

**Corporate** NO: R170**Report** COUNCIL DATE: July 22, 2002\_

<b>REGULAR</b>			
TO:	<b>Mayor &amp; Council</b>	DATE:	<b>July 18, 2002</b>
FROM:	<b>City Solicitor</b>	FILE:	<b>3150-01/#5</b>
SUBJECT:	<b>Development Cost Charge Exemption - Religious Establishments</b>		

**RECOMMENDATION**

That the information be received.

**BACKGROUND**

Council at its meeting of July 15, 2002 adopted the following resolution:

*That staff provide a report to Council on whether a proposed church hall should automatically be exempted from DCCs if it is to be located on a lot on which a church exists that has previously been exempted from paying taxes.*

Council at its meeting of April 29, 2002 adopted the policy recommendation contained in Appendix "A" to Report No. R086 from the General Manager, Planning & Development. A copy of this report is attached as Schedule "A". Legal Services concurred in its recommendations and provided extensive legal input.

**DISCUSSION**

There are two principal reasons why church halls or schools ancillary to a place of worship cannot be automatically exempted from development cost charges ("DCCs") if they are located on a lot on which a church exists that has previously been exempted from taxes. To provide a more complete discussion on the issues raised in Council's resolution I have included schools ancillary to places of worship.

**School Developments on Land Surrounding Places of Worship**

Section 339(1) of the *Local Government Act*, R.S.B.C. 1996, c. 323 (the "Act") states:

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

(k) *a building owned by an incorporated institution of learning that is regularly giving children instruction accepted as*

*equivalent to that given in a public school, in actual occupation by the institution and wholly in use for the purpose of giving the instruction, together with*

- (i) the land on which the building stands, and*
- (ii) any area of land surrounding the exempted building that the council may, by bylaw, exempt as being reasonably necessary in connection with that building;*

The exemption provided by Section 339 of the *Act* is a general tax exemption and does not relate to DCCs.

Section 933 of the *Act* authorizes the City to impose DCCs. The City has adopted such a by-law and therefore DCCs are applicable to all construction and subdivision that occurs within the City if applicable under the terms of Section 933 of the *Act*.

Section 933 of the *Act* does include a number of exemptions to the payment of DCCs. However, the only exemption that is applicable to a property or development that is otherwise exempt under Section 339(1) of the *Act* is the exemption set out in Section 933(4)(a) of the *Act* which provides that no DCCs are payable with regard to 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) of the *Act*. Section 339(1)(g) of the *Act* refers only to single buildings or structures which are set apart for public worship and church halls **considered by Council** to be necessary in connection with the exempt building.

The City's Development Cost Charge By-law No. 11951 (the "DCC By-law") was amended in 1998 to provide that DCCs are not payable with regards to buildings which are exempt from taxation under Section 339(1) of the *Act*.

Section 933(11) of the *Act* deals specifically with this question as it states:

*(11) As a limitation on section 176(1)(c) [corporate powers - assistance] and section 183 [assistance under partnering agreements], a local government must not provide assistance by waiving or reducing a charge under this section.*

In light of the fact that Section 933(4) of the *Act* refers only to one subsection of the tax exemption subsections located in Section 339 (1) of the *Act* and that Section 933(11) of the *Act* specifically limits the City's authority to provide assistance by way of waiving or reducing DCCs, it is my opinion that school developments, whether private or otherwise, are subject to DCCs.

## Church Halls on Lands Surrounding Places of Worship

Section 339(1)(g) of the *Act* 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 in Sections 933 and 339(1)(g) noted above, which exempts buildings falling within Section 339(1)(g) of the *Act* from DCCs 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 in 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 and therefore Council cannot enact a by-law that permits an automatic exemption from DCCs.

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*.

## CONCLUSION

With respect to church halls there is no authority provided in the *Act* for the City to apply any exemption automatically or retroactively, nor are there any provisions 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*.

CRAIG MacFARLANE

City Solicitor

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Encl.

c.c. General Manager, Planning & Development

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