

Planning, Development & Assessment Report to
Priorities and Finance Committee
2014 June 17

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PFC2014-0494
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NON-PROFIT TAX MITIGATION REPORT

EXECUTIVE SUMMARY

This report provides options and recommendations for providing property tax mitigation during the construction period of non-profit facilities where the property does not qualify for an exemption from property tax. Five options were developed, presented to stakeholders and included in the report. Administration concludes that, if Council believes that this issue should be addressed through a subsidy, a tax cancellation policy outlining the circumstances under which Council will consider tax cancellations for non-profit facilities that are under construction is the best available option.

ADMINISTRATION RECOMMENDATION(S)

That the Priorities and Finance Committee recommends 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 October, 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) the foundations for the building have been laid, and (3) an application for cancellation has been submitted to the Assessment business unit;
 - ii. Tax cancellations occur 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;
2. Direct Administration to issue a call for applications for the first round of tax cancellations for the 2014 tax year; and
3. Direct Administration to provide a refined estimate of program funding requirements for the tax cancellation policy using the information gathered from 2.

PREVIOUS COUNCIL DIRECTION / POLICY

Council adopted the following recommendation from the Priorities and Finance Committee with respect to Report PFC2013-0472 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 the fact that improvements to the property are under construction, would typically qualify for a property tax exemption.”

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BACKGROUND

This report focuses on the issues of property tax mitigation for property held by a non-profit but not used for an exempt purpose because the property is in some stage of development. This issue was brought to the fore 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(1)(n) 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 (see Attachment 1). Using the guidance from the Court, 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.

It should be noted that the legislation is much more generous when a municipality is involved: where The City owns a property and proceeds to construct a facility thereon, the property would generally be exempt. For example, recreation centres that are built by The City and then transferred to a non-profit upon completion would typically be exempt during construction and afterwards, once the property is being used for an exempt purpose and held by a non-profit.

Subsidies Used by The City of Calgary

As outlined in Attachment 1, property tax exemption is a form of subsidy. A conceptual background on subsidies currently used by The City is provided in Attachment 2 and summarised in table format below to provide context for considering the best approach in applying a subsidy towards a property/organization.

TYPES OF SUBSIDIES USED BY THE CITY		
Subsidy Type	Payer	Purpose
Tax Exemption (Indirect)	Taxpayers, indirectly through a higher tax rate	Typically, to support the operations of non-profit facilities
Tax Rebate / Cancellation (Direct)	The City (unbudgeted)	A variety of purposes at Council's discretion
Grants for Construction (Direct)	The City (through tax supported operating budget and the capital budget)	Capital grants to support the construction of new facilities
Operating Grants (Direct)	The City (through tax supported operating budget and through provincial grants)	Operating grants to support the operations of non-profit organizations

The table shows that most subsidies are paid directly by The City (through the operating budget, which is tax supported) for a specific purpose. Recent subsidy-related tax cancellations have been for a variety of purposes at Council's discretion, but generally to support non-profit organizations during the construction phase of new facilities and are not budgeted. In the past, these types of cancellations have been covered using a fund that is designed to refund taxes when there is an inaccuracy in a previous years assessment. Tax exemptions are different

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from other types of subsidies in that they are paid indirectly by other taxpayers through property and business taxes, rather than directly as part of the budget process. Tax exemptions may be established by Council bylaw but most are directed by provincial legislation and policy.

In the context of the entire city, few properties qualify for a non-profit tax exemption under the MGA and/or COPTER. In 2013, almost 466,000 properties were assessed by The City of Calgary. Just over 10,000 of those (2 per cent) were exempt from taxation. Most tax exempt properties are associated with government functions, meaning they are either owned by the local, provincial or federal government or institutions closely associated with government (e.g., hospitals, schools, universities, libraries, etc.). Discounting these government related properties, about 1,900 properties (or 0.4 per cent of all properties) remain, and the majority of these are the properties that qualify for exemption as a non-profit under the MGA or COPTER. The 2013 assessed value of these 1,900 properties was \$1.57 billion, which, at 2013 tax rates, translates into \$17.3 million dollars in foregone municipal taxes annually.

