agreements and Development Levy Agreements Policy*. A Working Group, comprised of development community members and interested related business representatives, supported by City staff, was established early in 2020 to work through proposed policy changes (Appendix B) collectively.

The Working Group met virtually for seven workshops throughout the project to share ideas, review project progress and provide feedback. The result was a process that allowed for significant information sharing and provided the opportunity to build a collective understanding of the issues.

In addition to the primary engagement, a focus group was established through Regina and Region Home Builders' Association that concentrated on the Infrastructure Tables shown in Appendix B of the *Administration and Calculation of Servicing Agreement Fees and Development Levies Policy*. These sessions were focused on financial modelling of options for infrastructure investment and resulted in no changes to the policy but lead to a better collaborative and collective understanding of how the financial model works.

This process has enabled continued engagement with stakeholders on the content and application of the policies. The engagement provided for a common understanding and clarity on applying the policies resulting in greater certainty for stakeholders and Administration.

Recommendations within this report as well as planned City Council dates were provided to stakeholders in advance. Stakeholders and other interested parties will receive a copy of the report and notification of the meeting to appear as a delegation in addition to receiving a written notification of City Council's decision. Public notice of the public hearing required to be conducted upon consideration of the proposed bylaws will also be given in accordance with *The Public Notice Policy Bylaw, 2020*.

DISCUSSION

A city's growth can offer benefits such as supporting and attracting local business, creating population thresholds necessary to support arts and culture, promoting community vibrancy and fostering services such as transit and recreation.

Growth requires an investment in services and infrastructure. As growth occurs, demands on the system-wide infrastructure increase for services such as water, wastewater, stormwater, transportation, parks and recreation. New neighbourhoods and employment

areas require expanded or new infrastructure system upgrades for services. For example, an upgrade to the Wastewater Treatment Plant may be required and without it, the City may not have the ability to sustain growth.

The City applies development charges such as Servicing Agreement Fees (SAF) and Development Levies (DL) to collect money to offset these new or expanded infrastructure costs. Servicing Agreement Fees are applied in new subdivisions. The City charges Development Levies when the changes in the land-use intensity result in more residential units or an increase in the area of commercial, industrial, institutional or office space resulting from a new development.

The Act authorizes municipalities to charge development levies and servicing agreement fees. Pursuant to this authority, and as required by *The Act*, Council has adopted *The Development Levy Bylaw, 2011*. The bylaw also incorporates and is intended to work in tandem with both *Administration and Calculation of Servicing Agreement Fees and Development Levies Policy* and the *Administration of Servicing Agreements and Development Levy Agreements Policy*.

These policies provide for the methodology required to be used by the City in calculating and imposing Servicing Agreement Fees and Development Levies, including administrative policies for:

- Recovering costs associated with growth and renewal by collecting Servicing Agreement Fees and Development Levies.
- Managing the expenditure and collection of Servicing Agreement Fees, Development Levies and Intensification Levies through formal agreements.
- Planning and phasing major infrastructure required for growth and renewal.
- Managing financial risk through responsible debt management, annual reporting, and growth analysis.

In early 2020, Administration began the process of a major review of both development charges policies. Early in the project, the City established a Working Group to reflect various stakeholders' perspectives affected by any policy changes. The members of this Working Group included the Regina and Region Home Builders' Association (RRHBA), residential, commercial, industrial and infill developers, along with members of the City administration.

The Working Group met regularly and extensively for the duration of the project to:

- Build a collective understanding of the principles of the policy;
- Ensure that concerns and ideas are consistently understood and considered when developing the recommended Development Charges Policy, and;
- Understand the implications of updating the policy.

Administration developed the final recommendations in consideration of the Working Group's feedback through the project. Administration evaluated all decisions related to proposed policy changes for legal, financial and operational risks.

Key Considerations, Findings and Proposed Changes

The review process resulted in proposed changes to the Bylaw and related policies. The changes are intended to clarify the policy framework and ensure that it is interpreted and applied consistently.

The Working Group proposed that the existing two policy documents be combined to remove redundancies. Generally, related sections were combined and reformatted with attention to ease of use, clarity, brevity and redundancy removal.

Administration checked the definitions for correct context within the policy and consistency with other City documents. Business practices that were already in effect were incorporated where it was appropriate. A summary of changes can be found in Appendix B. Specific changes to the policy are found in Appendix C, noting the original policy section, the new policy section and the rationale for the change, modification or deletion.

Key areas of focus within the policy that resulted in more significant changes are outlined below:

Policy Exemptions:

The sections on policy exemptions are intended to provide a clear policy framework that identifies lands that would be exempt from the collection of SAFs or DLs. The provision of exemptions within the policy allows for the specific listing of lands or development that the City considers to have very little impact on the supporting infrastructure required for growth. Examples of the proposed changes to the exemptions are:

- parcels of land dedicated as Municipal Utility and used for City infrastructure
- parcels of land utilized for power and gas facilities that do not have an occupied building on them.

To provide consistent application and interpretation of this section of the policy, modifications are proposed. The proposed changes are supported by industry stakeholders and Administration and were found to have no significant financial impact on the City. The proposed policy language can be found in Section 7A for the Greenfield Area Exemptions and 8.A.1 for the Established Area Exemptions of the proposed policy attached as Appendix A.

Intensification:

Specific feedback received from the Working Group related to intensification called for some minor changes to definitions and related sections that would result in clarity of application. The general discussion was about providing proposed changes that would reduce the financial impact of charges imposed within the Established Area.

