



Corporate

 NO: R086

Report

 COUNCIL DATE: April 29, 2002

REGULAR COUNCIL			
TO:	Mayor & Council	DATE:	April 25, 2002
FROM:	General Manager, Planning and Development	FILE:	3150-01
SUBJECT:	Policy Regarding an Exemption from Development Cost Chargesfor Church Halls		

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information; and
2. Approve the policy attached as Appendix "A" entitled "Policy Regarding the Exemption from Development Cost Charges for Church Halls".

INTENT

The purpose of this report is:

1. To advise Council of current procedures followed by City staff in dealing with the collection of Development Cost Charges ("DCC's") for projects involving buildings set apart for public worship and church halls;
2. To recommend a policy related to exempting church halls from the payment of DCCs; and
3. To report on the matter of the DCCs collected in relation to a recent building constructed on the Star of the Sea parish site and a church hall addition constructed to the Colebrook United Church.

BACKGROUND

At its Regular meeting on December 10, 2001, Council adopted the following resolution:

"That the matter of Development Cost Charges for the Star of the Sea Parish and Colebrook United Church be referred to staff for further consideration and report back to Council."

Based on the City's DCC By-law, DCCs for buildings in the Public Assembly PA-1 and PA-2 Zones are collected at the time of building permit issuance and are calculated based on the floor area of the building. These zones accommodate, among other uses, churches (i.e., buildings set apart for public worship). Based on statutory exemptions discussed in more detail later in this report, areas such as the main worship area within a church building and the space occupied by facilities that are considered directly ancillary to the main worship area, such as the choir space, foyer, washrooms, clergy areas and church offices, are exempted from DCCs. However, areas such as church halls, other than the main worship area, as well as ancillary areas specifically serving the church hall, such as kitchens, washrooms and storage areas and other areas not obviously connected to the main worship area, such as a daycare centre, gymnasium and/or residential unit(s), have not been exempted from DCC charges. Disagreements over interpretation are resolved between the applicant and City staff.

DISCUSSION

Although DCC charges have been resolved without contention in the majority of church projects, concerns have been raised over the past couple of years, regarding the payment of DCCs in relation to a couple of building projects involving sites on which buildings set apart for public worship are located. These are described briefly in the following paragraphs.

The Star of the Sea Parish, at 15024-24 Avenue, applied for an exemption from DCCs for a hall that was constructed as an addition to a private school, that was located on the same lot as the parish church building. The exemption was denied on the basis that the hall was remote from the church (i.e., the hall is separated from the church by approximately 150 metres) and appeared to be more directly related to the school use on the property than the church use. The proponent ultimately paid the DCCs for this hall and proceeded with construction.

A building permit to construct a hall, attached to the Colebrook United Church at 5441-125A Street, was processed by the Building Division. The proponent requested an exemption from the payment of DCCs for the addition. This request was denied on the basis that the hall was to be used primarily for functions other than those directly connected to the adjoining church and, therefore, was not considered necessary to the church use.

Provisions in the Local Government Act

Section 933(4) of the *Local Government Act* sets out the City's authority to exempt construction from DCCs. Section 933(4) states:

(4) A charge is not payable under a by-law made under subsection (1) if any of the following applies in relation to a development authorized by the building permit:

(a) the permit authorizes the construction, alteration or extension of a building or part of a building that is, or will be, after the construction, alteration or extension, exempt from taxation under section 339(1)(g).

Section 339(1)(g) states:

(1) Unless otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:

(g) a building set apart for public worship, and the land on which the building stands, together with

(i) any church hall considered by the council to be necessary to the exempted building, and the land on which the church hall stands, and

(ii) any area of land surrounding the exempted building, an exempted hall, or both, that the council may, by bylaw, exempt;

The statutory framework set out by these two sections requires the City to exempt a structure from DCCs if a building is, or will be when completed, exempt from taxation, pursuant to Section 339(1)(g) of the *Act*.

There are two elements to the exemption provided by Section 339(1)(g) of the *Act*. Firstly, there is a non-discretionary statutory exemption, which is provided for those buildings "*set apart*" for public worship. Council has no discretion with regard to the exemption and the statutory exemption arises by operation of law where a building is set apart for public worship. Secondly, Council is given the discretion to provide for an exemption from DCCs for a church hall which is "*considered by the council*" to be "*necessary*" to the building set apart for public worship. This discretion must be exercised on a case-by-case basis. Council's decision becomes applicable to the building through the adoption of a by-law setting out Council's pronouncement that it considers the hall to be necessary to the building set apart for public worship. Council's decision and adoption of the appropriate by-law must occur, prior to the issuance of the building permit that is the triggering event for the collection of DCCs, pursuant to Section 993 of the *Act*.

There is no authority provided in the *Act* for the City to apply any such exemption retroactively, nor are there any provisions providing for a rebate of collected DCCs, or a grant in lieu of DCCs, based on the granting of the exemption provided by Section 339(1)(g) of the *Act*.

