

**Chief Financial Officer's Report to
Priorities and Finance Committee
2019 June 04**

**ISC: UNRESTRICTED
PFC2019-0491**

Overview and Administration of Property Tax Relief Framework

EXECUTIVE SUMMARY

As a result of Council's decision to cancel property taxes for the Free Masons' property (C2018-0959), Council directed Administration to provide more information regarding the municipality's tax relief powers. This report provides an overview of the provincial legislation pertaining to property tax relief, specifically property tax exemption framework and Council's discretionary tax relief powers. It provides information regarding how Administration applies the rules and conditions set out by The Government of Alberta ('The Province') to ensure that the property tax exemptions meet the criteria as set by the Province. The report will also provide further information regarding Council's use of its tax relief discretionary powers and the circumstances for which Council has used its tax relief or cancellation authority.

ADMINISTRATION RECOMMENDATION:

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

RECOMMENDATION OF THE PRIORITIES AND FINANCE COMMITTEE, 2019 JUNE 4:

That Council receive Report PFC2019-0491 for information.

PREVIOUS COUNCIL DIRECTION / POLICY

On July 30, 2018, Council approved Notice of Motion C2018-0959, which cancelled the 2018 municipal property taxes for the Free Masons' Grand Lodge. Through Notice of Motion C2018-0959, the following Motion Arising, moved by Councillor Chahal was adopted:

"That Council direct Administration prepare a report and return to Council through the Priorities and Finance Committee no later than 2019 Q2, that provides an overview of the legislation governing property tax exemptions and tax cancellations in Alberta, Administrations' current process for administering property tax exemptions, the property tax base exempt from taxation and previous Council direction regarding property tax cancellations."

BACKGROUND

Property Tax Relief Legislation Overview

Property Tax Exemption Legislation

The *Municipal Government Act* (MGA) outlines two categories of property tax exemptions:

- Property types that are non-assessable, or in other words, properties which are not assessed and therefore are not subject to property taxes. Non-assessable property types are described in section 298 of the MGA and are exempted pursuant to section 351.
- Part 10 of the MGA, specifically sections 351, 361-365 and 370(a), (c) and (d) outline the criteria for property tax exemptions applicable to properties which are assessed.

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Community Organization Property Tax Exemption Regulation (COPTER) provides the exemption criteria for properties held by (owned, leased or operated) non-profit organizations that fall under MGA section 362(1)(n):

- (i) acting in an official capacity on behalf of the municipality
- (ii) community games, sports, athletics, or recreation
- (iii) charity or benevolence
- (iv) senior citizen lodge accommodation
- (v) agricultural society or community association

COPTER also allows the exemption for ten other property use classifications that are not exempt under the MGA, such as non-profit museums, and non-profit childcare facilities.

Both the MGA and COPTER provide the criteria and conditions for property tax exemption in Alberta. It is the responsibility of the municipalities to interpret the criteria and administer the tax exemption to properties that qualify.

Attachment 1 provides a summary of each of the relevant sections in the MGA and COPTER. It also provides the types or uses of properties defined in the legislation that might qualify for property tax exemption.

Council's Tax Cancellation, Refund, Deferment Authority Legislation

Under section 347 of the MGA, Council has discretionary taxation power to cancel or refund taxes. It specifically states:

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- (a) cancel or reduce tax arrears;
- (b) cancel or refund all or part of a tax;
- (c) defer the collection of a tax

Further, section 203 of the MGA specifies that Council may not delegate its powers with respect to taxes, including its authority to cancel, refund or defer property taxes under section 347. However, the recently approved *The City of Calgary Charter, 2018* will allow The City of Calgary Council to delegate this authority through a Council bylaw as long as the total amount cancelled, refunded, or deferred in a taxation year does not exceed \$500,000 in a calendar year.

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INVESTIGATION: ALTERNATIVES AND ANALYSIS

Current Processes for Administering Property Tax Exemption

Property Tax Exemption Framework set by the Province

Through provincial legislation and the Property Tax Exemption in Alberta: Guide ('the Guide'), the Province specifies what types of properties and their uses qualify for property tax exemption and sets out the rules and conditions regarding a property's eligibility for exemption. It is the responsibility of the municipalities to apply these rules and conditions to ensure that the qualifying properties receive their tax exemptions.

