

Bill No. 203
2019

By-law No. CPOL.-_____-____

A by-law to enact a new Council policy entitled
“Municipal Service and Financing
Agreements”.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, C.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, C.25, as amended, provides a municipality with the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS the Council of The Corporation of the City of London wishes to enact a new Council Policy entitled “Municipal Service and Financing Agreements Policy”;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The policy entitled “Municipal Service and Financing Agreements Policy”, attached hereto as Schedule “A” is hereby adopted.
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 11, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – June 11, 2019
Second Reading – June 11, 2019
Third Reading – June 11, 2019

Schedule “A”

Policy Name: Municipal Service and Financing Agreements Policy

Legislative History: Enacted _____ (By-law No. CPOL.-_____-_____))

Last Review Date: May 9, 2019

Service Area Lead: Director, Development Finance

1. Policy Statement

In order to achieve a logical, affordable and fiscally sustainable installation of infrastructure to service growth and development, the City of London utilizes the Growth Management Implementation Strategy (“GMIS”), which is updated on a yearly basis. There may be circumstances, however, where the annual GMIS process cannot address a pressing need for infrastructure construction and where Municipal Council desires to advance a project ahead of its scheduled GMIS construction date. The Municipal Service and Financing Agreements Policy applies to applications for agreements between the City and a proponent to accelerate the construction an infrastructure project outside of the regular GMIS process.

2. Definitions

- 2.1 **20 Year Servicing Boundary** - means the extent of lands within the Urban Growth Area that are deemed to be required to meet projected 20 year unit and non-residential space demand as identified through the Development Charges Study growth allocations (also known as the “GMIS Boundary”).
- 2.2 **Agreement(s)** - means a form of Municipal Service and Financing Agreements as described in Section 1.3 of this Policy.
- 2.3 **the Act** - means the *Development Charges Act*, S.O. 1997, c.27, as amended.
- 2.4 **the City** - means the Corporation of the City of London.
- 2.5 **Capital Budget** - means the financial plan adopted by Council. In the context of this policy, the capital budget provides the funding for the capital projects reflected in the adopted GMIS, and is subject to separate Council approval.
- 2.6 **Carrying costs** - means the financial costs associated with funding an accelerated infrastructure project (e.g., interest costs, opportunity costs, application and administration costs), from the time of design to the time of repayment (i.e., “non-reimbursable costs”).
- 2.7 **CSRF** - means the City Services Reserve Fund.
- 2.8 **DC** - means Development Charge or Development Charges.
- 2.9 **DC Study** - means the Development Charges Background Study as prepared to meet the requirements of the Act.
- 2.10 **FEA** - means Front-Ending Agreement.
- 2.11 **GMIS** - means the Growth Management Implementation Strategy, as described in the City’s Official Plan and adopted by Municipal Council on June 23, 2008, as amended from time-to-time.
- 2.12 **IPR** - means Initial Proposal Review, submitted by a proponent developer prior to submitting a formal subdivision application.
- 2.13 **MSFA** - means Municipal Service and Financing Agreements.
- 2.14 **Staff** - means an employee of the Corporation of the City of London.
- 2.15 **Urban Growth Area** - means the extent of permitted urban development for the City of London, as described in the City’s Official Plan.

3. Applicability

This policy applies to all requests by private landowners for front-ending Development Charges-funded infrastructure.

Although the Act provides for several types of MSFAs, there are two types of Part III (“Front-Ending”) Agreements addressed by this Policy:

- i) Single Front-Ending Owner Front-Ending Agreement: where the agreement to accelerate infrastructure under this policy is between the City and a single front-ending owner/consortium; and,
- ii) Future Benefiting Landowners Front-Ending Agreement: where the agreement to accelerate infrastructure under this policy is initially between the City and a single front-ending owner/consortium, with the addition of future front-ending owners that become party to the agreement as their land within the benefiting area develops.

