

2021 Levy on Railway Roadways and Rights-of-Way and on Power Utility Transmission and Distribution Corridors

Date: June 3, 2021
To: Executive Committee
From: Controller
Wards: All

SUMMARY

This report seeks Council authority for the introduction of the by-law necessary to levy and collect taxes for the 2021 taxation year on railway roadways and rights-of-way and on land used as transmission or distribution corridors owned by power utilities, totalling approximately \$7.05 million in taxation revenue, of which the municipal share is \$6.54 million and the provincial education share is \$0.51 million.

The 2021 levy has decreased from the 2020 levy total of \$7.1 million (with a \$6.6 million municipal share and a provincial education share of \$0.5 million) due to a reduction in the 2021 total acreage subject to this levy. For 2021, the property tax rates for railway rights-of-way and hydro corridors remain unchanged from 2020.

Taxation of railway lands varies across Canada, with some provinces utilizing a per-acre rate for railway lands, and most western provinces using tonnage per linear kilometre rates. In Ontario, per-acre rates are not increased annually. From 2005 to 2016 railway rates remained static, followed by modest rate increases in 2017 and again in 2018, with no rate increases since. If railway and hydro rates had been indexed to inflation to reflect increases in the Consumer Price Index in each year since 2005, an additional \$2.2M would be generated from the levy in 2021, including an increased in the municipal portion of revenues of approximately \$1 million.

RECOMMENDATIONS

The Controller recommends that:

1. City Council authorize the levy and collection of taxes for the 2021 taxation year on railway roadways and rights-of-way and on land used as transmission or distribution corridors owned by power utilities, in accordance with subsection 280 (1) of the City of Toronto Act, 2006 and subsection 257.7 (1) of the Education Act.

2. City Council receive Attachment 2: Acreage and Tonnage Taxation Systems of this report for information.

FINANCIAL IMPACT

The 2021 levy of taxes on railway roadways and rights-of-way and on power utility transmission or distribution corridors will raise approximately \$7.05 million, of which the municipal share is \$6.54 million and the provincial education share is \$0.51 million.

The total municipal share of the 2021 levy of \$6.54 million is consistent with the approved 2021 Non-Program budget revenue estimate of \$6.55 million. Comparatively, the total revenue for 2020 was approximately \$7.1 million, of which the municipal portion was \$6.6 million and the provincial education portion was \$0.5 million.

Table 1, below, summarizes the acreage rates prescribed by the Province, the total acreage for each group of properties, and the resulting 2021 and 2020 levy on railway roadways or rights-of-way and on power utility transmission or distribution corridors.

Table 1: Levy Amounts for 2021 and 2020 on Railway Rights-of-Way and on Power Utility Transmission or Distribution Corridors

	Municipal Rate per Acre	Education Rate per Acre	Total Rate per Acre	Acreage	Municipal Levy	Education Levy	Total Levy
2021 Levy							
Canadian National Railway	\$624.33	\$822.69	\$1,447.02	125.58	\$78,403	\$103,313	\$181,716
Canadian Pacific Railway	\$624.33	\$822.69	\$1,447.02	494.00	\$308,419	\$406,409	\$714,828
Power Utility – Hydro One	\$834.02	\$1,208.66	\$2,042.68	2,712.46	\$2,262,246	\$3,278,442	\$5,540,688
Metrolinx	\$624.33	\$0.00	\$624.33	975.53	\$609,053	\$0	\$609,053
Total				4,307.57	\$3,258,121	\$3,788,164	\$7,046,285
Adjusted Total (City retaining Education share of Hydro One levy)¹					\$6,536,563	\$509,722	\$7,046,285
2020 Levy							
Canadian National Railway	\$624.33	\$822.69	\$1,447.02	126.58	\$79,028	\$104,136	\$183,164
Canadian Pacific Railway	\$624.33	\$822.69	\$1,447.02	493.99	\$308,413	\$406,401	\$714,814
Power Utility – Hydro One	\$834.02	\$1,208.66	\$2,042.68	2,720.99	\$2,269,360	\$3,288,752	\$5,558,112
Metrolinx	\$624.33	\$0.00	\$624.33	975.38	\$608,959	\$0	\$608,959
Total				4,316.94	\$3,265,760	\$3,799,289	\$7,065,049
Adjusted Total (City retaining Education share of Hydro One levy)¹					\$6,554,512	\$510,537	\$7,065,049