To assist municipalities in their decision making, the Province provides municipalities and the public four guiding principles¹ for which property tax exemption is based on. They are:

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

The importance of 'public benefit' is key, as it is the general public or taxpayers subsidizing the property taxes for the exempt properties. The use of the property or the operation of the organization receiving a property tax exemption must contribute back to the community in which they are located to warrant a relief from property taxes. Because the financial cost of each exemption is borne by other taxpayers, it is very important that organizations apply to The City for tax exemption and each property tax exemption application is scrutinized to ensure that the use of the property qualifies for tax exemption.

In addition to providing the conditions for each property tax exemption category, the Guide outlines general qualifying tests that will assist municipalities to ensure that the conditions are met, which include:

- Is the primary use appropriate?
- Who holds the property?
- Is the property held by a registered non-profit organization?
- Does the property meet the accessibility criteria?

Each test corresponds to the specific conditions outlined in COPTER. If the result of one test does not meet the qualifying condition as prescribed by the Province, the property does not qualify for property tax exemption (Attachment 2). An example of this situation would be a golf club. It meets the primary use test of a sports and recreation facility and can be set up as a non-profit organization. However, it does not meet the "accessibility criteria", as only members of the golf club have access to the facility, which would make the property ineligible for property

¹ The Government of Alberta's *Property Tax Exemption in Alberta: A Guide*
http://www.municipalaffairs.alberta.ca/documents/as/pte_guide_2005.pdf

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tax exemption. To provide a better perspective, there are about 6,000 registered non-profit organizations² in the city of Calgary and about 1,500 property accounts are exempt under the COPTER³.

It is necessary for an organization to provide valid information to ensure that the property meets the criteria specific to each exemption category. Without an application or information from an organization, it is difficult for a municipality to (a) effectively know that a tax exempt use of the property is in fact occurring and (b) meet its due diligence obligation (i.e. confirming property use and organizational structure) as legislatively required for tax exemption qualification. The application process provides Administration the ability to apply the general tests necessary in determining if a property qualifies for property tax exemption specific to its use. It also serves to preserve the fair and equitable treatment of all organizations seeking tax exemption.

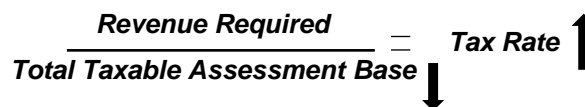
Assessment Review Board (ARB) and Property Tax Exemption Decisions

As the tax status of a property or business is one of the matters listed in MGA section 460(5), a person can file a complaint with the ARB if they do not agree with the taxable status of a property. In most circumstances, tax status related complaints are a result of Administration's decision not to exempt a property from property taxes after the application process has been completed, as the use of the property did not meet the MGA or COPTER criteria. The rationale for this decision is further defended in front of the ARB. The ARB can change the tax status of the subject property to "exempt from taxation" should it decide that the taxable tax status of a particular property under complaint is incorrect.

Current Property Tax Exemption Base

Properties that have been deemed exempt from taxation are removed from the total taxable assessment base and do not contribute to the revenue required by The City to support essential City services. This means that as the total taxable assessment base decreases, it would require an increase to the tax rate to ensure that The City receives the same amount of revenue to provide the same level of City services, such as fire protection and water services (Figure 1).

Figure 1

$$\frac{\text{Revenue Required}}{\text{Total Taxable Assessment Base}} = \text{Tax Rate}$$


Taxpayers provide an indirect subsidy to properties that are exempt from property taxes. In other words, the tax burden of exempt properties is shifted to property owners that pay property taxes. These types of subsidies are generally justifiable because the exempt properties are

² Information from Alberta Government Open Data - <https://open.alberta.ca/opendata/alberta-non-profit-listing> It includes non-profit organizations that may be exempt outside of COPTER as well.

³ Includes properties exempt under MGA section 362(1)(n), as the rules and conditions for exemption under this section is in COPTER.

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used to provide services that either relieves the burden of providing these services through government sources or produce other social goods and services for the benefit of the general public (e.g. community theatres, food banks, homeless shelters, and etc.).

Attachment 3 provides the current property assessment base exempt from property taxes under each exemption category. The attachment provides the perspective of how much was removed from the total assessment base for 2019 due to property tax exemption.

Council's Property Tax Relief Authority under MGA

While Administration administers tax relief to non-profit organizations through the property tax exemption scheme as set by the Province, Council also has tax relief or mitigation authority under the MGA, specifically sections 347 and 364.

