TORONTO

STAFF REPORT
ACTION REQUIRED
with Confidential Attachment

Collection of Water/Utility Arrears from Condominiums and Collection of Utility Arrears for York Condominium Corporation No. 82

Date:	March 9, 2012
To:	Government Management Committee
From:	Treasurer and City Solicitor
Wards:	All and Ward 8: York West
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions, and contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	P:\2012\Internal Services\rev\gm12006rev (AFS15189)

SUMMARY

The purpose of this report is to obtain Council's approval to collect outstanding public utility charges (i.e. water/sewer, and solid waste charges) on condominium utility accounts by implementing a mechanism to transfer overdue water and sewer charges to the property tax accounts for individually-owned condominium units. This report also recommends that the Province of Ontario be requested to make amendments to the *City of Toronto Act, 2006* to similarly allow outstanding solid waste collection charges to be apportioned among and added to the property tax accounts for individually-owned condominium units.

This report (including the confidential portion) also addresses a strategy for the collection of utility arrears (water/sewer and solid waste collection charges) that are currently owed to the City by York Condominium Corporation No. 82 (4645, 4673, 4675 and 4689 Jane Street).

RECOMMENDATIONS

The Treasurer and City Solicitor recommend that:

1. Council approve an amendment to the City of Toronto Municipal Code to allow a pro-rated portion of any water receivable for a condominium property to be added to the tax accounts for the individual condominium units where the receivable remains outstanding 58 days after the billing date, consistent with Council's previously approved procedures for the administration and collection of water accounts.

2. The pro-rated portion of the water receivable for any condominium unit be calculated as the percentage of the total receivable that corresponds to the percentage the current value assessment of each unit bears in relation to the current value assessment of all units forming the condominium.

3. Council request the Province to amend the *City of Toronto Act, 2006* to allow solid waste arrears to be apportioned among and added to the tax rolls for individual condominium units in the same manner as water receivables described in Recommendation 2.

4. Should the amendments to the *City of Toronto Act, 2006* referred to in Recommendation 3 be made, that solid waste collection charges be subject to the same processes used for the collection of water arrears for condominiums, including apportioning and adding outstanding solid waste charges to the tax account for individual units.

5. Council adopt the confidential instructions to staff in Attachment 1.

6. The confidential recommendations and information in Attachment 1 remain confidential as it relates to litigation that affects the City and is subject to solicitor client privilege.

7. The appropriate City Officials be directed and authorized to take the necessary action to give effect thereto.

8. Authority be granted for the introduction of the necessary bills to give effect hereto.

Financial Impact

The recommendations in this report, if adopted, will facilitate the collection of water, sewer and certain solid waste collection charges from condominium properties, and secure water/sewer receivables as a first priority lien against a condominium owner's individual unit.

As of February 8, 2012, overdue utility (water/sewer and solid waste) charges total approximately $3.3 million from condominium properties, representing approximately 48 properties. Of this $3.3 million in outstanding utility arrears, approximately two-thirds relates to water/sewer receivables ($2.2 million), and one-third relates to solid waste collection fees ($1.1 million). The length of time for which arrears have accumulated vary by property, and range in age from 90 days to two years, with only two (2) properties with arrears greater than two (2) years.

Unless outstanding utility arrears can be secured against a property tax account for collection, as recommended in this report, these outstanding amounts will remain at risk for collection and could ultimately be written off as uncollectible.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

In July 2003, Council approved a staff report from the Chief Financial Officer and Treasurer entitled "*Administration and Collection of Water Accounts"* (ref: Clause 6 of Report No. 7 of the Administration Committee). This report established a collection strategy for overdue water accounts, including a process to add overdue water amounts to a property owner's property tax account where the overdue amounts relate to water supplied to a property after January 1, 2004. Council's decision and the staff report are available at:
http://www.toronto.ca/legdocs/2003/agendas/council/cc030722/adm7rpt/cl006.pdf

