User Fees in Canada

A Municipal Implementation Guide

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The work being presented at the Symposium is the penultimate chapter in our book entitled User Fees in Canada. This penultimate chapter presents a User Fee Implementation Guide, which integrates the user fees design and implementation lessons based on the economic and public administration literature and Canadian case law. To support this presentation, we have provided two components. The first is a five page overview and context, which summarizes the material in the book upon which the Guide is based. The second is the chapter from the book that outlines the User Fee Implementation Guide.
OVERVIEW & CONTEXT

User fees have become increasingly relied upon by municipal governments in Canada to fund municipal services due to the combined pressures from federal and provincial devolution of responsibility and the political costs of raising property taxes. While there is a substantial body of literature regarding the rationale for user fees, little information exists about how to design and implement a user fee such that it satisfies the Canadian legal requirements that have been established for the formal classification of user fees. The primary purpose of our book is to provide a detailed review of the existing academic literature and Canadian case law to highlight key legal, technical, and administrative issues that present design and implementation challenges for user fees for Canadian municipalities.

This book is divided into three parts and each part contains three chapters. Part I of this book provides an overview of Canadian municipal user fees and sets the context for the remaining book. Following this introductory chapter, we provide an overview of the municipal context. This chapter provides a snapshot of municipal features relevant to the consideration of user fees. This is followed by a chapter that outlines the theory of implementation. At the broadest level, implementation is “what happens between policy expectations and perceived policy results”. ¹ This chapter details the existing public administration literature on implementation to provide a rationale as to why implementation is an important feature of policy development, including fiscal policy and especially the case of user fees.

Part II of the book independently examines the ex-ante criteria for implementing municipal user fees related to the economic, law, and public administration fields respectively. As has been stated, user fees pose a design and implementation dilemma due to the balance that must be made between economic, legal, and public administration criteria. While user fees are well known, much is still missing regarding user fees implementation factors, particularly at a municipal level. It is our opinion that these three literatures have developed in isolation of each other and need to be brought together in order to develop a more complete understanding of the use, design, and implementation of user fees. In addition to the academic benefits, practitioners are directly well served by these efforts.

How do these literatures fit together to form a holistic view on user fees? The economics literature gives a rationale for the adoption of user fees and is well established and relatively uncontroversial. Economists propose that user fees should be charged wherever possible, in order to allocate costs efficiently and benefits among users. Economists have also generated models to determine what costs the user fee should include and general principles of user fee design. The economic analysis is useful to public administrators to provide a guide for the proper design of user fees. As such, our work provides a summary of this research. However, the economic literature not only fails to consider implementation challenges, but it also ignores legal and public administration considerations. In other words, it is the implementation of these economic design features where the complications occur; complexity that arises when the economic design principles are applied to practical situations and consensus on implementation is lacking. The case law and public administration literature are thus used in this book to fill this void.

To our knowledge, our work is the first to provide a comprehensive review of the Canadian case law concerning user fees. The contextual starting point for our analysis is the Supreme Court of Canada decision in Lawson v. Interior Tree Fruit and Vegetable Committee of Direction (“Lawson”). The most important portion of this decision for our purposes is that it sets out the test to determine if a levy is a tax. As outlined in Lawson, a tax is: enforceable by law; levied by a public body; imposed under the authority of the legislature; and intended for a public purpose. This is the main test that is applied throughout subsequent cases to determine if a levy is a user fee or a tax, including the subsequent Supreme Court of Canada decision in Eurig Estate (Re) and several municipal law cases considering volumetric gravel removal, garbage tipping fees, and sewage disposal fees. Additional cases with specific relevance which will have influence on the fee design are also studied in our book.

\[\text{Lawson v Interior Tree Fruit and Vegetable Committee, [1931] S.C.R. 357.}\]
\[\text{Ibid, at paragraph 10.}\]
\[\text{Eurig Estate (Re), [1998] 2 S.C.R. 565.}\]
\[\text{Allard Contractors Ltd. v. Coquitlam (District), [1993] 4 S.C.R. 371, 85 B.C.L.R. (2d) 257.}\]
Public administration criteria are developed out of existing literature on user fees in the municipal context combined with our own emerging research on ex ante implementation criteria related to congestion charging in Halifax\(^9\) that attempts to provide a generalizable set of criteria that municipal decision makers should at least consider when designing informed policy pertaining to user fees. While specific public administration literature on user fees is relatively thin, we extrapolated principles from other relevant public administration literature on policy design and implementation along with using our own practical experience as former public servants in Canada and Australia.

Part III of the book provides municipal public administrators with integrated considerations based on the standards established in economics, case law, and public administration for the design and implementation of user fees. This leads to articulation of a user fee implementation guide aimed at practitioners that summarizes our insights drawn from the discipline-specific material as well as the integrated implementation lessons. This guide is what is presented below and forms chapter 8 of our book. This will be the focus of the presentation at the conference. The complete draft version of the book has been made available to reviewers upon request. The book ends with a concluding chapter that affirms the usefulness of a multidisciplinary analysis of user fee implementation and which suggests several benefits to practitioners and theorists as well as areas for further research.

It is important to note that the user fee implementation guide is being compiled into an interactive web-based version to assist municipal practitioners with an easily accessible interactive format for the Guide’s information. The guide presented here currently has placeholder images for our graphic designer who is working on images that will appear in the book and the online interactive guide. The images that appear below will be replaced once this work is completed. For example, the green, red, and yellow highlighted text will be replaced by traffic light symbols. An example of the web design has also been provided and is available to reviewers upon request.

Given the books theoretical and practical focus, practitioners, academics, and other interested parties will be interested in the material presented in our book. We acknowledge the funding of the Canadian Taxation Foundation in making this research possible and would like to

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thank all those local government practitioners who contributed their valuable time, energy and expertise in consulting on preliminary versions of the user fee guide to improve its rigor and application power.
As we noted in chapter 1, when a municipality decides to design and implement a user fee, that user fee should be designed to meet certain criteria. Chapters 4-6 outlined the economic, legal, and public administration criteria independently from each other while chapter 7 integrated overlapping criteria across these disciplines.\(^{10}\) This chapter combines all these separate and disparate criteria into one guide that can be used by Canadian municipalities contemplating new user fees and those wanting to review their existing user fees to ensure that these user fees reflect “smart” practices. As outlined in chapter 1, in this guide, the phrase “smart practices”\(^{11}\) refers to practices that appear helpful to a particular set of needs, where relevant lesson are extracted and applied with informed contextual (be it functional, geographical, temporal, or jurisdictional) appreciation. This contrasts with “best practices”, which implies the compilation of all available practices and a benchmarked comparative categorization of what constitutes “best” as judged by experts. It also contrasts with “promising practices”, which move even more away from ultimate criteria than smart practices and refer to practices that do not possess demonstrable proof of success. We use the phrase “smart practices” over “best practices” because we do not believe that there is any “best” way to implement user fee regimes. Instead, local contexts and specific needs are inherently essential to implementation viability and success. At the same time, we do propose that some generalizable themes and principles can be applied across cases and contexts.

Our guide is specifically Canadian in orientation and application and is premised on a municipality perspective. Moreover, it is an \textit{ex ante} approach; it focuses on the particular stage \textit{after} the decision to \textit{consider} a policy position, but \textit{before} the decision to \textit{adopt} it, and \textit{before} the

\(^{10}\) Readers who are interested in understanding where the requirements laid out in this guide come from should review those individual chapters.

\(^{11}\) Recall from chapter 1 that the phrase “smart” does not imply that other practices must be “dumb”. “Smart practice”, coined by Eugene Bardach, is simply making reference to the degree of generalizability of a practice.
action needed to implement it. That is, we begin by assuming that the municipality has already decided in favor of considering the potential implementation of user fees and that the problem to be resolved by the user fee regime has been identified. The type and status of municipality, its financial position, and any specific revenue and expenditure considerations confronting its ongoing sustainability are also presumed to have been issues that have already been considered in the decision to pursue consideration of a user fee.

From this starting point, the implementation guide we present is a two-part process requiring a municipality to consider a range of technical and non-technical policy questions to help decision-makers decide whether a user fee regime can be enacted or not and, if enactment is possible, what other implementation factors ought be considered. The technical issues determine the policy logic of pursuing a given user fee regime and the feasibility of a regime from the perspective of the municipality’s authority to actually enact it. The non-technical issues flesh out a range of practical and political issues that will help maximize the chances of implementation success. Figure 8.1 provides a summative schematic of the guide.

In working through the guide, readers will notice that we have attempted to provide visual cues throughout to help the reader make an informed assessment and decision concerning any given criteria. We use “yes”, “no” (indicated by traffic light symbols) formulations for technical policy questions that present a definitive answer. Elaboration, example, caution, and case study symbols are also included at various points for both the technical and non-technical questions to help illustrate components of the criteria and provide tempering information where caution is warranted. When testing the guide with local government users, it became clear that municipal officials should read through the provided examples, caution, and case studies first and then
Figure 8.1: Components in applying this implementation guide

First and Second Stages are covered by this implementation Guide

**Preliminary Stages**

Assumed to be completed by municipality

1. Identify the problem to be resolved by the user fee regime

2. Consider type and status of municipality, its financial position, and any specific revenue and expenditure considerations confronting its ongoing sustainability

**First Stage**

Determine responses to technical criteria

- **STEP 1**: Establish that a user fee is an appropriate policy instrument
- **STEP 2**: Decide that a user fee is preferred to other revenue instruments
- **STEP 3**: Determine authorities
- **STEP 4**: Establish objectives
- **STEP 5**: Specify revenue uses
- **STEP 6**: Ascertain the costs of providing the good or service
- **STEP 7**: Set the size and type of fee
- **STEP 8**: Decide on surcharges, discounts, and subsidies

**Second Stage**

Determine responses to non-technical criteria

- **22**: Exercise Prudential Judgement over Entire Design and Implementation Package

- **9**: Determine Policy Environment
- **10**: Determine Policy Scale & Scope
- **11**: Develop Consultation & Communication Strategy
- **12**: Consider User Fee Regime Design, Coordination & Governance
- **13**: Evaluate Capacity
- **14**: Review Quality of Services
- **15**: Consider Financing & Resourcing
- **16**: Identify Enforcement and Monitoring Processes
- **17**: Develop Evaluation Regime
- **18**: Identify Political Risks
- **19**: Identify Champion Politician
- **20**: Consider Regime Timing Issues
- **21**: Evaluate and Identify Implications of (Non) Alignment Between Policy and Political Issues
apply the step to a specific municipality. When answering the questions in the guide, the municipal official should adopt a cautious and applied approach that meets the needs of their particular community and temporal context. We do not claim to be providing legal, economic, or public administration-related advice. Instead, the features and questions are aimed at flagging potential issues that might require subject-matter experts to provide tailored advice.

The first part of the guide establishes the *technical* policy issues that must be addressed. These technical dimensions should be considered first as they definitively determine whether a user fee regime can proceed or not. While a municipal official may wish to look ahead at conceptual issues pertaining to user fee implementation, without obtaining certainty on the technical logic and legality of the user fee, there will be no sound or secure basis to pursue a user fee regime. The steps and questions within each of the steps presented in Part I should be addressed in the order presented as the material covered in one step leads directly to the material covered in the next step.

The second part of the guide addresses *non-technical* issues that flesh out a range of practical and political issues that will help maximize the chances of implementation success. They address how well a regime proceeds or not. An important point to note is that the non-technical part of this guide is presented in the stepped format that we follow for the technical section. This should not be taken to mean that we believe the policy process outlined in part II is linear or necessarily rational. There are, in fact, many ways to conceptualize the policy process, but we use the linear stepped approach here as a heuristic\(^\text{12}\) device for reader ease and to help match with the linear approach that is fundamental to the technical issues discussed in part I of this guide. With this in mind, we present a different visual to describe part II; the visual maintains steps but has been specifically given a more animated picture to try to convey more of

\(^{12}\) A heuristic is a learning, discovering, or teaching tool.
the dynamic and intertwined nature of the issues posed in this part. Unlike in part I of the guide, most of the criteria in part II of the guide are open-ended in nature, requiring the municipality to exercise its own applied judgment to the particular issue raised. This requires a level of prudential judgment that we cannot put into “yes” or “no” formulation. Instead, municipalities will be alerted to the potential influence of a given issue in the criteria we present and we have attempted to include examples to help illustrate the pertinence of these criteria and our rationale for including them as relevant forces that a municipality ought consider to help achieve as great a success as possible as a user fee regime gets implemented. Furthermore, the steps in the second part of our guide may not all apply to any given user fee regime or to all municipalities. Smaller municipalities may not find all the steps applicable to their situation and the demands of each of the steps may not be appropriate to the nature and size of the user fee in question. For example, establishing a simple, small-scale user fee applying to ice time at a local rink may not warrant an elaborate, full-scale working through of all steps in our guide. Instead, municipalities should exercise judgment and common sense in applying the principles of the steps that we outline in this section of the guide.

The final component of our guide—which we suggest is both a step as well as an important part of applying the entire guide—encourages municipalities to overlay prudential judgment across the entirety of any design and implementation package. As with the other non-technical issues that we set out in the guide itself, this process of overlaying prudential judgment cannot be formulaically proscribed. Instead, we raise attention to the significance of this judgment process and of getting strategic eyes to overlook the entire design and implementation package to ensure it stands up to scrutiny, in terms of coherence and logic as well as the “sniff” tests that many practiced policy and decision makers apply to the policy process.
It is important to remember that we provide this guide as a set of smart practices. We do not believe there is any “best” way to implement user fees yet there are important, relatively generalizable, features to be considered and questions that ought to be asked if policy success is to be the pursuit in considering a municipality’s readiness. As such, municipalities that have yet to implement user fees can begin to translate the principles we espouse in a forward looking manner to their specific contexts, while those that have already implemented user fees, as well as academics interested in the theory of user fee implementation, can apply the principles in a backward manner to assess success and failure and the reasons for such outcome. We do not claim predictive power for our user guide as to success or failure in implementation, but we do argue that if practitioners carefully ask and address the features and questions posed in this guide, they should maximize opportunities for success and hopefully avoid potential pitfalls. Finally, it is worth noting from the very beginning that we argue that success in user fee regime design and implementation is a continuous process. The application of our guide cannot be performed on a one-off basis and then forgotten. Instead, we argue that continuous monitoring and reviewing of the user fee regimes is essential to implementation success. Continuous review allows for recalibration and adjustments that will allow the user fee regime to meet its objectives on a rolling basis and experience greater success with user uptake and public acceptance.

PART I: TECHNICAL ISSUES

Part I of this guide focuses on purely technical issues related to designing and implementing a user fee. In this part, the steps raised in this part of the guide are methodical and relate primarily to legal and economic principles with some public administration criteria added in. In most cases, the steps here focus on designing a user fee that satisfies economic criteria conditional on meeting legal requirements for a user fee regime. Most of the steps contain sub-questions that
involve yes/no answers and there is little room to skip, ignore, or overlook the elements raised in these steps and sub-questions. These technical issues have been divided into eight steps. The steps are ordered according to the way they should be addressed. In most cases, where one step ends, the next one begins, leaving little room to attack the problem in any other order. Figure 2 show a schematic of the steps. It could be argued that steps 1 and 2 in part I are similar in intent and may be consolidated, however we feel there are important differences between these two steps and, hence, have separated them.

