

THE CITY OF WINNIPEG

THE ENTERTAINMENT FUNDING BY-LAW
NO. 7710/2000

**A By-law of THE CITY OF WINNIPEG
imposing a tax upon persons attending
amusements and places of amusement for
the purpose of providing funding to arts and
cultural groups.**

WHEREAS pursuant to the provisions of *The Municipal Act*, The City of Winnipeg may impose a tax on the admission price for amusements and places of amusement;

AND WHEREAS Council wishes to impose such a tax for the purposes of providing a dedicated funding source for arts and cultural organizations in the City;

NOW THEREFORE THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

1. This by-law shall be referred to as **"The Entertainment Funding By-Law"**.

Definitions

2. In this by-law

"admission price" means the fee or charge paid by or collected from a person for entrance to a place of amusement, and includes,

- (a) where entrance to a place of amusement is allowed on the basis of a season ticket or annual ticket, the fee or charge paid by or collected from the purchaser of the season ticket or annual ticket,
- (b) any fee or charge which, although not charged for entrance to a place of amusement, is charged for the right to sit or use any particular seat, or box or stand in a place of amusement for any privilege or right to use or sit in any particular place in relation to viewing an amusement not given to a person who does not pay the fee or charge, and

- (c) where a person is allowed entrance by means of a complimentary pass or ticket to a place of amusement for the entrance to which a fee or charge is paid by or collected from other persons, the fee or charge paid by or collected from a person who has paid the fee or charge and has the same or similar rights and privileges in the place of amusement as the person allowed entrance by means of the complimentary pass or ticket;

but does not include the fee or charge paid by or collected from a person to participate in an athletic sport;

"amusement" means a contest, dance, entertainment, exhibition, game performance, program, show, riding device or amusement ride;

"athletic sport" includes ice skating, roller skating, bowling, golf, tobogganing and the use of skate board facilities but does not include dancing, miniature golf or the use of go-karts or participation in a paintball, laser or other survival or tag game;

"dance" means a dance featuring recorded or live music, but does not include a social where the admission price is \$15.00 or less;

"Director of Corporate Finance" means the holder of such office of the City, or his designate;

"owner" means any person who operates, conducts or manages an amusement or place of amusement, and includes the employee, manager, lessee, transferee or partner of an owner and any person selling tickets or passes as an owner's agent;

"person" includes a firm, partnership, association or other body, whether incorporated or unincorporated;

"place of amusement" means a place where

- (a) an amusement is given, held, played, performed or otherwise takes place, and

- (b) an admission price is charged or collected;

"performance of an amusement" includes the performing, holding, staging, exhibiting, playing or operating of an amusement, and "performing an amusement" has a corresponding meaning;

"social" means a social occasion for which an occasional permit is issued, as provided for in *The Liquor Control Act*, and regulations thereto;

"tax" means a tax imposed under this by-law.

Limited local content

3. For the purposes of this by-law, where more than 40% of the performers involved in the performance of an amusement do not reside within Winnipeg, the amusement is deemed to have limited local content.

Imposition of tax

4. Subject to section 8, every person attending a place of amusement shall, upon every attendance at that place of amusement, whether admitted for cash, by regular ticket, season or other periodic ticket, pass, complimentary ticket or voluntary contribution or without the payment of any fee, charge or contribution, pay to the City for the raising of revenue for the City, a tax in accordance with section 7.

10% tax on admission price

5(1) On an admission price of \$5.00 or more, the tax shall be ten per cent (10%) of the admission price, but, if in making the computation of the tax the result includes a fraction, the tax shall be the whole number that is nearest to one-eleventh of the total charge made to include the admission price and the tax.

Season tickets or other passes

5(2) On passes, complimentary, season or periodic tickets, or where the person is admitted without payment of the usual or any price of admission, the tax shall be based on the admission price payable at the amusement for that accommodation.

Persons exempt from tax

6(1) The owner, while on duty in a place of amusement, or a peace officer or inspector entering a place of amusement for the purposes of enforcing any law in force in Manitoba, including any by-law of the City, is not required to pay the tax at that place of amusement.

