

FINANCIAL LOSS DURING MAJOR CONSTRUCTION PROJECTS

Draft Policy

Recommendation

That Executive Committee recommend to City Council:

That the June 19, 2024, Integrated Infrastructure Services report IIS02125, be received for information.

Requested Action	Information only		
ConnectEdmonton's Guiding Principle	ConnectEdmonton Strategic Goals		
CONNECTED This unifies our work to achieve our strategic goals.	Regional Prosperity		
City Plan Values	THRIVE		
City Plan Big City Move(s)	Catalyze and converge	Relationship to Council's Strategic Priorities	Economic Growth
Corporate Business Plan	Serving Edmontonians		
Council Policy, Program or Project Relationships	<ul style="list-style-type: none"> 2023 - 2026 Capital Budget 		
Related Council Discussions	<ul style="list-style-type: none"> February 8, 2021, Office of the City Manager report CR_7806, City of Montréal's Financial Assistance Policy March 23, 2022, Integrated Infrastructure Services report IIS00397, Financial Assistance for Economic Loss due to Major Construction October 4, 2023, Integrated Infrastructure Services report IIS00397, Motion on Financial Assistance for Economic Loss due to Major Construction 		

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Previous Council/Committee Action

At the October 4, 2023, City Council meeting the following motion was passed:

That Administration prepare a Financial Loss During Major Construction Projects policy using the draft policy report from March 23, 2022 (report IIS00397) and incorporating the following features:

1. Financial assistance be provided directly to business owners (not landlords).
2. A cap on forgiveness (example: 50 per cent of property taxes for the years of construction).
3. Forgiveness to be repaid in years subsequent to construction completion should revenue increase to a level (example: 15 per cent) higher than pre-construction values.
4. Forgiveness to be based on business revenue, not net income.
5. Income from the specific business must be at least 50 per cent of gross revenue of this and all related businesses.

Executive Summary

- City Council provided direction on October 4, 2023, to bring back a previously drafted policy on financial assistance for businesses impacted during major construction with additional criteria. The revised draft policy is included in Attachment 1.
- A financial assistance program for businesses impacted by major construction may help address concerns of some businesses affected by major projects.
- Implementing a financial assistance program as outlined in the revised draft policy comes with risks in terms of the ability to provide appropriate oversight and governance, such as the verification and validation of financial information gathered to support the issuance of a grant payment.
- While not financial in nature, the City currently takes many proactive steps to support businesses impacted by major construction projects.
- If directed by Council to implement, costs associated with the revised draft policy will vary depending on the scope of the program (type of major works included) and identified major work areas. It is estimated that the annual costs of the program could be \$225,000 per 100 businesses operating in an eligible area. Administrative costs are estimated to be up to an additional \$200,000 per year. This does not include any further costs associated with added levels of oversight the City may choose to implement.
- If directed by Council to implement a grant program instead of the revised draft policy, costs associated with a grant program will also vary depending on the scope of the program. It is estimated the annual cost of a grant program could be \$250,000 per 100 businesses in an eligible area. The grant program, however, would require less administrative burden than the revised draft policy.
- Due to the associated limitations and the potential financial impact, Administration does not recommend implementing the Draft Policy.

REPORT

Administration updated the draft policy originally included in the March 23, 2022 Integrated Infrastructure Services report (IIS00397 Financial Assistance for Economic Loss due to Major Construction), to incorporate additional features (Attachment 1) (the “Draft Policy”). Additions include: clarification that financial assistance is directed to business owners (not landlords), a “cap” or maximum amount of financial assistance available per business, the amount to be repaid in subsequent years, the amount of financial assistance based on business revenue and stipulation that income from the specific business must account for a minimum of 50 per cent of gross revenue of all related businesses.

Removed from the Draft Policy is the notion of repayment of financial support in subsequent years as it risks the grant being construed as a loan which is not permitted in the *Municipal Government Act*.

Financial assistance for economic loss due to major construction can provide support to businesses potentially experiencing negative impacts due to major construction projects that may, at times, limit access and discourage patronage during construction. An assistance program may address the concerns of some businesses in areas affected by major construction.

There are multiple limitations to the value and merits of the type of program outlined in the Draft Policy:

- Financial support compensates businesses for losses already realized.
- Support is provided after the loss has already occurred and does not prevent or mitigate losses from occurring and, as such, may not provide timely support.
- The program assumes any financial loss above an established threshold is attributable entirely to the construction. Based strictly on financial submissions, Administration would be unable to distinguish between financial impacts of construction and other external impacts. Other contributing factors could include changing market conditions, increasing costs or inefficient business models.
- Comparability of financial results over time would serve as the basis for loss calculations for assistance. Where an organization does not have audited financial statements, comparability of data from one year to the next would be difficult to assess and assistance would then be based on financial information submitted and sworn to by businesses. Without audit or review, information may be subject to error or misrepresentation.
- Businesses that work to mitigate losses do not receive a benefit from such a program. Further, those who effectively work to mitigate losses will effectively be asked to fund the program through increased taxes, creating potential inequity in the program more broadly.