Tax cancellations are always a matter of Council discretion and so the purpose behind them can vary. As detailed in Report PFC2012-0472, Council provided tax mitigation through tax cancellation to a number of organizations in its 2010 – 2013 term. These cancellations, though not budgeted, were accommodated through a pre-existing tax cancellation fund meant to allow for tax cancellations through the *Assessment and Tax Circumstances Reports*. Those reports, which are typically presented to Council twice annually, cancel taxes in circumstances where an assessment is found to be inaccurate resulting in a property or business owner being levied an incorrect amount of taxes. The cancellation of the Royal Canadian Legion Branch No. 1 taxes honours part of a 1919 lease agreement and will continue until 2018.

COST SUMMARY OF CURRENT TAX MITIGATION PROGRAMS/DECISIONS BY YEAR			
<i>Year</i>	<i>Organization</i>	<i>Cancelled Provincial and Municipal Property Taxes</i>	<i>Year Total</i>
2011	Legion	\$16,788.96	\$59,217.36
	Folk Festival	\$22,164.50	
	cSpace	\$20,263.91	
2012	Legion	\$20,469.08	\$220,796.19
	St. John Ambulance	\$59,774.57	
	Folk Festival	\$15,788.64	
	cSpace	\$124,763.90	
2013	Legion	\$22,444.72	\$107,737.21
	cSpace	\$85,292.49	

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In addition to the above, there is a tax cancellation program related to the process of consolidating the business and non-residential property tax. Its purpose is to ease the transition for organizations that are exempt from business tax but not exempt from property tax ("Limited Benefit Non-Profit organizations"). This year Council cancelled just over \$68,000 of taxes as part of this program.

Other Jurisdictions

The cities of Edmonton and Lethbridge both have Council policies that address the issue of property tax mitigation during the construction period of non-profit organisations' facilities. The policies cancel taxes for a period of up to two years.

Calgary City Council Priorities 2015-2018

While *Council's Fiscal Plan for Calgary (2012-2014)* contained a commitment to developing art spaces in particular, direction in *Calgary City Council Priorities 2015-2018* is broader and references the provision of public space. 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."

Instituting some kind of tax mitigation for the construction of non-profit facilities may encourage more private provision of public space, though property taxes are generally a small part of development costs, especially on larger projects.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

To follow through on Council's direction arising from PFC2013-0472, Administration developed options for mitigation, consulted with stakeholders (see "Stakeholder Engagement, Research and Communication" section for more details on the consultation process) and used policy setting considerations to analyze the types of subsidy available to mitigate property taxes for the organizations.

Policy Setting Considerations

By their very nature, subsidies are a form of special treatment for a certain segment of a given population, and they should be created /implemented only when there is a clear purpose for their existence. Council discussions on subsidy-related tax cancellations indicate an interest in supplementing property tax exemption legislation through an additional subsidy to non-profit facilities that are under construction or renovation and planned to be used for a tax exempt purpose. If a subsidy is to be implemented, the following evaluative criteria should help Council to make a decision as to how to structure the subsidy. It should be noted that principle of predictability was added as a result of stakeholder consultations.

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- *Flexibility*
 - The subsidy should be subject to review and subject to amendment or cancellation on a regular basis (annually or biannually) in order to ensure it continues to be in line with Council's priorities.
- *Transparency*
 - The flow of the subsidy from taxpayers to the qualifying organizations should be conducted in open and obvious fashion, and should be easily subject to scrutiny. In addition, the process for applying for a subsidy should be easily accessible and widely communicated.
- *Equity*
 - The subsidy should be broadly applicable to the class of organizations/properties to which it applies.
- *Efficiency / Ease of Administration*
 - The costs of administering the subsidy should be kept to a minimum and, relatedly, the work requirements of administering the subsidy should be kept to a minimum.
- *Predictability*
 - The flow of the subsidy should be predictable, both from a City and non-profit perspective.
- *Stakeholder View*
 - Stakeholders were consulted and a recap of their views of each option is included below.

