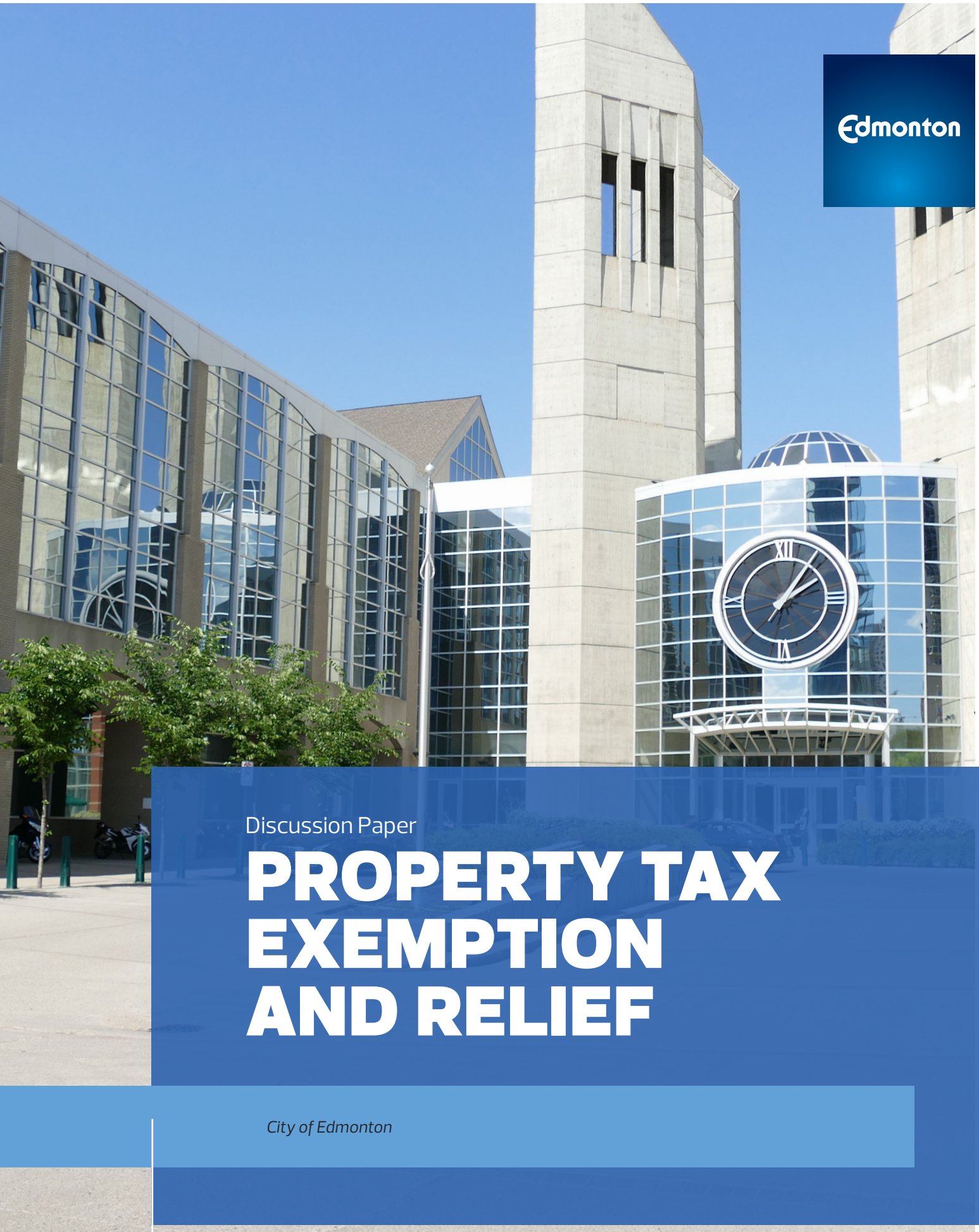


Discussion Paper

PROPERTY TAX EXEMPTION AND RELIEF

City of Edmonton



The Property Tax Exemption and Relief Discussion Paper is a followup to the Assessment and Taxation White Paper. It is written to clarify and provide further context to the City policies surrounding the granting of property tax exemptions or relief in the City of Edmonton and provide historical context for the current policies.

Property tax exemptions, by their nature, are a redistribution of the tax burden. When some property owners are not required to contribute to the tax base, others are called upon to contribute more. For this reason, decisions surrounding tax exemption and relief are important and relevant property tax policy topics as questions of fairness and equity take centre stage.

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INTRODUCTION

1.0

It is fair to say that property tax exemptions and various forms of tax relief are among the most complicated and challenging topics within the field of assessment and taxation. Whereas the usual question for tax policy surrounds tax distribution (i.e. "who pays how much"), the question tackled by exemptions and tax relief considerations is "who should not pay and why?". Given that all property owners would gladly volunteer their property for tax exemption status, it is essential to develop firm and principled foundations to answer the question of who should not pay.

In Alberta, rules around property tax exemption are governed by the Municipal Government Act (MGA) and its associated regulation, the Community Organization Property Tax Exemption Regulation (COPTER). The primary exemption section within the act, Section 362, is one of the longest sections in the MGA, addressing everything from government property to non-profit organizations. Each exemptible property type has its own requirements as laid out within the section or the associated regulation. To the greatest extent possible, City administration follows this legislation when determining exemptions. The legislation itself, however, is ambiguous and has caused several disputes both at the Assessment Review Board and the Court of Queen's Bench.

Exemptions are a challenging topic, but getting it right is important. Big cities like Edmonton have significantly more tax exempt assessment than other Alberta municipalities as they house a large proportion of the exemptable properties. Schools, universities, health care facilities, provincial holdings, libraries, cemeteries, religious assemblies, senior's facilities and various non-profits are all exempt under provincial legislation. In 2017, Edmonton's Assessment and Taxation Branch recorded approximately $20B in tax exempt assessment[1]. Taxed at the City's 2017 municipal tax rate, the value of tax exempt property would have contributed over $300M in municipal property tax alone. To put that number into perspective, those exemptions effectively increase the tax burden on remaining property owners by about 20 per cent.

While most exemption rules are laid out provincially, the MGA grants City Council with some tax exemption and relief powers. These powers create room for municipal policy discussions. Under section 364, City Council has some limited exemption authority that goes beyond provincial requirements. Historically, the authority granted under this section has been used sparingly, but requests to expand use of this provision are not uncommon. Under section 347, Council has the authority to cancel, refund or defer municipal property taxes to any property or group of properties to the extent it considers appropriate. Council's 347 authority creates opportunities for multiple policy conversations.

This discussion paper is broken into three parts. The first will focus on understanding the property tax exemption system in Alberta. The second will review some of the major exemption issues faced by the City of Edmonton. The final part will outline Council's authority to provide tax relief under section 347 and discuss possible policy options coming from that authority.

[1] *This numbers does not include grant-in-lieu properties discussed later in this paper as they ultimately contribute to the tax base. The number does, however, include municipally owned property. The number is, therefore, only an order of magnitude.*

PROPERTY TAX EXEMPTIONS

2.1 OVERVIEW OF PROPERTY TAX EXEMPTIONS

Before discussing the specifics of property tax exemptions, there is value in understanding how property tax exemptions work in principle. As outlined in the Assessment and Taxation White Paper, the City assesses property using a market value mass appraisal approach. All real property be must assessed, but some of that assessment can be made exempt from property tax. This means that the municipality must still determine the market value of exempt properties, but the assessment associated with those properties is not included in the assessment base used to calculate tax rates.

To better illustrate how this works, the following two formulas should be referenced:

1. TAX RATE FORMULA (BUDGET-BASED)

$$\frac{\text{CITY BUDGET}}{\text{ASSESSMENT BASE}} = \text{TAX RATE}$$

2. INDIVIDUAL PROPERTY TAX FORMULA

$$\text{PROPERTY ASSESSMENT} \times \text{TAX RATE} = \text{PROPERTY TAX}$$

The formulas above serve as the basis for determining tax rates and collecting the appropriate tax amount from each property owner. These formulas were discussed in section 1.7 of the Assessment and Taxation White Paper to show how the City's budget and assessment values are determined independently, but work together to ensure the City can collect its necessary revenue. This approach is called "budget-based" and shows how the municipality will still collect its budgeted revenue requirement despite potential fluctuations in assessment values.

Equally important to a budget-based approach is how changes to assessment values affect an individual property owner's taxes. This is the relationship between formula 1 and 2. If one group of properties are under-assessed, for example, then the tax rate will increase and result in those properties that are assessed fairly paying more. The effect is similar when it comes to property tax exemptions. While not referenced specifically above, the assessment base of formula 1 excludes any assessment exempt from taxation. Properties that are exempt from taxation do not contribute to the City's budget and their assessment values are not included within the tax rate calculation. This puts upward pressure on the tax rate, causing all remaining property owners, who comprise what is typically referred to as the "taxable assessment base", to pay more overall.