**Figure 2: Part I Steps**

- **STEP 1**: Establish that a user fee is an appropriate policy instrument
- **STEP 2**: Decide that a user fee is preferred to other revenue instruments
- **STEP 3**: Determine authorities
- **STEP 4**: Establish objectives
- **STEP 5**: Specify revenue uses
- **STEP 6**: Ascertain the costs of providing the good or service
- **STEP 7**: Set the size and type of fee
- **STEP 8**: Decide on surcharges, discounts, and subsidies
STEP 1: ESTABLISH THAT A USER FEE IS AN APPROPRIATE POLICY INSTRUMENT

The first step in designing and implementing a user fee is to establish that a user fee is an appropriate policy instrument for your policy problem. This requires understanding of what a user fee is and what characteristics of a good or service make it suited to be funded by a user fee.

What is a user fee?

A user fee is: (1) a charge for a publicly provided good or service, (2) where the revenues from the fee are solely used to offset the costs of providing the good or service, and (3) the size of fee is dictated by the cost of providing the good or service.

A user fee is a charge for a publicly provided good or service, but not all publicly provided goods and services are suited to be funded through a user fee. There are two key characteristics of publicly provided goods and services that are relevant to determining if a user fee is appropriate policy instrument: rivalry and excludability. These two characteristics are essential for being able to implement a user fee regime.

a. Does the consumption of the good or service by one person decrease the consumption by other people? YES/NO

This characteristic is known as the level of rivalry present. The more rivalry that is present, the better suited the good or service to a user fee.

For municipalities, often the primary input into providing a good or service is staff time. If staff are providing a service for one user, they are unable to use that same time to provide a good or service to another user. The consumption of staff time by one user, decreases the consumption of that same portion of staff time by other users. This means that goods or services that mainly require staff time for their provision (e.g. providing building permit) are
well suited for user fees, because you can distinguish between units consumed and the consumer. On the other hand, many people in a community can consume the same quantity of police services without decreasing each other’s consumption of the service. Goods or services with this characteristic are not well suited for a user fee.

It is important to note that this characteristic is not just a present or not present type noted in the examples above. Instead, it is a spectrum: there is a large range of this characteristic with respect to publicly provided goods and services. In addition, the presence of this characteristic may be variable and depend on certain conditions being present. For example, many people can consume road space at the same time, but once too many people start to use the road it becomes congested and consumption of the road by one person decreases the consumption of the road by other people. Many publicly provided goods and services are congestible under specific conditions. This includes not only roads by also community recreation centers and public transit. User fees for congestible goods and services can help manage the congestion particularly when the congestion can be well predicted and user fees charged or the fee increased during peak times.

In the case of congestible goods, the answer to this question might be both yes or no, depending on the circumstances. This may cause some confusion about whether a user fee is an appropriate policy instrument. If there is any time or situation where the answer to this question is yes, then the answer to this question should be considered to be yes.

b. Can non-payers be excluded from consuming the good or service? YES/NO

This characteristic is known as the level of excludability. The greater the chances of excluding people from consuming the good or service the better suited the good or service to a user fee. This characteristic is all about the feasibility of restricting the consumption of a good or service only to those who explicitly pay to do so.

Municipalities may more logically think about the near antithesis of this condition: can you can identify users and extract payment from these users for the good or service? It is, though, important to consider if non-users will derive benefits from the provision of the good or service without paying. If so, there are reduced incentives to pay for the good or service.
Public transit is an example of a service that is excludable. By having a token collection system, non-payers are generally excluded from using public transit. On the other hand, police services are an example of a service that is non-excludable. Those that do not pay for the service are hard to exclude from the benefits of a safe and secure community.

If you answer yes to both of these questions then a user fee is an appropriate policy instrument for the problem at hand. But these criteria are not enough to suggest that user fees are the preferred policy instrument. Administrators will still need to decide if a user fee is preferred to other instruments, particularly municipal property taxes, which is what we turn to next.

**STEP 2: DECIDE THAT A USER FEE IS PREFERRED TO OTHER REVENUE INSTRUMENTS.**

What criteria can be used to guide the selection of user fees over other revenue instruments, like property taxes? Economists typically judge the idealness of a revenue instrument against five widely accepted criteria: efficiency, equity, administration and compliance costs, visibility, and accountability. In this step, we assess user fees against each of these criteria and note the conditions that make user fees the preferred revenue instrument.

1. **Efficiency:** User fees promote the efficient allocation of government resources because direct recipients of benefits pay for the goods and services they consume, just as occurs in the market.

2. **Equity:** User fees work on the basic principle of fairness because you pay for what you get. This makes user fees ideal for goods or services where each individual user directly benefits from consuming goods or services Examples include sewage use, refuse collection, and water.
3. **Administration and compliance costs:** User fees can be self-sustaining and pay for their own administration and compliance costs, if these costs are accounted for in establishing the fee.

Administration and compliance costs are those costs needed to comply with the user fee, including enforcement costs and costs to operate the collection system. All revenue instruments should be simple to administer and comply with since a complicated system just wastes resources. **A user fee system should ensure that the administration and compliance costs are included and paid for from the revenues. We return to considering costs in Step 6.**

The disadvantage of user fees is that it is likely that multiple user fees within a municipality will each generate their own administrative and compliance costs. As a result, property taxes may appear to be easier to administer and monitor than user fees. However, administration and compliance costs related to multiple user fees can be minimized if these costs are centralized across all user fees. All user fee systems will need similar infrastructure and duplication can be avoided through such harmonization as well as applying lessons learned from existing user fee regimes.

4. **Visibility:** User fees are highly visible as consumers are fully informed as to the amount they are paying for the good or service and are knowledgeable about the quantity and quality of the good or service they are receiving.

5. **Accountability:** User fees increase consumer awareness of the goods and services they are paying for and can indicate their preference for these goods or services through their consumption levels allowing governments to adjust the type and levels of goods and services providing more quickly and regularly than the alternative indicator, which is a general election.

Assessing user fees against these five criteria lead to five questions to be considered by the municipality regarding the preference for user fees.

a. Is efficiency as important criteria for raising revenue by the municipality?  **YES NO**

b. Does the municipality want to charge constituents according to the benefits they receive from the good or service they are providing?  **YES NO**

c. Can administrative and compliance costs of the user fee regime, either in whole or in part, be recovered through the fee charged?  **YES NO**
It is also important to note that this is not about whether administration and compliance costs are actually or should be covered by the user fee, but rather can they be recovered through a fee. It is a theoretical condition rather than an actual condition. Whether these costs can or should be covered is a point that we return to in Step 6 and 7.

d. Is it important to the municipality to ensure that users understand the link between fees paid and goods and services received by users? **YES** **NO**

e. Does the municipality want to receive signals from users about the goods and services most desired by constituent users? **YES** **NO**

**Elaboration**

User fees act in the same way that prices do in the free market. Prices, and hence user fees, determine the quantity demanded of a good or service by consumers. If the price is too high, few people pay for the good or service. If the price is too low, too many people want to consume the good or service such that supply cannot meet the quantity demanded. It is in this way that the market receives signals from consumers about the goods and services most desired by users. When goods and services are funded through taxes, these is no comparable signal received by the municipality about the level and type of goods and services provided by the municipality. Afterall, when goods and services are provided at a seemingly zero price, many people consume a good or service who would not if even a marginal price were charged. Instead, one of the only feedback mechanism is through vocalizations of concerns and interests at council meetings or similar venues.

**Example**

Municipalities send annual property tax notices to all property owners. Owners, though, sometimes seek a duplicate tax notice. A municipality can either provide this service gratis, funded through property taxes, or charge a fee for duplicate tax notices. When the service is funded through property taxes, all homeowners bear the cost of some homeowners requiring a duplicate tax notice. Charging a user fee, even a nominal fee, for providing a duplicate notice means that only those homeowners needing a duplicate notice pay for the cost, resulting in a substantial reduction in owners seeking a duplicate tax notice as they find it is cheaper to locate their original notice or make a copy themselves. Only those homeowners that truly need a duplicate notice will be willing to pay the user fee.
User fees promote efficiency, equity, compliance costs, visibility, and accountability, which is why the approach of local finance should generally be “whenever possible, charge”. Administrators that place significant emphasis on these criteria will find that user fees are their preferred policy tool, conditional on the criteria outlined in Step 1 being met. If you answer yes to most of these questions then a user fee is a preferred revenue instrument for the problem at hand. A key selling point of user fees, based on these criteria, is that they can be put in place not just to generate revenue, but also to curb demand and influence consumer preferences. These are likely to be secondary objectives of many user fee regimes, which leads us to consider objective setting in step 4. Before we can consider objectives, however, we must first consider the authorities of the municipality to deliver a user fee regime.

STEP 3: DETERMINE LEGAL AUTHORITIES

Once it has been determined that user fees are the preferred policy instrument for the identified policy problem, the next step in designing and implementing a user fee is to review the municipalities enabling legislation and ensure that the municipality has the jurisdictional authority to implement a user fee regime and, if so, within what constraints. With this information in hand, the municipality can devise a plan to overcome any identified constraints, including seeking additional authorities or revising the desired course of action. This step is an important step as it provides the municipality with the means to avoid or minimize any legal risk associated with enacting the user fee regime.

Determining legal authorities and the legal environment within which the municipality must operate is a different condition than considering the policy environment within which the municipality must
operate. For example, municipal politicians may have implemented a policy of financial viability and user fees may be seen as a tool with which to achieve that policy objective. Step 9 considers the policy environment in designing and implementing user fees.

a. Do you have a copy of the municipality’s enabling legislation? **YES/NO**

The municipalities enabling legislation is usually found in provincial legislation entitled *Community Charter, Municipal Act,* or Charter Acts for individual cities. Copies of this legislation can usually be found online or from the ministry that is responsible for municipalities in the province.

b. Have you reviewed the enabling legislation? **YES/NO**

Municipalities are only allowed to exercise the powers that are delegated to them by the provinces or territories. Careful examination of the provincial or territorial authority is required to establish the authority given to municipalities to charge user fees and if there are any legal limitations on those authorities in the law.

c. In reviewing the enabling legislation:

   i. Does the municipality have authority to provide the good or service? **YES/NO**

   ii. Does the municipality have authority to charge a user fee? **YES/NO**

   iii. Does the municipality have the authority to charge a user fee for that good or service? **YES/NO**

   iv. Are there any limits on the municipality’s authority to provide the good or service or to charge a user fee? **YES/NO** If so, what are they?

   It is important to note the exact language used regarding the authority to set a fee. For example, courts have in the past interpreted the phrase “to fix a fee” to mean that the user fee is limited to being a flat, and not a variable, fee. This is discussed in more detail in Step 7.

In reviewing the enabling legislation, it is important to review the enabling legislation in its entirety as the authorities related to any specific good or service and to charge a fee are likely to be contained within various sections of the legislation.
To aid municipal public administrators, a case study is provided below. It is suggested that the case study be read through in its entirety before reviewing any particular enabling legislation.

**Case Study: Smithton, British Columbia, Canada**

The purpose of this fictitious case study is to provide a better understanding of the legal principles applied to user fees. Smithton is a municipality incorporated under the British Columbia *Local Government Act* and is a part of the Mountain Regional District. The Mountain Regional District has a Solid Waste Management Plan (SWMP) that was developed in accordance with the British Columbia *Environmental Management Act*. The SWMP does not provide for pick-up and disposal of municipal solid waste, but rather allows municipalities to decide whether they will offer a solid waste disposal service and how that service will be funded. However, the SWMP does detail how solid waste is to be disposed of in the Mountain Regional District if solid waste is picked-up by a municipal service. Smithton operates a municipal solid waste pick-up service and is concerned about both increasing pressure on its budget and reducing the amount of solid waste that it is producing. The elements of the municipal solid waste pick-up and disposal service include waste diversion and public education regarding suitable goods for residential solid waste pick-up. Suzie is a municipal public administrator in Smithton. Suzie has been asked to consider the legal general principles for user fee implementation.

Suzie has determined, knowing that Smithton municipalities are only allowed to do what is provided to them in their governing legislation, she must ensure that Smithton can charge a user fee. The relevant sections that Suzie understands to be important are:

**Community Charter**

8 (2) A municipality may provide any service that the council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.

(3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:

[...]

(h) the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64

12 (1) A municipal bylaw under this Act may do one or more of the following:

(a) make different provisions for different areas, times, conditions or circumstances as described by bylaw;

(b) establish different classes of persons, places, activities, property or things;

(c) make different provisions, including exceptions, for different classes established under paragraph (b).
The authority of a council under section 8(3)(h) may be exercised in relation to the following:

(d) refuse, garbage or other material that is noxious, offensive or unwholesome;
(e) the use of waste disposal and recycling services;

A council may, by bylaw, impose a fee payable in respect of
(a) all or part of a service of the municipality,
(2) Without limiting subsection (1), a bylaw under this section may do one or more of the following:
(a) apply outside the municipality, if the bylaw is in relation to an authority that may be exercised outside the municipality;
(b) base the fee on any factor specified in the bylaw and, in addition to the authority under section 12 (1) […], establish different rates or levels of fees in relation to different factors;
[…]
(d) establish terms and conditions for payment of a fee, including discounts, interest and penalties;
(e) provide for the refund of a fee.

Schedule: Definitions and Rules of Interpretation

1(1)
“fee” includes a fee by any name, including a charge;
“municipality” means, as applicable,
(a) the corporation into which the residents of an area are incorporated as a municipality under Part 2 of the Local Government Act or under any other Act

Suzie has determined that s 8(3)(h) includes waste disposal services as provided for under s 64(d). According to s 94(1)(a), a municipality can establish fees payable in respect of a service of the municipality and s 12 allows for those fees to vary based on classes, so for instance, Suzie can make different fees for different amounts of solid waste. In light of both of the major concerns of Smithton, Suzie is considering recommending a volumetric user fee where a base amount is charged for all households and an increased amount above the base is charged for every additional bag of residential solid waste set out for pick-up.

d. Have you obtained legal advice regarding your authorities? YES/NO

Interpreting legislation and associated case law is difficult. It is prudent for the municipality to carry out a detailed legal analysis and to seek legal guidance from experts in municipal law to ensure that the user fee regime accords with the municipality’s authorities. This may mean consulting in house lawyers or retaining the services of an independent expert in municipal law, depending on the resources available to the municipality, as a means to avoid or
minimize legal risk associated with the enacting the purposed user fee regime and to use should a lawsuit regarding the user fee regime arise.

e. How does the municipality’s authorities compare to the authorities of municipalities reviewed for their approach to user fees or delivery of the good or service?

