

**Planning & Development Report to
Combined Meeting of Council
2020 July 20**

**ISC: UNRESTRICTED
C2020-0775**

Off-Site Levy payment relief program update

EXECUTIVE SUMMARY

As directed by Council, Administration has developed an off-site levy payment relief program in response to the COVID-19 pandemic's impact on the development and building industry. The proposed program aims to provide temporary financial relief for the development and building industry by reducing the penalty for late payment of off-site levy charges through an invoice credit, while covering costs incurred by The City and managing City cash flow and financial risk. The program is intended to support development already underway to continue through the near-term impact of the pandemic. The City has considered financial and capital investment impacts of the program and balanced these with the potential economic benefit of continued development.

ADMINISTRATION RECOMMENDATION:

That Council direct Administration to implement the off-site levy payment relief program in response to the COVID-19 pandemic as outlined in Attachment 2.

PREVIOUS COUNCIL DIRECTION / POLICY

At the [2020 June 15 Combined Meeting of Council](#), Council directed Administration to develop an off-site levy payment relief program as outlined in option 2 in Attachment 3, and report back to Council no later than 2020 July (C2020-0647).

BACKGROUND

The COVID-19 pandemic has disrupted daily life for all Calgarians and poses significant challenges to local business. During the COVID-19 pandemic, The City is currently offering a variety of municipal financial relief measures, as presented to Council on 2020 April 30 (C2020-0508), and at the 2020 May 11 and 2020 June 29 Strategic Meetings of Council. As part of the overall package of relief measures available for businesses and the development and building industry, Council directed Administration to develop a program to provide relief of off-site levy payments (hereinafter referred to as The Program). The Program outlined in option 2 of Attachment 3 (C2020-0647) is expected to allow developers who apply and are approved for the program to delay payments of their off-site levies with a reduced late payment penalty, while still covering associated costs incurred by The City.

While many developers are facing financial hardship due to the compounding effects of the economic downturn and COVID-19, The Program is solely intended to provide short-term financial relief in response to the impacts of the pandemic. It is not intended to address the overall economic and market conditions impacting the development industry, be a permanent solution, or to be considered as part of the Off-Site Levy Bylaw review for 2021.

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The following principles, outlined in C2020-0647, have been applied in developing The Program:

- Maintain the principle of 'Growth Pays for Growth'
- Manage City liquidity and cash flow
- Mitigate risk of non-payment
- Enable economic activity during pandemic recovery
- Transparent approach that maintains the integrity of the off-site levy bylaw and process

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Following Council's direction on 2020 June 15, Administration carried out the next steps as outlined in option 2 of Attachment 3 (C2020-0647). Details of steps taken by Administration, and the associated outcomes and/or proposed approaches are outlined in Attachment 1. Administration conducted financial analysis, including City cash flow and liquidity impacts, capital investment impacts, risk analysis, determined legal implications and details regarding program process and administration. Administration engaged with industry stakeholders broadly, and specifically with customers who have levy payments currently outstanding or coming due in 2020. Feedback has been used to inform program terms, anticipated uptake, and in evaluating program benefits and impacts.

Proposed program:

Administration has aimed to develop a program in alignment with the principles outlined in C2020-0647, that is relatively straightforward to implement and access. Administration has also carefully considered stakeholder feedback, while aiming to balance City and industry risks and interests.

The proposed terms of The Program are outlined in Attachment 2. The Program is voluntary and will allow developers who apply and are approved, the ability to delay payment of these outstanding levy charges with a reduced late payment penalty, effective 2020 July 31 to December 31.

Levy types

Levies are imposed on all land that is to be subdivided or developed, for which a levy has not previously been paid. Off-site levies collected by The City are imposed on greenfield area lands and established area development. The Program includes off-site levies in greenfield area lands (collected through Development Agreement invoices) (Attachment 2, Table 1), and Centre City Levy in established areas (collected through Development Permits) (Attachment 2, Table 2).

Off-site levies in the greenfield area are collected through Development Agreement (DA) invoices. Upon the developer and City entering into a Development Agreement the off-site levies are collected a year following (30%), two years following (30%) and three years following (40%) the date the development agreement was signed. Late payment relief on these invoices is anticipated to allow development underway to continue.

