



Proposed Inclusion of Live Music Venues as a component of the Creative Co-Location Facilities Property Tax Subclasses

Date: May 20, 2020

To: City Council

From: General Manager, Economic Development and Culture

Wards: All

SUMMARY

The Creative Co-Location Facilities Property Tax Subclasses of the commercial, residual commercial and industrial property classes (the "Subclasses") were established by City Council and the Province of Ontario to support the affordability and sustainability of cultural and creative spaces in Toronto. The first application intake for property tax relief was in 2018 with established eligibility criteria for qualifying properties acting as creative hubs with multiple tenants, and a second intake was in 2019 when the criteria were expanded to include membership-based co-working facilities for creative workers and enterprises.

The purpose of this report is to amend the eligibility criteria for the Subclasses to strengthen the original intent of the benefit in supporting access to space for creative enterprises and to help address the unprecedented challenges threatening live music venues in Toronto through recommended amendments and expansion of the Subclasses. More specifically, the report recommends that City Council authorize the creation of a third category of eligible properties within the Subclasses to include live music venues where local and grassroots musicians perform.

Stringent, objective and enforceable guidelines for eligible portions of properties in which live music venues operate are recommended and include eligibility criteria with consideration for: (A) venue infrastructure; (B) bookings and compensation; (C) creative sector employment; (D) time in operations; and, (E) attendance capacity. In initially approving the Subclasses, Council recognized the public benefit being generated by specific properties in meeting the provincial definition of creative enterprises in producing cultural goods and services. Toronto's live music venues, which are the training ground and launch pad for musical careers, need critical support in the face of ongoing pressures that threaten to close dozens of local venues.

The timing of the proposed implementation of the third intake of the Subclasses in 2020 with expanded criteria is related to the City's efforts in COVID-19 recovery for the

cultural sector, consistent with the intent of the enabling provincial legislation for the Subclasses and addressing Council directives to promote Toronto as a music city. Staff have consulted closely with industry on the proposed live music venues eligibility criteria through the Toronto Music Advisory Committee (TMAC).

Finally, also proposed for the 2020 taxation year is temporarily suspending a portion of the eligibility criteria respecting the tenant-based properties and the membership based co-working facilities since applicants would not be able to fulfill these particular requirements due to the public health protection measures related to the COVID-19 pandemic and the closing of their operations by provincial emergency orders.

RECOMMENDATIONS

The General Manager, Economic Development and Culture, recommends that:

1. City Council approve revised eligibility criteria for the Creative Co-Location Facilities Property Tax Subclasses outlined in Attachment 1 of this report thereby creating a new live music venue category of eligible properties.
2. City Council approve amendments to Municipal Code Chapter 767, Taxation, to temporarily suspend the application of delivery eligibility criteria respecting free programming and cultural activities for the public at tenant-based properties; and suspending the application of delivery eligibility criteria respecting terms of co-working memberships and professional development services for creative enterprises at membership based co-working facilities as described in this report such that these eligibility criteria are not required to be met during the period while public health protection measures remain in effect related to the COVID-19 pandemic.
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.
4. City Council direct the General Manager, Economic Development and Culture to report to the Toronto Music Advisory Committee on the impact of the Creative Co-Location Facilities Property Subclasses on live music venues and the status of its administrative process within twelve months.
5. City Council approve the increase to Non Program Tax Deficiencies 2020 Budget by \$1.06 million gross with a corresponding withdrawal from Assessment Appeal Stabilization Reserve (XQ0706), for \$0 million net change to fund the tax relief measures in this report for 2020 taxation year.

FINANCIAL IMPACT

For the 2020 taxation year, City Council adopted tax relief for the Creative Co-Location Property Tax Subclasses at 50% reduction in the commercial, residual commercial and

industrial property class rates. If the recommendations in this report to amend eligibility criteria are adopted by City Council, it is anticipated that approximately 60 live music venues may apply for Subclasses for the 2020 taxation year, in addition to the currently eligible properties.

As live music venues were not included in the Creative Co-Location Facility Property Subclasses when the 2020 tax roll was received, properties with an eligible live music venue will be transferred into the Subclasses later in 2020, resulting in those properties' taxes being adjusted by the approved reduction percentage for the subclasses, effective January 1, 2020 and based on Council's approval of the by-law that amends the Municipal Code to include live music venues as eligible for inclusion in the Subclasses.

Based on the currently available information, it is anticipated that approximately 60 live music venues might be eligible to be included in the Subclasses if the recommended amendments to the criteria are adopted by City Council. The potential municipal tax relief for 2020 is estimated to be approximately \$1.06 million. Considering the financial pressures as a result of COVID-19 impacts, there are limited options for available funding. While discussions internally and with other orders of government are ongoing on opportunities to address COVID-19 related costs, until that time the Assessment Appeal Stabilization Reserve has been identified as a temporary measure to fund any immediate requirements for the proposed tax relief measures.

The corresponding education portion of the tax reduction would be approximately \$0.9 million. In total, eligible live music venues could collectively benefit from a tax reduction of approximately \$2.0 million.

