

2. SPECIAL AREA LEVY AND LOCAL IMPROVEMENT CHARGES

**PRÉLÈVEMENTS POUR SERVICE SPÉCIAL FOURNI DANS UN SECTEUR
DÉSIGNÉ ET TAXE D'AMÉLIORATIONS LOCALES**

COMMITTEE RECOMMENDATION

That Council approve that Council be prepared to consider Ward Councillor initiatives involving the use of special levies or fees on the basis of the process outlined in Document 1.

RECOMMANDATION DU COMITÉ

Que le Conseil approuve que le Conseil prenne en considération les initiatives des conseillers de quartier visant le recours aux prélèvements ou aux frais spéciaux en se basant sur le processus exposé dans le document 1.

DOCUMENTATION/DOCUMENTATION

1. City Clerk and Solicitor's report, dated 27 June 2017 (ACS2017-CMR-LEG-0005)

Rapport du Greffier Municipal et avocat général, daté le 27 juin 2017 (ACS2017-CMR-LEG-0005)

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
4 July 2017 / 4 juillet 2017**

**and Council
et au Conseil
12 July 2017 / 12 juillet 2017**

**Submitted on June 27, 2017
Soumis le 27 juin 2017**

**Submitted by
Soumis par:
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2017-CMR-LEG-0005

SUBJECT: SPECIAL AREA LEVY AND LOCAL IMPROVEMENT CHARGES

**OBJET: PRÉLÈVEMENTS POUR SERVICE SPÉCIAL FOURNI DANS UN
SECTEUR DÉSIGNÉ ET TAXE D'AMÉLIORATIONS LOCALES**

REPORT RECOMMENDATIONS

That the Finance and Economic Development Committee recommend that Council approve that Council be prepared to consider Ward Councillor initiatives involving the use of special levies or fees on the basis of the process outlined in Document 1.

RECOMMANDATIONS DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil de prendre en considération les initiatives des conseillers de quartier visant le recours aux prélèvements ou aux frais spéciaux en se basant sur le processus exposé dans le document 1.

BACKGROUND

The Finance and Economic Development Committee adopted the following motion at its meeting of October 4, 2016:

WHEREAS The City of Ottawa has two mechanisms used for community-based funding of special projects known as Special Area Levies pursuant to Subsection 326(1) of the Municipal Act, 2001, and Local Improvement Charges pursuant to Ontario Regulation 586/06, "Local Improvement Charges – Priority Lien Status"; and

WHEREAS a Special Area Levy requires no formal public consultation outside of the notification provided according to Subsection 81(10) of the Procedure By-Law; and

WHEREAS a Local Improvement Charge requires specific criteria be met in order to achieve approval including a petition signed by two-thirds of the owners in the benefitting area representing fifty per cent of the assessed value; and

WHEREAS a Local Improvement Charge also includes an appeal process to the Ontario Municipal Board and the Special Area Levy does not have any avenue for appeal;

THEREFORE BE IT RESOLVED that the Finance and Economic Development Committee direct staff to develop a recommended standard process for proceeding with the implementation of a Special Area Levy using the criteria set

out in the Local Improvement Charge process, where possible, and report back to the Committee with their recommendation by Q2 2017.

This report is to respond to the direction given in the above motion.

DISCUSSION

There have been four community-based initiatives that have been financed in whole or in part through a special rate since amalgamation. Three of the initiatives were capital programs while the fourth was an operational program. The initiatives are:

1. Canterbury Community Centre – 2004 – Expansion and upgrade to Canterbury Community Centre partially funded by a special rate on the Ward.
2. Burying Hydro Lines – 2010 – Burying of electricity lines along Kanata Avenue funded by special rate on the Ward.
3. Nuisance Mosquito Control Program – 2016 – Program to reduce mosquitoes in Kanata North and associated research funded by special rate on the Ward.
4. Canterbury Community Outdoor Covered Refrigerated Rink Facility – 2016 - Construction of covered rink partially funded by special rate on the Ward.

In each case, the consideration of the proposed program and imposition of the special levy in the respective ward was subject to public meetings and other consultation preceding its consideration by Committee and Council. In the instance of the Nuisance Mosquito Control Program there was also an open ballot by which person within the Ward were encouraged to mail in or deliver to specified locations a signed ballot with their name and address specifying whether they agreed with or opposed the proposed program. 2,525 ballots were received. The number of registered voters in Ward 4 in the 2014 election was 22,578 with 10,317 ballots being cast.

