TORONTO

REPORT FOR ACTION

Agreement with the University of Toronto for Voluntary Payments Relating to its Revenue-Producing Properties

Date: November 14, 2023
To: General Government Committee
From: Controller
Wards: All

SUMMARY

This report seeks authority to extend an existing agreement with the University of Toronto (the "University") regarding voluntary payments to be made by the University on its revenue-producing properties, substantially on the same terms as the previous agreement approved by Council in 2013.

RECOMMENDATIONS

The Controller recommends that:

1. City Council authorize the Controller to enter into an agreement with the University of Toronto to extend the existing agreement pursuant to which the University makes voluntary payments to the City on its revenue-producing properties, on substantially the same terms as the existing agreement, including the following:

    a) that the University agree to continue to make voluntary payments to the City on all revenue producing properties for which it collects payments on account of taxes;

    b) that the term of the agreement be for 10 years, covering the taxation years 2024 to 2033, inclusive; and

    c) such other terms and conditions satisfactory to the City Solicitor and the Controller, and in a form satisfactory to the City Solicitor.

2. City Council request that the Minister of Finance and the Minister of Colleges and Universities review the legislation governing exemptions from taxation and the treatment of tenants occupying university lands that would otherwise be taxable to ensure that the assessment and taxation provisions are consistent, both within Toronto and across Ontario.

FINANCIAL IMPACT

If the recommendations in this report are adopted, such that the City and the University enter into a further extension agreement with respect to voluntary payments made by the University related to its revenue-producing properties (i.e., properties that are owned by the University but leased to third parties, including commercial tenants and/or tenants that would otherwise be liable for property taxation), the voluntary payment that the University would make for the years 2024 to 2033, inclusive, would total approximately $4 million (or approximately $398,000 per year) based on payments received from the University in 2022. The City has yet to receive the voluntary payment for 2023 from the University due to the timing of this report.

The calculation of the voluntary payment is determined using a list of revenue producing properties, as determined by the University, together with the current value assessment (CVA) and total tax levy for those properties, as confirmed by the City. If the whole property is revenue producing, the university will make a voluntary payment equivalent to 100% of the taxes that would have been levied if the property were taxable. Where only a portion of the property is occupied by revenue producing tenants, the University calculates the amount payable based on the percentage of space occupied by the revenue producing portion of the property in comparison to the total square footage of the property.

In addition to the voluntary payment amounts received from the University of Toronto, Section 285 of the City of Toronto Act, 2006 allows the City to levy an annual amount (the Heads and Beds levy) for universities and colleges. The Heads and Beds levy is based on $75 per resident space under Ontario Regulation 121/07. The annual Heads and Beds levy on University of Toronto properties for 2023 is $5.6 million.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

At its meeting held on July 19, 20, 21 and 26, 2005, City Council, while considering a report dated June 29, 2005, entitled, "Agreement with the University of Toronto for Voluntary Payments Relating to its Revenue-Producing Properties" (Consolidated Clause 15 of the Policy and Finance Committee Report No. 7) authorized that the City enter into an agreement with the University of Toronto as it has in the past with respect to voluntary payments by the University on its revenue producing properties. The terms of the agreement were that the payments on all revenue producing properties be equivalent to taxes that would be payable if such properties were not exempt from taxation, that the agreement be for fifteen years, covering the taxation years 1997 to 2011, inclusive, and all other terms and conditions to the satisfaction of the City Solicitor and the Treasurer. The University of Toronto continued to remit voluntary payments for 1995 and 1996 despite not having an agreement in place, while negotiations were going on during this period.

The 2005 Council decision and public staff report can be accessed at:

http://www.toronto.ca/legdocs/2005/agendas/council/cc050719/pof7rpt/cl015.pdf

In addition to the public staff report referenced above, City Council also received a confidential report (June 29, 2005) from the Deputy City Manager and Chief Financial Officer and City Solicitor respecting the agreement with the University of Toronto for Voluntary Payments relating to its Revenue-Producing Properties. The confidential report was considered in-camera and remains confidential in its entirety, in accordance with the provisions of the Municipal Act, 2001, (now the City of Toronto Act, 2006) as it contains information pertaining to the security of the property of the municipality.

At its meeting held on November 13, 14, 15 and 18, 2013, City Council authorized the City Solicitor to extend the existing agreement with the University of Toronto negotiated in 2005 with respect to voluntary payments by the University on its revenue-producing properties. The term of the agreement was for 12 years, covering the taxation years 2012 to 2023, inclusive.

The 2013 Council decision and public staff report can be accessed at:

https://secure.toronto.ca/council/agenda-item.do?item=2013.GM25.6

COMMENTS

ISSUE BACKGROUND

Section 3(1) of the Assessment Act, 1990 states that "All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation: (4) land owned, used and occupied solely by a university, college, community college or school as defined in the Education Act or land leased and occupied by any of them if the land would be exempt from taxation if it was occupied by the owner".

