

2014 FDA Process Review of Alberta Municipal Levies: Implications for Alberta Taxpayers and Connection to Alberta Democracy



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- 2. to encourage people to be involved in monitoring government processes at all levels of government and in providing sound, practical, and effective suggestions. (For more information on the FDA visit: www.democracychange.org)**

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EXECUTIVE SUMMARY

The Foundation for Democratic Advancement (FDA) asserts that municipalities like any other government department and agency, corporation, and non-profit/charity organization are expected to operate efficiently and effectively in order to provide adequate services at reasonable cost. In this report, the FDA is not promoting and will never promote the idea that municipalities have the right to impose their own levies in order to create more revenue. The reader knows that extra revenue and abundance of cash and resources may lead to complacency, inefficiency, waste, and corruption. However, the FDA supports and advocates that municipalities have the right, when needed and warranted, to supplement their revenue in order to provide services and develop and maintain safe and reliable communities.

In its research, the Foundation for Democratic Advancement uncovers the bias of section 648 of the Alberta *Municipal Government Act (MGA, 2000)* and the section's inconsistent application throughout Alberta. As it stands, section 648 only allows Alberta municipalities to charge hard infrastructure levies (such as charges for sewer or water infrastructure) on new off-site developments as opposed to municipalities having the discretionary capacity to charge for both hard and soft levies which includes police and fire services, parks, and community infrastructure. Currently, several Alberta cities (most notably the City of Calgary) bypass this restriction on levies by signing private negotiated agreements (standard development agreements) with development community stakeholders. These agreements allow the City of Calgary, for instance, to charge also for soft infrastructure levies because the development industry agreed to them, and therefore it cannot sue on grounds of violation of the *MGA*. All other Alberta municipalities are restricted to charging only hard infrastructure levies unless they too can negotiate private agreements with developers and/or developer associations. Moreover, the Government of Alberta ignores the bypass of section 648 by Alberta municipalities.

In the FDA's view, section 648 is a process shortcoming by allowing developers to either avoid soft infrastructure levies or negotiate low levies from a strong negotiating position. In either scenario, Alberta municipal taxpayers likely pay more for the capital costs of new off-site developments, while developers, which are the principle profit beneficiaries of new developments, pay less. This issue resolves around who pays for soft infrastructure which is critical to new off-site infrastructure and the ability of municipalities to maintain safe and viable communities (*MGA, Part 1, Section 3*).

An off-site levy is one financing source to both pay for growth-related infrastructure and pass on infrastructure costs to those individuals and organizations who are the primary beneficiaries of the growth, and thereby ensure "growth pays for growth" (Baumeister, 2012; Slack, 2012; Corvus, 2014). If developers assume full cost of growth-related infrastructure, then their profits will be less, or the additional development charges will be passed onto the consumer which will increase the cost of new developments. If the municipal taxpayers absorb the cost of growth then their tax rates will be higher, and the

consumer cost of new off-site developments may be lower, unless developers set higher profit margins and keep the difference.

Currently under section 648, Alberta taxpayers likely have higher municipal tax rates and/or deferred tax in the form of municipal debt from unfair soft infrastructure costs. Also, FDA financial analysis shows that Alberta small and medium municipalities may be facing unfunded liability and/or debt from their limited ability to charge for growth-related soft infrastructure. In contrast, developers have greater profits from new off-site developments through low soft infrastructure levies or no soft levies at all. Related to this issue, both rural and urban Alberta municipal associations (AAMD&C and AUMA) have passed repeated resolutions requesting that the Government of Alberta amend section 648 in order to give municipalities the legislative authority and discretionary capacity to charge for both hard and soft infrastructure in regard to off-site developments and in response to new and additional service requirements and demands (AAMD&C, Resolution 6-07F, 2007 and Resolution 4-11S, 2011; AUMA, Resolution C.ii.3, 2008 and Resolution C.ii.3, 2011).

Through its analysis and professional experience, the FDA believes the process limitation of section 648 is a political decision because the Government of Alberta has authority over the contents of the *Municipal Government Act (MGA)* including amendments. How could this limitation be accepted and even passed by elected officials who ought to represent the interests of all Albertans? Why are most Albertans uninformed about this issue, especially when it affects how much municipal tax they pay and impacts all Alberta municipalities? How can the Government of Alberta ignore the repeated resolutions of the Alberta Association of Municipal Districts and Counties, and the Alberta Urban Municipal Association? These resolutions in essence mean every Alberta municipality wants to be granted the ability to charge for growth-related soft infrastructure in order to meet the service demands of new growth.

The FDA believes that section 648 is rooted in democratic and electoral issues. In particular, the FDA believes that Alberta lacks guiding fundamental democratic principles for its provincial and municipal democracies (as compared for instance to the State of California) and that provincial elected officials have substantive political say in the Alberta Legislature, while Albertans have given substantive political say only on Election Day, barring government initiated referendums. To illustrate, Alberta has no mechanisms for citizen-initiated referendum or recall, or citizen-initiated legislation. Compounding this inherent political bias to elected officials over the voice of Albertans, and lack of concrete democratic principles of Alberta democracy such as “all political power is inherent in the people” (CSC, 1879, Article 2, Section 1), the fairness of the Alberta provincial electoral system is compromised by a number of legislative biases to large, established parties (FDA Electoral Fairness Report on Alberta, 2012).

The FDA concludes that Alberta requires reform in its election law and governance practices. Simply amending section 648 of the *MGA* by allowing municipalities to charge developers soft infrastructure levies ignores deficiencies in Alberta democracy and its corresponding reduction in the rights and political power of its citizens. The FDA

recommends that all Albertans within their means get involved with the Alberta legislative process and implementation if they want to protect and advance their democratic voice, and create a society of their choosing.

“If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in government to the utmost.”

- Aristotle

RECOMMENDATIONS

Recommendation 1

The FDA recommends that all Albertans participate within their ability in government processes and practices by staying informed and monitoring decision-making and legislation. An engaged and active public can safeguard and advance democracy in Alberta.

Corrective Action to be Taken

This recommendation is fundamentally a social and political decision. Albertans need to decide what kind of society and democracy they want to live in, and take the necessary steps to make it reality. No meaningful social and political change will occur without the active involvement of the people.

Recommendation 2

The FDA recommends that the current Government of Alberta amend immediately section 648(2) of the *Municipal Government Act* to include soft infrastructure levies in response to their fairness and soundness and to repeated requests from the AUMA and AAMD&C which are representative of all Alberta municipal jurisdictions. Additionally, the levies must be properly earmarked with sound spending control for the purposes of collecting the levies, and funds derived from levies must never exceed their purposes or be put into a general revenue account.

Corrective Action to be Taken

This recommendation is a political decision.

The Alberta Legislature should honour their obligation to serve Albertans as a whole, and in doing so, make the necessary changes to section 648(2).

The Alberta electorate should base future voting decisions on government action related to this issue.

