

Community Organization Property Tax Exemption Regulation

COPTER brings about significant ongoing concerns for municipalities, and AUMA urges the province to complete a comprehensive review of this regulation as part of the MGA review.

Revisions of this legislation should follow these key ideas:

- **Fairness and Equity:** there is a need for increased consistency and clarity; current definitions are unclear and lead to inconsistent application of the exemption legislation across Alberta. At an administrative level, this also leads to a variety of challenges in determining what is exempt and what is not. Similarly, property owners are faced with uncertainty on whether their property will be exempted.
- **Openness and Transparency:** Current processes for property tax exemptions are not open and transparent. Exemptions from assessment obscure transparency as the actual shift in burden to other rate payers is not fully accounted for.
- **Sufficient Capacity:** Municipalities need to maintain a sufficient property tax base and revenue-generating capability: an exemption does not mean that the tax burden disappears, but rather it is simply shifted to other taxpayers. Therefore, the reason for an exemption must remain appropriate and the exemption should be reviewed periodically to ensure that it remains relevant.

AUMA's input on concerns relating to COPTER utilizes input from Calgary/Edmonton ("Cities"), the Alberta Assessors' Association (AAA), and ideas not voiced by either organization (AUMA). The sourcing of input is indicated in brackets after each bullet.

I. Definitions

- Charitable and Benevolent Purposes: the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community (COPTER s1(1)(b)).
 - Courts have liberally interpreted and applied the phrase "any other purpose beneficial to the community". As a result, non-profit organizations not registered with the Canada Revenue Agency (CRA) or the Government of Alberta are being included within the definition of "charitable and benevolent purpose" because their services are considered beneficial to the community. (Cities)
 - It is unclear how far this definition goes in terms of the supporting property uses not directly related to the charitable/benevolent purpose (e.g. the exemption of parking). (Cities)
- General Public: pertaining to the general community, rather than a group with limited membership or a group of business associates (COPTER s1(1)(c))
 - "General public" & "General community" are synonymous terms. The definition is weak, therefore, interpretation is too broad and may lead to the benefit of specific interest groups at the expense of all other members of the public. (AAA)
- Held by: for the purposes of COPTER, "held by" means that the organization, society or association is the owner of the property and the property is not subject to a lease, licence or permit, or (b) the organization, society or association holds the property under a lease, licence or permit. (COPTER s 5)

- The definition of “held by” is not clear so is subject to interpretation, particularly with respect to vacant property, parking lots, and property under construction (AAA)
- Minor Fee: this term is not defined in either the Municipal Government Act (MGA) or COPTER
 - Without a definition it is unclear what constitutes a minor fee, and therefore continues to be open to interpretation amongst municipalities, assessors, Assessment Review Boards, taxpayer and the courts. In particular, it is unclear as to whether a “minor fee” includes rent. (AAA)
- Percentage of Use: property that is used solely for community games, sports, athletics or recreation if, for more than 40 per cent of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older. (COPTER s9(1)(b))
 - Terms are too broad and interpretation within municipalities, tribunals and courts varies greatly. (AAA)
 - It is difficult to determine (a) time a property is in use on which to base a percentage of time (b) what percent “majority” measures (c) age of participants. (AAA)
- Membership Requirement: membership requirements are not specifically defined within COPTER but are noted in various sections discussing membership and general public.
 - There should be some clarity as to what the parameters are in terms of a membership requirement and fees (e.g. should fees be based on an annual basis, monthly, per person etc. (RA fee – caveat on title? Cost of ownership of home?) (Cities)
- Community: this term is not defined in either the MGA or COPTER.
 - “General public” & “General community” are synonymous terms. As noted above, the definition is weak, therefore, interpretation is too broad and may lead to the benefit of specific interest groups at the expense of all other members of the public. (AAA)
- Used in Connection With: this term is not defined in either the MGA or COPTER.
 - “Used in connection with” has been interpreted very broadly and has benefitted certain groups (some for-profit organizations) at the expense of all other members of the public that pay additional taxes to make up for the exemptions. (AAA)
 - Some properties such as for-profit food kiosks/stations that currently are considered “used in connection with” facilities and institutions, such as post-secondary institutions, hospitals or recreational facilities should not be exempt from taxation. (AAA)
- Subsidized Accommodation: this term is not defined in either the MGA or COPTER.
 - Without a definition, determining what constitutes “subsidized accommodation” is becoming increasingly problematic for municipalities as funding models are evolving and diversifying at a rapid rate. Some organizations may be funded in a manner that would suggest it appropriate that they pay property tax – yet they still achieve tax exemption. (AAA)

