

Creative Co-Location Facilities Property Subclasses - Ontario Regulation 384/18

Date: May 22, 2018
To: City Council
From: General Manager, Economic Development and Culture
Wards: All

SUMMARY

This report provides a summary of Ontario Regulation 384/18 (O.Reg. 384/18), filed on May 8, 2018, that establishes the regulatory framework to implement the new Creative Co-location Facilities property tax subclass. Council approval is sought to appoint the General Manager, Economic Development and Culture to the role of "Program Administrator" and the City Treasurer to the role of "Appellate Authority" to fulfil administrative functions defined in the regulation. This report is supplemental to and should be considered concurrently with Item EX34.21: *Refining Eligibility Criteria for the Creative Co-Location Facilities Property Subclasses*.

RECOMMENDATIONS

The General Manager, Economic Development and Culture recommends that:

1. City Council appoint the General Manager, Economic Development and Culture to the role of "Program Administrator" as defined in O.Reg. 384/18.
2. City Council appoint the City Treasurer to the role of "Appellate Authority" as defined in O.Reg. 384/18.
3. City Council authorize the City Solicitor to submit the bills necessary to amend Municipal Code Chapter 767, Taxation, Property Tax, to give effect to these recommendations, and any other provisions deemed necessary as a result of the enactment of O.Reg. 384/18.

FINANCIAL IMPACT

The financial implications related to the implementation of a new tax subclass for creative co-location facilities are set out in Item EX31.1a: *Creative Co-Location Facilities*

Property Tax Subclasses and Item EX34.21: Refining Eligibility Criteria for the Creative Co-Location Facilities Property Subclasses.

There are no additional financial implications associated with the recommendations in this report beyond those identified in these earlier reports. See:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX31.1>

and

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX34.21>

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On May 14, 2018, the Executive Committee requested that the General Manager, Economic Development and Culture report directly to Council at its meeting on May 22, 2018, identifying any necessary by-law amendments arising from the recent enactment of Ontario Regulation 384/18, to reflect the requirements outlined in the regulation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX34.21>

On February 12, 2018, City Council approved with amendments the reports "2018 Property Tax Rates and Related Matters" and "Creative Co-Location Facilities Property Tax Subclasses" providing the parameters for assessing the eligibility criteria for inclusion in the Creative Co-Location Facilities Property subclasses and the reduction of the tax rate for the subclasses at 50%. The By-law to implement the February Council decisions was enacted at the meeting.

<https://www.toronto.ca/legdocs/bylaws/2018/law0168.pdf>

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX31.1>

<https://www.toronto.ca/legdocs/mmis/2018/ex/bgrd/backgroundfile-112457.pdf>

COMMENTS

The provincial budget bill (*Bill 31, Plan for Care and Opportunity Act (Budget Measures), 2018*) received Royal Assent on May 8, 2018. The passing of this bill was required before the Ontario Minister of Finance could enact a regulation to establish the regulatory framework for the creation of the new property tax subclasses for Creative Co-location Facilities. The required regulation was filed by the Minister on May 8, 2018 as Ontario Regulation 384/18 (O.Reg. 384/18).

The regulation amends Ontario Regulation 282/98 (the tax class regulation) to establish a new "Creative Enterprise Facilities subclass" within the existing commercial and industrial tax classes, and within any other optional tax class that contains property that would otherwise be included in the commercial or industrial classes. The wording in the regulation refers to a "Creative Enterprise Facilities subclass". For the City of Toronto's purposes, based on Council's earlier adoption of this tax class in principle, the City has adopted the terminology "Creative Co-location Facilities" to describe properties within

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the subclass. This terminology is used throughout this report, as being more descriptive of the co-locational tenancy requirements of eligible properties.

The regulation requires that Council enact a by-law in order to have the creative enterprise facilities class apply. Council has already provisionally approved to have the subclass apply for the 2018 taxation year, in its adoption of Item EX31.1, with the approval of recommendation 7, as follows:

7. Subject to the required regulation being enacted by the Province, City Council adopt the Creative Co-Location Facilities subclasses, or other name defined in regulation, within each of the Commercial Residual Property class and Industrial Property class for the 2018 taxation year.

As a practical matter for future years, the adoption of the subclass can be accomplished through Council's annual approval of the municipal tax levy/tax policies report.

The regulation also stipulates that, in order for land to be included in the subclass, the following requirements must be met:

- the property has been approved as being eligible for inclusion in the subclass; and
- the City of Toronto has passed a by-law listing the properties eligible for inclusion in the subclass.