The above highlights a key point about tax exemptions: tax exemptions do not make taxes go away, but rather they redistribute the tax burden to other property owners. In other words, taxpayers foot the bill for exempt properties. Because of this effect, it is vitally important that the taxing jurisdiction make it clear to taxpayers who is exempt from taxation and why. This requires the assessment authority to assess all properties transparently and the tax exemption authority to provide clear justification for making certain properties exempt.

Property tax exemptions are typically justified by a "public good" argument. The use of the property is said to benefit the general public and is therefore subsidized by the general public. Exemptions can be related to government properties such as schools, hospitals and libraries, or to private property, such as religious assemblies and non-profits. Each of these property types contributes to the overall well-being of the municipality and surrounding region. Part of the problem with property tax exemptions, however, is that the municipality in which exempt entities are located bears the entire burden of subsidizing the property even if surrounding municipalities, or province as a whole, benefit.

PROPERTY TAX EXEMPTIONS *(CONT.)*

2.2 PROPERTY TAX EXEMPTIONS IN ALBERTA

Rules surrounding property taxation are dictated by the Government of Alberta through the Municipal Government Act and its associated regulations. By default, all properties are subject to property tax unless otherwise specified. Section 362 of the MGA outlines the exceptions and includes:

1. Any interests held by the Crown in right of Alberta or Canada in property
2. Property held by the municipality (with exceptions)[2]
3. Property used in connection with school purposes
4. Property used in connection with education purposes
5. Property used in connection with hospital purposes
6. Property held by a regional services commission
7. Property used in connection with health region purposes
8. Property used in connection with nursing home purposes
9. Property used in connection with library purposes
10. Property held by a religious body
11. Property used as a cemetery or burial sites
12. Property held by a foundation under the Senior Citizens Housing Act or a management body under the Alberta Housing Act
13. Property held by a non-profit organization

The list is summarized for simplicity, but additional criteria for each category can often apply. These additional criteria are included either within the MGA, or its associated regulations.[3] There are also a few categories of exempt property within subsequent sections that can be made taxable at City Council's discretion.[4] Issues related to some of the exempt property types above will be discussed in greater detail in the following sections.

[2] *Exceptions include activities that are geared towards making a profit, electric power systems, telecommunication systems, and natural gas systems.*

[3] *While not discussed explicitly within this paper, exemptions can also be created through Private Members Bills, Local Authority Board Orders and other Acts. A few exemptions of this nature exist, and make up about 1.5% of the City's total exemptions.*

[4] *Most of these categories would likely be exempted under other sections, such as Ducks Unlimited and Hostelling Associations. However, one category of exemption that can be made taxable is student dormitories operated by universities. Historically, university dormitories occupied a grey zone that was left to the discretion of the municipality. In the 1980's and early 1990's, university dormitories were exempt from assessment unless otherwise specified by the municipality. Edmonton had a bylaw in place to keep them assessable, and therefore taxable. In 1997, Council passed bylaw 11644 to keep student dormitories taxable as the new MGA made them assessable but exempt from taxation by default.*

PROPERTY TAX EXEMPTIONS *(CONT.)*

2.3 GRANT IN PLACE OF TAX / PAYMENTS IN LIEU OF TAX PROPERTIES

Subsection one of section 362 in the MGA makes any property held by the provincial or federal government exempt from taxation. While not a requirement, both the provincial and federal orders of government tend to compensate municipalities that lose property tax revenue in this manner with a grant in lieu of property taxes. Provincial grants are known as "Grants in Place of Taxes" (GiPoT) and federal grants are known as "Payment in Lieu of Taxes" (PILT). [5]

These grants typically offset revenue that would otherwise have to be generated through property tax. As a result, municipalities tend to account for the revenues received through this grant program as municipal property tax revenue and the assessment of these grant-in-lieu properties are included within the tax rate calculation (meaning that property tax payers are not required to completely subsidize other orders of government). In 2018, Edmonton recorded slightly more than $2.8B in grant in lieu property assessment value. These properties are expected to contribute approximately $40M in grant in lieu funding.

Eligible grant properties are typically restricted to government office spaces. Education and health facilities held by other orders of government are not eligible for grant payments. Other properties held by government entities have been a source of dispute in Edmonton and across the country. For example, the appropriate payment in lieu compensation for Citadel Hill in Halifax was debated right up to the Supreme Court of Canada.[6]

Edmonton has typically maintained a positive relationship with its government counterparts and grants have rarely been disputed. Recently, however, the provincial government has chosen to withdraw grant-in-lieu funding for properties held by Alberta Social Housing, which includes seniors and affordable housing units. This decision left the municipality with a multiple million dollar shortfall in 2018 and the matter is still under deliberation.

[6] *It is technically unconstitutional for one order of government to tax another. To simplify matters, government properties are made exempt and a voluntary (or mandatory) grant system is developed.but exempt from taxation by default.*

PROPERTY TAX EXEMPTIONS *(CONT.)*

2.4 COMMUNITY ORGANIZATION PROPERTY TAX EXEMPTION REGULATION (COPTER)

The Community Organization Property Tax Exemption Regulation, or COPTER, is the primary regulation addressing property tax exemptions.[7] The main focus on this regulation is to further outline criteria for non-profit organizations to qualify for exemption status. Given the evolving nature of non-profit operations, it is not a given that every organization registered as a non-profit will be exempt from property tax. To provide an order of magnitude, the City of Edmonton had 1,476 property tax accounts exempted under COPTER in 2018. January 2018 data from the Government of Alberta shows slightly over 6,000 non-profits registered in Edmonton.[8] Section 10 of COPTER is particularly relevant in determining exemptions:

> **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.

Exemptions in COPTER are, therefore, based on the property's use and whether that use is restricted. "Restricted", under the meaning of section 7, means restricting access based on race, culture, ethnic origin, religious belief, property ownership, the requirement to pay fees beyond minor entrance/service fees, or the requirement to become a member of an organization.[9]

[7] *This regulation is in the process of being updated. Any commentary within this discussion paper is based on COPTER with amendments up to and including Alberta Regulation 257/2017.*

[8] *Data pulled from the Government of Alberta's open data site.*

[9] *Requiring membership is allowed in some circumstances, but access to membership must not be restricted and any associated fees must be considered minor.*

PROPERTY TAX EXEMPTIONS *(CONT.)*

2.5

PARTIAL EXEMPTIONS – TIME AND SPACE

Exemptions are often complicated by the fact that buildings can be partially exempt and partially taxable. This occurs frequently when a for-profit property owner leases space to a non-profit exempt entity. In these cases, the City of Edmonton performs a "time and space" calculation that determines what portion of the building is being used for exempt purposes (space) and how often that space is used for that exempt purpose (time). If the area is wholly leased to a non-profit organization, no time calculation is required.

Time and space calculation can also be applied to determine what portion of an otherwise exempt building should be made taxable. This would occur when a non-profit building owner leases space to a for-profit organization. Similarly, exempt properties may be made taxable to the extent that they serve alcohol. This is the case with the Shaw Conference centre, which is only taxed for those events where liquor is served. The effect of holding a license under the Gaming and Liquor Act is discussed in the following section.

PROPERTY TAX EXEMPTIONS *(CONT.)*

2.6 LICENSED PREMISES

As discussed above, it is possible for an organization to be exempt from taxation, but still pay taxes for a portion of their building. This can either be because the exempt property leases space to a for-profit (churches leasing to cell towers), or because the exempt organization itself sells liquor or deals in gambling. Section 365 of the MGA states:

> **Licensed premises**
> 365(1) Property that is licensed under the Gaming and Liquor Act is not exempt from taxation under this Division, despite sections 351(1)(b) and 361 to 364.1 and any other Act.
>
> (2) Despite subsection (1), property listed in section 362(1)(n) in respect of which a licence that is specified in the regulations has been issued is exempt from taxation under this Division.

COPTER subsequently qualifies the exceptions set out in subsection 2:

> **Gaming and Liquor Licenses**
> 8(1) For the purposes of section 365(2) of the Act, property described in section 362(1)(n) of the Act and Part 3 of this Regulation in respect of which a bingo licence, casino licence, pull ticket licence, Class C liquor licence or a special event licence is issued under the Gaming and Liquor Regulation (AR 143/96) is exempt from taxation if the requirements of section 362(1)(n) and this Regulation in respect of the property are met.
>
> (2) Despite subsection (1), property in respect of which a bingo facility licence or casino facility licence is issued is not exempt from taxation.

