



# 4.2.

## USE OF CONTRIBUTIONS FOR PARK PURPOSES

FEBRUARY 26, 2019



## SUMMARY OF THE AUDIT

### OBJECTIVE

Ensure that contributions received for parks have been used as intended, in accordance with the Act and administrative frameworks.

### RESULTS

Although efforts have been made to ensure compliance with the provisions of the *Act respecting land use planning and development* (LUPDA) regarding the use of contributions for park purposes, interpreting these provisions is complicated and tools are needed to facilitate its implementation.

Against this backdrop, we believe that improvements should be made with regard to the following key aspects:

- For two boroughs in our sample, controls used to ensure that all contributions for parks have been received need to be more stringent;
- Situations that raise doubt about compliance were noted in two selected boroughs;
- The roles and responsibilities for verifying compliance with the provisions of section 117.15 of LUPDA related to the use of contributions for park purposes are not clearly defined for the three selected boroughs;
- The process of verifying compliance with the provisions of LUPDA is not documented in the case of the three boroughs;
- The three boroughs do not have a guideline on the procedure to be followed for implementing the provisions of LUPDA;
- Decision-makers do not have all the relevant information before they authorize the use of contributions for park purposes for the various projects for all three boroughs;
- Reports do not give an overall picture of changes in the fund in terms of projects completed and whether expenditures were in compliance.

In addition to these results, we have formulated various recommendations for business units.

The details of these recommendations and our conclusion are outlined in our audit report, presented in the following pages.

Note that the business units have had the opportunity to formulate their comments, which appear after the audit report recommendations.

## TABLE OF CONTENTS

<b>1. BACKGROUND</b>	<b>107</b>
<b>2. PURPOSE AND SCOPE OF THE AUDIT</b>	<b>109</b>
<b>3. AUDIT RESULTS</b>	<b>110</b>
3.1. Review of all contributions received	110
3.1.1. Monetary contributions	110
3.1.2. Land transfer contributions	113
3.2. Compliance with use of contributions requirements	115
3.2.1. Interpretation and implementation of the provisions of section 117.15 of the <i>Act respecting land use planning and development</i>	115
3.2.2. Borough council approval and information provided to decision-makers	121
3.3. Accountability	124
<b>4. CONCLUSION</b>	<b>126</b>
<b>5. APPENDIX</b>	<b>127</b>
5.1. Objective and evaluation criteria	127



## LIST OF ACRONYMS

### **BC**

borough council

### **LUPDA**

*Act respecting land use planning  
and development*

### **MAMH**

ministère des Affaires municipales  
de l'Habitation

### **SAJ**

Service des affaires juridiques

### **SGPI**

Service de la gestion et de la planification  
immobilière



## 1. BACKGROUND

The *Act respecting land use planning and development* (LUPDA) (CQLR, chapter A-19.1) sets out legal provisions that allow municipalities to require contributions for parks, playgrounds and natural areas when they have adopted bylaws for that purpose. The boroughs that we audited have such bylaws and have been implementing them for several years. These bylaws have also been amended by the Ville de Montréal (the City) city council and they have applied to all boroughs of the City since June 19, 2018.

LUPDA also sets out provisions regarding municipalities' use of contributions for park purposes, playgrounds and natural areas. More specifically, section 117.15 of LUPDA stipulates the following:

*“Land transferred pursuant to a provision enacted under section 117.1 may be used only for the establishment or enlargement of a park or playground or for the preservation of a natural area for as long as it belongs to the municipality.*

*Every amount paid pursuant to such a provision and every amount received by the municipality in return for a transfer of land under the first paragraph shall form part of a special fund.*

*The fund may be used only to purchase or develop land to be used for parks or playgrounds, to purchase land to be used for natural areas or to purchase plants and to plant them on property of the municipality. For the purposes of this paragraph, the development of land includes the construction thereon of a building the use of which is inherent in the use or maintenance of a park, playground or natural area. ”*

Thus, contributions for parks can be remitted either through a monetary payment or transfer of a parcel of land. Monetary amounts received must be deposited in an account provided for this purpose<sup>1</sup>. As mentioned in the provisions of LUPDA, sums paid into this special fund or parcels of land transferred as contributions may be used only for the purposes provided for in LUPDA.

For the period from January 2014 to August 31, 2018, sums collected for all boroughs that appear in the account provided for this purpose concerning contributions for parks paid in money totalled nearly \$38.6 million, as shown Table 1. For the three boroughs that were audited, and for the same period, these amounts represent more than a quarter of contributions collected in money, as shown in Table 1.

<sup>1</sup> “Deferred income” line item.

**TABLE 1 – CONTRIBUTIONS RECEIVED  
CONTRIBUTIONS FOR PARKS, PLAYGROUNDS  
AND NATURAL AREAS  
RECEIVED FROM JANUARY 1, 2014 TO AUGUST 31, 2018**

BOROUGHES	CONTRIBUTIONS RECEIVED	PERCENTAGE OF ALL CONTRIBUTIONS RECEIVED
Mercier–Hochelaga-Maisonneuve	\$3.3 million	8.5%
Le Plateau-Mont-Royal	\$5.0 million	13.0%
Rivière-des-Prairies–Pointe-aux-Trembles	\$2.1 million	5.4%
Other boroughs (16)	\$28.2 million	73.1%
<b>TOTAL – 19 BOROUGHES</b>	<b>\$38.6 MILLION</b>	<b>100%</b>

Source: SIMON (City accounting system).

