

ALTERNATIVES FOR THE COLLECTION OF THE BUSINESS IMPROVEMENT AREA LEVY

EXECUTIVE SUMMARY

This report responds to NM2016-33, adopted by Council on 2016 December 06, as sponsored by Councillors Pootmans, Chabot, Carra, and Sutherland.

Provincial legislation currently specifies that Business Improvement Area (BIA) levies must be based on the assessment of taxable businesses. The City will discontinue preparing business assessments in 2019 when the process to consolidate the municipal business tax with the non-residential property tax will be complete. Administration has investigated alternatives to the collection of the BIA levy through business tax. In other jurisdictions with BIAs but no business tax, the BIA levies are collected through the non-residential property tax systems.

The alternatives for the collection of the BIA levy are:

- An additional levy to the non-residential property tax
- A voluntary membership levy
- An additional levy to business licence fees

In reviewing the alternatives using criteria for consideration, an additional levy to the non-residential property tax continues to be the most viable option for collecting BIA levies. The specific parameters of this option are contingent upon changes to provincial legislation and Regulations that are expected later this year, though timelines are uncertain.

ADMINISTRATION RECOMMENDATION

That the Priorities and Finance Committee recommend that Council receive this report for information.

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2016 December 06 Combined Meeting, Council adopted Notice of Motion NM2016-33, brought forward by Councillors Pootmans, Chabot, Carra and Sutherland as follows:

“NOW THEREFORE BE IT RESOLVED that Council direct Administration to prepare a report on the alternative methods for collection of the BIA levy in Calgary; the method to inform all of the businesses along those main streets in regard to the budgets and AGMs as there may be limitations under FOIP and to report back through Priorities and Finance Committee no later than March 21, 2017.”

On 2017 January 23, Council approved the annual Business Revitalization Zone Budgets through C2017-0078.

On 2017 January 23, Council passed the annual 2017 Business Improvement Area Tax Bylaw (3M2017), which includes adopting the business assessments, and methods of preparation and collection used for municipal business tax set out in the 2017 Business Tax Bylaw (1M2017).

On 2017 January 23, Council passed the annual 2017 Tax Rates of Business Improvement Areas in The City of Calgary (4M2017).

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On 2016 November 15, Council passed the annual Business Tax Bylaw (Bylaw 1M2017), that directs Administration to prepare assessments of every taxable business premises for municipal budgetary purposes, payable by the owner/operator of the business, regardless of whether the premises is owned or leased.

On 2012 April 09, through PFC2012-35, Council approved eliminating the municipal business tax in 2019, when the consolidation of business tax revenues into the non-residential property tax is complete.

BACKGROUND

The Municipal Government Act (MGA) and the Business Improvement Area Regulation AR 93/2016 (Regulation) allow municipalities to establish BIAs and collect the levy on their behalf. This legislation is under review by the Government of Alberta as a part of modernizing the MGA, updating its regulations and developing a City Charter for Calgary.

There are 11 BIAs in Calgary and an estimated 5,100 taxable businesses that pay BIA levies through The City's business assessment and business tax process. The levy enables BIA members to fulfill their mandate purposes as set out in the MGA which are: to improve, beautify and maintain property in the zone; develop, improve and maintain public parking; and, promote the zone as a business or shopping area. The total 2017 BIA levy reported in C2017-0018 is \$3,781,373. The City provides additional professional and administrative support through Calgary Neighbourhoods, Law, City Clerk's and Finance.

During the 2012 preparation for implementing the consolidation of the business tax with the non-residential property tax, Administration indicated that until an alternative method for the collection of the BIA levy was established by the Government of Alberta, it was prepared to continue collecting the levy using business assessment and taxation. BIAs were surveyed at that time and indicated support for advocating for a levy on non-residential property tax. In the MGA review and City Charter recommendations The City requested that the non-residential property tax system be considered as the mechanism for the collection of the BIA levy. This option also has the support of the City of Edmonton. While the Province has not yet provided the legislative changes, to date, the Province has indicated support for a legislative change that would allow the collection of the BIA levy through the non-residential property tax.

Through NM2016-33, Council has asked Administration to explore and report on alternatives with the additional consideration for information businesses receive under the existing provisions, and what may be provided once The City discontinues the business tax (Attachment 1).

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The purpose of this report is to provide information on alternative methods for the collection of the BIA levy in Calgary. The alternatives are presented with consideration for the method for informing businesses of BIA Annual General Meetings and budgets, and also with respect to limitations under the Freedom of Information and Protection of Privacy Act (FOIP).

