

Off-Site Levy Update

RECOMMENDATIONS:

Review By: 2020 November 09

That Council:

1. Direct Administration to transfer the confirmed \$56.3 million earned investment income to the associated Off-site Levy accounts from Corporate Programs as outlined in Attachment 1;
2. Effective 2020 January allocate any future investment income earned on the Community Services portion of the Centre City Levy to the Centre City Community and Recreation infrastructure levy accounts; and
3. Direct that the Report, Attachment and Recommendations remain confidential pursuant to Sections 24 (Advice from officials), 25 (Disclosure harmful to economic and other interests of a public body) and 27 (Legal advice) of the *Freedom of Information and Protection of Privacy Act*, to be reviewed 2020 November 09.

HIGHLIGHTS

- This report provides recommendations to allocate investment income of \$56.3M that was earned but not allocated to the Community Services Levy and the Utilities' Levy accounts during the 2006-2019 time period.
- What does this mean to Calgarians? The Off-site Levy program helps to fund Calgary's growth related infrastructure costs to provide necessary service to residents and businesses.
- Why does this matter? To ensure transparency and accountability, Administration is working to improve the off-site levy system and governance structure and to address the off-site levy process audit recommendations (AC2019-1241), including internal controls, reporting and process documentation.
- In 2020 July, through off-site levy bylaw review work, land development industry stakeholders asked why Community Services levy balances did not earn interest.
- A full analysis of Community Services, Transportation and Utilities investment income allocations was conducted.
- It was confirmed that investment income was not allocated to either the Off-site Levy or Centre City Levy programs for Community Services. The investigation found that this also existed in Water Resources, primarily for a portion of the Stormwater (historically Drainage) Off-site Levy balances. Transportation Levies (including transit buses) were also reviewed and it has been confirmed that investment income has been allocated appropriately for these accounts. See Attachment 1 for additional information.
- Prior to being formally introduced into the Off-site Levy bylaw, the Community Services levy was voluntary, and the terms and conditions did not specify an attribution of income.
- Moving forward, all Off-site Levy and Centre City Levy accounts will have the formal direction on where to direct investment income.
- Previous Council Direction: Not Applicable
- Strategic Alignment to Council's Citizen Priorities: A well-run city

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DISCUSSION

At the Community Services Off-site Levy working group meeting on 2020 July 08, Building Industry Land Development (BILD) members asked why the Community Services Off-site Levy balance did not earn investment income prior to the Community Services levy charge being formally introduced into the Off-site Levy bylaw in 2019 October (PFC2019-1123). Prior to being formally introduced into the Off-site Levy bylaw, the CS levy was voluntary, and the terms and conditions did not specify an attribution of income. Additionally, a formal request made through the 'BILD Questionnaire' was provided to Administration as part of the 2021 Off-site Levy Bylaw review work.

In response to the inquiry from BILD, Administration formed an internal working group in 2020 July to review the Community Services levy charges and the history of the investment income received. This review applied to both the Off-site Levy and Centre City Levy programs as Community Services levy funds are collected for each. Administration also investigated if this potential issue existed with any of the other levy accounts and found that it did for the Stormwater (historically Drainage) Off-site Levy balances as well. The investigation of investment income for Transportation (including transit buses) and Water and Wastewater levies did not identify any concerns.

There is a distinction between the consideration for the two areas impacted. Community Services Levy legislation did not exist until 2017 whereas the legislation related to the Water Resources Levies in the Municipal Government Act goes back to 1995.

The financial reporting impacts related to the investment income for the Community Services and Water Resources Levy accounts, during the 2006-2019 time period, are currently being evaluated by Administration and engagement has been initiated with the external auditors. If the impact to the financial statements is significant, an update will be provided through Audit Committee.

Community Services Levies

Off-site Levy

The Community and Recreation Levy was added to the Off-site Levy Bylaw through Charter Bylaw 2H2019 on 2019 October 21 and became effective 2019 December 31. The passing of this bylaw resulted in legislative requirements related to investment income being paid on the Community Services Levy account balance. Administration has followed the process to ensure investment income earned on the Community Services levies balance be allocated to the Community Services Off-site Levy accounts effective 2020 January 01. Prior to the Community Services levy charge being formally introduced into the bylaw effective 2019 December 31 these levy payments were considered voluntary in nature, and the terms and conditions did not specify an attribution of income. As the interest-bearing nature was not specified, until the levy was added to the bylaw, investment income was not allocated to the Community Services levy balance and was reported as Corporate Revenue. If there was an operating budget surplus in a given year, it would have been deposited into the Fiscal Stability Reserve (FSR). The City has been transparent in reporting which off-site levy balances earn interest as part of the Annual Reserves and Long Term Liabilities Report dating back to 2011.