As written, section 365 overrides all other exemption sections of the MGA. If a property is licensed under the Gaming and Liquor Act with anything other than a class C liquor licence or special event licence, it cannot be exempted. Class C licences can be obtained for the sale and consumption of liquor within a facility that is not open to the public but is primarily for use of members, such as a clubhouse.

A good example of non-profit organizations that are exempt, but made taxable through these provisions are the Royal Canadian Legions. Royal Canadian Legions are exempt from taxation save for their licensed area.[10] Within the licensed area, each Legion must choose to either obtain a Class A or Class C liquor licence. If a Class A is chosen, alcohol can be sold to the general public, but the bar space becomes taxable. If a Class C is chosen, alcohol can be sold primarily to club members, but the bar space remains property tax exempt. Each Legion makes its own decision on which licence to obtain.[11]

[10] *Legions are exemption under section 36 of the MGA, but licenced areas taxable according to 365. Where applicable, the City applies time and space calculations to determine the taxable amount.*

[11] *Legions have made various attempts over the years to receive a class A liquor licence and remain tax exempt. At the time of writing this paper, those attempts have remained unsuccessful.*

PROPERTY TAX EXEMPTIONS *(CONT.)*

2.7

MUNICIPAL TAX EXEMPTION AUTHORITY

Not all non-profits are automatically exempt from property taxation. Tests are laid out within COPTER that may prevent a non-profit from being considered an exempt entity. In cases where non-profit organizations fail these tests, section 364 of the MGA grants City Council the authority to make them fully exempt from taxation.

Council's tax exemption authority under section 364 is limited and can only be applied to non-profit organizations and machinery and equipment property, but, once exempted, those organizations are not responsible to pay municipal property tax. The relevant section reads:

> **Exemptions granted by bylaw**
> 364(1) A council may by bylaw exempt from taxation under this Division property held by a non-profit organization.
>
> (1.1) A council may by bylaw exempt from taxation under this Division machinery and equipment used for manufacturing or processing.
>
> (2) Property is exempt under this section to any extent the council considers appropriate.

The MGA was first passed in 1994, but COPTER was not released until late in 1997. In June of 1997, the City of Edmonton supported the formation of the Advisory Committee on Tax Status of Non-Profit Organizations to advocate and convey concerns of the non-profit sector regarding legislation and/or regulations governing the taxable status of property held or occupied by non-profit organizations to the provincial government. In addition, City Council requested the committee recommend options to City Council on how best to use its powers under section 364. The committee's report was presented to Council in 1998 along with principles for determining exemption qualification.[12]

By the time the committee's recommendations were reported to Council, COPTER had been passed and most of the committee's recommended criteria were incorporated into COPTER. This left little need for Council to use its 364 powers. At present, only five properties are included under Council's exemption authority. They are:

- Tix in the Square (exempted in 2000)
- Kids in the Hall (The Hallway) (exempted in 2000)
- Lucky 7 Films (exempted in 2013)
- Habitat for Humanity Prefabrication Workshop (exempted in 2015)
- Parking area at 9538 103A Avenue used by The City of Edmonton, the YMCA of Northern Alberta, and Condominium Corporation 1322711 (exempted in 2015)

These properties are exempted either with or without conditions. Tix in the Square and Kids in the Hall have unconditional exemptions, while the other three exemptions are based on use of the space. In 2017, the total displaced municipal tax revenue was about $210,000.

[12] *Principals recommended by the committee are included in Appendix A*

PROPERTY TAX EXEMPTIONS *(CONT.)*

2.8 ADMINISTRATIVE CHALLENGES

As mentioned in the introduction to this paper, tax exemptions are a challenging process from an administrative perspective. These challenges are worthy of elaboration and emphasis.

1. Legislative Challenges – provincial legislation often suffers from a lack of clarity, which can result in differing interpretations of existing sections. The City does its best to ensure a consistent and fair approach, but must also contend with court interpretations of outdated legislation.[13]

2. Non-Profit Relationships – the City's exemption area deals closely with many non-profit entities across the City. Non-profit groups come in all shapes and sizes and some are run by volunteers who regularly rotate positions. Frequent changes to non-profit governance can create administrative challenges, particularly when exemption renewal forms are due and not submitted.

3. Tenants and Leases – tracking when exempt entities leave otherwise taxable space can also be a challenge, as there is no incentive for the departing entity or the property owner to inform the City of the change. Property owners are fast to inform the City when exemptions should apply, but slow to indicate when they are no longer warranted. This can result in the continued application of tax exemptions to ineligible properties even after they should be made taxable.

4. Political Sensitivities – taxing charities, nonprofits and religious organizations that contribute positively to the Edmonton community comes with political sensitivities. Public pressure can make the administration of exemptions more difficult even when Administration is following appropriate legislation and protocols.

These challenges underline the importance of maintaining a clear and consistent approach to exemptions. Exceptions and ad hoc changes without supporting policy or legislation creates inequities and increases administrative costs as well as the chance for error.

[13] *Many of the legislative issues raised by the City of Edmonton were not address in the Modernized Municipal Government Act Review process.*

EXEMPTION ISSUES

3.1 ISSUE OVERVIEW

This section provides an overview of specific exemption issues the City of Edmonton has faced. Few have policy resolutions through existing municipal authorities, but a fuller explanation of the issues helps to clarify the basis of Edmonton's advocacy positions with the Government of Alberta.

3.2 "USED IN CONNECTION WITH"

The term "used in connection with" is cited within several subsections of section 362 of the Municipal Government Act and has been the source of several legal disputes over the past two decades. For example, prior to 2005, commercial and retail properties on the University of Alberta's campus were registered as taxable. That year, the University of Alberta filed a case with the Court of Appeal arguing that a cafeteria should be exempt from taxation on the grounds that it assisted with providing education in a practical and efficient manner, thus tying it to being "used in connection with educational purposes".[14] The City of Edmonton argued that the term "used in connection with" should be restricted to those functions that were necessary or integral to the purposes described. The Court of Appeal sided with the University of Alberta, making the cafeteria space exempt.

In 2013, the precedent set by the original case was further widened when the University of Alberta argued that all retail and commercial space on campus should be exempt on the grounds that it made the lives of students more efficient.[15] Due to previous case law, the path had already been cleared for this argument and the retail spaces of HUB Mall became exempted, including fast food restaurants, coffee shops, lawyers' offices, accounting offices and convenience stores.

Since 2013, Edmonton and other municipal authorities have sought clarity on the Government of Alberta's intention behind the term "used in connection with". This is one of many topics currently under review in the regulation.[16]

[14] *See University of Alberta v. Edmonton (City of), 2005 ABCA 147*

[15] *See Edmonton (City) v. Governors of the University of Alberta, 2013 ABQB 440*

[16] *The Modernized Municipal Government Act failed to make appropriate changes to resolve this issue, but COPTER is still being reviewed.*

EXEMPTION ISSUES *(CONT.)*

3.3 RELIGIOUS PROPERTIES AND TAXABLE LAND

Properties held by a religious body are exempt from taxation, with some notable limitations. If, for example, a religious body retains a for-profit day-care on site, or leases space for a cell phone tower, these uses would be considered taxable and a percent of the exempt assessment would be adjusted accordingly. In addition, land that is not being used for religious purposes is considered taxable. Section 362(1)(k) addresses religious properties and reads as follows:

> 362(1) The following are exempt from taxation under this Division:
>
> (k) property held by a religious body and used chiefly for divine service, public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes;

Given the above legislation, vacant land owned by religious organizations can still be considered taxable. Based on the above section, religious organizations and their associated parking lots are exempt from municipal property taxation, but if such an organization has their place of worship sitting on several acres of land, then a part of that land would be considered excess and is taxable. The challenge, then, is to determine where property used chiefly for religious purposes ends and where excess land begins.

To address this challenge, Edmonton has implemented an administrative policy of calculating exemptable area by deducting the footprint of the religious assembly and its associated set-backs and parking requirements from the total land area. Those properties that still retain a positive land balance are examined to determine if the remaining area is large enough to be considered taxable.[17]

This analysis has resulted in approximately 10% of properties owned by Edmonton based religious organizations becoming taxable to some degree. Levying property tax on an entity that has historically been fully exempt is never a popular decision, but Administration feels this approach is consistent with the wording of the legislation. It should also be noted that both the Assessment Review Board and Court of Queen's Bench have agreed that religious properties must actually be used for the purposes described in the legislation in order to be exempt.

