

AUMA Submission on the Offsite Levies Regulation

AUMA used the discussion guide provided by Municipal Affairs and working group discussions to develop a response in the form of questions and answers to specific issues that will need to be addressed in the regulation regarding the collection of offsite levies for police stations, fire halls, libraries, and community recreation facilities.

Discussion Question #1: Scope

How should the new services provided for under the Act (community recreation facilities, fire halls, police stations and libraries) be defined, what is included?

- An offsite levy for any of these facilities may be collected when new development in a community necessitates increased service. This increased service may be accomplished in different ways in municipalities across the province, so the province needs to ensure that it allows for flexible approaches. As such, the regulations need to be flexible enough to allow for local solutions that meet the needs of the community and that evolve over time as standards and requirements change. Specifically:
 - There should not be a prescriptive list in the regulation that states what the scope of a facility may cover. However, a reasonable link to studies supporting the standards and long term development plans for the particular service would be appropriate.
 - A municipality should have the flexibility to determine the community's desired level of service, and outline their intention in their planning documents (e.g. master plans, capital plans, statutory plans and municipal policies).
- The offsite levy calculation should be directly proportional to the required increase in services and include all capital costs including those for land in addition to the building itself.
- The scope of these facilities should:
 - allow for all capital costs, including land servicing;
 - allow flexibility in what is allowable in terms of a community recreation facility that provides for both indoor and outdoor recreation (e.g. tennis courts, playgrounds, spray-parks etc.) that are used by the new development;
 - include new greenfield developments, as well as renovations, or expansions to existing infrastructure. For example:
 - A fire hall in a community may be able to meet the increased demand of new growth by adding an additional bay, or a recreation facility may need to add additional square footage to allow for increased attendance, or a library may need to add floor space for additional book stacks.
 - In contrast, in another situation, a new subdivision may require all brand new facilities to address the growth.
 - Allow for the ancillary pieces to the infrastructure to be eligible. For instance, in a library there may be spaces dedicated to community learning – these should be included as they form part of the current use of a library.

- Allow for improvements to service capacity that do not require physical expansion of the facility
- Redevelopment levies should be allowable - currently, an offsite levy for these new facilities can only be charged for each type of infrastructure once. This will become problematic in redevelopment areas where an increase in intensity requires an increase in services, yet a levy cannot be charged.

Should there be a standard for infrastructure covered by offsite levies?

- Each municipality will require varying levels of service for their municipality. Thus the calculation of the levy would also need to be flexible for a municipality to utilize these provisions.
- The level of standard that the municipality requires should be set out in a planning document and determined locally by council. This is because:
 - It is up to the municipality to determine what their needs are in a facility and what level of service is desired by its residents and the determination in a planning document should serve as the level of acceptable development.
 - It is likely that even with the new offsite levy provisions, municipalities will still be paying for the majority of the cost of the facility. Municipalities will therefore remain accountable to their residents and will not spend frivolously on “nice to haves” just because a portion of the facility is covered by an off-site levy.
 - Choosing the cheapest capital cost facility or equipment could result in higher life cycle costs for operations.

Discussion Question #2: Calculation

How can the 30% threshold be calculated?

- The requirement for a facility to benefit at least 30% of the population is an arbitrary and unnecessary threshold and should be removed. The municipality should be allowed to charge a proportional amount as has been used in the past for offsite levies for water, sewer, and roads.
- The regulation should include the ability to include financing costs and ensure that net present value of costs are allocated.
- If the 30% threshold is not removed, the regulation should clearly set out the outcome and what constitutes proof and who has the necessary burden of proof in terms of the 30 % benefit. The municipality’s costs associated with calculating the benefit should be added to the cost of the levy.

Discussion Question #3:

When should an offsite levy be collected?

- Timing should be at the discretion of the municipality as set out in their bylaw.
 - A municipality may choose to collect a levy at the subdivision stage, and at the development permit stage for infill development.
- This flexibility would allow the municipality to face various situations, for instance:
 - Single family subdivisions could have a levy imposed at the subdivision stage. If a municipality chooses to postpone the payment beyond endorsement, the municipality assumes the risk of default of payment. The municipality, in its sole discretion, would then need to determine the level of risk they are prepared to assume in this regard and the amount of security that will be required for any deferred payments.
 - For multi-family developments, the municipality could postpone the determination of levies to the development permit stage of development.

Should there be a provision that sets out when a facility needs to be constructed?

- No as there are several factors beyond a municipality's control that affect timing. For example, a municipality may have a capital plan that sets out an expected construction period but this would be impacted when the province changes its committed capital funding each year as part of the annual budget. As well, other factors such as economy, population size, migration etc. fluctuate and a project may need to be delayed or advanced based on these factors.
- If the province implements a provision that sets out when a facility needs to be constructed, the trigger for development could be population growth or density and the required infrastructure that aligns with a municipality's planning documents and capital plan.

