

Creative Co-Location Facilities Property Tax Subclasses

Date: February 2, 2018
To: Executive Committee
From: General Manager, Economic Development and Culture
Wards: All

SUMMARY

City Council directed staff to develop detailed eligibility criteria for inclusion of properties in a new Creative Co-Location Facilities Property Tax Class. Staff have since been advised by the Ontario Ministry of Finance that the best approach would be to establish subclasses in each of the commercial property tax class and the industrial tax class to address the policy intent. This report presents the detailed eligibility criteria for inclusion of properties in the subclasses, the process to approve such properties and a process to address further reviews related to the criteria. The proposed property tax rate reduction of 30% will be brought forward in the concurrent "2018 Tax Rates and Related Matters" report on February 6, 2018.

RECOMMENDATIONS

Subject to the required regulation being enacted by the Province, the General Manager, Economic Development and Culture recommends that:

1. 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.
2. City Council approve the detailed eligibility criteria outlined in Attachment 1 of this report in order to assess eligibility of properties for inclusion in the Creative Co-Location Facilities Property subclasses,
3. City Council approve the process to approve properties for inclusion in the new Creative Co-Location Facilities Property subclasses, and a further review process, as outlined in Attachment 2 of this report.
4. City Council authorize the General Manager, Economic Development and Culture to assess and annually designate those properties that meet the eligibility criteria set out in

Attachment 1 for inclusion in the Creative Co-Location Facilities Property subclasses, and to amend the eligible properties from time to time as properties become ineligible due to tenancy changes, or other changes affecting eligibility.

5. City Council authorize the City Solicitor to submit the bills necessary to give effect to these recommendations, including the authority to submit bills from time to time to give effect to the General Manager, Economic Development and Culture's designation of eligible properties for inclusion in the Creative Co-Location Facilities Property subclasses.

6. City Council direct the General Manager, Economic Development and Culture to report to the Economic Development Committee on the impact of Creative Co-Location Facilities Property subclasses and the status of its administrative process within twelve months of the provincial regulation coming into force.

FINANCIAL IMPACT

If adopted, the concurrent report entitled "2018 Tax Rates and Related Matters" will set the level of tax relief for the new Creative Co-Location Facilities Property Subclasses at a 30% reduction in the commercial residual and industrial tax rates, subject to the Ontario Minister of Finance's regulation enabling the by-law.

As no Creative Co-location Facility properties were returned on the tax roll received for 2018, no direct financial implications are to be reflected in the 2018 City's budget arising from the adoption of the detailed eligibility criteria for the new property subclasses. However, when the City receives the requested authority by the July meeting of City Council, eligible properties will be transferred into the new subclasses later in 2018, resulting in those properties' taxes for 2018 being adjusted by the approved reduction percentage for the subclasses.

Based on available information, it is anticipated that less than twenty properties will request and be approved for inclusion in the sub-class in 2018. Preliminary estimates suggest that the municipal property tax reduction in 2018 for applicable portions of eligible properties would be in the range of \$0.8 to \$1.2 million, to be funded from the Corporate Non-Program Tax Deficiency Account. The corresponding education tax reduction would be in the range of \$0.6 to \$1.0 million. In total, eligible properties could benefit from tax reductions ranging from \$1.4 to \$2.2 million.

In 2019 and future years, existing properties in the sub-class will be funded by corresponding rates changes within the commercial class, while new additions to the class will be treated as in-year pressures each year, in a similar fashion to property assessment class changes.

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

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 establish a new property tax class for "art and culture facilities." 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 policy discussions 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 eligible 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 subclass 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>

Finally, at its meeting on December 5, 2017, City Council directed the General Manager, Economic Development and Culture, in consultation with the Interim 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 the February 6, 2018 Executive Committee meeting.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX29.17>

COMMENTS

The purpose of this staff report is to:

- Opt into the Creative Co-Location Facilities property subclasses for the 2018 taxation year;
- Establish detailed eligibility criteria for inclusion of properties in the proposed Creative Co-Location Facilities property subclasses;
- Outline a process to approve inclusion of such properties in these property subclasses; and

- Outline a process to address reviews related to the City's administration of the eligibility criteria.

In his letter of September 25, 2017 to the City, the Ontario Minister of Finance indicated a three-step process for establishing a new property tax class.

Firstly, City Council must make a request to create such a class, defining the local policy objectives and detailing the key eligibility criteria. This step was completed when City Council approved the related staff report on December 5, 2017 in which policy objectives and high level criteria were approved.

