

Tax Exemptions Under Section 364 of the Municipal Government Act - Review

Recommendation

That the October 16, 2020, Financial and Corporate Services report CR_8020, be received for information.

Previous Council/Committee Action

At the January 27, 2020, Executive Committee meeting, the following motion was passed:

That Administration conduct a review of all existing tax exemptions under section 364 of the *Municipal Government Act* to ensure they fit under current City policies and standards, and provide a report back to Committee.

Executive Summary

The City of Edmonton currently exempts five properties by municipal bylaw. This comes at the cost of roughly \$250,000 per year. Municipal tax exemptions should be reviewed periodically to ensure the exemptions are still relevant and appropriate. Administration continues to review accounts to improve the administration of exemptions; however, Council may decide whether any of the five accounts should be removed from the municipal exemption list. Any recommended changes would be made effective in the 2021 tax year, unless Council stipulates otherwise.

Report

Property tax exemptions are most often required through legislation, including the *Municipal Government Act* (MGA) and the *Community Organization Property Tax Exemption Regulation* (COPTER). Section 362(1)(n) of the MGA and COPTER exempts property held by non-profit organizations from taxation, but not all property held by non-profits is exempt. Requirements within both the MGA and COPTER may prevent exemption for some property owned by a non-profit. The legislated requirements for property tax exemption must be fairly and equitably applied to all properties. In cases where a property held by a non-profit organization fails to meet the legislated requirements, section 364 of the MGA grants City Council the authority to make them exempt from taxation to the extent that it considers appropriate. Council's tax exemption authority under section 364 is limited and can only be applied to

property held by non-profit organizations, and machinery and equipment used for manufacturing and processing. Once a property is exempted, non-profit organizations holding the property 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.

At present, only five properties are included under Council's exemption authority. They are:

- Tix on the Square (exempted in 2000)
- Kids in the Hall (now 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)

Each is discussed in more detail below.

Tix on the Square

Tix on the Square was exempted from municipal tax by Council bylaw in 2000 after a review by an exemption peer review committee. While operated by a non-profit organization (Edmonton Arts Council Society), the property is essentially a retail store. Tix on the Square does not meet the definition of 'thrift shop' to be eligible for an exemption under COPTER. Other legislation under which this property was considered for tax exemption included Section 362(1)(n)(iii) of the MGA. Section 362(1)(n)(iii) requires that a property held by a non-profit be used for a charitable or benevolent purpose that is for the benefit of the general public. Distinguishing the extent to which Tix on the Square benefits the general public as compared to other local retailers is difficult. Therefore, Tix on the Square, has instead been exempted under Council authority. This exemption results in a total tax loss to the City of ~\$2,500 per year.

The Hallway Cafe

The Hallway Cafe, formerly Kids in the Hall, was exempted from municipal tax by Council bylaw in 2000 after a review by an exemption peer review committee. The Hallway Cafe has similar challenges to Tix on the Square, including Section 362(1)(n)(iii) of the MGA requiring that property held by non-profits be used for a

charitable or benevolent purpose that is for the benefit of the general public. This exemption results in a total tax loss to the City of ~\$9,000 per year.

In conducting this review, it has also been noted that The Hallway Cafe has a Class A liquor license. Section 365(1) of the MGA explicitly prohibits a property that is licensed from being exempt from taxation under a Section 364 Bylaw. Administration is following up with the business operators to discuss alternative licensing arrangements that may allow them to remain exempt.

Lucky 7 Films (Film Alberta)

Film Alberta is a private, for-profit film and video production studio located on 5305 Allard Way. There are two components to the building: the front portion is a three storey with basement office space and the back portion is an open studio for film production. Given the use of the property, it does not qualify for a tax exemption under legislation.

In 2013, City Council directed Administration to work with the organization to determine a model to achieve tax reduction or cancellation over the long term, including the possibility of leasing the building to a non-profit organization and providing tax exemption by bylaw. Through this discussion, the owner of Film Alberta established a non-profit company under the name “Lucky 7 Films” to hold the property.

With the property being held by this non-profit entity, City Council exempted it by bylaw. The bylaw stipulated that the exemption would only be for the periods of the year during which spaces of the building were vacant. This exemption requires the property owner to report to City Administration annually regarding the amount of space and length of time that portions of the property are rented or used. The intention of the exemption was to be short-term to support the studio while it was struggling and the 2013 report suggested that, “once the subject property reaches a certain level of use or long-term occupancy, the bylaw granting exemption will be reviewed and, with Council approval, repealed.”

For a number of years, use of the studio space has not been reported by the property owner as required by the bylaw exemption. Administration has received lease information for the office space but, without further use information, the exemption cannot be based on the property’s use. This means that the property has been exempted at near 100 percent for several years, resulting in a total tax loss of ~\$105,000 per year.

This exemption is not consistent with how others are applied, in that it supports a private business. This exemption may no longer serve its intended purpose of supporting the studio on a short-term basis. Council may consider concluding this exemption for the 2021 tax year.

Habitat for Humanity Prefabrication Workshop

Habitat for Humanity's prefabrication workshop was exempted from municipal tax by Council bylaw in 2013. Exemption requirements for property held by non-profits and used to provide affordable and subsidized housing are found in the subsections of section 362, as well as other legislation. This property does not qualify under the sub-sections related to affordable and subsidized housing because it is not being used as housing accommodation. Furthermore, Habitat for Humanity benefits a limited group of families with a rigorous selection process and therefore is not considered to benefit the general public under the meaning of the legislation.

Council chose to exempt the facility by bylaw in 2015. This exemption was updated in 2019 when the organization moved to a new building. This exemption results in a total tax loss of ~\$88,000 per year.

Parking Area at 9538 103A Avenue

This parkade was originally constructed to support YMCA and City staff. The parkade title is registered under a condominium corporation and not the YMCA. The parkade also charges rates for use, making it restricted, and would not meet the definition of charitable and benevolent.

Had the title been registered with the YMCA as the owner, the parkade may have been exempted because property owned by the YMCA may be exempt under a private member's bill. As this was not registered that way, but the purpose is YMCA use, Council chose to exempt the parkade by bylaw in 2015. The exemption results in a total tax loss of ~\$50,000 per year.

Corporate Outcomes and Performance Management

| Corporate Outcome(s): The City of Edmonton's resilient financial position enables both current and long-term service delivery and growth. | | | |
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| Outcome(s) | Measure(s) | Result(s) | Target(s) |
| Ensure transparent and reasonable tax policy | Past year's taxes forgone as a result of Council exemption decisions. | Council has approved 5 ongoing municipal tax exemptions for non-profit organizations through Bylaw 12408. This costs the City roughly \$250,000 per year. | N/A |

Others Reviewing this Report

- B. Andriachuk, City Solicitor