



CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Financial Planning & Policy Division

PUBLIC WORKS DEPARTMENT
Environment and Sustainable Infrastructure Division

TO: Chair and Members Audit, Finance and Administration Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: April 10, 2012	
SUBJECT/REPORT NO: Municipal Services and Property Taxation on Condominium Properties (FCS12020/PW12011) (City Wide) (Outstanding Business List Item)	
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SIGNATURE:	

RECOMMENDATION

- (a) That report FCS12020/PW12011 “Municipal Services and Property Taxation on Condominium Properties” be received for information;

- (b) That, in an effort to mitigate the cost of services undertaken by Condominium Corporations, City staff provide Condominium Corporations with a list of the City's current contractors and their respective pricing;
- (c) That the subject matter be identified as completed and removed from the Outstanding Business List.

EXECUTIVE SUMMARY

In response to Council's direction, staff has reviewed the existing City of Hamilton policies with respect to condominium properties. In particular, staff were directed to look at the provision of such services as garbage and recycling collection, storm sewer annual cleaning, fire hydrant testing, parking/signage on roads and other related services.

Staff have concluded that the provision of services, as they relate to condominium properties, is consistent to that of any other privately owned property. Basically, it is the responsibility of the property owner (single family home, condominium, commercial/industrial properties) for maintenance within their private property. The property taxes paid by condominiums, single family homes, commercial/industrial properties, etc., go towards public services and programs. As such, staff are not recommending any changes to the existing treatment of condominium properties. However, in an effort to mitigate the cost of services undertaken by Condominium Corporations on their private property, staff are recommending that the City provide Condominium Corporations with a list of its' current contractors and their respective pricing. This can assist Condominium Corporations in their negotiations with contractors.

It should be noted that the City of Hamilton **does** provide garbage and recycling collection to condominium properties (with the exception of properties with physical constraints). City staff are also in the process of working with Condominium properties where there has been some resistance on the number of required fire route signage, and, in some cases, have come up with an acceptable compromise.

Property taxes are not a fee-for-service, but instead a method of distributing the cost for public services and programs throughout the municipality. The Municipal Act further dictates that municipalities must collect property taxes from "all of the taxable assessment" base. The City of Hamilton sets its annual tax rates based on the approved annual budget. The annual budget accounts for municipal services/ programs and does not make any allowance for services/programs not being provided (i.e., specific services to private properties).

Due to the lack of inventory of catch basins, fire hydrants, etc., on private property, staff are not able to determine the cost of providing services to condominiums such as catch basin cleaning or fire hydrant flushing, however, it would be reasonable to assume that the costs would be significant (there are over 400 residential condominium corporations in the City of Hamilton). These additional incurred costs would be borne by all property owners in adherence to the Municipal Act. In addition to this, there are significant liability issues, as well as, equity issues as it pertains to other types of private property (commercial and industrial properties would request the same services). This would set a potential expensive precedent and much higher costs.

The Municipal Property Assessment Corporation (MPAC) was consulted with respect to condo fees affecting a property's current value assessment. According to MPAC staff, current value assessment simply reflects the market and therefore condo fees may, to some extent, affect a property's assessed value. The presence of condo fees may impact a buyer's willingness to buy a condominium property or be taken into account in arriving at the ultimate selling price.

Alternatives for Consideration – Page 10

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

On March 8th, 2010, representatives from the Canadian Condominium Institute, Golden Horseshoe Chapter advised Committee of the Whole (now known as General Issues Committee) of their concerns with respect to the City of Hamilton's policies on condominium properties. In response, the following direction was approved by City of Hamilton Council:

"Staff were directed to meet with CCI to investigate and report back with a plan for attempting to mitigate the costs of services provided to condominium residences including:

Garbage and Recycling collection

*Storm sewer annual cleaning
Fire hydrant testing
Parking/signage on roads
Other related services*

Staff were also to include in their report back information available from AMO and MPAC.”

In response to the above direction, Senior City staff met with representatives from the Canadian Condominium Institute (CCI) on several occasions. The “Analysis / Rationale for Recommendation” section of this report highlights the outcome of these meetings.

POLICY IMPLICATIONS

Staff are not recommending any changes to the existing City policies.

RELEVANT CONSULTATION

Consultation with various City departments, particularly Public Works, Planning & Economic Development, Hamilton Emergency Services and Public Health Services, was required. In addition, as directed by Council, staff consulted with the Municipal Property Assessment Corporation (MPAC) and the Association of Municipalities of Ontario (AMO).