For the 2020 taxation year, the costs of the municipal portion of taxes foregone as a result of the reduction in the tax rate for those properties deemed eligible will be funded from the corporate Non-Program Tax Deficiency Account. In 2021 and in future years, the costs of the tax reductions provided to those properties deemed eligible for inclusion in the class will be funded by corresponding rate increases within the respective tax classes. New additions to the Subclasses will be treated as in-year changes, and reflected via changes to the tax roll made through Supplementary/Omitted Assessment Notices issued by the Municipal Property Assessment Corporation, and corollary adjustments made to the property taxes for properties included in the tax Subclasses.

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

DECISION HISTORY

City Council at its meeting of March 31, 2016 adopted a Toronto Music Strategy and directed the General Manager, Economic Development and Culture, in consultation with the Mayor's Office, the Chair, Economic Development Committee, the Arts Advocate and the Toronto Music Industry Advisory Council (TMAC), to implement the recommended actions.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.ED10.7>

The Creative Co-Location Facilities Property Tax Subclasses was established by City Council and the Province of Ontario in 2018 to support the affordability and sustainability of cultural and creative spaces in Toronto. The stream of applicants in the inaugural year were restricted to tenant-based properties.

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

In 2019, City Council approved a second stream with revised eligibility criteria for the Creative Co-Location Facilities Property Tax Subclass by creating a new membership-model category of eligible properties.

<https://www.toronto.ca/legdocs/mmis/2019/ex/bgrd/backgroundfile-129974.pdf>

At a meeting in February 2020, a City staff presentation (see below link) was received for information by the Toronto Music Advisory Committee (TMAC) respecting financial aid to support live music venues in the City of Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MA3.2>

At its meeting of May 13, 2020, the Toronto Music Advisory Committee endorsed the expansion of the Creative Co-Location Facilities Property Tax Subclasses as a means of providing support to live music venues and requested the Director, Arts and Culture Services, to finalize the draft eligibility criteria for the Subclasses for submission to City Council at the earliest opportunity:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MA5.2>

COMMENTS

Live music venues range in size and location with small locales typically having less than 200 people capacity and medium locales between 200-1,500 people capacity. Smaller venues, such as those used by grassroots and local musicians and presenters, have been the hardest hit by the COVID-19 crisis in Toronto and are expected to be amongst the last sectors of the economy to recover.

Live music venues host performances by individual musical artists or groups of musical artists of original or non-original (cover) musical works on instruments, vocally or on equipment conventionally used to perform jazz, rock, folk, classical, R&B, hip hop, global, experimental, and other genres of music. Such performances include performances by electronic musical artists and DJs using digital equipment, software, or turntables to create musical performances for an audience, but exclude the simple playback of recorded music without a creative role being played by the DJ.

Toronto has established itself as a global music powerhouse. In the streaming era, Toronto artists have dominated global sales, leading industry professionals from around the world to seek out the next stars in Toronto. Such success, however, cannot be taken for granted, and the ecosystem of grants, training and mentorship that supports it needs to be deliberately maintained. Most critically, Toronto's live music venues, which are the training ground and launch pad for musical careers, need immediate support in the face of pressures that threaten to close dozens of local venues. Dozens more venues have disappeared over the last five years, with very few opening to replace them.

The rationale for this targeted municipal assistance to help sustain Toronto's network of live music venues is that live music venues make a vital contribution to Toronto's economic, social and cultural life. Live music venues fulfill this role in a variety of ways: employing artists, staff and others in the music industry; paying property taxes; anchoring Toronto's diverse cultural communities; giving local musicians a launching pad for their careers; attracting and retaining creative young people to Toronto; and helping to shape a civic identity valuing and promoting music and culture. Maintaining live music venues is critical to supporting the cultural vitality of Toronto, which in turn supports the Toronto's ability to attract and retain talent and investment by sustaining a vibrant, liveable city.

The [Economic Development & Culture Divisional Strategy 2018 - 2022](#) is the five-year framework guiding the development of the Division's programs and services with one of the four focus areas being space and access; specifically, with the goal of improving access to and affordability of space for business and culture. One specific action is the leveraging of incentives to support access to space for business and culture.

Furthermore, the [Toronto Music Strategy: Supporting and Growing the City's Music Sector](#) created by the Toronto Music Advisory Council for the City of Toronto reports that a vibrant music sector provides direct employment, pay business taxes and generate spending in other sectors such as restaurants, hotels, photographers, videographers, stylists, graphic designers, web designers, advertising agencies, etc..

Through the Mayor's Task Force on Economic Support and Recovery, research and community consultations indicate that the live music sector will be among those sectors affected first and likely among the last to rebound from the impacts of COVID-19. The main factors that threaten Toronto's live music venues are the following:

- the vast majority of small and medium-sized live music venues (over 90%) lease their facilities, lacking the stability that ownership might offer wit;
- many live music venues are downtown where density is increasing, rents are rising sharply, and property assessment values and therefore property taxes are also rising while revenues for live music venues remain relatively flat;
- commercial insurance is getting more difficult to obtain and/or premiums are going up steeply for live music venues according to experts in the music industry; and
- in addition to these pre-existing financial pressures, live music venues will face significant constraints in re-opening due to continued restrictions on gatherings.

