

Creation of a New Property Tax Class for Creative Co-Location Facilities

Date: November 20, 2017

To: Executive Committee

From: Acting Chief Financial Officer and Deputy City Manager Cluster A

Wards: All

SUMMARY

The most recent Provincial property reassessment has resulted in significant assessment increases for many property owners. Some of these large increases were due to incorrect assessments (e.g. 401 Richmond Street West, downtown Yonge Street retail), which assessments have since been significantly reduced by the Municipal Property Assessment Corporation (MPAC).

Rapidly increasing land values resulting in significant property tax increases is a city-wide issue facing many properties beyond arts and culture facilities. Similar concerns have been raised respecting organic food growers/retailers (Kensington Market), music venues, and main street retail on a broader scale (e.g. along the Eglinton corridor).

For this reason, staff will be coming forward with potential options for mitigating tax increases which could include the re-instatement of the tax increase capping protection program for those properties in the commercial, industrial and multi-residential property classes that have previously reached their full Current Value Assessment (CVA) level of taxation and are no longer protected from large re-assessment related tax increases. This proposed policy option together with others will be reported to Executive Committee at its meeting of February 6, 2018, through the "2018 Tax Rates and Related Matters" report to be considered concurrently with the City's 2018 Capital and Operating Budgets.

Notwithstanding this, City Council has previously requested the Province to explore opportunities to support not-for-profit arts and culture organizations and incubators, including through property assessment tools. The Ontario Minister of Finance has most recently extended his willingness to work with the City to establish a new property class for arts and culture facilities.

To seize on this opportunity, this report presents the City's policy objectives and proposed key eligibility criteria for the recommended new property class for Council approval as a first and required step in this process. Upon receipt of this formal submission, Ministry staff will work with City staff in developing a regulatory framework

for the creation of this class. If adopted by the Province, the regulatory framework will provide flexibility for the City to design its own eligibility criteria beyond the broad parameters established by the Province.

RECOMMENDATIONS

The Acting Chief Financial Officer and Deputy City Manager Cluster A recommend that:

1. City Council approve the policy objectives and key eligibility criteria for the creation of a new property class for Creative Co-Location Facilities, as outlined in Appendix A of this report.
2. City Council request the Province to create a new property tax class for Creative Co-Location Facilities based on the policy objectives and key eligibility criteria set out in this report and that such property class be created as a property class for which municipalities be permitted to establish more detailed local criteria and property-specific by-laws, effective for the 2018 taxation year retroactive to January 1, 2018, and further, the Minister of Finance be requested to allow municipalities to set the tax rate for this new Property Tax Class.
3. City Council direct the Acting Chief Financial Officer to include, as part of the 2018 tax rate and tax ratio setting process, the Creative Co-Location Facilities tax class, subject to the necessary regulations being approved and filed by the Province before such provision takes effect, with a report to Executive Committee at its meeting of February 6, 2018 as part of the "2018 Tax Rates and Related Matters" report.
4. City Council direct the General Manager, Economic Development and Culture, in consultation with the Acting Chief Financial Officer and the City Solicitor, to establish detailed eligibility criteria for inclusion of properties in the proposed Creative Co-Location Facilities tax class, together with a process to approve inclusion of such properties in this tax class, and a process to address appeals related to the City's eligibility criteria, with a report to Executive Committee at its meeting of February 6, 2018.

FINANCIAL IMPACT

This report recommends that the Province implement a new property tax class for Creative Co-Location Facilities and that the City adopt policies that detail eligibility criteria and set the level of tax relief.

A new tax class, with a new starting transition tax ratio recommended by the City and set by the Province, may result in small tax shifts between properties within a tax class, and between tax classes, which would be observed in the 2019 taxation year.

As no properties will be returned on the tax roll for use for 2018 taxes, there will be no impact to the 2018 taxes levied as a result of this report. However, if the City receives

the requested authority, subsequent to transfer of eligible properties into the new class in early 2018, MPAC will prepare supplementary assessments, which will result in adjustment of taxes for such properties, resulting in such properties paying taxes for 2018 as though they were in the new class for the entire year. These supplementary assessments and resultant taxes will result in a reduction of taxes in 2018. The amount of reduced taxes will depend on the number of properties included in the new class, their assessments, and any mitigation that might otherwise be in place regarding capping.

Staff will be reporting to Executive Committee at its meeting of February 6, 2018, on 2018 tax rates and policy matters, including consideration of potential measures to mitigate tax increases, which could include the re-instatement of the tax increase capping protection program for all properties in the commercial, industrial and multi-residential property classes, so as to protect these properties from experiencing large reassessment-related tax increases. Foregone revenue from capping is recovered within the class by 'clawing-back' a portion of tax decreases from properties that would otherwise experience tax decreases through CVA reassessment.