As shown in Table 2, for all boroughs, and for the same period, the amounts used for various projects (expenditures) totalled nearly \$21.8 million. On their own, the three boroughs that were audited account for more than \$10 million of expenditures from the parks fund versus all expenditures by the 19 boroughs. This represents almost 50% of the use of these contributions.

**TABLE 2 – USE OF CONTRIBUTIONS  
CONTRIBUTIONS FOR PARKS, PLAYGROUNDS  
AND NATURAL AREAS  
USED FROM JANUARY 1, 2014 TO AUGUST 31, 2018**

BOROUGHES	CONTRIBUTIONS USED	PERCENTAGE OF ALL CONTRIBUTIONS USED
Mercier–Hochelaga-Maisonneuve	\$2.99 million	13.7%
Le Plateau-Mont-Royal	\$5.28 million	24.2%
Rivière-des-Prairies–Pointe-aux-Trembles	\$2.66 million	12.2%
Other boroughs (16)	\$10.87 million	49.9%
<b>TOTAL – 19 BOROUGHES</b>	<b>\$21.8 MILLION</b>	<b>100%</b>

Source: SIMON (City accounting system).



With regard to land parcel contributions for the three boroughs, borough council approved only one third-party land transfer from January 2014 to August 31, 2018.

Under section 131 of the *Charter of Ville de Montréal*, city council has jurisdiction over provisions of sections 117.1 to 117.16 of LUPDA relating to contributions for parks, playgrounds and natural areas. However, the *By-law concerning the delegation of city council powers to borough councils (02-002)*<sup>2</sup> delegates to all borough councils responsibility for implementing bylaws relating to section 117.1 of LUPDA. Through this delegation of power, boroughs are therefore responsible for collecting the contributions for parks through these bylaws adopted by city council.

According to the information we obtained from the persons we interviewed in the business units, with regard to the use of sums deposited in the fund provided for this purpose, this is also the boroughs' responsibility. They use these funds for their local needs. Consequently, boroughs must apply the provisions of section 117.15 of LUPDA that we quoted previously.

With respect to parcels of land transferred as contributions for parks, playgrounds and natural areas, boroughs are also responsible for receiving this transfer when the borough council (BC) has chosen this form of contribution.

Ultimately, these contributions represent an additional funding tool for boroughs for implementing projects involving parks, playgrounds and natural areas.

## 2. PURPOSE AND SCOPE OF THE AUDIT

Pursuant to the *Cities and Towns Act*, we completed a performance audit mission on the use of contributions for park purposes. We performed this mission in accordance with the Canadian Standard on Assurance Engagement (CSAE) 3001 described in the CPA Canada Handbook – Assurance, and other Canadian public sector certification standards issued by the CPA Canada Auditing and Assurance Standards Board.

The purpose of this audit was to ensure that contributions received for parks were used as intended, in accordance with the Act and administrative frameworks.

The role of the Auditor General of the Ville de Montréal is to provide a conclusion regarding the objectives of the audit. To do so, we collected a sufficient amount of relevant evidence on which to base our conclusion and to obtain a reasonable level of assurance. Our assessment is based on criteria we have deemed valid for the purposes of this audit. They are presented in Appendix 5.1.

The Auditor General of the Ville de Montréal applies the Canadian Standard on Quality Control (CSQC) 1 of the CPA Canada Handbook – Assurance and, consequently, main-

<sup>2</sup> City council, bylaw no. 02-002, adopted on December 18, 2001.

tains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with ethical guidelines, professional standards and applicable legal and regulatory requirements. She also complies with the rules of independence and the other ethical rules of the Code of Ethics of Chartered Professional Accountants, which are based on the fundamental principles of integrity, professional competency and diligence, confidentiality and professional conduct.

Our audit work focused on the period from January 2014 to August 31, 2018. However, for some aspects, data prior to these years were also considered. It was primarily completed between June 2018 and January 2019.

This work was mainly performed with the following business units:

- Mercier–Hochelaga-Maisonneuve borough;
- Le Plateau-Mont-Royal borough;
- Rivière-des-Prairies–Pointe-aux-Trembles borough.

Upon completing our audit work, we presented a draft audit report to managers of each audited business unit for discussion purposes. The final report was then forwarded to each business unit involved in the audit in order to obtain action plans and implementation timelines.

A copy of the final report was also submitted to the city manager, the assistant city manager of the Services institutionnels, the assistant city manager of the Service aux citoyens, the director of the Service de la concertation des arrondissements, and the directors of the 16 other boroughs not directly targeted by our audit, so they could implement recommendations if appropriate.

