



Corporate Report

NO: R224

COUNCIL DATE: November 24, 2008

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **November 19, 2008**
FROM: **General Manager, Engineering** FILE: **5250-00**
SUBJECT: **Revision to City Policies and Practices Related to Latecomer Agreements,
Development Cost Charge Front-Ending Agreements, and Development Works
Agreements – Length of Cost Recovery Term**

RECOMMENDATION

The Engineering Department recommends that Council:

- 1) approve amendments to Policy H-25 “Frontage Latecomers” and Policy H-43 “Area Latecomers” as documented in Appendix I that will act to extend the term during which cost recoveries will be made under Latecomer Agreements from 10 years to 15 years and will incorporate other minor housekeeping amendments in these policies; and
- 2) approve the implementation of a 15-year term in place of the current 10-year term for recoveries under each of Development Cost Charge (DCC) Front-Ending Agreements and Development Works Agreements.

INTENT

Provincial legislation governing each of Latecomer, DCC Front-Ending, and Development Works Agreements was amended in 2007 to increase the maximum term for cost recoveries to be made under these types of agreements from 10 years to 15 years. This report seeks Council approval to extend the term from 10 years to 15 years as contained in Surrey policies in relation to each of these types of agreements and for other minor amendments to the Latecomer Policies.

DISCUSSION

Latecomer, DCC Front-Ending, and Development Works Agreements are used extensively in Surrey to allow developers to recover the costs of engineering servicing infrastructure from other lands that benefit from the engineering infrastructure that has

been installed by the developer when these other lands are developed. Council has delegated the administration and approval of Latecomer Agreements to staff through Policy H-25 “Frontage Latecomers” and Policy H-43 “Area Latecomers”. Council must approve DCC Front-Ending Agreements and Development Works Agreements on a project-by-project basis, as they are generally larger in scope.

Currently, Surrey policies and practices Latecomer Agreements, DCC Front-Ending Agreements and Development Works Agreements all have a maximum term for cost recovery of 10 years, which was the maximum allowed under previous Provincial legislation. At the expiry of the 10-year term, the front-ending developer is no longer able to recover costs from other benefiting land of engineering services that have been installed that benefit that other land. This 10-year limit on these agreements in some cases results in the “front-ending” developer not being able to recover the costs of engineering services that benefit other lands. In fact, some adjacent benefiting owners are prepared to wait out the 10-year term so as to avoid paying what would otherwise be their fair share of the costs of the engineering services that have been installed by the front-ending developer.

Given a recent change in Provincial legislation allowing for a 15-year maximum term for cost recovery under the noted types of Agreements, staff consider it reasonable for the City to amend the City’s policies and practices to allow for a 15-year cost recovery term. However, if Council approves such an increase in the length of the term for cost recovery, it would not apply to Agreements that the City has already executed with developers, which would remain limited to a 10-year term for cost recovery.

Policy H-25 “Frontage Latecomers” and Policy H-43 “Area Latecomers”, are attached as Appendix I complete with amendments that revise the cost recovery term for these types of Latecomer Agreements to 15 years from 10 years and that address some other minor clarification/housekeeping issues in these policies.

The proposed term extension to 15 years for these types of Agreements was discussed with the Development Advisory Committee (DAC). The DAC strongly supports this change as being beneficial to the development industry since it enhances the potential for more complete cost recovery by “front-ending” developers. This amendment has only limited impact to the City in that it will extend the period of time during which the staff must actively administer “cost recovery” Agreements for individual developers. The City collects a fee from each “front-ending” developer at the time of execution of each of these types of Agreements to cover the City’s costs of preparing and administering the Agreement.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Approve amendments to Policy H-25 “Frontage Latecomers” and Policy H-43 “Area Latecomers” as documented in Appendix I that will act to extend the term during which cost recoveries will be made under Latecomer Agreements from 10 years to 15 years and will incorporate other minor housekeeping amendments in these policies; and

- Approve the implementation of a 15-year term in place of the current 10-year term for recoveries under each of Development Cost Charge (DCC) Front-Ending Agreements and Development Works Agreements.

