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# **2004 BUDGET BRIEFING NOTE:** Municipal Act, 2001 - Notice Requirements for Changes to Fees and Charges

**Issue:**

To describe the new notice requirements that apply to proposals for new fees and charges or changes to existing fees and charges under Part XII of the *Municipal Act, 2001* and under Ontario Regulation 244/02. This report also reviews the implications of processing changes to fees and charges through the budget process.

**Background:**

Part XII, Fees and Charges, of the *Municipal Act, 2001* empowers municipalities to impose fees or charges for any activity or service that the municipality provides and for the use of its property. Fees or charges that are imposed under the authority of Part XII are subject to the new notice requirements in Ontario Regulation 244/02 (in force January 1, 2003) that must be met before passing a by-law to impose the fee or charge. The Key Points section below details the notice requirements and describes the information that must be made available to the public or interested individuals based on the specific category of fee or charge as set out in the regulation. The City Clerk is in the process of developing protocols to help ensure compliance with the legislative requirements where fees are introduced, or increases are recommended during the budget process.

Under Part XII of the *Municipal Act, 2001* (section 392), a municipality and its local boards are required to establish and maintain a list for public inspection indicating which of its services and activities and the use of which properties will be subject to fees or charges and the amount of each fee or charge. An interim list has been prepared and posted on the City's Web site until the City's fees and charges are consolidated in a new Chapter 441, Fees, in the City's Municipal Code.

**Key Point(s):**

**Notice for Waste, Water, Sewer, Police and Fire Fees and Charges:**

- Sections 12 and 13 of Ontario Regulation 244/02 address the power of a municipality or local board to impose fees or charges for a waste management system, the use of a sewage system, the consumption of water and inspections or issuance of permits for police or fire purposes. These sections stipulate that <u>the amount of any fee or charge should not exceed the cost of the respective system or service</u>.
- The above sections set out conditions that must be fulfilled before passing a by-law to impose the proposed fee or charge, including:

1. Holding at least one public meeting at which any person who attends has an opportunity to make representation with respect to the matter;

2. Ensuring that a minimum of 21 days notice of the public meeting is given, including giving 21 days notice to every person and organization that has, within five years before the day of the public meeting, given the clerk of the municipality or secretary of the local board, as the case may be, a written request for notice of the passing of the by-law containing a return address;

3. Ensuring that the notice sets out the intention of the municipality or local board to pass the by-law and whether the by-law would impose any fee or charge which was not in effect on the day the notice is given or change any fee or charge which was in force on the day the notice is given;

4. Making available to the public:

   i. a description of the service or activity or other matter for which the fee or charge is being imposed;
   ii. an estimate of the costs of providing the waste management system, the sewage system, water system, or the police or fire inspection or issuance activity in respect of which the fee or charge is being imposed;
   iii. the amount of the fee or charge; and,
   iv. the rationale for imposing the fee or charge.

- Sections 12 and 13 also have sunset provisions that require a municipality to review by-laws that impose waste or water fees or charges annually, and by-laws that impose police and fire inspection and permit fees or charges every three years.

- Fees processed under these sections are normally presented to Standing Committees in the form of a staff report. To ensure compliance with the notice requirement under the Act, the City Clerks protocols include the following:

  - Program staff, in consultation with Legal staff, prepares a draft notice that includes all the required information.

  - At least 25 days before the Committee meeting, Program staff contacts the Committee Administrator to confirm date, time and place of the meeting.

  - The notice must provide a link to the staff report. Therefore, Program staff needs to provide a copy of the report to the Administrator at the same time as the notice.

  - The Administrator reviews the draft notice and checks that information regarding the meeting is correct and forwards the final version to Media Buying for posting on the City's Web Site no later than 21 days prior to meeting.

  - The Administrator ensures that copies of the notice and report are mailed to anyone requesting such notice within the previous 5 years, post-marked no later than 21 days prior to meeting.

**Notice for Other Fees and Charges**

- The notice requirement for other fees and charges that are not waste, water, police or fire fees or charges is prescribed in subsection 14(1) of Ontario Regulations 244/02. Subsection 14(1) states as follows:

  (1) Before passing a by-law under Part XII of the Act to impose fees or charges, a municipality or local board shall ensure that notice of the intention of the municipality or local board, as the case may be, to pass the by-law at the council meeting specified in the notice is given to every person and organization that has, within five years before the day of the council meeting, given the clerk of the municipality or secretary of the local board, as the case may be, a written request for notice of the intention to pass the by-law containing a return address.

- Since no specified notice period is prescribed in section 14, and the section does not specifically require general notice or that a public meeting be held, a notice period of 4 days is deemed reasonable.

- Because the City Clerk has not kept a list of persons and organizations requesting notice of intention to pass a fee or charge by-law under this section, Legal has determined that general notice be given in ensure compliance.

- Posting a general notice and a list of new fees and charges and those fees ad charges recommended for increase during the budget process is deemed sufficient.

- Legal staff advised that the list should include a description of the fee or charge and the name and telephone number of a Department / Program contact qualified to answer question and provide additional information to the general public.

- For the 2004 budget process, it has been proposed that a minimum notice of four days from the date of the joint BAC and P&F meeting scheduled for March 30, 2004 would suffice.

- Request to depute on fees and charges referenced in the general notice above must be heard at the P & F Committee scheduled for March, 30 2004.

- To ensure compliance with the notice requirement under the Act, the City Clerks protocols include the following:

  - If there is a list of interested parties, notice is to be given when the agenda for the Committee meeting is published or the fourth working day before the Committee meeting, whichever is earlier.

  - Program staff, in consultation with Legal staff, prepares a draft notice which includes all the required information and contacts the Committee Administrator no later than the day of agenda closing before the Committee meeting to confirm date, time and place of the meeting.

- The notice must provide a link to the staff report if available, or a list of fees and charges being recommended as part of the budget process. Therefore Program staff need to provide a copy of the report to the Administrator at the same time.

- The Administrator reviews the draft notice and checks that information regarding the meeting is correct and forwards the final version to Media Buying (to the generic e-mail address) for posting on the City's Web Site no later than 4 business days prior to meeting.

- Media Buying provides the Administrator with confirmation of the date when the notice was posted to the City's Web Site.

- The Administrator ensures that copies of the notice and report are mailed to anyone requesting such notice within the previous 5 years, post-marked no later than **5 business days** prior to meeting.

- If an individual or organization gives the clerk a written request for notice of the passing of the by-law after such notice has been posted as described above, then Clerk's will provide them with a copy of the notice and add their particulars to the database for future reference.

**Establishing and Maintaining a List of Fees and Charges for Public Inspection**

- The Municipal Act, 2001 require a municipality to establish and maintain a list for public inspection indicating which of its services and activities and the use of which properties will be subject to fees or charges and the amount of each fee or charge.

- An interim list is currently posted on the Web. To comply with the Act, the interim list must be updated to include all fees and charges along with the respective amount of each fee or charge.

**By-Law to Introduce New Fee or Charge, or to Change Existing Fee or Charge:**

- Council must pass a by-law to introduce a new fee or charge or to increase an existing fee or charge.

- If introduced through the budget process, a separate recommendation addressing new and / or change to fees and charges and referencing each such fee and / or charge must be included in the Corporate Budget Report put before Council.

**Date:** February 7, 2004