## **3. AUDIT RESULTS**

### **3.1. REVIEW OF ALL CONTRIBUTIONS RECEIVED**

#### **3.1.1. MONETARY CONTRIBUTIONS**

##### **3.1.1.A. BACKGROUND AND FINDINGS**

At this stage of our work, we wanted to know whether mechanisms in place to ensure that all monetary contributions have been received so that all sums received as contributions for parks, playgrounds and natural areas are deposited in the special fund (the deferred income account).

As mentioned before, contributions for parks, playgrounds and natural areas are required under a bylaw that is to be implemented by the boroughs. More specifically, for Mercier–

Hochelaga-Maisonneuve borough, the Direction de l'aménagement urbain et des services aux entreprises is responsible for implementing this bylaw. For Le Plateau-Mont-Royal borough, it is the Direction du développement du territoire et des travaux publics. And for Rivière-des-Prairies–Pointe-aux-Trembles borough, it is the Direction du développement du territoire et des études techniques.

In short, these directorates are responsible for determining whether the bylaw applies, and if so, they make sure to collect the monetary contribution. Under this bylaw, the contribution for parks, playgrounds and natural areas is therefore claimed from the third party before a subdivision or building permit is issued.

Once the amount is collected, the Direction des services administratifs is responsible for ensuring that it is deposited in the special fund (the deferred income account), i.e. the account provided for this purpose. Details of transactions in this account regarding cash receipts and the use of contribution amounts refer to various file numbers related to the decision-making process and permits. The Direction des services administratifs uses this information to monitor the source of cash receipts and whether the use of contributions is compliant.

This directorate is therefore responsible for the financial management and maintenance of the special fund, i.e. the sums of money deposited in the fund and the sums that are used. Ultimately, this directorate must see to it that mechanisms are put in place to ensure that all amounts are deposited in the special fund.

It is therefore important that there be close communication between the two directorates in order to facilitate the reconciliation of sums deposited by the directorates responsible for financial matters in order to identify possible gaps.

We have therefore examined existing mechanisms to ensure that all sums have been deposited in this fund. With respect to the Mercier–Hochelaga-Maisonneuve borough, our audit shows that when a contribution for parks is collected, the Division des permis et inspections send the Division des ressources financières et matérielles an email to confirm collection. Each quarter, the account is reconciled and any discrepancies are queried and corrected, if applicable. In our opinion, this approach provides reasonable assurance that all contributions for parks have been recorded in the deferred income line item.

In the case of Le Plateau-Mont-Royal borough, the Division des ressources financières periodically extracts data on the deferred income item from the business office database. Also, the extract is queried to identify decision-making records relating to the transactions that have been entered. Entries are monitored, however this does not provide assurance that all contributions have been recorded; permit or cash receipt data (source data) are not used to reconcile the account.

In addition, the person interviewed in this division indicated that at the time of our audit she was working to improve the existing procedure.

For Rivière-des-Prairies–Pointe-aux-Trembles borough, the Division des ressources financières periodically extracts data on the deferred income item from the business office database. The extract is then queried to identify related decision-making records in order to enter the required references when the account is analyzed. Our audit work reveals that entries are monitored, but this does not provide assurance that all contributions have been recorded. Data from permits or cash receipts that may be characterized as “source data” are not used to reconcile the account.

In conclusion, the control procedure put in place by the Division des ressources financières does not ensure that all contributions have been recorded in this account, because the inputs are not used. Missing amounts cannot be detected using this procedure.

In conclusion, we believe that the boroughs of Le Plateau-Mont-Royal and Rivière-des-Prairies-Pointe-aux-Trembles should review existing mechanisms for verifying that all sums have been deposited in the special fund (deferred income) in order to make improvements required to ensure the completeness of the recorded data by aligning amounts received with those recorded as contributions for parks and reconciling them with permit or cash receipt data (source data).

## RECOMMENDATION

**3.1.1.B. We recommend that the boroughs of Plateau-Mont-Royal and Rivière-des-Prairies-Pointe-aux-Trembles review existing mechanisms for verifying that all sums have been deposited in the fund provided for this purpose, in order to make controls more stringent and to ensure that all contributions have been recorded.**

## BUSINESS UNITS’ RESPONSES

**3.1.1.B. *Le Plateau-Mont-Royal borough***  
*[TRANSLATION] In recent months, discussions have been initiated within the Division des ressources financières on implementing a park contribution management process. Finally, we concluded that the best way to track contributions is to send an action request to a member of the Division des ressources financières et matérielles on matters affecting the parks fund. (Planned completion: February 2019)*

***Rivière-des-Prairies–Pointe-aux-Trembles borough***  
*[TRANSLATION] A financial action request regarding decision-making records (delegated decisions) for approval of park fees that identify the amount collected by the borough will be sent to the financial resources advisor responsible for monitoring the finances of the park reserve fund.*

*The financial resources advisor will compare the amounts deposited in the deferred income account with the collection records prepared by the borough's Division des permis et inspections in order to reconcile the amounts collected with those recorded.*

*With regard to land transfers (cases submitted to the borough council), the financial advisor will act as stakeholder. (Planned completion: April 2019)*

### 3.1.2. LAND TRANSFER CONTRIBUTIONS

#### 3.1.2.A. BACKGROUND AND FINDINGS

We also wanted to know whether land transfer contributions received by the boroughs are accounted for in full in the City's accounting books.

