

Bill 23 Housing Comments Part 2
Nov 2022

Regarding the ongoing use of “Impost Fees” to fund water and sewer growth related capital works in the City of Kingston.

I reviewed the Ontario Municipal Act and Regulations.

I found the following within the Act:

Regulations

400 The Minister may make regulations providing for any matters which, in the opinion of the Minister, are necessary or desirable for the purposes of this Part, including,

- (a) providing that a municipality or local board does not have the power to impose fees or charges for services or activities, for costs payable for services or activities, for use of municipal property or on the persons prescribed in the regulation;
- (b) imposing conditions and limitations on the powers of a municipality or local board to impose fees or charges;

I found the following within the Regulations: (emphasis added by me)

[ONTARIO REGULATION 584/06](#)

.....Capital costs

2. (1) A municipality and a local board **do not have power** under the Act to impose fees or charges to obtain revenue to pay capital costs, **if as a result of development charges by-laws** or front-ending agreements under the *Development Charges Act, 1997* or a predecessor of that Act that was passed or entered into before the imposition of the fees or charges, **payments** have been, will be or **could be made to the municipality or local board to pay those costs**. O. Reg. 584/06, s. 2 (1).

(2) For the purpose of subsection (1),

“capital costs” has the same meaning as it has in the *Development Charges Act, 1997*; (“dépenses en immobilisations”).....

That sent me to the Development Charges Act. Under the DCA, “capital costs” are not defined in the “definition” portion of the act (Part 1). However, Part 2 of the act contains the following references:

Development charges

2 (1) The council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies.....

What services can be charged for

(4) A development charge by-law may impose development charges to pay for increased capital costs required because of increased needs for the following services only:

1. Water supply services, including distribution and treatment services.
2. Waste water services, including sewers and treatment services.....

A.) I am not a lawyer, so my reading of the above is “as a lay-person”.

B.) As a lay-person, I question whether it is currently legal for the City of Kingston to use “Impost Fees” to fund capital expenditures for water and sewer infrastructure?

C.) If it is legal, then this is a “potential loophole” for all municipalities around clauses in the Development Charges Act that are designed to not impede affordable housing – and that loophole probably should be closed if the government is committed to the intent of its changes introduced in Bill 23.

D.) I read the Municipal Act as giving the minister the power to make a regulation requiring municipalities to use Development Charges rather than Impost Fees should they wish to impose a specific fee to fund water and sewer infrastructure capital expenditures.