

Background and Previous Council Direction

Background

Property Tax Exemptions for Non-Profit Non-Market Housing

In 2023, Council approved Home is Here: The City of Calgary's Housing Strategy 2024-2030 ([CD2023-0749](#)), including action 2.A.2 which directs the creation of a bylaw under *Municipal Government Act (MGA)* section 364 to provide property tax exemptions for non-market housing held by non-profit organizations, which have not been eligible for property tax exemptions in the past.

Shortly after the Strategy was approved, the Court of King's Bench issued a decision in [McDonald v Edmonton \(City\), 2023 ABKB 615](#) which resulted in a new interpretation of the *Community Organization Property Tax Exemption Regulation (COPTER)*. This new interpretation resulted in The City recognizing tax exemptions for some non-market housing providers for the first time, pursuant to *COPTER* and section 362(1)(n) of the *MGA*.

From the time of the Court's decision through early 2024, Administration worked to understand the implications of the decision, identify properties that may be eligible, and to develop and communicate a new application process. In 2024, there were approximately 500 residential properties exempt under the provisions of the *MGA* and *COPTER* impacted by the McDonald v Edmonton decision, representing \$5.72 million in property tax savings for subject property owners.

Despite this, some properties held by non-market housing providers remain taxable, predominantly those who target their services to equity-deserving populations, such as Indigenous people or seniors, as the restriction of the housing programs to these populations constitutes a "restriction" under the meaning given to it in *COPTER* s. 7. While these provisions are presumably intended to prevent discriminatory organizations from benefitting from tax exemptions, the current framework ultimately prevents some organizations providing non-market housing for equity-deserving populations from benefitting from tax exemptions for their properties.

In 2024, the Government of Alberta passed the *Municipal Affairs Statutes Amendment Act, 2024* (commonly referred to as Bill 20), which amends section 363, adding a new provision, section 363(1)(e), of the *MGA* to provide additional exemptions for affordable housing, as determined by criteria in Ministerial Order No. 2024-011 from the Minister of Seniors, Community and Social Services. These exemptions become effective in 2025, with the Assistant Deputy Minister, Housing Division designating a list of properties that meet the prescribed criteria. The list of properties provided *MGA* s. 363(1)(e) exemptions includes at least 153 properties that were taxable in 2024 and will be at least partially exempt from taxation in 2025.

The criteria under the Ministerial Order for a s. 363(1)(e) exemption requires, among other things, that the property's below-market rental rates are defined under an agreement with an order of government, which may not be true of all non-market housing operating in Calgary

(such as those who had an agreement for funding to provide affordable housing for a set period of time which has now lapsed, while the provider continues to offer affordable rates after the agreement’s expiry).

The proposed bylaw, enabled under *MGA* section 364, would fill these gaps by providing exemptions based on The City’s criteria, which are not limited to the criteria under *COPTER*’s provisions, or the requirement under the Ministerial Order to operate under a government agreement.

Non-Profit Tax Mitigation Program

While some property tax exemptions are based purely on the ownership of the property (e.g., government-owned property is generally exempt), other types require the property to be **used** for an exempt purpose to qualify. This “use-based” type of exemption is based on the principle that certain property uses provide a broad public benefit and is commonly applicable to non-profit organizations. This “use-based” type of exemption will also apply to affordable housing properties exempt under section 363(1)(e) of the *MGA*. For consistency, the proposed bylaw under section 364 follows this same approach. This means that during the time these properties are being constructed (and are therefore not being used as housing), they will remain taxable.

Council approved the *Non-Profit Tax Mitigation (“NPTM”) Council Policy* in 2014. The NPTM program supports the development of these properties and equity between properties eligible for ownership-based exemptions and those eligible for use-based exemptions. Eligible organizations may apply to the NPTM program at the time a building permit is issued for their property. Then, once the organization takes occupancy of their property, they may apply for a property tax exemption. Once approved for the exemption, they may receive a tax cancellation for the value of up to 4 years of the municipal property taxes paid during the construction or renovation period.

The NPTM Policy was last reviewed in November 2023, where amendments were made to eligibility criteria to ensure access to the program for additional “use-based” exemption types and to reformat the document to updated policy standards.

The proposed amendments to the NPTM Policy (Attachment 3 of this report) would ensure non-market housing providers, whose property remains taxable until it is in use, may qualify for the NPTM program to receive tax mitigation. This includes both those who would be eligible for tax exemptions under the proposed bylaw, and those that will be exempt under *MGA* section 363(1)(e).

Previous Council Direction

DATE	REPORT NUMBER	DIRECTION/DESCRIPTION
2023 November 28	EC2023-1127	Non-Profit Tax Mitigation Policy Review That Council approve the proposed amended Non-Profit Tax Mitigation Policy as presented.

