

THE CORPORATION OF THE CITY OF ROSSLAND
MEMORANDUM



TO: Mayor and Councillors

FILE:

PC: Management

DATE: January 4, 2011

FROM: Victor Kumar CAO/City Manager

SUBJECT: Financial Assistance: Use of Facilities, Pools & Parks Policy

Background

The City, along with the other participating local governments of the East End RDKB withdrew from the Regional Recreation Services commencing January 1st 2009. Subsequently, regional recreation, library, arts and culture service were dissolved.

In an attempt to find a local solution to use facilities and services in other local governments, a grant in aid policy was instituted. This Policy financially assists some of the Non-Profit Organizations and Societies who provide community wide "service" in and outside of the City boundaries, using facilities, parks, pools (aquatic centre) and arenas located in other local governments. There was no intent in the Policy to provide individuals with financial assistance beyond the legislative authority of Council to provide "service" through one of the following means: either directly (City) or through another public authority or another person or organization.

It is becoming apparent that some citizens of Rossland do not comprehend that the Council's legislative authority does not extend beyond the boundaries of the City in accessing the other local governments' services and facilities. Access to other local governments' services and facilities may only occur through a "service" supported by property taxation and user fees.

Issues and Challenges

In order for the Council to expand the recreation "service" beyond the existing municipal boundaries the following issues and challenges must be overcome when considering the broad base application of expanding the grant in aid Policy:

- Council's sphere of authority;
- Legislative Authority in dealing with other local governments;
- Providing direct financial assistance to Individuals who wish to use other local governments' facilities and services;
- Providing municipal recreation service using other local governments' services and facilities.

Discussion of Issues and Challenges

Council's sphere of authority: Rossland Council's jurisdiction lies within the boundaries of the City. To this end, Council's legislative authority is exclusive to the "services" within the City unless it is legislatively authorized beyond the City's boundaries. Some of the key regionally used facilities, parks, pools (aquatic centre) are not located within the City boundaries. Though residents of Rossland wish to use these key regionally based services and facilities, urging Council to provide financial assistance, Council's sphere of authority is restrictive in this regard. Council can not simply act by a majority vote and pass a resolution on the strength of the demands from some residents or through a receipt of petition. There are legislative tools that enable local governments to enter into agreements for use of facilities and services benefiting the community as a whole, whether it is taken advantage of or not. Council within this legislative authority has the exclusive authority to allocate the level of financial commitment it is willing to devote to such a service as long as it has a community wide benefit. Council also has the legislative authority to seek community opinion through a plebiscite.

Legislative Authority in dealing with other local governments: The Provincial Legislature in the *Community Charter* specifically addressed the issues of services provided by other local governments and accessing such services by another local governments. A Policy of Rossland City Council may not be designed to circumvent the legislative authority relating to the services in another local government. Hence, Council must be mindful of these legislative provisions when considering the implications of policies and bylaws. The existing policy is designed to meet the legislative requirement within the Council's sphere of authority in providing "service" through another organization. Those individuals who wish to use the facilities, pools (aquatic centre) and parks in other local government jurisdictions do so according to the Terms and Conditions set by the other local governments. In drafting the current policy, great care was taken to avoid undermining the service provisions of the other local governments. To this end, restrictions were included in the policy to ensure that it relates to providing grants to well established organizations and Non-Profit Groups that provide "service" which benefits the residents in the City and beyond the boundaries of the City. Council has the legislative authority to make different provisions for different areas, conditions or circumstances; establish different classes of persons and make exceptions for different classes in a bylaw relating to services. To this end, a local government owning the facilities, parks and pools (aquatic centre) has the legislative authority to set rate structure for different classes of persons. For example: residents of Rossland are a "class of persons" within the jurisdiction of the local government providing the service. In the existing policy, such differentiation was also made so as to avoid the perception of providing direct financial benefit to any individual within the Community.

Financial Assistance to Individuals: The key issue is that the purpose of a local government is “*providing for services, laws and other matters for community benefit*”. The *service* must have a community benefit, not an individuals benefit. Direct transfer of funds to any individual is expected to be taxable in the hands of that individual, including transfer of funds on behalf of that individual to another local government. There is no legislative authority in existence that allows such transfers unless it is in the context of a “service” of the City. An individual or person may receive funding as long as there is provision of service on behalf of the City for the benefit of the community. The individual under this scenario is acting as a contractor in delivering a municipal service. A grant in aid to the Non-Profits and Clubs is differentiated from transfer of funds to an individual in that these organizations provide service within and beyond the City’s boundaries. Clubs and Societies use the grant fund from the City to advance their goals and objectives whether it be sporting, organizing an event, conducting children, seniors, disabled and handicapped individuals’ community and regional based services and programs. There are seldom any restrictions in joining these organized registered groups, organizations and non-profit societies. A minimum number of registrations were stated in the policy to be consistent with the recreation program that the City would otherwise provide. The City would not run a recreation program for one or two individuals in any event.