Options

The options below were developed by Administration and presented to stakeholders during the consultation sessions and stakeholder feedback is included under the "*Policy Setting Considerations*" for each option. It is difficult to know how much property could be subject to this particular situation and thus very difficult to provide a reliable estimate of the cost of any of the proposed subsidy programs. Based on the limited information on future development plans of non-profit organizations that participated in the consultation, it is estimated that the assessed value of properties that could become eligible would not likely exceed \$300 million (equivalent to \$1.0 million in 2014 provincial taxes and \$3.2 million in 2014 municipal taxes) in any given year. This estimate is based information provided to administration from entities that are considering or have begun construction of new facilities. The actual amount at stake in any given year could vary widely and accurate program estimates would require additional/more complete information as provided by the non-profit community.

Option 1: Council initiated tax cancellations (status quo)

Option 1 would be to continue to cancel taxes for non-profit organizations on a case by case basis using section 347 of the MGA. This process requires a non-profit organization to present their request to a Councillor and for the Councillor to bring a Notice of Motion with the details of

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the tax cancellation request to the floor of Council. Once the Notice of Motion is brought to the floor of Council, it must be approved by a majority of Council for a tax cancellation to occur.

Option 2: Mitigation through Current Grant System

Option 2 would be to provide mitigation for property tax incurred on properties through the current Community Services and Protective Services capital grants system. This would mean that when The City negotiates a granting agreement, any capital grant amount would be understood to include property tax mitigation. For organizations that have already received capital grants, mitigation would require continued tax cancellations. Going forward, this option would use the current funding envelope for capital grants to mitigate property taxes. Property tax exemptions would start once an organization begins using the property for an exempt purpose.

Option 3: Property Tax Exemption Bylaw

This option would result in a municipal property tax exemption by bylaw for properties that are held by a non-profit, under construction and planned to be used for a purpose that is tax exempt under the MGA and COPTER. An exemption for this type of property would require that a bylaw be passed by Council. Once the bylaw is passed, organizations would have to apply for an exemption. After an application for exemption is approved, the organization would no longer be liable for property tax. They would, however, have to apply once more to qualify for exemption under the provincial legislation, at that point the property would be exempt from both provincial and municipal property taxes.

Option 4: Council Tax Cancellation Policy

This option would provide a cancellation of property tax for properties that are held by a non-profit, under construction and planned to be used for an exempt purpose. The program would require another report to Council to pass a Council policy. The program would be administered along the following parameters:

- A new tax cancellation fund would be established with the specific purpose of cancelling municipal property taxes for non-profits with facilities that are under construction.
- Eligibility for four years begins when all of the following conditions have been met: (1) a building permit has been issued, (2) the foundations for the building have been laid, and (3) an application for cancellation has been submitted to the Assessment business unit.
- Tax cancellations occur once the property is found to be exempt.
- Only municipal property taxes are subject to cancellation.
- Administration would include tax cancellation requests in the semi-annual Assessment & Tax Circumstances Report to Council.

Option 5: Capital Grant Program

This option takes a different approach and allows Council to set up a direct capital grant program for non-profit organizations that are planning to build facilities that are intended to be used for exempt purposes. Parameters of the program would be dependent upon the level of subsidy that Council wishes to provide and the program need not be limited to property tax mitigation, though any grant administered through the program would negate the need for a

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further subsidy for property tax mitigation purposes. The exact parameters of the grant program (i.e., the circumstances and types of organizations that would qualify for a grant) would need to be detailed in a follow up report by Administration to the Standing Policy Committee on Community and Protective Services. Any subsidy under this option would likely be administered by the Community Services and Protective Services department, in a similar fashion to how it currently administers the Property Tax Assistance Program, a tax rebate program for low-income homeowners.

Option Analysis

The key question in choosing one of the options listed above is: what is the policy objective of Council? The effect of the cancellation decisions initiated during the 2010 – 2013 term was to subsidize the construction of specific non-profit facilities. If the goal of Council is to take a comprehensive approach to subsidize the construction of all non-profit facilities, then the best option to achieve that goal is the option that provides the subsidy with the most flexibility, in the most transparent and efficient manner and in a way that stakeholders think will help them meet their objectives.

The table below summarizes Administration's analysis as to how each option fares when analyzed through the policy setting considerations.