Vincent Lalonde, P.Eng.
General Manager, Engineering

VL/RAW/brb

Appendix I – Policies H25 and H43 with recommended amendments highlighted

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CITY POLICY

APPENDIX I

No. H-25

REFERENCE:	APPROVED BY:	COUNCIL
REGULAR COUNCIL MINUTES OCTOBER 3, 2005 CORPORATE REPORT R218	DATE:	
	HISTORY:	OCTOBER 3, 2005 FEBRUARY 4, 1991 NOVEMBER 20, 1989

TITLE: EXCESS OR EXTENDED SERVICES – FRONTAGE LATECOMER AGREEMENTS

1. Where the City has required a developer to provide a highway or water, sewer, or drainage facilities that serves or fronts land other than the land being subdivided or developed, this policy shall apply.
2. The Applicant shall pay all the costs of the road, water, sanitary sewer, or storm sewer extension, and may apply to the City to enter into a Latecomer Agreement in accordance with this policy.
3. Under the Latecomer Agreement, the City shall impose a charge on subsequent owners who obtain physical access to, connect to, front or benefit from the extension. Such charge shall be paid to the City who will, in turn, pay the frontender on a semi-annual basis.
4. The City may pay the cost of upsizing the road, water, storm sewer or sanitary sewer systems, or the provision of additional works not required by the Subdivision & Development By-law, subject to funding availability and policy. The developer shall not be eligible for latecomer benefits on any upsizing or additional component of system extensions paid for by Surrey.
5. The cost of the extension used to determine the latecomer charges shall be based on the actual cost of the extension required to serve the frontender's land in accordance with the standards prescribed in the Subdivision and Development By-law No. 8830. The cost of the extension shall only include the following:
 - (i) land or rights-of-way acquisition costs (only those incurred outside the Applicant's land);

* This policy is subject to any specific provisions of the Local Government Act, or other relevant legislation or Union agreement.

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- (ii) actual construction costs;
 - (iii) design and inspection costs;

all as certified by a Professional Engineer and as agreed to by the General Manager of Engineering.

The General Manager of Engineering reserves the right to request three public tender prices for costs submitted under Section 5(ii).

6. Within the benefiting lands of a Latecomer Agreement, the road, water, storm, and sanitary latecomer charge per metre shall be calculated from the costs of the works determined in Section 5., divided by the total amount of benefiting frontage.
7. All latecomer charges collected by the City, will be paid semi-annually to the frontender. No payment shall be made after the Latecomer Agreement has expired. The total amount paid to any frontender under the Latecomer Agreement during the entire term of the Agreement shall not exceed the total cost of the extension plus accumulated interest minus the frontender share of the costs.
8. All lands that were connected to the City system adequate for the existing Zone and use prior to a Latecomer Agreement are exempt from latecomer charges except where a new or larger connection is applied for.
9. A property owner who already had an existing connection to a road, or already fronted a Municipal main of adequate size and capacity for the intended land use prior to the date of a Latecomer Agreement is exempt from all payments under Section 3 for those works that were already connected unless the property is developed to a higher density.
10. Exempt properties shall not be taken into account when calculating the total amount of benefiting frontage.
11. The latecomer charges shall be escalated by an interest rate prescribed in the Surrey Subdivision and Development By-law No. 8830. The accumulation of interest shall be compounded annually on the anniversary date of the completion of the extension.
12. An owner within the benefiting lands shall pay, at the time of application for connection, a latecomer charge equal to the unit latecomer charge, multiplied by the benefiting frontage for that lot unless waived from the Latecomer Agreement by the Applicant.
13. The Applicant may choose to waive or eliminate latecomer charges for certain lands within the benefiting land. Waived properties shall be taken into account when calculating the total amount of benefiting frontage.

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TITLE: EXCESS OR EXTENDED SERVICES – FRONTAGE LATECOMER AGREEMENTS

H-25 (3)

14. The term of the Latecomer Agreement shall not exceed 15 years; however, the Latecomer Agreement shall become null and void when all extension costs have been collected and paid to the frontender.
15. No provision of this policy shall be deemed to exempt any land from payment of frontage taxes, development cost charges or any like charges or fees imposed by any by-law of the City.
16. No provision of this policy shall be deemed to be held to limit or restrict the City Council from exercising full jurisdiction and control over the operations of the extended Municipal system, nor shall it exempt any person receiving service thereby from any regulation, order or By-law of the Municipality.
17. If a developer has entered into a Servicing Agreement, or has commenced construction of works prior to the application for Latecomer Agreement, they shall be deemed to have forfeited their right to receive latecomer benefits.
18. The General Manager of Engineering is authorized to adopt a procedure which implements this policy.
19. See the Engineering Department document titled "Latecomer Procedure Manual" for a definition of terms used in this policy.