Property Tax Exemption through MGA Section 364 – Council Bylaw

Section 364(1) allows Council, through a bylaw, to exempt from taxation a property held by a non-profit organization, to any extent it considers appropriate. A property tax exemption through Council bylaw is rare, as there is a property tax exemption structure in place established by the Province. Properties exempt from property taxes through Council bylaw are typically properties that do not qualify for property tax exemption under the applicable legislation. Currently, there is only one Council bylaw under this authority, Bylaw 5M2013 (Attachment 4), which exempts properties owned and used by Resident's Associations.

Section 364(2) further allows Council, by bylaw, to exempt from taxes or defer the collection of taxes on brownfield properties. Brownfield property include property that, in the opinion of Council, is or possibly is contaminated, vacant, derelict or under-utilized, and is suitable for development or redevelopment benefiting the municipality. Currently, Council has not yet passed a bylaw under this section.

Council's Tax Discretionary Powers under MGA Section 347

Council also has property tax relief powers by exercising its discretionary taxation power under section 347 of the MGA. Under this section, Council has the authority to cancel, refund, and defer property taxes for any property or a group of properties. Council can cancel either only municipal property taxes, or both municipal and provincial property taxes. If Council chooses to cancel the provincial portion of the property tax for a property, The City still has to submit the provincial portion of the taxes to the Province.

Currently, there are two normal or typical methods Council would use its tax cancellation power under section 347; the Assessment and Tax Circumstances Report and the Non-Profit Tax Mitigation Policy. These tax cancellations occur on a yearly basis and each with its own separate qualifying factors. Council can also approve ad hoc tax cancellations through Notices of Motion for situations outside the normal circumstances.

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Assessment and Tax Circumstances Report ('the Circumstances Report')

The Circumstances Report is presented to the Priorities and Finance Committee twice a year for Council approval. In this report, Administration recommends Council cancel taxes in circumstances where an inaccuracy occurred to a property or business assessment in a prior year which resulted in a property or business owner being levied an incorrect amount of taxes. While Administration can make relevant changes to a property assessment account within the current year, legislatively it does not have the ability to alter property or business assessments for previous years to correct an error. To correct the property taxes that resulted from the inaccuracy, Council can cancel the requested prior years' property taxes. The budget for the cancellation under this report is \$1,000,000 per year.

Non-Profit Tax Mitigation Policy ('NPTM Policy')

Council adopted the *Non-Profit Tax Mitigation Policy* in 2014 December (C2014-0919). The Policy provides tax cancellation eligibility criteria for circumstances where Administration may recommend Council to cancel municipal taxes for an eligible property for the period of time when it was under construction and held by a non-profit organization. Under current legislation, certain exempt categories do not include the property tax exemption during the construction phase as the non-profit organization is not using the property for exemption purposes. When construction is complete, these properties, once in use for approved activities (e.g. places of worship, food banks, arts and cultural, etc.) would qualify for property tax exemption under the MGA or COPTER. The use of these properties must be approved for property tax exemption under provincial legislation to be considered for municipal property tax cancellation under the NPTM Policy. The total tax cancellation budget under the NPTM Policy is \$1,000,000 per year.

Ad Hoc Tax Cancellations through Council Notices of Motion

Through the Circumstances Report and the NPTM Policy, Council can use its tax discretionary powers in an equitable, consistent and transparent manner. The NPTM Policy has reduced the number of possible Notices of Motions requested by qualifying tax exempt non-profit organizations, as there is a policy and processes in place to address tax cancellations for properties that are under construction. However, ad hoc tax cancellations outside the normal or typical tax relief/cancellation methods, as mentioned earlier in the report, still happen on occasion for an organization that does not qualify for property tax exemption. The organization would request a Councillor to bring forward a Notice of Motion to the Council floor to get the taxes for the property it holds cancelled. These tax cancellations, though not budgeted on its own merit, are accommodated through the pre-existing tax cancellation fund.

Attachment 5 provides the tax cancellation amounts Council approved under its section 347 tax discretionary power since the 2015 taxation year. The total amounts stated on the attachment also includes the 2019 tax cancellations Council approved on May 27, 2019.