Option	Flexibility	Transparency	Equity	Efficiency	Predictability	Stakeholder View
Option 1 – Council Cancellations	+	–	–	+/-	–	–
Option 2 – Current Grant System	+	+	N/A	+	+	–
Option 3 – Exemption Bylaw	–	+/-	+	–	+/-	+
Option 4 – Cancellation Policy	–	+	+	+/-	+	+/-
Option 5 – Grant Program	+	+	N/A	+	+/-	–

Flexibility

The tax cancellation option (Option 1) is flexible; it allows Council to cancel taxes only in specific instances. Even once a Notice of Motion is filed with the City Clerk's Office, the approval of each cancellation is still subject to a Council vote. Option 2 would require that grants awarded through the current system take property tax mitigation into account but the awarding of capital

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grants would remain under the same process, it also implies that organizations that do not receive grants should not expect to receive any form of property tax mitigation.

Option 3, a property tax exemption bylaw is the least flexible of the potential options; it would encode an entitlement into The City's bylaws and would likely be difficult to remove. In addition, exemption decisions are reviewable by the Assessment Review Board meaning that the wording of the bylaw could be subject to review and interpretation by the Board, which may broaden the scope of the exemption further than intended. If an exemption were approved and an organization decided to change course and sell the property without developing it, the taxes for all years but the current year would not be recoverable.

A tax cancellation policy (Option 4) would be less flexible than other approaches. Such a policy would likely create an entitlement for property tax cancellation among the non-profit community, and such entitlements are difficult to withdraw once they have been put in place.

A grant program (Option 5) offers Council the most flexibility of any option in terms of the parameters of the program, applying any specialized criteria (i.e., identifying specific entities that could qualify for the grant and excluding entities that would not), budgeting for the program and the duration or end the program, if necessary.

Transparency

While Option 1, tax cancellation on a case by case basis, offers the most flexibility of any option, it is also the least transparent of any option. Under Option 1, the application process, insofar as it exists, requires approaching a Councillor for a cancellation and, as stakeholders reported, not all non-profits are in a position to make those kinds of requests. Once a request is granted, any cancellations that do occur are accommodated through a fund that was not intended to be used for requests to subsidize non-profit organizations. Option 2 is one of the most transparent because non-profit organizations are generally familiar with The City's grant programs, the programs are budgeted, administered in an open and obvious fashion, and subject to scrutiny, and only entities receiving capital grants would receive money for tax cancellations.

Option 3, exemption by bylaw, is less transparent than Option 2 because the nature and extent of the subsidy to non-profit organizations would not be visible or direct; rather it would be paid indirectly by other taxpayers through a higher rate for property and business taxes. That being said, the initial decision to exempt organizations from taxes must be effected through a bylaw and the bylaw process which includes three readings before Council. As such, the implementation process could be considered to be transparent.

Each of Options 4 and 5 would solve the transparency issues associated with Option 1 by formalizing the application process for mitigation and by ensuring that the funds used to administer a program would be budgeted specifically for that purpose. Further, if using a grant program as in Option 5, Council would be able to specify the types of organizations that would be eligible for enhanced funding.

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Equity

Equity is especially important in the context of the property tax system. Option 1 is likely to be the least consistent in its treatment of non-profits, and therefore the least equitable, because cancellations under Option 1 would not occur through a formalized, open and easily accessible process. Options 3 and 4 provide solutions to the equity related issues with the status quo of Option 1 by providing a formalized and obvious process and equitable treatment for qualifying organizations managed by administration. However, Option 3, implementing a property tax exemption bylaw, could lead to some unanticipated tax avoidance techniques that challenge equity more broadly. Once a decision has been made to exempt an organization from taxation through Council bylaw, and the calendar year has lapsed, the decision cannot be revoked. The entity could dispose of the subsidised property without ever putting it to an exempt use. Options 2 and 5 are grants and therefore outside taxation policy and so the principle of equity is less applicable and important when considering them.

Efficiency

Which option would be most efficient depends on the volume of cancellation requests received; this is a variable that is unknown. It is, however, expected that the number of requests for cancellation will increase above the current four given that non-profit stakeholders have been consulted and the issue has been widely communicated.