1. For Hydro One properties, the City retains the education portion of taxes. In the rows labelled "Adjusted Total", the education portion for Hydro One properties has been included in the Municipal Portion of taxes. Prior to April 1, 1999, under a revenue sharing arrangement for Ontario Hydro properties, the City retained both the education and municipal portions of taxes. Section 361.1 of the *Municipal Act* was amended effective April 1, 1999 to establish that the taxes payable were included in the definition of payment-in-lieu (PIL) properties. This allowed the City to continue to retain both the municipal and education portion of taxes, and this has been continued under the *City of Toronto Act, 2006*.

Table 2 provides a comparison of the change in acreage and levy from 2020 to 2021. For 2021, the per-acre rate for railway roadways and railway rights-of-way will remain at the 2020 levels of \$624.33.

Table 2: Change in Levy from 2020 to 2021

Company Name	Acreage	Municipal Levy	Education Levy	Total Levy
Canadian National Railway	-1.00	-\$624	-\$823	-\$1,447
Canadian Pacific Railway	0.01	\$6	\$8	\$14
Power Utility – Hydro One	-8.53	-\$7,115	-\$10,310	-\$17,425
Metrolinx	0.15	\$94	\$0	\$94
Total	-9.37	-\$7,639	-\$11,124	-\$18,764
Adjusted Total (City retaining Education share of Hydro One levy)		-\$17,949	-\$814	-\$18,764

Overall, the net revenue retained by the City for 2021 has decreased by \$18,764 from 2020. The net decrease is the result of decrease in total acreage of railway roadways and hydro corridor rights-of-way from 4,316.9 acres in 2020 to 4,307.6 in 2021 (representing a net decrease of 9.3 acres).

There are no financial impacts arising from the Acreage and Tonnage Taxation Systems sections of this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

At its meeting held July 12, 13, 14, and 15, 2016 City Council, in adopting Executive Committee Report [EX16.23: "2016 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors,"](#) authorized the levy and collection of taxes for the 2016 taxation year. At this meeting, City Council also adopted recommendations to request the Province of Ontario to enact regulations to prescribe a levy reflecting inflationary increases since 2005 and to adjust the rate annually to reflect an average annual inflationary increase.

The [2016 Ontario Economic Outlook and Fiscal Review](#) announced that the Province had initiated a review of the property taxation of railway rights-of-way in response to municipal requests. As part of the review, the Province held consultations with municipalities and representatives of the railway industry. Based on these consultations, in the 2017 Ontario Budget, the Province announced that it was taking action to address issues related to indexation of rates, variation in rates and implications for shortline railways. For 2018, the Province made further rate adjustments as part of its commitment to modernizing the property taxation of railway rights-of-way.

At its meeting held on December 5, 2017 City Council adopted [Item EX29.43: Municipal Property Taxation for Railway Rights-Of-Way.](#)

At its meeting held on April 24, 2018 City Council adopted [Item EX33.13: Acreage and Tonnage Taxation Systems for Railway Rights-Of-Way](#), which recommended the following:

1. City Council request the Treasurer to continue to work with the Ministry of Finance and other municipalities to explore the implementation of a taxation formula that incorporates both acreage and tonnage based rates resulting in a taxation rate that is greater than the current annual taxes.
2. City Council request the Treasurer to enter into discussions with the Railway Association of Canada and Railway Companies to explore the implementation of an acreage and tonnage based taxation formula and to report back to the Executive Committee in the first quarter of 2019.

At its meeting held on July 16, 17 and 18, 2019 City Council, in adopting [Item EX7.20: 2019 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors](#), authorized the levy and collection of taxes for the 2019 taxation year. At this meeting, City Council also adopted the following recommendations in regards to acreage and tonnage taxation systems:

3. City Council request the Chief Financial Officer and Treasurer to include the following information in future annual reports:
 - a. the potential additional income the City of Toronto could receive if the levy was based on a rate per tonnage as opposed to a rate per acreage;
 - b. a review of how the Provinces of Alberta, Manitoba, Saskatchewan and Quebec tax railway right-of-way properties within their boundaries;
 - c. a summary of what revenues the Cities of Calgary, Regina, Winnipeg and Montreal receive through railway taxation; and
 - d. following consultation with the Railway Association of Canada on what their membership's current practice is in the Canadian Western Provinces in terms of self-reporting their traffic, information on how a similar practice could be adopted in the Province of Ontario if a tonnage-based system similar to the Western Provinces was adopted.
4. City Council forward the Item to the Ontario Good Roads Association, the Association of Municipalities of Ontario and the Federation of Canadian Municipalities for their information.