[17] *The Appraisal Institute of Canada draws a distinction between surplus land, land that cannot be reasonably separated from the parcel, and excess land, which is not needed to serve or support the existing or proposed improvement and has the potential to be sold separately – Appraisal Institute of Canada and the Appraisal Institute, 2010. Appraisal of Real Estate, Third Canadian Edition. Vancouver, BC: UBC Real Estate Division.*

EXEMPTION ISSUES *(CONT.)*

3.4 RESIDENTS' ASSOCIATIONS

Residents associations are non-profit organizations that require membership for residential property owners in a specific development area. Membership fees are collected by the residents' association and the requirement to pay is secured by a caveat or encumbrance on each residential property title. Amenities owned by the residents' association have the potential to be exempt from property tax, but, similar to other non-profit organizations, COPTER requires that the amenities of residents' associations not be restricted to specific membership for more than 30% of the time. This requirement complicates the nature of residents' associations, as the fees paid by property owners are intended to pay for exclusive amenity access; limiting amenity use on the basis of property ownership is considered a form of restriction, making a property ineligible for tax exemption. This means that residents' associations are forced to choose between exclusivity or a tax exemption status for their amenities.

In response to this dilemma, residents associations have become more insistent in arguing for full exemption status. One notable example in Edmonton was the Summerside Residents Association, who took their argument to City Council for consideration in 2015. Council chose to deny the tax exempt status while the residents' association continued to hold restricted access to its facilities. In 2017, Summerside opened a portion of its facility for use by the general public and has achieved partial exemption under the existing legislation.

Despite Edmonton's success in holding the line on requiring public access in order to be eligible for an exemption, other municipalities (notably Calgary), have chosen to effectively exempt residents' associations while allowing them to restrict amenity access to residents' association members only.[18] Residents' associations were also lobbying the Government of Alberta to change the legislation to provide a blanket tax exemption of amenities regardless of any membership/ownership restrictions.

[18] *Because the City of Calgary cannot directly override provincial regulations to prevent exemption status based on restricted access, Calgary is instead using its section 347 powers to provide annual tax rebates to the residents' associations for the full value of the taxes they pay. Section 347 powers are discussed in part 3 of this paper.*

EXEMPTION ISSUES *(CONT.)*

3.5 BINGO ASSOCIATIONS

Under current legislation, a red line is drawn in the legislation between how a property is used and how revenues from that property are used. If a property is used for charitable and benevolent purposes, it may be subject to a tax exemption. If, however, the property itself is used to sell liquor or host gambling activities, a tax exemption would not be granted even if revenues from those activities went towards charitable entities. This is the current case for bingo associations and casinos where gambling activity provides revenue for charities.

The current state may, however, be in flux. Bingo associations are arguing that they are entitled to tax exemption because the revenues from bingo activities support local non-profit organizations and that property tax reduces the amount of revenue non-profits can garner from working bingos. [19] Bingo associations have taken this argument directly to the Government of Alberta and COPTER is currently under review. If bingo associations are successful in their argument, provincial policy will open the door to other groups seeking exemption status by arguing that the revenues they generate will support non-profit groups. To date, no policy distinction has been drawn to clarify why bingo associations should be exempt and casinos left taxable. Future non-profit building owners who lease space to for-profit business may also be tempted to claim full tax exemption status using the argument that the rent paid by a for-profit business supports the non-profit's work. The repercussions of a COPTER policy change will take some time to become clear if the province ultimately decides to support bingo associations in this way.[20]

[17] *Incidentally, several of the non-profits registered with the bingo association would, themselves, not qualify for tax exemption status given their restricted membership requirements.*

[20] *At the time of writing this paper, COPTER changes are not know. Earlier drafts had proposed a full exemption to bingo associations though, ironically, left the liquor portion taxable. Again, the distinction as to why gambling should be an exempt activity, but selling liquor should not has not been made.*

EXEMPTION ISSUES *(CONT.)*

3.6 REGULATED ASSESSMENT AND TAX EXEMPTIONS – MACHINERY AND EQUIPMENT

Some categories of property are assessed using a regulated approach. Properties assessed in this manner have their baseline values set by the Government of Alberta rather than relying directly on market indicators. Regulated values have historically been lower than market values and this has resulted in a property tax shift to properties assessed using a market value approach. A separate Regulated Assessment Discussion Paper will discuss these matters in more detail, but there also exists some overlap with property tax exemptions. Both farm and machinery and equipment properties have some tax exemptions built in. In the latter case, the exemption is partially because of municipal policy decisions. For the sake of this discussion paper, a short summary of the machinery and equipment issue is replicated below.

Machinery and equipment is defined as property used for manufacturing and processing. Most municipal jurisdictions across Alberta tax this category of property, but it is currently exempt in Edmonton under Council's section 364 authority. The following discussion is relevant if Council should ever choose to change that status.

The origins of the City of Edmonton's machinery and equipment tax exemption are less the result of clear municipal policy decisions and more the result of historical circumstance. Before 2008, Edmonton collected approximately 30% of its non-residential tax revenue from business tax. Properties that held machinery and equipment paid this business tax. Provincial legislation stipulated that machinery and equipment owners who paid business tax could not simultaneously be charged property tax for the machinery and equipment components.[21] Accordingly, machinery and equipment was tax exempt.

In 2008, Edmonton began phasing out business tax. This phase-out took place over four years and was revenue neutral – meaning the revenue collected from business tax was gradually shifted over to the non-residential property tax base. However, after the phase-out was completed, Edmonton did not implement a property tax for machinery and equipment. As a result, while the phase-out was revenue neutral for the City, it did have an impact on non-residential property owners: non-residential properties with machinery and equipment had their tax burdens reduced, while the remaining non-residential properties had their tax burdens commensurately increased.

Should City Council choose to tax machinery and equipment, the additional tax revenue based on the current assessment value is about $15M. That number may be higher once reassessments occur, but it is difficult to provide an accurate estimate without performing a full and detailed reassessment. The revenue could either off-set a future budget increase or simply redistribute the non-residential tax burden. The former approach would limit the tax increase on non-residential for a single year, and the latter approach would reduce the tax rate for all non-residential property owners on an ongoing basis. To ensure fair and equitable taxation, administration would likely require two to four years to re-inspect and assess the machinery and equipment inventory before a tax could be implemented.

[21] *This same stipulation did not exist for other non-residential property types.*

EXEMPTION ISSUES *(CONT.)*

If Council chooses to reconsider the taxable status of machinery and equipment, the following four points should be considered:

1. Fairness and Equity – There should be a clear and justifiable reason why one property type is exempt from taxation while others are not. If this justification does not exist, it is only fair that all property owners contribute to the costs of government. Exempting one property type simply shifts the tax burden to the remaining taxable base. The current M&E exemption is estimated to shift at least $15M in tax burden to other non-residential property owners.

2. Competitive Advantage – For the most part, the rest of the Edmonton region taxes machinery and equipment. Edmonton often uses its lack of machinery and equipment tax to promote itself as a preferred destination for prospective industrial development. On the other hand, this competitive advantage is offset, at least in part, by Edmonton's higher non-residential tax rate. Prospective developers with machinery and equipment components must often perform tax calculations to estimate whether Edmonton's tax environment is favourable. Of course, property taxes are not generally the largest consideration in choosing an industrial property location. Factors such as the cost of land and access to services, labour and consumers hold far greater influence in choosing an industrial location.[22]

3. Regional Negotiations – As the Edmonton region matures, the Edmonton Metropolitan Region Board gives increasing consideration to shared investment for shared benefit. Edmonton can argue that the city is a service centre that provides benefit to the greater region, and that the costs of these benefits should be shared.[23] On the other hand, because machinery and equipment is not taxed in Edmonton, the region can counter that tax parity goes both ways – that it would be unfair for them to contribute to regional costs if some Edmonton properties are exempt from contributing.

4. Workload Considerations – If Edmonton decides to tax machinery and equipment, administration will require time to review the valuation of its existing machinery and equipment inventory in order to make this adjustment. Resources will need to be reallocated to update machinery and equipment assessment values, and this will likely require a minimum of two years to complete.

[22] *More information on this point is articulated in Union of British Columbia Municipalities and BC Ministry of Community, Sport and Cultural Development, "Major Industrial property Taxation Impacts", Davies Transportation Consulting Inc., January, 2011.*

[23] *This point will be further discussed in the Big City Challenges Discussion Paper.*

EXEMPTION ISSUES *(CONT.)*

3.7 FARM BUILDINGS

Buildings used for farming operations in Alberta receive preferential property tax treatment. These buildings and structures are not assessable in Alberta's rural municipalities. Without an assessment value, the properties are also automatically tax exempt. This reduces the municipal tax base of rural municipalities, but also reduces the overall education tax base (meaning all residential property owners pay additional education tax to cover the farm building exemption).[24]

Until 2017, Alberta's urban municipalities assessed these buildings, but were required to provide a 50 percent tax exemption. This discrepancy between urban and rural approaches created an inequity in the taxation treatment. In 2017, the Alberta government addressed the inequity by exempting all farm buildings from assessment and therefore taxation.[25] While this action created equity across farm buildings, it only exacerbated the existing inequity in tax treatment between farm properties and all other properties assessed and taxed at market value. Given the small number of farm buildings in Edmonton, the municipal tax loss for fully exempting farm buildings is less than $100,000 annually.[26] The impact on education tax is harder to measure.