Several Ontario municipalities were also consulted. Below are some highlights:

City of Burlington / Halton Region

The Golden Horseshoe Chapter of the Canadian Condominium Institute (CCI) made a similar presentation/request, as the current services provided to condominiums in Halton Region are similar to that in Hamilton. Halton’s staff report in response to CCI, did not recommend any changes, it simply confirmed that the Region provides municipal services on public property and not on private property. Staff was subsequently directed to report back on more specifics with respect to costing of specific services.

Halton staff reported back in 2011 as part of their annual tax policy report and concluded that “*Staff continue to support the current service delivery for municipal services and taxation methods and believe that services are being provided in the most equitable manner available to all citizens in Halton Region*”. The Burlington staff report also did not recommend any changes to the current treatment of condominium

properties. In response to the direction to report back on the cost of providing services such as catch basin cleaning, storm sewer cleaning and street light maintenance to all residential condominium properties in the City of Burlington, staff explained the complexity of such a request due to the lack of inventory and unknown state of repair of these facilities on private property. Staff provided Council with an estimate of 2-3 hours per condominium (approximately 300 condominiums in total) to complete such an inventory, at which time Council approved not to proceed any further on the matter. Similar to Halton, the Burlington staff report concluded that “the upkeep of this private property is the responsibility of the property owner”. Although the staff report was approved, Burlington City Council did provide further staff direction to meet with representatives of the Condominium Corporations.

City of Brantford

Since 2005, the City of Brantford has provided garbage and recycling collection, storm sewer cleaning and fire hydrant testing to condominium properties. It should be noted that originally fire hydrant testing on private property was not approved by Brantford City Council due to unacceptable liability issues.

A liability agreement must be signed and a certificate of insurance must be submitted to the City for approval before receiving these services. The cost of providing these services to condominiums is included in the annual budget. Originally, as part of the 2005 budget, Brantford City Council approved \$30,000 for garbage collection and \$40,000 for storm sewer cleaning – these costs only provided for services to approximately 1/3 of the total condominium corporations in the City, and did not include cost for the service of providing blue boxes and/or recycling bins and recycling pick-up. Estimates (2005) for fire hydrant testing (winter check and flow test) were \$3,750 (\$50 per hydrant x 75 hydrants). City Council did not support compensating private condominiums for energy costs to provide street lighting on their private property (estimated at approximately \$20,000 to \$30,000).

Understandably, multi-residential properties approached the City requesting similar treatment for garbage collection (rebate program). Due to the significant costs of approximately \$565,000, this was not approved by City Council (January, 2009).

Town of Markham

The Town of Markham established a Condominium Working Group in 2007. Its goal, as set by Council was “to identify issues/options with respect to services received and taxes paid by condominiums that the Town of Markham could support and advocate at the Provincial level”. Analysis by City staff estimated that providing certain hard services to residential condominiums would increase the tax rate by 1.9%. The group ultimately recommended to Council that it request the Province to amend the legislation to create two new property classes – one for apartment condominiums and a second for town home condominiums. City Council unanimously approved this recommendation.

It should be noted that simply establishing a new property class for condominiums does not necessarily mean lower taxes for condominiums – City Council needs to approve a lower tax ratio. It was noted that should Markham Council approve a lower tax rate for condominiums, there would need to be a corresponding tax increase to the balance of Markham taxpayers. The Association of Municipalities of Ontario (AMO) advised Hamilton City staff that the Province has no appetite for establishing any new property classes.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Staff were directed to look at the provision of such services as garbage and recycling collection, storm sewer annual cleaning, fire hydrant testing, parking/signage on roads and other related services. These services are typically provided on public property by the municipality and by the property owner on private property. As such, the provision of these services, as they relate to condominium properties, is consistent to that of any other privately owned property. Basically, it is the responsibility of the property owner (single family home, condominium, commercial / industrial properties) for maintenance within their own private property. Extending services to one type of private property (in this case, condominiums) may result in requests to do the same on other types of private property (i.e., apartments, commercial/industrial properties).