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CITY POLICY

No. H-43

REFERENCE:	APPROVED BY:	CITY COUNCIL
REGULAR COUNCIL MINUTES OCTOBER 3, 2005 CORPORATE REPORT R218	DATE:	
	HISTORY:	OCTOBER 3, 2005 MARCH 27, 1995

TITLE: EXCESS OR EXTENDED SERVICES - AREA LATECOMER AGREEMENTS

1. Where the City has required a developer to provide a sanitary sewer pump station or drainage pump station and/or related appurtenances that serves land other than the land being subdivided or developed, this policy shall apply.
2. The Applicant shall pay all the costs of the Works and may apply to the City to enter into an Area Latecomer Agreement in accordance with this policy.
3. Under the Area Latecomer Agreement, the City shall impose a charge on subsequent owners who obtain benefit from the Works. Such charge shall be paid to the City who will, in turn, pay the frontender on a semi-annual basis.
4. The City may pay the cost of upsizing the Works, or the provision of additional works not required by the Subdivision & Development By-law No. 8830, subject to funding availability and policy. The developer shall not be eligible for latecomer benefits on any upsizing or additional component of system extensions paid for by Surrey.
5. The cost of the Works used to determine the latecomer charges shall be based on the actual cost of the Works required to serve the frontender and benefiting lands in accordance with the standards prescribed in the Subdivision and Development By-law No. 8830. The cost of the extension shall only include the following:
 - (i) land or rights-of-way acquisition costs (only those incurred outside the Applicant's land);
 - (ii) actual construction costs;
 - (iii) design and inspection costs for the works;

all as certified by a Professional Engineer and as agreed to by the General Manager of Engineering.

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The General Manager of Engineering reserves the right to request three public tender prices for costs submitted under Section 5(ii).

6. Within the benefiting lands of an Area Latecomer Agreement, the latecomer charge per hectare shall be calculated from the costs of the work determined in Section 5., divided by the total amount of gross developable benefiting area.
7. All latecomer charges collected by the City, will be paid semi-annually to the frontender. No payment shall be made after the Area Latecomer Agreement has expired. The total amount paid to any frontender under the Area Latecomer Agreement during the entire term of the Agreement shall not exceed the total cost of the extension plus accumulated interest, minus the frontender share of the costs.
8. All lands that were connected to City system adequate for the existing Zone and use prior to an Area Latecomer Agreement are exempt from latecomer charges.
9. Exempt properties shall not be taken into account when calculating the total amount of benefiting area.
10. The latecomer charges shall be escalated by an interest rate prescribed in the Surrey Subdivision and Development By-law No. 8830. The accumulation of interest shall be compounded annually on the anniversary date of the completion of the extension.
11. An owner within the benefiting lands shall pay, at the time of Rezone, or Subdivision, or application for connection, a latecomer charge equal to the unit latecomer charge, multiplied by the benefiting area for that lot unless waived from the Area Latecomer Agreement by the Applicant.
12. The Applicant may choose to waive or eliminate latecomer charges for certain lands within the benefiting lands. Waived properties shall be taken into account when calculating the total amount of benefiting area.
13. The term of the Area Latecomer Agreement shall not exceed 15 years; however, the Area Latecomer Agreement shall become null and void when all works costs in excess of the frontender costs have been collected and paid to the frontender.
14. No provision of this policy shall be deemed to exempt any land from payment of frontage taxes, development cost charges or any like charges or fees imposed by any by-law of the City.
15. No provision of this policy shall be deemed to be held to limit or restrict the City Council from exercising full jurisdiction and control over the operations of the extended Municipal system, nor shall it exempt any person receiving service thereby from any regulation, order or By-law of the City.

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16. If a developer has entered into a Servicing Agreement or has commenced construction of works prior to the application for an Area Latecomer Agreement, they shall be deemed to have forfeited their right to receive latecomer benefits.
 17. The General Manager of Engineering is authorized to adopt a procedure which implements this policy.
 18. See the Engineering Department document titled "Latecomer Procedure Manual" for a definition of terms used in this policy.

* This policy is subject to any specific provisions of the Local Government Act, or other relevant legislation or Union agreement.