In discussing the assessment and taxation of farm buildings, most people visualize the standard mixed farming operation with a barn, machinery storage buildings and a few grain bins. This perception leads to the issue gaining very little attention. The situation becomes more complicated when intensive agriculture is discussed. The taxation of large operations such as cattle feedlots, dairy farms and large poultry operations causes concern for rural municipal officials. Investments of millions of dollars in farm buildings result in no taxation, if fact, in some cases it lowers the tax incidence and increases the costs of supplying municipal services to the property. Municipalities such as Redcliff can have greenhouses that stretch over multiple acres, but contribute nothing to the municipal tax base – leaving other property owners in the area to cover the costs of municipal service.

Finally, the exemption of farm buildings may have an unintended consequence as marijuana grow operations begin to proliferate across the province. Under the current farm building regulations, these property types would be exempt from property assessment and taxation. The Government of Alberta could resolve this matter by specifying that growing pharmaceuticals does not qualify as farming operations.

If the original intention of the farm building exemption was to disregard small farm sheds and barns, the province could have all farm buildings assessed, but include a flat dollar amount assessment exemption. This flat dollar assessment exemption could be based upon the assessment of buildings associated with an average sized mixed farming operation. In this way, all farm buildings are treated equally, but those of a larger scale still contribute to the tax base.

[24] *Farm properties have a variety of tax breaks on both the assessment and taxation side. Farmland is underassessed and farm residences have a flat exemption. These issues will be discussed in more detail in a subsequent discussion paper dealing with regulated assessment properties.*

[25] *The assessment exemption for urban municipalities has been set for a five-year phase in.*

[26] *As of 2018, there are 90 tax accounts in Edmonton with farm buildings. A few of these would be considered intensive farming.*

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY

4.1 TAX CANCELLATION AND DEFERRAL AUTHORITY OVERVIEW

The previous sections of this paper have focused on property tax exemptions and their effect on the City's tax base. With few exceptions, tax exemptions are governed by provincial legislation and municipalities must follow those rules. Council does, however, have authority to cancel, reduce, refund or defer levied tax on an individual or group of property owners. The relevant section reads:

> **Cancellation, reduction, refund or deferral of taxes**
> 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.

While this power is quite expansive, a few limiting factors make it different from a full property tax exemption (such as the powers discussed under section 1.7). First, Council's authority to cancel, reduce, refund or defer property tax is limited to municipal property tax only. Education property tax is levied by the provincial government and the full amount levied must be remitted to the province. Second, any decision under this authority can only apply to the current year or previous years. So, unlike an exemption where a property can be exempted from property tax on a go-forward basis, tax cancellations, reductions, refunds or deferrals need to take place annually to maintain a reduction.

Given this authority, a wide variety of stakeholders have approached Council to request the use of this provision for their individual situation. City Council has been rightly cautious in utilizing this power, as one favourable decision potentially invites many more requests. To help guide Council's use of this authority, policy can be implemented to help support future decision making.

At present, Council has two existing policies that make use of their tax cancellation authority. One is the Tax Adjustment and Rebate Criteria for correcting administrative errors of fact, addressing buildings destroyed by fire or acts of God, and outlining conditions for tax penalty cancellation. The second is Council policy C-543 Retroactive Municipal Tax Refunds. This second policy provides retroactive tax refunds to organizations that become tax exempt but have paid property taxes while their building was under construction. Each of these policies will be discussed in turn below. Given that both have not been reviewed for at least a decade, possible policies changes will also be identified.

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

4.2 TAX ADJUSTMENT AND REBATE CRITERIA

The Tax Adjustment and Rebate Criteria has acted as the City's guiding policy on whether to provide property tax or property tax penalty cancellation.[27] The policy has four categories in which cancellation is possible, and one in which cancellation is specifically denied. Depending on the category, tax cancellation could be granted to the current owner for the current year and up to two previous years. The four categories include:

- *Errors in Fact*

  In cases where the City has erred on a factual matter that results in a higher than appropriate assessment value, Council may authorize a refund for the differential tax amount for a maximum of two previous years. If, for example, the City erroneously attributed a finished basement to a property where none existed, that property owner would be entitled to a tax refund equaling the amount they were overtaxed for the two previous years. Also, depending on when the error is discovered, the taxes for the current year are either adjusted before being levied, or refunded by way of issuing an amended assessment.[28] Errors in exemption amounts may also fall into this category.

  Refunds can be issued for a period less than two years if: (1) the current owner has had possession of the property for less than 2 years, or (2) the error does not extend back for the full two year period. Council set a limit of two previous years in part to limit municipality liability, and also to acknowledge the property owners' shared role in ensuring their property value and associated data is correct. All data used to assess a property is available to the property owner using online City tools or by requesting the information directly.

  As existing legislation only allows for assessment adjustments within the current year via an amended assessment or an Assessment Review Board decision, taxes from previous years are considered owed regardless of error. This section of Council's policy provides some leniency to the otherwise strict provincial provisions.

- *Errors in Judgement*

  Errors in judgement include, but are not limited to, market adjustments when reviewing neighbourhood sales, or a reduction in the relative condition or quality of the home. Unlike errors of fact, adjustments for errors in judgement are made for subjective rather than objective reasons. In cases where the assessor determines an assessment reduction is warranted because of a judgement call, but where no factual data has changed, the property would receive a current year adjustment, but not qualify for a tax refund in previous years. The fact that a property owner either accepted the previous years' assessments, or that the value was confirmed by the Assessment Review Board, is sufficient proof of due diligence in previous years.

- *Buildings Destroyed by Fire or Acts of God*

  In cases where a building is completely destroyed or rendered uninhabitable by a fire or act of God,

[27] *A copy of this policy is included in Appendix B. At the time of this paper's publication, a revised version of this policy was being proposed.*

[28] *Correcting the assessment value of a property within the year it was issued is called an "amended assessment". Amended assessments will automatically adjust the property's assessment value, and, by extension, the taxes owed by the property owner within that given year. These are at the discretion of the City Assessor and do not require Council approval.*

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

Council has authorized a prorated tax abatement to be calculated from the date of destruction/ damage to December 31. To qualify for this rebate, however, the site must be cleared within the current tax year. This component of the policy is to incentivize the removal of derelict structures.

Under existing provincial legislation, property is assessed based on its condition on December 31 of the previous year. If damage or destruction takes place in the current year, the assessment would only be adjusted for the following tax year and no proration would be required.

Neither provincial legislation nor City policy considers a rebate for buildings damaged by a fire or act of God, but still considered habitable.

- *Buildings Voluntarily Demolished*

  As was the case for destruction by fire or act of God, a similar rebate will be considered for those properties that are voluntarily demolished and the site cleared. However, this rebate is not provided if the building is in the process of being rebuilt or renovated within the same year. This provision is essentially the reverse of the City's supplementary assessment process, in which partially completed properties are assessed and taxed at their full value for a prorated period once a building has been completed. In offering a prorated tax reduction in the case of demolition, the City acknowledges the removal of a building in a similar fashion to the construction of one by adjusting the taxes accordingly. Eligibility also requires the site to be cleared of debris, encouraging site clean-up.

- *Cancellation of Tax Related Charges*

  One of the most common requests the City receives is for cancellation of tax penalties accrued because of late payment. Under the current tax policy, Council has authorized cancellation of tax penalties when late payment is the result of a death in the immediate family, or other substantiated compassionate and humanitarian grounds.[29] This provision has been the source of the greatest consternation because the terms "compassionate and humanitarian grounds" are not well defined, nor have the timelines for deaths in the family been included in the criteria. As a result of this lack of clarity, property owners have requested tax penalty rebates when, for example, taxes are paid one day late or pets pass away close to the tax deadline.

  The Assessment and Taxation Branch has typically held the qualifying cases in this provision to a very small number each year. Internal practices dictate that qualifying cases be considered only when the property owner has died or been hospitalized during the payment period. Death in the immediate family has also been considered, but only when travel is required and documentation is provided.

  While these rules seem harsh, having strict tax deadlines is important to ensure higher compliance and collection rates. Further adding to the case for a strict deadline, the municipality advertises the tax deadline and taxes are consistently due on the same day each year – June 30. Tax bills are sent out over a month in advance, tax balance queries

[29] *This category also requires a confirmation of a good payment record.*

[30] *Tax balance queries and monthly payment subscriptions can now be performed online.*

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

can be made with the municipality and monthly payment options are available.[30] Beyond the few exceptions made in this policy, the onus for paying taxes on time falls to the property owner.

