

## **Policy: Minister's list of classes of programs and services in respect of which conservation authorities may charge a fee**

April 11, 2022

### **Preamble**

A conservation authority is permitted to charge a fee for a program or service only if the program or service is included in the Minister's list of classes of programs and services in respect of which a conservation authority may charge a fee. The Minister's published list of classes of programs and services in respect of which a conservation authority may charge a fee ("Minister's Fee Classes Policy") is provided as per the provisions set out in section 21.2 of the *Conservation Authorities Act*. From time to time, the Minister may make changes to the list and will promptly update this document and distribute it to each conservation authority.

### **Fees that a conservation authority may charge under the *Conservation Authorities Act***

Section 21.2 of the *Conservation Authorities Act* requires a conservation authority to administer the charging of fees in a transparent and accountable manner by adopting and publishing a written fee policy, which includes a fee schedule that lists the programs and services for which an authority charges a fee and the amount to be charged. Conservation authorities must maintain their fee schedule and if an authority wishes to make changes to its fee schedule, it must notify the public of the proposed change (e.g., on its website). In its fee policy, a conservation authority must also set out the frequency with which it will conduct a review of its fee policy, including its fee schedule, the process for carrying out a review of the fee policy, including the rules for giving notice of the review and any changes as a result of a review, and the circumstances under which any person may request the authority to reconsider a fee that was charged to the person and the procedures applicable to the reconsideration. Decisions regarding the fee policy and fee schedule are made by the members of a conservation authority, comprised of representatives appointed by the participating municipalities and the agricultural sector representative member, where appointed by the Minister of the Environment, Conservation and Parks.

#### Reconsideration of fee charged

A conservation authority's fee policy must define the circumstances in which a person may request that the authority reconsider a fee that was charged and the procedures applicable to the reconsideration. Where the authority's fee policy permits a person to request the authority to reconsider the fee it has charged that person because it is contrary to the authority's fee schedule or excessive in relation to the program or service for which it was charged, that person may apply to the authority, in accordance with the procedures set out in the authority's fee policy, to request a reconsideration of the fee.

After receiving and considering the request, the authority may vary the amount of the fee to be charged to an amount the authority considers appropriate, order that no fee be charged, or confirm the original amount of the fee.

## **Fees that a conservation authority may charge as prescribed by other legislation**

The Minister's Fee Classes Policy does not include those instances where the authority is already authorized under another statute to charge a fee for a program or service. For example, where an authority administers an on-site sewage system program under the *Building Code Act, 1992*, the authority has the power to charge fees for that program. Similarly, under Part IV of the *Clean Water Act, 2006*, a municipality has enforcement responsibility to regulate significant drinking water threats in wellhead protection areas and intake protection zones and may delegate that responsibility to a conservation authority. When this delegation occurs, the conservation authority is also given the power to charge fees as the enforcement body under that Act.

## **User-Pay Principle**

The fees that conservation authorities charge, in accordance with the Minister's Fee Classes Policy, are considered 'user fees.' 'User fees' are fees paid to an authority by a person or organization for a service that they specifically benefit from. This includes use of a public resource (e.g., park access or facility rental) or the privilege to do something (e.g., receive an approval through a permit or other permission to undertake a regulated activity).

**For the purposes of this Minister's Fee Classes Policy, a fee may only be applied when the User-Pay Principle is considered appropriate, which is when there is a class of persons that directly benefits from a program or service delivered by an authority ("User-Pay Principle") (note: other restrictions may apply; see Table 1 below).**

Enabling authorities to charge a fee for programs and services where the User-Pay Principle is considered appropriate increases opportunities for an authority to generate revenue. This may reduce an authority's reliance on the municipal levy (now called an "apportionment") to finance the programs and services it provides. However, it is up to a conservation authority to decide the proportion of the costs associated with administering and delivering a program or service that should be recovered by a user fee versus those costs that are offset by other funding sources, such as the municipal levy. Beginning with the 2024 calendar year budgets, if an authority considered opportunities to raise and use self-generated revenue such as fees to finance its operations, the authority will be required to include in its budget a description of what the authority considered.

## Fee amounts

A conservation authority may determine the amount of a fee to be charged for a program or service that it provides. If a fee is to be charged for a program or service, the amount to be charged or the manner for determining the amount must be listed in the conservation authority's fee schedule. Some fee amounts cannot exceed the authority's costs for administering and delivering a program or service. For example, fees for planning services should be developed in conjunction with the appropriate planning authorities and set to recover but not exceed the costs associated with administering and delivering the services on a program basis. Similarly, fees for permitting services should be developed to recover but not exceed the costs associated with administering and delivering the services on a program basis. Other fees set by the authority for a program or service are not subject to this restriction, such as fees for selling products or fees for rentals. Fees that are not subject to this restriction can provide the authority with a source of revenue to help offset costs for other programs and services offered by the authority.