Recommended amendment of section 648(2):

Add the following off-site levies

- a) new or expanded facilities for libraries
- b) new or expanded facilities for parks and recreation

- c) new or expanded facilities and services for policing
- d) new or expanded facilities and services for transit
- e) new or expanded facilities and services for fire protection
- f) new or expanded facilities and services for solid waste and recycling
- g) new or expanded facilities and services for culture, art, and heritage
- h) new or expanded facilities and services for family and community support
- i) additional new or expanded facilities and services which can be justified as integral to the quality of life of citizens

Benefits of the Inclusion of Specific Soft-infrastructure Levies

- 1) Developers are required to pay their fair share of infrastructure costs of new developments.
- 2) Alberta municipalities, which likely have the greatest impact on the day-to-day lives of its residents, will have more financial control over municipal development, and the capacity to respond to the need for expanded services necessitated by new development.
- 3) It will reduce the unfunded liability of new developments in Alberta municipalities.
- 4) Alberta municipal taxpayers will have lower municipal taxes, and Alberta municipalities should have lower debt.
- 5) Alberta municipalities will be able to deliver a greater range of services especially if extra revenue is used efficiently with practical planning and implementation.

For further benefits, see (Nichols, 2010, p. 32).

Disadvantages of the Inclusion of Specific Soft-infrastructure Levies

- 1) Developers may pass on the additional levy costs onto the purchaser of new developments (and/or reduce their profit from new developments).

Marketplace competition should deter developers from passing excessive additional costs onto new purchasers.

2) Alberta municipalities may overcharge the development industry for soft infrastructure, and thereby stifle municipal economic development.

However, sections 648, 649, 650, and 655, in particular, of the *MGA* combined with the Principles and Criteria for Off-Site Levies Regulations (Alta. Reg. 48/2004) requires that municipalities have a comprehensive, objective, and transparent process for determining the types of levies and their amounts. In addition, competition between municipalities will help prevent municipalities from charging excessive levies.

Recommendation 3

The FDA recommends that the Alberta provincial and municipal electoral systems and legislative basis for Alberta democracy undergo an independent, citizen jury based review.

Corrective Action to be Taken

Fundamentally, this recommendation is a political decision.

The Government of Alberta needs to authorize this independent, citizen jury based review of Alberta democracy and electoral practices.

The review should cover electoral finance, voting procedures and measures to deter fraud, media campaign coverage, and other fundamental principles that underlie Alberta's democracy. In addition, during the campaign period, the review should highlight any legislative unfairness and bias involving the electorate, candidates, political parties, and corporations/trade unions.

INTRODUCTION

The FDA's mission focuses on ensuring that people become more knowledgeable about the impact of government processes and through that knowledge make informed decisions. This report will show the economic and democratic impact of section 648 of the *MGA* on Alberta municipal taxpayers. The FDA believes that Alberta municipal taxpayers are unreasonably subsidizing new developments, while developers are under-funding them. In addition, due to the shortcoming of section 648, Alberta municipalities face unfunded liability from new developments (in the form of soft infrastructure costs) and taxpayers shoulder the financial burden. Ultimately, the quality of life is at stake in Alberta municipalities. Albertans may want to use the report's findings to get involved in Alberta provincial affairs to hold the Government of Alberta accountable and help create a more democratic and fair *MGA*. In the coming months of 2014, there will be public consultation hearings on amendments to the *MGA*. Although the Government of Alberta is not obligated legally to act on any suggestions for amendment of the *MGA*, it is possible that if enough Albertans raise their voices about section 648 and other shortcomings in the *MGA* then political reform in the interests of all Albertans may occur. Barring any amendment through public consultation, reform could also be initiated in the 2016 Alberta provincial general election.

The FDA supports a people-based democracy, in which the citizens are the sovereign authority over political affairs. Common mechanisms that support the sovereign authority of the people are citizen-initiated referendum on repeal of laws and new laws, citizen-initiated recall of any elected official including the Alberta Premier, proportional/preferential voting systems (which utilize most votes to determine election winners and ensure that majority governments truly represent the majority of the electorate), community organizations and forums empowered with substantive political say, citizen juries, and direct democracy on legislation. The FDA applies this democratic standard to Alberta.

Alberta Municipal Government Act (MGA), Section 3 and Section 648

Section 3 in Part 1 of the *MGA* establishes the basic purposes of Alberta municipalities, which include “to provide services” and “to develop and maintain safe and viable communities.” As this report demonstrates, section 648 contradicts section 3 as section 648 restricts the financial capacity of municipalities “to provide services”, “to develop and maintain safe and viable communities,” and to respond to new growth and development.

Section 3 of the *MGA* reads as follows:

Part 1 Purposes, Powers and Capacity of Municipalities

Municipal purposes

3 The purposes of a municipality are

- (a) to provide good government,
- (b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and
- (c) to develop and maintain safe and viable communities.

1994 cM-26.1 s3

Section 648 is in Division 6, Development Levies and Conditions of the *MGA*. This section pertains to off-site levies which municipal governments can charge developers to help pay for infrastructure costs resulting from new off-site developments.¹ Without these levies, municipalities would likely be unable to pay for new infrastructures without overburdening municipal taxpayers.

¹ An off-site levy refers to “a mechanism for municipalities to recover capital costs incurred for infrastructure improvements required for new development. Off-site levies may only be collected once in respect of lands subject to development or subdivision for those items outlined (road, drainage, water, sewer). The Off-site levy rates are calculated by unit in order to ensure each development bears an equal share of costs associated with needs of a specified area” (Bylaw 12-04 Off-Site Levies Frequently Asked Questions, 2012, Vermilion River County). Additionally, cost recovery agreements are established to ensure that developments first-in do not bear an unfair percentage of the infrastructure costs as compared to later developments in the same land use area (Branson, 2013). Further, off-site itself refers to development that is outside of a municipality’s existing hard and soft infrastructure. Therefore, off-site development requires new infrastructure.

The purpose of the *MGA* is to provide legal governance processes for all Alberta municipalities. The *MGA* is the primary legislative document for municipalities. Unless otherwise stated, the *MGA* applies to all Alberta municipalities.

Section 648 from the *Municipal Government Act* reads as follows:

Part 17. Division 6. Development Levies and Conditions.

Off-site levy

Section 648

- (1)** For the purposes referred to in subsection (2), a council may by bylaw
 - (a) provide for the imposition and payment of a levy, to be known as an “off-site levy”, in respect of land that is to be developed or subdivided, and
 - (b) authorize an agreement to be entered into in respect of the payment of the levy.

- (2)** An off-site levy may be used only to pay for all or part of the capital cost of any or all of the following:
 - (a) new or expanded facilities for the storage, transmission, treatment or supplying of water;
 - (b) new or expanded facilities for the treatment, movement or disposal of sanitary sewage;
 - (c) new or expanded storm sewer drainage facilities;
 - (c.1) new or expanded roads required for or impacted by a subdivision or development;
 - (d) land required for or in connection with any facilities described in clauses (a) to (c.1).

- (3)** On September 1, 1995 an off-site levy under the former Act continues as an off-site levy under this Part.

- (4)** An off-site levy imposed under this Part or the former Act may be collected only once in respect of land that is the subject of a development or a subdivision.

- (5)** An off-site levy collected under this section, and any interest earned from the investment of the levy,

- (a) must be accounted for separately from other levies collected under this section, and
 - (b) must be used only for the specific purpose described in subsection (2)(a) to (c.1) for which it is collected or for the land required for or in connection with that purpose.
- (6)** A bylaw under subsection (1) must be advertised in accordance with section 606 unless
- (a) the bylaw is passed before January 1, 2004, or
 - (b) the bylaw is passed on or after January 1, 2004 but at least one reading was given to the proposed bylaw before that date.
- (7)** Where after March 1, 1978 and before January 1, 2004 a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for the purpose described in subsection (2)(c.1), that fee or charge is deemed
- (a) to have been imposed pursuant to a bylaw under this section, and
 - (b) to have been validly imposed and collected effective from the date the fee or charge was imposed.