DECISION HISTORY

On January 31, 2017, Toronto City Council adopted a Member's Motion from Councillor Cressy requesting that the Government of Ontario work with municipalities to explore opportunities to support not-for-profit arts and culture organizations and incubators, including property assessment tools and changes to the Ontario Culture Strategy to support the continued vibrancy of the sector.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM24.14>

Discussions between City staff and the Ontario Ministry of Finance followed over spring and summer 2017 regarding the potential of creating a new property tax assessment classification for not-for-profit arts and culture organizations and incubators.

By way of letter received on September 25, 2017, Ontario Finance Minister Charles Sousa advised Toronto Mayor John Tory that the Province sought to work with the City to "explore the possibility of creating a new property tax class that would enable the City to apply a reduced tax rate to arts and culture facilities." (See Appendix B). The process would be triggered by the Province receiving a formal request from the City articulating the local policy objectives and detailing the key eligibility criteria for the proposed class, to be followed by a consultative process with the City to develop a regulatory framework to support the creation of this new property tax class, including the flexibility for the City to design its own eligibility criteria beyond the broad parameters established by the Province.

Subsequently, at its meeting of October 2, 2017, City Council directed staff to develop policy objectives and a set of criteria for the creation of a new property tax sub-class for arts and cultural facilities in Toronto and report back to Executive Committee by February 1, 2018.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM32.39>

COMMENTS

Normally, the classification of a property for tax purposes is determined by MPAC based on the predominant use of the property, and as defined in regulation. There are currently 15 property tax classes, as set out in Ontario Regulation 282/98 as amended (e.g. residential, commercial, industrial, and multi-residential being the predominant classes, with some classes being available at a municipality's option).

<https://www.ontario.ca/laws/regulation/980282#BK3>

The desire to create new property tax classes is not new. What has prevented the proliferation of special tax classes has been a lack of good public policy justification, challenges in developing objective definitions for such classes, an absence of regulatory/legislative permissions to do so, and the Province's concern for province-wide implications.

Defining a property tax class for "Creative Co-Location Facilities" presents similar definitional challenges. Based on the predominant use, such properties would otherwise be classified within the commercial and/or industrial tax class. Any attempt at a definition of such a class would invariably necessitate a detailed examination of the tenant mix and tenant activities taking place within the property, and an evaluation of whether these activities provide the desired public benefits. For example, the term "creative" may mean different things to different people.

A determination that the tenants and activities within a property would meet the eligibility criteria would require the examination of a substantial amount of documentation from the property owner and tenants, including disclosure of information on tenants, rents, public uses, etc., and an evaluation of whether or not the activities taking place within the property met the desired intent for inclusion in this special property class. This information is not required nor collected by MPAC in the determination of a property's tax classification. The actual tenant mix and activities within the property may also change from year to year, as tenants change, and so a property's eligibility for inclusion in such a class may change from year to year, and therefore would require an annual review/confirmation that all eligibility requirements continue to be met.

The administrative requirement and level of detail and complexity of information required to determine eligibility within such a class to an appealable standard goes beyond MPAC's current authority and mandate.

What is new, however, is that the Minister of Finance in his letter of September 25, 2017 to Mayor Tory has indicated a willingness to consider a different process to facilitate the creation of a new property tax class for arts and culture facilities. This process would transfer the responsibility of establishing the detailed eligibility criteria for such a class to the City. This would therefore require the City to develop and administer a process to approve eligible properties for inclusion in this class, and notify MPAC of this designation such that MPAC can classify these properties within the Creative Co-Location Facilities tax class for municipal taxation purposes.

The letter proposes a two-step process. Firstly, City Council must make a request to create such a class, articulate the local policy objectives and detail the key eligibility criteria. Secondly, upon receipt of this formal request, Ministry staff would work with City staff in developing a regulatory framework for the creation of the new property tax class. It is anticipated that the regulatory framework would provide flexibility for the City to design its own eligibility criteria, which would require the City to approve such criteria, and develop a process to identify and approve inclusion of such properties in this tax class

Over the past year, City staff have been working on developing local policy objectives and eligibility criteria for a new tax class for arts and culture facilities, but more specifically a narrower sub-set of properties which reflects a more local policy objective and named "Creative Co-Location Facilities".

Throughout this process, Economic Development and Culture staff have undertaken research and consulted with stakeholders, including property owners, tenants, and creative organizations. The following sets out the objectives and criteria established through this process. Based on an initial staff assessment, there are limited properties in the city that would fit within the recommended eligibility criteria.