Secondly, upon receipt of this formal request, Ministry of Finance staff would work with City staff in developing a regulatory framework for the creation of the new property tax class. Staff from various City divisions met with Ministry of Finance staff on January 11, 2018 to provide input into the development of the Minister's regulation. A regulation has not yet been enacted but is expected soon, therefore all eligibility criteria and process for inclusion are subject to the regulation coming into force.

Thirdly, the expected regulatory framework provides flexibility for the City to design its own eligibility criteria. This stage begins with this report by requesting Council to approve the detailed eligibility criteria outlined in Attachment 1 and enact a by-law outlining this criteria. Once the Minister's regulation is in force, the City by-law will take effect. The General Manager, Economic Development and Culture, will review the criteria and the process for their administration within two years of the first by-law identifying eligible properties and will report back to Council on any recommended changes.

The rate reduction proposed in the concurrent "2018 Tax Rates and Related Matters" report of 30% was determined in view of a number of factors. Such a rate is consistent with the rate reduction provided to the existing commercial subclasses. In addition, analysis of properties that may qualify under the proposed eligibility criteria for the new subclasses determined that a 30% reduction in rate would benefit creative enterprise tenants located within eligible properties, enabling such properties to continue to offer substantially below average market rents in the face of rising property assessments. This rate would provide a material benefit to the owners and operators of Creative Co-location Facilities, while the eligibility requirement that creative enterprise tenants receive substantially below average market rents ensures that such tenants also benefit. This benefits the City as a whole and local communities by helping to retain creative enterprises in the City and improve public access to arts and culture. However, it should be noted that due to capping and clawbacks in effect for the commercial and industrial property classes, the actual tax reduction for individual properties in this proposed subclass will vary. In addition, creative enterprises who are eligible charities located in such properties, may apply to receive a further 40% reduction in property taxes under the City's Property Tax Rebate for Registered Charities program, which would bring their taxes close to the residential tax rates.

The proposed eligibility criteria for the Creative Co-location Facility property tax subclasses are set out in Attachment 1. The criteria have been designed to capture properties in the City of Toronto that serve a broad public good by providing affordable, collaborative spaces for arts and culture production and consumption, while also providing public programming to improve accessibility to the arts and to strengthen local community connections.

The criteria have further been designed to ensure that a property (or portions of the property) is only included within the Creative Co-location Facility property tax subclasses where all of the eligibility criteria are met. Only then would the eligible portions of the property be designated, by by-law, to be classified within the Creative Co-location Facility property tax subclasses. This report recommends that authority be delegated to the General Manager of Economic Development and Culture to assess applicant properties against the recommended eligibility criteria to determine the properties that are included in these property subclasses. A bill would then be introduced to give effect to the General Manager's decision.

Property owners seeking inclusion in the subclasses will need to demonstrate that they fully satisfy the City's eligibility criteria via an application process with public guidelines and a fixed application deadline.

It is recommended that Economic Development and Culture Division (EDC) administer the process to identify eligible properties for inclusion in the property subclasses. The process is outlined in Attachment 2 and consists of the following steps:

- Publishing the criteria and guidelines;
- An application intake;
- Application review by EDC;
- Review by the GM of EDC of the applications against the eligibility criteria and a determination of which properties meet the criteria and are therefore included in the subclasses;
- Council enacts a by-law identifying the properties that are included in the subclasses; and
- Determination of assessed value attributable to eligible portions by the Municipal Property Assessment Corporation (MPAC).

The required information for application to the Creative Co-location Facility property tax subclasses is outlined in Attachment 3 to this report.

Right to Request a Review

City staff will ensure that owners of property that have been determined not to be an eligible property are made aware of their right to request a review of the evaluation of their application by the Treasurer.

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

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ATTACHMENTS

Attachment 1: Detailed Eligibility Criteria for Inclusion in Creative Co-location Facilities Property Subclasses

Attachment 2: Administrative Process for Determining Eligibility in Creative Co-location Facilities Property Subclasses

Attachment 3: Required Information for Application to the Creative Co-location Facilities Property Subclasses

Attachment 1: Detailed Eligibility Criteria for Inclusion in Creative Co-location Facilities Property Subclasses

The eligibility criteria for the Creative Co-location Facility property tax subclasses are set out below.

The eligibility process is a two-step process; firstly, the property as a whole must meet the requirements of a "**Qualifying Property**" set out below, and secondly the portion of the Qualifying Property that is eligible for inclusion in the Creative Co-location Facility property tax subclasses must be identified.

