

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: John M. Fleming
Managing Director, Planning and City Planner

Subject: Section 37 of the Planning Act (Bonusing) Revisions
and Additional Opportunities for Implementation
The Corporation of the City of London

Meeting on October 29, 2018

Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken:

- 1) this report **BE RECEIVED** for information; and
- 2) Civic Administration **BE DIRECTED** to research and review best practices for the implementation of Section 37 (Bonusing) of the *Planning Act*; review City needs and priorities; and, report back on findings and recommendations.

Executive Summary

Purpose and the Effect of Recommended Action

The purpose and effect of this report is to;

1. Provide information on 2015 updates to Section 37 of the *Planning Act*;
2. Provide background information on how Section 37 (bonusing) is implemented in London and,
3. Request direction to undergo a comprehensive review of best practices for the implementation of Section 37 across Ontario and consider how to apply it within London in a more rigorous way that reflects the priorities of Council and the value uplift in relation to the development proposal.

Rationale of Recommended Action

The City's 1989 *Official Plan*, as well as *The London Plan*, both allow for the use of Section 37 of the *Planning Act* (bonusing) to permit an increase in height and density in exchange for public benefits.

The City of London does not current have standards or guidelines to inform the use of bonusing during planning applications. Priorities have not been identified by Council in regards to the types of public benefits that are desirable, particularly within different geographic locations. Furthermore, an analysis of the value uplift achieved through the increased height and density, and how it relates to the public benefit being proposed, has not been conducted.

A more methodical application of Section 37 would increase efficiency and transparency when negotiating bonus zones, as well as better implement the priorities of Council through the planning application process.

Background

What Is Section 37 of the Planning Act?

Section 37 of the *Planning Act* has been in existence since 1983 and has allowed for the acquisition of community benefits in return for increases in height and/or density.

Unlike other financing tools such as Development Charges and Parkland contributions, Section 37 benefits are meant to have a reasonable and direct relationship with the local community within which the development is located. It allows greater flexibility and precision than the other tools, allowing secured benefits to be direct, tangible and responsive to local community needs, and reflective of the new residential units that are being created and the increased need for community amenities that results.

Updates to Section 37 of the Planning Act

Section 37 of the *Planning Act* (for full policies see Appendix A.1) sets out the requirements for a municipality to use bonusing, including the following:

1. have a by-law which allow increases in height and/or density in return for “*facilities, services or matters...*”
2. have an official plan which has provisions relating to the authorization of increases in height and density;
3. enter into an agreement with the landowner;
4. have the agreement registered against the land;
5. put all monies received into a special account to be spent only to pay for “*facilities, services or matters specified in the by-law*”;
6. the money in the account may be invested but any interest must go into the account, which must be reported on annually in an Auditor’s report;
7. prepare a yearly detailed financial statement, with specific “*facilities, services or matters*” acquired, and present to Council;
8. the statement will include opening and closing balances and transactions relating to the account;
9. provide a copy of the statement to the Minister on request; and,
10. provide statement to the public.

Subsections (5) through (10) above, were added to the *Planning Act* in 2015. These additional subsections require the maintenance of special accounts for the funds received under this section, with annual financial statements from the City Treasurer to Municipal Council regarding the balance and spending details from these accounts.

How Section 37 Has Been Implemented To Date

The *Official Plan* was approved by Council on June 19, 1989, and since then, the City has used bonusing to secure community benefits in return for increases in height and/or density. The application of bonusing has evolved over time in response to the unique context, constraints and opportunities of individual projects. There has not been a standard method of implementing bonusing.

Traditionally, public benefits have been “in-kind benefits” provided by the developer as part of their development, including such things as underground parking. Recently, the City has begun to bonus for monetary contributions to off-site community benefits including public art, and contributions to major public projects including Dundas Place and Back to the River.

Bonusing has also been used to lock in urban design concepts to ensure compatible development forms are being implemented where there is an increased height and/or density. This is particularly important within built-up areas, as compatible built forms are

essential to protecting existing residential amenity. Locking in the design provides the public with a degree of certainty that the concepts agreed upon by staff, the community and the developer through the rezoning process will remain unchanged through the subsequent Site Plan review and Building Permit, and ultimately be built out.