Off-site levies for established areas (i.e. for Centre City Levy payments and treatment plant levies) are required to be paid in full at the time of release of a Development Permit (DP) (for Centre City Levy), or at issuance of Development Completion Permit (DCP) (for treatment plant levy). Administration will introduce an agreement and process to temporarily allow delayed

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payment up to the release of a DCP for Centre City Levy payments in alignment with treatment plant levies, and The Program in the greenfield area. At the time a DCP is released, development is deemed complete. Administration considers the ability to delay payment to the time of DCP, most closely associated with sale/revenue generation for the development industry, to be fair and equitable to the relief being offered through The Program. Therefore, The Program will not apply to treatment plant levies in the established areas as they can already be delayed to the DCP.

Program period and retroactivity

The Program will apply retroactively to outstanding levy invoices from when the State of Local Emergency was declared on 2020 March 15 to July 31 (or the effective date of The Program) and looking ahead for invoices that will be issued to 2020 December 31.

Reduced late payment penalty

By introducing an invoice credit of 15.53% per annum for levies in greenfield lands, The City will effectively reduce the late payment penalty from 18% per annum to 2.47% per annum for up to six months. The late payment charges of 2.47% per annum have been calculated to cover City costs, as directed by Council, and include the costs to cover Utility principal and interest payments normally paid by levies and foregone interest from investment of levy balances. Costs to administer the program are anticipated to be minimal, and therefore have not been included and will be absorbed within existing budgets.

For Centre City Levy in established areas, no late payment fee will be charged, in alignment to the process for treatment plant levies in established areas.

City financial considerations:

Administration has considered financial implications related to The Program, including other relief measures, corporate liquidity, and the risk of non-payment. Other pandemic relief measures provided by The City, including Property Tax relief (C2020-0382) and Utility payment deferrals, have had a significant impact on the City's liquidity. Given the impacts of the pandemic, The City must retain the ability to be nimble and responsive to unpredictable changes and cash flow demands. Administration has evaluated cash flow implications due to receiving levy payments up to six months later than expected and is able to manage these amounts as part of current work plans and forecasted timelines. However, the risk of non-payment at the end of the payment relief term has significant financial implications, which may require cancelling or deferring projects or may result in passing on the cost to the utility rate payer or property taxpayer. As such, the timeframe for The Program must be carefully considered.

Administration acknowledges there are current levy balances (Attachment 3), however off-site levy funds are governed by the Municipal Government Act, which does not allow The City to use the funds for a purpose they were not intended. These funds cannot be used to off-set a payment relief program, they must be used to build specific growth-related infrastructure, and must be used for the appropriate service line and infrastructure type. Additionally, there are growth commitments and debt repayments that these balances are used for.

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Program uptake

As of June 30, 2020, the total amount of off-site levies eligible for The Program (currently outstanding and coming due 2020 March 15 to December 31) was approximately \$85M. Should all eligible off-site levies be delayed through The Program, The City would delay receipt of this approximately \$85M by up to six months. Stakeholder feedback to-date suggests 20% to 60% uptake of The Program by developers who currently have an outstanding invoice for the period 2020 March 15 to December 31. The proportion of total levies that may be delayed with or without the program is unknown, therefore Administration has reviewed and assessed impacts of up to 100% uptake. The City has determined that any additional relief (length or amount) for off-site levy payments would put The City's liquidity at risk and may pose issues for delivery of capital investment programs already underway and/or approved by Council.

Late payment rate

Administration has determined the late payment penalty of 2.47% (credit of 15.53%) per annum as being sufficient to cover short-term costs incurred by The City due to The Program, as directed by Council. The City will use corporate working capital as a short-term funding source for Utility principal and interest payments.

Foregone late payment revenue

Should all eligible invoices apply for and take advantage of late payment relief for six months, The City would potentially forego late payment fee charges up to approximately \$6.6M (\$85M at 7.77% semi-annually or 15.53% per annum. This assumes the same invoices will remain unpaid for the same period should The Program not exist. However, The City does not rely on these charges as a revenue stream for off-site levies, since the vast majority of off-site levy invoices are paid on time to avoid incurring these charges, and these charges are not considered as part of the off-site levy bylaw calculations.