The land transfer contribution procedure is different from the monetary contribution procedure. Several transactions must be completed before the land becomes part of City property.

According to the documents and information we obtained, only one land transfer contribution was approved by the borough council between January 1, 2014 and August 31, 2018. The Rivière-des-Prairies–Pointe-aux-Trembles borough received this contribution.

Pursuant to a resolution adopted in 2015, the BC approved this land transfer contribution.<sup>3</sup> The documents we obtained indicate that the parcel of land became a park and part of the public domain following the approval of the cadastral transaction in 2017 as indicated in the notarial deed dated June 1, 2018, of which we had a copy, which in turn indicates that the land is a park and is part of the public domain of the City.

The SGPI produced a property fact sheet for the lot received as a contribution. This sheet describes the lot and related parameters. The value of the lot indicated is entered on the real estate assessment roll.

For its part, the Service des finances included this lot in a document entitled "Inventaire des propriétés de la Ville". According to the information and documents obtained from the person contacted in this department, the amount entered in this inventory will be zero, because the lot has been transferred to the borough free of charge.

However, the Canada Public Sector Accounting Handbook states that "... the cost of a contributed capital asset, including a capital asset in lieu of a developer charge, is its fair value at the date of the contribution<sup>4</sup>". In addition, the standard defines fair value as follows: "...amount of the consideration that would be agreed upon in an arm's length transaction between knowledgeable and willing parties who are under no compulsion to act".

<sup>3</sup> Resolution: CA15 30 11 035 (November 3, 2015 session).

<sup>4</sup> Date of transfer of ownership formalized by a notarial deed.

With regard to the entry of the contribution received by the Rivière-des-Prairies–Pointe-aux-Trembles borough in the City’s books of account, it required that the land value be appraised so that the Service des finances could record the land at its fair value when the City becomes the owner of the land, i.e. the date on which a notarial deed was drawn up for this purpose, as required by the Normes comptables and the Manuel de présentation de l’information financière municipale du ministère des Affaires municipales et de l’Habitation (MAMH)<sup>5</sup>.

In our opinion, because the Service des finances is responsible for financial reporting, as such, it is obliged to ensure that all transactions recorded are in compliance with accounting standards. It goes without saying that the book value for these lots must meet these requirements.

## RECOMMENDATIONS

**3.1.2.B. We recommend that the Service de la gestion et de la planification immobilière ensure that the land obtained as a contribution for parks, playgrounds and natural areas be appraised at fair value to enable the Service des finances to account for it in the City’s books.**

**3.1.2.C. We recommend that the Service des finances ensure that the registration of land obtained as a contribution for parks, playgrounds and natural areas in the City's books meets the requirements of Canadian public sector accounting standards and the Manuel de présentation de l’information financière municipale du ministère des Affaires municipales et de l’Habitation.**

## BUSINESS UNITS’ RESPONSES

**3.1.2.B. *Service de la gestion et de la planification immobilière***  
*[TRANSLATION] The Service de la gestion et de la planification immobilière undertakes to determine the fair market value of lots obtained as a contribution for parks, playgrounds and natural areas each time a borough receives lots as compensation. To implement this initiative, the Service de la gestion et de la planification immobilière will establish a process in conjunction with the boroughs and the Service des finances. (Planned completion: December 2019)*

<sup>5</sup> Page 4-163, December 2017.

**3.1.2.C. Service des finances**

*[TRANSLATION] After obtaining the Service de la gestion et de la planification immobilière's share of the value of the lots received as contributions for parks, playgrounds and natural areas, the Service des finances will ensure that the registration of these lots in the city's books meets the requirements of Canadian public sector accounting standards and the Manuel de présentation de l'information financière municipale du ministère des Affaires municipales et de l'Habitation.*  
*(Planned completion: April 2019)*

**3.2. COMPLIANCE WITH USE OF CONTRIBUTIONS REQUIREMENTS****3.2.1. INTERPRETATION AND IMPLEMENTATION OF THE PROVISIONS OF SECTION 117.15 OF THE ACT RESPECTING LAND USE PLANNING AND DEVELOPMENT****3.2.1.A. BACKGROUND AND FINDINGS**

As previously mentioned, the provisions of section 117.15 of LUPDA regarding contributions provided as parcels of land, stipulate that:

*"Land transferred pursuant to a provision enacted under section 117.1 may be used only for the establishment or enlargement of a park or playground or for the preservation of a natural area for as long as it belongs to the municipality."*

Similarly, these provisions with respect to monetary contributions stipulate that:

*"The fund may be used only to purchase or develop land to be used for parks or playgrounds, to purchase land to be used for natural areas or to purchase plants and to plant them on property of the municipality. For the purposes of this paragraph, the development of land includes the construction thereon of a building the use of which is inherent in the use or maintenance of a park, playground or natural area."*

The MAMH website only provides a brief description of these provisions regarding use of the special fund for parks, playgrounds and natural areas.