ISSUE BACKGROUND

Ontario Regulations 387/98 under the *Municipal Act, 2001* (continued by O. Reg. 121/07 under the *City of Toronto Act, 2006*) and O. Reg. 392/98 under the *Education Act*, as amended, have prescribed the applicable rates for railway and power utility rights-of-way acreage levies since 1998. Beginning in 1998 and ending in 2005, the Province prescribed what were termed "transition rates" each year, to phase-in changes

to the taxation level of these right-of-way properties. In 2005, a uniform rate of taxation was reached within each of eight geographic regions across the Province. The acreage tax rates established in 2005 are called 'mature rates' and apply to all years beyond 2005.

In the 2017 and 2018 Provincial Budget, the property tax rates on railway rights-of-way was increased by \$6 per acre for 2017 and \$7 per acre for 2018. The rates were not changed for the 2019 and 2020 tax years. For the 2021 tax year, the property tax rates for railway rights-of-way will continue to remain at 2020 levels.

COMMENTS

Subsection 280(1) of the *City of Toronto Act, 2006* requires the City, in accordance with the regulations, to levy an annual tax for municipal purposes on the railway roadways, and rights-of-way and on land used as transmission or distribution corridors owned by power utilities.

Subsection 257.7(1) of the *Education Act* requires the City to levy and collect taxes based on the rates prescribed for school purposes on the railway and power utility lands described in subsection 290(1) of the *City of Toronto Act, 2006*.

Ontario Regulation 121/07 under the *City of Toronto Act, 2006* and 392/98 under the *Education Act*, (as amended by O. Reg 123/07), prescribe the applicable rates for 2021 for the municipal portion and education portion of taxes respectively, for railway and power utility rights-of-way acreage levies.

To calculate the taxes payable on acreage properties, the City of Toronto requires the area of each property and the applicable tax rates. The acreage figures are provided to municipalities by the Municipal Property Assessment Corporation (MPAC) on the returned assessment roll each year and are available for 2021.

As provided in Table 1 above, the revenue for 2021 from all the railway and power utility rights-of-way is approximately \$7.05 million, of which the municipal share is \$6.54 million and the education share is \$0.51 million. Of the \$6.54 million municipal share, \$609,053 will be received in the form of payment-in-lieu of taxes from Metrolinx.

Legislative Amendments

At various times since 2006, City Council has made recommendations to the Minister of Finance to amend regulations to require an annual inflationary adjustment in the "mature rate" prescribed by Regulation so as to phase in rate changes that more properly reflect the market value of the land over a period of time. Council's position and requested changes on the assessment and taxation of railway rights-of-way and hydro corridors has been identified to the Province on several occasions by staff.

By way of letter dated April 3, 2018 addressed to all Municipal Treasurers, the Ministry of Finance advised of measures the Province had undertaken to modernize the property taxation of railway rights-of-way for the 2018 taxation year. The Province announced in the 2018 Ontario Budget that it was taking action to address further rate adjustments for

railway rights-of-way. Building on progress made in 2017, mainline railway right-of-way property tax rates for 2018 continued to be updated to reflect average annual commercial property tax changes. In Toronto for 2018, this represented an increase of \$7 per acre. The acreage rates for railway roadways and railway rights-of-way changed from \$617.33 in 2017 to \$624.33 in 2018. The acreage rates were not changed for 2019 and 2020 and will remain unchanged for the 2021 tax year.

Acreage and Tonnage Taxation Systems

In 2019, City Council requested that staff report on the implications of taxing railway rights of way on the basis of tonnage rates, as opposed to acreage rates, and to identify the potential additional income the City of Toronto would receive under a tonnage-based rate system. Staff were also directed to consult with the Railway Association of Canada on their membership's current practice for how the Canadian Western Provinces self-report their traffic and tonnage, and how a similar practice would work if a tonnage-based system was adopted in the Province of Ontario. A letter from the Railway Association of Canada addressing these items is included as Attachment 1 to this report.