II. Beneficiaries of Exemption

- How can the regulation be amended to ensure that the non-profit organization is the beneficiary of the exemption?
 - There have been instances when the exempt property owner is not passing along the tax exemption to the lease holder of the exempt property. All property should be

taxable, and exemptions for organizations should be reimbursed by grants in a transparent manner. (Cities)

- III. Exemption for Residents Associations (RA)
- Are there circumstances where RAs should continue to be eligible for property tax exemptions?
 - Municipalities should be enabled to exempt RAs if they determine that the property is being taxed twice (through the value of the residents' properties, and then again as a community property). (AUMA)
 - IV. Exemption for Affordable Housing
- How have changes in the affordable housing industry impacted property taxation and exemptions?
 - Non-profit organizations continue to increase their holdings/operations of affordable housing as part of their mandates rather than relying on provincial and federal levels of government to provide it. Non-profit organizations in turn are becoming increasingly challenged to fund these operations with budget/funding cuts by provincial and federal governments. The result is increased pressure by non-profit organizations on the municipalities where tax exemptions become a downloading of service costs by other levels of government onto municipalities. (AAA)
 - There needs to be some clarity provided regarding what is or is not exempt, and what qualifies them for exemption. This should take into consideration the fluidity of the rental housing and the mixed use of properties with market and below market housing, and circumstances where the market units help to fund the non-market units. (Cities)

V. Qualification Criteria

- What aspects of the current eligibility criteria would you like to see modified? Provide suggestions for modification.
 - See concerns as noted in charitable/benevolent.

VI. Administrative Process

- What aspects of the current administrative process would you like to see modified? Provide suggestions for modification.
 - Currently, some types of exemptible entities and properties have to apply for exemption every year while other types do not have to apply at all. The MGA does not require an application or renewal for its tax exemptions and COPTER does require renewals but not to all properties and property uses. These omissions and the related administrative procedures compromise the accuracy of exemption data and provide tax benefits and liabilities in error. (AUMA)

Apart from crown and municipal property, provisions should require application and renewal procedures for all assessable properties where a tax exemption is desired. The current annual applications required by the Regulation use significant administrative resources for all parties. A reapplication cycle based on typical property use changes for exemption type would increase administrative efficiencies, improve data quality and reduce tax revenue risk. Renewal cycles could be developed locally, based on a data analysis of how often different types of organizations and property

uses typically change locations. Types of organizations that do not change location frequently could be asked

Community Organization Property Tax Exemption Regulation Review

Stakeholder Engagement Discussion Guide

Introduction

The *Municipal Government Act (MGA)* is the law under which all Alberta municipalities are empowered to shape their communities. Alberta's communities offer programs and services that help make them great places to live, work, and play. Based on various property types, property taxes help communities fund the programs and services Albertans enjoy and the *MGA* outlines processes that govern assessment and taxation within Alberta communities.

Some properties are exempt, through the *MGA*, from paying taxes because they are owned by another level of government or provide a public benefit. The Community Organization Property Tax Exemption Regulation (COPTER) provides municipalities with criteria and conditions to use to evaluate property tax exemption applications for organizations that provide a public benefit. As part of the *MGA* Review, Municipal Affairs is reviewing COPTER and seeking feedback on the provisions within this regulation and whether the provisions meet the regulation's intent and purpose.

The purpose of this discussion guide is to present the relevant background information regarding the history of COPTER, identify the primary stakeholders of the regulation, and present discussion questions to stakeholders for written feedback prior to the in-person engagement session planned for summer 2016.