Section 4.3 (General Provisions/Bonus Zones) of *Zoning By-law Z-1*, currently includes fifty (50) site specific bonus zones which have been approved between 1993 and 2018.

Financial Considerations

As noted above, the addition of subsections (5) through (10) to Section 37 of the *Planning Act* require the City to maintain special accounts, to restrict spending for the funds received under this section, with annual financial statements from the City Treasurer to Municipal Council regarding balances and spending details from these accounts.

A process has been put in place to establish the required special accounts so that contributions, spending and account balances can be maintained separately for each development agreement and reported on annually.

To date, only one development agreement has reached the point of monies being received by the City under Section 37. The agreement for Tricar's Azure building at 505 Talbot includes a contribution of \$250,000 for public art. In May 2016, \$31,000 of this amount was used to commission the London Arts Council to select an artist for the public art (see **Appendix B**). The artist was chosen in September 2018. The remaining funds will be used to purchase the art piece upon completion.

Key Issues with Bonusing

A number of issues have been identified through staff and developer experience with Section 37 implementation. The following subsections outline key issues with bonusing.

1) Prioritization of Public Benefits

The 1989 *Official Plan*, as well as *The London Plan*, include policy related to the facilities, services and matters that may be provided as public benefit in exchange for increased height and density. However, staff have not received specific direction from Council on their priorities within the list of bonusable items, outside of site-specific applications where staff have been directed to include affordable housing. To date, the onus has largely been on the developer to propose what public benefits they are willing to provide, and staff have refrained from dictating the nature of the public benefits or the amount.

It has been expressed at recent Planning and Environment Committee meetings that there is a desire to investigate how affordable housing can be achieved through bonus zoning. There are also a number of other facilities, services and matters that Council may want to prioritize as bonusing opportunities arise. Identifying priorities upfront will help to inform both staff and the development community what appropriate bonusable features are, early on in the planning process.

2) Geographic Considerations

As is the case with contributions to Back to the River and Dundas Place, many bonusing considerations have a geographic component, and the priorities of Council and the community may vary by location. For example, where a development is located on a Rapid Transit route, contributions to a Rapid Transit station may be desirable and appropriate.

A number of strategies and plans have been produced by various service areas throughout the Corporation identifying priorities and needs based on geography.

However, these have not been consolidated in any meaningful way in order to inform bonus zone negotiations. Compiling these various strategies and plans will help inform Council in setting priorities, particularly based on geography.

3) Value Uplift

There has not been a rigorous evaluation by staff to identify the value uplift realized by developers through increased density, since the act of bonusing zoning began in 2009. There has not been any monetary equation or calculation used to identify the value of additional units, and therefore, no methodical linkage has been made between the proportion of value uplift and the amount and type of public benefit that is being received. As a result, developer-staff negotiations have not had a standard starting point or expectation.

It would be beneficial to investigate how integrating some form of technical equation as a guideline would provide greater certainty and transparency of expectations when negotiating the uplift in value realized by the developer from increased density. This, in turn, could more closely link the public benefit outcomes to the uplift.

Next Steps

Many Ontario municipalities have taken advantage of Section 37 of the *Planning Act*. Some of these municipalities, including Toronto, Ottawa and Vaughan, have also adopted standards or guidelines for the implementation of Section 37 in order to provide some direction and consistency to bonus zoning applications.

By way of this report, staff are seeking Council direction to initiate a comprehensive review of best practices for Section 37 implementation, as well as an internal assessment of needs and priorities that can be achieved through bonusing. Staff will report back at a future Planning and Environment Committee with findings and recommendations.

It is important to note that this study and the resulting report back to Planning and Environment Committee will focus only on the City's bonusing practices and will not review or alter the *1989 Official Plan* or *The London Plan* policy framework.

Conclusion

In 2015, the Province amended Section 37 of the *Planning Act* to increase accountability for monies contributed through bonusing, and in response, the City has developed a process by which to set up special accounts, monitor contributions and report out going forward.