Discussion Question #4: Benefitting Area

How can a municipality determine the benefitting area?

- In order for this regulation to serve communities across the province with differing population sizes and development growth, there needs to be a broad opportunity for the municipality to determine who benefits from the facility and how the 30% threshold can be reached.
- Presently offsite levies cannot be collected regionally. Permitting intermunicipal off-site levies between jurisdictions would allow for a more coordinated regional approach and allow neighbouring municipalities to share a common philosophy and better support the development of projects.
 - The regulation should specifically allow municipalities to charge an offsite levy to support a facility in a neighbouring municipality and transfer the funds to that municipality where the facility is supported by appropriate studies and either a separate agreement in respect of cost sharing or as part of an ICF

Discussion Question #5: Administration

What level of planning needs to be demonstrated?

- Funds collected from a levy should be spent only on the infrastructure that it was intended for when the levy was collected. If a municipality decides to not go ahead with a building, there should be a mechanism to refund the development or an acceptable use for the funds.
 - Municipalities should also be able to use accounts from different types of infrastructure to reduce financing costs. If municipalities could utilize funds collected for infrastructure that is “lagging” to fund the costs for “leading” projects, the funds can be utilized to their maximum potential.
- Any facility built by the municipality that is expected to gather funds from an offsite levy should be included in the municipality’s planning documents, whether a capital plan, area structure plan, or some other document that demonstrates the need for the facility and the expected benefit area.
- The inclusion of the facility in a capital plan would demonstrate the municipality’s projected planning to pay for the facility beyond what would be collected by an offsite levy.
- These plans could incorporate feedback from the development industry, which would ensure clarity and buy in.

What level of reporting is required? How can the regulations increase accountability?

- There are provisions in the existing regulations that state the levy is subject to annual reporting requirements, and that the information used to calculate the levy be kept current.
- The regulation should consider how municipalities will:
 - collect funds (when are funds collected, how are debentures dealt with, what interest rates should levy models incorporate);
 - use levy funds (how are levies utilized, how do programs function before a community is built out);
 - set timelines for reporting (minimum presentation and reporting requirements); and
 - calculate offsite levy provisions
- It is reasonable for a municipality to regularly report on the projects slated for development and how the offsite levy is to be used for these projects.
- Further, a municipality should regularly examine the offsite levy bylaw to determine if the calculations remain relevant and amend the bylaw accordingly.
- These reporting provisions would enhance the accountability to both industry and the public to create confidence in the process and ensure that funds collected for the purpose of providing services are being used as such and further to ensure that the calculations of a levy are utilizing current information.

Discussion Question #6: Appeals

What should the dispute resolution mechanism include or consider in handling offsite levy disputes?

- The new appeal provisions in the Act should be removed. The current offsite levies for services such as water, sewers, and roads are not subject to an appeal and this should extend to community service facilities as well. The dispute mechanism for these levies is through the Court of Queen's Bench which rules on matters of law or jurisdiction. This process is sufficient and would preserve a municipality's autonomy and continue to allow certainty of operations for the municipality while providing a mechanism for developers to seek recourse for offsite levies that are in contravention of the Act.
- Allowing the MGB to impose an offsite levy bylaw on a municipality runs counter to the principle of municipal autonomy.
- Additionally it is important to keep consistency in appeal processes and it would be confusing to have two set of rules and processes for the collection of offsite levies.
- Although we do not agree with the new appeal provisions provided for in the Act for the MGB to repeal a bylaw adopted by council we understand that there are two options of appeal in terms of the offsite levy provisions, that of the appeal of the bylaw itself, and second, the application of the bylaw.
- The appeal period for the bylaw should be a relatively short time frame (30-60 days) that allows time for an appeal yet still allows a municipality to continue operations.
 - To allow for an open ended period of appeal of the bylaw would be a dangerous precedent to set and would hinder operations of a municipality.
 - There needs to be certainty around municipal bylaws that provide clarity for council, municipal administration, industry, and the public.
- There also needs to be clarity around who has jurisdiction to hear an appeal surrounding the application of an offsite levy.
 - After the bylaw appeal period has passed, appeals should not speak to the actual provisions of the bylaw, but only how it is applied in a certain case.
- Any appeal process needs to consider a model that mitigates challenges and delays that an appeal would create, yet provide the necessary background that would be acceptable to the MBG. For example:
 - Process, timelines, statutory impact, and precedence impact should be clarified;
 - If a municipality is ordered to repeal or amend a bylaw will the scope of the amendment be delineated during the appeal;
 - The Board should delineate timelines for the implementation of an amendment;
 - Whether a council is required to vote in favor of any amendment brought on through recommendation from an appeal Board needs to be clarified.
- Minor updates to an offsite bylaw should not open the bylaw up to an appeal. A municipality that actively updates their bylaws to reflect current trends and inflation should not be penalized by reoccurring appeals.