The following section provides details on the specific municipal services which were raised as part of this review:

Garbage / Recycling Collection

The City of Hamilton **does** provide garbage and recycling collection to condominium properties. The Solid Waste Management by-law 09-067 includes multiple dwellings in its definition of an “eligible property”. Under the by-law, however, there is a “Physical Constraints Exemption”, which means “*a situation on a property which results in inadequate space for the placement of bin containers and/or for waste collection vehicles to enter the property and remove the waste from the bin containers in a safe manner.*” In such circumstances, the property may be ineligible for waste collection and disposal service, and as such the property owner becomes fully responsible for the provision of this service. Operations & Waste Management staff has tried to avoid potential physical constraints in new developments through specific waste management design criteria that is part of the City’s site plan guidelines. However there continues to be occasional reluctance on the part of the development industry if it impacts on the number of units and/or parking spaces.

Storm Sewer (catch basin) Cleaning

The City of Hamilton is responsible for catch basin cleaning on public property. The cycle requirement is once every seven years and results in a cost of approximately \$25/unit. If the City of Hamilton were to provide this service on condominium private property, the request could similarly be made by other types of private property, including single family dwellings that also have catch basins on their properties and are therefore responsible for them. The City of Hamilton does not have an inventory of number of catch basins located on private property throughout the City. If an estimate of the cost to provide catch basin cleaning services to condominium properties is required, an inventory of affected properties and associated storm sewer infrastructure would need to be conducted to facilitate the calculation.

Fire Hydrant Testing

The City of Hamilton currently inspects approximately 12,500 fire hydrants on a continual three-year cycle. The annual cost of this program is approximately \$290,000 and is funded through water and sewer rates (not through property taxes). Fire hydrants on private property (including commercial and industrial properties) are the responsibility of the property owner. The City of Hamilton is not responsible for these hydrants nor does the City have an inventory of them, however staff estimate that there would be approximately 5,000 fire hydrants on private property throughout the City.

Similar to other services, it is expected that if the City of Hamilton were to provide this service to condominiums, it would need to provide it to other private properties as well. Based on current costs, the estimated cost would be approximately \$125,000 annually or \$25 per hydrant. This represents the City's cost for the field work only and would require an administrative charge should the City undertake to offer this service. It remains unknown whether or not there would be additional costs associated with issues relating to entry to private property and the liability of operating private water distribution and plumbing systems.

The act of fire hydrant testing in this scenario requires the operation of private water systems and inherently includes the application of unusual operational demands on these systems. Transient surges that accompany this testing can potentially damage private water systems and, although contract language can be developed to protect the City and its contractors from liability, there is a high probability that the City would find itself in an unfavourable position should damage occur to these private systems, basement flooding or adverse water quality issues be created as a result of these activities.

Fire hydrants can be operated in an "open left" or "open right" pattern depending on what has been specified. The evolution of the water system in Hamilton saw that former City of Hamilton with an inventory of "open right" hydrants, while the outlying, former municipalities, all possessed "open left" hydrants. It would be assumed that private development required the same regime, however, it is unknown whether or not this

occurred and, as a result, would likely create practical challenges for the City's contractor when operating older unmaintained hydrants that are difficult to operate.

Unlike other services that are considered in this report, the provision of this service presents an inherent need to operate a privately owned and maintained water supply or plumbing system. These systems can be complex and could be in a jeopardized state of physical health and as such the provision of this service would create an unfavourable risk for the City.

Parking / Signage

Any signage placed on private property is the responsibility of the property owner for installation, maintenance, etc. The City of Hamilton's Traffic Operations sells signage to the property owner if requested.

The Ontario Building Code regulates where fire access routes are required. The establishment of a fire access route (including sign location and installation) is regulated by City of Hamilton By-law 01-217 "A By-law to Establish and Regulate Fire Routes". By-law 01-217 is enforced by Hamilton Emergency Services (Fire), who identify the roadways requiring signage and the location of signs along the fire route. This designated fire access route is then registered with the Courts and Municipal Law Enforcement (MLE) for enforcement purposes. The property owner of the private roadway must adhere to this registered fire access route and is responsible for both the purchase and installation of the required signage.

There has been some resistance on the part of a few Condominium Corporations as a result of the number signs required, both due to the cost and aesthetics. As a result, City staff is in the process of working with Condominium Corporations and, in some cases, have come up with an acceptable compromise.