For the purpose of assessing this eligibility, a **Qualifying Property** must have as tenants creative enterprises that produce **Cultural Goods and Services** that are charged a **Below Average Market Rent**, as defined below:

Creative Enterprises are entities that produce "Cultural Goods or Services", as defined by the Canadian Framework for Cultural Statistics (under the headings Core Culture Domains; Cultural Sub-Domains; or Ancillary Culture Sub-Domains) as outlined below.

Culture Domains					
A. Heritage and libraries	B. Live performance	C. Visual and applied arts	D. Written and published works	E. Audio-visual and interactive media	F. Sound recording
Core Culture Sub-domains					
<ul style="list-style-type: none"> Archives Libraries Cultural heritage Natural heritage 	<ul style="list-style-type: none"> Performing arts Festivals and Celebrations 	<ul style="list-style-type: none"> Original visual art Art reproductions Photography Crafts 	<ul style="list-style-type: none"> Books Periodicals Newspapers Other published works 	<ul style="list-style-type: none"> Film and video Broadcasting Interactive media 	<ul style="list-style-type: none"> Sound recording Music publishing
Ancillary Culture Sub-domains					
		<ul style="list-style-type: none"> Advertising Architecture Design 	<ul style="list-style-type: none"> Collected information 		

Below Average Market Rent is the lesser of:
 a net rent that is at least 30% lower than the average market net rent for a similar space in a similar neighbourhood (as validated by the City of Toronto through reference to current data compiled by a recognized commercial realty firm), and a net rent that is 30% below the net rent paid by non-eligible tenants in the same building.

STEP 1:

A **Qualifying Property** is a property in which all of the following criteria are met:

a) Minimum Scale/Physical Space: The property must consist of a physical building (i.e. not a virtual network), with a minimum net rentable area of 10,000 square feet, or,

where the property is owned by the City of Toronto, a minimum net rentable area of 5,000 square feet.

b) Multiple Tenants: The property must have a minimum of ten (10) distinct, full-time tenants that meet the definition of "Creative Enterprises".

c) Concentration of Creative Enterprises: A minimum of 51% of tenants in the building, in relation to the total number of tenants, must be Creative Enterprises. In addition, Creative Enterprise tenants must occupy a minimum of 51% of the property's net rentable area.

d) Free programming and cultural activities for the public: A Creative Co-location Facility must offer at least twelve cultural programs that are offered free of charge to members of the public over the course of the calendar year, with no less than ten months of the year featuring such programs.

Cultural programs are events, educational sessions or activities that relate to areas of activity described under the Framework for Cultural Statistics, which are:

- film-making workshops or the screening of films or video;
- authors readings or workshops related to book publishing;
- presentation of performing or visual arts;
- interpretation of cultural and natural heritage; and,
- live music presentation.

STEP 2:

Portions of the Qualifying Property eligible to be a Creative Co-location Facility (**the "Eligible Property"**) are those portions of a "Qualifying Property" which satisfy the following criteria for leased space, common space or owner-occupied space.

A. Criteria for Leased Space:

a) The leased space within a Qualifying Property is occupied or leased by a "Creative Enterprise".

b) The term of the lease for the leased space occupied by the Creative Enterprise is a minimum of 5 years.

c) The rent charged for the space leased to the Creative Enterprise is Below Average Market Rent (BAMR).

d) All Creative Enterprises leasing space in the Qualifying Property receive at least two of the following benefits that arise from co-location (provided by or through the property owner or landlord).

- free access/use of meeting or conference space;
- free or subsidized use of photocopier, telephones, fax machines and other office equipment and technology;
- demonstrated consolidated buying power for office and other supplies;

- access to free tailored professional development and training; access to subsidized accredited professional services, such as accounting or legal services;
- coordinated support for public programming;
- coordinated marketing initiatives; or shared services related to the property's security systems, cleaning, reception, courier, mail, and catering.

B. Criteria for Eligible Common Space:

A portion of non-tenanted common space, or shared elements of the building (lobby, elevators, hallways, stairwells, mechanical) within a Qualifying Property is determined by multiplying the total square footage of the common space by the percentage that the rentable area occupied by eligible leased space bears in relation to the total net rentable area.

C. Criteria for Owner-Occupied Space:

A portion of a Qualifying Property that is occupied by the owner of the property for non-commercial activity, up to a maximum of 10% of the total net rentable space.

Non-Eligible Portions

For clarity, only those portions of a Qualifying Property that meet the above criteria constitute the Eligible Property for inclusion in the Creative Co-location Facility subclasses of the Commercial and Industrial property tax classes. Accordingly, any portions of the property that do not meet the criteria above are not eligible to be included within the Creative Co-location Facility property tax subclasses.