Amusements and places of amusement which are exempt

6(2) No person shall be required to pay the tax for attending an amusement, or a place of amusement, that is listed in Schedule "A", provided the tickets purchased for that amusement, or place of amusement, include a statement that the performance is exempt from the collection of tax under this by-law.

Schedule "A" list of amusements and places of amusement

7. An amusement or a place of amusement, which, in the opinion of Council, meets the criteria set forth in Schedule "B", may be listed in Schedule "A".

Where tickets may indicate performance of amusement is exempt

8. An owner shall only be permitted to include on the tickets sold for an amusement, or place of amusement, that it is exempt from the collection of the tax where, prior to the selling of any ticket, the owner:

- (a) files with the Director of Corporate Finance:
 - (i) a statutory declaration stating that the amusement is being held directly by an organization referred to in a listing under Schedule "A"; and
 - (ii) such further information as the Director of Corporate Finance may require to confirm that the organization continues to comply with the Listing Principles contained within Schedule "B"; and
- (b) receives from the Director of Corporate Finance written authorization to print on the tickets to be sold that the amusement, or place of amusement, is exempt from the tax.

When an amusement is held directly by an organization

9. For the purposes of this by-law, an amusement is held directly by an organization:

- (a) when that organization is liable for payment of all expenses relating to the performance of the amusement;
- (b) when that organization is responsible for the organizing, producing, staging, managing and promoting of the performance of the amusement and utilizes:

- (i) its own employees, or members of the organization, or other volunteers from the community, who receive no remuneration other than the payment of reasonable incidental expenses related to their activities, such as food and travel costs, or
 - (ii) person(s) under contract(s), provided that those contracts provide:
 - (I) that all remuneration paid is at a fixed rate, or
 - (II) that, where any remuneration to be paid is to be arrived at on the basis of a percentage of the gross or nets receipts, all those contracts collectively are structured in such a manner so as to ensure that the organization receives at least 10% of the gross revenue from the admission price paid by those attending the amusement; and,
- (c) where related party transactions of that organization are not significant.

Related party transaction

10. Under this by-law, related party transactions are deemed to be significant if they comprise 20% of transactions or more than \$300,000.00 per annum, whichever is less.

Collection of taxes

11(1) An owner shall collect the taxes imposed by this by-law in cash from the persons liable therefor.

Refusal to collect taxes

11(2) If an owner neglects or refuses to collect the taxes imposed by this by-law, the Director of Corporate Finance may take such steps as he may deem expedient to collect the taxes.

Records and returns

12. Every owner who collects any tax, or is responsible for the collection of any tax, under this by-law shall

- (a) account to the Director of Corporate Finance for all tax collected;
- (b) remit all tax collected to the Director of Corporate Finance as hereinafter provided;

- (c) file with the Director of Corporate Finance within thirty (30) days of the amusement being held or, if the place of amusement operates continuously, annually, an audited financial statement or a financial statement certified by the officers of the organization including a statement of gross revenue; and,
- (d) include upon every ticket to his place of amusement upon which is printed an admission price of \$5.00 or more, a statement of the amount of tax included in the ticket price, if any.

Remittance of tax

13. The tax that has been collected during

- (a) any month upon admissions to a place of amusement which is continuously operated shall be remitted on or before the sixth day of the following month; or
- (b) any week shall be remitted before the Thursday of the following week, in any instance where subsection (a) does not apply.

Right of entry of Director of Corporate Finance

14. The Director of Corporate Finance may for the purpose of enforcing this by-law, enter at any time, any place of amusement

- (a) to collect the tax imposed by this by-law, if necessary;
- (b) to audit the books, records and accounts of the owner for the purpose of ascertaining the amount of tax to be collected and remitted;
- (c) to place in the lobby or other part of the premises such notices regarding the tax as the Director of Corporate Finance may think necessary;
- (d) to take readings of any automatic ticket vending machine used therein;
- (e) take stock and the serial numbers of admission tickets in the place; or
- (f) to require the owner to produce for inspection any book, contract, agreement, letter paper or document relating to the place of amusement or the business thereof; and

- (g) make and remove copies of any documents or records required in the administration of this by-law.

