Winnipeg

Legal Services Department • Services juridiques

INTER-OFFICE MEMORANDUM

TO:	**Marc Lemoine** City Clerk	**FROM:**	**Harold Dick** Legal Services
FILE:	G.3/2018(63)	**DATE:**	December 5, 2018

RE: Fees and Changes By-law Amendment

Attached please find a By-law which amends the Fees and Charges By-law No. 196/2008 in order to

(a) exempt the impact fee from the Chief Financial Officer's authority to increase all City fees by the rate of inflation; and

(b) require that the impact fee be raised by the rate of construction inflation, as determined by the Chief Financial Officer (CFO), on January 1 of each year.

Item No. 5 of the Report of Executive Policy Committee dated October 19, 2016 dealt with at Council's meeting on October 26, 2016, records that Council approved a resolution concerning the implementation of an impact fee which provided in part as follows:

2. That the Impact Fee By-law (draft attached as Appendix C) which will apply an impact fee effective May 1, 2017, for residential development in New Communities and Emerging Communities as set forth in Our Winnipeg and Complete Communities, outlined in bold in Appendix D be enacted, and that for the purposes of the Impact Fee By-law, the following be established:

A. that the fee amounts increase on January 1 of each year by the rate of construction inflation for the previous year as determined by the Chief Financial Officer, and that the annual increase be capped at 5% per year;

The resolution also provided *"That the Proper Officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing".*

The rate of construction inflation was applied to the impact fee on January 1, 2018 as directed by this resolution. This was possible because the rule regarding inflationary increases set out in the Fees and Charges By-law was not applicable to the increase.

The Fees and Charges By-law provides as follows:

3(1) Subject to this By-law, the Chief Financial Officer is hereby authorized to increase

annually any fee imposed by the City of Winnipeg by an amount equal to or less than the rate of inflation.

This authority

(a) applies despite the fact that the amount of a fee or a method of determining a fee has been set out in a by-law or resolution, unless the by-law or resolution specifically states that the amount of the fee or method of determining the fee is exempt from this section; and

(b) supersedes any mechanism for an inflationary increase provided for in any other by-law or a resolution.

3(1.1) The Chief Financial Officer may increase a fee by the rate of inflation pursuant to subsection (1) only if, at the time the inflationary increase takes effect, the current fee have been in place for 12 months or more.

These provisions give the CFO authority to increase all fees imposed by the rate of inflation as determined by the Consumer Price Index and provide that this authority supersedes all other inflationary mechanisms established by Council. However, the By-law also provides that the CFO's authority does not apply to fees imposed less than 12 months prior to the date of the inflationary increase. Since the impact fee had been implemented on May 1, 2017 (less than 12 months before January 1, 2018), the CFO's authority under the Fees and Charges By-law to raise the fee by inflation did not apply on that date and Council's direction to increase the fee by the rate of construction inflation was applicable.

As of January 2019, however, the rule in the Fees and Charges By-law which provides for an inflationary increase as determined by the Consumer Price Index will apply because the fee will have been in place for 12 months.

In order to comply with Council's direction to "do all things necessary to implement" Council's direction to increase the impact fee annually by the rate of construction inflation, it is necessary to bring to Council this amending By-law for enactment. As noted above, this By-law will achieve Council's direction by amending the Fees and Charges By-law to exempt the impact fee from the general rule concerning inflationary increases determined by the Consumer Price Index and by mandating annual increases to the impact fee by the rate of construction inflation as determined by the CFO.

Because of Council's decision concerning the substance of this By-law amendment and its direction to "do all things necessary to implement the intent of the foregoing", Legal Services is of the view that this By-law amendment can be brought to Council's agenda as a communication.

If you have any questions, feel free to contact me.

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HAROLD DICK
Solicitor

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Enclosure