

Funding of Public Services - *The Cities Act*

The City is authorized by *The Cities Act*, SS, 2002 c. C-11.1 (the “Act”) to establish and collect property taxes and to create public utilities. Each of these mechanisms are to be used and applied differently. Case law has interpreted the ability to use and apply these mechanisms in different circumstances.

Taxes

- The Act requires Council to pass a property tax bylaw annually that authorizes it to impose taxes at a “uniform rate considered sufficient to raise the amount of taxes required to meet the estimated expenditures and transfers, having regard to estimated revenues from other sources, set out in the budget of the city” [subsections 253(1) and (2)] .
- Council is permitted to establish classes and sub-classes of property for the purposes of establishing tax rates.
- Taxes are to be levied on all property in the City, except for property that is exempt from taxation under the Act. (e.g. places of public worship and Crown property)
- The Act provides the mechanism by which the City can enforce against property owners who do not pay promptly. Ultimately, taxes due on a property may be enforced against the owner by taking title to the property under *The Tax Enforcement Act*, RSS 1978, c. T-2.
- The characteristics of a tax have been clearly established by case law. These characteristics include that the tax is: (1) enforceable by law, (2) imposed under the authority of the legislature, (3) levied by a public body, and (4) intended for a public purpose. Based on these characteristics, almost all money collected by the City could be considered a tax. However, the case law distinguishes between taxes and utility/user fees by considering how the money is collected, calculated, and applied.
- The collection of taxes is the principle means of financing government expenditures. Taxes are not required to bear a direct relationship to the benefit of goods and services received. Rather, such revenue may be used for any reasonably determined governmental public purpose. For example, tax revenues may be used to support public safety, regulatory activities, public facilities and the provision of goods such as water or electricity.

Public Utility

- Public utility is defined in the Act as a system or works used to provide one or more of a list of services for public consumption, benefit, convenience or use, including water, sewage disposal, public transportation, electrical power, heat and waste management.

- The Act empowers the City to pass bylaws for city purposes and includes the authority to pass bylaws respecting public utilities and services provided by or on behalf of the city, including establishing fees for those services.
- Such bylaws may deal with things in different ways and divide them into classes or subclasses and deal with each class or subclass in different ways.
- As required by section 264 of the Act, if City Council sets fees in connection with any services provided by the City, the fees apply uniformly on the same basis to property that is exempt from taxation as to property that is not exempt from taxation, and at the same rate.
- The City may provide a public utility service either directly or through a controlled corporation or by agreement with any person.
- Similar to taxes, the failure to pay a public utility fee may be enforced against owners and tenants who do not pay promptly. The City may discontinue providing a public utility for any lawful reason. Similar to taxes, ultimately, unpaid charges for a utility service, whether supplied to the owner or a tenant of the property, may be added to the tax roll of a property and then may be levied and collected in the same manner as taxes, including civil action, distress, payment of the rent to the City by a tenant, and taking title under *The Tax Enforcement Act*.
- The case law tells us that a utility/user fee is different from taxes: (1) it is imposed on specific persons, activities or properties that receive a service or benefit; (2) the amount of the charge is intended to estimate the cost of the service or benefit; and (3) the revenue generated by a public utility or service fee is not intended for use as general revenue or for general governmental purposes, but is intended to support provision of the specific service or benefit received. Estimates for the cost of providing the service or benefit must be reasonable and result from a legitimate costing exercise.

Taxes and Public Utilities Compared

- The characteristics of taxes differ from public utilities. A tax's primary purpose is to raise revenue for general purposes; a tax does not charge for services directly rendered.
- On the other hand, the amount of a utility fee charged must be linked to the cost of the service provided. A reasonable connection between the cost of the service provided and the amount charged must be shown. Such fees are imposed on specific properties that receive the service and the proceeds of the fees are used for the provision of those services and not for general governmental purposes. Further, a public utility may only be established in limited circumstances and must be established by bylaw. Conversely, a bylaw is not required to spend the general revenues of the City which are generated largely by property tax.
- Therefore, taxes and utility/user fees are distinguishable in terms of authorization in *The Cities Act*, and in terms of how the funds for each are calculated, collected and applied.
- The Act provides Council with a choice as to how to fund and deliver particular public services or works, each representing a separate and distinct model. These

differences make it difficult to justify the provision of the same services both as a utility and funded through property taxes.

- Each service must be clearly delineated and identifiable and must be funded either as a utility or through the property tax - but not by both. If flexibility in how the service is delivered is desirable, for example, providing varying cart sizes, the service should be established and funded as a public utility. If the service to be provided will be consistent, the service may be funded either through property tax or through a public utility, but it should be one or the other for the entire service.

Scenarios

The following provides examples of different scenarios:

- Using Both Taxes and Utility to Fund Different Cart Sizes
 - If the City were to fund a small waste cart by property taxes but offer larger cart sizes funded by a utility fee (or vice-versa), the services would be identical, though varying in degree based on the size of the cart. Establishing a utility to service one cart size and using taxes to fund another would be difficult, if not impossible, to do on any rational basis. Servicing the small carts would have to be separated from servicing the larger carts in order to accurately estimate the costs of the service to establish a justifiable utility fee.
- Using Both Taxes and Utility to Fund the Same Program but Different Services
 - If separate services for the same program can be clearly delineated, it may be possible to fund one service by property tax and the other by utility fee. In one of the scenarios originally proposed organics collection and disposal are to be funded by a utility and compost depots by taxes. Any bylaw establishing the utility would have to very clearly identify the services to be covered by the utility and the fee charged would have to reflect the anticipated or estimated cost of performing those services.
 - In some cases, it may be theoretically possible to identify the “services” but this would become difficult to justify in practice. An example would be separating organics collection and disposal services. A bylaw could be drafted establishing organics collection as a public utility while leaving organics processing funded by property tax. This is because there is arguably no overlap between the two services to be provided - the collection service would be provided to specific properties and a reasonable connection between the cost of the service provided and the amount charged to the properties could be shown. However, it becomes difficult to justify to taxpayers who do not receive the organics collection utility why they are paying for the processing of the organics collected through property tax. So in this example, although the services can be clearly delineated, they cannot be rationally separated.
 - Similarly, establishing processing as a utility while collection is funded by property tax cannot be rationalized on the characteristics of each, described above. If every (non-exempt) property owner is paying for the collection of organics, it would be challenging for the City to then justify determining and

imposing the cost of processing only on the properties that receive the processing service, even though all properties pay for the collection.

Conclusion

- The Act provides options for Council to finance government expenditures.
- The collection of taxes and the establishment of public utilities are two such mechanisms, each with distinct characteristics in how they are collected, calculated and applied.
- The collection of taxes raises general revenues and there does not need to be a connection between the property taxed and the use of the proceeds.
- By definition, however, there must be a correlation between a utility/user fee and the cost to provide the service.
- Given these differences in collection, calculation and application, funding the same services using both mechanisms is not permitted.