Year	*Council Directive Rebates*
2017	$212,610
2016	$235,433
2015	$124,610
2014	$546,245
2013	$238,499

Edmonton is one of the few jurisdictions in Alberta to have a tax cancellation policy. Edmonton's policy is considered by some to be overly lenient while it is used by others as a template for their own policies.[31] Included below is a five-year summary of tax dollars rebated as a result of the policy.

[31] *Compensation for destruction or demolition of buildings is rare in other jurisdictions.*

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

4.3 CRITERIA REVIEW AND POLICY UPDATE

Under the City Charter, Council can choose to delegate its section 347 powers to Administration, but only to a limit of $500,000 a year. As part of considering this new power, Council may also wish to review and update the tax adjustment and rebate criteria. Relevant policy considerations are outlined below:

- *Categories of Eligibility*

  Council may first wish to review whether the existing categories of tax adjustment and rebate sufficiently address all potential valid requests. The current categories include:

  1. Objective Errors in Fact – examples where the City has erred in a provable and objective way.
  2. Buildings Destroyed – examples where buildings are destroyed or rendered uninhabitable because of unexpected events such as fires or tornados and the site is cleared
  3. Buildings Demolished – examples where property owners demolish buildings and clear the site.
  4. Death and Illness – examples when property owners or their immediate family experience tragedy near the tax deadline

  Another category currently not included within the policy relates to properties under probate—properties where the owner has passed away and the estate is under review. Because estate assets are frozen during this period, property taxes are typically paid by the executor or an expected beneficiary of the estate. On occasion, beneficiaries have argued that the requirement to pay taxes during this period is onerous. However, the City should exercise care about involving itself in the resolution of estates. Wills in probate are an open ended process and can often take several years to resolve.

  A subsequent policy may also want to codify situations where tax adjustments and rebates are considered in the name of customer service. Examples include correcting innocuous misapplied payments to accounts, or penalty adjustments based on successful Assessment Review Board appeals.

- *Request Deadlines and Scope*

  Two further policy considerations relate to when requests will be accepted (or no longer accepted) and how far back compensation will be granted. Typical application deadlines for errors in fact have been within the taxation year and compensation has, until now, been a maximum not exceeding two previous years.[32] Both the applications deadline and compensation period could be adjusted to be longer or shorter. The longer the timelines, the greater the municipal liability and likely number of requests. Longer compensation periods should also take account of the reliability of information from previous years; that the error may exist today does not mean the same error existed in previous years. Shorter timelines will place greater onus on the property owner to ensure their property tax accounts are in order.

- *Limiting Considerations*

  Limiting provisions that deny claims in the case of illegal activity may be warranted. It may be appropriate, for example, to withhold tax relief if the property owner did not apply for appropriate building permits or is involved in enforcement action by the municipality.

[32] *A property owner cannot request a rebate for an error that existed two years ago, but was since corrected.*

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

- *Minimums/Maximums*
  At present, there are no minimums or maximums on the dollar value of tax rebates. However, these could be implemented in a new policy. Minimums and maximums will limit the kinds of requests the City of Edmonton will receive. Regardless of whether minimum or maximum refund amounts are instituted for current or past years, errors will always be corrected for the following taxation year, no matter the amount.

- *Residential vs. Non-Residential*
  Tax rebate policies could be crafted to apply differently to different property types. For example, death or illness in the family may be a valid argument for a residential household, but likely not for a large business. Determining whether and where to draw these distinctions is open for discussion.

- *Addressing Requests Outside Policy*
  In addition to outlining what will be considered as part of a policy, it is also helpful to detail what will not be considered. City Council, of course, still has the authority to approve requests that fall outside its policy. In those cases, a process should clearly describe how a request will be addressed. It is not yet clear whether Administration will bring forward all requests that fall outside policy, or whether such requests will require a notice of motion from Council. The former would likely result in a large number of requests coming forward to Council annually, while the latter would reduce the number of requests but place some responsibility with the individual Councillor being approached.

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

4.4 RETROACTIVE MUNICIPAL TAX REFUNDS

While various religious and non-profit properties are exempt from taxation once in use, they are still considered taxable while under construction. The legislation is written in this manner for good reason. Consider the following examples:

a. a non-profit purchases a property, but ultimately decides to sell it before using it for its intended purpose.

b. a non-profit completes construction of their building, but leases 50% of it to a restaurant.

Waiting until after construction is complete ensures that only the space that qualifies for an exemption becomes exempt and the municipality avoids effectively subsidizing a property that never provided a public benefit. The language used in the legislation does, however, create additional burden on legitimate religious or non-profit groups who ultimately use their property for the intended exempt purposes. To address those circumstances, Council approved policy C-543.

Council policy C-543, Retroactive Municipal Tax Refunds, governs the rules around which eligible exempt properties will be considered for retroactive municipal tax refunds dating back to the years they were under construction.[33] This policy only applies to municipal property taxation amounts and does not consider refunding education taxes. Under this policy, qualifying properties must have (1) had a valid building permit, (2) submitted all necessary exemption paperwork, and (3) been approved for an exemption on a go-forward basis. Once these conditions have been satisfied, Council's policy allows a municipal tax refund to commence "at the time the building foundations are laid, for any period of construction in the current year and to a maximum not exceeding the previous two years."[34] To help illustrate the policy, a few examples are included below:

- *Example 1 - 100% Tax Exempt*
  A non-profit society completes construction of a cancer therapy clinic in January 2018. The land was purchased in April 2016, building permits were issued in June 2016, and foundations were laid in July 2016. During the construction period, all property taxes were paid. Upon confirmation of operation in January 2018, the property is made 100% tax exempt. Under Council policy C-543, a prorated portion of 2016 (i.e. from the time the foundations were laid in July) and the full 2017 municipal property taxes are refunded and credited to the property tax roll.

- *Example 2 - Partially Exempt Space*
  An exemptable non-profit completes construction in June 2018. The land was purchased in April 2016, building permits were issued in June of 2016 and foundations were laid in July 2016. During the construction period, all property taxes were paid. Upon confirmation of operation in June 2018, it is clear that 10% of the building has been reserved as commercial/retail leasable space. As a result, the building is made 90% exempt. Under Council policy C-543, 90% of municipal property taxes are refunded and credited to the property's tax roll account for a prorated portion of 2016, all of 2017, and a prorated portion of 2018.

The above two examples demonstrate how the policy is meant to work. There are several other examples,

[33] *A copy of this policy is included in Appendix C. At the time of this paper's publication, a revised version of this policy was being proposed.*

[34] *City of Edmonton, City Policy C-543 (Retroactive Municipal Tax Refunds), City of Edmonton, February 2009*

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

however, that have stretched the limits of the policy and have caused Council to occasionally step beyond the policy's scope. Consider the following examples:

- *Example 3 – Greater than Two Year Construction Time*
  A religious assembly completes construction of a building used for religious worship in January 2018. The land was purchased in April 2014, building permits were issued in June 2014 and foundations were laid in July 2014. During the construction period, all property taxes were paid. Upon confirmation of operation in January 2018, the property is made 100% tax exempt. Under Council policy C-543, the period of construction extends over a period longer than the maximum two year allowance. As a result, a municipal tax refund is only available for the full 2016 and 2017 tax years. In this example, while foundations were laid in July 2014, the property is only eligible for a maximum refund not exceeding the previous two years.

This third example illustrates the first policy consideration associated with C-543. Setting a limit of two years reduces the municipality's liability and encourages property owners to complete construction within a reasonable timeframe. However, situations have emerged where property owners did not complete their construction within the two year limit and were required to pay some municipal property taxes that were not eligible for a refund. In other examples, Council felt it appropriate to extend the rebate beyond the two year timeframe.

- *Example 4 – Non-Payment During Construction*
  A non-profit society completes construction of a full-service nursing home for adults with autism in January 2018. The land was purchased in April 2016, building permits were issued in June of 2016 and foundations were laid in July 2016 (similar to example 1). During the construction period, no property taxes are paid and penalties accrue. Upon confirmation of operation in January 2018, the property is made 100% tax exempt.

While this fourth example falls within the policy's allowable time period, the original policy did not contemplate how to address non-payment of taxes and its associated penalties. On the one hand, it can be argued that refunds are only meant to return the original property tax principal levied and that any penalties accrued should remain payable. On the other hand, if the original property tax balance is refunded and was always intended to be refunded, then the basis on which the penalties are being charged is unknown. Without a clear answer to this question, Council may be tempted to forgive penalties. This action, would reduce the likelihood of timely payments by non-profits expecting eventual refunds. The answer to this question can be gleaned in acknowledging the indefinite nature of this eventuality. Non-profit organizations should not be encouraged to build up debt with the municipality in anticipation of a refund, since refunds are not guaranteed. Taxes are always due by their deemed deadline and non-payment will result in penalties, even if the principal amount is eventually refunded.