If the volume of tax cancellation requests remains as low as it is currently, then Option 1 may be an efficient option because cancellations occur at the Council level and decisions can be made in a short time frame, with the least burdensome process for Administration. Stakeholders, however, noted that Option 1 is the most burdensome for the non-profit community. In addition, Option 1 would require continued Notices of Motion from Council, and require Council consideration for individual cancellations on an ongoing basis. If the volume of requests changes somewhat, Option 2 would be more efficient as it would narrow the number of applications using existing eligibility criteria and would work using current City grant processes. Options 3, 4 or 5 could accommodate a larger volume of requests for tax mitigation efficiently with the allocation of more resources from Administration. Both Option 3 and Option 4 would require a new process to be administered by the Assessment business unit. Option 3 could be complicated by the Assessment Review Board appeal mechanism associated with property tax exemptions. Option 4 could “piggyback” on the current Assessment & Tax Circumstance Report process and in this way be an efficient option. Option 5 would require a new process to be administered by Community Services and Protective Services, but would not require annual Council approval beyond the approval of the program in detail and the continued operation of the program through the business planning and budget cycle.

Predictability

Option 1, the status quo, is not predictable for The City as it is not a budgeted subsidy program. The tax cancellations that do occur are currently accommodated through a fund whose purpose is to correct inaccuracies in assessments in previous years and not to provide an additional subsidy to non-profit facilities that are under construction or renovation. There is also a concern that some entities are able to benefit from a property tax cancellation and then dispose of the property, or part of the property, for it to be used for a non-exempt purpose. This will likely occur in the case of a recent cancellation, an organization that received a cancellation now

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intends to dispose of a portion of its holding for a residential development by a private developer(s). Option 1 is also not predictable to non-profit organizations because it relies upon the discretion of individual Councillors to bring a Notice of Motion to the floor and the discretion of Council as a whole to approve the final amount of the tax cancellation.

Option 2 is the most predictable option because capital grants from The City to non-profit organizations are subject to a rigorous process and could be funded through the current funding envelope. Organizations like cSpace and the Calgary Folk Festival, which both received capital funding from The City, had clauses in their funding agreements that stated that they were responsible for the property taxes on the property they were developing. Such a clause did not, however, prevent these organizations from pursuing alternate forms of mitigation through Council. Future funding agreements need to explicitly include property tax mitigation as part of the grant agreement.

The effects of an exemption bylaw (Option 3) on tax rates would be difficult to know ahead of time, and the cost of the mitigation program to taxpayers would not be subject to budgetary consideration. Instead, tax revenue would be foregone as a matter of course, but at an unpredictable rate year to year. In addition, property tax exemption decisions made by bylaw could be appealed to the Assessment Review Board this presents an addition level of unpredictability to both The City and the non-profit community. The wording of the bylaw would be subject to review and interpretation by the Board, which may broaden the scope of the exemption further than intended. Non-profit organizations, on the other hand would see a relatively predictable subsidy in the form of a tax exemption bylaw. It is also important to note that once the decision to exempt an organization has been made, and the calendar year has lapsed, the decision is not revocable and a non-profit could dispose of a property without ever putting it to an exempt use. So implementing a property tax bylaw could lead to some unanticipated tax avoidance techniques.

Option 4, a cancellation policy, would allow Administration a greater ability to budget for the cost of providing a subsidy to non-profit facilities that are under construction or renovation. In addition, there would be no question that the property would be used for a tax exempt purpose, as that would be a requirement for the taxes on it to be cancelled. A Council policy with respect to tax cancellations would also provide non-profit organizations with a predictable tax mitigation program.

A grant program (Option 5) could be structured in a manner that is easier to manage from a budget perspective. As one example, Council could cap the amount of funds that are to be distributed for tax mitigation purposes. On the other hand, if there were a guaranteed grant for the full amount of funds required to offset current year taxes to any organization that applied, then the program would be less predictable than other options.

Stakeholder View

Stakeholders were concerned with the amount of discretion held by Council and the unpredictability associated with Option 1. They noted that the resources associated with ensuring a successful Notice of Motion would be prohibitive to some organizations. Their overall impression of this option was that it is not transparent, overly cumbersome and neither

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equitable nor consistent in application. Religious groups in particular, were concerned about their ability to find success under the current system.