In response to the motion, Corporate Services (Finance), Infrastructure Services and Legal Services each reached out to the provincial/municipal organizations to which they belong in order to determine if there was a best practice that could be followed or if one could be developed based upon experience elsewhere. Within the few responses that were received, no municipality indicated the use of local improvements or special rates for community initiatives, i.e. local improvements or special rates were only used for the traditional projects such as sewer or water infrastructure or noise barriers.

Options For Signifying Support

Existing statutory means to obtain public concurrence on a proposal include the following:

Local Improvement Regulation

The Local Improvement Regulation being, Ontario Regulation 586/06, as amended, made under the *Municipal Act 2001*, provides a long-standing means, either through petition or municipal initiative, of funding capital works of a local nature. The methods of moving forward with a project under the regulation include:

- a) A petition signed by two-thirds of the owners having at least 50 per cent of the assessment; or
- b) By an initiative of the municipality. In this instance, there is an ability of one or more persons to file an objection in which case the ability to proceed with the work is decided by the Ontario Municipal Board.

The cost of the work once completed is recovered as a special levy over a specified period of time from the properties benefiting from the work. With a local improvement, after the rates to be imposed are made known, there is the option for those subject to the charges to object to the Committee of Revision to determine if the rates have been properly calculated.

Municipal Act 2001 Special Rate

Either through the *Municipal Act 2001*, section 326 as a special levy or Section 391 as a fee, the City has the ability to impose a charge against a defined area for a special service. Such levy or fee can be for capital or operational costs incurred by the municipality. There is no mandatory consultation process required as a precursor to exercising the authority under these provisions.

It is legally possible for a municipality to require a local improvement-like process as a prerequisite to imposing a special levy or fee. For example, the City of Markham does not utilize local improvements for extensions of watermains or sewers to existing areas but will impose a fee under Section 391 if it is shown that two-thirds of the owners of the subject area are in agreement with the proposed works.

However, it is noted that in respect of the four projects identified in the background to this report, all charges were imposed on a ward basis. A requirement that a community initiative obtain the written concurrence of two-thirds of the property owners in the ward would be extremely difficult to meet. Further, the level of effort and staff time and involvement that would be required to verify such a petition in the unlikely event one were submitted would be commensurate with that required to verify the eligibility of all voters in that ward to vote on election date.

Reference to the Ontario Municipal Board

As discussed above under the Local Improvement Regulation, where a local improvement is municipally initiated, as opposed to being on the basis of a petition, if objections are filed to the local improvement, the matter is heard by the Ontario Municipal Board. The current *Ontario Municipal Board Act* as well as the proposed *Local Planning Appeal Tribunal Act*, permit a municipality to voluntarily refer a matter to the Board/Tribunal for a decision. Thus, a municipality could specify that where a community initiative to be financed by a special levy is proposed, the matter would be referred to the Board/Tribunal if a certain level of objections were received. However, this provision for voluntary reference to the Board is not commonly utilized.

Recommended Approach

It is the opinion of staff that there is no viable and affordable means similar to the local improvement process to determine the support for a community initiative where the costs are to be recovered on a ward-wide basis. In the event that further such initiatives are proposed, to ensure that the consultation process for such initiative provides a clear indication of the level of support for the project and that it is known at the outset to all stakeholders as what the consultation process will be, staff recommend the following process, which is also set out in Document 1.

1. This process applies where a community initiative in respect of either capital or operational costs is proposed by a Ward Councillor, with all or a portion of such costs to be recovered by a special levy or fee from all or a defined area of the Ward.
2. The Councillor shall submit to the appropriate Standing Committee and Council a report outlining the following matters:

- a) The nature of the proposed project;
- b) The cost of the proposed project;
- c) The other sources of funding, if any;
- d) The benefitting area for the project and a rationale for how that area was determined;
- e) Whether the contribution from property owners is to be by levy or a fee, the estimated amount of such levy or fee, and the duration of the levy or fee;
- f) In respect of an operational program, a statement of whether the continuation of the program and the levy or fee is anticipated to be sought in the following term of Council and, if so, the information to be presented and the expected timelines for consideration of such information by the subsequent Council; and
- g) A proposed program for consultation and obtaining the views of the property owners and residents within the proposed benefitting area which shall include:
 - i. A consultation period of at least three months;
 - ii. At least one open house to make available background information in respect of the proposed program;
 - iii. In addition to, and at least one week after the (last) open house, at least one public meeting to discuss the proposed program and to receive the submission of written comments;
 - iv. Advertisement of the open houses and public meetings in the community newspapers and on the Ward Councillors website together with an electronic address to which responses can be sent; and
 - v. A proposal for how the support or opposition for the proposed program can be measured.