Jurisdictional authorities have to be kept in mind when looking for “smart practices”. Jurisdictions exercise their delegation of powers to municipalities in different ways, meaning that all municipalities will not have the same authorities. In relation to user fees, this means that a municipality may be able to enact a user fee for a particular public good or service and with particular characteristics, while another municipality is not permitted to enact the same user fee or have the same characteristics. This is an important caveat given that a current trend in public administration research is to conduct jurisdictional scans to determine what other jurisdictions are doing in an area of interest and to use that information to inform their own approach. What, on the surface, may seem like an ideal approach employed by another jurisdiction may rely on authorities the interested municipality does not possess. As a result, a less ideal approach may be a required compromise given the constraints the authorities placed on a jurisdiction. These nuances will not be clear without a fulsome understanding of a municipality’s authorities (and the authorities of those jurisdictions being examined).

f. If there are limits or you are currently lacking the authority you desire, is it possible to work within existing authorities? YES/NO

g. If it is not possible to work within existing authorities, the municipality will need to seek provincial approval for expanded authorities. If the municipality wants to seek expanded authorities, what is the plan to seek that authority? YES/NC

h. If the municipality wants to seek expanded authorities, is approval from the appropriate body likely? YES/NO

Expanding municipal fiscal authorities is a step not taken lightly by provincial governments as doing so sets potentially undesirable precedent and such a strategy should not be undertaken lightly by the municipality. If there is a way to achieve a similar outcome
under existing authorities, then that should be the preferred approach.

i. Do you have a back-up plan if the request to expand authorities is denied? **YES NO** What is it?

If you answer **yes** to most of these questions then you have clearly established your authorities and have established a plan on how to proceed either within these authorities or to see expanding authorities. With this information firmly in hand, a firm understanding of the municipality’s authorities and the constraint within which it must design and implement a user fee, the next step is to consider the objectives of the purposed user fee regime.

**STEP 4: ESTABLISH OBJECTIVES**

The public policy process stipulates that once a policy problem is identified, **it is essential to set the objectives that the public policy will achieve. Objectives outline the desired result to be achieved and give a sense of direction by providing guidelines for activities.** The fourth step to designing and implementing user fees is to understand the desired objectives and to situate these objectives within the legal parameters that the municipality must function. **When it comes to user fees, the only legally permissive primary objective, as established in the case law, is to raise revenues to cover the cost of providing the good or service of interest, whether cost recovery occurs in whole or in part.** This does not rule out secondary objectives, including behaviour modification, but these can only be met conditional on meeting the primary objective of cost recovery. If instead the primary objective is to change behaviour, then the municipality has to consider a tax or a regulatory charge, and not a user fee.
A municipality provides residential refuse collection and wants to invoke a user fee for that service. For a user fee to be valid, the primary objective of the fee must be to cover the cost of residential refuse collection. A secondary objective, to be met conditional on the primary objective being met, may be to change behaviour so that residences produce less refuse or engage in recycling or composting.

These objectives should be clearly set out in the accompanying bylaw or similar instrument as the bylaw or similar instrument is important an important guiding document and also acts as evidence for the courts should a legal challenge arise.

a. Does the municipality have a clear primary objective for the levy? YES/NO

b. What is the primary objective for the levy? Is it to (a) raise general revenue; (b) change behaviour; (c) recoup the costs, in whole or in part, of a good or service the municipality is providing?

The primary objective of a user fee is embedded in the definition of a user fee. A user fee is a charge for a publicly provided good or service where the revenues from the fee are solely used to offset the costs of providing the good or service. As a result, the primary objective must be to recover costs from providing the good or service. Step 6 discusses what costs could be considered for recovery, which is quite broad.

c. Are there secondary objectives for the user fee? YES/NO What are they?

Secondary objectives can be achieved only conditional on the primary objective of cost recovery being met. That is, having secondary objectives does not rule out a user fee, but they cannot be the primary objective. Social or political objectives are quite common in public policy, and particularly user fees. Two common social objectives are related to behavioural modification (i.e. reducing consumption of a service) and addressing concerns with ability to pay, discussed in Step 8. Generally, concerns related to ability to pay arise when there is an underlying value that the public has expressed in terms of providing access to the good or service because it is seen to benefit society. While user fees are equitable based on benefit-based principles, they may not be equitable based on ability to pay. With user fees, all consumers pay
for the cost of the good or service regardless of their income, a key measure for ability to pay. Ability to pay is the most frequent argument against user fees, specifically that they are regressive. The literature, however, is not conclusive regarding the regressive nature of user fees. In fact, the evidence suggests three main arguments against user fees’s regressivity. First, upper-income households benefit disproportionately from free public services. For example, upper-income households are more likely to live in large households and consume more than their share of sewage, water, and refuse collection than lower income households when these services are funded through property taxes and not user fees. Second, user fees allow low-income consumers to adjust their consumption to lower levels, thereby paying less than they would under a property tax system. Third, any regressive or disproportionate effects can be minimized or even reversed with careful design, revenue uses, and compensation mechanisms, particularly discounts and exemptions for readily identifiable groups, a point we return to in Step 8. If the public places a high value on the provision of the good or service and its broad accessibility, the imposition of a user fee may not be appropriate unless access to the good or service by low income individuals can be accommodated through such tools as discounts. The position taken in this guide is based on good user fees design that dictates that equity concerns based on ability to pay should not be taken into account initially but rather after the regime is designed but before implementation. As a result, we return to address concerns related to ability to pay in Step 8 when we discuss discounts.

When setting or considering secondary objectives, municipalities will have to give careful consideration to how these secondary objectives might jeopardize the primary objective of cost recovery. For example, a user fee regime might have the secondary objective of conservation. If this objective is successfully met, this means that users have reduced their consumption. Reduced consumption at the given fee level would then lead to reduced revenues. Municipalities might then find themselves in the situation of having to reward their constituents for their conservation effects by raising the user fee in order to ensure that revenues cover the incurred costs of providing the good or service. This is a point that is considered in more detail in Step 7.

d. Does everyone agree with the primary objective?  **YES NO**
In order to satisfy legal requirements for a user fee, it must be understood that the primary objective is to recoup the costs of providing the good or service, in whole or in part, without generating a surplus (discussed in Step 6). If there is no agreement around this, the legality of the user fee is at risk.

e. Can dissenters to the primary objective be accommodated through a statement of secondary objectives, such as those related to social or political objectives? YES/NO

Educating politicians and constituents on the legal requirements for user fees will often bring most in support of the primary objective of the user fee regime being to recoup costs. Support can further be entrenched by accommodating those who want the regime to achieve other objectives though the formation of secondary objectives.

f. Will you be drafting a bylaw or similar instrument for the user fee? YES/NO

A bylaw usually accompanies municipal user fees regimes, though in some cases may be approved by policy, resolution, or delegation to the CAO, among other vehicles. Without a valid bylaw or similar instrument, the user fee regime will likely not be valid. You will need to check your authorities to determine the need for and requirement of such a bylaw or similar instrument.

g. Will the bylaw or similar instrument contain a purpose statement? YES/NO

The bylaw or similar instrument should contain a clear purpose statement that sets out the objectives of the user fee and describes the proposed levy as a user fee. Bylaw drafters need to be informed of the importance of this purpose statement.

If you answered yes to most of these questions then you have a consensus regarding your objectives, both primary and secondary, and will be codifying these objectives in the user fee bylaw or similar instrument. We saw in this section that the main objective of a user fee is to recoup the costs of providing a good or service. It, therefore, immediately follows that criteria related to acceptable revenue uses is tightly linked to setting objectives.

**STEP 5: SPECIFY REVENUE USES**
Step 4 noted that the primary objective of a user fee must be to recoup the costs of providing the good or service that is being charged for. As a result, revenues must be earmarked and spent purposefully, a requirement set out in case law. This means that the revenues from user fees cannot be deposited into general revenues to offset general expenditures, but must be specifically used to offset the cost of providing the good or service.

The seminal court case that deals with the allocation of revenues is *Eurig Estate (Re) [13]* [*Eurig*]. This case dealt with probate fees. In this case the court found the probate fees to be a tax and not a user fee. They came to this conclusion, in part, because revenues were not specifically used to offset the cost of granting probate, but rather to defray the costs of court administration in general. Case law stipulates that there must be a tight link between the activity charged for and activities funded by user fee revenues.

a. Is the use of the revenue generated from the user fee clearly established? **YES/NO**

b. Will the revenue be directed to a specific account to be used to offset the cost of providing the good or service? **YES/NO**

Revenues from user fees must be strongly earmarked to satisfy legal criteria and is recommended to satisfy economic criteria. If revenues are deposited into general revenues then the levy will not satisfy the legal requirements for it to be found a user fee. While there is no specific requirement in the case law that user fee revenues must be put into a specific account, it is not clear how one would satisfy the requirements of cost recovery and a tight link between the activity charged for and activities funded by the revenues if revenues were placed in a general account. The issue is twofold. First, for practical purposes, it may be more difficult to track and therefore harder for the municipality to know what money was collected and what money was spent and on what. Second, from the court’s perspective, some judge’s just adhere to the strict interpretation of the requirements. The case law specific refers to a “specific account”, and many judges then interpret this to mean exactly that.

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c. Is there a narrow link between the good or service being charged and the activities to which the revenues will be directed?

Revenues from user fees must be used to offset the costs, either in whole or in part, of providing the good or service. Ascertaining costs is a point we return to in Step 6.

User fees for residential garbage collection are used to offset the cost of providing residential garbage collection, including pick-up and disposal costs, operating costs, as well as costs incurred to inform consumers about the service. User fees for residential garbage collection cannot be used to offset costs of other municipally provided services that are unrelated to residential garbage collection, like the provision of recreational services.

The legal requirements for a user fee necessitate that the user fee revenues be directed, but it is not clear what programs and service can be funded from the revenues. For example, while it is agreed that user fees from refuse collection can be used to fund programs related to refuse collection, it is not clear what breadth in defining refuse collection is allowed. Can revenues from residential refuse collection be used to fund broader environmental programs, including leaf collection and refuse collection for transit services? Because the degree of connect between the good or service from which the revenues are collected and the good or service that is funded by the revenues has not yet been established in case law, it would be prudent to ensure a tight and defensible connection between the two.

d. Is the link between the charge and the activities being funded supported by the purpose statement in the bylaw or similar instrument? **YES** NO

While case law stipulates that there must be a tight link between the activity charged for and activities funded by the revenues, the case law has not stipulated as to the breadth between the activity being charged and the activities being supported by the user fee revenues. As a result, prudence in this area is advised and legal advice should be sought. Step 4 noted the importance of the bylaw or similar instrument enacting the user fee regime to contain a purpose statement. Including wording in the bylaw or similar instrument about the purpose of the fees and how they will be used and how their use relates directly to the purpose would be helpful, especially should a challenge of the user fee regime arise.
Properly earmarking and specifying the use of the revenues from the user charge is one essential component of having a user charge that meets the legal criteria. If you answered yes to most of these questions, you have established how the revenues are to be used and have ensured that they will be tightly and narrowly earmarked. As revenues from the user fee must be used to offset the costs of providing the good or service, an essential task is to ascertain the costs of providing the good or service. This is the point we turn to next.

**STEP 6: ASCERTAIN THE COSTS OF PROVIDING THE GOOD OR SERVICE**

The legal criteria for a user fee require that the size of the fee be substantiated by the costs of providing the good or service. Therefore, before the fee can be set, costs must be known. If the costs are not properly determined then the government may be in a position where the revenues generated from the user fee do not cover the costs of providing the good or service. Whether this is a strategic decision or an unexpected outcome, any losses would then have to be covered from general tax revenues, resulting in either reduced services or higher taxes in either the short or long-run.

Shortfalls in revenues from user fees cannot be made up for from revenues from other user fees given the need for user fees to be linked to the activity being charged.

The courts have noted that deficits are a permitted outcome from a user fee regime, however surpluses are a different matter. While small or sporadic surpluses are permissible, the courts have ruled that **municipalities cannot generate ongoing or large surpluses from the user fee that cannot be defended with reference to upcoming future costs like infrastructure replacement.**
It is important to note that the courts have made it clear that so long as reasonable attempts have been made to match the revenues generated from the user fee to the cost of providing the good or service, that will suffice. The courts acknowledge that costs and consumption can change that are not predicted and adjustments cannot be made in the short-term to ensure that surpluses are not generated. The point is that surpluses cannot be an intentional design feature of the user fee regime, but rather an accidental or unintentional consequence of user fee design in the real world.

With these constraints, properly calculating the costs of providing the good or service is a very important task facing a public administrator in designing and implementing a user fee, entailing the identification of all financial costs incurred to provide the good or service.

Economists advocate including both financial (defined broadly) and non-financial costs in determining the costs of providing a good or service. Non-financial costs refer externalities (costs experienced by those external to the transaction e.g. the smell experienced by non-municipal residents from the municipal compost facility on a hot summer day) and opportunity costs (the highest valued alternative not chosen e.g., municipal resident forgo a new recreation facility due to sewer infrastructure upgrades). However, the courts have made it clear that governments are limited to the recoupment of actual costs, intimating that including non-financial costs in the calculation may not be accepted by the courts. Since costing out non-financial costs is exceedingly difficult and rarely employed in actual user fee regimes, most municipalities are unlikely to pursue this method of calculating costs. If a municipality does decide to include non-financial costs, the municipality will have to devise a clear statement for the courts regarding why this method was used and why the inclusion of non-financial costs was important in the design and implementation of the user fee regime. This information will then have to be communicated to and understood by consumers. Since including non-financial costs will increase the size of the fee, municipalities may find that including these non-financial costs impedes public acceptance of the user fee regime. In addition, inclusion of non-financial costs may result in large and ongoing surpluses that will be difficult to defend to both the courts and consumers.

Financial costs include both capital, including future replacement costs, and operating costs, all fixed (costs that do not vary with the quantity of the good or service produced) as well as variable costs (costs that vary with the quantity of the good or service produced), and both short-term and long-term costs. It is important to distinguish between all these types of costs and their
presence and size will directly influence the size and type of user fee implemented. With respect to estimating operating costs, it is important to include any administration and compliance costs (discussed in Step 2), costs related to communication, publicity, consultations, and evaluation (discussed in Steps 11 and 17), as well as costs associated with maintenance, upkeep, and experts (e.g. consultants). Public administrators are encouraged to think quite broadly about these costs associated with any user fee regime. The better the estimates, the more likely the user fee itself will not have to be revised after it is implemented. A properly set user fee will ensure that these costs are included and paid for through revenues generated by the user fee.

a. Is the user fee regime linked to actual goods or services rendered by the municipality?  
   YES  NO

b. Have best efforts been made to identify all the financial costs of providing the good or service?  YES  NO

This includes costs incurred for consultation, communication, evaluation, compliance, administration, and to comply with service standards and other legislation set by other levels of government.