RSA 2000 cM-26 s648;2003 c43 s3

How Does Section 648 of the MGA Impact Taxpayers?

Section 648 establishes the charges of and procedures for municipal off-site levies. As stated in section 648(2), off-site levies only apply to hard infrastructure.

Hard Infrastructure Included in the MGA

- 1) water
- 2) storm
- 3) sanitary/sewer
- 4) transportation (roads)
- 5) lands

Examples of Soft Infrastructure/Capital Cost Excluded from the MGA

- 1) parks and open spaces
- 2) recreation facilities
- 3) family and community support services
- 4) culture, art and heritage services
- 5) fire protection
- 6) protective services
- 7) solid waste and recycling services
- 8) transit services

Soft infrastructure is integral to the quality of life, public experience, and security of residents in any community. Under the current provisions of the *MGA*, municipalities are prohibited from charging for soft infrastructure that is required as a result of new growth. Each municipality must subsidize the new growth by paying for soft infrastructure, usually through taxpayer contributions. However, since developers benefit financially from these expansions, it follows that they should bear some of the cost of soft infrastructure within them.

The FDA believes that section 648 is a shortcoming of the *MGA*. The section benefits developers at the expense of Alberta municipal taxpayers, by helping to cause privately negotiated soft infrastructure levies between municipalities and developers where developers can insist on low soft levies or walk away and pay none. Moreover, without a negotiated and signed agreement on soft levies, municipalities that charge developers soft infrastructure levies might face lawsuits for violating the *MGA*, as was the case with the Town of Okotoks (Patterson, 2011).

Section 649 of the *MGA* requires municipalities to be specific in any redevelopment levy or off-site levy, thereby creating necessary grounds for accountability and scrutiny of levies.

Section 649 reads as follows

Levy bylaws

649 A bylaw that authorizes a redevelopment levy or an off-site levy must set out the object of each levy and indicate how the amount of the levy was determined.

1995 c24 s95

Table 1: Overall Impacts of Section 648 on Key Stakeholders

Average Alberta Taxpayers	Alberta Municipalities	Developers
Increased Municipal Taxes	Increased Capital Expenditures to Meet Service/Facility Expansion Requirements Stemming from New Growth	Lower or No Soft Infrastructure Costs for New Off-site Developments
Potentially Decreased Levels of Jurisdictional Services and Accessibility of these Services	Potentially Higher Municipal Debt	Higher Profits
Delay in Timeliness of Municipal Provisions	Increased Financial Instability	
Potentially Reduced Quality of Life	Reduced Capacity to Fulfill the <i>MGA's</i> Assigned Purposes of Municipalities (Part 1, Section 3)	

Municipal Bypass of Section 648 and Section 648 Impact on Alberta Taxpayers

Despite the *MGA* being the primary legislative document for Alberta municipalities and section 648 applying only to hard infrastructure, some cities including Calgary, Edmonton, Red Deer, and Lethbridge bypass section 648 through privately negotiated development agreements with the development industry and relating to levies for hard and soft infrastructure. To illustrate, see the references (Urban Development Institute – Calgary, 2014; City of Calgary, 2014) to view the standard development agreement between the Urban Development Institute and the City of Calgary, and actual standard development agreements from 2006 to 2012 for residential, commercial, and industrial. These agreements prevent lawsuits against the cities and municipalities² and likely favour developers as soft infrastructure levies are not included in the *MGA*. (For illustration of municipal levies, please see Bar Chart 1 on page 20.) In other words, due to section 648, the development industry is negotiating from an advantageous position.

In contrast, smaller municipalities like the City of Airdrie have voluntary recreation contribution agreements and recovery of expenses agreements. Voluntary agreements mean that developers have the option of paying for soft levies or not paying for them. Airdrie has the following development charges for hard infrastructure:

- 1) \$1,200 per residential dwelling unit;
- 2) \$1,250 per acre for engineering costs in Subdivision Area; and
- 3) \$425 per acre for levy report costs in Subdivision Area.

Moreover, Airdrie has a bylaw relating to off-site levies that pertain solely to hard infrastructure levies (Bylaw No. B-16, 2010), and a \$9,600 per acre voluntary contribution agreement for developers to help finance recreation (or soft) infrastructure (Smith, 2012). The recreation and other related charges of large municipalities are required charges rather than voluntary.

Breakdown of the City of Calgary's 2008 Development Levies

The overall development levy charged by the City of Calgary as of 2008 is \$131,298 per hectare or \$7,294 per unit. The actual cost of infrastructure for new growth is \$282,510 per hectare or \$15,695 per unit (Cost of Growth Review, 2009). According to these figures, Calgary taxpayers compensated for the low development levies in the amount \$151,221 per hectare or \$8,401 per unit, barring any government subsidies and voluntary contributions.

² In 2011, the Prairie Communities Development Corporation sued the Town of Okotoks for charging off-site levies and requiring voluntary contribution agreements which are not covered by the *MGA*. The Town of Okotoks lost the case. Justice O'Brien struck down an Okotoks 2009 bylaw aimed at collecting funds from developers for the construction costs of the 32 Street bridge (Patterson, 2011).

Calgary's 2012 Development Levies

Table 2: 2012 Calgary Levies Permitted by the MGA (Source: Acreage Assessments, 2013)

Hard Infrastructure	2012 Calgary Development Levy (per hectare)
Water	\$24,865
Storm	\$70,308
Sanitary (Sewer)	\$45,075
Roads	\$33,343
Totals	\$173,591

(For addition information, please see Table 5 on page 18)

Table 3: 2012 Urban Development Institute – City of Calgary ‘Negotiated Levies’ not Permitted by the current MGA

Soft Infrastructure	2012 Calgary Development Levy (per hectare)
Community and Recreation	\$75,644

The 2012 total for Calgary development levies for hard infrastructure is \$173,591 and \$75,644 for soft infrastructure. In other words, soft development levies amount to 30.35 percent of total development levies and therefore, 30.35 percent of the City of Calgary's development levies violate section 648 of the *MGA*. In addition, assuming similar soft infrastructure costs between municipalities, Calgary taxpayers paid around 30.35 percent less in infrastructure costs for new off-site developments in 2012 than taxpayers from other Alberta municipalities that did not charge for soft infrastructure levies.

According to the 2010 Rocky View County Amenity Study, completed by Nichols Applied Management, it is suggested that Rocky View County have development charges for soft infrastructure—recreation, cultural, library as follows:

- \$2,700 per unit (residential)
- \$10,000 per acre (non-residential).

**Table 4: Basis for Estimated Development Charges for Rocky View County
(Source: Nichols, 2010, p.31)**

Facilities	Growth Requirements	Cost
Community Parks	2 Hectare/1,000 People	\$100,000/Hectare
County-wide Parks	4 Hectare/1,000 People	\$100,000/Hectare
Libraries	1 sq ft/Person	\$400/sq ft
Community Centers	1 Hall/3,500 People	\$1.8 Million/Hall
Regional Multi-Use	1 Facility/40,000 People	\$40 Million/Facility

This estimated non-residential rate of \$10,000 per acre compares to a non-residential rate of “approximately \$20,000 per acre in Calgary” (Nichols, 2010). Presently, Rocky View County has only an \$800 voluntary recreation levy (Spruit, 2014).