Providing municipal recreation service using other local government’s service facilities. Council may wish to expand the existing recreation service by offering new programs through the City’s Recreation Department. Council is able to set the fee structure of any new recreation programs that may be authorized. The recreation department could book facilities, pools (aquatic centre) and park usage times in other local governments’ jurisdictions. The City’s recreation department would pay the fees and charges assessed by the other local governments. These would be organized recreation programs using other local government facilities. There must be sufficient number of registrations to recover reasonable cost of delivering such programs. There would be an element of subsidy involved as are in the other existing municipal recreation programs if Council so chose through the setting of the fee structure in the Recreation Fee Schedule Bylaw. Advance planning would be required to ensure greater participation in the programs by individuals. The risk in delivering this type of new recreation program, using other local government service facilities, is that once the booking is made, if there are insufficient number of registrants, the Recreation Department would be liable for the fees and charges unless there was a reasonable notice period for the cancellation, as is done with the City’s other existing recreation programs. It is conceivable that the other local government might not wish to schedule times of programs or might set a higher rate in order to discourage organized programs from using its facilities unless the other local government’s objective is met. Regardless, the other local governments’ facilities use would not be denied as long the set fee structure is paid by any user and organization.

The issues and challenges discussed explain that a local government does not have the tools to assist individuals unless it is within the context of a 'service'. Though the individuals of one Community have the freedom of mobility and use, the usage must comply with the Terms and Conditions set by the other local government. The City's approach in providing service should be within the legislative authority when it relates to the use of services and facilities in other local government's jurisdiction. The following options and alternatives are available to Council to consider in addressing the issue of the use of facilities and services in other local governments.

Option and Alternatives

Option 1: *Hold a Plebiscite for the participation in an inter-municipal recreation service.* The regional recreation was set up through referendum based on participation of all local governments in the Region. It was a democratic process and those that utilized the services got use to it. The service was funded through a regionally based taxation and user fee. This is no longer in place, hence a plebiscite might be an appropriate tool to determine whether there is general support to enter into an agreement with other local government jurisdictions for an inter-municipal recreation service. The plebiscite focus would be on two specific components within one single question such as:

"Do the electors of Rossland wish the City Council to enter into a recreation service agreement with Trail and other local governments with an annual residential tax limit not to exceed \$0.50 per \$1,000 of assessed residential property".

A plebiscite is less costly than a referendum. A week long voting period can take place, using the City's last municipal voters list. The result of the plebiscite is not binding though precedent suggests that Council would have an enhanced authority to act.

A plebiscite provides Council with clarity on the issue of the inter-municipal recreation service similar to the previous regional recreation service. This approach is better than relying on surveys and petitions from the Community. It meets with the legislative requirement of entering into inter municipal agreements that might exceed over five years. It is contemplated, that when such an agreement is entered into, it is for a long term, though it is expected there would be cancellations and renewal provisions.

Option 2: *Status quo;* There is no change required to the policy or the recreation service as it exists. Council of the day made the decision to be a party to the dissolution of the regional recreation service. It was a significant decision. A Council is not expected to please everyone regardless of the significance of the decision. Council made the decision based on the overall benefit to the Community. The tools available to get back into the inter-municipal recreation service of another local government are there, however, a Council must

determine the "value of the service" to the taxpayers. Council would ultimately be accountable to the electors. The tools that are available to implement an inter-municipal recreation service requires the parties to reach an agreement on the "value" of the service. Generally the jurisdiction owning the facilities and services has an upper hand in such negotiations. Hence, it is important to determine whether there is a strong desire to reach an agreement through a plebiscite process. Under the present system no Rossland resident is denied access to Trail facilities and services except the fee structure is higher for the "class of Rossland residents". This is in compliance with the existing legislative authority.

