

COUNCIL NON-PROFIT TAX MITIGATION POLICY

EXECUTIVE SUMMARY

This report follows through on the Council direction provided in Report PFC2014-0688 to draft a Council policy to mitigate the property taxes of non-profit organizations that paid tax during the construction period of their facility and have been found to be exempt from property tax. It also discusses actions taken to make the non-profit community aware of the policy. This report recommends that Council adopt the attached Non-Profit Tax Mitigation Policy and make the necessary budgetary adjustments to fund the policy.

ADMINISTRATION RECOMMENDATION(S)

That Council:

1. adopt the Non-Profit Tax Mitigation Policy in Attachment; and
2. increase budget and appropriations for Taxation Program #856 by the funding required for this initiative.

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2014 September 22 Regular Meeting of Council, the following recommendations from Council's consideration of Report PFC2014-0688 was adopted.

That Council:

1. Direct Administration to prepare a report to Council including a draft Council policy describing the circumstances in which Council will consider providing tax cancellations for non-profit organizations with facilities under construction in Calgary, no later than 2014 December, including the following points:
 - i. Eligibility, for four years, begins when all of the following conditions have been met: (1) a building permit has been issued, (2) an application for cancellation has been submitted to the Assessment business unit within the tax year the cancellation is requested to begin;
 - ii. Tax cancellation occurs once the property is found to be exempt;
 - iii. Only municipal property taxes are subject to cancellation;
 - iv. Administration to include tax cancellation requests in the semi-annual Assessment & Tax Circumstances Report;
 - v. A transition time frame to allow organizations to qualify under the policy: (1) as if the policy were in place from 2013 January 01 and (2) if the organization has applied by 2015 December 31.
2. Direct Administration to issue a call for applications under the policy; and
3. Direct Administration to provide a refined estimate of program funding requirements for the tax cancellation policy using the information gathered from Recommendation 2.

Report PFC2014-0688 resulted from the referral of Report PFC2014-0494 at the 2014 July 21 Combined Meeting of Council. Report PFC2014-0494 was the result of Council direction at the 2013 July 29 Regular Meeting of Council:

"That Administration to bring a report, including key stakeholder feedback, to the Priorities and Finance Committee no later than June 2014 with options and recommendations for mitigating property taxes associated with properties owned or held by non-profit organizations that, but for

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the fact that improvements to the property are under construction, would typically qualify for a property tax exemption.”

BACKGROUND

This report is the culmination of a process to address the issue of property tax mitigation for properties and/or facilities held by a non-profit but not used for an exempt purpose because the property and/or facility is under construction and thus not used for an exempt purpose. Administration was directed to bring a Council Policy to address this issue through Council's consideration of Report PFC2014-0688.

This issue was identified because of the current state of the law with respect to exemptions for non-profit organizations. In general, property tax exemptions related to non-profit organizations and contained in the section 362 of the *Municipal Government Act* (MGA) and the *Community Organization Property Tax Exemption Regulation* (COPTER) are determined on the basis of the use of the property. The word “used” has been interpreted by the courts to mean the current actual use of the property and not the future intended use of the property. Administration has not granted exemptions to non-profit organizations that are in the midst of construction on a site where the non-profit owns or holds the property based on the courts interpretation.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The purpose of this report is to present the proposed *Non-Profit Tax Mitigation Policy* (Attachment) for Council adoption. This section of the report will be used to highlight the important parts of the policy.

The purpose of the policy is to provide a framework such that Council can exercise its tax cancellation powers through section 347 of the *Municipal Government Act* (MGA). The proposed policy contemplates the cancellation of municipal taxes only where a non-profit has been taxed during the construction period of their property and/or facility and after the property and/or facility has been exempted from tax.

Timing

There are four key parts to the timing of the policy. The first is the cancellation period, which is the time period covered by the policy. As a result of Council's previous direction, the cancellation period extends from the time a building permit is issued to the time the property is found to be exempt from taxation, up to a maximum of four years.

The second is the timing of the actual cancellation. Once a property is found to be exempt under provincial legislation, a recommendation for cancellation will be submitted through the next possible *Assessment and Tax Circumstances Report*, which occurs semi-annually.

