

Development Levies and Servicing Agreements

The Planning and Development Act, 2007

2025

Introduction

Development Levies and Servicing Agreements are essential tools for municipalities as they enable local governments to fund necessary infrastructure upgrades, promote sustainable growth, and achieve fiscal sustainability. By ensuring that developments contribute their fair share towards the costs associated with growth, these cost recovery tools play a critical role in shaping the urban and rural landscape in a responsible and well-planned manner.

Legislative Authority

The legislative authority for development levies and servicing agreements is derived from the *Planning and Development Act, 2007 (the Act)*. Sections 168-176 outline the interpretation, function, and application of development levies and servicing agreements. Although both tools are designed to ensure municipalities and developers distribute the cost of infrastructure construction and upgrades fairly, they are two distinct mechanisms as outlined in the Act and must be applied as such.

Capital Costs

Items that may be included as a development levy or a servicing agreement fee are specifically defined as capital costs. Capital cost refers to the municipality's estimated cost of providing construction, planning, engineering, and legal services that are directly related to the matters for which development levies and servicing agreement fees are established. They do not include the cost of maintaining roadways, other related infrastructure, and public facilities.

Implied Exclusion

If an item is not specifically listed within in the definition of "capital cost" and is not referenced in sections 169 (2) or 172 (3) it may not be charged as a levy or servicing fee.

Development Levies

Development levies are a cost recovery tool for new developments requiring no subdivision. For a municipality to apply development levies, it requires the passage of a development levy bylaw. Before a municipality is eligible to pass a development levy bylaw, the municipality must adopt an Official Community Plan (OCP) permitting council to use levies in accordance with the Act. This can either be done by adopting a new OCP or through an amendment. Development levy bylaws are typically enacted in municipalities that are experiencing substantial growth or development, including site redevelopment and intensification. Funds collected through the development levy bylaw are used to fund the design, construction, or improvement of capital infrastructure and facilities that are necessary to accommodate the growth and development within the municipality. Development levies exist to ensure the costs associated with development are not the complete responsibility of the municipality and that the necessary infrastructure is in place to support new and future development. As per subsection 169(2) of the Act, levies may only be collected and used for providing altering, expanding, or upgrading services that include:

- Sewage, water or drainage works.
- Roadways and related infrastructure.
- Parks.
- Recreational facilities.

If a subdivision of land is required, development levies must NOT be used. A servicing agreement must be used instead.

When a municipality's review determines that the provision of services outlined above is required, a levy may be charged. This includes scenarios where a new development requires the upgrade of a municipal road or a water treatment plant. The preparation of construction standards by a municipal engineer may be an eligible charge if it can be demonstrated that it is directly related to the capital costs of that development.

Development Levy Bylaw

The Development Levy Bylaw outlines the conditions and criteria under which the development levy will be imposed on developers. This includes specifying the types of developments subject to the levy, such as residential, commercial, or industrial projects, and setting the rate or method by which the levy will be calculated and collected.

To ensure fairness and legitimacy of development levies imposed on new developments, it is imperative for the municipality to undertake thorough studies that determine projected capital costs. These studies serve as a crucial form of protection for the municipality, enabling them to substantiate and defend the levy amounts if they are appealed. Typically, they come in the form of a future growth study and consider the population growth rate, areas of expected growth, and a general idea of which services will be required to accommodate the new population.

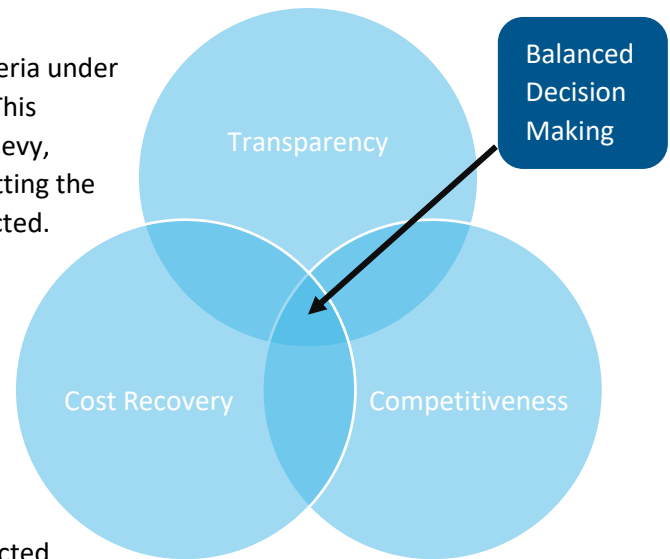
Not only is a study required by the Act as a complimentary appendix to the bylaw, but by conducting studies, a municipality can establish a solid foundation for its fees based on rationality and sound reasoning that ensure that new development is mutually beneficial.