As an example of financial costs in a municipal context, the Federation of Canadian Municipalities (FCM) 14 outlines some of the financial costs that should be included when considering implementing water and sewer fees. FCM identifies three cost categories: capital works, operations, maintenance, and administration, and financial. Capital works includes the costs associated with expansion, upgrades, rehabilitation, and replacement. The FCM recommends using an asset management system with a complete infrastructure inventory and valuation, condition assessments, and repair, replacement, and refurbishment plans. Operations, maintenance, and administration covers the costs related to staffing, annual operational contracts, material, equipment, and energy costs for day-to-day operations of the service. Financial costs are the costs related to short-term and long-term debt, such as interest expenses and associated legal costs. The FCM provides an example of the financial costs that should be considered in relation to water and sewage fees.

c. Have short-term costs been distinguished from ongoing costs? YES/NO

In setting up a user fee regime, some costs will be costs incurred over the short-term, likely related to set up costs, whereas other costs will be ongoing. Differentiating between these costs will help determine the fee structure discussed in Step 7.

d. Have capital costs been distinguished from operating costs? YES/NO

Capital costs are fixed, one-time expenses that include the purchase of land and buildings, engaging in construction, or the purchase of machinery and equipment. Operating costs, on the other hand, are ongoing expenses that relate to the operation of the user fee regime.

e. Have fixed operating costs been distinguished from variable operating costs? YES/NO

Operating costs can be fixed or variable. Fixed operating costs are costs that do not vary with quantity produced and include expenses such as rent. Variable operating costs are costs that vary with quantity produced and include various overhead costs like labour and utilities. Differentiating between these costs will help determine the fee structure discussed in Step 7.

f. Have best efforts been made to estimate all of these financial costs? YES/NO

In terms of how rigorous the costing analysis has to be, the courts have established that only a loose evaluation or estimate of actual costs by the municipality is all that is required. In other words, there must be evidence that the municipality has incurred actual costs and has engaged in an exercise to match these costs to the service provided to determine the fee charged. That said, best efforts should be made to ensure an accurate estimation of costs to ensure that the municipality is able to recoup its expenses. It is important to ensure that you consider how costs will change over the life of the user fee regime, including accounting for inflation.

g. Is everyone in agreement about these costs? YES/NO

To ensure that all the costs of the user fee regime are properly accounted for, public administrators should consult broadly within the municipality to ensure that all interests are represented and that there is consensus amongst those affected by the user fee regime of the costs.

h. Will all of these identified costs be recouped through the user fee regime? YES/NO
The legal requirements for a user fee are that the revenues from the fee are solely used to offset the costs of providing the good or service. While large and ongoing surpluses pose a legal challenge, and will need to be mitigated, deficits do not. There is no obligation on the part of the municipality to recoup all of the costs of providing the good or service, however if the municipal wishes to do so, it will have to ensure it mitigates against potential deficits. It is possible to fund some of the costs of the user fee regime through property and other taxes that do not require that revenues be earmarked. Economists argue that sunk costs, like capital costs, and short-term costs might be better suited to be funded through taxes than through a user fee since these lumpy costs make pricing the user fee challenging. For example, over what time period do you amortize the costs of these large one-time or short term expenses? How do you factor in the costs of replacement of machinery and equipment into a user fee? The shorter the time period these costs are amortized, the larger the fee will be in the short term which will make acceptance of the regime challenging. Another complication with funding capital costs solely through a user fee is that municipalities are not permitted to run operating deficits but capital costs are being funded through operating revenues. In addition, some capital costs can also be recouped once the regime is wound down, like selling the building or land and the users will not be able to benefit from this windfall of revenues.

i. Has the municipality accounted for or put in place a plan to deal with changes in costs that may occur over the life cycle of the user fee?  

The costs associated with a user fee regime will not remain stagnant over the life of the regime. Some costs will rise, some costs will fall, and other costs can arise that were unanticipated such as those associated with technological change and unexpected shocks (like a natural disaster). Given the importance of properly estimated costs to the sustainability of the user fee regime, the municipality should plan for a regular review or evaluation of costs associated with the regime and provide for a method of updating the fee accordingly. Because of backlash that often occurs when fees need to be unexpectedly increased or raised substantially, it would be wise for the municipality to establish a regularized process for fee review and changes. For example, if the main cost component of a user fee is staff time, the costs of which are set and regularly updated through wage negotiations, it would be wise to link the changes in these fees to changes in negotiated wages. The issue of evaluating the regime more broadly is taken up in Step 17.
Properly identifying, accounting for, and estimating the costs of a user fee regime is an essential step to ensure the financial viability of the regime itself. If you answered yes to the questions in this step then you have a firm understanding of your financial costs and the types of costs that will be incurred, or you are willing to fund the service with a combination of user fee revenues and property tax revenues, and you have a plan for monitoring costs throughout the delivery of the service and how any changes in costs will be addressed will be factored into the fee. Once detailed information related to the costs of a user fee regime is known, the next step is to set the size and type of fee.

**STEP 7: SET THE SIZE AND TYPE OF FEE**

Probably the most difficult and technically complex step in this entire guide is this one: setting the size and type of fee. The last item in Step 6 started to hint at this by suggest that some costs might not be suitable to be recouped through a user fee, but rather a property or related tax. Once it is decided what costs will be recouped through the fee itself, decisions can be made regarding the fee itself.

A current trend in public administration research is to conduct jurisdictional scans to determine what other jurisdictions are doing in an area of interest and to use that information to inform their own approach. This is particularly true with respect to the setting the size and type of fee. There are two important caveats with doing this research. First, the jurisdictions included in these scans are very likely to have very different authorities, not only from each other but also from the municipality engaging in the jurisdictional scan. What, on the surface, may seem like an ideal approach employed by another jurisdiction may rely on authorities the interested municipality does not possess. As a result, a less ideal approach may be a required compromise given the constraints the authorities placed on a jurisdiction. These nuances will not be clear without a fulsome understanding of a municipality’s authorities (and the authorities of those jurisdictions being examined), a point that links back to Step 3. Second, municipalities may choose to align the size and type of their fee with that which exists in comparable municipalities. Proceeding blindly in such a way without considering the costs and objectives of the
enacting municipality and how they differ or are similar to the comparator municipality can result in either an ongoing deficit, which will have to be funded out of the tax base, or a surplus, which will have to be rationalized to constituents and the courts should a legal challenge arise.

a. What pricing regime will the municipality use? (a) marginal cost pricing (b) average cost pricing or (c) average incremental cost pricing?

There are three pricing strategies available to municipalities: marginal cost pricing, average cost pricing, and average incremental cost pricing.

Marginal cost pricing is unlikely to be accepted by the courts as it requires the estimation of various non-financial costs (the difficulties of which was discussed in Step 6), and the courts have made it clear that governments are limited to the recoupment of actual costs. While economists advocate marginal cost pricing, they also acknowledge the impracticality of this pricing regime. This leaves the municipality with two (simpler) pricing options: average cost pricing and average incremental cost pricing.

Average cost pricing is the “typical” way user fees are set because it is the simplest. Average cost pricing estimates the total financial cost and divides it by the number of units that will be provided to obtain the user charge. Using this method each consumer is charged based on the adding up the total cost of the good or service and dividing by the total number of units used in entire community. Average cost pricing is favoured by public administrators in user fee implementation because of the simplicity of its structure. While the simplicity of the average cost model may be attractive, it is also to its detriment since the danger is that it unlikely to recover the full cost of providing the good or service.

Average incremental cost pricing, on the other hand, allows for calculation of the cost of providing the service to an additional user. The average incremental cost is calculated by dividing the cost of providing an increasing unit by the anticipated number of additional users. Each user is charged the average of the total incremental costs. Economists advocate using average incremental cost pricing as it better matches costs to revenues.

b. Have the number of users or units that need to be provided been identified or estimated?

YES NO
Regardless of which pricing method is chosen, each requires the calculation of the number of users or the number of units that will be supplied. Doing so will necessitate understanding of the constituents in the municipality (and surrounding area if access will be granted to non-constituent users) and the level of demand for the proposed good or service. In some cases, the users and units will be the same thing, but in most cases they will be different. They will be different when a user can use multiple units (e.g. water use, sewage use, public transit use), but the number of units is still dependent on knowing the number of users so most municipalities will need to know not only how many users there will be but also how many units the users will use. That is, you need to know both the extent and intensity of use.

c. Has the municipality accounted for changes in users and units over both the short and long-term to ensure that revenues continue to cover the costs incurred? YES NO

It is important that two aspects be considered during this process.

First, as soon as you price a good or service, the number of units demanded for that good or service will fall. How much it will fall will depend on a user’s price elasticity of demand. Price elasticity of demand (PED) indicates the resulting percentage change in quantity demanded given a percentage change in price. A municipality can either attempt to estimate PED for their good or service or consult the literature for available estimates (typically a range will be available to use). Most municipally provided goods and services that have been subject to user fees have estimates available, including recreation services, sewage, water, and solid waste collection. If behaviour modification is a secondary objective of the user fee regime (see Step 4), this knowledge of PED will be important to understand the behavioural modification effects of the fee. That said if a price change elicits no or limited change in quantity demanded, then the desired behavioural change may not be forthcoming.

Second, over time the number of users will also change as tastes, population, income, as well as substitute and compliment goods change. These are changes in demand that tend to take place over the longer term, after the fee regime has been in place for a number of years. As the number of uses change, the size of the fee will have to change so as to ensure that ongoing surpluses or unwanted deficits do not occur.
d. Are the number of users or units that need to be provided sufficient to ensure a reasonable sized fee? **YES/NO**

Once the number of potential users or units that will need to be supplied is known the public administrator needs to consider whether the number of users or units can sustain the fee. Without sufficient users or units given the costs, the user fee may have to be set at a level that is beyond the users maximum willingness to pay, thereby further limiting users or units, or is unaffordable, thereby resulting in ability to pay problems. If the number of users or units is too small for the user fee regime to be sustainable or affordable then either there is not sufficient demand for the municipality to provide the good or service, the regime will have to be wound down once the number of users or units drops below a certain threshold, or the good or service will have to be funded through a broad-based tax like a property tax.

e. What type of fee will the municipality use? (a) **flat fee** (b) **variable fee** or (c) a **mix of a flat fee and variable fee**?

A user fee can be a fixed fee, a variable fee, or a combination of both provided that the municipalities enabling legislation allows for the proposed fee structure and, if using variable fees, variable costs are incurred (see Step 3).

Flat rate charges are charges in which the rate does not vary with consumption. While **flat rate charges are easier to administer than variable charges**, the rate of consumption is based on an assumption of the use of the user, not the actual amount of the product or good used. An example of a flat rate charge is a charge for water services were the amount of water consumed is not metered. All residences pay the same fee for water (e.g. $600 a year) regardless of how much water they consume. The fee reflects average total water consumption rather than the actual consumption of each individual household. As a result, some households pay for more water than they use while others pay for less water than they use. Because there is no feedback mechanism that links the amount paid to the amount consumed, no households have incentive to reduce their consumption. Instead, the incentive is to increase consumption. When the cost of providing a good or service rise or fall as the quantity provided increases this leads to pricing complications. In these cases, a simple flat fee is unlikely to full cover the costs of providing the good or service and a volumetric fee should be considered.
Volume-based pricing calculates the amount of the fee based on the amount of the product or good consumed. This type of pricing includes constant unit prices, declining block rates, increasing block rates, humpback block rates, seasonal rates, and excess use rates. Constant unit rates are an equal charge applied for each unit of consumption. This is different from a flat rate because each unit is still being charged, whereas a flat rate is one amount no matter how many units are consumed. An example of a constant unit rate is a user fee for each bag of garbage that is set out for pick-up; whereas a flat rate may charge a certain amount for garbage pick-up over the course of a month, no matter how many garbage bags were set out for pick-up. A declining block rate is a charge where there is a decrease in the charge as the volume increases. An example of a declining block rate is where the user fee applied to a unit of water decreases after a certain number of water units are consumed. Such a fee type might be used when the good or service displays economies of scale, however, when applied to some goods or services which have related environmental objectives, such as water, the declining block rate has been criticized as it fails to promote conservation of the resource. Increasing block rates are the inverse to a declining block rate, where a charge increases as the volume of units consumed increases. Humpback rates combine increasing and decreasing block rates with the intention of encouraging conservation but allowing large industrial users to have declining block rates reflecting economies of scale. Seasonal rates are adjusted to increase when there is peak demand, or to accommodate a decline in resources which encourages conservation. Prices correspondingly decline in the off-season. Using water as an example, in the summer unit prices would be higher as there is less rainfall and more water use (for example, by watering lawns, washing cars, filling pools), while prices would be lower in the rest of the year. Excess use rates are rates that are set on consumption during peak times, for instance during the days, after a threshold amount has been reached.

The final type of user fee is multi-part tariffs, which combine a flat rate to cover the fixed costs of providing the good or service with an additional charge, often based on volume that covers the variable costs of providing the good or service. A common example of rate mixing are telephone systems, where a flat rate is charged to have access to the network and a volume-rate is added on depending on how many calls you make or how long you talk.

In charging volumetric fees it is also important to note two things. First, volumetric fees have the potential to raise funds substantially in excess of the costs incurred. Recall, though, that the courts have
noted that “a surplus itself is not a problem so long as the municipalities made reasonable attempts to match the fee revenues” with costs. Volumetric fees also have the potential to substantially modify behaviour, such that use declines over time. As use declines, the revenues from the volumetric fees may no longer cover the fixed cost of providing the good or service resulting in pressure to raise the user fee. Constituents are unlikely to be supportive of raising fees in the face of declining use. As a result, it is important to get the mix and size of the fee correct in the first place notably considering a two part fee: a fixed portion to cover the fixed costs of providing the good or service and a volumetric portion to cover the variable costs of providing the good or service. Any fee will have to be periodically reviewed to ensure that the revenues continue to cover costs.

Second, in order to charge volumetric fees, you must be able to monitor actual use. In some cases, this means the municipality will need to have in place or will need to plan for additional infrastructure, such as meters and metre readers, to allow this monitoring to take place. In some cases, this might provide difficult, particularly if a variable fee for stormwater run-off or sewer use is contemplated. When considering the type of fee, municipalities will also need to consider the infrastructure needed to support that fee and the feasibility of deploying that infrastructure.

f. If the municipality is going to charge a volumetric fee, in whole or in part, does the necessary authority to charge variable fees exist in the municipalities enabling legislation? **YES/NO**

It is important that the municipality ensure that its enabling legislation allows for variable fees, building on step 3. If the phrase “fix a fee” appears in a municipality’s enabling legislation it may be that a volumetric fee is not permissible.

g. If the municipality is going to charge a volumetric fee, in whole or in part, does the nature of the costs incurred support this type of fee? **YES/NO**

In addition to ensuring that the proper authorities are in place to support a variable fee, the municipality must also establish that there is a clear rationale for a variable fee in order to satisfy the requirement that the user fee be tied to the cost of the service. The most straightforward argument in support of a variable fee is the
presence of variable costs; there exists a relationship between the change in the user fee and the change in the cost of providing the service. That is, a volumetric fee must correlate to a varying cost (either increasing or decreasing depending on the type of volumetric fee) in providing the good or service.

Properly setting the size and type of fee is not a simple task. There are a lot of decisions that directly influence both the short-term and long-term sustainability of the user fee as well as public acceptance of the fee. If you answered yes to the questions in this step then you have given consideration to how the fee will be set and how the fee is related to the costs incurred. Now that the size and type of fee have been determined, the next step is to consider premiums and discounts to these fees. These are steps that should always be determined after deciding on the appropriate pricing strategy for the user fee regime to better understand the tradeoffs that must occur with modifying the pricing schedule.

STEP 8: DECIDE ON SURCHARGES, DISCOUNTS, AND SUBSIDIES

In many cases, municipalities will want to vary the fee schedule so that some users pay more and some users pay less than the fee determined using the pricing method chosen in step 7. There are two main reasons for varying the fee schedule. First, some classes of users may contribute to increased costs (surcharge) or decreased costs (discounts). Second, not all users have the same ability to pay and the municipality may want to give discounts or subsidies to those with reduced ability to pay.

a. Does the municipality want to vary the fee across types of users or across specific users?