The scope of the rebate, including the number of years and whether penalties are included, are important policy questions for Council to consider. On the one hand, City Council looks to support exempt entities in their aims to benefit the community. On the other hand, an excessively lax policy could encourage abuses and place both the City and otherwise exempt entities in difficult situations when projects fall through or use changes.

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

City Council has, in the past five years, chosen to go beyond their existing policy by extending forgiveness timelines. Previous to that, very few accounts were considered for tax forgiveness outside Council's policy. To provide further context, a five-year tax rebate summary is provided:

Year	*Approved Tax Forgiveness Under Council Policy*	*Approved Tax Forgiveness Outside Council Policy*
2017	$194,472.27	$259,564.27
2016	$111,004.04	$9,043.72
2015	$93,386.05	$133,586.43
2014	$28,227.27	$0.00
2013	$108,496.56	$50,979.50

Deferral Authority

In addition to its ability to refund or cancel taxes, Council can also choose to defer property tax payments. In a similar fashion to its other powers, Council should exercise caution when using this authority. As discussed above, Council has expressed discomfort penalizing exemptible organizations for non-payment of taxes during their construction period. As a result, previous policy conversations with Council have proposed a use of its deferral authority in the context of the Retroactive Municipal Tax Refund policy such that the exemptible organization's property taxes are deferred while construction is underway. However, if such an approach is taken, limits on the number of deferral years should be set. Doing so will allow the City to avoid carrying a large tax debt on behalf of a property owner. It will also reduce the risk for both the City and exempt property owner if the property is never completed, or does not become fully exempt.

It should be noted that no other municipality in Alberta has a tax deferral policy, but City Council has approved ad hoc tax deferrals over the past five years. A summary of Council decisions is provided below:

Year	*Approved Council Deferral*
2017	$204,680.05
2016	$126,474.89
2015	$92,996.53
2014	$62,282.57
2013	$0.00

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

4.5 OTHER USES OF TAX CANCELLATION/DEFERRAL AUTHORITY

Beyond the two existing City policies, Council has entertained various other requests from property owners for tax relief or tax incentives. Some of these requests were directly tied to property taxes, while others were more indirectly related. Very few of these kinds of requests have been approved, but some potential topic areas are discussed below.

Low Income and Seniors Grant Programs

Property tax is often criticized for taxing a fixed asset with no correlation to the income level of the property owner. This topic was discussed at some length in the Assessment and Taxation White Paper, which argued that there is typically a correlation between income level and home value. Deferral programs are also available to seniors in Alberta. See section 2.1 of the Assessment and Taxation White Paper for a more detailed discussion of this topic.

Neighbourhood Construction Activity

City Council commonly receives requests for compensation due to nearby construction activity. Acknowledging that construction activity is commonplace, Council should take special care in designing any policy around this form of compensation. From a property tax perspective, the amount of taxes owed are based on the value of the property. Construction activity timelines are typically short and there is no noticeable impact to property values as a result. If, however, longer-term construction begins affecting sale prices,the assessment process will capture this impact by default without the need to provide special compensation.

Council has, on occasion, discussed the possibility of compensation in "extreme" circumstances. However, defining what constitutes "extreme" and determining an appropriate compensation may be difficult. The following are some of the questions Council would need to answer in order to develop a policy of that nature:

1. Would "extreme" circumstances be based on duration of the project or the amount of overrun?

2. How long is too long?

3. How much compensation is appropriate?

4. How would compensation be calculated?

Business Incentive Program

Businesses and non-residential property owners are also a common source of requests for tax reductions. While the City already has a number of programs that invest in particular areas and their associated infrastructure, some property owners make direct requests to the City for funding or property tax reductions, often characterized as incentives, to support their development.

Once again, Council should exercise caution in proceeding down such a path without clear criteria that can be applied to all applicants. Tax breaks for some property owners mean tax increases for others. Providing ad hoc incentives without clear criteria opens the City to accusations of disrupting the market by picking winners and losers, as well as setting precedent for future requests. Fairness, equity, transparency

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

and an understanding of the public good should all be considered in advance of providing tax incentives.

Before pursuing such programs, some preliminary considerations may include:

- Determining tax return before providing assistance
  - This helps determine municipal benefit before determining cost
  - It also determines whether the project would be competitive without incentive
  - It helps make the costs more predictable
  - It provides a benchmark to measure the appropriate incentive
- Requiring the developer to provide detailed financial disclosure
  - This could include a pro forma that includes the cost of project, projected revenues/expenses and expected return, which can help to analyze impact of incentive
  - Developer should share information similar in detail to what they would provide a bank or investor based on the project
  - Ensures assistance is only offered to make the project feasible
- Require that incentives result in an economic return (performance based)
  - Incentive should provide a measurable beneficial outcome
  - Incentives can be developed with provisions for clawbacks in the case of non-performance
  - Rather than provide upfront incentives in full, provide annual incentives that can be tied to benchmarks (easier to enforce and monitor)
  - Develop a pre-agreed schedule of benefits (reduces risk and increases certainty)
- Consider incentives through infrastructure support
  - Infrastructure costs are more easily known by municipalities
  - Infrastructure investments can benefit multiple property owners
  - Infrastructure investments are more in line with the traditional municipal role
  - Infrastructure provides ongoing benefit regardless of whether a business remains
- Engage in a cooperative approach with the province and regional partners
  - Having provincial cooperation places more tangible link between job growth and government revenue (income tax rather than property tax)
  - Avoids the race to the bottom with each municipality trying to outdo the other
  - Leverage increases and potential overextension decreases when regions works together
  - Levels regional playing field making business decisions easier
- Consider whether such an approach is equitable and transparent

COUNCIL TAX CANCELLATION AND DEFERRAL AUTHORITY *(CONT.)*

- Determine whether providing an incentive result in Council choosing winners and losers in the marketplace
- Consult with other stakeholders affected by the decision that may not be the beneficiary

Brownfield Redevelopment Grant Program

Edmonton has had a Brownfield Redevelopment Grant Program since 2012 to promote remediation and redevelopment of brownfield sites.[35] At present, this program is limited to former refueling sites. The Brownfield Redevelopment Grant Program is indirectly tied to property tax as the remediation grant (phase III grant) is calculated based on the assessment uplift associated with site remediation and redevelopment.

Under the Modernized Municipal Government Act, the City now has the authority to offer tax deferral or exemptions to brownfields. Such a power would likely be used in conjunction with a promise of redevelopment, but Council should exercise caution on how such system is structured. Under the new sections of the MGA, Council may either develop a tax exemption bylaw or enter into tax exemption agreements.

Choosing the bylaw route is not recommended as defining a category of tax exemption can be challenging and developing a single bylaw may take a one-size-fits all approach to a complicated issue. Furthermore, once a tax exemption category has been developed, that policy can be interpreted and ruled on by the Assessment Review Board, which may shift Council's original intent.

Alternatively, Council could choose to develop a brownfield exemption policy and then enter into individual agreements with property owners in accordance with that policy. In pursuing this approach, Council would simply be taking its existing grant program and creating an alternative tax cancellation program. The ultimate effect of an exemption or grant program is similar with similar costs to the City.

Tax Increment Financing

Tax increment financing is the process of using future tax revenues to cover the financing costs of current infrastructure investments. This is generally the principle that was applied when establishing the City's three Community Revitalization Levy (CRL) areas. In cases where growth and construction may not have occurred without an initial infrastructure investment, tax increment financing can be a powerful tool. However, despite its sound theory, tax increment financing is always challenged to prove that growth would not have otherwise occurred were it not for the initial investment. For instance, if a project would have proceeded regardless of the City's investment (even if somewhere else in the City or a few years later), then the tax increment tool will ultimately increase property taxes across the entire tax base without any financial benefit to the City.

Non-Profit Local Improvements

While most non-profits are exempted under the Municipal Government Act, some are still subject to local improvement levies for infrastructure installation in their area. Edmonton City Council has received one request from a non-profit for local improvement tax relief. Council chose not to cancel the amount owing, but decided instead to defer it, making it payable at a later date. Any kind of action to support non-profits with local improvement costs can be significantly precedent-setting. Updating the City's Tax Cancellation and Rebate Policy will help support Council in making consistent and principle-based decisions on such matters in the future.

[35] *A pilot project was launched in 2006, but the current program was launched in 2012.*

CONCLUSION

5.0

Tax exemptions and tax relief are two of the most challenging topics from an assessment and taxation perspective. While the demand for exemptions and relief are strong, a municipality must exercise due caution on how it pursues policies in this realm. In offering a tax break to one property owner, the City is, in effect, asking all other taxpayers to subsidize the one receiving the break. In answering calls for transparency, fairness and equity, a municipality must enter this conversation with open eyes and be prepared to justify any tax exemption or tax relief action with strong arguments regarding the public good.