Those that already receive capital funding from The City believed that any taxes levied against the property they were developing amounted to a clawback of funding that had already been granted. As such, they believe there was merit to Option 2 in which they would receive additional funds as a matter of course. Internal stakeholders from Community Services and Protective Services were concerned that choosing this option would put an increased burden on the current funding envelope and may result in fewer projects overall. Those that have not received capital funding from The City thought this option was unfair, as it offers additional assistance to organizations that have already benefitted from City funding.

Stakeholders believed that a defined administrative process (as laid out in Option 3) was beneficial. They also believed that the ability to appeal an administrative decision to a tribunal was positive. Many stakeholders expressed satisfaction with the current administration of exemption processes by The City. They also expressed the most confidence in the exemption option with respect to predictability. Stakeholders expressed concerns about the timeframe for exemption being limited to the construction period for an improvement; some believed that property should be exempt while it is being held prior to construction, as well as during the construction phase.

Stakeholders were concerned that the cancellation conducted via Option 4 would occur only after the property was found to be exempt. They believed that such a system would place some projects at risk. They did see a benefit, however in an established program with clear rules that is administered through the assessment/taxation system.

Stakeholders were concerned about the flexibility inherent in any granting system considered under option 5; they believed a grant could be taken away at any point and hence such a program was not reliable. Religious groups were also concerned that grant program would not cover their facilities.

Timing

Options 1 and 2 are limited in scope, require no new program and could be implemented without delay. Options 3, 4 or 5 are new programs/policies and would require an additional report to Council.

Summary and Conclusion

Given the discussion above Administration believes that the best course of action, if Council believes that a subsidy for non-profit organizations with facilities under construction is warranted, is to provide a subsidy through a tax cancellation program for qualifying organizations.

While not the most flexible option, a tax cancellation program (Option 4) would be transparent because it would require Council approval every year and the subsidy would be budgeted through a new fund established specifically for the purposes of subsidizing non-profit construction through the tax system, it would be administered equitably among those that

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qualify for the cancellation, and it is the most efficient way to handle larger volumes of request for assistance.

Stakeholders see the benefits of this option because it provides them with a subsidy and a clearly defined process. Stakeholders are concerned, however, about the delay in the mitigation of property taxes until after they have occupied the property and use it for an exempt purpose. This delay comes with significant benefits for The City, most notably time to plan and make adjustments to the budget for cancellations and certainty that the subsidy is applied to property that has qualified for an exempt use.

In summary, this option strikes the right balance for a new subsidy program. It ensures that the subsidy forms a part of the budgeting process, the subsidy is correctly targeted, and the program leverages current processes.

If Council prefers to consider mitigation requests on a case by case basis, or determines that no mitigation should take place, Option 1 would be the most appropriate option. Option 2 offers mitigation to a very limited number of organizations (i.e., only those organizations that currently receive a capital grant from The City).

Stakeholder Engagement, Research and Communication

Every non-profit that currently holds property and is exempt from taxation (899) was contacted via mail to provide feedback on the issue of mitigation for non-profit facilities that are under construction. A letter was sent to each organization inviting them to register their interest in participating in a stakeholder feedback session by registering online, by phone or via email. Over 60 organizations responded to the letter. In April, a total of five external stakeholder feedback sessions were held with 44 participants from 37 organizations. In addition, there was a formal stakeholder feedback session for internal stakeholders from Finance, Recreation and Community & Neighbourhood Services.

Each session included an education portion, where the essence of the issue was outlined, and a feedback portion, where each option was presented and stakeholders were asked to express their perceived benefits and concerns for each option. Of those that participated in the sessions 91 per cent believed that the session accomplished its objectives. Participants were also asked to indicate if they were thinking about or in the process of building a new facility.

The feedback was themed by the engage! business unit and those themes were used in preparing the report. Stakeholder views were included as one of the policy setting considerations for analyzing the options.

