NON-PROFIT TAX MITIGATION REPORT (REFERRAL)

EXECUTIVE SUMMARY

This report covers the Council-directed discussions between the non-profit community and Administration with respect to the timing of recommendations for a Council policy to mitigate property taxes during the construction phase of a facility by a non-profit organization. After discussions with the non-profit community, Administration has amended its recommendations to include a transition time frame so that properties can retroactively qualify under the policy starting from 2013 January 01, through an application submitted by 2015 December 31.

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 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) the foundations for the building have been laid, and (3) 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.

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2014 July 21 meeting of Council decided to refer Report PFC2014-0494,

“REFER, Moved by Councillor Chu, Seconded by Councillor Carra, that Report, PFC2014-0494, Non-Profit Tax Mitigation Report, be referred to Administration to return with a report to the 2014 September 02 Regular Meeting of the Priorities and Finance Committee to allow for further discussion with the non-profit community on the timing.”

Report 2014-0494 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 the fact that improvements to the property are under construction, would typically qualify for a property tax exemption."

BACKGROUND

In discussions of Report PFC2014-0494 at Council, it was decided that the Report be referred back to Administration so that the timing of tax mitigation could be further discussed with the non-profit community. It is Administration's understanding that the main stakeholder group that raised concerns with the Report were those that have or are recommended to receive funds from The City designated for cultural space under the Municipal Sustainability Initiative (Cultural MSI Group). These organizations include: Calgary Opera, cSpace Projects, Alberta Ballet, Decidedly Jazz Danceworks, the National Music Centre, and the Calgary Arts Development Authority (CADA). Collectively, these organizations are set to receive $67 million dollars in funding from The City, not including any annual operating grants, tax mitigation for the construction period of their facilities or tax exemptions once those facilities are complete.

As far as Administration is aware, the Cultural MSI Group is the only external group that has raised concerns with respect to the recommendations in Report PFC2014-0494. Their concerns when the report was going to Council were: (1) the timing cancellation period should begin earlier in the development process and (2) that provincial taxes should also be included in the cancellation program. The issue of provincial taxes will not be covered in this report as Council directed Administration to further discuss timing with the non-profit community. Moreover, in Council's deliberation of NM2013-19, the cancellation of cSpace Projects taxes, the issue of provincial taxes was discussed at length. When Council cancels provincial taxes, it does not cancel the amount requisitioned by the provincial government. Therefore, in effect, The City pays twice to cancel provincial taxes; once in the form of a refund to the organization and once in the form of fulfilling the requisition from the provincial government.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

A broader discussion of the tax mitigation program is contained in Report PFC2014-0494 (Attachment). The purpose of this report is to fulfill Council's direction to clarify and discuss timing issues associated with the proposed policy.

In a session attended by Administration and the Cultural MSI group on 2014 August 19 it became apparent that, while clarity was important, it could be achieved in relatively short order in discussions between stakeholders and Administration. The Cultural MSI group was more concerned with the design of the policy and wanted to see a longer, deeper and more immediate subsidy. They agreed that, from their perspective, policy should feature the following:

- A tax cancellation period that begins with a development permit application and extends for up to five years
- Cancellations for approved projects occur on an annual basis
- Both provincial and municipal property taxes are cancelled

Below, each of these requests (with the exception of the request for provincial tax mitigation) is detailed with reasons, and compared to the reasons for Administrations recommendations.

Issue #1: Timing of the Cancellation Period

The Cultural MSI group's first concern was the beginning of the cancellation period, under which the policy would be based upon the issuance of a building permit and the laying of the foundation of the facility, extending until the facility is found to be exempt under the MGA for up to a maximum of four years. The Cultural MSI group stated that their work for the benefit of the community begins at the outset of a project and that it becomes tangible upon the submission of the development permit application, which the Cultural MSI group described as relatively onerous process. It was also noted that previous tax cancellations, through ad-hoc Council Notices of Motion, for cSpace Projects have occurred prior to the construction phase of the project.

There are three reasons for Administration's recommendation of a building permit and the laying of foundation as the beginning of the cancellation period. The first reason is Council's direction from its consideration of Report 2013-0472, which was to bring back options 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." The approach by Administration was always to find the best proxy to represent the beginning of the construction period in order to fulfill Council's direction.

The second reason is conceptual, with a building permit released and the foundations laid, a non-profit has begun putting the property to a use through the physical construction of a facility. It is this use and the effort to return benefits to the community that merits some form of tax relief. This conceptual approach forms the basis of how other Alberta municipalities have addressed this issue.