The total amount of investment income that would have been earned from the investment of the Community Services Off-site Levy balances in the period from 2006-2019 is \$47.6M. Administration has gone as far back as 2006 as this is when the Community Services levy

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charge was renamed from 'Recreation Levy' to 'Community and Recreation Levy' and the levy rate was increased significantly from \$2,000/ha to \$40,082/ha.

Centre City Levy

The total amount of investment income that would have been earned from the investment of the 'Centre City Community and Recreation infrastructure charge' over the period from 2007-2019 was \$0.7M. (Centre City Levy collection began in 2007). The Centre City Community and Recreation levy charge is still considered voluntary in nature and Administration is recommending effective 2020 January to allocate any future investment income earned on the Community Services portion of the Centre City Levy to remain within the Centre City Community and Recreation levy accounts. For a summary of the Community Services investment income totals see Attachment 1.

Water Resources Levies

Off-site Levy

Prior to 2011 a storm sewer levy was charged per Bylaw 34M2004, enacted on 2004 June 7. This bylaw charged a transportation levy and a storm sewer levy for catchment areas. The MGA was changed effective 2003 December 4 to require that any interest earned from the investment of the levy be accounted for separately from other levies and only be used for the purpose for which it was collected.

The Off-site Levy bylaw in 2011, 34M2011, introduced levies for treatment and water distribution and they remain in the current Off-site Levy bylaw, 2M2016, which was passed in 2016. From the timeframe prior to Bylaw 2M2016, there is an amount of \$8.036M in investment income that should have been allocated. See Attachment 1 for more detailed information on these amounts.

Additionally, under the 2011 bylaw, there was investment income recorded to the Water Utility sustainment reserve balance, that should have been allocated to the levy balance in Water and Wastewater infrastructure types. However, in the calculation of the levy rates for the 2016 bylaw, there was also a shortfall from the 2011 timeframe that was forgiven. While this \$1.866M is historical investment income that should have been applied to the levy balances, it would only have reduced that shortfall that was forgone and therefore would not be included in the investment income grand total.

Centre City Levy

Since 2007, \$1.0M in investment income has been allocated based on Water Resources Centre City Levy balances. This investment income has been appropriately used to fund projects that support centre city redevelopment.

Administration has reviewed all levy balance accounts and has found no other instances where investment income has not been allocated to the respective levy balance accounts. With the addition to the bylaw and recommendation two of this report, Administration has taken steps to ensure that all levy accounts will now earn investment income and there is sufficient and appropriate documentation to follow the existing procedure for investment income allocation.

STAKEHOLDER ENGAGEMENT AND COMMUNICATION (EXTERNAL)

Public Communication or Engagement was not required

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Once Council direction is confirmed at the 2020 November 02 Combined Meeting of Council Administration will be informing and engaging BILD and The Commercial Real Estate Development Association (NAIOP), no later than 2020 November 09, at which time this report will be publicly released.

The internal working group that was formed in response to this issue includes representatives from Community Services, Planning & Development, Utilities & Environmental Protection, Finance, and Law.

IMPLICATIONS

Social, Environmental, Economic – Not Applicable

The joint industry and City Off-site Levy Governance Committee adopted 2021 Off-site Levy principles:

- Sustainable and Resilient
- Shared cost, shared benefit, shared risk
- Competitive
- Collaborative and consultative
- Transparent and accountable
- Aligned and compliant

Service and Financial Implications

Existing operating funding - one-time

Current year operating budget impact of \$56.3M

Existing capital funding – one-time

It will increase future Community Services and Water Resources levy-eligible capital budget funding availability by \$56.3M

RISK

Reputational Risk – Although investment income was not formally approved to be attributed to the Community Services levies, if The City were to be perceived as earning investment income from funds collected from developers and using those funds outside of the intended purpose for which off-site levy funds were collected, this would likely have a negative impact on The City's reputation.

Financial Risk – If the transfer of funds as outlined in the recommendation were to be approved by Council it reduces the City's financial flexibility.

Off-site Levy Bylaw and Audit implementation – These findings may result in impacts to the work on the off-site levy bylaw review and Audit implementation to ensure that stakeholders understand and are satisfied with the actions taken in response to their questions from 2020 July.

ATTACHMENTS

1. Community Services and Water Resources Investment Income Summary

**Planning & Development Report to
Combined Meeting of Council
2020 November 2**

**ISC: UNRESTRICTED
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Department Circulation

General Manager	Department	Approve/Consult/Inform
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Dan Limacher	Utilities & Environmental Protection	Consult
Katie Black	Community Services	Consult
Jill Floen	City Solicitor	Consult