YES  NO

Many municipal fees vary by type of customer.
One such example is to differentiate among residential, utilities, industry, business, non-profit, agriculture, and so on. These are often in the form of surcharges applied for a specific class of users. An example is sewage treatment which would add an additional fee to the sewage of industrial waste. The justification for such a charge is that it is denser and contains a more damaging discharge and is therefore more expensive to treat. These increased costs can be recouped through the user fee, but there is no reason for all users to pay for these costs since the increase in costs can be linked to a specific class of users.

Another example is to charge non-resident users a higher fee than resident users. This often occurs when tax revenues are used to cover some of the cost of providing the good or service. Since non-resident users do not pay taxes in the municipality, they are charged a higher fee to make up the difference. An example would be library users. Users that are residents of a municipality can use the library at a reduced or no cost, but non-residents are required to pay a fee to access the services of the library.

A third example would be to charge lower income users a lower fee. For example, seniors, students, and children are often offered a reduced price based on the assumption that they have a reduced ability to pay. That said this is not true in any given circumstance. Indeed, as baby boomers retire, seniors will be more affluent than they ever have been in the past and in many cases will be more affluent than those working.

A fourth example would be to charge heavy users a different fee than light users. For example, many transit and recreation services offer discounts on weekly or monthly pass users.

A fifth example is one where a specific user can apply for fee reduction or waiver. In cases where a fixed fee is charged and that fee is attached to a property tax bill, a constituent may wish to apply for a waiver to that fee because they do not, in fact, use the service being charged. Consider garbage collection fees that are affixed to an annual property tax bill. Some constituents have reduced their garbage production to zero and hence are being charged for a service they do not use. There needs to be a clear and detailed process in place for constituents to appeal the charge.

b. If the municipality is going to vary the fee across different users does the necessary authority to differentiate among users exist in the municipalities enabling legislation?  

   YES  NO
In order to differentiate among classes of users, the municipality must first ensure that its enabling legislation allows the municipality to differentiate among classes of users, building on step 3.

c. If the municipality is going to charge some users surcharges does the nature of the costs incurred support this type of fee? **YES NO**

d. Is the municipality concerned about user’s ability to pay? **YES NO**

e. If yes,

   i. Is the user fee regime likely to have regressive effects? **YES NO**

   When the financial burden of a service falls more heavily on low income households, it is referred to as regressive. This usually manifests itself as the payment taking a larger portion of the after-tax income of low income households.

   ii. Can users most likely to experience regressive effects be identified? **YES NO**

Municipalities do not usually have the ability to officially investigate a user’s financial circumstances to determine whether
they are eligible for a reduced payment. Instead, discounts or subsidies are usually offered to a class of users that are known or believed to have a reduced ability to pay. These groups will depend on the municipality’s own socio-economic characteristics but often includes seniors, children, and students.

ii. Can a strategy be developed to overcome these regressive effects? YES NO

Given the lack of conclusive information regarding the regressive impact of user fees, one of the challenges facing public administrators is deciding how to include equity considerations in implementation and particularly for municipal public administrators. If any regressive effects are present they can be minimized or even reversed with careful design, revenue uses, and compensation mechanisms, particularly discounts and exemptions for readily identifiable groups. It is possible to accommodate equity concerns not just through fee reductions, but also operational changes. For example, providing more services to low income areas or reducing the burden of the fee by accepting various forms of payment or allowing individuals to pay by month rather than one up front yearly fee.

iii. Will addressing these regressive affects negatively affect the ability of the user fee regime to meet its stated objectives? YES NO

The primary objective of a user fee is to recoup the cost of providing the good or service. Discounts will clearly jeopardize meeting this objective. Revenues lost through discounts will need to be made up for from general tax revenues. Because most municipalities are unable to run operating deficits, this necessarily means that other goods and services would have to be curtailed or taxes would have to be increased. It is important for this outcome to be fully understood by decision makers.

In addition, many user fee regimes carry a secondary objective related to modifying behaviour. For example, a secondary objective of many garbage collection fees is to entice users to reduce their waste. Offering discounts also jeopardizes these types of objective and will have to be balanced against concerns related to ability to pay keeping in mind the point of user fees is to user fees also allow users to adjust consumption to save money.

iii. Would the user fee regime face significant opposition if these regressive affects were not addressed? YES NO

Many user fee regime face opposition on this front and a municipality should prepare for such opposition. Detailed
questions concerning communication and consultation are discussed in Step 11.

In the end, deciding on surcharges will likely be an easier task than deciding on discounts and subsidies to address any regressive aspects of a user fee. While it is not clear if regressivity is really a concern with user fees, setting user fee prices in a vacuum, without considering the public perception on these issues in equally unwise. Discounts are commonly given for differentiated users, like seniors and students, and it will be a significant task to convince the public to eliminate these so-called distortions. Once surcharges, discounts, and subsidies are decided, public administrators are going to have to determine what affects these will have on revenues, particularly whether a second source of funds will need to be identified to address deficits or whether future modifications are needed to address ongoing or large surpluses.

SUMMARY TO PART I

Part 1 of this guide laid out a number of technical policy issues that need to be tackled when designing and implementing user fees. These issues focused mostly on making sure that legal requirements are addressed while adhering to economic criteria related to good user fee design. The first two steps focused on determining whether uses fees were an appropriate instrument for the problems at hand while the third step considered what the municipalities authorities were are for designing and implementing user fees. Assuming that user fees are an appropriate tool and the authorities exist, the remaining steps focused on the fee itself by considering objectives, revenue use, costs to provide the good or service, setting the fee, and finally deciding on discounts. The second part of the guide now elaborates on non-technical issues that a municipality should consider to ensure implementation success is maximized to as great an extent as possible.
PART II: NON-TECHNICAL ISSUES

Whereas the previous section dealing with technical policy issues involved yes/no answers, the following questions are not able to be posed in that format. Instead, the questions in part II require delicate, prudential judgment and the weighing of options and contextualization of issues and responses. The following issues are therefore posed as simple “Have you considered [topic]” questions. As with the previous part, however, we provide Elaboration and Example visual cues to help illustrate the concepts under review in most questions.

As shown in Figure 3, these non-technical issues have also been divided into four themes: policy related themes, political themes, alignment themes and prudential judgement. This division is consistent with the discussion of relevant public administration related criteria from chapter 6. This division helps decision-makers to focus on the various components that aid the public policy process as well as how to integrate them to assist effective implementation. Whereas Part I of this guide was clearly a stepped process where each step needed to be completed and answered in a certain way to ensure the decision-maker (and the user fee regime) could progress, the steps in Part II are more fluid and require more prudential judgment on the part of the municipality in applying the issues to their particular circumstances and contexts. As a consequence, unlike in Part I where questions are posed with introductory material and ended with a discussion that links the material to the next step, in this part some questions include introductory material before they are posed, while other questions are posed straight up because they are self-explanatory. Further, as the steps and questions therein can be addressed in any particular order there is no material that links the steps to each other. Finally, it is worth repeating that we have included the overlay of prudential judgement as both an individual step in the non-
technical assessment process as well as an overarching principle that ought to guide municipalities as they implement the guide in its entirety.

With this in mind, it is also worth noting that we cannot claim comprehensive inclusion or treatment of all non-technical issues. It is possible—perhaps likely—that a municipality may identify additional issues to those listed below. Municipalities will also need to determine the relevance of any given issue outlined below to their specific context and circumstances. Our last observation is that a timeframe should be developed by each municipality for its consideration of each of the steps outlined in Part II. It may make practical sense for a municipality to adopt a three-four year timeframe to reflect the electoral cycle in its reflections on answering the questions below. Another position would be that policymaking reflection would be better served by a longer term perspective on conceptualizing the user fee regime over a ten year period or longer to determine feasibility.
and enduring viability. Whatever the decision taken, this timeframe should be made transparent in the thinking and advice that is presented to decision makers, elected representatives and the community being served by the user fee regime.
THEME 1: POLICY-RELATED ISSUES
STEP 9: DETERMINE POLICY ENVIRONMENT

Policy making does not occur in a vacuum. Consideration of policy environments and contexts is essential to help the municipality strategically manage the design and implementation of the user fee regime. While the following step has been placed as a beginning question to be posed, **this environmental issue should be considered on a continual basis as events and circumstances change over the course of the implementation phase of the user fee regime.** If a regime takes some years to progress, much can change regarding the broader policy and political sphere which may have significant impact for the success or failure of the user fee regime. Ensuring someone monitors and makes appropriate decision making concerning the policy environment will help officials to keep hold of the user fee implementation purpose and agenda.

(a) What policy settings and levers are present that impact on the user fee regime? How will these forces influencing the user fee regime be addressed by the user fee decision regime?

Here, the question is aimed at **encouraging officials to consider what policy instruments and contexts might be used to help, or thwart, user fee regime implementation.** Policy settings refer to the landscape within which the user fee is rolled out. **These are difficult to control because they are part of the general environment in which politics is conducted.** An example of a policy setting could be the prevailing economic conditions, such as a global financial crisis, that might curtail, or perhaps promote (should the community be facing financial ruin and the user fee is the only way out), a community’s acceptance of a user fee regime. There might be a political scandal on political expenses at the time of user fee regime determination that might suggest prudence in delaying consideration of a user fee regime until the community might be more willing to consider the user fee regime on its own merits and not be perceived as a tactic of politicians to “scam” money from the community.
Policy levers refer to instruments that could be used, and are more controllable, by governments to shape the public image of the user fee regime. For example, the municipality might choose to provide some incentives (e.g., free concert tickets) at the beginning of the user fee regime to encourage take-up rates until the public gets used to the regime and its hoped for benefits.

Whether it be a policy setting or policy lever, the key for the municipal official is to consider how these forces could be taken into account in the user fee regime itself in order to maximize the chances the user fee regime has of being implemented with success. If the municipal official can do something about the policy settings or levers themselves, then direct action on this front might also be pursued. Otherwise, the municipal official should take time to consider how the user fee regime should be shaped or amended to meet the challenges or opportunities posed by the policy settings and policy levers that are in place at the time of user fee design and implementation.

**STEP 10: DETERMINE POLICY SCALE AND SCOPE**

What is the policy scale and scope of the user fee system that is proposed? What implications does scale and scope hold for implementation?

Here, the question is concerned with identifying how significant the user fee system will be vis-à-vis the size of the community in which it will be rolled out. This assessment should be made not only with respect to physical geography (that is, will the system cover the entire community or just a portion, does it apply to a small rural community or to a large urban centre and what are the effects and implications of this user fee regime rollout in a physical sense), but also how the rollout of the user fee regime will impact on related services or policy areas.

By considering this question, we are encouraging implementing officials to take into account the fact that user fee regimes might have different implications for municipalities depending on the size and type of the municipality as well as the relative magnitude of the user fee regime itself within this municipality context.
For example, will the user fee system dominate the budget of the municipality? If so, how will design and implementation costs and unanticipated costs potentially impact the budget? If a congestion user fee regime was implemented in a small semi-rural community dependent on tourism, how will this impact on tourism outcomes? Is the market for the user fee good or service big enough to sustain a user fee regime or are there so few users that the regime is not financially viable?

STEP 11: CONSULTATION AND COMMUNICATION

The way that the user fee regime is perceived by the public will play a significant role in success with implementation. To help inform the design and implementation process, the following questions should aid municipal officials to gather appropriate information and use it strategically and with good effect. Officials should remember that our guide is aimed at design and implementation features of a user fee regime after a decision has been made to pursue such a regime and that consultation should focus particularly on these elements of user fees. Consultation processes that provide a clear rationale for the user fee (for example for financial sustainability reasons) and take the user fee as a given and then proceed to focus more on design and implementation issues are usually more helpful than consultation processes that try to persuade the public as to whether they want a user fee or not. This is largely because the general public will usually oppose the introduction of a user fee as a matter of course so to focus on this question is to waste the true opportunity of consultation.

As discussed in chapter 6 of this book, the distinctive gathering and sharing of (i) information; (ii) education; and (iii) promotion dimensions to the user fee regime factor into this consultation and communication component of user fee design and implementation. For this step, the municipality will need to determine what data (if any) already exists (for example on price and acceptability of the user fees), what data is needed, and how communication and
consultation is to take place at each stage of the user fee design and implementation process. Another critical consideration for each municipality to decide is whether there is a possibility and desirability to tie in consultation on user fees with other consultation and communications processes or not. This will be a choice that depends on individual circumstances and timing as well as whether it makes commonsense to link user fees with a particular consultation process or not. A town hall meeting on financing issues may conveniently tie in a discussion with user fees or this issue might inflame a community group to negative effect for the user fee rollout. The municipal official will also need to take into account whether the community in question is suffering from consultation exhaustion or not. The concept of consultation exhaustion refers to the overloading of consultation processes onto a given community that may make community members disenchanted with any suggestion of commencing another consultation and communication process. For other communities, the opportunity to participate in some genuine consultation and communication processes may be welcome news.

**Information**

(a) Has information been gathered from sub-groups of users and the community at large to help inform regime design and implementation and to “give voice” to the community?

Even if a community or a component of a community is not in favour of a policy, much can be done to improve its take-up by allowing members of these public groups to air their views and to be heard by those decision makers with power over the regime. The notion of “genuine engagement” is very important here. Token consultation—engaging with the public for show and without any intention to use or acknowledge the feedback and ideas—must be avoided at all costs.

(b) Does the regime achieve broad support and credibility with sub-groups of users?
This question encourages municipal officials to gather data to help inform an answer to this question. The key issue is to have enough data to identify relevant sub-groups and their views. For example, within a community it is possible that certain age groups might have different views about a user fee regime proposal such as might be the case for a congestion fee regime if the older population or student population in that community use a lot of public transportation. The views of this sub-group are likely to be different from that of professionals with families who live in the same community. Once a municipality has determined relevant sub-groups, it is helpful to gauge whether there is broad support and credibility across these sub-groups or not and to identify to what this support can be credited? Can you leverage this support to help with implementation rollout? If broad support is not present, do you know why it does not exist? Can anything be done to move disenchantment or opposition towards approval?

(c) Does the regime achieve broad support and credibility with the broader community?

Just as sub-group information is important, gauging the perceptions—and the reasons for those perceptions—of the community as a whole can provide helpful information to a municipality to determine how well received or not the user fee regime will be. This information can help officials perform some creative thinking about how to manage to these perceptions and perhaps help reshape negative perceptions and leverage off positive ones.

Education

(d) Do these groups understand the nature and level of charges, why they are required, and how the system will work?

Information regarding community perceptions is one set of data but consultation and engagement also needs to take place after educative activities have been performed. As a general rule, sensational or emotive reactions and information will be the currency with which the general public forms its opinions and perceptions unless rigorous and detailed enough information campaigns are undertaken to ensure the community makes an informed decision with awareness of the practical, personal and public interest dimensions to a user fee regime.
(e) Has customised information and consultation and public relations processes been conducted positively with sub-groups of users?