The proposed changes would allow Developers within the Established Area to apply a credit to the development site for the last legal use without risking losing that credit after 10 years. The 10-year limit can discourage the development of underutilized lands that have been dormant for a substantial period. Removal of the limit will reduce the regulatory barrier for

property owners who wish to develop existing sites within the Established Area. The proposed policy language can be found in Section 8.A.2 of the proposed policy attached as Appendix A.

Deferred Payments of SAF's and DL's

When entering into a Servicing Agreement or Development Levy Agreement, Developers currently can defer SAFs and DLs' payments valued over \$50,000 throughout the course of their development. This option is exercised in almost all cases. To exercise this option, Developers must agree to a set of scheduled payments within the agreements. These future payments are secured by letters of credit.

Deferred payments provide Developers with more options to manage their cash flows during construction. Deferred payments for SAF currently occur in two separate payments at nine months and 18 months after the agreement's execution.

The Working Groups' feedback requested that Administration consider allowing more time for these payments to occur within the agreement. Administration considered deferred payment timings within the context of risk to the City and found that increasing the payment timing was a low financial risk to the City as the Developers already insured the payments with a letter of credit. The proposed policy now allows for payment of Infrastructure assessments at 30 per cent initially, 40 per cent at 12 months and the remaining 30 per cent at 24 months instead of the previous nine months and 18 months.

Similarly, the proposed policy allows for payment of Parks and Recreation assessments at 50 per cent at 18 months and the remaining 50 per cent at 24 months instead of the previous 12 months and 24 months. The proposed policy language can be found in Section 7.B.2 for development in the Greenfield Area and Section 8.B.2 for development in the Established Area attached as Appendix A.

Financial Assurances for Completion of Work

The City collects and holds performance securities from Developers to ensure that they construct the subdivision or development as planned. The amount of these securities is typically based on a submission provided by the Developer called the Engineering Submission. This submission typically includes engineering drawings, modelling, calculations, and estimates to support the development's infrastructure. The Developer's Engineer estimates this infrastructure's total costs to support the development's required security and bonding.

Securities are called upon by the City when the Developer is in default of the conditions of the Servicing Agreement or Development Levy Agreement. A default will generally occur when any of the agreement's terms aren't met. In the event of a default, the City can use performance security to complete the development according to the risk to the City or secure the area and prevent further development. Completion of the development related to City risk is not the same as completing the development. The City will act to secure our risks related to infrastructure and to ensure that the development site will have limited

impacts on taxpayers. When securities are collected, the City needs to balance protecting itself against the risk of Developer default and not holding excessive-performance security.

Most of the performance securities held by the City are in the form of performance bonds. The City does not have a substantial history of servicing agreements entering default. The City also does not have a history of needing to call on performance securities to complete the work. According to a record search that Administration conducted over 30 years, no City records were found using performance securities in the context of servicing or development agreement-related work. This included a record search for both landscaping and infrastructure work. Over this same time period, there are records of the City placing a few agreements into default notice. However, in all these instances, the Developer had managed to refinance or reconcile the default conditions and continue the development.

During the policy review, Administration compiled best practices research on the use of performance securities in Calgary, Edmonton, Saskatoon, Lethbridge, Kelowna, and London. The Working Group noted that the cities of Calgary and Edmonton conduct business with a tiered performance security system. There was interest from the Working Group to explore a Regina option for tiering performance security requirements. Tiered systems can help cities balance risk management and overall development costs in terms of performance bonds. Both the cities of Edmonton and Calgary allow for a lower value of securities held for Developers that have a good record of completed agreements without issue and increase the amounts required for Developers with poor performance, have been placed in default of the contract or that may not have an established record of Development.

A tiered system is proposed in the new policy that emulates the City of Edmonton and the City of Calgary policies. Similarly, the proposed tiering would help the City of Regina more appropriately assign and manage the risk between high-risk Developers and low-risk Developers.

In this system, the City would first categorize a Developer based on the Developer's experience on prior projects, either with the City or other jurisdictions, and their performance on those projects. Once the Developer category is determined, the amount of security is assessed based on a percentage of the estimated construction cost.

Developers with low risk and good category ranking would be required to provide less performance security. Developers with a higher risk and poor category ranking would be required to provide more performance security determined by the risk. The tiering system provides for clear criteria for determining the risk and this criteria forms part of the proposed policy. There is a risk that a system such as this would be perceived as unfair to new Developers with no relevant land development experience. The additional cost for the securities, in these cases, would not be prohibitive for the development but meant to offset the additional risk to the City dealing with Developers with an unknown track record. Developers that have not completed development within Regina would be required to submit reference developments from other jurisdictions to support a lower risk classification.

As Developers finish servicing agreements with the City, the City would apply the results to their next application. This would allow for recategorizing Developers based on their performance in agreements. The proposed policy language can be found in Section 7.B.3 of the proposed policy is attached as Appendix A.

DECISION HISTORY

The initial release of these complimentary policies was in 1996 with CR96-311. The policy was amended in 1997 with CR97-81 with minor changes. It was further amended with changes in 2010 with CR10-105.

In 2015 Council amended the policy with provisions to support a transition to a new phasing and financing plan with CM15-14. In 2017 the calculation methodology for SAF's and DL's was added with CR17-121 to allow for the industrial lands exemptions and Endeavour to Assist.

In 2018, Council approved further amendments with CR18-40 and CR18-55 that provide further clarity on the application of endeavour to assist with respect to lift stations and added the Intensification Levy. In 2020, Council approved further revisions to the policy related to Endeavour to Assist to allow for further clarity of interpretation and consistency of application.

The recommendations contained within this report require City Council approval.

Respectfully Submitted,



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Respectfully Submitted,



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ATTACHMENTS

- Appendix A - SAF and DL Policy
- Appendix B Summary Change Log
- Appendix C Detailed Change Log