Table 5: 2008 to 2013 City of Calgary Acreage Assessment including Levies

CITY OF CALGARY - ACREAGE ASSESSMENTS

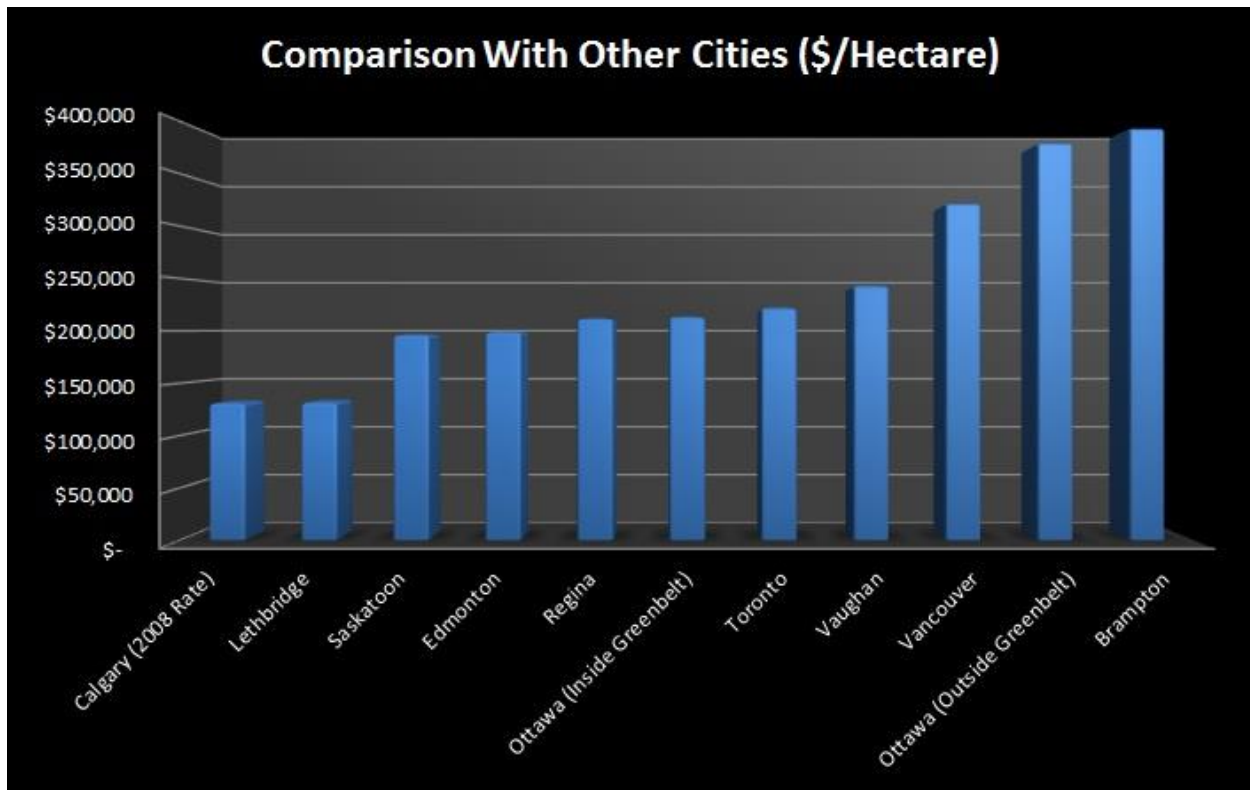
REVISED: AUGUST 21, 2013	RATE PER HECTARE 2013	RATE PER HECTARE 2012	RATE PER HECTARE 2011 > 400 Ha	RATE PER HECTARE 2011 <400 Ha	RATE PER HECTARE 2010	RATE PER HECTARE 2009
LEVIES						
STORM SEWER LEVY (Based on Location)						
1 BOW RIVER WATERSHED	3,861	3,713	3,654	3,038	2,423	2,300
2 ELBOW RIVER WATERSHED	332	319	314	263	211	200
3 FISH CREEK WATERSHED	615	591	582	397	211	200
4 NOSE CREEK WATERSHED	10,006	9,622	9,469	12,795	16,120	15,300
5 PINE CREEK WATERSHED	3,821	3,675	3,616	3,441	3,266	3,100
6 SHEPARD WATERSHED	54,478	52,388	51,553	47,481	43,408	41,200
SANITARY SEWER LEVY	46,873	45,075	44,356	22,178		
WATER LEVY	25,858	24,865	24,469	12,235		
TRANSPORTATION LEVY	126,392	121,543	119,605	93,258	66,910	63,507
COMMUNITY AND RECREATION LEVY	78,662	75,644	74,438	62,713	50,988	48,794
FEES						
TRAFFIC SIGNAGE & ROAD MARKINGS	676	650	650	648	646	613
INSPECTION FEES	2,419	2,326	2,326	2,326	2,326	2,208
SURVEYS ACT BASE MAP FEE (Invoiced Separately)	468	450	450	450	450	450
EAST SPRINGBANK STORM STUDY FEE (If Applicable)	400	400	400	400	400	400
DEVELOPER FUNDED INFRASTRUCTURE STABILIZATION FUND						
UTILITY OVERSIZE	5,000	5,000	5,000	5,000	5,000	5,000
MAJOR ROAD STANDARD OVERSIZE	11,800	11,800	11,800	11,800	11,800	11,800
COMMUNITY & DISTRICT PARKS	5,500	5,500	5,500	5,500	5,500	5,500
NOTES: - The rate increase is calculated January 1st of each year by averaging the last 4 quarters of Statistics Canada’s published Non-residential Construction Price Index for Calgary and dividing by the average of the previous 4 quarters to that as per bylaw 34M2011. - Watershed boundary map is included in Bylaw 34M2011. - Survey’s Act Base Map Fee is collected by Infrastructure and Information Services in a separate invoice.						

(Source: Acreage Assessments, 2013)

According to Table 5, the 2013 Calgary primary levy rates (sanitary sewer, water, transportation, and community and recreation) have increased by 3.88 percent from the 2012 primary levy rates. Therefore, assuming that the 3.88 percent increase applies

equally to all levies, Calgary taxpayers paid about 28.32 percent less development costs in 2013 than taxpayers from Alberta municipalities that did not charge for soft infrastructure levies. (28.32 percent as percentage of total primary levies)³ If the FDA factors in soft infrastructure fees and the Developer Funded Infrastructure Stabilization Fund, Calgary taxpayers paid about 34.43 percent less in infrastructure costs from new developments than taxpayers in municipalities that did not charge for soft infrastructure or have no infrastructure fees or access to Developer Funds.

Bar Chart 1: Comparison of 2009 Levy Rates in Canadian Cities



Of the eleven major cities listed, Alberta cities have the lowest levy rates, with the exception of the City of Saskatoon which is \$2,629 under the City of Edmonton’s levy rates. The bar chart supports the notion that even privately negotiated agreements between Alberta municipalities and developers favour developers (Cost of Growth Review, 2009).

³ The amount of soft infrastructure costs will vary from municipality to municipality based on quantity and scope of new development and infrastructure needs. 28.32 percent infrastructure cost difference (\$78,662) is a general calculation that only shows the nature of the costs involved with soft infrastructure. 28.32 percent is the percentage of Calgary’s 2013 primary soft infrastructure levies (community and recreation) in comparison to the total 2013 primary levies (sanitary sewer, water, transportation, and community and recreation).