Educative information campaigns are usually helpful to perform at a sub-group level to ensure different groups with their different needs are catered to and so these sub-groups can determine the practical implications of the user fee regime and how design and implementation issues might be customized to meet their valid concerns. If customization cannot occur, officials should convey to sub-groups and the general public why not so that the public can be persuaded as to the rationale behind decision making and can at least feel as if they have been heard, even if the outcome may not go in favor of their opinions or concerns.

**Promotion**

(f) Have clear “winners” and “losers” associated with the policy been identified and a strategy been developed and implemented to balance potential opposition that may occur from this process?

This question reinforces the criteria just outlined above in terms of officials identifying a clear picture of the positions and needs of the various groups in their community and how they might be able to attend to these various positions. While the goal may be to try to meet everyone’s concerns, this is obviously not always possible so municipal officials should pay particular attention to transparency in information and educative roles to provide feedback to public constituents so they can understand why decisions are made the way they are.

(g) Should a pilot or trial of the regime be implemented? If so, what benefits will it achieve and if not, why not?

The literature on user fee regimes debate the advantages and disadvantages of using pilot or trials of a user fee regime in order to iron out implementation issues and to also give – hopefully – comfort to the public about how the regime will work in practice and how their lives will change (if much at all) after implementation of a regime. There is no set consensus about whether a pilot or trial is optimal or not. The simple answer is that it very much depends on the regime in question and the community involved. Municipal officials should make use of any data or
experience they might have on past pilot projects or trials to see if a community will be receptive or not to such an approach. Related, but independent, consideration will also have to be given to whether a pilot is even possible for a given user fee regime and whether it is desirable. If a pilot is pursued, officials should make sure that detailed education and careful planning is put into its execution and into setting up appropriate expectations with the community regarding the objective of the pilot and how the regime will proceed after pilot completion. If a pilot sees the regime experience a significant failure of some sort, this might shift previous positive perceptions of community members and entrench further any negative opinions. If this occurs, it is possible the pilot might have done more harm than good in terms of providing any logistical or technical information. A risk calculation should be performed by officials to determine the potential for such an event to occur and the potential aftermath and consequences of a pilot failure. Similarly, pilot success should be estimated with attendant perception and technical benefits as shown in the case study below.

**Stockholm, Sweden**

Stockholm provides an important example of the benefits of a trial. There, a trial of congestion charges took place during January–July 2006 before a congestion charge regime received referendum approval and became implemented in August 2007. The trial took place only after a coinciding public transit injection and upgrade which saw a small increase in public transport use during the trial and a positive reduction in crowding from the minor influx of commuter-switching. Both these factors helped ensure citizens’ post-trial acceptance of congestion charging was higher than the pre-trial acceptability levels.15

(h) Does the communication plan feature strategies to meet user and public demands for information and education before, during and after implementation?

The timing and execution of communication and consultation strategies require informed thinking and delicate balancing of community needs across the full timeline of design and implementation. A municipality may have resources and inclination to develop and perform the content of these plans itself or it may seek the assistance of communication or

engagement specialists.

(i) How will communication and consultation imperatives be incorporated into the implementation of the regime if non-government agencies are being used?

Should a municipality decide in favour of non-government agencies in the design or implementation (see Step 12 below), attention should be paid to how these organizations will be contracted into government decisions and processes surrounding communication and consultation both as partners and with the general public. For example, if a municipality decides it will engage in a town hall forum to discuss and educate the general public about a user fee regime pilot program, will the non-government agency (as a necessary partner in the user fee regime) be held to the results of this town hall forum or will they participate at all?

(j) What community perceptions exist about the potential and actual use of non-government partners? Do these perceptions require management? How can you manage this issue?

The use of non-government partners in a user fee regime may be technically efficient and effective yet the general public might be opposed to their inclusion in the regime for some other reason. For example, some communities might be opposed to a certain private sector contractor being used in the user fee regime because of their other business activities. The reputation, credibility and ethical standing of any non-government partner must be carefully weighed and tested against community perceptions to determine whether some issues management might be needed before that partner could be included in any user fee regime or if, indeed, the partner should be included at all. A non-government agency that might have undertaken work in a local community in the past and been found wanting by that community may not be an appropriate partner to seek for a user fee regime, even if their technical credentials warrant them being considered as a potential contributor to the user fee regime. Conversely, some communities might actually form trust in a user fee regime using non-government partners is those non-government partners are local operators that community members know. A key issue, here, to managing the issue is trust formation. If a non-government partner is to be used, the municipality should consider how such partners can be linked in positive ways with the community and arguments provided as to why their input is needed to make the user fee regime effective. Transparency and getting non-government
partners to engage in consultation and communication processes with the community are likely to result in more favorable acceptance of non-government partner involvement in the user fee regime.

(k) What contingency plans are in place to manage any derailment of any element (technical or non-technical) of the implementation task?

It is unusual, if not impossible, for any policy or program to experience perfection in execution. Officials should perform risk assessments and develop appropriate risk mitigation and management plans to constantly monitor and attend to any implementation errors or failure. Scenario planning may prove a helpful exercise in this regard in terms of truly visualizing diverse eventualities and seeing how robustly the municipality can respond to a range of situations and manage appropriately and effectively to them. Adjustments to resourcing or design features of the user fee regime may be needed in advance of implementation to allow for improved capacity or robustness of systems to deal with such implementation derailment. Continuously monitoring the user fee regime design and implementation across time and against policy and political contexts (see Step 9 and Steps 18-20) will help municipalities be preemptive and proactive against failure, especially for non-technical derailments.

STEP 12 CONSIDER USER FEE REGIME DESIGN, COORDINATION AND GOVERNANCE

A number of sub-questions are associated with the practical design of the user fee regime, including the coordination and governance aspects of the regime. This Step addresses the question of who and how the regime should develop and be managed:

Who

(a) Who should be involved in the design and implementation of the user fee regime? Have the implications of non-participation of certain groups been taken into account?

This question encourages the municipality to identify what government and non-government stakeholders might have
useful contributions to make to the design and implementation of the user fee regime itself and to decide on the level of inclusion of these parties in the design and implementation phases of the user fee regime rollout. For example, are there private sector contractors who will be involved in provision of infrastructure? Should non-profit stakeholders be involved in the policy process such as might be the case of certain environmental groups being involved in the deliberations of implementing a recreational park user fee regime? Within the municipality, decisions will need to be made regarding which divisions (if relevant) should be involved in shaping policy development, liaising with the public and actually build or contract necessary infrastructure or system construction. The skills of a range of strategic and operational practitioners should be drawn into the process to take advantage of technical feedback loops but obviously attention needs to be paid to resourcing of staff and the need for a tight team of professionals to oversight the process. In making decisions on the question of who to involve in regime design and implementation, the municipality will need to consider internal capacity issues covered in Step 13.

**Victoria, British Columbia**

Victoria is currently considering how best to provide a dedicated, sustainable funding model for its stormwater system and the City is proposing a new stormwater utility bill such that property owners will see stormwater costs taken off their property taxes and placed in a transparent manner in a separate user fee regime. An issue to be worked through is how best to treat non-profit organizations and other government agencies located in the City which are not normally charged property tax but which would become liable for stormwater charges under the new regime. To not include these bodies appears to be an inequity in the system, but to begin to charge these costs could result in unfair outcomes for the financial position of these important organizations in their contribution to the City and would have flow-on effects to the clients of these bodies (including, obviously, taxpayers using the government organization services). Moreover, there could be important implications associated with non-participation of a user group in any given user fee application. This is because non-participation might shrink the user group, thereby influencing pricing and feasibility of the user fee regime overall. Including these non-government and other government bodies in the design and implementation decision making processes for the user fee regime is likely to result in helpful ideas and creative solutions as to how best to respond to these types of challenges.

(b) What institutions/agencies **internal to the municipality** should be involved in decision making and governance associated with the user fee regime?
Part of a municipality’s decision making concerning capacity should involve an assessment of which parts of the organization need to be involved in the regime’s design and implementation. While policymakers will be important, technical operations staff should be integrated into the process to give adequate attention to on-the-ground issues and contexts. Moreover project management skills will be required as well as contract managers, liaison officers to work with other jurisdictions, and communication and consultation experts to engage with the public.

(c) What institutions/agencies in **sub-national and national governments** should be involved in decision making and governance associated with the user fee regime?

Preparedness is not limited to internal organizational capacity. A municipality should consider which provincial, territorial or national government agencies might be needed to give effect to a user fee regime. In Step 3 of this guide we discussed the issue of appropriate authorities to give effect to a user fee regime. A municipality might have to seek provincial expansion of authorities although the precedent created by such an act makes some sort of arrangement with a provincial or national jurisdiction more likely. Regardless of whether the municipality has the authority or not, it may still be desirable to include provincial and/or national agencies or officials in the user fee regime implementation process to facilitate smooth roll-out.

For example, in the case of vehicle congestion user fee regimes it will be important to identify which are municipal roads are and which are provincial or national roads. A municipal user fee regime that covers across a road system with national roads, for example, would need authorization and involvement with the Canadian Government. Given municipalities are “creatures of the provinces”, the appropriate Provincial Government may also need to give its approval. This issue of jurisdictional authority is covered in Step 3. What this particular question is raising is the relevance of including other jurisdictions in governance and decision making arrangements pertaining to the user fee regime.

(d) What organizations **external to government** should be involved in decision making and governance associated with the user fee regime?

The potential inclusion of private sector organizations as partners or contractors in a user fee regime necessitates careful thought as
...to their involvement in decision making and governance arrangements pertaining to the regime. The need for accountability and transparency in user fee regimes may potentially conflict with commercial confidentiality required by private sector organizations. Moreover, accountability frameworks may need to be adjusted to ensure private sector participants are actually captured by accountability legislation or conventions. In other words, the inclusion of private sector organizations in any municipality user fee regime requires careful thought to ensure their role and status is appropriately reflected in any arrangements struck between the municipality and the private sector counterpart. These arrangements should not compromise public interest demands of the user fee regime, including the need for private sector organizations to provide performance and behavioural accountability, but appropriate commercial confidentiality will need to be addressed.

(e) Which organizations and agencies and how many should actually implement the regime?

Whereas earlier the questions were focused on decision making and governance arrangements, here the question is focused on actual implementation responsibilities for the user fee regime. Decisions concerning how many separate organizations ought to be involved in implementation and from which sector (government, private sector) will hinge, in part, on technical requirements and municipality capacity and capability. As a general principle, the greater the number of parties involved, the higher the burden of general managerial responsibility will be for the municipality to ensure integrated user fee regime implementation.

(f) Should these be government-based, private sector or non-government agencies? On what basis will this be decided?

The selection of which sectoral agencies should be involved in user fee regime delivery will be a matter for each municipality to decide. Much will depend on municipality capability and capacity, the technical demands of the user fee regime itself (for example a complex technology might be needed to implement the regime with expertise only residing in a private sector corporation) and choices regarding whether and how non-government agencies can and should be included in the implementation process.

How?
(g) Is there a mix of centralised and decentralised management processes to facilitate user fee implementation? If not, why not?

Policymaking in government is often characterized by a range of centralized functions such as budget and financial control and key decision making processes and decentralized functions given to line agencies. In the local government context, the small size of many municipalities means that most functions are carried out by the same arm of the municipality. In larger municipalities, different agencies are established and key roles such as that of the Chief Financial Officer are given separate duties to play an oversight role across the entire municipality as a whole. Depending on the municipality itself as well as the user fee regime, decisions will need to be made as to whether to separate out the user fee regime management to a separate part of the municipality to be more independently run or whether management of the user fee regime will be undertaken by a more centralized entity such as the Office of the Chief Financial Officer, for example. This question encourages municipalities to pay attention to the benefits and challenges of using centralized and decentralized management processes for the effective running of the user fee regime. While some municipalities may not have a large choice in the governance and managerial processes they can deploy to run the user fee regime, because they are small in size for example, paying attention to this issue may lead to creative thinking about how best to structure managerial processes to maximize the benefits of centralized and decentralized authorities and systems to aid the successful running of the user fee regime.

(h) Is it appropriate to have a single, coordinated authority to implement user fee design and implementation? If not, why not?

In various countries there have been experiments made with organizationally separating policy from its delivery with independent government entities established to deliver programs to make good on policy developed in core policy units within the government. This approach to program design and implementation is based on principal-agent theory, also known as agency theory, and is meant to help improve efficiency and effectiveness in government operations and public value. However, such separation

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also faces agency costs referred to as adverse selection (where the agent may not fully represent their abilities) and moral hazard (where the agent shirks on meeting their allocated tasks) and transaction costs (which recognizes that multiple transactions take place between a principal and their agent/s which otherwise could be avoided or streamlined if the same organization was conducting both design and implementation tasks). If the agency and transaction costs are higher than the efficiency gains to be made by separating design from delivery functions, the organization should retain an integrated organizational format to carry out the task which, in this case, is the user fee regime. If the efficiency gains are higher than the agency and transaction costs, separate design and delivery organizations may be considered an appropriate response by a municipality.

(i) Does the regime feature simplicity, transparency and planning to facilitate smooth administration?

This question requires the municipality to consider the administrative burden of the user fee regime and the traditional design elements that often aid management in strategically managing programs. The question proposes the standard principles of administrative simplicity, transparency and planning be considered to help managers of the user fee regime be proactive in ensuring smooth administration of the user fee regime by anticipating potential user interactions with the regime and planning ahead to avoid, or at least manage, otherwise unanticipated consequences of user fee rollout.

(j) Does the regime facilitate coordination with other policy demands including audit, financial and information management systems?

This question is related to the criteria above in that it asks a municipality to consider how seamless the user fee regime will be with existing audit, financial and information management systems in use in the municipality. Depending on the user fee regime that is being pursued in terms of its size and scope and relative impact on the municipality, as well as other technical issues that might apply to the rollout of the regime, decision makers may deem existing systems to be adequate to use for the regime or they may decide new systems may need to be considered. If additional systems are required, decision makers should ensure that the new systems will integrate in a helpful way with other existing municipal systems to ensure efficient and
effective integration of the user fee regime with municipality activities and processes.

For example, a congestion charge regime might require specific information technology demands that the municipality does not currently possess, thereby warranting a new information technology system. This system might be able to standalone in a given municipality but it should be able to meet financial and audit demands of the municipality in question. In Halifax\textsuperscript{17} we note the presence of existing Automatic Vehicle Identification (AVI) technology that might be able to be extended for a congestion regime as well as potential integration of this AVI technology with the Halifax MACPASS which would allow the toll to be collected by identifying driver accounts using transponders attached to vehicle windshields and automatically deducting the toll without the vehicle stopping. This example suggests there are benefits to be potentially gained by at least considering the potential integration of user fee regime requirements with related information technology and other auditing and financial systems.

(k) Does the regime promote accountability?

While transparency is a desired trait of public programs to help management keep track of the program progress and its effects, this question encourages municipalities to incorporate transparency for accountability and educational purposes with the general public. Because user fee regimes involve the expenditure and collection of public monies the accountability component of their rollout is imperative. Municipality elected representatives and the general public need to be able to review the regime and its success based on agreed objectives with a view to ensuring value for money in the allocation of public monies. How a municipality achieves this accountability will be up to each local government to determine in accordance with relevant municipal procedures. The legal imperative for the user fee regime to ensure earmarked revenues (see Steps 5 and 6) suggests separate accounting treatment of the user fee regime should be considered.