Background

The *MGA* was introduced in 1994 and took effect on January 1, 1995. This Act addressed a broad range of local government issues and consolidated 25 provincial acts dealing with municipalities. Property tax exemptions that were previously addressed in the *Municipal Taxation Act* are now governed by the *MGA* and its regulations.

Exemptions from property taxes provided to qualifying properties tend to reflect social values that are based on collective priorities of public benefit. For example, government, churches, hospitals, schools, and other such properties that have collective priorities for public benefit are eligible for property tax exemption under Section 362 of the *MGA*. While the legislation lays out the rules governing exemptions for community organizations, the decision to grant an exemption rests at the municipal level. The meaning of "public benefit" has been interpreted at the municipal level. As a result, local property tax exemption decisions are specific to a property, an area, an organization, or a combination of these three. The exemption decision often rests on the facility's accessibility to the public and the overall public benefit from its use.

In 1997, the Government of Alberta formed the Non-Profit Tax Exemption MLA Review Committee to review the effects of the new legislation on property tax exemptions and make recommendations on potential revisions. The committee established a set of principles and a process for considering property tax exemptions for "non-profit" organizations. These principles included:

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- advancement of “public benefit” in terms of charitable and benevolent purposes, community games, sports, athletics, recreation, and educational purposes;
- recognition of the “volunteer contribution and fundraising component” that most often characterizes non-profit status organizations;
- advancement of youth programs and community care for the disadvantaged; and
- appropriate access to non-profit facilities and programs.

In addition to these principles, the committee also provided recommendations that would support the principle of local autonomy in municipal decision-making. The result of the recommendations made by this committee was the Community Organization Property Tax Exemption Regulation (AR 281/98) – also known as “COPTER.” When read in conjunction with Section 362(1) (n) of the *MGA*, the regulation sets out the conditions that a non-profit organization must meet before a property tax exemption is approved.

A key aspect of the COPTER was to provide local jurisdictions with autonomy to make their own decisions about activities in their communities. To ensure clarity and consistent application of exemption provisions, “A Guide to Property Tax Exemptions in Alberta” was developed by Municipal Affairs. This document is intended to help members of non-profit organizations, municipal administrators, property assessors, and other groups that have an interest in property tax exemptions. The guide facilitates the interpretation of this regulation, as well as the consistency of decision-making concerning property tax exemptions across Alberta. The guide can be found at www.municipalaffairs.gov.ab.ca/documents/as/pte_guide_2005.pdf.

The last comprehensive review of COPTER was conducted in 2008. Targeted consultations, including an online consultation component, were held across the province. The common key issues identified were as follows:

1. Frequently misinterpreted terminology required identification and clarification to ensure more consistent application of the regulation.
2. The beneficiary of the exemption. Often, for-profit landlords received the exemption as the owner of the property, but did not pass the exemption benefit on to the non-profit organization.
3. There was concern that the regulation’s focus on “time allocated use” for youth programs resulted in ineligibility of sports facilities for an exemption, despite also providing public benefit for adults and seniors.
4. Administrative dates required review to enable municipalities to make exemption decisions in time for budget deliberations and the preparation of the assessment roll.

The 2008 review resulted in changing the date to apply for an exemption under COPTER. The date to file an application was changed from November 30 to September 30, and the date for receiving supporting documentation was changed from February 15 to November 30.

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Some key issues were not addressed in the 2008 review, as significant debate existed on these items and no mutually agreeable conclusion was reached.

In 2011, four private members bills were proposed that exempted the lands and buildings owned by four residents associations in Calgary. Since the mid-1980s, non-profit residential associations have been established to market subdivisions and manage associated recreational amenity property that may include golf courses, soccer fields, ice rinks, and lakes. Exemptions to land and buildings owned by residents associations was a new request that initiated a targeted review of COPTER. The result was an amendment specifically addressing residents associations and suggesting they be treated similar to community associations. This exemption came into force on January 1, 2012 and impacted only the cities of Calgary and Edmonton. Since this change, concerns have been raised that these residents associations do not meet the requirements of public access, as they are restricted to property owners and renters in the association.