Off-Site Levies Regulation REVIEW 2016

Stakeholder Discussion Sessions

October 26, 2016

Outcome and Purpose Statement

Purpose

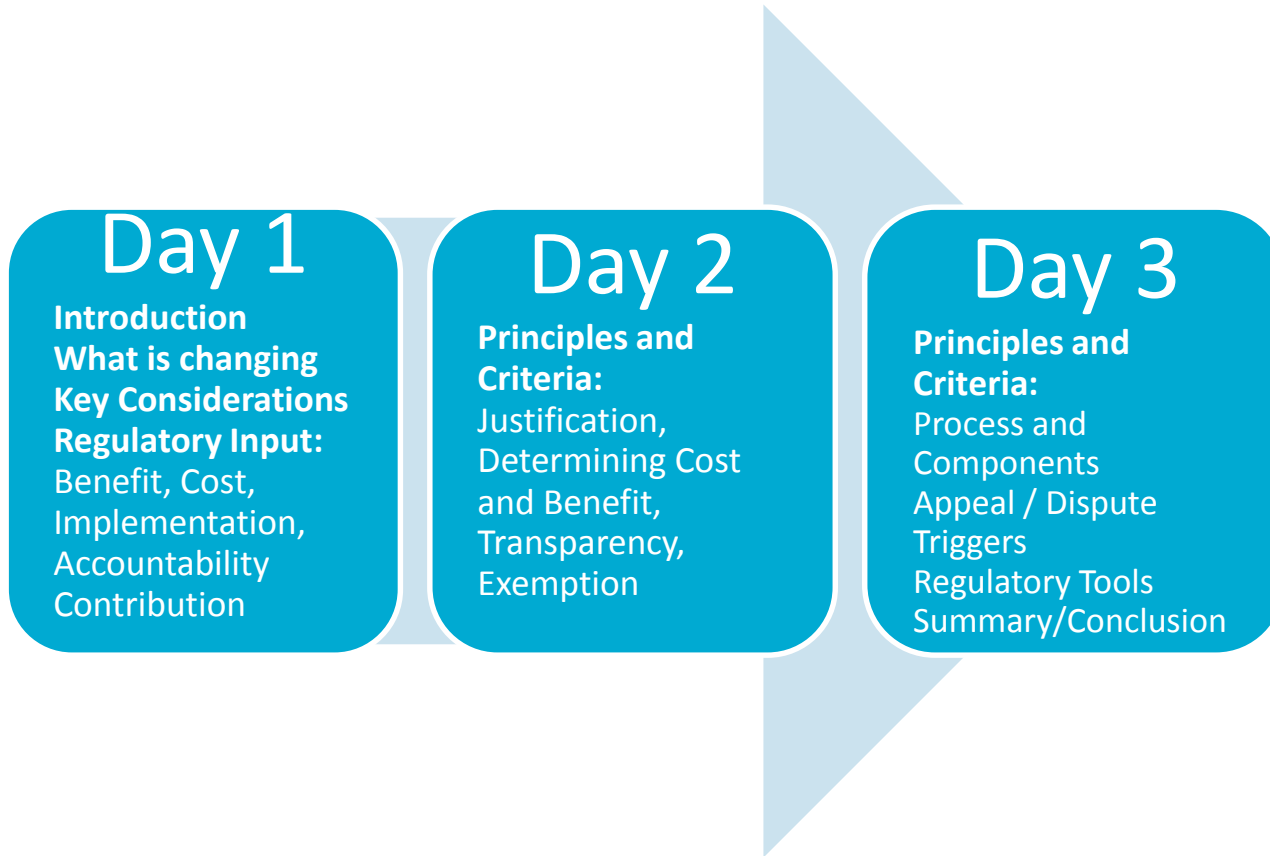
To acquire stakeholder input on need for change in existing provisions of the Off-Site Levy regulation and the proposed new expanded scope of provisions for benefiting area - addition of four new facilities in the scope of Off-Site-Levis (OSL).

Outcome

Input on key concepts including:

- Updating the list of existing Principles.
- Establishing a list of Criteria.
- Differentiating between principles and criteria.
- Ensure a balance between practical flexibility versus prescription.
- Ensure appropriate accountability and transparency.