We find that the provisions of section 117.15 of LUPDA are written in broader terms and therefore a legal interpretation is required for many projects or activities completed by a borough. These provisions therefore provide little detailed information on all cases concerning these projects and activities.

However, through our audit we obtained legal documents from the boroughs regarding the interpretation of these provisions. We were also able to identify legal documents produced

by MAMH. We also consulted documents produced by the City's Service des affaires juridiques (SAJ), including the boroughs' legal bulletins, which deal with the interpretation of these provisions in specific situations. Finally, we also found a 2017 Superior Court ruling concerning a dog park and the issue of limited access to dog parks.

In summary, the documents we consulted regarding the interpretation of these provisions state that sums from the special fund for parks, playgrounds and natural areas must not be used for:

- regular maintenance of a park or park equipment or plants (e.g., lawn mowing, cleaning, and painting);
- construction of an indoor ice rink, community centre or indoor pool;
- development or redevelopment of a community garden;
- development of a green traffic calming extension;
- construction of tree pits on public land;
- development of a green alley;
- development of a dog exercise area if access is limited (not accessible to all);
- street furniture not intended to be installed in a park or playground.

It should be noted that these are examples of situations related to the interpretation of the provisions of section 117.15 of LUPDA. This list is therefore not exhaustive and some aspects of this list could be interpreted differently in individual cases. However, this list demonstrates the complexity involved in interpreting and implementing these provisions.

With respect to land contributions, by making the necessary adjustments to what we have just described, land received as a contribution can only be used as indicated by the Act *"for the establishment or enlargement of a park or playground or for the preservation of a natural area"*. Land obtained as a contribution could not be used to develop a community garden, for example.

In view of these provisions and the various legal documents we consulted to interpret how they should be implemented, we wanted to know whether the various projects implemented by the boroughs we audited raised concerns regarding compliance with these provisions and their interpretation.

To this end, we reviewed disbursements related to the use of each contribution for the various projects. The directorate of the borough prepares a decision-making summary. The BC then adopts an approval resolution in order to implement the project.

We therefore reviewed decision-making summaries from January 1, 2014 to August 31, 2018, for each borough we audited.

Our audit work raised some doubts as to whether the boroughs of Mercier-Hochelaga-Maisonneuve and Rivière-des-Prairies-Pointe-aux-Trembles had complied with these provisions.



With regard to Mercier-Hochelaga-Maisonneuve borough, decision-making summaries mention fence repairs in parks and playgrounds, relocating a community garden and upgrading dog exercise areas, but the summaries do not specify whether these exercise areas have limited access.

In the case of Rivière-des-Prairies–Pointe-aux-Trembles borough, a decision-making summary reports that dog agility and exercise areas were developed, but the summary does not specify whether these areas have limited access.

Based on these findings, we wanted to ensure that there was a documented approach to verifying compliance with the Act for each project file or decision-making summary. However, our audit did not find any evidence of such a documented approach.

We also enquired about existing mechanisms and the tools used to ensure compliance with this requirement. Our work reveals that the boroughs we audited do not have a detailed written guideline on the procedure for ensuring that a project complies with the provisions of section 117.15 of LUPDA concerning disbursements from the special fund.

However, our work suggests that the boroughs have various legal opinions and documents regarding the interpretation of these provisions for specific cases and situations.

However, the number of these opinions and documents held by the boroughs and the subjects that are dealt with vary between boroughs. In other words, none of the boroughs we audited has all the legal documents that we consulted concerning disbursements from the special fund for different situations.

In addition, our audit revealed that only Mercier-Hochelaga-Maisonneuve borough has a checklist to facilitate the implementation of the provisions of section 117.15 of LUPDA. This is an initiative of an employee who recently started to work at the borough. This list was developed using legal documents and opinions that were obtained.

We believe that this is a good initiative to introduce best practices. However, we reviewed the checklist and found that it does not include all the situations we identified. In addition, it lists an “approved” status for dog exercise areas, but does not indicate that access to such an area must not be restricted.

Section 117.15 of LUPDA does provide clear, concise guidelines to deal with all cases regarding the use of sums from the special fund to complete projects.

Interpreting these provisions is difficult and complicated, and we believe that a legal approach is required to ensure compliance. Although a checklist is very useful and even necessary, we believe that it is in the borough's interest to produce a guideline on how to proceed to ensure compliance.

Based on the interviews we conducted in the three boroughs, our work reveals that the roles and responsibilities for verifying compliance with the provisions of section 117.15

of LUPDA are not clearly defined with respect to each project. However, preparation of projects related to parks, playgrounds and natural areas, which result in using amounts from the special fund, involves more than one directorate within the same borough. We therefore believe that an official within the borough's relevant departments must be formally designated to oversee compliance audits to ensure that they have been performed.