The Bylaw must be approved by the Community Planning Branch (CPB) and comply with all relevant sections of the Act, including public notice requirements. It is important to note that receiving approval from the minister for a development levy bylaw means that it has met the minimum requirements as it relates to the legislative procedure for passing the bylaw. It does not constitute an endorsement of the levies themselves. The municipality must be able to justify its fee structure to ensure that if it is appealed, it is substantiated by a professional study.

The amount of a levy may vary according to:

- Zoning districts.
- Land uses.
- Capital costs as they relate to different classes of development as established in the bylaw.
- The size or number of lots

Additionally, development levy bylaws typically specify how the revenues generated from the levies are to be used.



A municipality may not collect levies that are not required to service a development. An example of this would be attempting to collect fees for recreation from an industrial or commercial development where recreation is not applicable.

This may include funding capital projects, servicing debt related to infrastructure improvements, or establishing reserve funds for future infrastructure needs directly related to the development.

Development Levy Agreement

As per section 171, if a council has passed a development levy bylaw, they may require an applicant who has submitted a development permit or the owner of the land to pay any applicable development levies in accordance with the bylaw.

In situations where the council deems it necessary, either the council itself or the designated development officer may require the applicant or owner to enter into a development levy agreement with the municipality. This agreement outlines the terms and conditions for how the development levies will be paid to the municipality.

It is important to note that council is limited to assessing only one development levy for each development project unless otherwise stated in the Act. This ensures that property owners are not subjected to excessive or redundant levies for the same development.

Terms and Conditions

Developers must pay the levies according to a specified schedule, which may be based on milestones such as building permit issuance, occupancy, or final approval of a development project. This may include installments or varying payment rates as development is phased in. The bylaw may specify that a municipality may request letters of credit, performance bonds or other reasonable forms of collateral to ensure payment of fees.

Servicing Agreements and Fees

Section 172 of the Act explicitly outlines the process for developing servicing agreements and how they are utilized. In contrast to development levies, servicing agreements are the permitted mechanism a municipality may use if a subdivision is required for a new development. A municipality may request a servicing agreement to provide services and facilities that directly or indirectly serve the new subdivision. Generally, under the agreement, the municipality accepts long-term responsibility for maintaining services in the new subdivision in exchange for the developer installing the services required.

If a servicing agreement is required by the municipality, an applicant will not receive a certificate of approval from the approving authority until both parties have signed.

Provision of Servicing Agreements

Under subsection 172(3), a municipality shall not include within the agreement the completion of any work or the payment of any fees by the applicant that have been previously addressed by the payment of development levies or through a development levy agreement. A municipality may only do so when additional capital costs are incurred as a result of the proposed subdivision. This includes:

- The construction or installation by the applicant of storm or sanitary sewers, drains, watermains and laterals, hydrants, sidewalks, boulevards, curbs, gutters, streetlights, graded, gravelled, or paved streets and lanes, connections to existing services, area grading and levelling of land, street name plates, connecting and boundary streets, landscaping of parks and boulevards, public recreation facilities, or other works that council may require.

- If a council can reasonably demonstrate costs related to the proposed subdivision, the applicant must pay fees set by council. These fees cover all or part of the expenses for sewage, water, drainage, and other utility services, as well as public highway facilities, or park and recreation spaces.
- Time limits for the completion of the work or the payment of fees specified.
- Provisions for cost-sharing between the municipality and the applicant.
- The amount and location of land that may be required for municipal utilities.
- Provisions for payment for facilities outside of the municipality by the applicant.
- The capital costs to connect the development to a provincial highway should it be required.

The capital costs being charged may be within or outside the proposed subdivision but must directly or indirectly benefit the subdivision.

If an applicant is requested by the municipality to enter into a servicing agreement as a part of the subdivision approval process, it shall be completed within 90 days after the municipality has received the application. This period may be extended if both the applicant and municipality are in agreement.

Structure of the Agreement

Best practices for servicing agreements are to ensure they follow a standard structure that outlines the roles and responsibilities of both parties, interpretation of terms, timelines, dispute resolution, and any relevant appendices are included. These responsibilities should be clearly defined in the agreement, which may include:

Developer Responsibilities

- Build or install the required services to the specified standards and times. Indemnify the municipality or have liability insurance protecting its interests and maintaining the site safely during construction.
- Pay the municipality servicing or off-site fees (which may be listed in a schedule) and other fees (e.g. inspection and legal costs).
- Remove construction garbage when required.
- Repair municipal facilities such as road surfaces and replace survey markers or other facilities damaged or destroyed during construction.
- Keep all property taxes current.
- Transfer ownership and rights to all constructed works on acceptance by the municipality.