4. The Policy

4.1 Guiding Principles

The City’s use of MSFA agreements is guided by key principles that inform requests for MSFAs, evaluation of MSFA proposals and agreements prepared to implement this Policy. The MSFA principles are as follows:

- a) The Growth Management Implementation Strategy serves as the City’s development staging strategy for growth infrastructure. The adopted GMIS serves as the basis for the corporate Capital Budget. The GMIS and timing of infrastructure in the DC rate study are intended to provide an adequate supply of serviceable, developable land to meet the growth forecasts.
- b) Municipal Service and Financing Agreements are tools to be used to advance project timing from planned GMIS and Capital Budget construction schedules. Given the opportunity for developers to request adjustments to the timing of infrastructure through the annual GMIS process, MSFAs are not anticipated to be required on a frequent basis.
- c) It is critical that the integrity of the Development Charge reserve funds be maintained at all times when using MSFA tools. In order to maintain the integrity of the reserve funds and to avoid undue debt risk, the City will cap the total value of MSFAs that will be undertaken. Development advanced through an MSFA benefits the proponent developer in their attempts to capture a perceived market demand; therefore, the risk and costs associated with an MSFA are to be borne by the proponent developer and not the City.
- d) Market choice for new housing is beneficial to Londoners, but the timely build-out of existing serviced lands is also essential to capture revenues to pay for past investments in infrastructure.
- e) Opportunities to positively affect the cash flow of development charges reserve funds are valued by the City.
- f) All growth opportunities must be assessed based on the debt risk associated with the proposal and the existing DC debt profile.

4.2 MSFA Parameters

4.2.1 General

- a) The total value of all obligations under executed MSFA agreements at any point in time from the inception date of this policy to July 31, 2019 shall not exceed ten million dollars (\$10,000,000) (i.e., “the cap”).
- b) MSFAs shall generally only be used to advance one infrastructure project per development. The City may consider the use of an MSFA to accelerate multiple projects where the secondary projects represent minor extensions of projects that are eligible for DC funding. In addition to the maximum value of MSFA agreements outlined in Section 2.1.i), no infrastructure project accelerated through an MSFA shall exceed three million dollars (\$3,000,000) for any one service component as defined in the DC By-law.

- c) Municipal Service and Financing Agreements will not be used to accelerate development located outside of the 20 Year Servicing Boundary as indicated in the Development Charges Background Study.
- d) Only works included in the most recent Development Charges Background Study will be eligible for acceleration through the use of an MSFA. Additionally, only works within the current 5 year GMIS and Capital Budget time periods will be considered for acceleration.
- e) As part of an application for an MSFA, the development proponent shall be provided the opportunity to describe the benefits of accelerating a project from the existing GMIS and Capital Budget timeline, consistent with Section 2.1 iv).
- f) Lands accelerated for development through an MSFA shall be contiguous to existing developing lands.
- g) Infrastructure projects proposed for acceleration through an MSFA shall meet the criteria outlined in this policy (Section 4) to the satisfaction of the City. The development proponent will have the opportunity to address the criteria in applying for MSFA approval.
- h) Costs associated with the preparation and administration of an MSFA (e.g., staff time and consulting fees) shall be recovered from the proponent developer.
- i) The proponent developer shall pay for the full costs associated with the non-growth share of the accelerated work. The cost of the non-growth share shall be repaid to the proponent developer, unless the developer and the City agree to have the developer pay a portion or all of the non-growth cost without reimbursement as part of the acceleration of the project. Repayment of the non-growth share shall be exclusive of interest and shall be based on the actual non-growth amount for the project, rather than the estimate contained in the Development Charges Background Study. Reimbursement of the non-growth share will occur at the same time as reimbursement of the growth share.
- j) Agreements shall contain provisions for the City to recover cost overruns should the actual cost of an accelerated project exceed the estimated cost identified in an Agreement. Conversely, should the accelerated project produce cost efficiencies resulting in the project being below the anticipated cost identified in an agreement with the City, the agreement shall provide that any excess of the front-end funding that exceeds the revised actual cost of the works be returned to the proponent, without interest.