Many of the rules surrounding tax exemptions are dictated provincially. This can be viewed as both a benefit, in that it allows a municipality to avoid political sensitive discussions, as well as a detriment, because it reduces municipal flexibility to respond to issues at a grass-roots level. Similarly, a provincially legislated exemption policy ensures consistency across the province, but changes to that policy are often slow and not within municipal control. For matters dictated provincially, this paper serves as a basis for advocacy.

For tax exemption or relief policy within municipal control, this paper provides a framework for discussion. Clear and well-defined guidelines are essential to any well-functioning municipal policy. At some point, policies of this nature must draw lines that may, in some respects, seem arbitrary. A municipal Council should only pass policies in this area if they are willing to defend it both from its critics and those seeking to be included.

APPENDIX A: 1997 TAX FORGIVENESS CRITERIA

In order to qualify for tax forgiveness a property and/or facility would need to meet the following fundamental principles :

Fundamental Principles	*Description*

Community Benefit	• Organizations are of community benefit if they provide programs or services in the following areas:
	  • charitable and benevolent activity
	  • neighborhood community association or community league activity
	  • arts/cultural activity
	  • multicultural/ethnocultural activities
	  • youth or senior citizen associations
	  • amateur sports and recreation organizations
	  • museums and interpretive exhibits
	  • non commercial child care
	  • aid to the disabled & handicapped, OR
	• The programs and services provided by the organization are deemed of public benefit to citizens of Edmonton serving them either as a geographic community or community of interests; and
	• The organization's ability to provide those services is either more efficient, effective, accessible, or of a higher quality than would be provided by the city or the private sector; and
	• The benefits of the programs and services improve the quality of life of citizens of Edmonton.

Incorporation	• The organization must be incorporated as a non-profit in accordance with Section 241(f) of the Municipal Government Act. • The organization must be in good standing under the applicable act of legislation.
Mission	• The mission or goals of the organization are considered to serve the community.
Volunteer	• There is volunteer involvement in the organization's programs, activities or services.
Accessible	• The organization actively promotes participation of the community in the programs, activities and facilities. • The programs are not considered elite in nature and are readily accessible to members of the community. • The programs, activities and fees do not restrict community access or participation.

APPENDIX A: 1997 TAX FORGIVENESS CRITERIA *(CONT.)*

Fundamental Principles	*Description*
Chief Use	• The activities that provide community benefit must be at a level representing approximately, at least, 60% of the usage of the property or part of the property.
Quality Programming	• The programs are considered of a quality meritorious to warrant public support.
Commercial In Nature	• Normally, an organization would be not be considered for tax exemption if it is commercial in nature. If a non-profit organization is offering a competitive service but only to serve the mission or purpose of the organization it should be considered for exemption. For example, if food is served as part of an organization's programs to encourage socialization or for health reasons it may considered tax exempt.

APPENDIX B: 1998 TAX ADJUSTMENT AND REBATE CRITERIA

TAX ADJUSTMENTS AND REBATE CRITERIA

Approved: City Council
September 1, 1998

PREPARED BY: Corporate Services Department - Assessment and Taxation Branch

TITLE: **TAX ADJUSTMENTS AND REBATES**

Qualifying adjustments will be carried out by the Administration and applied to the current tax roll for the time of ownership by the current owner to a maximum not exceeding two years.

I. ERRORS IN FACT

1. Error in calculating the size of an improvement.
   Note: This type of error is generally the result of a transposition of measurements taken in the field by the Assessor.

2. Major variations that were erroneously included in the improvements assessment.
   Example: Basement finish/additional furnaces/additional fireplaces.
   Note: This type of error is generally the result of an external assessment having been done on the improvement.

3. Assessment of additional structures on the property.
   Example: Shed/garages/swimming pools.
   Note: This type of error is generally the result of the improvement being placed on the wrong account.

4. Assessment of adjustments to land value.
   Example: Land rated as serviced or wrong zoning applied.
   Note: This type of error is generally the result of misinterpretation of maps or zoning bylaws.

II. ERRORS IN JUDGMENT

1. Opinion or judgment errors and change in use requests would come forward in the situation of a ratepayer not agreeing with the classification or quality of the improvement or subjective land features used by the Assessor. This type of change would not qualify for a tax rebate.

APPENDIX B: 1998 TAX ADJUSTMENT AND REBATE CRITERIA *(CONT.)*

III. BUILDINGS DESTROYED BY FIRE OR ACTS OF GOD

1. A building completely destroyed and the site cleared within the current tax year: Council authorizes the Administration to calculate a building tax abatement for that portion of the year from the date of destruction to December 31.

2. A building or part of a building damaged but not totally destroyed which renders the building uninhabitable, unusable or unsafe be eligible for a tax abatement prorated from the date of the damage to December 31, if the site is cleared within the current tax year.

3. Buildings damaged or destroyed and which circumstances do not fit Clauses 1 and 2: Council may give consideration of tax abatement on the merits of each case based on the principles stated in Clauses 1 and 2.

IV. BUILDINGS VOLUNTARILY DEMOLISHED

1. A building voluntarily demolished and the site cleared, Council will authorize a building tax abatement for that portion of the year from the date of demolition to December 31 of that year.

2. A building or part of a building which is voluntarily demolished but the building is in the process of being renovated will not be considered for rebate by Council.

V. CANCELLATION OF TAX RELATED CHARGES

1. Requests for forgiveness or cancellations of penalties, legal fees or other tax related charges applied in accordance with Council approved bylaws or Provincial Legislation would not qualify for a tax rebate.

2. Requests for forgiveness or cancellation of penalties applied in accordance with Council approved bylaws or Provincial Legislation would qualify for cancellation when late payment is the result of a death in the immediate family, or other substantiated compassionate and humanitarian grounds when there is confirmation of a good payment record.

The above covers the most common requests that are received for a tax rebate. Any request that is not covered by the above will be reviewed on an individual basis and forwarded to Council for consideration.

APPENDIX C: CITY POLICY C543

CITY POLICY

POLICY NUMBER: C543

REFERENCE:

ADOPTED BY:
City Council
25 February 2009

SUPERSEDES:
New

PREPARED BY: Planning and Development **DATE:** 2 January 2009

TITLE: **Retroactive Municipal Tax Refunds**

Policy Statement: Municipal tax refunds remain at the discretion of City Council.

The following will be given consideration for municipal tax refund:

a) Organizations described in the MGA under Section 362(1)(d) school buildings, 362(1)(e) hospital buildings, 362(1)(h) nursing homes, 362(1)(k) religious buildings, 362(1)(l)(iii) buildings used for burial purposes, 362(1)(m) lodge accommodations and 362(1)(n) non-profit organizations, excluding student dormitories, and in the *Community Organization Property Tax Exemption Regulation* A.R. 281/98 (COPTER), will be given consideration.

b) Construction or renovation of a facility, for which a building permit has been issued, for an organization that has met the necessary requirements set out in the MGA and COPTER and has been granted exemption.

c) Necessary forms to prove exemption eligibility or an exemption application have been submitted to the City Manager for review and the organization meets all requirements necessary to qualify for exemption as set out in the MGA and COPTER.

d) The refund period commences at the time building foundations are laid, for any period of construction in the current year and to a maximum not exceeding the previous two years.

e) The refund will be paid at the completion of building construction and applied to the current tax roll for the time of ownership by the current owner.

The purpose of this policy is to:

a) Guide Council's discretionary power to grant retroactive tax refund for the construction period for properties that become exempt on completion.

b) Ensure requests from non-profit organizations asking for tax refunds for the municipal portion of the property taxes under the *Municipal Government Act,* R.S.A. 2000, c. M-26 (MGA), Section 347, for the period of time the buildings are under construction and do not qualify for tax exemption, are dealt with in a consistent manner.

This policy is subject to any specific provisions of the Municipal Government Act or other relevant legislation or Union Agreement.

APPENDIX C: CITY POLICY C543 *(CONT.)*

CITY PROCEDURE

		POLICY NUMBER:	**C543**
AUTHORITY:	City Manager	**EFFECTIVE DATE:**	25 February 2008
TITLE:	**Retroactive Municipal Tax Refunds**		

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1. DEFINITIONS

1.01 Foundations – Includes excavation and backfill and reinforced grade beam on concrete pile or concrete strip footings and pads.

2. PROCEDURES

2.01 Planning and Development to:

a) Review exemption request for exempt and non-profit organization to determine whether the necessary criteria as set out in the Act and Regulation have been met.

b) Report to Executive Committee requests for refund of the municipal portion of property taxes from exempt and non-profit organizations.


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