Attachment 2: Administrative Process for Determining Eligibility in Creative Co-location Facilities Property Subclasses

The following steps will make up the administrative process that will occur on an annual basis.

1. Publish criteria and guidelines: Once approved by Council, the criteria will be published on the toronto.ca website and shared with major arts and culture organizations in the city to share with stakeholders. The guidelines will outline all required information and documentation that must be submitted with the application. The guidelines will also be posted on the City's website. See Attachment 3 for a listing of the required information.

Note: If the Ontario Minister of Finance's regulation is not in force prior to the approval of the criteria in this staff report, the by-law will not be in force until such a time that the regulation has been enforced.

2. Application intake: EDC will receive applications from property owners along with the required documentation to ensure that the properties can be assessed against the eligibility criteria. The applications will be reviewed for completeness. While the onus for a complete application will be placed upon applicants, during the first year of the new property tax subclasses, staff will work with property owners after applications are reviewed to ensure that all required documentation is submitted. Prospective applicants will be clearly advised in application materials that inclusion in the Creative Co-Location Facilities property tax subclasses may have implications for access to other financial assistance from government programs and it is therefore recommended that advice be obtained from a qualified tax professional prior to application.

3. Application review: The General Manager of EDC and EDC staff will review the applications and all documentation provided against the eligibility criteria, and will determine which properties will be included in the Creative Co-Location Facilities property tax subclasses. The General Manager of EDC will have final approval of recommended successful applicants.

4. By-law Approval of Properties: The City Solicitor will submit a bill to Council for approval to formally designate the properties approved by the GM EDC for inclusion in the subclasses.

5. On-going Review of Eligibility: The GM will also determine ongoing eligibility of properties from time to time as tenancies change. When a property, or a portion of a property, has become ineligible, the City Solicitor will submit bills to Council to give effect to the change by amending the by-law.

Note: Council must elect to have the tax subclasses apply on an annual basis by enacting a by-law each year. As a practical matter, the election to have the class apply would be included in the annual tax levy by-law that establishes annual tax rates and other tax policies. If a Qualifying Property has a change in eligibility status, the owner is required to alert the City as soon as that change is known.

5. Determination of Assessed Value Attributable to Eligible Portions: In all cases, once a determination has been made as to the portion of the building that is eligible, and a by-law enacted to designate the portions of the property to be classified within the Creative Co-location Facility property tax subclasses, MPAC will determine the assessment value attributable to the eligible portion of the property, and will reclassify the property according to the new tax classification. The City will receive notification of these assessment changes through currently prescribed means.

Attachment 3: Required Information for Application to the Creative Co-location Facility Property Subclasses

The following information must accompany all applications made by a property owner, or representative, applying for inclusion in the Creative Co-location Facility property tax subclasses.

Building Specific Documentation / Information

Description of subject property that contains the creative co-location space:

- Municipal address
- Size of building
- Number of floors
- Age of building
- Access to public transit
- Parking spots
- Photos of building
- Description of surrounding area
- Description of building ownership
- Average market rent for district

Provide building floor plans that identify:

- Floor number
- Units including numbers
- Size of units
- Tenants including unit number(s) occupied
- Copies of floor plans identifying all tenants and showing all spaces that are under direct lease to the property owner
- Common space square footage

Tenant Specific Information (to be provided for each tenant within building)

- Name of Tenant
- Type of business
- Description of cultural goods or services provided by the tenant
- Confirmation that the tenant is in good standing on their rent/lease payments
- Type of organization i.e. for profit, not-for-profit, charity
- Copy of lease(s)
- Number of employees
- Description of goods/services produced/delivered
- Length of tenancy
- Lease expiry date
- Net Rent
- Operating costs
- Apportioned property tax
- Hydro costs

Other Required Information

- Demonstrated provision of other benefits to tenants (e.g. use of meeting space, access to amenities such as photocopier or office supplies, professional development offerings etc., as defined in the eligibility criteria.);
- Attestation that there is a concentration of tenants that produce "cultural goods or services" (as defined by 50% plus one in both number of tenants and the proportion of net rentable space);
- Attestation and documentation that the Cultural Programs requirements will be met in the upcoming year;
- Attestation that the City of Toronto's Revenue Services will be notified as soon as any change occurs at a Qualifying Property that may affect eligibility; and,
- Such other information as may be deemed necessary to establish eligibility.