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Certain sections of the current Regulation require The City to take reasonable steps to inform businesses of certain events:

- a. When a BIA is considered being established (s.3);
- b. When the boundaries of BIA might be changed (s.8);
- c. Notice of a proposed BIA budget (s.11); and
- d. Disestablishment of a BIA (s.26).

Notification of Annual General Meetings is undertaken by the BIA boards and staff, though it is not mandated by the current Regulation.

In advance of this Notice of Motion, Administration surveyed other assessment authorities and compared the legislation of other major cities. Across Canada, provisions related to raising levies for BIA-type initiatives are limited to using property and business premises bases. Attachment 2 summarises the findings: other major jurisdictions that have BIAs but no municipal business tax use a non-residential property base for the collection of the BIA levy. BIAs in Vancouver and Toronto include both property owners and businesses on their boards. Vancouver provides BIAs with information to contact businesses; Toronto does not.

Non-Assessment Related Levy Collection

Two other alternatives were identified through discussions with internal and external stakeholders: raising the BIA levy through a voluntary BIA membership levy, or as an addition to business licence fees for businesses operating within a BIA. These are discussed in the Options section.

Criteria for Consideration

In evaluating potential alternatives, privacy was considered first. Property owner name and mailing address is considered to be “personal information” and subject to the protections of Freedom of Information and Protection of Privacy Act (FOIP).

The City is able to provide BIA staff with the trade name, business owner's name, business location, and business mailing address for businesses within BIA boundaries operating under a City of Calgary business licence. Business licence information is not “personal information” under FOIP and is not collected for the purpose of determining a tax liability or collecting a tax. Although not all business types are required to have a business licence, important retail, entertainment and foodservice business types that would be operating along the main streets of BIAs are required to be.

Solutions for collecting the business information for businesses that are not required to be licenced by The City are being investigated. Currently these business records are maintained in systems that will not be maintained after 2019. Any business records shared with BIAs would have to be limited to the specific purposes of the BIA Regulation and any City bylaws, and where disclosure is permitted under FOIP.

Efficiency was also considered in evaluating the alternatives. The levy should be relatively easy to administer in an effective way in order to minimize administration costs.

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It was assumed that if The City was collecting the levy, it would continue to be required to inform taxpayers within the designated area if there was a petition in support of or in opposition to establishing, changing the boundaries of, or disestablishing a BIA.

In order to identify other issues that potential alternatives should address, Administration met with BIA representatives. Administration also invited The Chamber of Commerce and the Calgary Building Owners and Managers Association (BOMA) to provide their comments.

The principal issues raised by BIA representatives were related to how using an additional levy to the non-residential property tax may affect BIA mandates and visibility, the cost of the levy to individual members, and the stability and predictability of levy revenues. Attachment 3 provides information on how the alternatives address each of these issues.

Alternatives

Option 1: Additional Levy to Non-Residential Property Tax

Under this Option, once the business tax is discontinued, the basis for collecting the BIA levy would be non-residential property assessments already prepared for the purposes of levying the municipal and provincial tax. With enabling legislation, the BIA levy would be an additional levy to the non-residential property tax payable within the BIA boundaries, and collected using property tax systems. The payment of the BIA levy to The City would be the responsibility of the property owner. Typically, property owners distribute proportional shares to tenants as they do now with property tax.

Membership in the BIA would be automatic for both property owners and businesses within the BIA boundaries. The parameters of this Option are contingent upon changes to provincial legislation and regulations.

This Option would require a modification to the current tax billing system to accommodate the BIA levy on the non-residential property tax bill. The modification would require an estimated \$500,000 to \$750,000, with approximately one year for development.

The City would continue to mail property owners and businesses on record the appropriate budget and Council meeting notices, eventually migrating to a web platform on Calgary.ca. Information on how to contact BIA offices for voter information, and board eligibility and nomination would be included in City communications. All other communications would be the responsibilities of the BIAs, using the business record information permitted under FOIP.

Option 2: Volunteer Membership Levy

Under this Option, BIA-type associations would be established outside of the Regulation. Membership would become a voluntary arrangement, and funding or revenue analogous to the levy would be collected by members without using City tax systems, assessment functions, or business record information. This Option is not supported by the framework of existing legislation.

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Depending on the nature of their relationship to The City, Option 2 presents no associated FOIP issues or cost to The City. The costs of administration to collect the voluntary fees would be borne by voluntary members as part of their annual budgets. Methods of informing businesses within a zone or area in regard to the budgets and AGMs would be developed by the membership. Investigation did not identify any voluntary business association types with a mandate similar to existing BIAs.