With respect to exercising the discretionary authority provided to Council by Section 339(1)(g) of the *Act*, in relation to exempting church halls from DCCs, two options are available for consideration by Council:

1. Do not exempt church halls from the payment of DCCs (i.e., continue current practice); or
2. Adopt a policy that stipulates minimum requirements as to when Council will consider exempting a church hall from DCCs.

The following is an evaluation of these options:

Option 1: Do not exempt church halls from DCCs (i.e., continue current practice)

Pros:

- Consistent with current practice;
- Church halls place demands on engineering services that the City constructs, using DCCs as the

funding source;

- Straight forward and inexpensive to administer.

Cons:

- Does not respond to concerns that places for public worship and related church halls are "not for profit" entities that provide a service to the community and should not be burdened, to the same degree, with taxes and other fees and charges as other types of development.

Option 2: Adopt a policy that stipulates minimum requirements as to when Council will consider exempting a church hall from DCCs

Pros:

- Will respond to concerns that places for public worship and related church halls should not be burdened, to the same degree, with taxes and other fees and charges as other types of development, since they provide a needed public service;
- Allowed by legislation;
- The amount of DCCs collected from church halls is relatively insignificant in relation to the total amount of DCCs collected by the City and, as such, there will only be a very marginal impact on the DCC program.

Cons:

- Inconsistent with current practice;
- Administration of the policy will be more complex than the current approach and, therefore, somewhat more time-consuming and expensive;
- Church halls have an impact on engineering services and, on this basis, exempting church halls from the payment of DCCs is inequitable in comparison to other types of development.

Recommended Course of Action:

Based on the above evaluation, it is recommended in accordance with Option 2, that Council adopt a policy providing for church halls, under certain conditions, to be exempted from the payment of DCCs. The following minimum requirements are recommended as the basis for Council to consider an application for such an exemption:

1. That the church hall, for which the exemption from DCCs is being sought, be located on the same lot as the building set apart for public worship;
2. That the total area of the church hall and ancillary areas (i.e., kitchen, washrooms, foyer, storage areas, etc.), for which exemption from DCCs is being sought, not exceed the total area of the building set apart for public worship, including ancillary areas (i.e., foyer, washrooms, administration offices, etc.); and
3. That the organization that operates the building set apart for public worship, on the same lot as the

proposed church hall, submit a letter to the City that articulates the reasons why the church hall is considered necessary to the operation of the building set apart for public worship and all the uses that the proposed church hall will be expected to accommodate and the relative frequency of each of the uses.

These recommended minimum requirements are incorporated in the draft policy that is attached to this report as Appendix "A". It is recommended that Council adopt this policy for use in relation to addressing applications for DCC exemptions for church halls.

Retroactive Application of Policy

As mentioned previously in this report, there is no authority provided in the *Act* for the City to apply any such DCC exemption retroactively, nor are there any provisions providing for a rebate of collected DCCs or a grant in lieu of DCCs. As such, for projects that have already paid DCCs to the City, for the construction of church halls that may otherwise be exempted from the payment of DCCs by the proposed policy, the City is not in a position to grant a refund.

The Deputy City Solicitor has reviewed this report.

SUMMARY

Based on a review of the provisions of the *Local Government Act* and on an evaluation of options with respect to exempting church halls from the payment of DCCs, it is recommended that the policy documented in the attached Appendix "A" be adopted by

Council as the basis for addressing future applications for exemption from DCCs, for projects involving the construction of church halls. Based on the provisions of legislation, this policy cannot be applied, retroactively, to projects for which building permits have been issued and for which DCCs have already been paid.

Murray Dinwoodie
General Manager,
Planning and Development

MDD:saw

cc City Solicitor
Deputy City Solicitor

Attachment

Appendix "A"

APPENDIX "A"

POLICY REGARDING THE EXEMPTION FROM DEVELOPMENT COST CHARGES FOR CHURCH HALLS

This policy is to be applied to each application received by City staff, for an exemption from the payment of Development Cost Charges, related to the issuance of a building permit to allow the construction of a "church hall".

- In each case where an application for such exemption is received, staff will prepare a Corporate report to Council that will:
 - document the particulars of the application;
 - document whether the requirements (the requirements are listed below) for consideration of a DCC exemption have been satisfied;
 - document the results of staff's evaluation of the application; and
 - make a recommendation regarding whether a DCC exemption should be granted.

- Minimum requirements for consideration of a DCC exemption:
 - The church hall, for which the exemption from DCCs is being sought, must be located on the same lot as the building set apart for public worship;
 - The total area of the church hall and ancillary areas (i.e., kitchen, washrooms, foyer, storage areas, etc.), for which exemption from DCCs is being sought, is not to exceed the total area of the building set apart for public worship on the same lot, including ancillary areas (i.e., foyer, washrooms, administration offices, etc.); and
 - The organization that operates the building, set apart for public worship on the same lot as the proposed church hall, must submit a letter to the City that articulates the reasons why the church hall is considered necessary to the operation of the building set apart for public worship and all the uses that the proposed church hall will be expected to accommodate and the relative frequency of the various uses.

- Where Council approves an exemption from DCCs for a church hall, staff will prepare and forward the necessary by-law to Council for the required readings, in advance of the issuance of the building permit related to the church hall.