STEP 1:

Following the process outlined in the Minister's letter, it is recommended that City Council request the Province to create a new property tax class for Creative Co-Location Facilities based on the policy objectives and key eligibility criteria:

Local Policy Objective

The clustering of creative enterprises has proven to be an effective means for bodies outside of government to support public policy priorities such as:

- the delivery of public programming;
- the strengthening of arts and cultural sector; and
- achieving sector-wide efficiencies through collaboration in the cultural sector.

The City of Toronto seeks to recognize the benefits provided to the citizens of Toronto through Creative Co-Location Facilities and ensure their ongoing viability by requesting, that the Province of Ontario recognize this group as a special tax class under the Ontario Assessment Act.

Key Eligibility Criteria

The property must meet all of the following criteria:

1. Have multiple tenants
2. Majority of tenants must be Creative Enterprises
3. Must provide Below Market Rent leases for cultural organizations
4. Must meet a minimum threshold for size of the facility
5. Must provide free programming and cultural activities for the public

STEP 2:

Implementation

The City's ability to adopt a tax class for Creative Co-Location Facilities can only occur after a provincial regulation has been enacted to amend O.Reg. 282/98 to create the new tax class and to define the broad eligibility criteria and to allow for more detailed local criteria to be adopted by the local council. Council could then adopt, by by-law, the detailed eligibility criteria for inclusion in this class, including the means of identifying qualifying properties. The definition and criteria would form part of the City of Toronto Municipal Code.

This report recommends that City Council direct the General Manager, Economic Development and Culture, in consultation with the Acting Chief Financial Officer and the City Solicitor, to establish detailed eligibility criteria for inclusion of properties in the proposed Creative Co-Location Facilities tax class, and to recommend such criteria to Council for approval.

Under the approach suggested by the Minister of Finance, the City retains the responsibility to identify and approve eligible Creative Co-Location Facilities for inclusion in the tax class, and would designate properties by by-law, in accordance with the City's detailed eligibility criteria. This would therefore require that the City develop and administer a process to identify potentially eligible properties, through an annual application/self-identification process, and review and approve eligible properties, and make recommendations to Council to approve that the property be included in the tax class. It is anticipated that the process would also incorporate requirements for an annual confirmation / re-verification that eligibility criteria continue to be met for continued inclusion in the class. The Economic Development and Culture Division has agreed to undertake responsibility for administering the application intake / review / approval process, and for recommending to Council the properties that are eligible to be designated for inclusion in the tax class.

Once a property has been designated as being included in the tax class, the City would notify MPAC of this designation, referencing the relevant by-law(s), such that MPAC can classify the property within the creative co-location facility tax class for taxation purposes.

In many respects, the methodology set out above mirrors the current processes used to identify properties that have been designated as municipal capital facilities, such that MPAC can re-classify the property.

Appeals Process

The tax classification of a property under the *Assessment Act* and O.Reg. 282/98 is one of the grounds on which a property may be appealed to the Assessment Review Board. As such, a new tax class or sub-class for Creative Co-Location Facilities would require that an appeal process be identified where an owner could appeal a property's inclusion or exclusion from the class. Details surrounding an appeal process will be developed in

consultation with the Ministry of Finance and the Assessment Review Board as applicable, and included in the by-law defining the tax class.

Implementation in 2018

Amendments to provincial regulations are required to create the new tax class in order to have it apply for the 2018 taxation year. City staff will work with the Ministry of Finance to determine whether the new tax class can be created in advance of Council having approved the individual properties to be included in the class, while ensuring that properties can be included in the class for taxation purposes retroactively to January 1, 2018. As Council normally establishes tax rates for all classes in February of each year, a placeholder designation for a new tax class must be considered in the tax rate setting process.

CONTACT

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SIGNATURE

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ATTACHMENTS

Appendix A - Local Policy Objective and Key Eligibility Criteria
Appendix B - Minister of Finance letter to Mayor Tory

APPENDIX A

Local Policy Objective

The clustering of creative enterprises has proven to be an effective means for bodies outside of government to support public policy priorities such as:

- the delivery of public programming;
- the strengthening of not-for-profits in the arts and cultural sector; and
- achieving sector-wide efficiencies through collaboration in the cultural sector.

The City of Toronto seeks to recognize the benefits provided to the citizens of Toronto, from Creative Co-Location Facilities and ensure their ongoing viability by requesting, that the Province of Ontario recognize this group as a subclass under the Ontario Assessment Act.

Key Eligibility Criteria

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