Table 6: 2012 Comparative Non-residential and Residential Tax Rates for Seven Alberta Municipalities

Seven Alberta Municipalities	2012 Non-residential Tax Rates	2012 Residential Tax Rates	Yes or No—Soft Infrastructure Levies
Airdrie	7.9993	4.3236	Voluntary
Calgary	12.3112	3.4565	Yes
Edmonton	15.1587	5.0126	Yes
Lethbridge	16.8160	6.7320	Yes
Okotoks	6.1240	4.7620	No
Red Deer	10.3976	3.5150	Yes
Rocky View	7.2187	2.4062	Voluntary

Table 6 demonstrates that Alberta municipalities, which only charge hard infrastructure levies, do not have higher non-residential and residential tax rates than Alberta municipalities that charge hard and soft infrastructure levies. However, additional infrastructure costs for these municipalities may be showing up as debt and unfunded liability that is eventually funded by taxpayers. In the case of Rocky View County, in 2012 it incurred \$66,860,808 million in long-term debt (Audited Financial Statements, 2012), which equates to \$1,833.75 per capita debt based on a population of 36,461 (Federal Census, 2011). Rocky View County has a transportation off-site levy bylaw, but it pertains specifically to new and expanded road infrastructure covered by the *MGA* (Bylaw C-7195, 2012) and as mentioned a voluntary recreation levy (Spruit, 2014).

Table 7: 2012 Accumulated Surplus for Seven Alberta Municipalities

Seven Alberta Municipalities	2012 Accumulated Surplus	2012 Residential Tax Rates
Airdrie	\$550,482,129	4.3236
Calgary	\$13,192,941,000	3.4565
Edmonton	\$11,689,773,000	5.0126
Lethbridge	\$1,081,599,000	6.7320
Okotoks	\$316,817,018	4.7620
Red Deer	\$1,609,852,000	3.5150
Rocky View	\$429,108,869	2.4062

(Source: 2012 Annual Financial Statements of the seven municipalities)

Table 7 shows municipalities that charge both hard and soft levies maintain an accumulated surplus. This surplus accounts for all revenues, expenses, government transfers, and assets. However, the Town of Okotoks, which does not charge soft levies, maintains a modest accumulated surplus, as does Rocky View and Airdrie, which only charge voluntary soft levies.

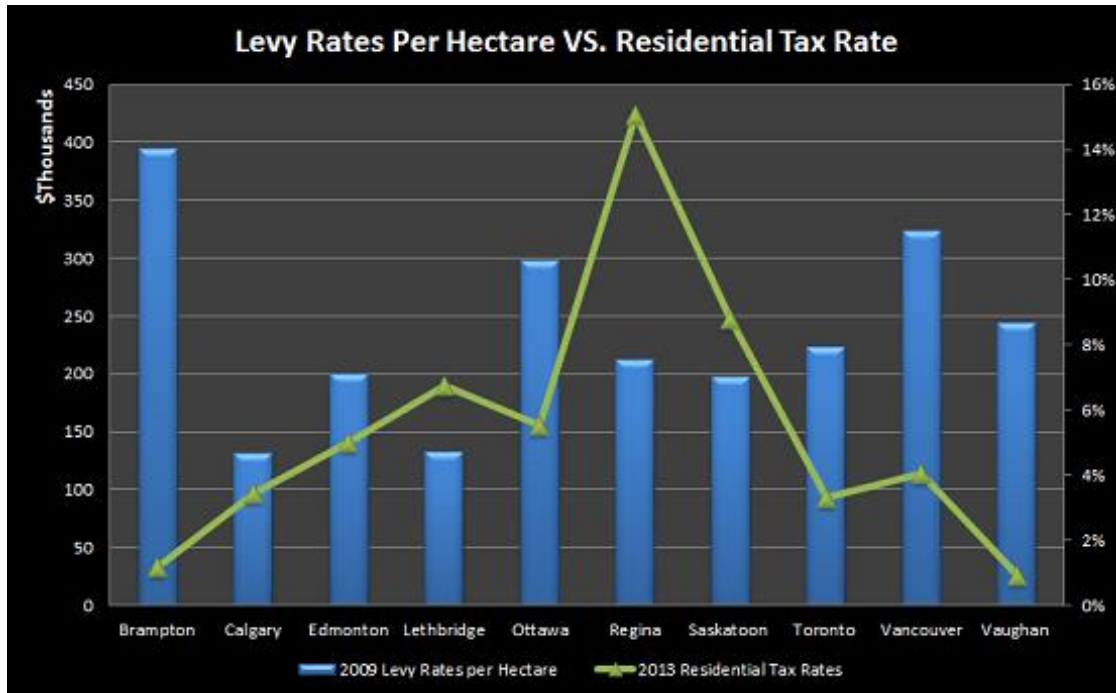
As outlined in Table 6, Okotoks has the lowest non-residential tax rate of these seven municipalities and yet the fifth highest residential tax rate. Yet Table 7 demonstrates that the lack of soft infrastructure levies do not translate overall into accumulated debt. Several factors determine the accumulated debt or surplus of a municipality including the fiscal plan, financial discipline, number of assets, and past financial performance. Further, with higher soft infrastructure levies, the accumulated surpluses of Alberta municipalities may be higher.

Table 8: 2012 Non-residential and Residential Tax Rates for Canadian Cities from Bar Chart 1

Canadian Cities	2012 Non-residential Tax Rates (Commercial) (%)	2012 Residential Tax Rates (%)
Brampton	2.397629	1.161747
Calgary	12.311200	3.456500
Edmonton	15.158700	5.012600
Lethbridge	16.816000	6.732000
Ottawa	10.122380	5.540560
Regina	18.571900	13.062000
Saskatoon	15.805953	8.816000
Toronto	3.212000	3.316000
Vancouver	17.518200	4.050770
Vaughan	1.921724	0.930021

Non-residential tax rates refer to the basic commercial tax rates. The City of Brampton has the lowest residential and non-residential tax rates, and yet it had the highest hard and soft levy rates in 2009.

Bar Chart 2: Comparison of Levy Rates and Residential Tax Rates



Bar Chart 2 shows inconsistent evidence that higher levy rates result in lower residential tax rates. This inconsistency may be attributable to the fact that levy rates are only one variable of many which impact residential tax rates, including fiscal policy, past and current tax base, and past and current performance of economy.

Table 9: 2012 Accumulated Surplus for Canadian Cities from Bar Chart 1

Canadian Cities	2012 Accumulated Surplus	2012 Residential Tax Rates	2012 Long-term Debt
Brampton	\$175,722,000	1.162	\$0.0
Calgary	\$13,192,941,000	3.457	\$4,248,368,000
Edmonton	\$11,689,773,000	5.013	\$2,232,921,000
Lethbridge	\$1,081,599,000	6.732	\$78,884,000 (as debenture debt)
Ottawa	\$10,679,356,000	5.541	\$1,435,911,000
Regina	\$1,293,826,000	15.065	\$81,550,000
Saskatoon	\$3,034,601,000	8.816	\$197,125,000 (as term debt)
Toronto	\$18,165,066,000	3.316	\$3,699,256,000
Vancouver	\$5,930,468,000	4.051	\$730,771,000
Vaughan	\$7,303,949,981	0.930	\$77,269,273 (debenture & other debt)

In Table 9, the accumulated surpluses accounts for all revenues, expenses, government transfers, and assets of the municipalities. Note, an accumulated surplus does not necessarily equate to zero debt for a municipality. For example, in 2012, the City of Calgary had long-term debt totaling \$4,248,368,000. Also, the amount of accumulated surplus is deceiving because in general, the larger the city the more assets it likely maintains, which translates into a higher surplus.

