



STAFF REPORT ACTION REQUIRED

Garbage Collection - For Tenants in Residential Units Above Commercial (RUAC) Properties

Date:	July 26, 2010
To:	Public Works and Infrastructure Committee
From:	General Manager, Solid Waste Management Services
Wards:	All
Reference Number:	p:/2010/swms/August/011PW

SUMMARY

Solid Waste Management Staff were asked to report to the Public Works and Infrastructure Committee in response to PW29.7 to amend Chapter 841, Waste Collections, Commercial Properties to require Residential Units Above Commercial premises (RUAC) property owners, who receive the tax rebate, to provide bag tags to the tenant at no additional cost. This report discusses the four options staff considered with regards to RUAC owners and the use of bag tags. Solid Waste Management Services will further explore the fourth option discussed in the report ("Invoice Option") and will report back to Public Works and Infrastructure Committee by mid-2011 on how to implement such a policy.

RECOMMENDATIONS

The General Manager, Solid Waste Management Services, recommends that:

1. City Council direct the General Manager, Solid Waste Management Services, to investigate Option 4 and report back to the Public Works and Infrastructure Committee by mid- 2011 on implementation.

Financial Impact

There are no immediate financial impacts arising as a result of this report.

DECISION HISTORY

City Council, at its meeting on August 5 and 6, 2009, approved the RUAC fee structure contained within the staff report “PW25.1 Residential Units above Commercial Premises and Revisions to Particular Solid Waste Management Rates”. The City Council Decision Document can be viewed at:

<http://www.toronto.ca/legdocs/mmis/2009/cc/decisions/2009-08-05-cc38-dd.htm>

At its meeting on January 5, 2010, the Public Works and Infrastructure Committee referred Item PW29.7 "Garbage Collection - For Tenants in Residential Units Above Commercial Properties" to the General Manager, Solid Waste Management Services, for a report back to the Public Works and Infrastructure Committee in April 2010. The Public Works and Infrastructure Committee and motion can be viewed at:

<http://www.toronto.ca/legdocs/mmis/2010/pw/decisions/2010-01-05-pw29-dd.htm>

City Council, at its meeting on July 6, 7 and 8, 2010, adopted PW34.3 "Proposed New Multi-Residential Billing System and Rate Structure for Bulk Collection Customers" and directed the General Manager, Solid Waste Management Services, to convene a meeting including the Federation of Metro Tenants' Association, the Greater Toronto Apartment Association, the General Manager, Shelter, Support and Housing Administration, the Deputy City Manager and Chief Financial Officer and the City Solicitor for the purpose of developing recommendations on how to ensure that tenants are not unfairly charged as a result of the Waste Rate Structure and to submit a report to the Public Works and Infrastructure Committee early in 2011. The City Council Decision Document can be viewed at:

<http://www.toronto.ca/legdocs/mmis/2010/cc/decisions/2010-07-06-cc51-dd.htm>

ISSUE BACKGROUND

Under the current RUAC Fee Structure, owners of RUAC buildings are allowed to choose between the use of garbage bins or the use of garbage bag tags to dispose of the garbage generated in the residential portion of the RUAC building.

If an owner selects the garbage bin program, the owner will receive a utility bill with the associated bin fee per bin and the standard \$209 rebate per tax roll number.

If an owner selects the use of garbage tags, the owner will receive a utility bill with only the standard \$209 rebate per tax roll number and owners will have to arrange that either they or their tenants purchase the necessary garbage bag tags.

COMMENTS

Staff reviewed four (4) alternate options for providing garbage bag tags directly to the owners, so that the owners can distribute the garbage tags to the tenants.