## Minister's fee classes

The following is the list of classes of programs and services in respect of which an authority may charge a fee.

**Table 1. Classes of programs and services for which conservation authorities may charge a fee**

Classes of programs and services	Criteria	Examples
Category 1 mandatory programs and services (section 21.1 of the <i>Conservation Authorities Act</i> )	Category 1 programs and services where the following requirement is met: <ul style="list-style-type: none"> <li>• The User-Pay Principle is appropriate.</li> </ul>	Examples may include: <ul style="list-style-type: none"> <li>– Administration of section 28 natural hazards development permits (current section 28 and unproclaimed section 28.1), including related technical advice and studies.</li> <li>– Responses to legal, real estate and public inquiries regarding a section 28 permit (and unproclaimed section 28.1) and natural hazard inquiries under the <i>Planning Act</i>.</li> <li>– Activities requiring a permit made pursuant to section 29 of the <i>Conservation Authorities Act</i>.</li> <li>– Review and commenting on applications under other</li> </ul>

		<p>legislation noted under the Mandatory Programs and Services Regulation (O. Reg. 686/21) and associated inquiries.</p> <ul style="list-style-type: none"> <li>- Access to authority owned or controlled land for recreational activities not requiring direct authority or other staff involvement.</li> </ul>
<p>Category 2 municipal programs and services – i.e., those programs and services an authority provides on behalf a municipality pursuant to a memorandum of understanding or service level agreement (or other agreement) (section 21.1.1 of the <i>Conservation Authorities Act</i>)</p>	<p>Category 2 programs and services where the following requirements are met:</p> <ul style="list-style-type: none"> <li>• The User-Pay Principle is appropriate; <b>and</b></li> <li>• The parties agree through provisions in a memorandum of understanding, service level agreement, or other agreement governing the provision of the Category 2 program or service that the authority should be permitted to charge a fee for that program or service.</li> </ul>	<p>Examples may include commenting on <i>Planning Act</i> applications for technical and policy matters other than for consistency with natural hazard policies, such as related to natural heritage, storm water management, or other matters requested by a municipality.</p>
<p>Category 3 authority determined programs and services (section 21.1.2 of the <i>Conservation Authorities Act</i>) that are financed in whole or in part by the municipal levy and on or</p>	<p>Category 3 programs and services that are financed in whole or in part by the municipal levy, where the following requirements are met:</p> <ul style="list-style-type: none"> <li>• The User-Pay Principle is appropriate; <b>and</b></li> <li>• Where a cost apportionment agreement has been entered into for a Category 3 program or service, the agreement includes provisions permitting the authority to charge a fee for the program or service. This requirement does not apply where the cost apportionment agreement</li> </ul>	<p>Examples may include private land stewardship or extension services that are partially funded by municipal levy.</p>

<p>after January 1, 2024 will require a cost apportioning agreement</p>	<p>relates to any of the following Category 3 programs and services:</p> <ul style="list-style-type: none"> <li>i) Recreational activities that are provided on land that is owned or controlled by the authority with the direct support or supervision of staff employed by the authority or by another person or body, or with facilities or other amenities maintained by the authority, including equipment rentals and renting facilities for special events.</li> <li>ii) Community relations to help establish, maintain, or improve relationships between the authority and community members.</li> <li>iii) Public education services to improve awareness of issues relating to the conservation, restoration, development, and management of natural resources in watersheds in Ontario.</li> <li>iv) The provision of information to the public.</li> <li>v) The sale of products by the authority.</li> </ul>	
<p>Category 3 authority determined programs and services (section 21.1.2 of the <i>Conservation Authorities Act</i>) that are not financed in whole or in part by the municipal levy</p>	<p>Category 3 programs and services that are not financed in whole or in part by the municipal levy, where the following requirement is met:</p> <ul style="list-style-type: none"> <li>• The User-Pay Principle is appropriate.</li> </ul>	<p>Examples may include those listed in the row above that are not financed in whole or in part by municipal levy.</p>

**Disclaimer**

This Minister’s Fee Classes Policy summarizes some of the requirements in the *Conservation Authorities Act* with respect to the charging of a fees by a conservation

authority for programs and services. This document should not be construed as legal advice or a substitute for seeking independent legal advice. Anyone seeking to fully understand how the Act may apply to the charging of fees by a conservation authority for programs or services should refer to the Act. In the event of any inconsistency between the *Conservation Authorities Act* and this policy, the Act will always take precedence.