Staff were also asked to include a summary of how the Provinces of Alberta, Manitoba, Saskatchewan and Quebec tax railway right-of-way properties, and to provide a summary of the revenues the cities of Calgary, Regina, Winnipeg and Montreal receive through railway taxation. This information is provided in Attachment 2.

CONTACT

Casey Brendon, Director, Revenue Services
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SIGNATURE

Andrew Flynn
Controller

ATTACHMENTS

Attachment 1 - Letter from the Railway Association of Canada

Attachment 2 – Acreage and Tonnage Taxation Systems – Response to Item EX7.20 Recommendation (July 2019)

Attachment 1: Letter from the Railway Association of Canada



April 15, 2020

Casey Brendon
Director
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Dear Mr. Brendon,

Thank you for your inquiry concerning RAC member property tax reporting requirements in Alberta, Saskatchewan and Manitoba.

Each year railway companies provide provincial assessment authorities with information about average costs for railway track and infrastructure and a traffic profile that includes data about Gross or Net Ton Miles carried through each subdivision in the province. Assessment authorities use this information to estimate a railway's construction costs and prescribe a regulated rate for each railway class.

Information and reporting frequency requirements are mandated through provincial legislation rather than municipal bylaw. In general, the reporting process for railways are similar in Alberta, Saskatchewan and Manitoba, with railways filing information by subdivision and not municipal jurisdiction.

RAC and its members remain concerned with any effort to alter the tax regime for the railway right of way in Ontario and the City of Toronto. The transition towards a tonnage-based taxation system would effectively treat railway track as an assessable component and breach Section 30(3) of the Ontario Assessment Act.

Furthermore, replicating the assessment processes in Western Canada would also require the Municipal Property Assessment Corporation to scale up their ability to complete railway costing analysis. This analysis needs to be transparent, predictable and fair while ensuring that railway information remains confidential. For railways, the administrative and reporting burden required to support the analysis would be substantive.

In its report to City Council (EX7.20), the Controller states that the City of Toronto already maintains the highest acreage rates for railways in the province, and that there is no evidence to suggest that changing to a tonnage-based levy would provide benefits to Toronto. RAC agrees with the Controller's statement and supports a decision to not alter the property tax regime for railway rights of way.

Please do not hesitate to contact me if you require additional information at 613.564.8103 or moulo@railcan.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gullo".

Michael Gullo
Senior Director, Policy and Public Affairs
Railway Association of Canada

Attachment 2: Acreage and Tonnage Taxation Systems – Response to Item EX7.20 Recommendation (July 2019)

Acreage and Tonnage Taxation Systems

In early 2018 the Ontario Ministry of Finance proposed a high-tonnage rate of \$300.00 per acre, which is substantially lower than the 2018 acreage rate of \$624.33 per acre for the City of Toronto. Municipalities were able to request the high-tonnage rate for railway rights-of-way properties if they believed that the tonnage being moved met the high-tonnage threshold of 70,000,000 gross ton-miles per route mile. It would then be up to the railway companies to provide the tonnage data to either prove or disprove the claim.

The Ontario Government, in their communication dated May 24, 2019, has indicated that no high-tonnage rates are being introduced for railway taxation.

Currently railway companies do not report on tonnage and kilometres of railway rights-of-way for any municipality in Ontario. A taxation system that is entirely dependent on industry-supplied data that cannot be independently verified may prove problematic to administer, and carries the risk that data can be manipulated or under-reported, or that companies may change their business model in an effort to avoid taxes. Information received from municipalities in Saskatchewan, Alberta and Manitoba, confirm that relying on the railway companies to provide this data can be quite challenging.

In February 2020, the Revenue Services Division met with representatives from the railway industry to discuss how tonnage reporting is handled in Saskatchewan, Alberta and Manitoba (see attachment 1 for response from the Railway Association of Canada). In the Western Provinces, tonnage reporting is mandated through provincial legislation. Railway companies report tonnage data annually to provincial assessment authorities who use the data to prescribe the rates. The tonnage data that is reported is broken down by railway subdivisions and not by municipality. The railway representatives indicated that tonnage moving through the Western Provinces (bulk commodities) is vastly different than what is moving through Toronto (commodities to support retail).