(l) How will accountability demands be incorporated into the regime if non-government agencies are being used?

The presence of non-government agencies (be it private sector or

\textsuperscript{17}Catherine Althaus, Lindsay M. Tedds and Allen McAvoy, “The Feasibility of Implementing a Congestion Charge on the Halifax Peninsula: Filling the “Missing Link” of Implementation” (2011) 37:4 Canadian Public Policy 541-561, at 549.
non-profit agencies) necessitates careful thinking about how to ensure these bodies are held accountable for their involvement in a public regime. How municipalities should ensure this accountability trail is a subject of debate. At least, municipalities should be raising accountability issues with potential non-government collaborators to identify ways that public accountability can be upheld.

**STEP 13: EVALUATE CAPACITY**

Capacity in the context we are using the term, here, refers to the assets available to the municipality to carry out its user fee design and implementation to effective completion. **Municipalities are not always in a position to, themselves, possess all the requisite skills and assets needed to pursue implementation of a user fee regime. Here, the municipality is encouraged to think through what relevant assets it possesses and what additional resources might be needed to ensure the user fee regime is implemented in an efficient and effective manner.**

An important distinction that must be made is between capacity to implement and capacity to operate. Both stages of design and implementation should be evaluated for municipality capacity but the answers to each stage may be different. A municipality might well be positioned with capacity to implement but lacks operational skills and resources to actually operate the user fee regime over the longer term. When considering the questions below, municipal officials should carry this distinction through their reflections.

In encouraging municipalities to consider capacity, it is worth noting that the most complex position is that of the municipality of medium capacity status. For smaller municipalities, the answer is often easy to determine that the municipality may need external skills and assistance. For large municipalities, the skills are often already present. The more complicated question is for a medium size municipality which is faced with the dilemma of
trying to determine how it will even know if it has the right level and mix of skills or not? To assist such municipalities confronting this dilemma, consideration could be given to using strategic planning, risk management and business case processes to help in making such an assessment. If the municipality does not possess these skills in-house, officials might choose to use the services of external parties or the skill services and lessons of other municipalities who have already performed user fee regime design and implementation. Municipalities can reflect on the following non-comprehensive list of skills (presented in no particular order) that may be relevant to user fee regime design and implementation:

- legal
- town planning
- pricing
- communications
- public engagement and consultation
- systems planning
- information technology
- audit
- evaluation
- financial
- economic
- engineering
- contracting
- accountability expertise
- strategic planning
- risk management
- business case development
- leadership expertise
- project management

We recognize that this list might appear daunting to some municipalities or that it might seem excessive, especially if a municipality is developing a small-scale user fee regime. Adapting the general principles that the skills suggest, through processes such as “scaling”, would be an appropriate response in such situations. Scaling encourages municipalities to reconfigure and
adapt otherwise elaborate processes into workable solutions appropriate to their needs and is particularly helpful in situations where resources are thin.

(a) Does the municipality possess appropriately competent in-house expertise, processes and skills, including technical procedures, project management and staff morale, to accommodate the new user fee system?

Elaboration

This generic question encourages a municipality to assess its overall resource capacity, both in existing form and as specified by way of future needs, to develop and implement the user fee regime. The question specifically identifies the important components of cultural preparedness as well as project management skills in addition to technical skills and assets required. The organizational readiness of the municipality to tackle the implementation demands of a user fee regime should not be underestimated and municipalities should plan for enough resources to be dedicated to the task, whether they need to invest in training, redeploy or specifically deploy existing staff, make use of resources from other municipalities, or employ consulting bodies or other experts to ensure all aspects of implementation are covered. If in-house capacity is not present, or enough, for a municipality to design and implement a user fee regime, consideration should be given to the advantages and disadvantages of seeking or strengthening in-house capacity versus obtaining external capacity (for example through contractors).

(b) Do independent professionals need to be involved in user fee design and/or implementation?

Elaboration

Consulting experts might be needed to be drawn into the implementation process for a user fee regime, especially if specific technical expertise is required or if a municipality is wanting to gain from existing expertise that might exist in other municipalities or in independent consulting firms without building it themselves from scratch.

(c) Do independent professionals need to be involved in evaluation?

Elaboration

A particular benefit of using independent experts in certain aspects of a user fee regime becomes apparent when the evaluation stage
of regime implementation is considered. If the user fee regime was contentious for any particular reason, or if accountability demands warrant it, independent evaluation experts can be drawn into the process to perform independent evaluation of the regime and its implementation to ensure credentialed oversight of the process takes place and an arm’s-length assessment given as to the regime’s efficacy, whether the evaluation be of a formative or summative nature.

(d) How will resources be shifted to meet municipality capacity needs and, eventually, wound down upon implementation rollout of the user fee regime?

A municipality faces a number of demands and challenges at any given time, and the user fee regime is only one of a number of issues on a municipality agenda at any point in time. Municipal officials will need to weigh priorities and make judgments concerning the allocation of skills and resources on a rolling basis, ensuring that enough resources are dedicated to the user fee regime to make the design and implementation process work effectively. An investment of skills and resources upfront is likely to be helpful over the longer term. Moreover, over time, the need for ongoing skills and resources will shift from the implementation phase to the operating phase of the regime. The municipality will need to be performing ongoing capacity assessment in order to know when this shift will occur and to move skills and resources away from the implementation phase of the user fee regime and determining its operating capacity with a view to making the right investment of skills and resources in this area.

STEP 14: REVIEW QUALITY OF SERVICES

(a) Are the goods or services for which fees are being charged of sufficient quality to engender willingness to pay on the part of users and to promote their uptake of any fee system? If not, why not?

User fee regimes cannot assume that users will automatically operate as regime developers might hope. An important consideration relates to the historical, existing and desired
future quality of the good or service at stake and the willingness to pay on the part of users for this good or service.

For example, there may be historical underfunding of the good or service in question or an associated good or service that might be required to help establish a user fee (for example, public transport infrastructure if a congestion charge is being contemplated). In this case, public quality assessments of complementary options (e.g., transport) are likely to be low and a municipality may need to inject quite substantial amounts of resources into these areas to get the public to use the good or service and make choices in their consumption patterns that match anticipated consumer preferences. Similarly, the quality of the good or service may not be enough for users to pay a user fee for it and user exodus might occur. In other instances, however, such as in garbage collection, the good or service may not feature viable alternatives. If the quality is poor in these latter situations, public disenchantment with the user fee regime is likely to be strong as users will feel as if they have no choice but to pay money for poor quality. If quality is high, the public is – as a general rule – more willing to pay for the good or service in question if education explains the rationale and makes a case for introduction of a user fee regime. London had an existing transport system of sufficient quality that it could leverage to pursue a congestion user fee regime that minimized transport user disenchantment, and therefore increased overall public reception to the user fee idea.

(b) If quality improvements are necessary in alternative goods and services associated with the user fee regime, does the municipality have authority to make change?

This question asks whether the municipality has the authority to make quality improvements, if necessary, in associated goods and services (in this case public transport infrastructure and services) or whether the municipality might need to seek assistance on this issue from other jurisdictions. The timing of such investments relative to the implementation of the user fee regime is a related and important issue.

Congestion fee regimes are a good example where quality improvements in public transport infrastructure and services are needed to allow the regime to be implemented effectively. This is because there needs to be viable transport alternatives for residents to allow them to meet the regime objective to get them out of cars
Eliasson, and Schuitema, Steg and Forward\textsuperscript{18} note that London and Singapore experienced success with their congestion fee regimes because they had pre-existing high-quality public transport systems that offered viable alternatives to commuters prior to implementation of the congestion fee. In the case of Stockholm, public transport upgrades took place prior to implementation of any user fee regime in order to help commuter acceptance of its trialed, and eventually enacted, congestion fee system.

(c) If other jurisdictional authority is needed for such quality improvements, what strategies are in place to achieve this?

This question digs a little deeper from the preceding question to ask whether strategies to secure the assistance of other jurisdictions on quality improvement in related goods and services areas have been developed and activated.

**STEP 15: CONSIDER FINANCING AND RESOURCING**

Step 6 of this guide provided rigorous discussion of the economic and financial principles and underpinnings to a user fee regime at the municipal level. What is included in this non-technical section is a discussion of “soft” issues relating to financing and resourcing of the regime. No firm criteria are given and there are no set answers to the questions posed, but considering these types of questions should help officials and decision makers come more prepared to the design and implementation process. The first two questions in this Step are aimed at user perspectives and issues relating to financing. The final two questions in this Step are aimed at the municipality itself to ensure it has adequate resourcing to undertake the user fee regime.

(a) Is there flexibility in payment options for fees on the part of users?

\textsuperscript{18} Supra note 6.
Client-centred approaches to service delivery have become a mantra of governments across jurisdictions around the globe. Given that different users will feature different abilities to pay the user fee in question at any given time, there can be merit in providing flexible payment options not only to increase fee collection itself, but also to promote principles of equity and fairness.

For example, congestion charges might be collected using an automated system with a toll lane also present with a physical attendant present to help those who do not use or do not choose to use the automated system. Flexibility, of course, must be weighed against cost and technical possibility factors.

(b) How simple and easily understood is fee collection?

If a fee collection system is too complicated to use, it runs the risk of failure to pay on the part of users either through ignorance, or protest! Ensuring clear and simple fee collection systems are in place and that appropriate education and information mechanisms are available to residents and visitors is helpful to user fee regime take-up and approval.

(c) Is there enough resourcing available and given to implementation of the user fee system?

Municipalities who pursue user fee regimes should ensure they have enough resources to allocate to the regime design and implementation to ensure they get a good product that produces effective outcomes. Stingy resourcing of a user fee regime is more likely to result in regime rejection or regime failure because there is more likely to be system failures that cause user frustration and, overall, often cost overruns over the longer term.

(d) Is there enough resourcing to related policy areas that demand attention as a result of introduction of any user fee regime (e.g., alternative goods and services)?

As outlined in Step 14, user fee regimes can require upgrading of infrastructure or goods or services in related areas in order to ensure effective design and implementation of the user fee regime itself. Thus public transport infrastructure is often needed to be upgraded when congestion fee regimes are introduced to allow options by the transportation public. This question requires the municipality to review its resourcing ability to fund such
upgrades in related sectors, industries or domains. If the resourcing capacity it not present, alternative options will need to be considered for these associated areas or the user fee regime may need to be delayed until appropriate resourcing is secured.

**STEP 16: IDENTIFY ENFORCEMENT AND MONITORING PROCESSES**

The following questions probe the monitoring regime for the user fee regime from a managerial perspective to ensure policy learning is taking place, as well as from a user perspective to ensure the user fees are actually being collected and penalties applied in the event of system abuse such as failure to pay.

(a) Have contingencies been identified for unintended consequences associated with implementation of the user fee regime? What scenarios have been accounted for and why these?

Policymaking is rife with examples of unintended consequences, both positive and negative. For example, it is possible that a garbage collection fee regime might end up seeing some residents use alternative dumping grounds that might negatively affect the environment. Yet again, a recreational park user fee regime might see tourism patterns shift away from the recreational park towards alternative tourist attractions in the community that were not originally anticipated. A municipality may use scenario planning and futures research techniques to try to anticipate and develop a response to potential unintended consequences. Identifying intended and unintended consequences as part of evaluation processes (see Step 17 below) may also provide helpful data as to whether unintended consequences are helpful or not and whether they are key drivers of regime effectiveness or failure.

(b) Does the regime feature enforcement and monitoring processes to facilitate learning improvement and to guard against incremental inequities or failures?
Continuous monitoring of the user fee regime and building in mechanisms to identify and rectify (or manage) emerging glitches or outright failures is important to regime success. The concept and principles of the so-called “learning organization” proposed by Peter Senge\(^\text{19}\) encourages a municipality pursuing user fee design and implementation to be open to constantly transforming itself and adjusting the regime, as needed, based on continuous learning by dedicated operational staff and policymakers. Believing that a user fee regime can be implemented and then just left to its own devices is a risky and fraught endeavor.

(c) Is there public confidence in the proposed system with respect to enforcement and monitoring?

The user fee regime must feature enforcement mechanisms for those users who fail to pay and monitoring systems to capture such payment failure. While it is expected that the elements of this enforcement and monitoring system should be reasonably designed, a sometimes more critical issue is whether the public perceives these systems to be well-founded and carried through. If the public begins to believe that users can get away without paying the user fee, for example, public confidence in user fee regime implementation is likely to drop and this could negatively impact the entire implementation process as the public begins to wonder what else in the implementation process suffered from failure. Similarly, if the public feels that the municipality has implemented the user fee regime and then forgotten about it or let it “run-down”, their confidence will drop in the regime with associated negative implications for overall regime effectiveness.

(d) Does the regime feature mechanisms to identify and measure public confidence in the implemented system with respect to enforcement and monitoring?

The notion of public confidence just outlined in the question above requires that there be data collection mechanisms to gather information to aid a municipality in identifying and measuring public confidence in the user fee regime, especially as it pertains to enforcement and monitoring. Being able to confidently take stock of rigorously collected and analyzed public perception and user data will help a municipality to respond to any polling data that might be used by media outlets or opposing forces or questioners of the regime.

Municipalities may wish to consider developing and collecting user surveys to help establish public confidence in user fee regime. These instruments might be considered as part of the consultation and communication processes established as part of Step 11. Gathering data on instances of payment failure as well as monies collected from payment failure should also form part of the systems in place in the user fee regime to help municipalities with this element of implementation.

**STEP 17 DEVELOP EVALUATION REGIME**

The user fee regime involves public monies so there should be accountability not only for performance but also a measurement and evaluation regime to aid program learning and improvement. Evaluation can occur on a continuous basis or as a more discrete one-off program evaluation exercise. It can occur before or after options are being considered for potential implementation. These questions aid officials and decision makers in the quest to ensure a helpful evaluation dimension is built into the design and implementation phases of the user fee regime. Evaluation is linked to the discussion of capacity in Step 13. Too often evaluation is left out of regime design and implementation because resources are too thin or capacity is stretched or not present. Alternatively, a municipality might be so busy providing the service that it has no time or capacity to evaluate the fee. Leaving out evaluation, however, can compromise the user fee regime overall, especially in an ongoing sense. We suggest that evaluation should be prioritized wherever possible. Performance measurement and evaluation tasks are not simple tasks and municipalities should make use of sound expertise such as that given by Canadian evaluation experts McDavid, Huse and Hawthorn. The text by McDavid, Huse and Hawthorn

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is encouraged for use by municipalities in pursuing technical assistance with any aspect of the following discussion on evaluation.

(a) How will the user fee regime be measured and evaluated?