Stakeholders

COPTER impacts all Albertans as taxpayers, as well as a variety of other groups and associations within Alberta. The list below, in alphabetical order, indicates the targeted stakeholders the COPTER Review team intends to engage directly. While these stakeholders will be engaged directly, any municipality or individual may submit feedback through the Minister's tour in summer 2016 and the online public consultation from February to April 2017.

- Alberta Assessors' Association
- Alberta Association of Municipal Districts and Counties
- Alberta Chambers of Commerce
- Alberta Continuing Care Association
- Alberta Seniors Communities & Housing Association
- Alberta Urban Municipalities Association
- Building Owners and Managers Association
- City of Calgary
- City of Edmonton
- Volunteer Alberta

Current Issues

Some of the key issues identified in 2008 remain unresolved and continue to surface across municipalities. Over the years, there have been decisions made by assessment review boards (ARBs) and judgements from the Court of Queen's Bench that have created more conflicts for municipalities in applying the COPTER. Consequently, there is a need to review and provide clarification in the regulation to address these issues. However, some of the issues, such as affordable housing, are complex matters that likely require further discussions with other provincial ministries and a larger cross-section of the

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stakeholder base than can be accomplished within the timeframe allotted to this review. This review will provide an opportunity to identify these specific issues for future analysis and consideration.

The following sections describe the common key issues that are the focus of this review.

I. Definitions

Municipal Affairs has identified definitions within the *MGA* and *COPTER* that require clarification to better support municipalities making decisions on property tax exemptions. These terms have been the subject of significant debate regarding their interpretation.

The definitions are:

- Charitable and Benevolent Purposes
- General Public
- Held By
- Minor Fee
- Percentage of Use
- Public Access
- Membership Requirement
- Community
- Used in Connection With
- Professional Sports Franchise
- Facility
- Subsidized Accommodation

The Stakeholder Response Form contains a table of these definitions with sections to provide written feedback. Using the Stakeholder Response Form, please provide information regarding what works well within the current definition, what does not work well, and any suggested changes including specific wording if applicable.

II. Beneficiaries of Exemption

Under Section 304 of the *MGA*, the property owner receives the property tax bill and pays the property tax in most situations where a leasing agreement exists. However, when a non-profit organization is eligible for an exemption under the *COPTER*, but leases property from a private land owner, the landlord may be the beneficiary of the exemption rather than the non-profit organization. If the landlord does not pass on the savings directly to the organization, municipalities are often reluctant to grant exemptions. Clarification is necessary regarding leasing agreements between landlords and non-profit organizations to ensure the benefit of the exemption is realized by the non-profit organization and not the landlord.

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- 1) How can the regulation be amended to ensure that the non-profit organization is the beneficiary of the exemption?
- 2) Are there circumstances when it would be appropriate for a private property owner to be the beneficiary of the exemption? If so, what are the circumstances and how could the exemption be applied?

Please use the Stakeholder Response Form to provide written feedback for these questions.

III. Exemption for Residents Associations (RA)

RAs are created by developers as a means of marketing new subdivisions. RA members typically include property owners and renters in a subdivision. RAs often own certain amenity properties in a subdivision, such as club houses, beaches, sports facilities, and playgrounds. Currently, residents associations only exist in Calgary and Edmonton. In 2011, the COPTER was amended to provide property tax exemption for RAs. There has been concern raised that this exemption is contrary to the following terms used to determine qualification for exemption:

- 1) General Public – facility use is limited to RA members and guests
- 2) Public Access – facility use is limited to RA members and guests
- 3) Membership requirement- to access facilities, you must be a member of the RA

Please provide feedback on the following questions regarding RA property tax exemptions.

- 1) What are the positive impacts of the exemption for RAs?
- 2) Are there negative impacts of the exemption for RAs?
- 3) Are there circumstances where RAs should continue to be eligible for property tax exemptions? If so, what are the circumstances and how could the exemption be applied?

Please use the Stakeholder Response Form to provide written feedback for these questions.