The third and final reason is alignment with the policies of other municipalities. The cities of Edmonton and Lethbridge have addressed this issue and both municipalities have adopted policies that are based on building permits and foundations being laid. The proposed policy direction is more generous than other municipalities in that the maximum cancellation period has been extended for a period of four years rather than two years as in Lethbridge and Edmonton. The reason for the extension to four years was to allow for projects of a large scope, like the National Music Centre, to receive a cancellation for the entire period that their facility is under construction.

Issue #2: Timing of Cancellation

The second major concern of the Cultural MSI group was the timing of the cancellation. Under the proposed policy direction, a cancellation would occur only after an organization has applied for and has been granted a property tax exemption. Their concern was that many of their grantors, including government funders, do not allow property taxes as an eligible project cost under the grant. The property tax is an operating cost to the organization, a cost for which it is more difficult to find funding.

There were two reasons Administration recommended a cancellation after an exemption has been granted. The first was that risk to The City is minimized by such a design. If cancellations were to be granted on an annual basis The City would not be able to ensure that a given property is eventually used for an exempt purpose. For example, one of the Cultural MSI group members is planning to subdivide its land into multiple parcels, at least one of which is not going to be used for an exempt purpose but rather for a residential development. By doing the cancellation at the back end, The City can assure the use of the property for an exempt purpose at the time of cancellation.

The second reason is, again, alignment with other municipalities in Alberta. The cities of Lethbridge and Edmonton both administer their policies/programs in a similar fashion. In discussions with those municipalities, it was reported that the programs generally run very smoothly, due in large part to the timing of the cancellations.

Issue #3: Transition Time Frame

A transition time frame was not part of the discussions with the Cultural MSI group, however it is an important piece of the policy given that requests for tax cancellation have been delayed since 2013. Administration intended to include a transition time frame as part of the finalized policy and is now presenting the time frame given that this report discusses timing issues. The transition time frame will allow those that would have qualified if the policy had been in place on 01 January 2013 to qualify for the program, provided they apply by 31 December 2014.

Summary and Conclusion

The Cultural MSI group's request is understandable in that they have larger scale projects that are partly funded by The City and may attract significant taxes. In addition, the non-profit purposes for which the organizations are formed ultimately aim to benefit the public. It is important to remember, however, that this policy is intended to be wide in scope and extend beyond those that have closer relationships with The City.

Within this context, it is appropriate to place limits on the amount of tax relief provided to non-profit groups when a property sits vacant or unused for a public benefit. Administration believes that by providing a tax mitigation program that covers the physical construction phase of a project, Council can recognize the contribution of non-profit organizations when the work has started towards the completion of a facility that will eventually be used for a public benefit. Extending the timing of the cancellation period from physical construction, moves The City further away from the practices of other municipalities that have addressed this issue and further away from the concept of use, which is foundational in the current tax exemption legislation. If Council believes additional assistance is required for City related projects then it may be worthwhile to examine those instances on a case by case basis and provide that assistance through a granting process rather than through the tax system.

The question raised with respect to annual cancellation versus retroactive cancellation once a property is found to be exempt, is one of risk. Should a non-profit developing a property carry the tax risk associated with that development or should The City, and all other Calgary taxpayers, carry that risk on their behalf? From this perspective it is clear that non-profit organizations should be the ones carrying the risks associated with their projects up until they start returning public benefit through their use of a completed facility. So, the appropriate timing for cancellation is once the project is completed, occupied and used for a public benefit / exempt purpose.

Stakeholder Engagement, Research and Communication

All those that registered an interest in participating in stakeholder sessions as part of PFC2014-0494 (61 organizations) were sent a 2014 July 31 email asking for further input on the timing of the policy. The only organizations to respond were those in the Cultural MSI group. CADA worked with Assessment to coordinate a meeting between the Cultural MSI group and Assessment staff on 2014 August 19. Input for this report was gathered at that meeting. In addition, the cities of Lethbridge and Edmonton were contacted in order to understand, in more detail, about how their programs actually operate which turned out to be in accordance with how the programs are described in their respective policies.

Strategic Alignment

The recommendations align with the policies of other municipalities. It is also in keeping with the spirit of the provincial legislation by continuing to require a physical use of the property for some type of tax relief.

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

To operate a mitigation program, 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. Some organizations have indicated that the structure of the program (i.e. cancellation upon exemption and cancellation only of municipal property taxes) may be difficult from a cash flow perspective given that property tax must come from operating, rather than capital funds.

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 municipal 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., those in the Cultural MSI group).

Current and Future Capital Budget:
There are no capital budget implications associated with the recommendation.

Risk Assessment
The tax cancellation policy framework 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.

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):

- Council directed Administration to come back with a report with recommendations for a mitigation program while a property is under construction.
- Conceptual alignment with the provincial legislation, in that the policy requires that the property be put to use (in this case for the construction of a facility).
- Aligns with the policies that address this issue in other Alberta municipalities.
- 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
PFC2014-0494 - Consolidated