Here, the municipality should consider the extent of its commitment to evaluation and measurement of the user fee program, both in its initial implementation and on an ongoing basis. This will help determine how rigorously measurement and evaluation tools should be built into the program design—both initially and on an ongoing basis—and the more discrete task of assessing how well the implementation itself took place of the user fee regime. **An important component of answering this question will rest on what criteria will be used to establish measurement parameters and the evaluation objectives.** How will information be collected to help measurement and evaluation? Will a performance measurement regime be used? Will separate evaluation exercises be conducted? Will an integrated approach be adopted? How will these take place? Who will be involved? How regularly will it take place? **The purpose of this question is to encourage municipalities to be serious in considering the many facets of measurement and evaluation as part of the design and implementation process rather than leaving them as an afterthought or forgetting to address this dimension of a user fee regime altogether.** It is important for municipalities to be aware that **performance measurement is not the same as evaluation** and that evaluators are not unanimous in seeing performance measurement and evaluation as complementary, let alone integrated, information collection processes although authors such as McDavid et al believe they can and should be.21 Whatever decisions are taken by the municipality regarding evaluating the user fee regime, care should be taken to perform comprehensive consideration of the various issues and dimensions to this important component of user fee design and implementation.

To give an example of some of the complexities of performance measures regarding user fee regimes, the case of congestion fee regimes can be used. Eliasson22 notes that debates still exist as to whether reduced congestion should be measured according to traffic volume or travel speeds. Whereas traffic volume is easier to measure and communicate, in fact travel speeds are a better indicator of the efficiency to be gained from a congestion fee

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21 Ibid., at 3-9.
22 Eliasson, supra note 6, at 397.
regime. This example shows how an otherwise common assumption might be that performance measures are simple to develop for user fee regimes, yet there is more complexity to the task.

(b) What will be the objectives of the evaluation and the audience/s for the evaluation information?

Evaluation can occur for many different reasons. It can be required for parliamentary accountability purposes, to help managers learn more about the successes and failures in a program and how to improve it, or to make informed assessments as to whether to continue on with program or not based on evidence. Establishing the objectives and audience/s for the evaluation are important because they often dictate what kind of evaluation takes place. Municipalities should be aware that at a basic level, there exist at least two types of evaluation: formative and summative. Formative evaluation is defined by McDavid et al\(^\text{23}\) as “a type of implementation-related evaluation. [Formative evaluations]… assess the extent to which intended program or policy designs are successfully implemented by the organizations that are tasked with doing so… and can also examine the ways that existing organizational structures, processes, and cultures either facilitate or impede program implementation” (original bold). Summative evaluation, on the other hand, is concerned with outcomes performance and program effectiveness. McDavid et al\(^\text{24}\) define summative evaluation as “evaluation that is aimed at answering questions about a program or policy achieving its intended results, with a view to making decisions about the future of the program”. Analysis can be done on an ex ante or ex post basis. As McDavid et al\(^\text{25}\) explain, ex ante evaluations are less common than ex post evaluations and involve prospectively assessing how well a program will operate before implementation or how well a pilot or trial program operates with a view to predicting actual program success. Ex post evaluations review a program after it has been in place for some time. Another option is to pursue a program prior to its implementation armed with baseline data or measures. This enables a comparative picture to be established and included for future evaluations of whatever nature, hopefully with a view to providing greater accuracy and rigor.

\(^{23}\) Supra note 11, at 8.
\(^{24}\) Ibid.
\(^{25}\) Supra note 11, at 24.
Whatever the form of the evaluation, the audience and their needs will be important to establish. Will the evaluation or performance data be used for a public audience or for internal managerial purposes? For what ends will the data be used: for political purposes? To blame and shame? To hold to account? To learn and improve? What level of detail is required in the data?

(c) Who will carry out the evaluation? Are independent experts required and/or desired?

A municipality can use internal measurement and evaluation expertise and systems. Alternatively, if this expertise does not exist or is not up to capacity, external experts can be drawn in to help design and carry out the evaluation process. The choice, in part, can be driven not only by resourcing capacities but also by the placement of expertise and management discretion. Should the user fee regime have been predominantly undertaken by external parties, then there can be benefits and challenges to using internal municipal evaluators. They can learn a lot more about the program and its operations and implementation or they might not be best placed with enough expertise to do a thorough enough evaluation exercise. A municipality will be best placed to make this assessment.

Another important consideration is whether independence of the evaluators is a relevant matter. If there is debate over the implementation of the regime or should the community feel there is a need to obtain an independent assessment of how well the implementation process took place or how the user fee regime has been designed or is being operated over the long-term, then independent evaluators can be a helpful addition to the evaluation task. Independent assessments can help municipality communication and education endeavors to help show the community – especially those who are skeptical or opposed to user fees – that the regime is not tainted by improper practices or that there is, indeed, merits to be gained by implementing user fees.

**THEME 2: POLITICAL ISSUES**

This second section in the non-technical part of this guide identifies political issues that appear helpful for a municipality to consider as it designs and implements a user fee regime. The following questions aim to help municipal officials determine the political viability of a user fee regime given that policy implementation must be enacted within the realm of
continuous political decision making where electoral implications and ideological positions are highly relevant. **While we do not suggest officials make any partisan judgments or assumptions, we do encourage officials to be aware of political factors that have bearing on user fee regime implementation success.** We acknowledge the challenges in making this distinction and the practical complexities confronting any public servant trying to maintain political neutrality at the same time as supporting politicians in their quest to cultivate the public interest within the democratic system of Canada. The caliber and quality of the politicians involved in any user fee regime is extremely significant. Sometimes, politicians will be sought as champions of the user fee schemes and at other times, their involvement might actually jeopardize the success of the user fee regime itself. An issue for all municipal officials to be aware of, however, is the need to “not cross lines” and to reflect on the unique position of municipalities as often having longstanding and personal components to their professional relationships between public servants and elected politicians. While there are no “easy” answers to this need for simultaneous awareness of politics yet maintenance of political neutrality, it is often in this “grey” zone of practical policymaking that success can be achieved for design and implementation.

**STEP 18: IDENTIFY POLITICAL RISKS**

(a) Is political consensus present and is it enough to generate public acceptability of user fees?

Here, it is important for the official to know whether there is unanimity, or at least strong consensus, amongst politicians for the user fee regime or whether there is internal political differences of opinion that might thwart the implementation of
the user fee regime (for example, political infighting or bickering might be aired publicly or through the media and this lack of unanimity could be seen as a good reason why a community should wait before it proceeds with implementing the user fee regime. **Even if political consensus is present, the official needs to also determine whether this political unanimity is enough to sway public opinion in favour of the user fee regime.** If public acceptability were low and an upcoming election were to see a change in elected politicians (perhaps towards some politicians who were opposed to user fee regimes) then implementation might be paused, or stopped, and the official will need to deal with the implications of this.

(b) What constituencies have a stake in the user fee regime and what stake/s can you identify? Are these the same or different from consultation and communication needs? If different, how can you manage these?

Here it is relevant and, most likely, **appropriate to have politicians or political advisers address the details of information gathering and decision making concerning constituency identification and assessment.** A municipal official could reasonably ask, however, whether political constituencies have been identified and implications for each identified and addressed at the political level? If not, why not?

**STEP 19: IDENTIFY CHAMPION POLITICIAN**

(a) Is there already a political champion for the user fee regime or is one possible to achieve?

A champion politician is an elected representative who is in favour of the user fee approach and who is willing to publicly voice this preference and lobby on behalf of its implementation by making favourable public and media statements and helpful explanations to stakeholders, communities and media as well as have enough influence to channel funds and priority focus for the regime into its implementation rollout. **The presence of a champion politician is argued by many in the literature, from case experiences, to be a helpful determinant of user fee success.** While we argue above that the caliber and quality of politicians is extremely significant to any user fee regime, each municipality will need to reflect on the
desirability of a champion politician, and the selection of which person to fill that important role should it be possible. How this decision takes place represents one of the “grey” zone challenges of policymaking that somehow must maintain political neutrality yet practically must provide informed advice on political reality.

STEP 20: CONSIDER REGIME TIMING ISSUES

(a) Should the municipality adopt a speedy, decisive, high-impact implementation strategy or a slow, incremental approach? On what basis will this decision be made? What continuing assessment processes are in place to monitor, adjust and learn from implementation on an ongoing basis?

This set of questions encourages officials to match community attributes and needs with user fee implementation style. Some municipalities might find that quick implementation with visible gains for community users and stakeholders would enable community take-up of a user fee regime to be successful. For other municipalities, the community might generally prefer slow change that allows its members to digest and reflect on new policy initiatives before deciding in what ways they want to proceed. For some communities, pilot projects might be appropriate whereas for others they might just generate negativity. Officials should pay attention to characteristics of their community that they know will be applicable here, including not only long-term characteristics of a community (such as more general conservatism or progressivism) but also current characteristics that might be applicable. For example, the community might have just gone through a substantial change process recently and be suffering from change fatigue which might impede reception of a user fee regime if the regime is too dramatic in its rollout.

(b) What mechanisms are in place to help ensure political stability for the user fee regime so that elections, policy changes and/or party politics do not negatively impact on implementation?

User fees can be contentious enough within community debates without the formal structures of politics impacting negatively on user fee acceptance and uptake. The timing of user fee regime
implementation may need to be delicately balanced against impending elections or internal party political activities that might be occurring at the municipal level that might otherwise divert the user fee regime from being implemented in a calm environment. While debate over whether to pursue user fees or not in a municipality often does warrant high levels of debate as part of elections or party caucus meetings, the design and implementation phases do not usually fair well during times of political instability. Instead, political calm is usually a more conducive environment for design and implementation activities to take place. Officials should try to secure ways and times for such political calm to be present during user fee regime design and implementation to maximise success.

**THEME 3: ALIGNMENT ISSUES**

This third and final section in the non-technical part of this guide identifies alignment issues that appear helpful for a municipality to consider as it designs and implements a user fee regime. The following questions aim to help municipal officials determine how the political and policy issues just identified intermingle and coalesce, or not, and what implications this confluence of forces might have for the user fee regime. As you will see when you reading this section, these questions really bring officials and decision makers back to the beginning non-technical contextual issues that were outlined in Step 9. **Policymaking is not usually a linear process, even if we have used a linear stepped process as a heuristic to work through the issues that can helpfully be considered.** Instead, all the non-technical issues coalesce and spin off each other in a more cyclical and often random manner. The ability of a municipality to make sense of all these issues and overlay prudential judgment that brings a community along with it in designing and implementing a user fee regime is difficult to proscribe, yet essential to user fee regime effectiveness.

**STEP 21: EVALUATE AND IDENTIFY IMPLICATIONS OF (NON) ALIGNMENT BETWEEN POLICY AND POLITICAL FORCES**
(a) Do policy and political factors align at a given time to present a window of opportunity for user fee implementation? How have you established this? If so, is a user fee regime being considered?

This question encourages officials to, again, **pay attention to the political landscape but this time coupled more tightly with the policy landscape as well**. For example, is it that the municipality is keen to upgrade its transport infrastructure and pursue more environmentally-friendly activities, the politicians and the community are all willing to consider allocating money to these objectives and there has been a donation of a significant number of free bikes to the community but there is a gap in ideas about how to connect these separate objectives and facts into a concerted policy or program? If this was the environment (or there were another set of favorable forces at play in any given community) has a user fee regime been voiced as a potential option for the community to consider?

(b) What other issues are on the political and policy agenda within the municipality? Are these issues coordinated with user fees? If not, do these other portfolio considerations promote or detract from user fee implementation? How will you manage these issues?

Here, the question is asking the official to contemplate how user fees fit with other issues on the policy and political agenda and to **adopt a portfolio appreciation** for how user fees might fit within a broader set of municipality policies and objectives.

For example, a municipality that wants to implement a parks and recreation user fee might find it difficult to reconcile such a regime with a program that encourages recreational park camping to residents because of the potential inconsistencies in policy objectives that public perceptions might attribute to these two policies.

**THEME 4: PRUDENTIAL JUDGEMENT ISSUES**

Political theorists and public administration experts John Kane and Haig Patapan⁶ argue that prudential judgment is a lost art that must be resurrected in modern public administration circles.

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They outline how prudence, or practical wisdom as it can be called, is a virtue and skill that the Ancient Greeks specifically linked to political and public administration activity and how many academics and practitioners are calling for prudence to reinvigorate contemporary administrative decision making. They define prudence as “the ability to make sound decisions under complex, ever-changeable conditions” and a “truly prudent person … reconciling the demands of the most important with those of the most pressing”. Given the discretion that administrative officials can have over policymaking, the notion of prudential judgment is seen by Kane and Patapan as moving beyond application of technical, managerial principles towards a more fulsome appreciation for the wider demands of providing public service. For them, applying prudential judgment over a user fee regime would necessarily involve overlaying principles emerging from “…not just managerial technique but also liberal democratic traditions, constitutional governance, and a realistic appreciation of the broadly political nature of all administration”.

**STEP 22: EXERCISE PRUDENTIAL JUDGEMENT OVER ENTIRE DESIGN AND IMPLEMENTATION PACKAGE**

(a) Has someone applied prudential judgment over the entire design and implementation package?

This step encourages municipalities—both officials and decision makers—to carefully weigh the multiple complex demands of policy and political realms as they review the entirety of the user fee design and implementation package. This prudential judgement process is required as a continuous function while completing the other steps in the guide but should also be conducted as a distinct exercise once the details of the package become finalized and a strategic eye can be run over the entire regime. While there is no tangible prescription to guide the specifics of this process, much benefit can be gained by asking experienced officials or politicians

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27 Ibid., at 711.
28 Ibid., at 720.
to “run their eye” over the package to weigh and consider its overall merits and application.

SUMMARY TO PART II

Part II of this guide laid out a number of non-technical issues that need to be considered when designing and implementing user fees. These issues focused on a range of policy-related issues, political issues, alignment issues and prudential judgment. Together, the range and diversity of questions posed in the non-technical section of the guide make it clear how there is a strong need for leadership and prudential judgment on the part of municipal officials to navigate the complexity, challenges and opportunities of the policymaking process surrounding user fees. The policy issues suggest municipalities should pay attention to policy environment, scale and scope, consultation and communication, user fee regime design, coordination and governance, capacity issues, quality of services, financing and resourcing, enforcement and monitoring and evaluation. The political issues encourage municipalities to identify political risks, a champion politician and consider regime timing issues. The alignment section suggests municipalities pay attention to the implications of (non) alignment of policy and political forces, especially with respect to how a user fee regime will feature amongst a wider portfolio of policy and community activity. The prudential judgment step encourages municipalities to overlay a strategic eye across the entirety of the design and implementation package to ensure immediate and longer term issues are carefully considered, along with coherence and a “feel” for the community and how the user fee will roll out. While there is no tangible prescriptive rule to guide this exercise of prudential judgement, its presence is nevertheless a balancing force that often provides essential leadership across all the facets of the design and implementation task.

In noting these four areas, it is worth stressing again how this non-technical component of the guide sees the policy process with respect to user fees not as a linear, stepped approach so
much as a complex web of interconnected issues that require delicate handling and careful judgment. While we present the issues in a stepped arrangement for use by officials and decision makers in the municipal context, the cyclical and often random nature of policymaking means that intelligent and informed creativity in the design and implementation of user fee regimes is essential.

A final point is critical. Municipal officials cannot just work through these 22 steps, pass a bylaw and establish a user fee regime and forget it. Continuous monitoring and reviewing of design and implementation factors must be performed. Those municipalities that ignore this continuous attention to the dynamic needs of user fee regimes do so at their peril. Those who pay attention to the need for continuous monitoring and review of user fee regimes are more likely to experience implementation success.