Subsequently, in September 2006, in adopting as amended a staff report from the Treasurer entitled "*New User Fees - Revenue Services Division: Charges For Transferring Overdue Water Bill Amounts to the Tax Roll; and Fees for Applications for the Cancellation, Reduction or Refund of Property Taxes Made Under Section 334 of the* Municipal Act, 2001" (Ref: Clause 14 of Report No. 6 of the Administration Committee), Council approved that a fee of $35.00 per tax account be charged for each overdue water bill amount that is added to the tax roll for collection purposes, effective January 1, 2007. Council's decision in this matter is available at:
http://www.toronto.ca/legdocs/mmis/2007/bu/bgrd/backgroundfile-2719.pdf

The strategy outlined in this report for the collection of overdue amounts from condominium properties is consistent with both of the above Council decisions.

ISSUE BACKGROUND

The *City of Toronto Act, 2006* establishes the municipality's ability to hold the property owner ultimately responsible for water arrears by allowing a municipality to add unpaid water utility charges to the property's tax roll. The City of Toronto has had procedures in place to add unpaid water charges to the tax roll since 2004. Additionally, Ontario Regulation No. 594/06 under the Act identifies water fees or charges added to the tax roll as having "priority lien status", such that these fees/charges:

1. may be collected in the same manner as taxes on the property;
2. may be recovered with costs as a debt due to the municipality from the assessed owner of the property at the time the fee was added to the tax roll and from any subsequent owner of the property or any part of it;
3. form a special lien on the property in the same manner as taxes under section 266 of the *City of Toronto Act, 2006*; and,
4. may be included in the cancellation price under section 346 of the *City of Toronto Act, 2006* in the same manner as are taxes on the property, in the event that a Tax Arrears Certificate is registered on title of the property.

By adding water arrears to the property tax account, the debt is secured against the property. The effect of these amounts having "priority lien status" mean that these fees/charges remain as a debt owing to the City even if the property changes ownership (i.e., the arrears stay with the property and become the responsibility of a subsequent owner). The ability to secure such water arrears against a property's title has proven to be a very effective collection mechanism. Normally, any tax or water arrears on a property being sold are settled between the vendor and a prospective purchaser prior to closing, with the City collecting these overdue amounts. Additionally, amounts added to the tax roll can eventually be collected through the tax sale process.

COMMENTS

Currently, Revenue Services is responsible for billing, collection, customer service, meter reading, and payment processing for approximately 475,000 utility accounts, with annual billings of approximately $914 million per year. Amounts billed for utilities include water and sewer charges of approximately $676 million per year, and solid waste collection charges of approximately $238 million gross (including solid waste rebates of approximately $178 million), representing $60 million in net solid waste revenues after rebates.

Although the procedures approved by Council in 2003 to transfer outstanding water arrears to a property's tax account have proven effective for most property types, the City is currently prevented from transferring water charges to the tax account for condominium properties, as a result of a number of administrative and legislative gaps. As a consequence, arrears of water, sewer and solid waste amounts remain outstanding at a number of condominium properties in the City, with no effective means of collection in place short of litigation.

Collection of Water Arrears from Condominium Properties

Condominium properties are comprised of many individually assessed units, each with an assessed owner. In most cases, water supplied to a condominium property is measured and accounted for by a single bulk water meter that records water consumption for the entire property. While the use of this meter type is beneficial from a billing perspective (i.e. one bill as opposed to many), it poses a challenge when an account remains outstanding. The chief complication results because there is typically no single tax account to which the water arrears can be transferred. Instead there are numerous tax

accounts (one for each unit owner), and the current value assessment (CVA) associated with each account includes a portion of the value of the common areas that are shared amongst all unit owners. At present, the *Toronto Municipal Code* does not provide authority nor prescribe a method in which the total liability could be divided or apportioned between the units.