Many of Toronto's live music venues are at risk of closing permanently due the financial hardships resulting from the COVID-19 pandemic. In view of the public benefit that such venues produce in terms of a vibrant and liveable city, municipal action is required to address the situation.

As noted above, only a small minority of live music venues own their own building (estimated at under 10%). Since property tax incentive programs such as the Subclasses provide savings to building owners, eligibility criteria are proposed in such a

way as to ensure that benefits, such as ongoing tenancy, are passed on to the live music venues. As responsibility for property taxes ultimately remains with the property owner, the owner must apply initially and annually thereafter to continue to be included in the Subclasses in order to receive the tax reduction. City staff will also monitor compliance with this eligibility criterion.

Recommended Amendments to Eligibility Criteria

Refer to Attachment 1 for the proposed eligibility criteria to identify live music venues within the City of Toronto that could potentially qualify for the 2020 Creative Co-Location Facilities Property Tax Subclasses and for inclusion in this tax class in 2021 and beyond.

Live music venues must meet five eligibility criteria, in order to be eligible under the Live Music Venues category under an expanded Creative Co-Location Facilities Property Tax Subclasses Program. The proposed stringent, objective and enforceable guidelines for eligible portions of properties in which live music venues operate includes eligibility criteria (differentiating from bars and restaurants) with consideration for: (A) venue infrastructure; (B) bookings and compensation; (C) creative sector employment; (D) time in operations; and, (E) attendance capacity.

Also proposed for the 2020 taxation year are minor amendments to the eligibility criteria in view of the unique pressures facing creative spaces in the sector due to the application of public health measures related to COVID-19 respecting free programming and cultural activities for the public relating to tenant-based properties; and temporarily suspending the eligibility criteria respecting terms of co-working memberships and professional development services for creative enterprises at membership based co-working facilities. For 2020 the requirement that the operator provide members with access to and use of shared resources at a minimum of 8 hours per day for at least 5 days per week and that the property owner offer a minimum of 25 professional development programs, services, and/or events to its members in a calendar year will be waived, such that these eligibility criteria are not required to be met during the period while public health measures remain in effect due to the COVID-19 pandemic. The rationale is that applicants likely will not be able to fulfill these requirements due to the COVID-19 pandemic and the closure of their operations by provincial emergency orders.

Should City Council approve the revised eligibility criteria for the Creative Co-Location Facilities Property Tax Subclasses outlined in Attachment 1 of the report thereby creating a new live music venue category of eligible properties, EDC staff will send out application forms to live music venues from the contact list provided through the Toronto Music Advisory Committee (TMAC). After an assessment of the received applications and accompanying documentation by staff in EDC, Real Estate Services, Revenue Services, and Corporate Finance against the eligibility criteria, the eligible parts of the qualifying properties will be approved and a bill will be drafted by City Legal for Council's adoption for property-specific tax relief. The adopted by-law will then be sent to the Municipal Property Assessment Corporation (MPAC) with a list of properties so that new additions to the Subclasses can be treated as in-year changes, and reflected via

changes to the tax roll made through Supplementary/Omitted Assessment Notices, and corollary adjustments made to the property taxes for properties included in the tax Subclasses.

The General Manager, Economic Development and Culture, will review the criteria and the process for their administration within one year of the by-law identifying eligible properties and will provide an update report to TMAC on the impact of the new live music stream.

Restrictions related to Eligibility of Live Music Venues

A declaration in the application form would affirm that (1) the property will be used as a live music venue for the full tax year and if the property ceases to operate as a live music venue, the incentive (i.e. property tax relief) will be repaid to the City; (2) the live music venue functions with integrity and good faith (3) that the benefits, such as ongoing tenancy, are passed on to the live music venues and (4) the applicant meets all the eligibility criteria.

CONCLUSION

The Toronto live music industry has been devastated by COVID-19. EDC staff, in consultation with TMAC, estimate that if the pandemic lasts more than a few months, up to 70% of live music venues in Toronto would not survive without significant government assistance. The margins of operating a business presenting live music are very thin, with operators frequently motivated by a desire to contribute to the vitality of the city over strict financial gain. Live music venues contribute to the liveability and prosperity of Toronto and play a critical role in the development of musical talent in the city. In keeping with the intent of the Creative Co-location Facilities Property Tax Subclasses, this measure will help preserve creative space in Toronto and protect its live music scene. While this measure will not protect all live music venues from closure, it is expected that it may provide some venues with the relief necessary to avoid bankruptcy and contribute to economic recovery and rebuilding of Toronto after the pandemic.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1: Detailed Criteria for Inclusion of Live Music Venues in Creative-Co-Location Facilities Property Tax Subclasses