These options included:

- 1) Require RUAC owners to purchase garbage bag tags and provide them directly to tenants at no cost, while the City provides RUAC owners the rebate (the "No-Cost to Tenant Option");
- 2) Require RUAC owners to submit a sworn affidavit to the City indicating that the RUAC owner has purchased garbage bag tags and distributed them to the tenants, in order for the City to provide rebate (the "Affidavit Option");
- 3) Require RUAC owners to purchase garbage bag tags and provide them directly to tenants, while the City provides RUAC owners the rebate. If tenant complains that they did not receive their garbage bag tags, City Staff will investigate, and if determined that no garbage bag tags were provided to the tenants, withhold the remaining owner rebate for the year will be withheld ("the Complaint Option"); and
- 4) The City will provide bag tags directly to the RUAC owners and/or tenants, and invoice the RUAC owners for the bag tags, in order for them to provide the bag tags to the tenants (the "Invoice Option"). The City will provide the RUAC owners the rebate.

1) The "No-Cost to Tenant Option"

Staff considered requiring that RUAC owners purchase garbage bag tags for tenants and provide them to tenants without passing on the additional cost. This option was rejected for the following reasons:

- The *Residential Tenancies Act* (RTA) is silent on whether the landlord or the tenant is responsible for complying with Chapters 844 and 841 (the by-laws) and that, further, the Landlord and Tenant Board's website indicates that it is between the landlord and the tenant to negotiate who is responsible for setting out garbage. The RTA also sets out the landlord's rights, obligations and procedures when they have incurred additional costs and wishes to pass these additional costs down to the tenant in the form of a rent increase.

If the City, by an amendment to the by-laws, requires the RUAC owners to purchase garbage tags for their tenants and at the same time denies the RUAC owners the ability to pass those costs on to the tenants, that amendment would be in conflict with the rights granted to the RUAC owner, as landlord, under the

RTA. Subsection 11(1)(a) of the *City of Toronto Act*, states that "[a] City By-law is without effect to the extent of any conflict with a Provincial or Federal Act or a regulation made under such an Act." As such, an amendment to the by-laws denying the RUAC owner the ability to attempt to pass on its costs from purchasing bag tags would be found to be without effect to the extent of that conflict.

- RUAC owners frequently do not reside at the property participating in the RUAC bag-only collection program. As a result, many tenants may be forced to buy bag tags on their own because of the absentee landlord, despite the requirement.
- As mentioned above, given that the bag tag program allows anyone to buy bag tags at any time, it would be extremely difficult to determine if the bag tags on a garbage bag were purchased by the landlord or the tenant, making it impractical to enforce the requirement that landlords purchase the bag tags.

2) The "Affidavit Option"

The rebate is a grant under section 83 of the *City of Toronto Act*. The City is able to impose conditions that must be met in order for a grant to be given. Staff considered the option of imposing a condition on RUAC owners that they must submit a sworn affidavit to the City indicating that they have procured bag tags for their tenants and have distributed those bag tags to the tenants. Once the City has received the proper affidavit, the City would issue the \$209 rebate on the Utility Bill. A RUAC owner would have to submit a sworn affidavit each year, in order to get the rebate for that year. This option was not favoured for the following reasons:

- It is estimated that there are approximately 12,000 units in the RUAC program and thus the management and record keeping of affidavits submissions by the City would require significant staff time, resources and an extensive record management system. It is estimated that six (6) new By-law Enforcement Officers and one (1) Solid Waste Management Services Staff at a cost of over \$500,000 annually would be required for the management of this investigation and enforcement program.
- If the City needs to investigate the truth behind an affidavit it would require significant staff time and resources and it may be difficult to find evidence that would show that a RUAC owner submitted a false affidavit.
- High turnover and vacancy rates of RUAC buildings would necessitate multiple sworn affidavits being submitted by the RUAC owner to the City increasing the resource issue identified.