Other Related Services:

West Nile Control

The City of Hamilton encourages everyone to eliminate standing water on their own property, as all properties, including public and private properties within the urban boundary, must comply with the Standing Water By-law 03-173 (officially called the By-law to Prohibit and Regulate the Accumulation of Standing Water at Specified Times of the Year) between April 1 and October 31 of every year. In addition to this, the City has a larviciding program which consists of selected surface water treatments as well as placing larvicide pellets or briquets in selected storm water catch basins that are maintained by the City. Larvaciding is done every season, usually in three rounds, when monitoring information shows that mosquito larvae are present. The application of larvicide on City lands is done by licensed applicators and is carried out under permit

from the Ontario Ministry of the Environment. The City does not have larvicide catch basins or surface waters on private lands.

Street Lighting:

The City Of Hamilton installs street lighting on public roadways according to guidelines as set out by the Illuminating Engineering Society and the Transportation Association of Canada. An annual maintenance contract with a value of approximately \$1M, ensures that the City meets the Municipal Act requirements for fixing outages, as well as upgrade replacements for older poles arms, luminaries, etc. There are significant expenses, borne by the City, associated with cost of energy to operate the system. The annual energy costs to operate the City's street lighting system is approximately \$4M. Lighting on private property is dealt with through site plan approval and must meet the standards as set in the site plan design guide. The estimated cost of providing this service on private property is difficult to assess without having exact figures for the number of units, but could run into the millions when factoring energy costs.

In the absence of a complete inventory, the total cost of providing the above services to all condominiums can not be determined at this time. However, due to the number of condominium properties in the City of Hamilton, it would be reasonable to assume that the costs would be significant. This cost would be borne by all taxpayers.

In addition to this, there are significant liability issues as well as equity issues as it pertains to other types of private property.

Property Taxation

The Municipal Act dictates that property taxes are to be levied equally, specifically section 307(1) of the Municipal Act, 2001 states; *"All taxes shall, unless expressly provided otherwise, be levied upon the whole of the assessment for real property or other assessments made under the Assessment Act according to the amounts assessed and not upon one or more kinds of property or assessment or in different proportions."*

Property classes are prescribed under the Assessment Act. Ontario Regulation 282/98 prescribes 7 mandatory and 6 optional classes of real property for the purposes of the Assessment Act. Municipalities do not have any authority to amend these prescribed property classes, nor dictate which types of properties are included in each property class. It is the Municipal Property Assessment Corporation (MPAC) which determines, in accordance with the Assessment Act, which property class a particular property falls under. In accordance with Ontario Regulation 282/98, condominiums are included in the "Residential" property class, and as such, are treated similar to single family homes (and other types of properties within this property class) for both assessment and property taxation purposes. Only the Province has the authority to create a new

property class for condominiums that is separate from the rest of the Residential property class. According to the Association of Municipalities of Ontario (AMO), the Province has no appetite for establishing any new property classes.

Marcel Beaubien, MPP, Special Advisor to the Minister of Finance, in his final report entitled "Property Assessment and Classification Review" (2002), responded to requests to have a separate property class for residential condominiums as follows: "*The fundamental premise of our property tax system is that properties should be taxed on the basis of their market value, not on the basis of the relative use that property owners make of local services.*" As such his recommendation was that residential condominiums remain in the residential property class. This is consistent with staff's opinion.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

An alternative to attempt to mitigate the costs to Condominium properties would be to investigate whether the City's contractor would consider providing some of these services to Condominium properties at the City's (lower) approved pricing. Both Halton Region and the City of Burlington reviewed this option and concluded that this was not a viable option. The City of Burlington reported that "the vendor was not amenable to the idea citing concerns regarding asset condition and additional administration effort involved in scheduling, coordinating and invoicing individual properties". Halton concluded that the possibility of leveraging the Region's contracts to allow Condominiums to receive the service at the Regions costs would be "a very challenging process to establish a contract that would provide a service to both parties". City of Hamilton staff are in agreement with Halton and Burlington's position and, as such, are not recommending pursuing this alternative.

Staff, however, are recommending that instead Condominium Corporations simply be given the information on the City's current contractors and their approved pricing – all of which is public information. Negotiations can then take place between the Condominium Corporations and the contractors directly. The Canadian Condominium Institute (CCI) could also assist individual condominiums in these negotiations as additional leverage.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability,
3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development,
6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ Council and SMT are recognized for their leadership and integrity.

Financial Sustainability

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost-effective manner.

APPENDICES / SCHEDULES

N/A