Municipal Responsibilities

- Provide information to developers to allow them to connect to existing services.
- Arrange for timely construction inspections.
- Issue completion letters or development and building permits as requirements are met.
- Accept responsibility for maintaining services once agreement conditions are met.

Municipal Utility Parcels

In a servicing agreement, a council may deem that the owner of land slated for subdivision allocate a portion of it for municipal utility purposes, as outlined in subsection 172(3)(a) or (b). This designated parcel must be marked on the subdivision plan as "Municipal Utility MU 1," "Municipal Utility MU 2," and so forth. The land provided becomes municipal property, and the municipality can lease it to entities providing public works or utilities.

Additionally, a municipality can designate its land as a municipal utility parcel or revoke such a designation if the utilities provided are relocated or no longer needed. However, if the designation persists, the municipality cannot exchange or sell the parcel. Notably, municipal utility parcels are excluded from the calculation of land required for a subdivision under subsection 186(3).

Application of Fees and Levies

As capital costs for servicing fees and levies are narrowly defined, so too is the manner in which a municipality is permitted to use them once they have been collected. Once payment has been made in either the form of a levy or servicing fee, the municipality shall deposit them into one or more development levy or servicing agreement accounts. These accounts must be separate and apart from other funds for the municipality. They cannot be transferred into their general revenue accounts.

A municipality shall use the funds received and any accrued interest only:

- To pay for the capital cost of providing services and facilities described in sections 169 and 172 of the Act.
- To pay debt incurred by the municipality as a result of the expenditures which were collected under their respective agreements.
- To reimburse an owner as part of the stipulation for cost sharing as outlined in the servicing agreement.
- In the case of fees collected as part of the servicing agreement to connect to a provincial highway, be paid to the minister responsible for the administration of *The Highways and Transportation Act, 1997*.

Registered Interest

A municipality may register an interest on a title based on the development levy or servicing agreement against the affected lands. The interest takes effect to the benefit of the municipality and runs with the land, binding on the registered owner of the land and any future successors.

The Right of Appeal

A council is required to formally request development fees, whether in the form of a development levy or servicing fees, in written format. Under subsection 176 (2) of the Act, upon receiving such a request, the applicant is granted 30 days to appeal to the Saskatchewan Municipal Board (SMB). Valid grounds for appeal of either agreement include:

- The capital work or project for which the development levy or fee is to be collected does not directly or indirectly serve the proposed development or subdivision.
- The development levy is not for capital costs.
- The calculation of the development levy is incorrect.

- The levy or its equivalent amount has already been paid with respect to the proposed development.
- Failure to enter into an agreement within the specified time (90 days unless otherwise agreed upon by the municipality and the developer).
- Whether or not a development levy or servicing agreement is necessary.
- The proposed terms and conditions of the development levy agreement or servicing agreement.
- Whether or not the application for the development permit or proposed subdivision of land is incomplete.

Where a municipal council has been granted the role of an approving authority, preliminary appeals are forwarded to the Development Appeals Board (DAB). At the same time, subsequent decisions from the DAB may be challenged and escalated to the SMB.

Benefits of Development Levy Bylaws and Servicing Agreements

1. **Fairness:** Development levies and servicing fees ensure that the costs of new infrastructure required to accommodate growth are borne by developers who directly benefit from the development, rather than placing the burden on existing residents and ratepayers who already must pay for the maintenance and repair of existing infrastructure.
2. **Managed Growth:** Development levy bylaws and servicing agreements enable municipalities to plan and manage growth in a sustainable manner by ensuring that new development contributes to the cost of necessary infrastructure upgrades and capital costs.
3. **Community Amenities:** Revenues generated from development levies or servicing agreements may be used to enhance the quality of life in communities by funding the construction of parks, recreational facilities, and other public amenities.

A sample development levy bylaw as well as a sample servicing agreement can be found at www.saskatchewan.ca. For more information about development levies and servicing agreements under the Act, please contact the Ministry of Government Relations, Community Planning branch.

Ministry of
Government Relations
Community Planning
420 – 1855 Victoria Ave.
Regina
S4P 3T2
306-787-2725

Ministry of
Government Relations
Community Planning
Room 978, 122 Third Ave. N.
Saskatoon
S7K 2H6
306-933-6937