Only one borough has a more detailed checklist to facilitate implementation of these provisions. According to the information and documents we obtained, it is difficult to prepare a list because it is based on legal opinions and documents related to the interpretation of these provisions. Although cases and situations have been dealt with in legal bulletins available to all boroughs, all boroughs may not have easy access to all existing legal notices, documents and information. In fact, as we mentioned above, notices and documents held by boroughs vary from between boroughs, because a boroughs may have obtained legal advice or legal documents regarding a specific situation.

The SAJ prepares monthly legal bulletins for the boroughs. Situations concerning these provisions have been dealt with in these bulletins before. Given the difficulty of interpreting these provisions and the many situations related to the interpretation of the provisions that we have identified, we are of the opinion that the SAJ could produce a summary of all these cases and situations in its legal bulletins to allow all borough to develop a checklist for interpreting these provisions and reduce the risk of using sums from the special fund in a manner that fails to comply with the Act.

## RECOMMENDATIONS

**3.2.1.B.** We recommend that the boroughs of Mercier–Hochelaga-Maisonneuve, Le Plateau-Mont-Royal and Rivière-des-Prairies–Pointe-aux-Trembles adopt a guideline to identify the roles and responsibilities for implementing a documented compliance audit and to formalize the process for implementing the provisions of section 117.15 of the *Act respecting land use planning and development* related to the use of contributions for park purposes, playgrounds and natural areas.

**3.2.1.C.** We recommend that the Service des affaires juridiques, as part of the production of its legal bulletins, examine the possibility of providing boroughs with a summary of all cases listed to date, related to the interpretation of the provisions of section 117.15 of the *Act respecting land use planning and development* relating to the use of the special fund for parks, playgrounds and natural areas, to enable the boroughs to develop a checklist for implementing these provisions.

- 3.2.1.D. We recommend that the boroughs of Mercier–Hochelaga-Maisonneuve, Le Plateau-Mont-Royal and Rivière-des-Prairies–Pointe-aux-Trembles develop a checklist for interpreting the provisions of section 117.15 of the Act respecting land use planning and development relating to the use of contributions for park purposes, playgrounds and natural areas.**

## BUSINESS UNITS' RESPONSES

**3.2.1.B. *Mercier–Hochelaga-Maisonneuve borough***

- 1) *[TRANSLATION] Prepare a document that defines individual roles and responsibilities and establishes the procedure for complying with the provisions of the “Act respecting land use planning and development”, chapter A-19.1. (Planned completion: March 2019)*
- 2) *Maintain the information communication link via memos and ad-hoc information messages to staff. (Planned completion: April 2019)*
- 3) *Meet with and inform all persons who may use the parks fund, complete purchase orders or validate them. (Planned completion: May 2019)*

***Le Plateau-Mont-Royal borough***

*[TRANSLATION] A discussion is already under way on this topic. The Bureau du vérificateur général’s audit report will serve as a guide and inspiration for drafting a guideline for collecting contributions and using contributions for parks, playgrounds and natural areas within Le Plateau-Mont-Royal borough. This guideline will contain the process to be followed, the roles and responsibilities of the various stakeholders as well as any reference documents required for decision-making. (Planned completion: December 2019)*

***Rivière-des-Prairies–Pointe-aux-Trembles borough***

*[TRANSLATION] The borough will issue a guideline on the use of contributions for parks, playgrounds and natural areas to enable officials to document the file and ensure that the project that we want to finance through this Fund complies with the provisions of section 117.5 of the Act respecting land use planning and development.*

*It will specify the roles and responsibilities of stakeholders in the process, the sources of information to be consulted and other mechanisms to achieve this goal. (Planned completion: October 2019)*

**3.2.1.C.**

**Service des affaires juridiques**

*[TRANSLATION] A review of recent case law and legal opinions will be conducted. The lawyer who will take on this mandate will liaise with the Service de l'urbanisme et de la mobilité to ensure that the guide produced by this department is made available to the boroughs and that it can be amended, if deemed necessary, to ensure that the information provided is consistent. The summary prepared by the Direction des affaires civiles of the Service des affaires juridiques will be published in the September edition of the Bulletin juridique. (Planned completion: when the September 2019 edition of the Bulletin juridique is published)*

**3.2.1.D.**

**Mercier–Hochelaga-Maisonneuve borough**

- 1) *[TRANSLATION] Update the eligible projects document to present it those involved. (Planned completion: March 2019)*
- 2) *Meet with and inform everyone involved. (Planned completion: May 2019)*
- 3) *Maintain the information communication link via memos and ad-hoc information messages to staff. (Planned completion: April 2019)*

**Le Plateau-Mont-Royal borough**

*[TRANSLATION] A checklist will be prepared and included in the financial response. A copy of this list will be available to all users in the finance shared folder on Le Plateau-Mont-Royal borough's network. (Planned completion: December 2019)*

**Rivière-des-Prairies–Pointe-aux-Trembles borough**

*[TRANSLATION] The borough will prepare a checklist to identify sources of regulatory information concerning the application of section 117.5 of the Act respecting land use planning and development.*

*This list will identify situations where funding is not permitted through the parks fund, based on available legal information.*

*It will also identify situations where funding is permitted according to legal opinions obtained to date.*

*In case of doubt, a regulatory compliance notice (legal opinion) will be required. (Planned completion: September 2019)*

### **3.2.2. BOROUGH COUNCIL APPROVAL AND INFORMATION PROVIDED TO DECISION-MAKERS**

#### **3.2.2.A. BACKGROUND AND FINDINGS**

At this stage of our work, we wanted to verify whether transactions involving disbursements from the special fund were recorded in a decision-making summary authorized by the borough council.