Staff explored the option of apportioning the water arrears in the same manner as the condominium corporation distributes common expense maintenance fees amongst the unit holders. In order to do this, staff would be required to obtain the condominium corporations' declaration and the square footage information for all of the units within the building, and then calculate a pro-rata share for each unit reflective of the unit owner's share of all other common elements and expenses. Given that this information may not be readily available to the City unless the Condominium Corporation was co-operative and willing to provide it, and that City staff would then be required to undertake their own analysis to determine a pro-rata sharing of the liability between all units, with no way to establish that the City's method was the same as the method used by the condominium corporation to apportion common elements and expenses, it was determined that this approach is not feasible.

A more defensible and consistent approach from the City's perspective is to apportion the outstanding water utility charges amongst the individual condominium tax accounts using the percentage that the Current Value Assessment of the individual condominium unit bears in relation to the total combined Current Value Assessments of all of the condominium units that comprise the condominium property. This is the method prescribed by the *City of Toronto Act* and used by City staff to apportion arrears of property taxes amongst condominium unit owners (i.e., where taxes remain outstanding for a new condominium development after the units have been separately assessed, with the taxes then apportioned amongst the individual units on the basis of each unit's CVA in comparison to the total CVA for the property). The CVA data for the individual units is readily available from the property assessment roll supplied to the City each year by the Municipal Property Assessment Corporation, and so facilitates this calculation.

As such, it is recommended that the methodology described above be used to apportion the water arrears on a pro-rata basis amongst the individual units forming the condominium property, and that the City of Toronto Municipal Code be amended to authorize adding a pro-rated portion of any water receivable for a condominium property to the tax accounts for the individual condominium units where the receivable remains outstanding 58 days after the billing date.

Proposed Collection Process for Condominium Water Arrears

The proposed collection process for condominium water arrears is consistent with and reflects Council's approved collection strategy for overdue water accounts for other property types that has been successfully used since 2004, and Council's decision to impose a $35 fee for water charges added to a property tax account for collection (see *Decision History* section of this report). The collection process for condominium properties includes the following progressive steps:

1. Once a condominium water/utility bill becomes overdue, a loss of early payment discount takes effect. If the bill remains unpaid for a period of 14 calendar days from the due date, Revenue Services will mail an *Overdue Notice* to the regular designated mailing address. This mailing address is usually addressed to the Condominium Corporation, the Condominium Corporation Board or a Property Management Company;

2. If the bill remains unpaid for an additional 14 calendar days, Revenue Services will mail a *Transfer to Tax Notice* to each of the individual condominium owners as identified on the Revenue Services Tax Management and Accounting System (TMACS). This notice serves to advise the condominium owners that unless the outstanding water utility bill is paid in full within 30 days, a pro-rated portion of the outstanding charges will be added to their property tax accounts. In addition, the Notice advises that a $35.00 fee will be charged to each individual condominium tax account once the arrears are transferred, and that penalties are applied to overdue tax accounts at a rate of 1.25% on the first day of default and at the beginning of every month thereafter; and

3. If the bill remains unpaid for an additional 30 calendar days, Revenue Services will transfer a pro-rated amount of the outstanding water utility charges to the individual condominium unit taxes in accordance with the methodology described in this report, and add the fee of $35.00 to the property tax account. A *Notice of Action* will be mailed to each of the individual condominium owners advising of the amount of the pro-rated portion of the outstanding water utility charges that has been added to their property taxes.

Schematically, the process is as follows:

Table 1
Collection Process for Condominium Water Arrears

Step	Circumstance	Response	Result
1	Account outstanding 14 calendar days beyond bill due date. Loss of early payment discount effected.	**OVERDUE NOTICE** mailed to condominium corporation, board or management designate	Payment of amount due, or amount remains outstanding
2	Account outstanding 28 days beyond bill due date	**TRANSFER TO TAX** notice mailed to individual unit owners if payment not received within 30 days	Payment of amount due, or amount remains outstanding
3	Account outstanding 58 days beyond due date	**NOTICE OF ACTION** mailed to individual owners advising of the amount that has been transferred to their taxes. Fee of $35.00 added to each property tax account.	City's revenue secured.