City staff can now investigate the use of bonus zoning more closely and recommend implementation options based on best practices across Ontario, taking into account City of London priorities.

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<p>Recommended by:</p>	<p>John M. Fleming, MCIP, RPP Managing Director, Planning and City Planner</p>
<p>Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Planning Services</p>	

October 18, 2018
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Appendix A – Policy Context
Appendix B – Financial Statement of Special Accounts

Appendix A – Policy Context

The following policy and regulatory documents were considered in their entirety as part of the Section 37 Review. The most relevant policies, by-laws, and legislation are identified as follows:

A.1 Planning Act

Section 37

Increased density, etc., provision by-law

37. (1) The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

Agreements

(3) Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.

Registration of agreement

(4) Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the Registry Act and the Land Titles Act, any and all subsequent owners of the land. R.S.O. 1990, c. P.13, s. 37.

Special account

(5) All money received by the municipality under this section shall be paid into a special account and spent only for facilities, services and other matters specified in the by-law. 2015, c. 26, s. 27.

Investments

(6) The money in the special account may be invested in securities in which the municipality is permitted to invest under the Municipal Act, 2001 or the City of Toronto Act, 2006, as the case may be, and the earnings derived from the investment of the money shall be paid into the special account, and the auditor in the auditor's annual report shall report on the activities and status of the account. 2015, c. 26, s. 27.

Treasurer's statement

(7) The treasurer of the municipality shall each year, on or before the date specified by the council, give the council a financial statement relating to the special account. 2015, c. 26, s. 27.

Requirements

(8) The statement shall include, for the preceding year,

- (a) statements of the opening and closing balances of the special account and of the transactions relating to the account;
- (b) statements identifying,
 - (i) any facilities, services or other matters specified in the by-law for which funds from the special account have been spent during the year,
 - (ii) details of the amounts spent, and

- (iii) for each facility, service or other matter mentioned in subclause (i), the manner in which any capital cost not funded from the special account was or will be funded; and,
- (c) any other information that is prescribed. 2015, c. 26, s. 27.

Copy to Minister

(9) The treasurer shall give a copy of the statement to the Minister on request. 2015, c. 26, s. 27.

Statement available to public

(10) The council shall ensure that the statement is made available to the public. 2015, c. 26, s. 27.

A.2 1989 Official Plan

London has had bonusing policies in the Official Plan since 1989 and has met the first two conditions contained in the Planning Act since 1989. Section 19.4.4 (Implementation – Bonus Zoning) of the Official Plan identifies the “facilities, services or matters” the City has historically received in return for increase in height/density;

1. development which supports the City’s urban design principles in Chapter 11;
2. affordable housing;
3. provision of common open space;
4. enhanced landscaped open space;
5. underground parking;
6. employment-related day care facilities;
7. structures and/or districts of heritage or cultural value;
8. innovative and environmentally sensitive development;
9. preservation of natural areas; and,
10. universal accessibility in new construction and/or redevelopment.

19.4.4. Bonus Zoning Under the provisions of the Planning Act, a municipality may include in its Zoning By-law, regulations that permit increases to the height and density limits applicable to a proposed development in return for the provision of such facilities, services, or matters, as are set out in the By-law. This practice, commonly referred to as bonus zoning, is considered to be an appropriate means of assisting in the implementation of this Plan.

Principle i) The facilities, services or matters that would be provided in consideration of a height or density bonus should be reasonable, in terms of their cost/benefit implications, for both the City and the developer and must result in a benefit to the general public and/or an enhancement of the design or amenities of a development to the extent that a greater density or height is warranted. Also, the height and density bonuses received should not result in a scale of development that is incompatible with adjacent uses or exceeds the capacity of available municipal services.