4.2.2 Front-Ending (Part III) Agreements – s. 44

Section 44 of the Act provides for the costs of constructing DC eligible works where the initial financing is to be provided by one or more of the parties to the Agreement. The Agreement may also provide for persons who, in the future, develop land within the area defined in the Agreement to pay an amount to reimburse the initial front-ending developer(s) for some part of the upfront costs of the work.

The Agreement is viewed as a loan arrangement between a developer(s) and the City. The loan to the City facilitates the financing and advancement of construction of infrastructure until it would otherwise have been constructed according to the timing specified in the GMIS.

This form of Agreement will generally be used to accelerate major works such as stormwater management facilities, trunk sanitary and storm sewers and arterial road improvements.

Under such an arrangement, the following minimum provisions will be included in the Agreement:

- a) A description of the work to be done, a definition of the area of the municipality that will benefit from the work and the estimated cost of the work.
- b) If necessary, the proportion of the cost of the work that will be borne by each party to the Agreement, and the method and timing for depositing the amount with the City.
- c) If necessary, the method for determining the part of the costs of the work that will be reimbursed by the persons who, in the future, develop land within the area defined in the Agreement; and a description of the way in which amounts collected from persons to reimburse the costs of the work will be allocated.
- d) If necessary, the method for determining the amount, and the amount of the non-reimbursable share of the costs of the work for the parties and for persons who reimburse parts of the costs of the work.
- e) The applicant(s) will finance all carrying costs associated with the Agreement. Carrying costs will not be eligible for reimbursement.
- f) The developer will provide the City with cash or an irrevocable indexed Letter of Credit, to the satisfaction of the City Treasurer (or designate), to finance the costs of the works. A Letter of Credit provided in relation to an Agreement will be drawn upon as design and construction of the work proceeds.
- g) The Agreement will contain provisions related to the repayment for the works. Repayment will be in the form of cash. The City will make repayment, using the appropriate service component, from the City Services Reserve Fund. The repayment may be financed from cash in the City Services Reserve Fund, or through a debenture, at the discretion of the City Treasurer (or designate).
- h) Redistribution of proportionate share of funding may be accomplished by financial contributions by parties named in the agreement who benefit from the works completed under the Agreement (See subsection 2.2 iii) above).
- i) Repayment by way of cash reimbursement of funding for front-ended works will commence on the date originally identified in the GMIS for the construction of the work at the time in which an Agreement is entered into. Adverse revenue conditions experienced by the City after entering into an Agreement may result in the deferral of other projects through the annual GMIS process. This may adversely affect the timing of projects not being accelerated.
- j) The entering of an MSFA Agreement will not alter the times at which DC's are collected from the developments which ensue from the construction of infrastructure facilitated by an Agreement.
- k) The Agreement will provide that the City will recover a sum estimated to be the reasonable cost of preparing and administering the Agreement, including staff time and expected consulting costs.
- l) The FEA will be subject to notification and appeal processes described in sections 46 through 49 of the Act.

4.3 Application for a Municipal Service and Financing Agreement

4.3.1 Application Required

A request for an Agreement with the City shall require the completion of an application form by the proponent developer(s). The application form will provide the applicant opportunities to demonstrate how the proposed acceleration meets the criteria outlined in Section 4. Consideration of a request for an MSFA will not commence until a completed application has been received by the City and acknowledged in writing by the City Treasurer (or designate) as complete.

4.3.2 Commissioner Certification

All applicants submitting MSFA applications shall be required to swear an oath before a Commissioner for the Taking of Affidavits that the contents of the application are true and complete, to the best of their knowledge. A Commissioner's stamped and signed verification of this oath shall be required prior to the commencement of an administrative review of an MSFA application.