Strategic Alignment

Pursuing any formalized mitigation program would result in a departure from provincial tax exemption policy, which is generally aimed at providing exemptions for non-profits that have assumed occupancy and are using a property for an exempt purpose. Instituting a tax

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cancellation policy would result in alignment between the cities of Edmonton, Lethbridge and Calgary.

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.”

Social, Environmental, Economic (External)

Social

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

Environmental

No known environmental impacts.

Economic

If Council chooses to address this issue with a mitigation program, additional funding will be required, which will require an increase in the tax rate for all taxpayers. 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, which are based only on anecdotal information and are not reliable, suggest that the fund should be \$3.2 million on an annual basis to ensure that every organization that qualifies, will receive a full refund of their taxes. This amount would ensure that the fund is large enough for a number of expected high value projects funded in part by The City (e.g., National Music Centre, Decidedly Jazz Danceworks and other projects funded through Municipal Sustainability Initiative funding).

Current and Future Capital Budget:

There are no capital budget implications associated with the recommendation.

Risk Assessment

The tax cancellation policy minimizes the risks associated with addressing this issue. 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 the property is exempt. With that said, through adopting the recommendation and passing a policy, Council binds itself to funding valid cancellation requests in future years.

Approval(s): Stanley, Rollin concurs with this report. Author: Jankovic, Michael T.

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Priorities and Finance Committee
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NON-PROFIT TAX MITIGATION REPORT

REASON(S) FOR RECOMMENDATION(S):

- Council directed Administration to come back with a report with recommendations for a mitigation program.
- Addresses a tax policy issue with a tax-oriented solution.
- 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.

ATTACHMENTS

1. Explanation of Property and Business Tax Exemptions
2. Types of Subsidies Used by The City

Approval(s): Stanley, Rollin concurs with this report. Author: Jankovic, Michael T.

EXPLANATION OF PROPERTY AND BUSINESS TAX EXEMPTIONS

In Alberta, property tax exemptions are generally legislated by the provincial government through the *Municipal Government Act* (MGA) and the *Community Organization Property Tax Exemption Regulation* (COPTER), which is then administered by municipalities. Business tax exemptions are generally part of the annual *Business Tax Bylaw* passed by Council, though there are provincially mandated statutory exemptions for businesses operated by the Crown and airports and a regulatory exemption for offices of members of the legislative assembly.

When a property or business tax exemption is granted by The City of Calgary, the remaining property or business taxpayers must pay the taxes that would have otherwise been paid by the exempt property or business owner. This is due to the way in which the property and business tax rates are calculated (i.e., dividing the amount of revenue required by the taxable assessment base as in Figure 1).

Figure 1

$$\frac{\text{revenue required}}{\text{taxable assessment base}} = \text{tax rate}$$

Any previously taxable property or business that is rendered exempt by virtue of ownership and/or use is removed from the taxable assessment base. As shown in Figure 2, this results in an increase to the tax rate. This effect is small on an individual basis but is substantial when all exempt properties and businesses are considered.

Figure 2

$$\frac{\text{revenue required}}{\text{taxable assessment base} \downarrow} = \text{tax rate} \uparrow$$

Therefore, the overall effect of a property or businesses tax exemption is that the remaining tax payers provide an indirect subsidy to organizations that are exempt from taxation.

Current provincial property tax exemption legislation does not exempt organizations that, though non-profit, are structured to benefit their members (i.e. limited benefit) rather than the greater community. These types of organizations are, however, generally exempt from business tax due to provisions in the *Business Tax Bylaw*.

In approaching this issue, it is useful to look at the rationale for property and business tax exemptions. The Government of Alberta has produced a guide for property tax exemption and included in the guide are the principles on which property tax exemptions are based. They are:

- advancement of 'public benefit', in terms of charitable and benevolent purposes, community games, games, sports, athletics, recreation, and educational purposes;
- recognition of the 'volunteer contribution and fund raising component' that most often characterizes 'not for profit' status organizations;
- advancement of youth programs and community care for the disadvantaged; and,
- appropriate access to non-profit facilities.