3) The "Complaint Option"

Under this option, the City would require the RUAC owner to procure garbage bag tags and provide them to the tenant, while at the same time the City would provide the RUAC owner with the \$209 rebate. If, during the course of the year, a complaint comes in from a tenant that they have not received garbage tags, City Staff would investigate to determine if this was the case. If the City Staff determines that the landlord has failed to give out the garbage tags, then the City will stop providing the RUAC owner the rebate. This option was not favoured for the following reasons:

- It would be difficult to determine the circumstances that would trigger an investigation, for example would it be based on one single complaint or would it require a number of complaints?
- Evidence to substantiate a complaint will be difficult to obtain. It may simply be a case of "he-said/she-said". Would a rebate be denied if one tenant failed to receive bag tags while other tenants did receive bag tags?
- This option would require considerable staff resources with respect to investigating the accuracy of any complaint and administering an appropriate appeals process.
- ML & S is charged with investigating infractions of by-laws, and where an infraction exists ML & S has the power to lay a charge which can ultimately be dealt with in court. ML & S staff do not feel that an infraction of this nature in which a RUAC owner is denied the rebate is in keeping with ML & S' mandate.
- The current practice for infractions under the Chapters is that ML & S officers will lay charges against the actual waste generator and/or property owner. Therefore there is some level of responsibility on both the landlord and the tenant to ensure that waste is set out properly.

4) The "Invoice Option"

Staff considered the option of the City providing garbage bag tags by mail to the RUAC Owners and/or tenants, at a charge equivalent to the Solid Waste Management Fee Structure Rebate, with the intent that the RUAC owner would distribute bag tags directly to their tenants. In this option the City would invoice RUAC owners for the minimum allotment of 67 tags per year, equalling \$209.00. The City would still provide the \$209.00 rebate per Property Tax Roll No.

Staff believe this option has merit but requires more consideration on how this policy could be implemented properly. Therefore, SWMS staff, in consultation with Revenue Services, MLS and the City Solicitor, will review this option more carefully and report

back by mid-2011 on how this option could be implemented. Specific issues that staff will need to review and address include:

- Investigate the billing logistics, staffing resources and records management system required in administering tag issuance to RUAC Owners and/or tenants;
- Determine the need for any administration fees associated with implementation of this policy;
- Determine how to deal with RUAC properties with multiple units & tenancies, vacancies and change in ownership of the RUAC property;
- Determine the appropriate enforcement mechanisms to deal with RUAC Owners that do not properly distribute bag tags to tenants; and
- Determine what specific amendments to Chapters 841 and 441 would be needed for this policy.

Upcoming Meeting with Federation of Metro Tenants' Association and Greater Toronto Apartment Association

City Council, at its July 6, 7 and 8, 2010 meeting, approved report PW34.3 "Proposed New Multi-Residential Billing System and Rate Structure for Bulk Collection Customers" and has directed the General Manager, Solid Waste Management Services, to convene a meeting including the Federation of Metro Tenants' Association, the Greater Toronto Apartment Association, the General Manager, Shelter, Support and Housing Administration, the Deputy City Manager and Chief Financial Officer and the City Solicitor for the purpose of developing recommendations on how to ensure that tenants are not unfairly charged as a result of the Waste Rate Structure and to submit a report to the Public Works and Infrastructure Committee early in 2011. The meeting and subsequent report will review issues associated with the costs of the Rate Structure and Billing System inclusive of the provision of rebates and how to prevent tenants from absorbing Waste Rate Structure costs. Staff will use this meeting as an opportunity to discuss the Invoice Option with the Landlord and Tenant groups to allow for any feedback and suggestions. After the meeting, Staff will review participants' comments and will report out on the consultation and resulting recommendations in early 2011.

Conclusion

Staff will require further opportunity to investigate Option #4 “Invoice Option” and will get feedback on this option from the effected Landlord and Tenant groups. Staff will then report back by mid-2011 on implementing this policy.

CONTACT

Lisa Duncan, Manager of Business Systems and Revenue, Planning & Policy Section,
Solid Waste Management Services, Telephone: 416-397-0207, Fax: 416-392-4754,
E-mail: lduncan@toronto.ca

SIGNATURE

Geoff Rathbone
General Manager
Solid Waste Management Services