Our examination of the amounts from the special fund of the three boroughs for the period from January 1, 2014 to August 31, 2018 reveals that each transaction related to a project was recorded in a decision-making summary approved by a borough council resolution.

Based on the information we obtained from the City's Service des finances, these transactions are reviewed by this department during the year, and a decision-making summary is required for disbursements from this special fund.

However, our audit reveals that in some cases Mercier-Hochelaga-Maisonneuve borough uses a decision-making summary that includes a different procedure. It is approved by the borough council as usual. However, this decision-making summary indicates a general amount approved in advance by the borough council for the implementation of future projects. The approved sum is the maximum amount available, as it were. Subsequently, a transaction related to the use of fund money is authorized by a manager using a purchase order that refers to the latter.

The review of a decision-making summary for 2018 using this procedure indicates that it provides a list of proposed projects, including the purchase of plants, the addition of street furniture, fence installation work in various parks and upgrades for dog exercise areas.

In addition, our audit of purchase orders related to this decision-making summary reveals that several are for repair and maintenance work, including painting playground furniture in a park. The use of special fund money for these projects raises doubts as to compliance with the provisions of section 117.15 of LUPDA.

In our view, there is a risk that this approach—i.e. use of a pre-approved decision-making summary for the next disbursement from the special fund through purchase orders for specific projects—may not comply with the provisions of section 117.15 of LUPDA. There is a risk that the money in this fund may be used for purposes other than those authorized by the Act. It is therefore important that mechanisms be put in place to ensure compliance where this approach is used.

We also reviewed decision-making summaries and purchase orders to verify whether decision-makers had sufficient information to confirm that compliance reviews had been performed for each project and that this project complies with section 117.15 of LUPDA, indicating the reasons for such compliance, before approval is obtained for the expenditure.

Although each decision-making summaries usually indicates that the project submitted complies with the City’s policies, bylaws and administrative frameworks, the review performed for the three boroughs did not allow us to identify evidence of more specific information on compliance with LUPDA, due to each project in relation to the provisions of the Act. As a result, the information provided to decision-makers does not allow them to make informed decisions for each project submitted to them involving disbursements from the special fund.

As mentioned previously, our audit did not identify evidence of a documented approach for verifying whether each project complied with these provisions, despite the fact that in some cases boroughs possess legal opinions, legal documents and other tools.

In our opinion, it is important that decision-makers (elected officials and managers) have relevant, accurate information on each file involving disbursements from the special fund for parks, playgrounds and natural areas, to enable them to make an informed decision before approving or authorizing use of the funds provided for in the Act. We believe it is important to reassure decision-makers in this regard.

## RECOMMENDATIONS

**3.2.2.B.** We recommend that the Mercier–Hochelaga-Maisonneuve borough put in place mechanisms to ensure compliance with section 117.15 of the *Act respecting land use planning and development* when a decision-making summary is used to authorize a general expenditure with a maximum budget, to allow subsequent use of purchase orders in order to make specific disbursements authorized by officials.

**3.2.2.C.** We recommend that the boroughs of Mercier–Hochelaga-Maisonneuve, Le Plateau-Mont-Royal and Rivière-des-Prairies–Pointe-aux-Trembles ensure that they provide decision-makers with relevant information on compliance with the provisions of section 117.15 of the *Act respecting land use planning and development* for each file involving disbursements from the special fund, to promote informed decision-making.

## BUSINESS UNITS' RESPONSES

### 3.2.2.B. **Mercier–Hochelaga-Maisonneuve borough**

- 1) [TRANSLATION] It was decided that this procedure would no longer apply. **(Planned completion: March 2019)**
- 2) Project leads has already been asked to complete their own decision-making summary for their respective projects (they will be able to group several similar projects together) **(Planned completion: March 2019)**
- 3) A memo / information message will be sent to all those involved. **(Planned completion: April 2019)**

In addition, the documents will be updated and available at any time for reference.

### 3.2.2.C. **Mercier–Hochelaga-Maisonneuve borough**

- 1) [TRANSLATION] The project lead must verify and ensure that his project complies with the regulations of the Act respecting land use planning and development.
- 2) The project lead's decision-making summary must state that the project complies with legal requirements.
- 3) The financial resources management advisor must ensure that funding is clearly indicated in his financial response as well as in the financial section of the decision-making summary. **(Planned completion: April 2019)**

#### **Le Plateau-Mont-Royal borough**

[TRANSLATION] Any records on the use of contributions for parks, playgrounds and natural areas are now accompanied by a certificate of compliance with the provisions of section 117.15 of the Act respecting land use planning and development. **(Planned completion: March 2019)**

#### **Rivière-des-Prairies–Pointe-aux-Trembles borough**

[TRANSLATION] Decision-making summaries involving the use of fund from the parks fund, playgrounds and green spaces to finance a park project will indicate that the borough has verified that it is in compliance with regulatory requirements.

