

Tax Deferral Request

Theatre Network 1975 Society

Recommendation

That Executive Committee recommend to City Council:

1. That the tax deferral under section 347(1) of the *Municipal Government Act* for Theatre Network 1975 Society (Tax Roll 2716157) be extended to May 2019.
2. That if the Theatre Network 1975 Society reaches the conditions required for exemption status by May 2019, Administration provide a report to Executive Committee recommending cancellation of the municipal taxes and penalties back to 2015.
3. That if the Theatre Network 1975 Society does not reach the conditions required for exemption status by May 2019, Administration provide a report to Executive Committee requesting further deferral or other action as appropriate.

Previous Council/Committee Action

At the April 11, 2017 City Council meeting, the following motion was passed:

1. That the tax deferral under section 347(1) of the Municipal Government Act for Theatre Network 1975 Society (Tax Roll 2716157) be extended to May, 2018.
2. That if the Theatre Network 1975 Society reaches the conditions required for cancellation under City Policy C543, Retroactive Municipal Tax Refunds, by May 2018, Administration will provide a report to Executive Committee recommending cancellation of the municipal taxes and penalties back to 2015.
3. That if the Theatre Network 1975 Society does not reach the conditions required for cancellation under City Policy C543 by May 2018, Administration will provide a report to Executive Committee requesting further deferral or other action as appropriate.

Executive Summary

In January 2015, Theatre Network 1975 Society lost their building at 10708 124 Street ("Roxy Theatre") to a fire. The property no longer qualifies for an exemption under provincial legislation, but the organization is requesting a continuation of special Council consideration.

Report

The Theatre Network 1975 Society ("Theatre Network") owned and operated the Roxy Theatre, located at 10708 124 Street. This theatre was exempted from property taxation under provincial legislation while in use as a non-profit entity.

On January 13, 2015, the Roxy Theatre was destroyed in a fire. According to provincial legislation, if a property is no longer being used for non-profit purposes, it cannot remain exempt from property tax. Since the property was not operating as a non-profit in 2015, it was taxed. The tax amount was only for vacant land as per Council's Tax Adjustment and Rebate Criteria.

In 2016, the Theatre Network approached City Council with a tax cancellation request. Council instead chose to defer outstanding municipal taxes and associated penalties under the condition that the property would be reviewed in 2017 to determine if a deferral was still warranted or if other action was appropriate. The Theatre Network paid its outstanding education tax amounts and related penalties. In 2017, Council chose to continue its deferral action and the Theatre Network again paid its education tax amounts.

The property now sits vacant with a deferred municipal tax amount owing. No penalties will accrue while the payment is deferred, but 2018 property taxes will be added in May. If Council follows with its original course of action, the organization would be expected to pay its 2018 education tax amounts, but the 2018 municipal tax amounts would be added to a new deferral motion.

Recent discussions with the organization indicate that the Theatre Network is working with Development Services and designs for a new facility are underway.

Financial Implications

Council currently has agreed to defer \$26,139.64 in municipal property tax. That amount is expected to increase by approximately \$9,500 in 2018.

Legal Implications

Section 347 of the *Municipal Government Act*, RSA 2000 c M-26, allows municipal councils to cancel or defer taxes if they consider it equitable to do so. Pursuant to the *Municipal Government Act* and case-law, property is not considered to be exempt until it is actually being used for an exempt purpose. Properties under construction are not considered to be used for an exempt purpose until complete.

Policy

This matter is being addressed outside of existing Council policy.

In 2009, Council developed City Policy C543 to equitably treat all non-profit entities that paid taxes prior to qualifying for a tax exemption under provincial legislation. City Policy C543 provides for retroactive municipal tax refunds to properties or portions thereof that subsequently fall under a legislated exemption, but only considers the property during its construction phase for the current year up to a maximum not exceeding the two previous years.

The reasoning at the time was to ensure that the property was completed and used for its intended purposes before providing tax cancellation or refund relief. If Council forgives taxes in advance, there is a possibility that the property is never used (or partially used) for its intended purposes and, in those instances, there would be no way to recover the lost taxes. Deferring taxes in 2016 and 2017 maintained responsibility for the taxes with the organization, but ended ongoing tax penalties.

Public Engagement

The Theatre Network was engaged during the drafting of this report. No other public engagement took place as this is a request from a single property owner.

Corporate Outcomes and Performance Management

Corporate Outcome(s): The City of Edmonton has a resilient financial position			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Ensure transparent and reasonable tax policy.	5-year total of Council- approved tax cancellations and refunds	Under City Policy C543: \$535,586.19 (2013-2017) Ad-hoc requests from non-profit organizations: \$301,314.21 (2013-2017)	N/A

	5-year average value of Council- approved tax cancellations and refunds	<p>Private property owners: \$0.00 (2013-2017)</p> <p>Under City Policy C543: \$107,117.24 (2013-2017)</p> <p>Ad-hoc requests from non-profit organizations: \$60,262.84 (2013-2017)</p> <p>Private property owners: \$0.00 (2013-2017)</p>	
Ensure transparent and reasonable tax policy.	<p>5-year total of Council- approved tax deferrals</p> <p>5-year average value of Council- approved tax deferrals</p>	<p>Ad-hoc requests from non-profit organizations: \$638,293.58 (2013-2017)</p> <p>Private property owners: \$0.00 (2013-2017)</p> <p>Ad-hoc requests from non-profit organizations: \$127,658.72 (2013-2017)</p> <p>Private property owners: \$0.00 (2013-2017)</p>	N/A

Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score	Current Mitigations	Potential Future Mitigations
Commercial	Tax refunds will shift the tax burden onto remaining taxpayers	5	1	5	Council could choose not to approve the request	A refund will be absorbed by the remaining tax base, but will put pressure on tax increases.
Legal / Regulatory	The City runs the risk of additional groups requesting similar consideration	3	1	3	This risk is mitigated by the existence of Council policy.	Council ultimately has the authority to approve or deny subsequent requests.