

# Municipal Government Act

progressive powers for municipalities

## INFORMATION BULLETIN #26

### INFRASTRUCTURE CHARGES

**Summary:** Municipalities may include provisions for infrastructure charges in their subdivision by-laws if authorized in the municipal planning strategy.

**Legislation:** Municipal Government Act (MGA) - Sections 274, 275, 276  
Halifax Regional Municipality Charter (HRMC) - Sections 284, 285, 286

**Discussion:** Infrastructure charges, sometimes referred to as off-site or development charges, are charges that may be imposed on a subdivider to cover all or part of the capital costs of certain specified services, incurred or anticipated to be incurred, that may be necessary because of the development of a new subdivision. These charges are applied to services located outside the area of land being subdivided.

In order to levy an infrastructure charge, there must be policy support in a municipal planning strategy. Unless the planning strategy authorizes the use of infrastructure charges, they may not be levied. Next, the infrastructure charges provisions must be set out in the subdivision by-law. The subdivision by-law must identify the areas in which the infrastructure charges are levied, the purposes for which the charges are to be levied, and the amount of the charge or the method of calculating the charge (i.e. formula): MGA s.274(3), HRMC s.284(3).

#### Purposes

The facilities for which infrastructure charges may be levied are:

- new or expanded water systems
- new or expanded wastewater facilities
- new or expanded stormwater systems
- new or expanded streets
- upgrading intersections, new traffic signs and signals, and new transit bus bays

***Each charge should be set and identified separately according to purpose (i.e. water systems, streets, etc.).***

Costs that may be included in the capital costs of these services are land, planning, studies, engineering, surveying and legal costs.

An infrastructure charge must be used for the purpose for which it was collected: MGA s.274(6), HRMC s.284(6). That is, if a charge is levied for improvements to stormwater systems, that is what the money must be spent on.

### **Charges**

Infrastructure charges may be set at different levels related to the proposed land use, zoning, lot size and number of lots. If infrastructure charges are to vary, the precise way in which they will vary in different circumstances must be set out in the subdivision by-law. Charges for capital costs that are anticipated but that have not yet been incurred should be based on reasonable estimates developed with advice from appropriate professionals, such as, engineers. Anyone proposing to subdivide should be able to calculate the charge from the by-law: MGA s.274(4), HRMC s.284(4). That is, if the by-law does not set out a specific charge per lot, it must include a formula for calculation of the charge.

Infrastructure charges may not be levied if they have already been collected for the same land unless further subdivision will impose additional costs: MGA s.274(5), HRMC s.284(5).

Trunk sewer taxes levied under previous legislation (e.g. *Municipal Act*, s.122; *Towns Act*, s.112) are deemed to be infrastructure charges: MGA s.274(9), HRMC s.284(9). The proceeds from trunk sewer taxes must accordingly be spent only for trunk sewer purposes. *Any changes to a trunk sewer tax will have to be made by way of amendment to the subdivision by-law.* Any municipality that formerly levied a trunk sewer tax should take steps to integrate that tax with its subdivision by-law.

### **Collection**

Infrastructure charges are payable by the subdivider before final approval is given for the subdivision: MGA s.274(7), HRMC s.284(7). In order to allow for some flexibility, legislation authorizes an infrastructure charges agreement (MGA s.275, HRMC s.285) to provide for the payment of the charges over time and permit final approval, and sale of lots, before the charges are paid in full.

The agreement may

- allow the payment of the charges by installments
- allow an applicant to pay the charges in kind, through the provision or extension of services
- provide for security to ensure the charges are paid when due.

The subdivision by-law should include a determination of the circumstances in which an infrastructure agreement will be entered into, as well as the general terms that should be in the agreement: MGA s.275(2), HRMC s.285(2).

Infrastructure charges are a lien on the land subdivided: MGA s.274(8), HRMC s.284(8). Accordingly, they will show on a tax certificate. The infrastructure agreement is binding on the land subdivided and must be registered in the registry of deeds. It binds the individual lots in the subdivision to the extent specified in the agreement: MGA s.276, HRMC s.286. That is, the statute would allow a provision whereby the municipality and the subdivider would agree to release lots individually from the agreement as they are sold, on payment of an appropriate portion *by the original subdivider* of the total amount outstanding. The agreement should also provide for interest on the outstanding balance, and a time period in which all charges must be paid, regardless of the number of lots sold.

In determining the appropriate portion of the total charge payable with respect to each lot, the municipality will probably want to see that the full charge is paid sometime before the last lot is sold. The proportion would therefore be somewhat higher than the average amount due for each lot.

**Related:**

See Section 3(2)(b) of the Department of Municipal Affairs *Financial Reporting and Accounting Manual* for discussion on accounting treatment.

**Note:**

The reader is cautioned that preparation of this and subsequent Information Bulletins containing practical suggestions must necessarily involve interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should be made to the *Municipal Government Act* or the *Halifax Regional Municipality Charter*, other relevant legislation and to legal advisors.