Other considerations:

Refunds

The Program will not offer refunds or credits for any levies or interest payments previously made. Administration has carefully contemplated this decision based on stakeholder feedback regarding fairness and equity for industry members who may have already made levy payments from when the State of Local Emergency was declared on 2020 March 15 to July 31 (or the effective date of The Program). Administration has considered refunds in relation to the requirements of the Off-Site Levy Bylaw, ability for The City to manage liquidity and cash flow and mitigate risk of non-payment of levies should they be refunded. Additionally, financial and legal risk associated with offering refunds, the ability of these customers to pay at the time of levies being due, and alignment with other City of Calgary pandemic relief measures (including Property Tax relief (C2020-0382) and Utility payment deferrals) have been weighed in making this determination.

Program period and duration of late payment relief

The Program will apply to outstanding invoices 2020 March 15 to December 31 and provide up to six months of relief for late payment. Based on stakeholder feedback, Administration considered a program period up to 2021 March or 2021 July, and the ability to delay payment of levies for up to twelve months with a reduced late payment fee. Administration acknowledges

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the limitations of the program period and duration for stakeholders, given timelines and seasonality of the development and building industry. The proposed period and duration have been selected to align with other City of Calgary pandemic relief measures, ensure the program is in alignment with the pandemic period (it is not intended to address the overall economic conditions), and maintain the program as separate and distinct from the 2021 Off-Site Levy Bylaw review for which extensive stakeholder engagement is required. Impacts to City liquidity, cash flow and capital investment programs have been considered, as well as the financial implications of developers deferring their current payment by up to six months, and having their next scheduled payment come due six months later. If any of The Program terms are modified, the length of the program is extended, or there is significant developer default on future levy payments, there may be considerable negative impacts for The City.

Securing against potential developer default

Administration has considered options to secure against potential developer default beyond what is currently collected, for those who access The Program. Stakeholder engagement has suggested that program uptake could be reduced by half or more, should additional securities be required, however even at this reduced rate of uptake, one fifth of survey respondents indicated they would still be interested in pursuing payment relief through The Program. The City is not fully secured in all cases, against the cost of levies and cost to complete City Infrastructure associated with Development Agreements. While it is difficult to separate the additional risk of non-payment of levies related to The Program specifically (from overall economic and pandemic impacts, or other), given The City is allowing delayed payment of up to approximately \$85M through the program Administration recommends requiring additional security. To balance stakeholder concerns and manage City risk, Administration will require applicants for off-site levies in greenfield areas to acknowledge and agree that should payment not be made in full at the end of the payment relief term (i.e. net 30 days, plus six months), The City will pursue registration on title where legally possible, for applicable lands which have been invoiced and for which a payment has not been received. No additional securities will be required at the time of application.

Stakeholder Engagement, Research and Communication

Administration undertook engagement internally (among Planning & Development, Law, Finance, Water Resources, Community Services and Transportation), with the Economic Resilience Task Force and broadly with industry. Additionally, a targeted on-line customer survey was conducted to evaluate potential benefits, anticipated uptake and specific terms of The Program (see Attachment 1, page 3). Stakeholders indicated that The Program may not be of benefit for every business, yet there may be other options available to developers to manage short-term financial pressures. Industry's primary concerns included the potential for The City to require additional securities (which reduced anticipated program uptake by half), any amount of a late payment fee, the length for which a reduced late payment fee may apply, and the desire for all levy types to benefit from The Program. Administration has carefully considered this feedback in developing The Program terms, as outlined in Attachment 2. Administration has also provided communication updates throughout program development, via email, industry newsletter, Calgary.ca updates and through 311.

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Strategic Alignment

The recommendations align with The City's support of businesses through pandemic response and are in alignment with direction in Council's approval of One Calgary 2019-2022 Service Plans and Budgets (C2018-1158), as amended and adjusted (C2019-1052).