Any change to the railway taxation system requires regulatory changes by the Province of Ontario. Currently, the acreage rates for the City of Toronto are the highest in the province. There is no evidence to suggest that changing to a tonnage based levy would provide benefits to Toronto in the form of increased overall levies, and it is unclear how a tonnage-based system would affect the levies on passenger railways (e.g., Metrolinx) that own/operate rights-of-way within Toronto and the GTA.

In 2020, the total tax levy for railway rights-of-way in the City of Toronto was \$1,506,937. This figure is based on the 2020 acreage rate (which remained at 2019 levels for 2020) for railway rights-of-way and 18 assessment roll numbers.

Railway Taxation in Other Jurisdictions

Saskatchewan

The legislation in Saskatchewan (The Cities Act) sets out how railways are assessed and the Saskatchewan Assessment Management Agency (SAMA) establishes the rates for the railway rights-of-way. Railway rights-of-way in Saskatchewan are defined as a continuous strip of land not exceeding 31 metres in width. Any railway land over 31 metres wide is assessed similar to industrial and commercial land and is taxed at the railway rate. The assessment rates as determined by SAMA are based on the value of the railway rights-of-way on a per tonne basis. There are five tonnage-based rate classifications ranging from less than 1 million tonnes to greater than or equal to 15 million tonnes, with rates ranging from \$18,900 per mile to \$609,500 per mile for the period of January 1, 2017 to December 31, 2020.

In 2020, the total tax levy for railway rights-of-way in the City of Regina was \$108,903. This figure is based on the assessed value assigned to the railway line (freight only), and the lands associated. Currently there are no commuter lines in Regina.

Alberta

The legislation in Alberta (Municipal Government Act) sets out how railways are assessed and the Alberta Government establishes assessment rates for railway rights-of-way in the "Alberta Railway Assessment Minister's Guidelines." Alberta defines railways as the associated rights-of-way and structures. The regulated assessment rates as determined by the provincial government have a base rate that is increased yearly by an assessment year modifier, then adjusted for tonnage by the annual traffic factor. The current base rate is \$453,173 per kilometre and the 2020 assessment year modifier is 1.471. There are eight types of tonnage-based rates ranging from zero tonnes to more than 25 million tonnes with rates ranging from \$6,666 per kilometre to \$266,647 per kilometre. Alberta also has factors in a tonnage-based rate for superstructures at \$13,332 per kilometre.

In 2020, the total tax levy for railway rights-of-way in the City of Calgary was \$626,871. This figure is based on railway rights-of-way belonging to the Canadian Pacific Railway, the Canadian National Railway and private tracks. There is a portion of railway rights-of-way that is owned/operated by the City of Calgary that is tax exempt.

Manitoba

The legislation in Manitoba (The Municipal Assessment Act) sets out how railways are assessed and Manitoba Regulation 166/2015 establishes the regulated rates for railway rights-of-way. Railway rights-of-way in Manitoba are defined as a continuous strip of land not exceeding 100 feet in width that are used as a roadway and includes the rails, grading, ballast, embankments, ties, etc., used in the operation of a railway and does not include land and improvements such as stations, warehouses, repair shops, etc. whether or not situated on the right-of-way. The regulated rates are based on the gross tonnage carried on the tracks, the miles of track and the land value (average assessed value of all land in the municipality on the reference date). There are eight tonnage-based classifications ranging from 0 tonnes to 30 million tonnes or more with rates

ranging from \$0 per mile to \$634,100 per mile. Railway land used for purposes other than rights-of-way is assessed at market value. Railway rights-of-way that have more than one track will have the full rate applied to one track and 50% of the rate applied to each additional track.

In 2020, the total tax levy for railway rights-of-way in the City of Winnipeg was \$1,242,860. This figure is based on the assessed value assigned to both freight and commuter traffic.

Quebec

The legislation in Quebec, Act Respecting Municipal Taxation, sets out how railway rights-of-way are assessed and levied. The assessed value of railway rights-of-way are determined by multiplying the area of the railway rights-of-way land by the rate. The rate is obtained by dividing the total assessment of the local municipality by the total land area of the local municipality. The City of Montreal, calculates the levy for railway rights-of-way by multiplying the assessed value of the property by the appropriate boroughs (there are 19 boroughs in total) non-residential tax rate.

The most current numbers received from the City of Montreal are from 2019. The 2019, the total tax levy for railway rights-of-way in the City of Montreal was approximately \$3,900,000. This figure is based on assessment values on 44 assessment roll numbers.