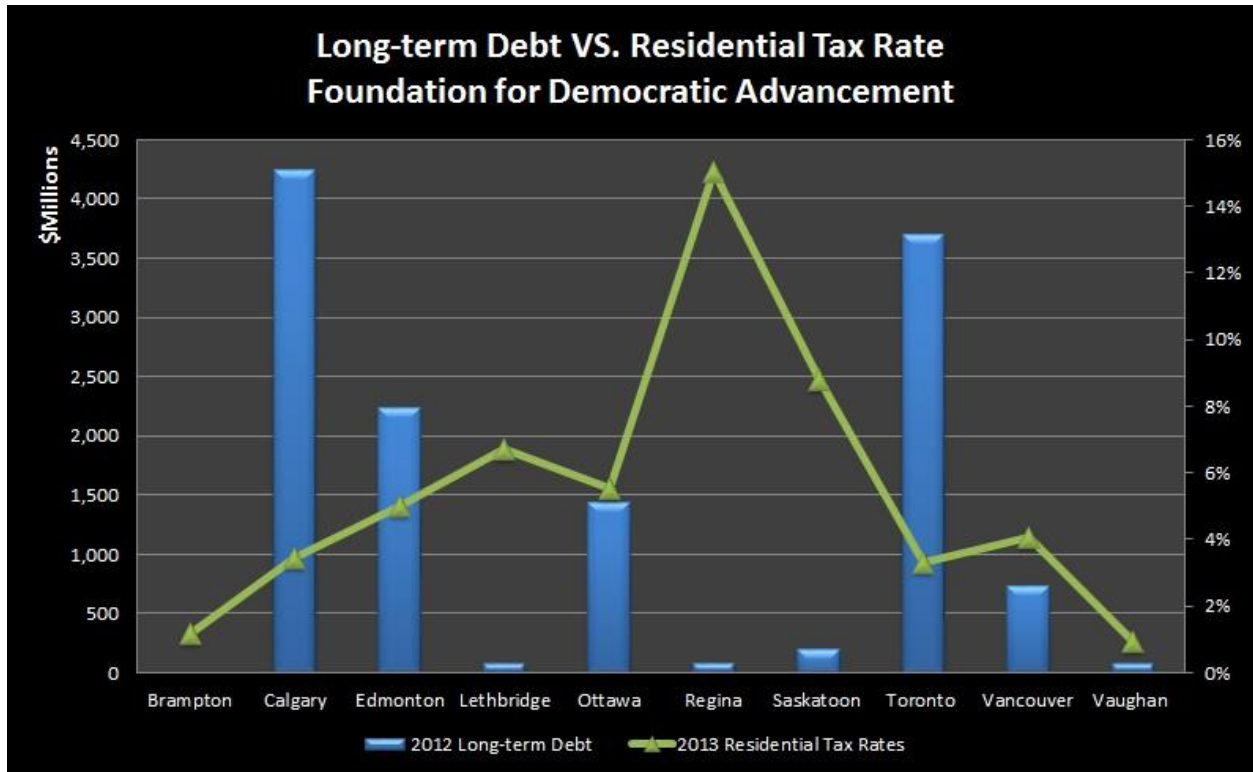
Although the Cities of Brampton and Vaughan had high levy rates in 2009 and the lowest residential tax rates in 2012, the City of Ottawa also had high levy rates, and yet its residential tax rate is higher than other cities with considerably lower levy rates in 2009. Therefore, assuming no significant change in levy rates in 2012, the correlation between low levy rates and high residential tax rates is not reliable. However, the impact of low levy rates may not be showing up as high taxes because it may be in the form of unfunded liability (inability to pay with current revenue future financial obligations) and/or decreased services.

Table 10: 2012 Long-term Debt for Canadian Cities from Bar Chart 1

Canadian Cities	2012 Long-term Debt	Long-term Debt per Capita
Brampton	\$0.0	0.0
Calgary	\$4,248,368,000	\$4,277.65
Edmonton	\$2,232,921,000	\$3,131.65
Lethbridge	\$78,884,000 (as debenture debt)	\$7,850.60
Ottawa	\$1,435,911,000	\$1,413.43
Regina	\$81,550,000	\$8,148.52
Saskatoon	\$197,125,000 (as term debt)	\$23,193.40
Toronto	\$3,699,256,000	\$3,661.08
Vancouver	\$730,771,000	\$72,420.24
Vaughan	\$77,269,273 (debenture & other debt)	\$7,726.47

In Table 10, consolidated financial statements determine long-term debt totals and 2011 statistics determine the population of each city. The City of Brampton stands out with zero 2012 long-term debt, and in 2009, it had the highest levy rates of the 10 cities being compared. Yet, the City of Vancouver had the third highest levy rate in 2009 and the highest per capita debt of the 10 cities in 2012. Therefore, the correlation between low levy rates and high long-term debt is not reliable. However, similar to tax rates, the impact of low levy rates may not be showing up as long-term debt because it may be in the form of unfunded liability (inability to pay with current revenue future financial obligations) and/or decreased services.

Bar Chart 3: Comparison of Long-term Debt and Residential Tax Rates



The evidence outlined in Bar Chart 3 demonstrates a lack of direct correlation between low residential tax rates and high long-term debt. This inconsistency is likely attributable to the fact that long-term debt is only one variable of many that influence residential tax rates.

Table 11: 2013 Development Levy Rates

Canadian Cities	2013/2014 Development Levy Rates
Brampton	Single detached \$25,586.26 per unit; industrial/office \$49.21 per sq. foot
Calgary	\$277,785.00 per hectare (off-site levy)
Edmonton	Variable rate; similar to what Calgary development levies*
Lethbridge	\$221,000 per hectare (off-site levy)
Ottawa	Single detached \$16,447 (inside greenbelt), \$24,650 (outside greenbelt) per unit; non-residential \$17.41 per sq. foot (city wide)
Regina	\$264.272 per hectare (off-site levy)
Saskatoon	Similar to Edmonton's variable rate based on specifics of lot and development
Toronto	Single detached \$19,412 per unit; non-residential \$141.16 per sq. meter
Vancouver	Residential (at or below 1.2 FSR) \$31.75 sq. meter; over 1.2 FSR \$136.38 sq. meter; industrial \$54.57 sq. meter
Vaughan	Single detached \$17,494 per unit; non-residential (retail, office, industrial) \$32.86 per sq. meter

* On January 29, 2014, the FDA spoke to a representative from the City of Edmonton, Planning and Development sector. It learned that in Edmonton, developers that utilize the same infrastructure share the costs. The initial developer incurs the total cost as debt, and then that cost is passed onto other developers with the first developer paying its share of infrastructure costs. An estimation of per hectare cost of newly subdivided land would only be an average. Individual per hectare cost may be higher or lower depending on circumstances surrounding newly divided land, such as the total number of days that the developer carries the total debt. In contrast, the City of Calgary has a fixed per hectare charge for all newly subdivided land.