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Council's Tax Relief Authority Delegation

While Council has the power to cancel, reduce, refund or defer taxes, under section 203(2)(d) and further amended in *The City of Calgary Charter, 2018* section 4(5), it can delegate this power by bylaw to any person or individual, if the taxes do not exceed \$500,000 in a taxation year. Which means Council can approve a bylaw authorizing Administration to cancel or refund taxes in circumstances where it feels appropriate. One of the key advantages to delegating this power is the taxpayer will receive the tax adjustment in a timely fashion, rather than waiting for approval from Committee and then subsequently Council.

Council elected to use their delegation authority to delegate the power to cancel property taxes (penalties up to \$25,000 in a taxation year) to the Chief Financial Officer in accordance with the Compassionate Property Tax Penalty Relief Program⁴. This addressed the requests Councillors and Administration receive with respect to the cancellation of property tax penalties on compassionate grounds. Similar to the NPTM program, this program allows for a transparent and more efficient manner of cancelling property taxes, in this circumstance tax penalties, and should also reduce the number of Notices of Motion Councillors present to Council on this issue.⁵

Stakeholder Engagement, Research and Communication

None for this report. This report is for information purposes only.

Strategic Alignment

This report aligns with the municipal taxation powers authorized by the Government of Alberta in the MGA and COPTER.

Social, Environmental, Economic (External)

Social

Property tax exemption is essential to the overall wellbeing of the community. The budgetary savings non-profit organizations receive from property tax exemption can be used towards funding social programs or other valuable services to the general public. While taxpayers are indirectly subsidizing the tax liability of these exempt organizations, it is justified as these organizations are providing in return a service or public good that benefits the general public.

Environmental

No known environmental impacts.

⁴ Further details of the program are set out in PFC2018-0325

⁵ A follow up report from the CFO is expected to be presented in Q4 updating the Priorities and Finance Committee the outcome of the program.

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Economic

For every property approved for tax exemption, there is a reduction in the total taxable assessment, which in turn increases the tax rate and passes on the tax burden of entities holding tax exempt properties to the rest of the taxpayers.

Tax relief through tax cancellation has an economic impact to The City of Calgary, as it is taking funds from The City's budget that could be used for other City services or budgetary needs. There is also an impact to the property tax rate calculations as tax cancellations are part of the budgetary or revenue requirements. Similar to property tax exemption, if the budgetary requirements for tax cancellations increases, it puts pressure on the property tax rate to increase to meet the requirements.

Financial Capacity

Current and Future Operating Budget:

There are no current or future operation budget implications from this report, as it is for information purposes.

Current and Future Capital Budget:

There are no current or future operation budget implications from this report, as it is for information purposes.

Risk Assessment

The risks directly associated with this report are minimal. However, there are risks involved in the property tax exemption scheme in Alberta and Council's discretionary power to cancel property taxes.

As mentioned earlier in the report, property tax exemptions decrease the overall taxable assessment base, which in turn will increase the tax rate for other tax payers to subsidize the loss in tax revenue due to the exemption. It is essential that the property tax exemption scheme, as set by the Province, be followed and each potential property tax exemption thoroughly analyzed and scrutinized as it is other taxpayers who will bear the burden of the shift in taxes on behalf of the non-profit organizations.

Deviations from the legislated tax exemption framework may lead to the inequitable application of tax cancellations. It may prompt organizations to approach Council for cancellations when they were not successful in receiving tax relief through the property tax exemptions framework. As Council approves tax cancellations for properties that do not qualify for property tax exemption, it runs the risk of an increase in requests from organizations that are in the same situation. In 2018, Administration did not grant over 20 properties tax exemption out of 112 new applications received, as the use of these properties did not meet the legislative criteria. The non-profit organizations that hold these properties could approach Council in future years requesting tax relief.

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REASON(S) FOR RECOMMENDATION(S):

As directed by Council, the report provides Council information with respect to:

- a) overview of the property tax exemption and tax cancellation legislation
- b) administering property tax exemption
- c) the property tax exemption base
- d) a background on Council's tax cancellation power under section 347 of the MGA

ATTACHMENT(S)

- 1. Attachment 1 – Property Tax Exemption Legislation Summary
- 2. Attachment 2 – Property Tax Exemption Process Map
- 3. Attachment 3 – Property Tax Exemption Base
- 4. Attachment 4 – Bylaw 5M2013
- 5. Attachment 5 – MGA Section 347 Tax Cancellation Amounts (2015-2019)