Council already enacted By-law No 168 -2018, to amend the City of Toronto Municipal Code to add the Creative Co-location Subclass, subject to getting the necessary enabling regulation. With the recent filing of O.Reg. 384/18, By-law No. 168-2018 is now in force.

Appointment of a Program Administrator

In terms of the application, eligibility, approval and appeal processes for the inclusion of properties in the Creative Co-location Subclass, the regulation identifies the requirement for a "Program Administrator" who is required to be appointed by Council. The Program Administrator, as defined in the regulation, is an employee of the City who is appointed to exercise the powers, duties and functions set out in the regulation and described below. This report recommends that Council appoint the General Manager, Economic Development and Culture to the role of Program Administrator under O.Reg. 384/18.

The functions of the Program Administrator include administering processes to receive, review and approve applications for property to be included in the class; to conduct audits and inspections of properties to verify eligibility requirements, and to hear requests for reconsiderations and to make determinations of eligibility thereunder according to the processes set out in the regulation.

Appointment of an Appellate Authority

The regulation also identifies the requirement for an "Appellate Authority", and required that the Appellate Authority similarly be appointed by Council. The Appellate Authority, as defined in the regulation, is an employee of the City who is appointed to hear appeals to eligibility of properties for inclusion in the Creative Co-location Subclass.

This report recommends that Council appoint the City Treasurer to the role of Appellate Authority under O.Reg. 384/18.

Request for Reconsideration and Appeal Processes

O Reg.384/18 sets out a two-stage process to review determinations made by the General Manager of Economic Development and Culture of applicant properties' eligibility for inclusion in the Creative Co-location Subclass as made under the authority delegated to the General Manager by Council by By-law 168-2018. . This two-step process was contemplated in staff's original report to Council on the creation of the subclass in EX31.1a.

A Request for Reconsideration (Step 1) may be made to the Program Administrator by a property owner to determine whether a property is included in the Creative Co-location Facilities subclass. The Request for Reconsideration process in O.Reg. 384/18 mirrors the requirements set out in Section 39.1: *Reconsideration of Assessment* of the *Assessment Act* with respect to process, timing and notification requirements. The difference is that Requests for Reconsideration for the purposes of the Creative Co-location Facilities subclass are heard by the City-appointed Program Administrator (General Manager, Economic Development and Culture), rather than the Municipal Property Assessment Corporation (MPAC), as prescribed under the *Assessment Act*.

Where, as a result of a Request for Reconsideration, a decision is made that a property should have been included in the subclass, or that it has ceased to be included, the Program Administrator must notify the City Clerk of the decision, and the City's by-law that identifies properties eligible for inclusion in the subclass and the City's tax rolls shall be amended accordingly. MPAC will also be notified of any changes to properties eligible to be included in the subclass such that assessment rolls can be appropriately amended.

The second step of the review process involves an Appeal to the City-appointed Appellate Authority. An appeal may be made to the Appellate Authority (City Treasurer) by a property owner (or any other party entitled to make an appeal under section 40 of the *Assessment Act*) to determine whether a property should be included in the Creative Co-location Facilities subclass. The appeal process in O.Reg. 384/18 again mirrors the requirements set out in Section 40: *Appeal to Assessment Review Board* of the *Assessment Act* with respect to process, timing and notification requirements. The difference is that appeals for the purposes of the Creative Co-location Facilities subclass are heard by the City-appointed Appellate Authority (City Treasurer), rather than the Assessment Review Board (ARB), as prescribed under the *Assessment Act*.

For appeals, O.Reg. 384/18 requires that the Appellate Authority hold a hearing (either orally or in writing) to make a determination whether the property is eligible for inclusion in the subclass. Where a decision is made that a property should have been included in the subclass, or that it has ceased to be included, the Appellate Authority must notify all parties to the appeal and the Program Administrator of the decision, and must provide notification of the decision to MPAC, the ARB and the City, such that the City's by-law that identifies properties eligible for inclusion in the subclass and the tax rolls shall be amended accordingly.

This report recommends that Council appoint by by-law a Program Administrator (General Manager, Economic Development and Culture) and an Appellate Authority (City Treasurer) as required under O.Reg. 384/18 for the purposes of administering the Creative Co-location Facilities subclass. It is further recommended that Council authorize the City Solicitor to submit the necessary bills to amend Municipal Code Chapter 767, Taxation, Property Tax, to give effect to these appointments, and to make any other provisions deemed necessary as a result of the enactment of O.Reg. 384/18.

In the preparation of this report, EDC staff consulted with staff from the Ontario Ministry of Finance, MPAC, City Legal Services, Corporate Finance and Revenue Services.

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