Information which may be requested from listed amusements and places of amusement

15. The Director of Corporate Finance may request the following information from the owner of an amusement or place of amusement which is listed in Schedule "A":

- (a) a completed financial statement, certified by the officers of the organization or by a member of a body of professional accountants incorporated by a statute of the Province of Manitoba, including, where part of the revenue from the amusement or event(s) was or is to be paid to a promoter, proprietor, member, officer or director, a completed financial statement indicating a final breakdown of such payments to be provided within 180 days of the performance of an amusement or such other time as the Director of Corporate Finance deems reasonable, and in a form prescribed by the Director of Corporate Finance;
- (b) an annual audited financial statement, certified by a member of a body of professional accountants incorporated by a statute of the Province of Manitoba at the end of the organization's fiscal year.

Organizations may be ordered to re-apply

16(1) Notwithstanding that an organization has been listed in Schedule "A" and such listing has yet to expire, or is for an indefinite term, the Director of Corporate Finance may, at any time, request that organization provide information equivalent to that of making an new application for listing an amusement, or place of amusement, in Schedule "A".

Failure to comply

16(2) Where a request, which has been made under subsection 1, is not complied with within a reasonable time, the Director of Corporate Finance shall report the failure to Council, through the Standing Committee on Fiscal Issues.

Listing may be revoked

17. Listings in Schedule "A" may be repealed:

- (a) where an owner fails to comply with a provision of this by-law, or a request made by the Director of Corporate Finance;

- (b) where Council is of the opinion that the listing fails to meet the intent of this by-law; or
- (c) for any other reason at the discretion of City Council.

Offence to enter without payment of tax

18(1) Every person who, without having paid the tax for which provision is made in section 3, enters a place of amusement for the purpose of attending an amusement or participating in an amusement is guilty of an offence under this by-law.

Offence to include statement performance is exempt

18(2) An owner, who includes on any tickets sold a statement that the performance is exempt from the collection of tax under this by-law, without having first obtained the written authorization of the Director of Corporate Finance, as provided under subsection 8(b), is guilty of an offence under this by-law.

Refusal to collect taxes an offence

18(3) An owner who neglects or refuses to collect the tax imposed by this by-law, or who permits or authorizes a person attending at his place of amusement without having paid the tax, is guilty of an offence under this by-law.

Refusal or failure to comply with a request

18(4) An owner who refuses, or fails to, comply with a request of the Director of Corporate Finance made pursuant to a provision of this by-law is guilty of an offence under this by-law.

Penalties

19. Every person who fails to comply with the provisions of this by-law is guilty of an offence and is liable on summary conviction,

- (a) for failing to comply with subsection 11(1), 12(b) or 18(3) or section 13, to a fine that is not less than the amount of the tax that should have been collected and remitted to the Director of Corporate Finance;
- (b) for failing to comply with other provisions of this by-law,
 - (i) if an individual, to a fine not exceeding One Thousand Dollars (\$1,000.00) or to imprisonment for a term not exceeding six (6) months, or to both fine and imprisonment;

- (ii) if a corporation, to a fine not exceeding Five Thousand Dollars (\$5,000.00).

Use of funds raised

20. Except as Council may otherwise provide, the revenues generated from this by-law shall be allocated to grant funding, as provided for in the "Policy for Cultural Grants Administered by the Standing Policy Committee on Protection and Community Services" as may be amended from time to time.

Transition

21. Subject to section 16, amusements taking place in 2001 that have been exempted under the Amusement Tax By-law No. 3107/81 shall be deemed to be listed in Schedule "A."

Successor to amusement tax

22. The tax imposed by this by-law is a successor to the amusement tax imposed under the Amusement Tax By-law No. 3107/81 and the terms "amusement tax" and "amusement taxes", as they appear in other by-laws of the City refer to the tax imposed under this by-law.

Repeal of Amusement Tax By-law

23. The Amusement Tax By-law No. 3107/81 is repealed as of December 31, 2000.

Consequential amendments

24. The City Organization By-law No. 7100/97 is amended

- (a) by adding the following as section 9.3:

"9.3 The Standing Committee on Fiscal Issues shall consider and report to Council through Executive Policy Committee on matters respecting the Entertainment Funding By-law."

- (b) by repealing clause 10(b).

Effective date

25. This by-law takes effect on January 1, 2001.

DONE AND PASSED in Council assembled, this 20th day of September, 2000.

