



REPORT FOR ACTION

Waiving Late Payment Penalties and Fees for Property Tax Payments

Date: September 8, 2017
To: Government Management Committee
From: Treasurer
Wards: All

SUMMARY

This report recommends that Council adopt amendments to the City of Toronto Municipal Code, Chapter 767: *Taxation, Property Tax*, to provide authority to the Treasurer to allow for a waiver of penalty charges and fees associated with late payment of property taxes, as a customer service measure, where a property owner has a good payment history and where other criteria are met. The changes are being recommended as a way to improve customer service and the City's responsiveness and flexibility in certain situations.

Additionally, this report identifies the circumstances surrounding a specific case of a large late payment penalty charge that was assessed as a result of a banking error. Council may wish to consider a partial refund of the late payment penalty in this circumstance.

RECOMMENDATIONS

The Treasurer recommends that:

1. Council enact a by-law to amend the City of Toronto Municipal Code, Chapter 767: *Taxation, Property Tax*, to authorize the Treasurer, and his/her designates, to provide a waiver of penalty charges and fees associated with a late payment of property taxes, where certain criteria, as identified in Attachment 1 to this report, are met.

FINANCIAL IMPACT

Interest and late payment penalties charged on overdue property tax accounts form part of the City's general revenues, and are reported under the City's non-program operating budget as *Tax Penalty Revenue*. The 2017 approved non-program budget includes a revenue estimate of \$29.0 million under the line item: *CE9160: Interest Income*.

Additionally, revenues are generated from fees charged for overdue notices. A fee of \$17.31 applies when an overdue notice is sent when a tax account has an outstanding balance of \$100 or more - these overdue notices are sent 4 times in each calendar year, in March, May, July and September. Revenues from overdue notice fees are reported within the operating budget for the Office of the Treasurer, Revenue Services Division, with a 2017 estimated revenue for these fees of approximately \$5 million.

Waiving late payment penalties and associated user fees, as recommended in this report and based on the estimated anticipated volume of property owners that may qualify, can be expected to result in approximately 2,900 residential properties, and a further 200 non-residential properties, being approved for the waiver in a year. Table 1 below identifies the financial impact of providing these waivers.

Table 1: Estimated Financial Impact of Waiving Late Payment Penalties and Fees

Account Type	Average Instalment Amount	Average penalty amount	Estimated Number of accounts with penalty to be waived annually	Estimated Penalty waived annually	Estimated Statement fees waived annually	Total Financial Impact Annually (Penalty & Fees)
Residential	\$800	\$10	2,900	\$29,100	\$25,200	\$54,300
Non-Residential	\$5,300	\$66	200	\$14,000	\$1,800	\$15,800
Total			3,100	\$43,100	\$27,000	\$70,100

In total, the recommended approach in this report could see a total of approximately \$54,300 in waived penalty and fee amounts for residential properties, and \$15,800 for non-residential properties, for a total annual financial impact of \$70,100 per year.

The estimated total penalties that could be waived annually, at \$43,100, represents approximately one-tenth of one percent of the budgeted total penalty revenue of \$29 million in 2017. Similarly, the total estimated statement fees that could be waived of \$27,000 represent one half of one percent of the budgeted fee revenue of \$5 million. Future year operating budgets will incorporate the costs of these waivers.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

The Deputy City Manager & Chief Financial Officer and Treasurer requested staff to explore the feasibility of providing a one-time waiver of late payment penalty and overdue statement fees under certain prescribed circumstances. The move comes in response to a desire to improve customer service and to be more responsive and flexible when dealing with citizen tax complaints.

COMMENTS

The purpose of a late payment penalty is to encourage taxpayers to pay on time. In accordance with *Chapter 767 of the Toronto Municipal Code*, a late payment penalty for non-payment of property taxes is imposed at the rate of 1.25 percent of the unpaid overdue amount on the first day of default (the day following the payment due date). Interest charges are also imposed for the non-payment of taxes at the rate of 1.25 percent on the first day of each month thereafter as long as the balance remains outstanding. In addition, an administrative fee is applied for the issuance of a Property Tax Statement (Overdue Notice) to property tax accounts where there is an outstanding balance of \$100 or more.

Currently, the *City of Toronto Municipal Code* provides no explicit authority or discretion to the Treasurer or staff to waive or alter late payment penalties, interest or fees for any circumstances, including a good past payment history.

Section 310 of the *City of Toronto Act, 2006* provides limited authority to cancel or adjust late payment charges on overdue amounts only under specific circumstances, such as in the case of errors made by the City (i.e. a misapplied payment), or where there has been an error or change to the assessment and/or property tax class under the *Assessment Act*. Where an error has been made in determining tax amounts due, this authority allows for the cancellation or adjustment of penalties, interest and fees that are a direct result of the error.