Social, Environmental, Economic (External)

The Program will broaden financial relief to the development and building industry during this time of economic distress due to COVID-19, by providing the ability to access temporary cash flow/working capital. Through stakeholder engagement, interested members of the development industry have cited the ability to maintain employment of staff, continuing to proceed with current development projects, ability to attract investor/lender capital, and the ability to free up cash to provide incentives to potential homebuyers as the key benefits of delaying payment of off-site levies with a reduced late payment fee.

Collection of off-site levies allows The City to generate funds necessary for all or part of the capital cost of new or expanded infrastructure related to growth, in alignment with One Calgary 2019-2022 Service Plans and Budgets.

Financial Capacity

Current and Future Operating Budget:

There are no anticipated impacts on The City's current or future operating budgets as a result of this report. Incremental operating costs to administer The Program are anticipated to be minimal, and therefore will be absorbed by Administration, within existing capacity. If any of The Program terms are modified, the length of the program is extended, or there is significant developer default on future levy payments, Administration would need to re-evaluate the risk to operating budgets and the potential impact on utility rate payers or taxpayers as a result.

Current and Future Capital Budget:

There are no anticipated impacts on The City's current or future capital budgets as a result of this report. If any of The Program terms are modified, the length of the program is extended, or there is significant developer default on future levy payments, Administration will need to re-evaluate the risk to capital program delivery and possibly defer or cancel capital projects.

Risk Assessment

City Financial Risk – Any off-site levy payment relief program increases financial risk for The City. These financial risks include:

- Limiting The City's future flexibility to respond to other needs or demands related to the impacts of COVID-19.
- If a developer defaults on off-site levy payments because of the pandemic, The City could experience significant cash flow and liquidity impacts, which may require The City to cancel projects, or pass the costs on to the utility rate payer or property taxpayer as a result.

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Additionally, the current proposed program terms (Attachment 2) have been considered holistically. Should any of the terms be modified or considered in isolation, The City may face additional financial, legal, or service risk.

To remain transparent, Administration will monitor and report uptake on The Program and the number and value of impacted invoices.

Developer Financial Risk – Delaying payment of off-site levies may increase financial risk for developers where the delayed payment comes due closer to the time of their next scheduled payment. At the same time, should developers facing financial hardship (i.e. bankruptcy or insolvency) not have the ability to delay levy payments with a reduced penalty, they may be at risk of immediate default.

Legal Risk – Off-site levies and the off-site levy bylaw are governed by the Municipal Government Act (MGA), and the Off-Site Levies Regulation (Alta Reg 187/2017), as amended by the City of Calgary Charter, 2018 Regulation (Alta Reg 40/2018). The Program considers the legislative context of the Off-Site Levy Bylaw and is considered a separate and distinct program from the bylaw. Any modifications to the proposed program terms that are contrary to the existing Off-Site Levy Bylaw would require comprehensive stakeholder consultation and possibly a bylaw amendment.

Service Risk – While there are no anticipated impacts to City capital projects underway, should the rate of non-payment of levies increase, The City would experience increased pressure on liquidity and cash flow, and potential impacts to levy-funded capital infrastructure projects already approved in the One Calgary 2019-2022 Service Plans and Budgets.

Work Plan Risk – Resourcing the creation of The Program has impacted work towards the Off-Site Levy Audit recommendations implementation and the Off-Site Levy Bylaw Review 2021 by up to two to three months. Should program terms be modified, or further work required, these programs will be further impacted.

Pandemic Risk – Should the risk of COVID-19 increase and result in a second wave, City and Developer financial risk may be significantly increased. Should this occur, Administration would review the financial situation and return to Council for further direction. To this end, and because of the financial risk involved, Administration is not seeking delegated authority to adjust Program Terms that may be directed by Council.

REASON(S) FOR RECOMMENDATION(S):

The COVID-19 pandemic poses significant challenges for the development and building industry. The proposed off-site levy payment relief program will provide temporary financial relief and support for industry members who choose and are approved to access it, while managing City interests and risks.

ATTACHMENT(S)

1. Attachment 1 – Off-site levy payment relief program – summary of steps C2020-0775
2. Attachment 2 – Off-site levy payment relief program – proposed program terms C2020-0775
3. Attachment 3 – Off-site levy payment relief program – Off-site levy balances C2020-0775