2023 September 16	CD2023-0749	Home is Here – The City of Calgary’s Housing Strategy 2024-2030 With amendments, Council approved the Housing Strategy 12-3, including action 2.A.2 to enact a bylaw under section 364 of the Municipal Government Act to provide municipal tax exemptions to non-profit non-market housing providers.
2023 July 04	C2023-0688	Housing and Affordability Task Force Recommendations Progress Update (Verbal) That Council direct that Administration consider Council feedback to inform the Corporate Housing Strategy.

Bylaws, Regulations, Council Policies

Below are relevant excerpts of the applicable legislation, regulations and Ministerial Orders that govern the different types of property tax exemptions for non-market housing mentioned in this report, including:

- **MGA s. 361(b)** Property Tax Exemptions for Residences
- **MGA s. 362(1)(n)(iii)** Property Tax Exemptions for Non-Profit Non-Market Housing
- **MGA s. 363(1)(e)** Property Tax Exemptions for Designated Affordable Housing
- **MGA s. 364** Authority to pass a Bylaw for Property Tax Exemptions for Non-Profit Organizations

These excerpts are included to provide an overview of the legislation governing property tax exemptions specific to the non-market housing sector. This includes information on the various criteria that properties must meet in order to qualify, context on how the legislation is evolving, and information on the legislative authorities of Council to enact the proposed bylaw.

In summary, excerpts from the following legislation and regulation are included:

- [Municipal Government Act, RSA 2000, c M-26 \(“MGA”\)](#)
 - [Community Organization Property Tax Exemption Regulation, Alta Reg 281/1998](#)
 - [Social and Affordable Housing Accommodation Exemption Regulation, Alta Reg 12/2022](#)
- [Municipal Affairs Statutes Amendment Act, 2024, SA 2024, c 11](#)
- [Alberta Housing Act, RSA 2000, c A-25](#)
- [Ministerial Order No. 2024-011](#)

Additionally, the *Non-Profit Tax Mitigation Council Policy* is attached to this report (with blacklined proposed amendments for approval) as Attachment 3.

For conciseness, non-relevant content has been removed from the below excerpts, indicated with “[...]”. Direct excerpts of the legislation are in [blue](#).

MGA s. 361(b) Property Tax Exemptions for Residences

Municipal Government Act

Exemptions based on use of property

361 The following are exempt from taxation under this Division: [...]

- (b) residences and farm buildings to the extent prescribed in the regulations;

Social and Affordable Housing Accommodation Exemption Regulation

Tax exemption — Alberta Social Housing Corporation

3 Property that is owned by the Alberta Social Housing Corporation is exempt from taxation under section 361(b) of the Act to the extent of 100% of its assessment.

Tax exemption — former Alberta Social Housing Corporation property

4(1) A property or unit in a property purchased from the Alberta Social Housing Corporation by an affordable housing provider or management body is exempt from taxation under section 361(b) of the Act to the extent of 100% of its assessment

- (a) during any period of time that the Minister of Seniors, Community and Social Services considers is reasonably required by the affordable housing provider or management body or any other affordable housing provider or management body to renovate or repair the property or unit for use as an affordable housing accommodation or social housing accommodation,

- (b) while the affordable housing provider or management body or any other affordable housing provider or management body uses the property or unit to provide affordable housing accommodation or social housing accommodation, and

- (c) during any period of time that the Minister of Seniors, Community and Social Services considers reasonable where the affordable housing provider or management body or any other affordable housing provider or management body intends to use the property or unit to provide affordable housing accommodation or social housing accommodation but the property or unit is vacant.

(2) Subsection (1) does not apply during any period of time that occurs after an affordable housing provider or management body uses the property or unit in circumstances other than those referred to in subsection (1)(a) to (c).

MGA s. 362(1)(n)(iii) Property Tax Exemptions for Non-Market Housing

Municipal Government Act

Exemptions for Government, churches and other bodies

362(1) The following are exempt from taxation under this Division: [...]

- (n) property that is [...]

- (iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

- (A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or

(B) by a non-profit organization, [...]

and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations.

Community Organization Property Tax Exemption Regulation

Interpretation

1(1) In this Regulation, [...]

(b) “charitable or benevolent purpose” means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;

[...]

Non-profit organization

6 When section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation requires property to be held by a non-profit organization, community association or residents association as defined in section 13 for the property to be exempt from taxation, the property is not exempt unless

(a) the organization or association is a society incorporated under the Societies Act, or

(b) the organization or association is

(i) a corporation incorporated in any jurisdiction, or

(ii) any other entity established under a federal law or law of Alberta

that is prohibited, by the laws of the jurisdiction governing its formation or establishment, from distributing income or property to its shareholders or members during its existence.

Meaning of restricted

7(1) In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on

(a) race, culture, ethnic origin or religious belief,

(b) the ownership of property,

(c) the requirement to pay fees of any kind, other than minor entrance or service fees, or

(d) the requirement to become a member of an organization.