Revenue Services will be required to make the necessary system enhancements to both the Water Management Accounting System (WMACS) and the Tax Management Accounting System (TMACS). It is anticipated that these system enhancements will require in-depth development changes and therefore, commencement of the revised collection practice will be implemented in early to mid summer 2012.

Implementing the proposed collection process for condominiums as outlined above, and amending the current City of Toronto Municipal Code to allow water charges to be added to the tax accounts for individual condominium units, will secure the City's water receivables, with little or no risk of loss, given that property taxes (and any water charges added) form a first priority lien on the property.

Collection of Solid Waste Collection Charges from Condominiums

Unlike water arrears, the City does not have the same legislative authority to add solid waste utility charges to the tax roll. While solid waste charges are similarly given priority lien status by Ontario Regulation No. 594/06, they are not included in the definition of "public utility" under the *City of Toronto Act,* and therefore cannot be added to the tax roll of the "property to which the public service was provided" (paragraph 1 of subsection 264(2)).

Given that similar collection issues exist with arrears of solid waste charges on condominium properties, this report recommends seeking the necessary legislative change from the province to amend the definition of a "public utility" to incorporate solid waste collections, and so permit the implementation of a similar collection method for condominium properties for solid waste charges. This report also recommends that should this authority be provided, that solid waste collection charges be subject to the same processes described herein for the collection of water arrears, including apportioning and adding outstanding solid waste charges to the tax account.

Outstanding Water and Solid Waste Collection Charges at York Condominium Corp No. 82 (4645, 4673, 4675 and 4689 Jane Street)

York Condominium Corporation No. 82 (YCC No. 82) operates condominium buildings with municipal addresses of 4645, 4673, 4675 and 4689 Jane Street, with 5 separate utility accounts. As of February 29, 2012, YCC No. 82 owed the City $884,258 in public utility arrears, with the oldest arrears dating back to March 2009. Of this amount, approximately $626,883 is arrears in relation to the provision of water, and approximately $257,375 is arrears in relation to solid waste collection services.

Revenue Services mails utility bills monthly, and has been mailing overdue notices on a regular basis. In terms of collection efforts, these accounts have been assigned to an internal collector, and both Revenue Services and Solid Waste Management Services staff have been in contact with representatives of the condominium corporation, both by telephone and in writing, but the utility charges have remained outstanding. In addition, the City has issued Utility Arrears Certificates to lawyers who had requested this

information as recently as October 3, 2011, that would identify the amount of the arrears. However, there was no response to the Certificates.

This matter was referred to Legal Services in December 2011 for further action. Legal Services sent demand letters to YCC No. 82 on December 21, 2011 demanding that YCC No. 82 enter into a payment agreement with the City to pay its outstanding arrears.

If the recommendations regarding amendments to the *Toronto Municipal Code* to authorize the apportionment of unpaid water charges proposed in this report are accepted, the total arrears could be reduced by approximately 70%, as the arrears in relation to water charges would be transferred to the property tax accounts for the individual condominium units, and therefore secured. However, approximately $257,375 of the current arrears relate to solid waste collection services – these amounts would remain uncollectible unless and until the province made the technical amendments to the *City of Toronto Act* sought in this report.

In light of the total amount of public utility arrears outstanding against this single property, the Treasurer is of the view that further attention to this particular account is warranted.

On the advice of the City Solicitor, the balance of the information relating to public utility arrears outstanding against YCC No. 82 is confidential, as it is subject to solicitor-client privilege. Additional information and confidential recommendations are contained in Attachment 1 to this report.

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SIGNATURE

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Treasurer	City Solicitor

ATTACHMENTS

Attachment 1: Confidential Information
Utility Arrears owing to the City by York Condominium Corp. No. 82 (4645, 4673 and 4689 Jane Street)