As shown in Table 11, the means for determining development levy rates vary from municipality to municipality. Based on Bar Chart 1, levy rates for large municipalities in Alberta have increased significantly since 2008/2009, and more than double for the City of Calgary (\$112,301 to \$277,785 per hectare primary levies) to the point that levies appear to be less of an issue. However, the same rationale may not be applicable to small and medium sized Alberta municipalities with less leverage to negotiate fair levies for soft infrastructure. In Rocky View County, for example, the municipality has only an \$800.00 Voluntary Recreation Levy to cover the infrastructure costs such as community halls and parks from newly subdivided land (Spruit, 2014). In contrast, in 2013 the City of Calgary negotiated and charged a \$78,662 per hectare community and recreation levy. The FDA believes that small and medium sized municipalities do not have the financial influence or bargaining power to negotiate advantageous soft infrastructure levies. Even with low or no soft infrastructure levies that might attract many developers, small and medium sized municipalities in rural areas may be less appealing than large

urban centers for development projects. Nonetheless, Alberta taxpayers in small and medium sized municipalities pay more of the total infrastructure cost for newly subdivided land than taxpayers in large municipalities.

Stakeholder Input, Government Responses, and FDA Analysis

1) Minister's Council on Municipal Sustainability

From the 2007 Report to the Minister of Municipal Affairs by the Minister's Council on Municipal Sustainability, the Council recommends that "the Government of Alberta should enact enabling legislation to authorize municipalities, at their discretion, to levy and collect additional own-source revenues..." The Council identifies "expanded scope for development levies in support of directly related local services" as one of the six recommended "own-source revenue areas." The purposes of these additional own-source revenues are "to strengthen municipal capacity to address ongoing operational sustainability and better respond to growth pressures." The authors of the Report are Mayor Dave Bronconnier, City of Calgary, President Bob Hawksworth, Alberta Urban Municipalities Association, President Don Johnson, Alberta Association of Municipal Districts and Counties, and Mayor Stephen Mandel, City of Edmonton (Report to the Minister of Municipal Affairs, 2007).

Government Response

"... broader consultation would be required before the province would consider any significant expansion of the current municipal taxation powers. While GOA recognizes the importance of ensuring adequate financial flexibility for municipalities, it is also recognized that many Albertans have significant concerns with the prospect of any increases to existing tax burdens. The Government of Alberta has provided municipalities with an additional \$11.3 billion in new funding over the next 10 years through the Municipal Sustainability Initiative, and this initiative will be taken into account in assessing whether further consideration of municipal taxation powers is appropriate..." (Background Documentation on Notice of Motion, 2010).

Alberta Association of Municipal Districts & Councils Response and Follow Up

"... The Association will continue to urge the Minister of Municipal Affairs to reconvene the Minister's Council of Sustainability in order to enact the tax tools outlined in this resolution..." (Background Documentation on Notice of Motion, 2010).

FDA Analysis

The FDA sees that the current Government of Alberta does not recognize the unreasonable financial burden placed on taxpayers as compared to the costs placed on special interest groups and project developers. The government does not sufficiently acknowledge the imbalance between large and small/medium sized municipalities in relation to levies.

Why is the Government of Alberta forcing all municipalities to incur unreasonably unfunded liability and threats to their ability to meet growth-related new and expanded service demands?

2) Alberta Urban Municipalities Association (AUMA)

2008 AUMA Resolution requests that the Government of Alberta amend section 648(2) of the *MGA* to allow for soft infrastructure levies. Or in the words of the AUMA,

“... the Alberta Urban Municipalities Association request that the Government of Alberta amend section 648(2) of the *Municipal Government Act* addressing off-site levies to add new or expanded facilities for fire rescue service, emergency medical service, police service, and library service to the list of capital costs, thereby granting authority to municipalities to impose an essential services off-site levy to fully serve and complete new communities” (AUMA, 2008).

FDA Analysis

FDA recommends a similar amendment of section 648(2) of the *MGA*.

3) Rocky View County

In 2007 and 2011, Rocky View County successfully advanced resolutions through the AAMD&C, which request that the Government of Alberta expand the authority of municipalities over development charges including off-site levies for the capital costs of new facilities for essential services (Resolution Database 4-11S, 2011).

Government of Alberta Response

“The proposed resolution to amend section 648(2) of the *MGA* to expand the scope of off-site levies to pay for capital costs of other facilities represents a significant change in government policy. In view of the potential impact on a variety of stakeholders, possible links to other parts of the legislation, and the Minister’s commitment to a comprehensive review of the *MGA*, it is recommended that this discussion be included in the broader *MGA* review” (Resolution Database 4-11S, 2011, p.2).

FDA Analysis

The Government of Alberta is clear that an amendment of section 648(2) to allow for soft infrastructure levies is counter significantly to its policy. The “stakeholders” who are impacted are developers with higher levy costs and Alberta taxpayers. The FDA is concerned that the government is favouring special interests at the expense of Albertans as a whole.

The Government of Alberta is currently conducting a *MGA* Review, which includes hearings, consultation with stakeholders, and public input. Regardless of the results of the Review, the Government of Alberta has authority over what amendments, if any, are applied to the *MGA*. Since the Government views any proposed changes to section 648(2) as a “significant change in government policy,” the FDA believes it is unlikely the Review will result in any meaningful amendment to section 648.

4) 2012 Municipal Affairs Development Symposium

In the Summary Report on the 2012 Municipal Affairs Development Symposium, the key issues of transparency and accountability included dialogue relating to additional off-site levies, risk identification, and a need to clarify all aspects of development costs and responsibilities.

The Alberta Association of Municipal Districts and Counties states that “if we charge offset levies, municipalities need to be able to rationalize them – how they reached that number, what are the priorities,” etc.

The Urban Development Institute, which represents developers, wants to “define infrastructure required; determine cost of infrastructure and report those costs” (McNeil, 2012).

The Alberta Urban Municipalities Association (AUMA) says “[levies] must be a two way street. Municipalities can’t always access same kind of information from developers. Sometimes we get caught funding infrastructure for multi-density development even when lots of people don’t live there; lots of condos on the market that didn’t sell. We need to be communicating more often about planning, financing, etc. They heard development industry wants transparency regarding where levy monies go. If cities disclose where funds go, this is publicly available, but city doesn’t know developer plans and how that might affect their budgeting” (McNeil, 2012).

Also, the AMUA says that “sometimes developers say levies are too high, but developers don’t have to justify why they are too high. [They] just saying [levies are] too high because [they] can’t sell houses for that price... Rationalizations don’t always go both ways” (McNeil, 2012).

FDA Analysis

If Alberta developers pay the same soft infrastructure levies, then there would be no unfair competitive advantage between them. However, lower levies in other provinces will create a competitive disadvantage. Most municipalities are likely under pressure to attract development projects, and consequently, the FDA believes that Alberta municipalities will likely always work to ensure that their levies are competitive.

The FDA believes that the Government of Alberta has a leadership opportunity to rectify the Alberta levy issue, just as Albertans have an opportunity potentially to rectify it in the 2016 Provincial Election.

5) 2013 FDA Process Review of the Bingham Crossing Development Application

In 2013, the FDA published its process review of the Bingham Crossing development application. This development application received heightened public support and opposition, and strong division on the Rocky View County Council. The report raises issues about inadequate offsetting mechanisms such as recall and referendum in the *MGA* and *Local Authorities Election Act* for citizens who lack substantive say on provincial legislation and municipal decisions.

The FDA sent the report to Alberta Municipal Affairs Minister Doug Griffiths and his response confirmed the FDA's views that citizens only have substantive say during the election period. This model of governance is reliant on a fair and strong electoral process, and weakened by a system that does not allow for voter influence in the years between elections.