3. Where the benefiting area is of a size that it is practical to approach all of the owners for their written concurrence, it is expected that such will be proposed in the report.
4. Subsequent to the conclusion of the consultation period, a report summarizing the results of the consultation in 2)g) above, as well as any new or additional information in respect of 2)b) – e) shall be submitted by the Ward Councillor to the appropriate Standing Committee and Council for a decision.
5. This process does not apply to a project that is proceeding in accordance with the Local Improvement Regulation.

Through the requirement of a comprehensive report on the proposed initiative in advance of formal consultation occurring and ensuring that such consultation period is at least three months in duration, fulsome information will be available with respect to the proposal and there will be an adequate opportunity to consider the proposal. Further, through the Council consideration of the initial report, the test for support of the initiative will be known.

RURAL IMPLICATIONS

If the recommendations in this report are adopted, they would apply equally to any community initiatives in the rural area.

CONSULTATION

As noted in the report, staff from the City Clerk and Solicitor's Department, the Corporate Services Department (Finance) and Infrastructure Services reached out to their provincial organizations in order to determine how they approached the matters discussed in this report.

LEGAL IMPLICATIONS

The statutory requirements for local improvement charges and *Municipal Act* fees or charges are as discussed in this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications association with the recommendation in this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

TERM OF COUNCIL PRIORITIES

This report is consistent with goal GP2 of providing oversight through tools and processes that support accountability and transparency

SUPPORTING DOCUMENTATION

Document 1 – Process for Consideration of Ward Councillor Sponsored Community Initiative

DISPOSITION

Where any community initiative is sought to be brought forward by a Ward Councillor, the City Clerk and Solicitor Department would work with the Councillor to ensure that the required steps in the process are followed.

**Document 1 – Process for Consideration of Ward Councillor Sponsored
Community Initiative**

1. This process applies where a community initiative in respect of either capital or operational costs is proposed by a Ward Councillor, with all or a portion of such costs to be recovered by a special levy or fee from all or a defined area of the Ward.
2. The Councillor shall submit to the appropriate Standing Committee and Council a report outlining the following matters:
 - a) The nature of the proposed project;
 - b) The cost of the proposed project;
 - c) The other sources of funding, if any;
 - d) The benefitting area for the project and a rationale for how that area was determined;
 - e) Whether the contribution from property owners is to be by levy or a fee, the estimated amount of such levy or fee, and the duration of the levy or fee;
 - f) In respect of an operational program, a statement of whether the continuation of the program and the levy or fee is anticipated to be sought in the following term of Council and, if so, the information to be presented and the expected timelines for consideration of such information by the subsequent Council; and
 - g) A proposed program for consultation and obtaining the views of the property owners and residents within the proposed benefitting area which shall include:
 - i. A consultation period of at least three months;
 - ii. At least one open house to make available background information in respect of the proposed program;

- iii. In addition to, and at least one week after the (last) open house, at least one public meeting to discuss the proposed program and to receive the submission of written comments;
 - iv. Advertisement of the open houses and public meetings in the community newspapers and on the Ward Councillors website together with an electronic address to which responses can be sent; and
 - v. A proposal for how the support or opposition for the proposed program can be measured.
3. Where the benefiting area is of a size that it is practical to approach all of the owners for their written concurrence, it is expected that such will be proposed in the report.
4. Subsequent to the conclusion of the consultation period, a report summarizing the results of the consultation in 2)g) above, as well as any new or additional information in respect of 2)b) – e) shall be submitted by the Ward Councillor to the appropriate Standing Committee and Council for a decision.
5. This process does not apply to a project that is proceeding in accordance with the Local Improvement Regulation.