Objectives ii) Bonus Zoning is provided to encourage development features which result in a public benefit which cannot be obtained through the normal development process. Bonus zoning will be used to support the City's urban design principles, as contained in Chapter 11 and other policies of the Plan, and may include one or more of the following objectives:

- (a) to support the provision of the development of affordable housing as provided for by 12.2.2.
- (b) to support the provision of common open space that is functional for active or passive recreational use;
- (c) to support the provision of underground parking;
- (d) to encourage aesthetically attractive residential developments through the enhanced provision of landscaped open space;
- (e) to support the provision of, and improved access to, public open space, supplementary to any parkland dedication requirements;
- (f) to support the provision of employment-related day care facilities;
- (g) to support the preservation of structures and/or districts identified as being of cultural heritage value or interest by the City of London, in consideration for their designation under the Ontario Heritage Act; (Clause (g) amended by Ministry Mod. #63 Dec. 17/09)
- (h) to support innovative and environmentally sensitive development which incorporates notable design features, promotes energy conservation, waste and water recycling and use of public transit;
- (i) to support the preservation of natural areas and/or features; and
- (j) to support the provision of design features that provide for universal accessibility in new construction and/or redevelopment. (Clauses (i) and (j) added by OPA 438 Dec. 17/09)

Implementation iii) The Zoning By-law may contain bonus zoning provisions for all forms of development. These provisions will describe the facilities, services or matters that qualify for the density bonus provisions and the extent of the height and density increases that will be received.

The Zoning By-law will include bonusing for the provision of day care facilities located in commercial or mixed-use buildings of larger than 1,858 square metres (20,000 square feet) in size by excluding the amount of floor space which is devoted to day care from the floor area ratio calculation. The amount of floor space devoted to day care will also be excluded from the calculation of parking requirements for the building.

The Zoning By-law will include bonusing for the provision of transit amenities or facilities provided on-site to a proposed development. The amount of bonus to be provided will be determined by the Zoning By-law based on the type or types of transit amenities or facilities provided in the development. (Clause iii) amended by OPA 438 Dec. 17/09)

Agreements i) As a condition to the application of bonus zoning provisions to a proposed development, the owner of the subject land will be required to enter into an agreement with the City, to be registered against the title to the land. The agreement will deal with the facilities, services, or matters that are to be provided, the timing of their provision, and the height or density bonus to be given.

A.3 The London Plan (under appeal)

The London Plan expands the policies to include two types of bonusing provisions (Appendix A.3). Type 1 Bonus Zoning is for sites where the proposed height and density is within the standard maximum height and density limit allowed in the applicable place type and is intended to mitigate compatibility impacts.

Type 2 Bonus Zoning is for sites where requests for an increase in height and/or density are requested which exceed the maximum height and density allowed in the applicable place type. Additional height and/or density may be permitted in return for;

1. exceptional site and building design;
2. cultural heritage resources designation or conservation;
3. dedication of public open space;
4. provision of off-site community amenities such as parks, plazas, civic spaces or community facilities;
5. community garden facilities that are available to the broader neighbourhood;
6. public art;
7. cultural facilities accessible to the public;
8. sustainable forms of development in pursuit of the Green and Healthy City policies of the Plan;
9. contribution to the development of transit amenities, features and facilities;
10. large quantities of secure bicycle parking and cycling infrastructure such as lockers and change rooms accessible to the general public;
11. the provision of commuter parking facilities on site, available to the general public;
12. affordable housing;
13. day care facilities, including child care facilities and family centres within nearby schools;
14. car parking, car sharing and bicycle sharing facilities all accessible to the general public;
15. extraordinary tree planting which may include large caliper tree stock, a greater number of trees planted than required or the planting of rare tree species as appropriate;
16. measures that enhance the Natural Heritage System, such as renaturalization, buffers from natural heritage features that are substantively greater than required or restoration of natural heritage features and functions; and,
17. other facilities, services or matters that provide substantive public benefit.

The London Plan also contains Policy 1639 which addresses Condition 2 of the Planning Act and states “Where an owner of land elects to provide facilities, services, or matters in return for an increase in the height or density of development, the municipality will require the owner to enter into one or more agreements with the City dealing with the facilities, services, or matters. This agreement may include such things as drawings, elevations and site plans. The agreement may be registered against the land to which it applies and the City will be entitled to enforce the agreement against the owner and, subject to the provisions of the Registry Act and the Land Titles Act, against any and all subsequent owners of the land.”