Beyond these general provisions, a number of universities in Ontario are governed by university-specific private or public legislation. Some of these statutes contain specific provisions relating to tax exemptions and/or the treatment of portions of university lands occupied by tenants that would otherwise be taxable, while other statutes are silent in respect of exemption or taxation provisions.

In researching this matter, staff reviewed both the York University Act and the Toronto Metropolitan University Act. In the case of both York and Toronto Metropolitan University, provisions within the individual statutes provide that while land owned, used and occupied by the university is exempt from taxation, portions of university property occupied by taxable tenants are subject to taxation. As such, these tenant-occupied portions are assessed by the Municipal Property Assessment Corporation (MPAC) as taxable, and these tenanted portions are billed to the university directly.

The provisions governing the Universities of Guelph, Windsor, Ottawa, and Brock are similar to York and Toronto Metropolitan University, in that taxable tenants occupying university-owned lands are separately assessed by MPAC and billed for taxes directly. By contrast, the University of Western Ontario Act and the McMaster University Act contain no specific provisions regarding exemptions or the treatment of university lands occupied by taxable entities. Staff have confirmed however, that in the case of McMaster University, taxable portions are returned on the assessment roll and billed for taxes directly, while in the case of the University of Western Ontario, all lands owned by the university are returned on the assessment roll as exempt from taxation, with the exception of certain portions of the university that are occupied by private research facilities - these are the only portions returned by MPAC as taxable.

The exemption and taxation provisions that apply to the University of Toronto are unique, as is the voluntary agreement between the University and the City that provides for payments to be made for revenue-producing tenants of the university. Section 17 (1) of the University of Toronto Act, 1971 states that "the property vested in the Governing Council and any lands and premises leased to or occupied by the Governing Council are not liable to taxation for municipal or school purposes".

The legislative provisions surrounding exemptions from taxation for lands owned, used and occupied by universities are inconsistent across the various statutes that govern universities in Ontario. Further, the legislative provisions (where they exist) governing the tax treatment for university lands occupied by tenants that would otherwise be subject to taxation vary by university and by municipality, as does the manner in which taxable entities occupying university lands are identified by the Municipal Property Assessment Corporation.

Voluntary Payments to the City

Despite the fact that the University of Toronto is exempt from taxation under special legislation, prior to amalgamation in 1998 the University and the former City of Toronto had agreements in place for over fifty years (1949 to 1995), whereby the University had agreed to make voluntary payments to the City for those properties which are owned by the University but not used by the University and from which the University receives a fair market rental income, in an amount estimated to represent the property taxes that would be payable on these portions. These properties are referred to as the University of Toronto revenue-producing properties.

In 2005 Council adopted a recommendation authorizing the City "to enter into an agreement with the University of Toronto as it has in the past with respect to voluntary payments by the University on its revenue-producing properties, and that said agreement be on terms acceptable to the City Solicitor and the Treasurer". The agreement was for a term of 15 years from 1997 to 2011.

In 2013 Council extended the agreement with the University of Toronto negotiated in 2005 with respect to voluntary payments by the University on its revenue-producing properties. The agreement was for a term of 12 years commencing from 2012 to 2023, inclusive.

This report seeks Council authority for a further extension of the current agreement for a 10-year term commencing from 2024 to 2033, inclusive. City staff have been in discussions with the University of Toronto's legal counsel and staff for the purpose of negotiating an agreement similar to the previous agreement entered into by the University and the City.

The recommended new agreement will essentially continue the same terms and conditions contained in previous Council approved agreements and would be an extension for a 10-year term covering the taxation years from 2024 to 2033, inclusive, based on terms and conditions to the satisfaction of the City Solicitor and the Controller.

Under the renewed agreement, the University will continue to make voluntary payments for real property owned by the University, where the real property is a 'revenue producing property', which means the property is leased to a non-exempt third party, is not used for any University purpose and is a property from which the University receives a fair rental. Additionally, it is the responsibility of the University to collect the amounts from the tenants of the revenue producing property and make remittances to the City.

It is clearly in the City's financial interest to renew the agreement with the University to allow the University of Toronto to continue to make voluntary payments to the City for its revenue-producing properties, despite the University's exemption from taxation under the University of Toronto Act, 1971. This agreement between the former City of Toronto and the University had been ongoing for over fifty years.

Finally, given the variation amongst the legislative provisions that apply to universities across Ontario, and the differing treatment of university lands that are occupied by taxable entities pursuant to those varied legislative provisions, this report recommends that the Province (Minister of Finance and the Minister of Colleges and Universities) be requested to review the legislation governing exemptions from taxation of lands owned by universities and the treatment of tenants occupying university lands that would otherwise be taxable to ensure that the assessment and taxation provisions of all applicable legislation are consistent with one another and are consistently applied, both within Toronto and across Ontario. Ensuring that the legislative provisions surrounding exemptions from taxation for lands owned, used and occupied by universities are consistent across the various statutes that govern universities in Ontario will also make clear that commercial uses of lands that are owned but not used by a university would be subject to normal taxation, thus establishing the City's right to receive taxation revenue for non-university uses.

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SIGNATURE

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