(2) The requirement to become a member of an organization does not make the use of the property restricted so long as

(a) membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and

(b) membership occurs within a short period of time after any application or minor fee requirement is satisfied.

(3) Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted.

[...]

Note: COPTER s. 7 is subject to the Court of King's Bench's interpretation in [McDonald v Edmonton \(City\), 2023 ABKB 615](#). Paragraphs 16 – 30 of the decision include key points on this interpretation, including:

- “that whether ‘individuals are restricted from using the property on any basis’ should be interpreted as meaning restricted from participating in the program,” (para. 21)
- “Consequently, providing individual, exclusive access accommodation does not constitute a restriction of use under s 7.” (para. 22)
- “Using the same interpretation, I find that charging rent does not violate s 7. There are no fees to access the services offered at the property.” (para 23)

Exemption under section 362(1)(n)(iii) of the Act

10(1) Property referred to in section 362(1)(n)(iii) of the Act is not exempt from taxation unless

- (a) the charitable or benevolent purpose for which the property is primarily used is a purpose that benefits the general public in the municipality in which the property is located, and
- (b) the resources of the non - profit organization that holds the property are devoted chiefly to the charitable or benevolent purpose for which the property is used.

(2) Property is not exempt from taxation under section 362(1)(n)(iii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

MGA s. 363(1)(e) Property Tax Exemptions for Designated Affordable Housing

Municipal Government Act

Exempt property that can be made taxable

363(1) The following are exempt from taxation under this Division:

[...]

[Added by Bill 20 – See below]: (e) affordable housing accommodation as defined in the *Alberta Housing Act* that is not exempt under section 361 of this Act.

[...]

(3) A council may by bylaw make any property listed in subsection (1)(d) or (e) subject to taxation to any extent the council considers appropriate other than for the purpose of raising revenue needed to pay the requisitions referred to in section 326(1)(a).

Municipal Affairs Statutes Amendment Act, 2024 (“Bill 20”)

Amends RSA 2000 cM-26

2(1) The Municipal Government Act is amended by this section. [...]

(25) Section 363 is amended

(a) in subsection (1) by adding the following after clause (d):

(e) affordable housing accommodation as defined in the *Alberta Housing Act* that is not exempt under section 361 of this Act.

(b) in subsection (3) by adding “or (e)” after “subsection (1)(d)”. [...]

(34) Subsections (24) and (25) come into force on January 1, 2025.

Alberta Housing Act – Section 1

Definitions

1 In this Act,

(a) “affordable housing accommodation” means a housing accommodation designated by the Minister as an affordable housing accommodation under section 31.1(1);

Designation of affordable housing

31.1 (1) Subject to subsections (2) and (3), the Minister may designate a housing accommodation as an affordable housing accommodation if the Minister is of the opinion that in the circumstances the housing accommodation is suitable for designation as an affordable housing accommodation.

Ministerial Order No. 2024-011

THEREFORE, I, JASON NIXON, Minister of Seniors, Community and Social Services, pursuant to section 31.1 (1) of the Alberta Housing Act, hereby:

1. Establish the circumstances under which a housing accommodation is suitable for designation as an affordable housing accommodation are that it must:
 - a. be subject to an agreement between the owner or operator of the housing accommodation and the Government of Canada, Province of Alberta, or a municipality;
 - b. have rental rates which are below market rates, pursuant to the agreement referred to in subclause (a); and,
 - c. be owned or operated by a not-for-profit organization incorporated under the Societies Act, Companies Act, or Business Corporations Act, a management body established under the Alberta Housing Act, or similar organization as determined under this Ministerial Order, that has a stated mission or mandate to serve those in core housing need (as defined in section 8(2)(a) of the Social Housing Accommodation Regulation) or to provide housing to target population groups identified in Stronger Foundations: Alberta's 10-year strategy to improve and expand affordable housing.

2. Delegate to the Assistant Deputy Minister, Housing Division, the authority to designate a housing accommodation as an affordable housing accommodation, in accordance with the circumstances set out in clause 1, including the authority to determine a similar organization under clause 1 (c).
3. Direct the Assistant Deputy Minister, Housing Division, to create and maintain a list of designated affordable housing accommodations to be reviewed and updated at least annually, or upon notification of the transfer of a housing accommodation designated as an affordable housing accommodation under this Ministerial Order.

MGA s. 364 Bylaw Powers for Property Tax Exemptions

Municipal Government Act – Section 364

Exemptions granted by bylaw

364 (1) A council may by bylaw exempt from taxation under this Division property held by a non-profit organization.

[...]

- (2) Property is exempt under this section to any extent the council considers appropriate.

Note: MGA s. 364 is the section empowering the proposed bylaw (Attachment 2 to this report).