Bonus Zoning

1638. City Council may pass a by-law, known as a bonus zone, to authorize increases in the height and density of development beyond what is otherwise permitted by the Zoning By-Law, in return for the provision of such facilities, services, or matters as are set out in the bonus zone.

1639. Where an owner of land elects to provide facilities, services, or matters in return for an increase in the height or density of development, the municipality will require the owner to enter into one or more agreements with the City dealing with the facilities, services, or matters. This agreement may include such things as drawings, elevations and site plans. The agreement may be registered against the land to which it applies and the City will be entitled to enforce the agreement against the owner and, subject to the provisions of the Registry Act and the Land Titles Act, against any and all subsequent owners of the land.

1640. Each proposal for bonus zoning will be considered on its own merits. The allowance for greater height and density on one site in return for certain facilities, services and matters will not be considered to establish a precedent for similar height and density on any other site.

1641. The facilities, services and matters to be provided in return for greater height or density do not necessarily have to be provided on the same site as the proposed

development. City Council may want to have such benefits directed to a property in the applicable neighbourhood or to lands within the wider city.

1642. Where an application has been made for a Type 1 or Type 2 Bonus Zone, the applicant shall submit a Justification Report that identifies the facilities, services or matters that are to be provided and how their public benefit is commensurate with the extent of the greater height and density that is being requested.

1643. Bonus zoning may be utilized to achieve any of the policy objectives of The London Plan. Consistent with the Planning Act, The London Plan establishes the following two separate classifications of Bonus Zoning:

1. Type 1 Bonus Zoning – where the proposed bonus zone allows for a height or density that is within the standard maximum height or density limit allowed in the applicable place type.
2. Type 2 Bonus Zoning – where the proposed bonus zone allows for a height or density that exceeds the standard maximum height or density limit allowed in the applicable place type.

1644. A framework of heights, permitted under Type 1 and Type 2 Bonus Zoning, is shown on Table 8 at the beginning of the Urban Place Type policies.

Type 1 Bonus Zoning

1645. In order to provide certainty and to ensure that the features required to mitigate the impacts of the additional height and densities are provided, Type 1 Bonus Zoning may be applied, within the standard maximum height or density limit for a place type, where the requested height or density would not be appropriate unless significant measures are put in place to support or mitigate this additional height or density. Through the bonus zone, the community, City Council and other stakeholders can be assured that such measures will be implemented in return for additional height or density as a development agreement must be entered into that fulfills the bonus provisions before this additional height or density is allowed. In this way, the bonus zone serves to lock in the important mitigating measures that ensure the development represents good planning.

1646. While City Council may invoke Type 1 Bonus Zoning under a wide variety of circumstances, it is primarily intended to be used under one or more of the following circumstances:

1. When the proposed development is at the upper threshold of the standard maximum height limit.
2. When there is a significant difference between the proposed development and the surrounding existing uses in terms of height, intensity or form.
3. When there are significant compatibility and/or fit issues that rely heavily upon mitigating measures for the proposed development to represent good planning.

1647. The standard maximum height and intensity limits of the place type will not be exceeded through Type 1 Bonus Zoning.

1648. Heritage conservation requirements may be addressed through Type 1 Bonus Zoning.

Type 2 Bonus Zoning

1649. Type 2 Bonus Zoning may allow for a height or density that exceeds the standard height or density limit otherwise permitted by the applicable place type. Table 8 can be consulted for easy reference to standard heights as well as the height limits under Type 2 Bonus Zoning.

1650. Type 2 Bonus Zoning may permit greater height or density in favour of a range of facilities, services, or matters that provide significant public benefit in pursuit of the City Building goals of this Plan. However, an applicant must demonstrate that this greater height or density represents good planning.