In Alberta, provincial election laws favour large, established political parties, and are deficient in the areas of electoral finance and media election coverage (FDA Process Review of the Bingham Crossing Development Application, 2013; FDA Electoral Fairness Report on Alberta, 2012; FDA Canadian Provinces Electoral Finance Report, 2012). No mechanisms exist to facilitate political empowerment, for example, government recall or a citizen-initiated referendum process.

Government of Alberta Response

"... Residents may attend council meetings, and some municipalities provide for public input or presentations at specific times during meetings. Municipal offices should be able to provide details about their processes...The *MGA* and *Local Authorities Election Act* also cumulatively set out provisions for regular elections of local councils, representing the ultimate assurance of accountability..." (Griffiths, 2013). For a complete response, please see the Appendix.

Section 648 Connection to Alberta Democracy

The Canadian *Charter of Rights and Freedoms* (1982) largely determines the content and practice of democracy in Alberta. It is the FDA's opinion that Canada lacks specific guiding democratic principles (other than "free and democratic society") and grants excessive political power to elected officials and little political power to citizens, particularly between elections. It has revealed inadequate deficiencies in the provincial and municipal electoral systems that prevent electoral fairness relating to election coverage in the media and practices for candidates and parties (FDA Electoral Fairness Report on Alberta, 2012; FDA Media Study of the 2012 Alberta Provincial Election, 2012; FDA Canadian Provinces Electoral Finance Report, 2012; FDA Process Review of the Bingham Crossing Development Application, 2013; FDA Electoral Fairness Report on Canada, 2013). These electoral deficiencies undermine a critical component of Alberta democracy since elections are the only venue where Albertans have substantive political say, barring government-initiated referendums.

The Alberta *Municipal Government Act* is a product of the electoral system, given that a significant number of elected provincial officials determine the content, application, and amendments to the *Act*. The Government of Alberta via its Municipal Affairs Department ignores deficiencies with the *MGA* and defers proposed amendments to a *MGA* review process, in where the same officials will determine the amendments, if any.

Presently, section 648 of the *MGA* allows Alberta municipalities to charge hard infrastructure levies on new off-site developments but not soft infrastructure levies. In new off-site developments, the taxpayer shoulders the costs related to soft infrastructure. The FDA believes this provision favours developers, burdens existing municipal taxpayers, and creates a financial disadvantage for new residents who must also pay higher taxes. In addition, it may negatively affect the financial position of small and medium sized municipalities that are limited in their revenue-generating capacity and often face debt and unfunded liability from new off-site developments. Larger cities including Calgary, Edmonton, and Lethbridge have maneuvered around section 648 through negotiation. They have signed private agreements with development stakeholders on soft infrastructure, in particular with local chapters of the Urban Development Institute (UDI), a national lobby organization for developers. However, the bargaining position for these municipalities remains weak as the *MGA* only allows for hard levies. It is probable that limited development levies facilitate unfunded liability and/or reduced service for all Alberta municipalities. However, evidence from 2008 to 2013 demonstrates that many larger municipalities have increased significantly levy rates to a more equitable and reasonable level while small and sized municipalities such as Rocky View County and the City of Airdrie have not.

The FDA does not argue that developers be liable for the entire cost of soft infrastructure expansion, however, as they are financial beneficiaries of and principle actors in new off-site developments they should be liable for a portion of the expense. The development industry has argued that soft infrastructure levies would increase the cost for developers and render their projects unsellable, or that these additional costs

are eventually passed on to the new homebuyer. However, developers can absorb all or part of the additional costs, and thereby reduce their own profit from new off-site developments instead of passing on the costs. Standardizing or equalizing levy rates in every municipality would eliminate any competitive disadvantage between developers. Further, the FDA sees soundness in the position that “growth [within reason] should pay for growth” (Baumeister, 2012; Slack, 2012; Corvus, 2014).

The *MGA* establishes the framework and process for every municipality in Alberta. However, the FDA identifies several deficient provisions that work to favour special interests and urban development in larger cities. This finding raises questions about the Alberta system of governance including its electoral system. In its 2013 Process Review of the Bingham Crossing Development Application, the FDA observed several limits to the substantive say of residents on land and development decisions and found additional shortcomings in the *MGA* including section 572, making successful citizen-initiated petitions for municipal inquiries subject to the consent of the Municipal Affairs Minister (*Municipal Government Act*, sections 231(1) and 232(1)).

The FDA believes that the ambiguous principles relating to democracy in the Canadian *Charter* contribute greatly to the shortcomings in democratic practice in Alberta. The federal decision-making model emphasizes consultation and compromise between the public and relevant stakeholders (Policy Statement and Guidelines for Public Participation, 2013). In practice, however, the FDA believes that fundamental democratic principles are set aside in favour of benefiting those with significant political and financial influence.

Deficiencies in the Alberta *MGA* reflect these standards and values and will likely continue until the issues at the root of democratic practice both federally and provincially are resolved. These include the excessive political power of elected officials, biased electoral systems, the lack of substantive say for citizens between elections, and a government decision-making model based on stakeholder consultation and compromise rather than fundamental principles that reflect and represent the interests of all Albertans. Reform is possible through political awareness and participation from involved Albertans who demand changes to legislation and policy.

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Acronyms

- **AAMD&C:** Alberta Association of Municipal Districts & Counties
- **AUMA:** Alberta Urban Municipal Association
- **CSC:** California State Constitution (1879)
- **FDA:** Foundation for Democratic Advancement
- **MGA:** Alberta Municipal Government Act
- **UDI:** Urban Development Institute

Appendix

From: Doug Griffiths
Sent: Wednesday, May 08, 2013 2:58 PM
To: 'stephen.garvey@democracychange.org'
Subject: re: Bingham Crossing Development
Dear Mr. Garvey:

Thank you for your recent correspondence and copy of the report on the Bingham Crossing development.

Under the *Municipal Government Act (MGA)*, municipalities are charged with the responsibility to provide good government; to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality; and to develop and maintain safe and viable communities. These are broad and important responsibilities, and their implementation involves managing and balancing resources to meet a multitude of both current and future community needs.

The powers of a municipal council are balanced by councils' accountability to the citizens who elect them. Therefore, it is essential that citizens take an active interest in the development and direction of our local governments and express their views to their locally elected representatives. Citizens can express their views to their municipality in a number of ways. Individuals or groups may write or meet with the municipality's administration or elected officials. There may be specific processes established for providing input.

The *MGA* sets out clear requirements for municipal councils to conduct their business openly (except in very limited and specific circumstances). Residents may attend council meetings, and some municipalities provide for public input or presentations at specific times during meetings. Municipal offices should be able to provide details about their processes.

The *MGA* and the *Local Authorities Election Act* also cumulatively set out provisions for regular elections of local councils, representing the ultimate assurance of accountability.

The Province of Alberta is responsible for establishing this legislative framework for local government, but does not have a role in settling disagreements about matters that are the responsibility of municipal governments and their electors. The validity of local democracy would be substantively undermined if the provincial government intervened each time some segment of a community disagreed with a decision of their elected local council.

As you may be aware, the *MGA* is currently under review, and will be the subject of an extensive public consultation process in the coming months. I encourage you to participate in this review, and to bring forward your ideas for legislative change so that they may be considered by other stakeholders as part of the review process.

Thank you again for writing.
Sincerely,
Doug Griffiths
Minister