The third aspect of the policy relating to timing is the transition program. This allows organizations that would have qualified under the program if it had been in place on 2013 January 01 to be considered for tax cancellation. The start date corresponds to the year that the process leading to the policy was launched.

The forth timing component is the application time frame. For all projects that qualify for the time period between 2013 January 01 to 2015 December 31, the application deadline is 2015

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December 31. Going forward the application deadline to receive full benefit of the cancellation is the end of the calendar year in which the building permit was issued. If an application is submitted in the calendar year after a building permit is issued the cancellation period will begin on January 01 of the year that the application is submitted. This part of the policy is in place to help Administration plan and budget for tax cancellations.

Estimates of Tax Implications

Letters and applications were sent to all organizations known to be potentially affected by this issue on 2014 November 14. Unfortunately, this mailing date was too late to gather sufficient information to provide refined program estimates for the implementation of the policy. These estimates will however be included in the next Assessment and Tax Circumstances Report, where it is expected that there will be some cancellations under the new policy (if it is adopted). With the information gathered from the engagement sessions from PFC2014-0494 Administration is putting forward a request for \$1 million for 2015 tax cancellations.

Stakeholder Engagement, Research and Communication

Letters and applications were mailed to all non-profit organizations known to be affected by this issue (over 900) on 2014 November 14. In the preparation of previous reports seeking Council direction on this issue, Assessment held consultation sessions with the non-profit community seeking their input. Arts organizations receiving cultural funding under the Municipal Sustainability Initiative (Cultural MSI group) were consulted in particular for Report PFC2014-0688. The Cultural MSI group stated a preference that both provincial and municipal taxes should be cancelled, that the cancellations occur annually instead of at the end of the project, and that the cancellation period occurs earlier (at the development permit stage).

Strategic Alignment

The proposed policy aligns, for the most part, with the policies of other municipalities. Other municipalities have also required that the foundations of a building be in place as a “trigger” for the cancellation period.

MGA and COPTER exemption provisions generally require that exempt facilities be open to the general public and so providing a tax cancellation program for the construction period of exempt facilities would align with Calgary City Council Priorities 2015-2018. Under the heading *A city of inspiring neighbourhoods*, one of the strategic actions is to:

“9. Provide great public spaces and public realm improvements across the city to foster opportunity for well used public spaces and places for citizen connections and urban vitality.”

The proposed policy would contribute to the development of new public facilities by providing some measure of tax relief once the public purpose of property and/or facility has been fulfilled.

Social, Environmental, Economic (External)

Social

A mitigation program may allow for more development of property by non-profit organizations.

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Environmental

No known environmental impacts.

Economic

If Council adopts the proposed policy, additional funding will be required, funding source to be determined. Non-profits that build facilities that become exempt would benefit from tax cancellations.

Financial Capacity

Current and Future Operating Budget:

Any commitment to address this tax policy issue with a direct subsidy will require ongoing funding through the operating budget. Current estimates for 2015, which are based only on anecdotal information, are for \$1 million. As major projects, like the National Music Centre, conclude, it is expected that this amount will increase as high as \$3.2 million. Budget and appropriations for Taxation Program #856 to be increased by the funding required for this initiative. Administration will present further refined estimates in the next Assessment and Tax Circumstances report.

Current and Future Capital Budget:

There are no capital budget implications associated with the recommendation.

Risk Assessment

The proposed policy framework minimizes the risks associated with addressing this issue. After 2015 The City will know, in advance, the amount of funding required on an annual basis and will be assured that the program achieves its purposes by withholding a refund until a given property and/or facility is exempt. Through adopting the recommendation and passing a policy, Council binds itself to funding valid cancellation requests in future years. Non-profit organizations with City funding or with other City relationships (i.e., those that lease or license City property) may request tax mitigation in addition to that provided through the proposed policy framework.

REASON(S) FOR RECOMMENDATION(S):

- Addresses a tax policy issue with a tax-oriented solution.
- Aligns with the policies that address this issue in other Alberta municipalities.
- Provides The City with information and time to plan and budget for cancellations.
- Provides stakeholders with a clearly defined process.
- Allows Council to review the list of qualifying organizations and the implications of the policy on a semi annual basis.
- Strikes the right balance between providing a new subsidy and ensuring that purposes of the subsidy are met by applicants.

ATTACHMENT(S)

Council Policy