Option 3: Additional Levy to Business Licence Fees

Under this Option, as above, BIA-type associations would be established outside the Regulation and the levy would be paid to The City through an addition to business licence fees for businesses operating within BIA boundaries. Business Registry has confirmed that this Option could be administered through their business unit.

As above, this Option is not supported by the framework of existing BIA legislation. Membership would be limited to businesses that operate under a City of Calgary business licence; and, not all businesses within a BIA's boundaries would be contributing towards the levy. Head offices, medical centres, lawyers and accountants are some examples.

The City would mail licenced businesses the appropriate budget and Council meeting notices, eventually migrating to a web platform on Calgary.ca. All other communications would be the responsibility of the BIAs, using City business licence information that can be disclosed under FOIP.

Option 4: Assessing Businesses Solely for BIA Purposes

Under this Option, once the business tax is discontinued, Administration would be required to continue to prepare business assessments within BIA boundaries, solely for the purpose of the BIA levy. The BIA rate would be applied to the business assessment and collected from business owner/operators using a new billing and collection system developed specifically for that purpose.

This Option would require significant financial investment. A new core assessment valuation and administration system is currently under construction to replace the existing system that will be unsupported at the end of 2019. It is being built without a business assessment module and so would require an enhancement in order to perform the business assessment function.

In addition, the current business tax billing systems and interfaces are nearing obsolescence. Continuing to collect the BIA levy through business tax billing and collections would require the development of replacements. An estimated \$2.5 million in capital expenditures would be required to develop this new functionality for both assessment and tax systems (Attachment 3). Work would need to begin immediately.

The City would continue to mail taxable businesses the appropriate budget and Council meeting notices, eventually migrating to a web platform on Calgary.ca. All other communications would be the responsibility of the BIAs, using the business information permitted by FOIP.

Conclusion

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Administration's review was limited to the questions raised in NM2016-33 and no recommendation to adopt any of the Options is being made at this time.

Based on the considerations above, Option 1 – collecting the BIA levy through an additional levy to the non-residential property tax – remains the most viable option at this time. The specific parameters of this option are contingent upon changes to provincial legislation and regulations that are expected later this year, though timelines are uncertain.

In terms of providing information to BIAs and businesses, the Province has indicated a draft of the amended BIA Regulation will be available for stakeholder feedback this year. It may address some of the FOIP concerns that have been identified, and also contain other amendments that may need to be addressed.

Stakeholder Engagement, Research and Communication

BIA representatives were invited to "Open House" sessions held on December 20 and January 16. Nine of the eleven BIAs participated. Administration also invited The Chamber of Commerce and the Calgary Building Owners and Managers Association (BOMA) to provide their comments. The Chamber did not take a position on the Notice of Motion. BOMA indicated that a method that did not involve property tax would be more appropriate as BIAs primarily benefit the businesses and retailers who are tenants in an owner's buildings, but not the building owners themselves.

Administration met with Councillors Pootmans, Carra, Chabot, and Sutherland to discuss the investigation results and reported back to the BIAs on 2017 March 15 with its proposed alternatives. Although there was general BIA support for using an additional levy to the non-residential property tax, the potential for negative impacts with extending BIA membership to include non-residential property owners was of considerable concern for some BIAs.

The report is a collaborative effort between Assessment, Calgary Neighbourhoods, Finance, Calgary Building Services, and the Law department.

Strategic Alignment

The City requested that the non-residential property tax system be considered as the mechanism for the collection of the BIA levy in the MGA review and City Charter submissions. The Government of Alberta has indicated a draft of the amended BIA Regulation, along with other Regulations, will be available for stakeholder feedback this year.

Social, Environmental, Economic (External)

No implications were identified.

Financial Capacity

Current and Future Operating Budget:

No operating budget implications are associated with the recommendation.

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Current and Future Capital Budget:

No capital budget implications are associated with the recommendation.

Risk Assessment

Any future recommendation for the assessment and collection of the BIA levy would need to assess Council's authority to implement the scheme, and whether the scheme complied with the legislation in effect at that time.

Information about potential risks associated with tax and assessment systems costs for each of the options are outlined in Alternatives Analysis and Costs in Attachment 3.

REASON(S) FOR RECOMMENDATION(S):

Administration explored alternative options for collecting the BIA levy along with related issues regarding information sharing under FOIP. This report is provided for information purposes only.

ATTACHMENTS

1. NM2016-33
2. BIA Levy and Communications Alternatives Across Canada
3. Alternatives Analysis and Costs