Option 3: *City's recreation department may organize programs using Trail Facilities based on confirmed participation and registrations.* Individuals may wish to register for programs and pay the fee structure as approved by Council. The City's recreation department can do the booking and make the payment in accordance with the Fee Structure set by the owner/operator of the facility located in another local government jurisdiction. Rossland Council has the authority to determine the rate structure for the program including any subsidy. The subsidy level might be at the same level if the same facility was located in Rossland or is in some way equivalent to the general subsidy applicable to all other existing Rossland based recreation programs. Legislative authority is there for Council to provide any service as long as it is available to everyone. This expanded recreation program would be no different in "service" than having a family skate in the Arena. The major risk of this approach is the lack of participation and the extent of the cost recovery by Trail from organized programs of Rossland using Trail Facilities. Trail Council has the authority like Rossland Council to set discriminatory rate structure based on class of persons, location and time. It might be too costly to participate on an organized program basis as opposed to an individual paying the non-resident fee on his/her own.

Option 4: *Single or two governance structures:* The 5 local governments and the two electoral areas are either governed as a single local government or split into two local governments. Either of these two governance models would eliminate the need to have differential rate structures unless one of the two local governments decides to implement a discriminatory rate structure for the non-taxation participants. This is a choice available for the elected representatives and residents to advance to make this region competitive in tax and having uniform user fees for facilities and services regardless of its location. Under such a scenario, existing facilities and services could be regionalized and become financially viable for all residents. As long as there are five local governments and two electoral areas in the Region, it must be recognized that every Council must face the issue of access to facilities and services in Trail on an on going basis.

Legislative Authority, Precedents and Policies

Council has the legislative authority to deliver any service. The service can be delivered by a person, a public authority or organizations (*Sections 7(b) and 8(2) of the Community Charter*). The emphasis is on a "service" and not on an individual. The individual can access a "service" based on the Terms and Conditions set by a Council.

The existing policy is in compliance to the extent that there are sufficient safeguards and restrictions to avoid the perception of providing direct financial assistance to individuals for their own benefit. The organization is defined in the Policy as "*whose purpose is recreation and competitive programs*" and further it must fall into the "three categories". This Policy is simply a grant-in-aid to organizations. Any amendment to the policy outside the legislative authority of "service" will invalidate the Policy making it legislatively non-compliant.

Once the policy becomes legislatively non-complaint, Council/City is subject to challenge from residents and electors. Further a member of Council knowingly voting and using funds contrary to the *Community Charter and the Local Government Act* is personally liable for the amount. (*Community Charter: Section 169- Auditor to investigate on reports and Section 191-Liabilities for use of money contrary to the Act*).

Budget and Financial Impact

In order for a Council to provide any service, the cost and net property tax effect must be allocated in the Financial Plan and reported accordingly in the Annual Report. A list of funds given to other organizations is also recorded in the Financial Plan and in the Annual Report.

The property tax impact of the change in recreation and cultural service from the Regional Service to the Municipal Service is attached for background and historical information- *Property Tax Utilization Comparison attachment*. This comparative information summarizes the municipal taxation structure implemented commencing in 2009.

For historical comparison-prior to the dissolution of the regional parks recreation and culture service, the City's contributions on the regional service is summarized in the 2008 -"*Rossland's contribution to each participant's service & facilities*". To gain an understanding of the regional system of sharing, the summary is structured to list only Rossland's contributions to all other services and facilities of the Region.

For example in 2008 Rossland requested \$429,500 from the Regional District to operate its parks, boulevards, museum and recreation. This \$429,500 was taxed as follows: the City of Rossland- \$73,445 from its taxpayers, Trail provided to Rossland \$ 196,281 and another \$159,774 in taxation came from all other regional participants. Trail Aquatic Centre requested \$491,000 from the Regional District. Rossland taxed \$83,961 towards the Trail Aquatic Centre, Trail taxed its own taxpayers \$224,387 and the remaining participants taxed \$182,652 for the Trail Aquatic Centre.

The summaries provided herein are to provide the change in taxation at the Regional level to the Municipal level. For inter-municipal regional service, the funding source would be a direct taxation on Rossland taxpayers or reduce some other service to make up the cost of the inter-municipal recreation service.

SSP and OCP Implications and Impacts

Rossland has plenty of recreation opportunities as identified in the Focus Area 4 of SSP-Recreation and Leisure. Transportation to facilities and services located outside of the Community increases GHG emissions unless a public transportation system is utilized. Public transit does not meet the individual preferences when recreation and leisure facilities and services are accessed. SSP (Focus Area 4-Energy and Air Quality). SSP Focus Area 11- Governance: The dissolution of the regional system of shared services/governance might be considered contrary to the end state goal in the context of conflict that has arisen with other local government and within the residents. Recreational opportunities are incorporated in the most recent update of the OCP.

Respectfully submitted