Sessions and Discussion Flow



What's Changing

Key Elements of *MGA's* proposed Off-Site Levy Provisions (Bill 21):

648 (2.1) In addition to the capital cost of facilities described in subsection (2), an off-site levy may be used to pay for all or part of the capital cost for any of the following purposes, including the cost of any related appurtenances and any land required for or in connection with the purpose:

- (a) new or expanded community recreation facilities;
- (b) new or expanded fire hall facilities;
- (c) new or expanded police station facilities;
- (d) new or expanded libraries.

(2.2) Subject to an appeal under section 648.1,, and (b) at least 30% of the benefit of the purpose, as determined under the regulations, is anticipated to benefit the future occupants of the land on which the off-site levy is being imposed.

What's Changing (Continued ...)

Key Elements of *MGA's* proposed Off-Site Levy Provisions (Bill 21):

Appeal of off-site levy

648.1(1) A person on whom an off-site levy is imposed ..., or any other person affected by the levy, may, ..., appeal ... to the Municipal Government Board on any of the following grounds:

- (a) that the purpose for which the off-site levy was imposed is unlikely to benefit future occupants of the land ...;
- (b) that the principles and criteria referred to in regulations ... that must be applied by a municipality when imposing an off-site levy ... have not been complied with;
- (c) that the levy or any portion of it is not for the payment of the capital costs of the purposes, ...;
- (d) that the calculation of the levy is incorrect;
- (e) that a levy for the same purpose has already been imposed...

What's Changing (Continued ...)

Key Elements of Proposed *MGA's* proposed Off-Site Levy Provisions (Bill 21):

Appeal of off-site levy

648.1(2) After hearing the appeal, the Municipal Government Board may

- (a) dismiss the appeal in whole or in part;
- (b) order the municipality to repeal or amend the bylaw ...;
- (c) repeal or amend the bylaw ...;
- (d) if the calculation of the off-site levy is incorrect, correct the calculation or order the municipality to correct the calculation ...

648.1(3) Where a bylaw amends the amount of an off-site levy, an appeal under this section may be brought only with respect to the amendment.

Regulatory Input – Discussion Session

The Group is invited to provide their input to the Minister based on the questions and topics outlined here.

Discussion on Principles

Q1 – Of the existing principles in the Act, which one are better suited to be principles and/or criteria?

Q2 – Are there any additional principles / criteria that may be defined in the regulation?

Q3 – For further clarity, do you need any edits to existing principles?

Q4 – With respect to identified criteria:

- (i) What changes do we want to make in existing wording?
- (ii) Is there any new criteria that should be added to address new provisions – benefiting area?

Regulatory Input – Discussion Session

The Group is invited to provide their input to the Minister based on the questions and topics outlined here.

New Facilities: Recreation Centre, Fire Hall, Police Station, Library

Defining Benefiting Area

Q5 – What type of information is necessary for the municipality to determine benefiting area for a recreation centre?

Q6 – What type of information is necessary for the municipality to determine benefiting area for a Fire Hall?

Q7 – What type of information is necessary for the municipality to determine benefiting area for a Police Station?

Q8 – What type of information is necessary for the municipality to determine benefiting area for a Library?

Q9 – Is there any general criteria to determine benefiting area for new facilities?

Regulatory Input – Discussion Session

The Group is invited to provide their input to the Minister based on the questions and topics outlined here.

New/Additional Facilities: Recreation Centre, Fire Hall, Police Station, Library

Defining Benefiting Cost

Q10 – What should be the consistent set of considerations for determining a new facilities project?

Q6 – How need for an additional facility determined?

Q12 – How do we determine scope and cost of new facilities

Q13 – How do we determine who should be serviced from a new facility?

Q14 – Are we in agreement that service area can be converted into benefiting area?

Q15 – Can we think about a practical criteria to determine cost and servicing area of the new facilities?

Regulatory Input – Discussion Session

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Process for Implementing Off-Site Levies

Q16 – Are there any implications on general land use bylaw as a result of changes in the regulation?

Q17 – Is there anything to be defined which is not defined right now?

Regulatory Input – Discussion Session

The Group is invited to provide their input to the Minister based on the questions and topics outlined here.

Accountability and Transparency

Q18 – What additional criteria, as specific to existing and new provisions we should consider for transparency purposes in terms of:

- (i) Collection of levy funds**
- (ii) Use of levy funds**
- (iii) Reporting**

Q19 – Should the additional facility be part of an already existing statutory plan to qualify for benefiting cost contribution?

Regulatory Input – Discussion Session

The Group is invited to provide their input to the Minister based on the questions and topics outlined here.

Appeals

Q20 – Levy can be appealed to the Municipal Government Board. What additional provisions relating to appeal provision need to be provided for in the regulation

Q21 – How long after an offsite levy bylaw is passed should the appeal period be open for?

Thank You for attending today's session!