IV. Exemption for Affordable Housing

Affordable housing exemptions are a large and complex issue. The affordable housing industry has evolved to include a spectrum of facility types based on a variety of factors that includes levels of care, seniors housing, and housing for people with disabilities or low income. Consequently, it is not as clear for municipalities or the organizations providing these housing services how they should be treated for tax purposes. As the industry around affordable housing continues to change in scope and definitions, discussions should be ongoing between federal, provincial, and municipal government levels to determine the appropriate exemption status for these facilities.

There have been some differences of opinion regarding the applicability of COPTER to address property tax exemption for affordable housing provided by non-profit organizations other than seniors lodges that are specifically exempted under Section 362(1)(n)(iv) of the *MGA* and parts 1 and 2 of the COPTER.

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There is a general understanding that the COPTER is not intended to address exemptions for all affordable housing types. In 2012, however, a Calgary Composite Assessment Review Board decision granted a property tax exemption to a non-profit housing provider, Horizon Housing Society, based on Section 362(1)(n)(iii). This sub-section provides exemption for property used for a charitable or benevolent purpose that is for the benefit of the general public. Municipalities suggest that properties managed by non-profit organizations should still be taxable and that this provision is not intended to deal with housing exemptions. This decision expands the definition of charitable and benevolent in such a way that could lead to a significant impact on the tax base.

- 1) How have changes in the affordable housing industry impacted property taxation and exemptions?
- 2) What are the major issues that need to be addressed to ensure appropriate property tax exemption decisions?
- 3) What would be the most appropriate mechanism to address property tax exemptions for the affordable housing industry?
- 4) What clarification is needed regarding affordable housing exemption policies and application of those policies in the exemption context?

Please use the Stakeholder Response Form to provide written feedback for these questions.

V. Qualification Criteria

Various stakeholders, including non-profit organizations and municipalities, have suggested that changes to the COPTER qualification criteria may be necessary to ensure this regulation is applied fairly. This section intends to explore what aspects are fair, which aspects may need further examination, and provides the opportunity to offer suggestions on any changes that may be required.

- 1) What aspects of the current eligibility criteria should be maintained as worded?
- 2) What aspects of the current eligibility criteria would you like to see modified? Provide suggestions for modification.

Please use the Stakeholder Response Form to provide written feedback for these questions.

VI. Administrative Process

The 2008 review resulted in changing the date for making application for an exemption under COPTER. The date to file an application was changed from November 30 to September 30, and the date for receiving supporting documentation was changed from February 15 to November 30. These changes enabled municipalities to make exemption decisions in time for budget deliberations and the assessment roll preparation.

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As part of the COPTER review, Municipal Affairs seeks to improve the administrative process of granting and managing exemptions. This section intends to explore which administrative aspects work well and which aspects may need further examination, and provides the opportunity to offer suggestions on any changes that may be required.

- 1) What aspects of the current administrative process are effective?
- 2) What aspects of the current administrative process would you like to see modified? Provide suggestions for modification.
- 3) Should an application be required for all exemptions? Please explain.
- 4) Are the current deadlines (September 30 and November 30) effective? Please explain. If they are not effective, please suggest preferred dates.
- 5) Should exemptions expire after a given length of time? Please explain. What is the ideal length of time before an exemption should be reviewed?
- 6) Should an exemption be effective once granted, or should it start at the beginning of the next fiscal year? Please explain.

Please use the Stakeholder Response Form to provide written feedback for these questions.

VII. Other Issues

Considering that a full review of the COPTER regulation has not been completed since 2008, Municipal Affairs recognizes that there may be other concerns with this regulation that were not addressed in the 2008 review. This section intends to address any issues not previously captured in this document.

- 1) COPTER is intended to allow municipalities to maintain local autonomy in property tax exemption decisions. As a result, municipalities may make different decisions regarding exemptions for similar properties. This variation in tax treatment may be interpreted as inconsistent across the province. How can this issue be addressed?
- 2) Considering the current COPTER regulation, are there any additional concepts or principles that should be considered?
- 3) Are there any other exemption issues you have encountered? How would you recommend they be addressed?

Please use the Stakeholder Response Form to provide written feedback for these questions.