

Chief Financial Officer's Report to  
Priorities and Finance Committee  
2019 March 05

ISC: UNRESTRICTED  
PFC2019-0237

## **2019 Business Improvement Area Tax Bylaw Amendment**

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### **EXECUTIVE SUMMARY**

A 2019 January decision of the Court of Queen's Bench of Alberta (the "Court of Queen's Bench") held that specific sections of the 2016 Business Tax Bylaw, 1M2016 (the "2016 Business Tax Bylaw") were of no effect. Except for these specific sections, the rest of the 2016 Business Tax Bylaw was held to remain in force.

Although business tax was eliminated for Calgary businesses in 2019, the 2019 Business Improvement Area Tax Bylaw ("Bylaw 1M2019") allows for the imposition of a tax on businesses within Business Improvement Areas ("BIAs") for the purpose of collecting Business Improvement Area tax ("BIA tax"). Bylaw 1M2019 contains sections which mirror the sections of the 2016 Business Tax Bylaw held to be of no effect. Administration is proposing amendments to remove these sections from Bylaw 1M2019.

#### **ADMINISTRATION RECOMMENDATION:**

1. That the Priorities and Finance Committee recommends that Council give three readings to the proposed bylaw to amend Bylaw 1M2019, the 2019 Business Improvement Area Tax Bylaw.
2. That Report PFC 2019-0237 be forwarded to the 2019 March 18 Combined Council Meeting.

### **PREVIOUS COUNCIL DIRECTION / POLICY**

Council passed Bylaw 1M2019 on 2018 December 17, prior to the Court of Queen's Bench decision being rendered on 2019 January 04.

Council passed the 2019 Business Improvement Area Tax Rates Bylaw and approved the proposed 2019 Business Improvement Area budgets on 2019 February 04.

### **BACKGROUND**

The *Municipal Government Act* provides municipalities with the ability to levy taxes on businesses. Until 2018, Council passed an annual business tax bylaw authorizing business taxes to be collected from businesses operating within Calgary. Business tax was eliminated for Calgary businesses in 2019.

Bylaw 1M2019 authorized the imposition of a tax on businesses within the BIAs for the 2019 tax year solely for the purposes of collecting a BIA tax (also known as the BIA levy) in accordance with section 20 of the current *Business Improvement Area Regulation* (the "BIA Regulation"). This bylaw applies only to businesses operating within a current BIA or any new BIA established during the 2019 tax year.

The BIA Regulation provides that a business improvement area tax bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 01 of that year. Therefore, any amendments to Bylaw 1M2019 must be passed prior to 2019 May 01.

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### **INVESTIGATION: ALTERNATIVES AND ANALYSIS**

Historically Assessment assessed the operators of commercial parking facilities, which include owners and landlords of commercial office space with parking spaces used by tenants, for the purposes of business tax. This was completed under the authority of the annual business tax bylaws and was continued for the purposes of collecting BIA tax through Bylaw 1M2019.

On 2019 January 04 the Court of Queen's Bench released its decision in *Airstate Ltd. v. Calgary (City)*, 2019 ABQB 10 (the "Court of Queen's Bench Decision"). This decision held that the sections of the 2016 Business Tax Bylaw providing authority to assess the owners of commercial office space with parking spaces used by tenants for business tax were of no effect. Except for these specific sections, the rest of the 2016 Business Tax Bylaw was held to remain in force.

Bylaw 1M2019 contains language which mirrors the sections of the 2016 Business Tax Bylaw which were held to of no effect, specifically sections 3(1)(h), (i) and (k)(iii) and 4(2). Administration therefore proposes amendments to Bylaw 1M2019 solely to remove the following:

- Section 2(1)(i);
- Section 2(1)(j);
- Section 2(1)(l)(iii); and
- Section 3(3).

The content of these sections are reproduced in Attachment 2. The remainder of Bylaw 1M2019 will remain unchanged.

The proposed amendments will result in owners of commercial office space with parking spaces used by tenants not being assessed and taxed for the purposes of the BIA tax, which aligns with the Court of Queen's Bench Decision.

To ensure compliance with the Court of Queen's Bench Decision, approximately 500 BIA business accounts were not included within the BIA base used for the calculation of the 2019 BIA tax rates.

### **Stakeholder Engagement, Research and Communication**

After the Court of Queen's Bench Decision was released, Administration immediately began to examine the implications of the decision and its effects, and to determine possible options for The City of Calgary to address the decision. The work group included staff members from Law, Finance and Assessment.

### **Strategic Alignment**

Approving the amendments to Bylaw 1M2019 will allow BIAs to receive funding to serve their business communities which supports the Citizen Priority of "A Prosperous City" in One Calgary 2019-2022. BIAs are included as part of the Economic Development & Tourism service line in One Calgary.

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### **Social, Environmental, Economic (External)**

No social or environmental impact is anticipated from the proposed bylaw amendments. Administration believes the proposed amendments will ensure Bylaw 1M2019 does not contain language mirroring sections of the 2016 Business Tax Bylaw held to be of no effect by the Court of Queen's Bench.

### **Financial Capacity**

#### ***Current and Future Operating Budget:***

There are no operating budget impacts.

#### ***Current and Future Capital Budget:***

There are no implications on the capital budget.

### **Risk Assessment**

The proposed amendments are intended to ensure compliance with the Court of Queen's Bench Decision by removing similar language to the sections of the 2016 Business Tax Bylaw which were held to be of no effect. If not removed, these sections of Bylaw 1M2019 could be successfully challenged on the basis of the Court of Queen's Bench Decision.

### **REASON(S) FOR RECOMMENDATION(S):**

The proposed bylaw to amend Bylaw 1M2019 addresses the issues raised by the January 2019 Court of Queen's Bench of Alberta decision.

The intent of the proposed bylaw to amend Bylaw 1M2019 is to remove the sections of the Bylaw 1M2019 which are similar to the sections of the 2016 Business Tax Bylaw declared to be of no effect.

### **ATTACHMENT(S)**

1. Attachment 1 – Proposed wording for the bylaw to amend Bylaw 1M2019
2. Attachment 2 – Excerpts from Bylaw 1M2019