In general, the large majority of Toronto residents and property owners pay their property taxes on time and in full, and in accordance with prescribed due dates and instalment amounts. Statistics on property tax collection rates, including those benchmarked under the Municipal Benchmarking Network Canada (formerly the Ontario Municipal Benchmarking Initiative, or OMBI), show that Toronto's long term in-year collection success rate for property taxes is 96% or better (i.e., 96% of property taxes are collected in the year they are billed).

Occasionally, however, property owners submit their property tax payments beyond the instalment due date for a variety of reasons (absent-mindedness, illness, vacation, etc.), or submit payment amounts that are less than the full instalment amount, leaving an unpaid balance that result in late payment penalties being applied to their tax account.

Where the unpaid balance or the missed or late payment is greater than \$100, a property owner may also receive a mailed overdue notice (Statement of Tax Account), advising them of the overdue balance, that results in an additional fee of \$17.31 being added to their tax account (2017 fee level).

Overdue notices are mailed in early January (free of charge); while the \$17.31 fee applies to notices mailed in mid-March, mid-May, Mid-July and Mid-September. Therefore, a property owner submitting a late payment may or may not incur fees for an Overdue Notice, depending on when their late payment was made.

Many customers who incur late payment penalties or overdue notice fees acknowledge that their payment was submitted late, and therefore simply pay the additional penalty/fee amounts by making an additional separate payment, or by including it in their next instalment payment.

From experience, however, the City receives an estimated 800 to 900 calls and correspondence per month to 311's Tax and Utility Inquiry line and Revenue Services' call centre from property owners that have incurred late payment penalties and/or fees, inquiring whether such fees can be reversed. Customers often cite, as their reasons for the delayed payment or the request for reversal of fees and penalty, factors such as:

- extenuating circumstances (illness or death in the family, emergency, travel, etc.);
- financial circumstances where additional charges or fees may cause hardship;
- problems with mail delivery (i.e., payment was mailed on time but delivered late);
- banking errors; and
- a lengthy past period with a good payment history.

To date, with no authority given to staff to waive or alter late payment penalty and fees, requests for such considerations have been consistently denied, however compelling the circumstances. The purpose of the recommended changes would be to provide staff with more discretion and flexibility to deal with extenuating circumstances.

Policy to provide a waiver of late payment penalty charges and fees

This report recommends that Council authorize amendments to the Toronto Municipal Code and implement policies to allow for a waiver of late payment penalties and fees, where a property owner has a good payment history and where other criteria are met, as a means of enhancing customer service.

The recommended policy was developed with a customer-service focus, and is similar in intent to measures adopted by the City of Hamilton in 2006. A draft recommended policy statement is provided as Attachment 1 to this report. The key points of the recommended approach are summarized below.

Purpose: To allow for a waiver to be granted of late payment penalties and associated fees for property tax payments so that:

- Taxpayers with a good payment history are recognized, rewarded and encouraged to continue to make payments in full and on time;
- Taxpayers with extenuating circumstances are not unfairly penalized;
- Taxpayers who make minor errors during their payments are not subject to a penalty; and
- All taxpayers are ensured a fair and consistent approach when applying this policy.

Application: The Treasurer, and designated staff from Revenue Services Division, are granted authority to waive late payment penalties, and associated overdue statement fees for property tax accounts that are classified within one or more of the Residential; Multi-Residential; Commercial; or Industrial property tax classes.

Authorization/Approval Limits: Designated staff have authority to waive penalty and associated overdue statement fees for taxpayer accounts, where all conditions of eligibility are met, based on the following thresholds:

- Revenue Services Supervisors approval up to \$100;
- Revenue Services Managers approval up to \$5,000;
- Revenue Services Director approval up to \$25,000;
- Treasurer approval up to \$50,000;
- City Council approval is required for amounts over \$50,000.

Eligibility Requirements: The following requirements must be met in order to be eligible for a waiver of late payment penalties and associated fees:

- Taxpayers are permitted to receive the waiver of one late payment penalty and associated fees for late property tax payments once in any five-year period.
- Only taxpayers with a good payment history (no late payments within the preceding five-year period where the property has been owned continuously through) are eligible for the waiver.
- Where a property has been owned by the current owner for less than five years, a request to waive late payment penalties and fees may be approved for a good payment history over a continuous period where no late payment penalties/fees have been incurred since the purchase date of the property by the current owner.
- A waiver of late payment penalty and associated fees will only be granted where an owner has requested, in writing or verbally, to the Treasurer, or to a Revenue Services' or 311 employee, to have the waiver apply, and all waivers are subject to approval (and documented within the City's property tax billing system), based on the authority limits set out above.
- An application or request to receive a waiver of late payment penalties may be made by the property owner of the tax account, or by the person authorized by the property owner to make property tax payments, (e.g., a tenant, an agent or a property manager appointed by the owner).