Due to these limitations and the potential financial impact of the Draft Policy discussed below, Administration does not recommend implementing the Draft Policy.

As previously outlined in report IIS00397, the City of Edmonton currently takes a number of actions to support businesses during construction, including:

- engagement during project planning,
- providing advance notice to businesses regarding the construction,

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- ensuring effort is made to maintain access to businesses during construction,
- providing clear signage to provide advance notice of any traffic disruptions or changes to access,
- staging construction to ensure access to businesses is maintained or alternative access is provided,
- providing additional wayfinding signage to direct customers to businesses in a construction zone and
- encouraging contractors to support businesses in areas of major construction.

Budget/Financial Implications

There would be an ongoing operating expense with a financial assistance program being funded through additional tax-levy, should the Draft Policy be adopted by Council.

The actual financial impacts of a financial assistance program are dependent on several factors, including:

- scope of the assistance program in terms of the number of projects determined to be major construction,
- number of businesses determined to be impacted by major construction,
- number of businesses eligible for assistance,
- actual losses realized by businesses, and
- program maximums and loss thresholds established.

The potential financial impact for a financial assistance program based on the Draft Policy is estimated to be \$225,000 per 100 businesses for payments made for eligible business losses and \$200,000 in additional resources to administer the program. These estimates are preliminary and based on a limited amount of data available due to these types of programs not being common in Canada. Actual costs and resources required may vary significantly.

While the provided Draft Policy is not recommended by Administration, a grant program could be an alternative means of supporting businesses impacted by major construction projects. The Major Construction Projects Business Support Grant is outlined in Attachment 2. This grant program could provide a lump sum grant to businesses impacted by City-led major construction projects. This grant would be intended to provide financial support to help businesses prepare for the potential effects of construction by adapting their operational practices and implementing their own strategies to encourage patronage during construction. A grant program is estimated to have a similar cost to the Draft Policy, \$250,000 per 100 businesses based on a \$2,500 annual grant, though it would have less administrative burden.

There is currently no funding available within approved operating budgets to implement either the Draft Policy or a grant program. Additional tax-levy funding would be required to fund the initial estimated costs, with the expectation that adjustments would be brought forward through future supplemental budget adjustments as more certainty around program uptake and actual resources required is confirmed.

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Legal Implications

The *Municipal Government Act* specifically limits the City's liability with respect to roads, public places and public works. These liability protections seek to balance the public interest of large infrastructure projects with individual interests. To offer such a program, the City would be providing compensation where there is no legal obligation to do so, and in some circumstances, in situations where the liability protections currently provided to municipalities in Alberta act to avoid. Although there is no prohibition against creating such a program, it would create a new precedent and expectations that are not currently required by law.

While any compensation offered by the City may be subject to repayment when certain terms and conditions are not met by a recipient, adding terms to an assistance program for private for-profit businesses that require repayment of the funds on the condition a recipient's revenues improve in the future, risks the grant being construed as a loan. Section 264 of the *Municipal Government Act* prohibits municipalities from offering loans to private, for-profit entities, therefore to comply with the *Act*, repayment requirements attached to the assistance program should be limited to circumstances where grant terms have not been met or conditions are breached.

Community Insight

As a relationship-based city, Administration listens and learns from the community in many ways: research, meetings with stakeholders (residents, businesses, organizations, etc), through partnerships, social media listening, public engagement, online petitions, 311 inquiries and other forms of community conversation and connections.

Formal consultations have not been completed as this could create an expectation that a financial assistance policy be implemented. Administration also did not conduct any engagement on the merits and value of the proposed Policy for businesses and so there is some uncertainty on the value businesses may see in this type of loss recovery Policy as drafted.

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Given any program would be applicable in a geographically impacted zone, equitable application of the program to eligible impacted businesses will need to be maintained. Although access would be available to those within the area of major construction work, the accessibility of the program for some groups may be unequal. Also, as the program requires the reporting of financial information and the categorization of information in ways not necessarily required by the business itself, this may pose a further barrier for some making applications.

In order to ensure the program is as accessible and equitable as possible, if implemented, measures would need to be taken to address possible barriers identified. Such measures could include using various communication tools to advertise the program, simplifying the application process as much as possible while ensuring the safeguarding of City assets, providing training for businesses in the community and ensuring staff are available to assist potential applicants with questions.

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Attachments

1. Draft Policy - Financial Loss During Major Construction Projects
2. Proposed Major Construction Business Support Grant