

Theatre Network 1975 Society

Request for Tax Deferral

Recommendation

That Executive Committee recommend to City Council:

1. That the deferral on tax roll account 2716157 continue until either the building foundations are laid or to the beginning of the 2020 tax year, whichever is earlier.
2. That the outstanding balance on tax roll account 2716157, in the amount \$34,291.40, which includes all previously deferred amounts, as well as a prorated portion of 2019 municipal tax levy be cancelled on condition that building foundations are laid in 2019.
3. That tax roll account 2716157 remains taxable while under construction until reaching exemption conditions, at which time Policy C607 should be applied.

Previous Council/Committee Action

At the April 10, 2018 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 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.

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. Administration is providing a recommendation for Council's 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 and 2018, Council chose to continue its deferral action and the Theatre Network paid only its education tax amounts each year.

The property remains vacant with a deferred municipal tax amount owing. No penalties will accrue while the payment is deferred, but 2019 property taxes will be added in May. If Council follows with its original course of action, the organization would be expected to pay its 2019 education tax amounts, but the 2019 municipal tax amounts would be added to a new deferral motion. Each year that this matter has been before Council, Council has signaled its intent to cancel the deferred amount to the first deferral date. The Theatre Network has not reached conditions for cancellation.

Over the past two years, the Theatre Network has received funding from all three orders of government to support reconstruction. This includes:

- \$300,000 in federal funding for design purposes
- \$2.5 million in federal funding for construction purposes
- \$2.5 million in provincial funding for construction purposes
- \$208,000 in municipal funding for design purposes
- \$3.6 million in municipal funding for construction purposes (committed)

Recent discussions with the organization indicate that the Theatre Network is expecting construction on the site to commence in the spring of 2019. Construction is expected to take 18 months to complete. The Theatre Network has requested that the outstanding balance continue to be deferred or simply be cancelled.

Under newly approved Council policy, the Theatre Network does not qualify for further tax deferrals. Council may choose to make the total balance payable, or simply cancel the outstanding amount. Since Council's previous motions suggested cancellation as a probable course of action, Administration has presented a recommendation that cancels the outstanding balance once construction commences and the building's foundations are laid. Once construction commences, existing Council policy will provide a process by which the municipal taxes will be rebated. Council must, however, decide on how to proceed with the outstanding tax balance.

Financial Implications

Council currently has agreed to defer \$34,291.40 in municipal property tax (2015-2018). That amount is expected to increase by approximately \$9,300 in 2019. Cancellation of the balance owing would be written off as part of the City's tax losses.

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.

On January 22, 2019, Council reviewed and updated its Retroactive Municipal Tax Rebate Policy (C607). Under that policy, tax deferral action is explicitly denied. Under existing Council policy, the Theatre Network will be eligible to request a municipal tax rebate after construction on the site completes only for the time during which the site was under construction. This means that the current balance of \$34,291.40, as well as several months in 2019 (until foundations are laid), would remain payable.

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
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Outcome(s)	Measure(s)	Result(s)	Target(s)
Ensure transparent and reasonable tax policy.	<p>5-year total of Council- approved tax cancellations and refunds.</p> <p>5-year average value of Council- approved tax cancellations and refunds.</p>	<p>Under City Policy C543: \$513,905.08 (2014-2018)</p> <p>Ad-hoc requests from non-profit organizations: \$810,247.05 (2014-2018)</p> <p>Private property owners: \$0.00 (2014-2018)</p> <p>Under City Policy C543: \$102,781.02 (2014-2018)</p> <p>Ad-hoc requests from non-profit organizations: \$162,049.41 (2014-2018)</p> <p>Private property owners: \$0.00 (2014-2018)</p>	N/A
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: \$756,166.76 (2014-2018)</p> <p>Private property owners: \$0.00 (2014-2018)</p> <p>Ad-hoc requests from non-profit organizations: \$151,233.35 (2014-2018)</p> <p>Private property owners: \$0.00 (2014-2018)</p>	N/A
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. In 2018, these tax exemptions shifted \$258,044.22 in property tax burden to the remaining non-residential base.	N/A

Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	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.
Legal/Regulatory	The City would be out of step with provincial legislation if an independent policy is created.	5	1	5	This will only occur if Council approves tax exemption or cancellation.	The City could work with the GOA to develop policy parity.

Others Reviewing this Report

- B Andriachuk, City Solicitor