1651. In all cases, proposals for Type 2 Bonus Zoning shall meet the requirements of Type 1 Bonus Zoning.

1652. Under Type 2 Bonus Zoning, additional height or density may be permitted in favour of facilities, services, or matters such as:

1. Exceptional site and building design.
2. Cultural heritage resources designation and conservation.
3. Dedication of public open space.
4. Provision of off-site community amenities, such as parks, plazas, civic spaces, or community facilities.
5. Community garden facilities that are available to the broader neighbourhood.
6. Public art.
7. Cultural facilities accessible to the public.
8. Sustainable forms of development in pursuit of the Green and Healthy City policies of this Plan.
9. Contribution to the development of transit amenities, features and facilities.
10. Large quantities of secure bicycle parking, and cycling infrastructure such as lockers and change rooms accessible to the general public.
11. The provision of commuter parking facilities on site, available to the general public.
12. Affordable housing.
13. Day care facilities, including child care facilities and family centres within nearby schools.
14. Car parking, car sharing and bicycle sharing facilities all accessible to the general public.
15. Extraordinary tree planting, which may include large caliper tree stock, a greater number of trees planted than required, or the planting of rare tree species as appropriate.
16. Measures that enhance the Natural Heritage System, such as renaturalization, buffers from natural heritage features that are substantively greater than required, or restoration of natural heritage features and functions.
17. Other facilities, services, or matters that provide substantive public benefit.

1653. Type 2 Bonus Zoning will only be permitted where it is demonstrated that the resulting intensity and form of the proposed development represents good planning within its context.

1654. Greater height or density offered through Type 2 Bonus Zoning will be commensurate with the public value of the facility, service or matter that is provided.

1655. Where cash is received by the municipality in favour of greater height or density through bonus zoning, all money received shall be paid into a special account and spent only for the facilities, services or matters specified in the implementing by-law.

A.4 Zoning By-Law

4.3 BONUS ZONES

- 1) HERITAGE BUILDING DESIGNATION BONUS - FLOOR AREA AND DWELLING UNIT DENSITY BONUS:

For buildings and/or structures designated as historically significant by the City of London, under the Ontario Heritage Act, in consideration for their designation, the following regulations shall apply for:

Non Residential Uses:

- a) a 25 percent (25%) increase in the gross floor area of the existing building and/or a 25 percent (25%) decrease in the required minimum parking for a permitted use on the lot or;

Residential Uses:

- b) for every 15 square metres of existing gross building floor area of a designated building, 1 additional dwelling unit shall be permitted for a permitted use on the lot to a maximum increase of 25% of the dwelling units permitted in the zone.

The increase in gross floor area and/or dwelling units shall be permitted in accordance with the regulations of the applicable zone. Where the proposed building is a mixture of residential and non-residential permitted uses, the bonus shall not exceed a combined total percentage of 25 percent (25%) increase in maximum number of dwelling units and non-residential floor area for the lot.

(Excluding 120 Kent Street - Z.-1-95316)

2) PUBLIC OPEN SPACE

For every 100.0 square metres (1,074 square feet) of public open space which is dedicated to the City (in excess of the required parkland dedication any undevelopable floodplain lands and Class 1,2, or 3 Wetlands), the density of the residential development may be increased by one unit per each 100.0 square metres (1,074 square feet) up to 25 percent (25%) of the total number of units that would otherwise be permitted by this By-Law.

(Excluding 120 Kent Street - Z.-1-95316)

3) DAY CARE FACILITIES

Where day care facilities are provided within commercial or mixed-use buildings of larger than 1858.0 square metres (20,000 square feet), the floor area devoted to the day care facilities shall not be included in the floor area ratio, the maximum gross or gross leasable floor area permitted, or in the calculation of the parking requirements for the building

Appendix B – Financial Statement of Special Accounts

**Planning Act - Section 37
Special Accounts for Bonusing Provisions included in Development Agreements
Financial Statement as of December 31, 2017**

Project	Commitment	Funds Received	Description/ Purpose of Funds Received	Funds Spent	Description/ Purpose of Funds Spent	Remaining Commitment
505 Talbot St – Tricar (Azure) ⁽¹⁾	\$250,000	\$31,000	Public Art	\$31,000	London Arts Council – selection of artist	\$219,000
40 York St - Tricar ⁽²⁾	\$100,000	\$0	Downtown Heritage	\$0		\$100,000
	\$150,000	\$0	Back to the River	\$0		\$150,000
Total	\$500,000	\$31,000		\$31,000		\$469,000

Notes:

- 1 City holds letter of credit for commitment
- 2 City holds promissory note for commitment