

2023 Levy on Railway Roadways and Rights-of-Way and on Power Utility Transmission and Distribution Corridors

Date: June 26, 2023

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 2023 taxation year on railway roadways and rights-of-way and on land used as transmission or distribution corridors owned by power utilities, totalling approximately \$7.00 million in taxation revenue, of which the municipal share is \$6.49 million and the provincial education share is \$0.51 million.

The 2023 levy has decreased slightly from the 2022 levy total of \$7.05 million (with a \$6.54 million municipal share and a provincial education share of \$0.51 million) due to a reduction in the 2023 total acreage subject to this levy. For 2023, the property tax rates for railway rights-of-way and hydro corridors remain unchanged from 2022.

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 \$3.05 million would be generated from the levy in 2023, including an increase in the municipal portion of revenues (including the Education share of Hydro One levy) of approximately \$2.82 million.

RECOMMENDATIONS

The Controller recommends that:

1. City Council authorize the levy and collection of taxes for the 2023 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.

FINANCIAL IMPACT

The 2023 levy of taxes on railway roadways and rights-of-way and on power utility transmission or distribution corridors will raise approximately \$7.00 million, of which the municipal share is \$6.49 million and the provincial education share is \$0.51 million.

The total municipal share of the 2023 levy of \$6.49 million is consistent with the approved 2023 Non-Program budget revenue estimate of \$6.54 million. Comparatively, the total amount billed for 2022 was approximately \$7.05 million, of which the municipal portion was \$6.54 million and the provincial education portion was \$0.51 million.

Table 1 below summarizes the acreage rates prescribed by the Province, the total acreage for each group of properties, and the resulting 2023 and 2022 levy on railway roadways or rights-of-way and on power utility transmission or distribution corridors.

Table 1: Levy Amounts for 2023 and 2022 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
2023 Levy							
Canadian National Railway	\$624.33	\$822.69	\$1,447.02	124.26	\$77,579	\$102,227	\$179,806
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	2,688.91	\$2,242,605	\$3,249,978	\$5,492,583
Metrolinx	\$624.33	\$0.00	\$624.33	976.43	\$609,615	\$0	\$609,615
Total				4,283.60	\$3,238,218	\$3,758,614	\$6,996,832
Adjusted Total (City retaining Education share of Hydro One levy)¹					\$6,488,196	\$508,636	\$6,996,832
2022 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	2,712.84	\$2,262,563	\$3,278,901	\$5,541,464
Metrolinx	\$624.33	\$0.00	\$624.33	975.53	\$609,053	\$0	\$609,053
Total				4,307.95	\$3,258,438	\$3,788,623	\$7,047,061
Adjusted Total (City retaining Education share of Hydro One levy)¹					\$6,537,339	\$509,722	\$7,047,061

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 2022 to 2023. For 2023, the per-acre rate for railway roadways and railway rights-of-way will remain at the 2018 levels of \$624.33.

Table 2: Change in Levy from 2022 to 2023

Company Name	Acreage	Municipal Levy	Education Levy	Total Levy
Canadian National Railway	-1.32	-\$824	-\$1,086	-\$1,910
Canadian Pacific Railway	0.00	\$0	\$0	\$0
Power Utility – Hydro One	-23.93	-\$19,958	-\$28,923	-\$48,881
Metrolinx	0.90	\$562	\$0	\$562
Total	-24.35	-\$20,220	-\$30,009	-\$50,229
Adjusted Total (City retaining Education share of Hydro One levy)¹		-\$49,143	-\$1,086	-\$50,229

Overall, the net revenue retained by the City for 2023 has decreased by \$49,143 from 2022. The net decrease is the result of decrease in total acreage of railway roadways and hydro corridor rights-of-way from 4,307.95 acres in 2022 to 4,283.60 in 2023 (representing a net decrease of 24.35 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 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.

At its meeting held on July 19, 2022 City Council, in adopting [Item EX34.21: 2022 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 2022 taxation year. At this meeting, City Council also adopted the following recommendations in regards to acreage and tonnage taxation systems:

2. City Council request the Province of Ontario to enact regulations to prescribe a levy on Railway Roadway and Rights of Way and on Power Utility Transmission and Distribution Corridors for the 2022 taxation year, reflecting inflationary increases since 2018 when the current rates were reached.

COMMENTS

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 were increased by \$6 per acre for 2017 and \$7 per acre for 2018. The rates have not changed since 2018. For the 2023 tax year, the property tax rates for railway rights-of-way will continue to remain at 2018 levels.

2023 Revenues from Railway Roadways and Power Utility Rights-of-Way

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 2023 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 2023.

As provided in Table 1 above, the revenue for 2023 from all the railway and power utility rights-of-way is approximately \$7.00 million, of which the municipal share is \$6.49 million and the education share is \$0.51 million. Of the \$6.49 million municipal share, \$609,615 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 have not changed since 2018 and will remain unchanged for the 2023 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 2 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 1.

In 2021, City Council requested that the Province of Ontario explore the impact of national railways converting to a tonnage-based levy system, as opposed to the current rate per acreage system in the Province of Ontario, to determine any benefits to municipalities. A letter from Councillor Paul W. Ainslie was sent July 16, 2021 to the Premier of Ontario and the Minister of Finance. A letter was received from the Minister of Finance in response to Councillor Paul W. Ainslie's letter indicating that the Province will not be making any changes to how railways are taxed at this time.

CONTACT

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SIGNATURE

Andrew Flynn
Controller

ATTACHMENTS

Attachment 1 – Acreage and Tonnage Taxation Systems – Response to Item EX7.20 Recommendation (July 2019)

Attachment 2 – Letter from the Railway Association of Canada