Maximum amount of waived penalties and fees: The maximum amount of the waiver shall be limited to the total of the late payment penalty applied to the account for the first late/missed payment (i.e., the penalty imposed on the first day of default), plus the amount of any overdue statement fee charged to the account as a result of the late/missed payment. Subsequent interest amounts added to the account (those applied at the beginning of any following month where an outstanding balance persists), or any subsequent fee incurred for additional overdue notices, are not eligible to be considered for a waiver.

Anticipated Take Up and Average Waiver Amounts

Based on an average volume of 800-900 telephone and written enquiries per month regarding late payment penalties and interest, and assuming that up to 30% may qualify for a waiver of late payment penalties, this suggests that approximately 2,900

residential properties, and a further 200 non-residential properties, may be eligible to receive the waiver in a year. The average late payment penalty amount to be waived would be approximately \$10, based on an average property tax instalment amount of \$800 for a residential property, and \$66.25 for a non-residential property, based on an average instalment amount of \$5,300. Additionally, approximately half of property owners that are eligible for the waiver will also receive a waiver of the overdue notice fee of \$17.31 where it has been applied.

In total, the recommended approach in this report could see a total of approximately \$54,300 in waived penalty and fee amounts for residential properties, and \$15,800 for non-residential properties, for a total annual financial impact of \$70,100 per year.

The recommendation in this report and the proposed policy provided as Attachment 1 are not intended to reward habitual late payment offenders, but rather to give an incentive to those taxpayers with a good history of paying their property taxes on time to continue to do so, while providing good and more responsive customer service.

Adopting a more compassionate approach will ensure that property owners who consistently pay their bills on time year after year will not be penalized for that one time, often with valid circumstances, where their payment is made past the due date. Giving designated staff the authority to waive penalties and fees (where all eligibility criteria are met), will not only make the customer experience positive, convenient and efficient, but will also demonstrate the City's commitment to providing outstanding customer service.

Late Payment Penalty Charge Arising from a Bank Error

This section of the report identifies the circumstances surrounding a specific case of a large late payment penalty charge that was assessed as a result of a banking error. Council may wish to consider a partial refund of the late payment penalty in these circumstances.

In July 2016, a large commercial property owner made a property tax payment to the City of Toronto of approximately \$8.4 million through the Royal Bank of Canada (RBC). The payment was made in advance of the instalment due date. RBC staff, however, in processing the payment request, inadvertently directed the payment on behalf of its client to the City of Edmonton. The error was discovered only after Toronto's instalment due date had passed, and after late payment penalties in the amount of \$105,051 had been applied to the account.

RBC accepted responsibility, acknowledging that the error was a result of a keying error made by RBC staff, and that the customer bore no responsibility for the late payment. RBC submitted payment of the full instalment amount *plus* the penalty amount incurred to the City, and reimbursed the customer fully for the entire penalty amount.

While acknowledging that the error was theirs, RBC has requested that the City consider providing a partial refund of the late payment charge that they reimbursed to their client. In an email communication dated April 6, 2017, the RBC states: "*We fully recognize that the fines are in place to ensure monies owed to the City are paid on time*", and "*understanding the nature of the penalty process and reasons for them, we*

feel that the application of it in this instance is not in accordance with its purpose and is now penalizing RBC for an unfortunate error on our part".

City staff responded by informing RBC that there are no provisions in the *City of Toronto Act, 2006* that would allow for a reversal of late payment penalty.

RBC has offered to compensate the City by making a payment equal to the value of investment interest lost over the term of the error (approximately 10 days), using an appropriate interest rate (e.g., the City of Toronto deposit rate, or the bank's then-current prime rate), in lieu of the actual payment penalty imposed. Under this proposal, RBC would pay as a penalty amount approximately \$6,800 (using current RBC prime rate of 2.95%), rather than the \$105,051 originally imposed as penalty.

There are no provisions within either the *City of Toronto Act* or the Toronto Municipal Code that provide authority to the Chief Financial Officer or the Treasurer to make adjustments to the penalty imposed. Council may, however, should it choose to, direct the CFO or the Treasurer to make a partial refund of the penalty imposed, based on the compensation proposal advanced by RBC, as set out above, or on some other method.

Should Council wish to make such a direction, suggested wording of a recommendation is provided below:

Council direct the Deputy City Manager & Chief Financial Officer/Treasurer to issue a refund to the Royal Bank of Canada for late payment penalties paid, in an amount calculated as the difference between the actual penalty fee imposed and an amount equal to the value of investment interest lost over the term of the error, calculated by using the Royal Bank of Canada's then-current prime rate, all as it pertains to a banking error acknowledged by the Royal Bank that attracted a late payment penalty charge of \$105,051 imposed in August 2016.

Again, the decision to allow for the refund of late payment penalties, in these circumstances, is entirely within Council's discretion to exercise.

CONTACT

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SIGNATURE

Mike St. Amant
Treasurer

ATTACHMENTS

Attachment 1: Draft Policy: Waiving Late Payment Penalties and Fees for Property Tax Payments