The tools developed for this purpose and the above guideline will specify the procedures. **(Planned completion: October 2019)**

### 3.3. ACCOUNTABILITY

#### 3.3.A. BACKGROUND AND FINDINGS

According to the information obtained from the persons interviewed in the three boroughs, reporting on contributions for parks can be summarized as follows:

- reconciliation account statements are sent to the borough director and the other directors of administrative units;
- some information is communicated during the year, on an ad hoc basis.

However, despite the efforts made, we did not identify evidence of periodic reports that provide an overall picture of changes in the fund in terms of projects completed and whether expenditures were in compliance.

In our opinion, contributions for parks represent an important source of funding for parks, playgrounds and natural areas for boroughs. These were monetary contributions or land transfer contributions from citizens.

#### RECOMMENDATION

**3.3.B. We recommend that the boroughs of Mercier–Hochelaga-Maisonneuve, Le Plateau-Mont-Royal and Rivière-des-Prairies–Pointe-aux-Trembles implement a periodic and formal reporting mechanism for contributions for parks, playgrounds and natural areas, to inform decision-makers about changes in the fund and to support informed decision-making.**

#### BUSINESS UNITS' RESPONSES

**3.3.B. *Mercier–Hochelaga-Maisonneuve borough***

- 1) *[TRANSLATION] Every time the parks fund is used, a reconciliation will be performed.*
- 2) *Reconciliations will be improved in 2019. A tab with further details will be added to facilitate searches and to provide an overall picture of changes in the fund.*
- 3) *The reconciliation will be sent to the directors and the borough director on a monthly basis.*
- 4) *The deferred income analysis: parks and playgrounds (line item 25507) will be sent to the Service des finances on a quarterly basis.*  
**(Planned completion: April 2019)**



**Le Plateau-Mont-Royal borough**

*[TRANSLATION] Le Plateau-Mont-Royal borough undertakes to file a report, at a regular meeting of the borough council, on the collection and use of the contributions for parks, playgrounds and natural areas.*

*This filing should normally coincide with the filing of financial results.*

***(Planned completion: May 2019)***

**Rivière-des-Prairies—Pointe-aux-Trembles borough**

*[TRANSLATION] At every March meeting of the borough council, a report will be submitted to the parks reserve fund as of December 31 of the year just ended.*

*It will indicate the balance at the beginning of the year (January 1), cash receipts, disbursements, credit backs, if any, related to the closing of projects and the balance on December 31.*

***(Planned completion: December 2019)***

## 4. CONCLUSION

Our audit shows that the boroughs have made efforts to comply with the provisions of the *Act respecting land use planning and development* (LUPDA) regarding use of sums from the special fund for parks, playgrounds and natural areas, including:

- the boroughs audited refer to legal opinions relating to the interpretation of the provisions of section 117.15 of LUPDA. They also consult certain legal bulletins produced by the Service des affaires juridiques;
- one borough developed a checklist for interpreting the provisions of LUPDA;
- controls for verifying whether all monetary contributions have been received are sufficient in one borough;
- disbursements from the special fund for parks are linked to a decision-making summary authorized by the borough council.

Despite these efforts, our audit work highlighted the absence of certain frameworks that would enable us to confirm compliance with all provisions of section 117.15 of LUPDA. Based on our audit findings, we therefore recommend that the boroughs:

- improve processes for ensuring that all contributions for parks have been received (two boroughs);
- put in place mechanisms to facilitate the interpretation and implementation of the provisions of section 117.15 of LUPDA, in particular, by adopting a guideline on the procedure for implementing these provisions and a checklist;
- provide a clearer, more formal definition of the roles and responsibilities for verifying compliance with these provisions;
- document the process of verifying compliance with these provisions (in the three boroughs);
- provide decision-makers with relevant information to make informed decisions before they authorize disbursements from the special fund for the various projects submitted to them;
- introduce more comprehensive reporting on both the receipt of contributions for parks and their use in various projects.

It is important that all boroughs have a good understanding of the relevant provisions of the Act in order to reduce the risk of misinterpretation or misapplication. The Ville de Montréal must have the assurance that contributions are used for the purposes set out in the Act.

## 5. APPENDIX

### 5.1. OBJECTIVE AND EVALUATION CRITERIA

#### OBJECTIVE

Ensure that contributions received for parks have been used as intended, in accordance with the Act and administrative frameworks.

#### EVALUATION CRITERIA

- All contributions received by the Ville de Montréal under the *Act respecting land use planning and development* have been deposited in the account set up for this purpose (money and land);
- Contributions for parks are used in accordance with the Act and administrative frameworks;
- The use of contributions for park purposes is authorized by the decision-making bodies concerned;
- Decision-makers report on the amounts collected as contributions for parks and their use.

