

Policy on Quantifying In-Kind Payments for Encroachment Agreements

Date:	May 21, 2008
To:	Public Works and Infrastructure Committee
From:	General Manager, Transportation Services
Wards:	All Wards
Reference Number:	Pw08020te.row

SUMMARY

City Council, in considering a request from the Royal Ontario Museum to waive the annual permit renewal fee for the encroachment of a portion of the Michael Lee-Chin “Crystal” structure over the City’s street allowance requested that this matter be reviewed in the context of Council’s policies of community benefits relating to development approvals. We have concluded that these fees for encroachments are not analogous to donations or benefits derived in exchange for height or density considerations for development applications.

Requests to waive the annual permit renewal fees for encroachments are highly infrequent (less than one per year on average) and the circumstances in each case are unique. While staff does not recommend waiving the fees or substituting some other manner of meeting this obligation, it is recommended that Council continue to review any such requests on the basis of their individual fact situation and merits.

A separate report has also been submitted to Toronto and East York Community Council in order to arrive at determination on the Royal Ontario Museum’s specific request.

RECOMMENDATION

Transportation Services recommends that City Council:

1. Maintain the status quo related to the application of annual permit renewal fees for private encroachments within the City’s public streets and consider requests for waiving such fees that may be received from time to time from cultural or other similar institutions on their individual situation and merits.

Financial Impact

Financial impact associated with maintaining the current approach of reviewing the infrequent requests to waive encroachment fees on a case by case basis as they arise would be minimal.

DECISION HISTORY

City Council, at its meeting of April 23 and 24, 2007, considered the matter, “Request to Waive Encroachment Fee – 100 Queen’s Park Crescent – Royal Ontario Museum” (Item TE4.18). In response to a request from the Museum, the Toronto and East York Community Council recommended that the annual encroachment permit renewal fee (\$2,400) for the portion of the Michael Lee-Chin “Crystal” structure which extends within the public road allowance of Bloor Street West, be waived on condition that the ROM provide five community placements per year to the Principal of Ryerson Public School in the March Break Camp.

Council referred the Item to the City Manager for a report to the Planning and Growth Management Committee on a policy of receiving and quantifying in-kind payments for encroachment agreements, such report to be concurrent with the previously requested report on community benefits relating to development approvals.

This report was originally directed to the Planning and Growth Management Committee. However, on reviewing the various background reports and policies, in consultation with staff who had involvement in assessing and reporting on community benefits, donations and development approvals, it is evident that the matter of encroachments into the public road allowance and associated annual permit renewal fees is not analogous with the City’s policies on donations or community benefits related to development. Accordingly, this matter is appropriately within the purview of the Public Works and Infrastructure Committee.

Staff are submitting a separate follow-up report on the ROM’s specific request to Toronto and East York Community Council. This will enable the fee waiver request to be considered by City Council in the context of the overall policy direction, whether it remain as status quo as recommended in this report or amended by Committee or Council in some other manner.

COMMENTS

Previous Reports on Community Benefits relating to Development Approvals

By way of background City Council, at its meeting of September 25, 26, 27 and 28, 2006, in considering, “Policy on Donations to the City for Community Benefits” (Clause No. 3 of Report No. 7 of the Policy and Finance Committee), among other things, adopted a policy for such donations. This policy acknowledges that voluntary donations to the City, its agencies and other organizations provide important contributions to City

building. It is equally important that donations occur in a manner that does not call municipal decision making processes into question, and donations should occur at arms length from decision making process. In addition to enacting the policy, Council also requested the City Manager to report further on donations and Section 37 benefits.

Through 2005 and 2006, City Planning staff engaged in an extensive process of developing Proposed Section 37 Implementation Guidelines, in connection with the new Official Plan provisions. Proposed Section 37 Implementation Guidelines as set out in a March 12, 2007 staff report, were referred by City Council at its May 23 and 24, 2007 meeting to the City Manager, to be brought back for Council consideration when the Official Plan Amendment on Heritage District studies is before Council (Item PG3.3). Subsequently, Council, at its meeting of November 19 and 20, 2007, approved Section 37 Implementation Guidelines (Item PG10.2). The Guidelines as set out in the staff report (September 18, 2007) under this Item note that facilities, services or matters (community benefits) obtained through height and/or density incentives are secured pursuant to Section 37 of the Planning Act. This authorizes the municipality with appropriate Official Plan provisions to pass zoning by-laws involving increases in height or density in return for the provision by the owner of community benefits.

Annual Permit Renewal Fees for Encroachments

Encroachments of private uses or structures into the City's public street allowances is contemplated in the various Municipal Code Chapters/By-laws related to Streets. While the encroachment of private structures from abutting properties is not encouraged, it is recognized that circumstances can lead to the need for these incursions, for a variety of reasons, particularly in the dense downtown area. City Council, at its meeting of February 4, 5 and 6, 2003, authorized the extension of a portion of the "Crystal" structure over the City's street allowance on Bloor Street West, subject to, among other things, the payment of the annual permit renewal fee (Clause No. 38 of Report No. 1 of Toronto and East York Community Council). An Encroachment Agreement between the City and the Royal Ontario Museum was subsequently executed in 2004.

Currently, some 22,000 encroachment agreements are in effect, involving items within the City street allowance of varying type and magnitude. A standard menu of annual permit renewal fees established by City Council and contained in Municipal Code Chapter 441-Fees, for this privilege is applicable. The nature of this fee is very different from a donation or the provision of community benefits in exchange for increased height or density in the context of a development project.

With respect to waiving of annual permit renewal fees, such requests are highly infrequent (average of less than one per year), and when they do arise, the circumstances in each case are unique. While staff would not recommend waiving the fee or substituting some other manner of meeting this obligation, it is acknowledged that Council may wish to consider the merits of an individual request. Accordingly, we do not feel it is necessary at this time to develop a policy for waiving the permit renewal fee for encroachments, and that Council continue to review these matters based on their relevant fact situations.

For the information of Committee and Council, it is noted that a number of cultural institutions are subject to encroachment licence fees, including the Four Seasons Centre for the Performing Arts and Ontario College of Art and Design. On the other hand, a minimal number of waivers (St. Michael's Hospital for instance) have been granted by Council.

Royal Ontario Museum Request

The specific request to waive the annual permit renewal fee was not addressed by Council at the time it considered Item TE4.18. The referral of the policy aspect is under the purview of Public Works and Infrastructure Committee, however, the application must still be addressed through Community Council. In this regard, staff have submitted a separate report to Toronto and East York Community Council in order that the matter is brought back before Council for disposition.

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