4.4 Criteria for Evaluation of Municipal Service and Financing Agreement Applications

The following is a list of the criteria that will be applied to an application for consideration of an MSFA:

- a) Is the project proposed for acceleration included in the most recent Development Charges Background Study?
- b) Is the project proposed for acceleration within the current 5 year period of GMIS and the Capital Budget?
- c) Is the estimated cost of the project within the available MSFA cap room and the available service component MSFA cap room?
- d) Does the project for proposed acceleration have a minor non-growth share?
- e) Is there a single DC-eligible infrastructure project required to permit the development of the subject lands?
- f) Are there DC-eligible minor extensions of other non-local services required to permit the development of the subject lands?
- g) If acceleration of the project produces pressure on timelines for lifecycle renewal projects on previously constructed infrastructure that would be impacted by the proposed development, is there a means of mitigating the pressure through the proponent contributing to the cost of prematurely upgrading previously built infrastructure?
- h) Are the benefiting lands contiguous to existing developing lands?
- i) Have all environmental assessments required for the proposed accelerated work been completed and approved?
- j) Will the project require the expropriation of land, and if so, what are the implications of the proposed expropriation?
- k) Are there any concerns related to the MSFA's impact on the City's debt ceiling?
- l) Does the financial analysis completed by Staff demonstrate that the acceleration of the project will not have negative impacts on DC cash flow projections and have minimal impact on tax and water/sewer rates funding for non-growth share portions?
- m) Are the proposed project and the information contained in the application consistent with the MSFA principles, and parameters as stated herein?

4.5 MSFA Request Review Process

4.5.1 Initial Assessment

Proponent submits development proposal through an Initial Proposal Report. If the IPR meeting identifies a DC-funded infrastructure project required for the development that has a construction date within the five year capital budget period, but with a construction timeline currently limiting the subject lands from being developed, the developer may submit an application for acceleration of the capital work.

4.5.2 Application

Although the application is pre-mature, based on the timing of infrastructure in the GMIS, the proponent desires to proceed by providing the financing necessary

to facilitate the construction of the needed infrastructure. This will entail entering into a form of MSFA with the City. The proponent completes an MSFA application and submits the application to Development Finance Staff for review. The application will require the proponent to demonstrate the need for the development and why it would be advantageous for the City to advance the construction timing of the needed infrastructure.

Staff review the completed application based on Council-endorsed MSFA policies and criteria and prepare a report for Council consideration (including an engineering and financial analysis of the implications of the proposal and its effects on the DC reserve funds). The report will be submitted to Corporate Services Committee and will provide a recommendation by the City Treasurer and City Engineer, regarding the City's review of the proponent's application for an MSFA.

4.5.3 Recommendation to Committee re: Application

If the Staff review deems the application to be in the City's interest based on the criteria and financial analysis, the recommendation to Corporate Services Committee will be to approve the application in principle, with direction to Civic Administration to work out the Agreement details in accordance with the staff report, MSFA policy elements affecting agreements and any further direction arising from Council's consideration of the report.

If the Staff review deems the application to be not in the City's interest based on the criteria and financial analysis, the recommendation will be to refuse the application, with reasons for the recommended refusal. In either case, the results of the staff review will be placed before the Corporate Services Committee of Council for their deliberation.

4.5.4 Negotiation/Preparation of Agreement

Pending a Council resolution that favours the pursuit of the MSFA agreement, Staff will initiate the preparation of the Agreement and a report for the Corporate Services Committee providing the Agreement for Council approval.

Upon Council approval of the Agreement, both parties affix signatures and the Agreement comes into force. Based on the terms of the executed Agreement construction of the developer front-end financed work can proceed.

4.5.5 Repayment under a Front-Ending Agreement

The initiating proponent(s) provides funds to the City to pay for the full costs associated with the construction of an infrastructure project, in accordance with the executed Agreement. The money received is deposited in a dedicated account and is used to pay for the costs of constructing the project. Under the Act provisions, as lands within the benefiting area are developed, the owners of the developing land may become party to the FEA and may be required to contribute funds to provide a proportional share with the proponent and previous developers, all as set out in the Agreement. Repayment of the funds provided to accelerate the work will be in accordance with MSFA policy and the terms of the FEA. Each year, the City Treasurer will report the amount of outstanding liabilities and credits associated with front-ending agreements in accordance with the Act provisions and regulations governing the annual report of the Treasurer. As outlined in the Act, Part III agreements are subject to notice requirements and are appealable.