Business tax exemptions are determined through Section 18 of The City's annual *Business Tax Bylaw*. The current exemption provisions were established through the business tax exemption

EXPLANATION OF PROPERTY AND BUSINESS TAX EXEMPTIONS

policy process in 2009. The stated purpose of the business tax exemption policy “is to foster a business tax exemptions framework that:

- a) is largely consistent with the property tax exemptions policy under the MGA because both are municipal taxes;
- b) relieves certain businesses, that provide a specified benefit to Calgary and its residents, of the obligation to business tax; and
- c) promotes a level playing-field for all business entities with commercial activities.”

The Concept of Use

In general, property tax exemptions related to non-profit organizations and contained in the section 362(1)(n) 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” was the subject of judicial interpretation in a 2008 court case between The City of Edmonton and North Pointe Community Church. In the decision the court found as follows with respect to the exemption provided for churches in section 362(1)(k) of the MGA,

In my view, the term “used” is not ambiguous. Intention to use does not equate to use... I note that nowhere in the MGA is the term “used” qualified by “actually” or any similar adverb. However, the MGA does contain a number of provisions where property is described as “intended for or used”.

...

There is nothing in the exempting provision or any reasonable interpretation of it that somehow makes the intent of the religious body or the stage of construction of the building relevant to the applicability of the exemption, except to the extent that a certain level of completion facilitates actual use.

As per the decision, Administration does not approve an exemption until a property is occupied and used for an exempt purpose.

TYPES OF SUBSIDIES USED BY THE CITY*Tax Exemption for Non-Profits: An Indirect Operating Subsidy*

In the literature on the property tax, it is generally accepted that property tax exemptions for non-profit organizations are an indirect subsidy provided to those who relieve the burdens of government in some respect. It is likely for this reason that the exemption does not begin until a property is actively operating with an exempt use. Thus it is helpful, when thinking about exemptions for non-profits, as an operational subsidy.

Exemptions are thought of as an indirect subsidy because when a property or business tax exemption is granted by The City, the remaining property or business taxpayers must pay the taxes that would have otherwise been paid by the exempt property or business owner (i.e., The City does not pay the subsidy directly to the organization). This is due to the way in which the property and business tax rates are calculated (i.e., dividing the amount of revenue required by the taxable assessment base as in Figure 1).

Figure 1

$$\frac{\text{revenue required}}{\text{taxable assessment base}} = \text{tax rate}$$

Any previously taxable property or business that is rendered exempt by virtue of ownership and/or use is removed from the taxable assessment base. As shown in Figure 2, this results in an increase to the tax rate. This effect is small on an individual basis but it is substantial when all exempt properties and businesses are considered.

Figure 2

$$\frac{\text{revenue required}}{\text{taxable assessment base} \downarrow} = \text{tax rate} \uparrow$$

Therefore, the overall effect of a property tax exemption is that the remaining taxpayers provide an indirect subsidy to organizations that are exempt from taxation.

Tax Cancellation for Non-Profits: A Direct Capital/Operating Subsidy

In contrast to tax exemption where the subsidy is paid indirectly by taxpayers, tax cancellations that seek to provide assistance to non-profit organizations are a direct subsidy from The City to the non-profit organization whose taxes are cancelled, usually through a credit to their property tax account.

Grants for the Construction of Non-Profit Facilities: A Direct Capital Subsidy

The City has a long history of partnering with select non-profits to develop facilities on both City land and non-City land for public benefit. Through funding agreements or facility lease/license agreements with these non-profits, The City provides grant funding to offset a share of the construction costs for approved capital projects undertaken by the non-profits to build and maintain these facilities. Sourced through City budget appropriations, the grants are a direct subsidy to the non-profit. Where construction-period property taxes are levied by The City on a capital project, the non-profit can submit property taxes paid for reimbursement through the capital grant. This subsidization of property taxes is only available only to non-profits in a partnership relationship with The City.

Operating Grants: A Direct Operating Subsidy

The City has relationships with specific autonomous non profit organizations that provide social, recreational, arts, learning, tourism, parks, and community services to enhance the liveability and sustainability of Calgary communities. The City provides grants to these non-profits to support operating or programming costs, based on a specific direct-funding relationship with each non-profit. The level of operating subsidy and budget support provided to each non-profit varies according its funding relationship.