Schedule "A"

1. An exemption which has been provided in section 2 for an indefinite term or for a season program does not apply to any performance that is:

- (a) a for-profit production, including a for-profit touring production which is offered through a bidding process;
- (b) mounted and assembled outside the City and has limited local content; or
- (c) is not directly held by the organization referred to in section 2;

unless that performance has been specifically listed.

2. Subject to section 1, no tax shall be collected upon admission fees to the performance of the following amusements or to the following places of amusement:

Schedule "B"**Listing Principles**

An amusement or place of amusement may be listed in Schedule "A" where an organization has made application for an exemption as hereinafter set out. Listings are intended to assist locally based charitable and not-for-profit cultural or athletic organizations in producing entertainment and sporting events with admission prices at a level which will encourage a broad audience. Listings are not intended to apply where an amusement is held for fund raising events in which the performers or promoters profit or where the exemption would result in for-profit gain.

Part 1 - Criteria**Definitions:**

1 In this schedule:

"charitable organization" includes an organization registered as a "charity" with Revenue Canada;

"cultural organizations" includes organizations providing the following types of amusements: musical, artistic, ethno-cultural, museums, galleries and exhibits of a non-commercial nature;

"identifiable group" means a section of the public distinguished by age, ancestry, nationality, gender, ethnic background, religion or belief;

"not-for-profit cultural or athletic organization" means an organization which:

- (a) is organized without share capital;
- (b) has a governing body elected democratically by the membership;
- (c) less than 50% of the organization's directors are "related" persons; and
- (d) has a membership criteria such that membership in the organization is open to the public, or an identifiable group, for no, or minimal consideration;

“related persons” means individuals who are related to each other by blood, marriage, adoption, common-law relationship, or close business or corporate association (e.g., business partners, employee and employer). Individuals or groups can also be related to a corporation in which they have a controlling interest. Persons related to these individuals are also related to the corporation.

Scope re listings for charitable or not-for-profit cultural or athletic organizations

2 Listings may be provided for the performance of amusements where:

- (a) the amusement is directly held by a charitable or not-for-profit cultural or athletic organization;
- (b) the amusement to be held is directly related to the character of the organization;
- (c) the organization is financially sound, or where in a deficit position, the organization is able to demonstrate a sound deficit reduction plan;
- (d) the organization renders a service to an identifiable group while being of a general benefit to the community as a whole; and
- (e) net revenues will be used to further the organization's undertaking or purpose.

Fund raising activities

3 An amusement which is intended for fund raising may be listed where:

- (a) the amusement is directly held by a charitable or not-for-profit organization; and,
- (b) individuals performing the amusement receive no compensation for their participation, other than remuneration, limited to a maximum of \$50, for expenses reasonably incurred related to their participation in the amusement.

Limited Local Content

4 Performances which have limited local content may only be considered for listing where the performance is to be offered by a locally based charitable or not-for-profit cultural or athletic organization as part of a festival, event, or season of performances and, in the opinion of Council, the limited local content will complement and enhance the ability of that organization to produce entertainment and attract a broad audience.

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Council may vary provisions

5 Notwithstanding any other provision of Schedule "B", an amusement, or place of amusement, that is not within the scope of sections 2, 3 or 4 may be listed in Schedule "A" where Council is satisfied:

- (a) such a listing is in keeping with the Listing Principles set out herein;
- (b) the organization demonstrates in writing that the compliance with a term, or terms, of this By-law may cause unreasonable hardship; and
- (c) where possible, alternate arrangements proposed by the organization present a reasonable alternative in the circumstances of the particular organization.

Part 2 - Applications For Listing In Schedule "A"

Applications

6 Organizations holding amusements or operating places of amusement may apply for listing in Schedule "A" by filing with the Director of Corporate Finance a completed application, in the form as prescribed by the Director of Corporate Finance, sufficient to demonstrate compliance with the criteria set forth in Part 1, which application shall include:

- (a) if a corporation, the most recent annual return or, in the case of a new corporation, proof of corporate status and a complete list of current officers and directors;
- (b) if a partnership, a list of all partners;
- (c) copies of the organization's constitution and operating by-law(s);
- (d) copies of contracts between the organization and any person organizing, promoting or managing the amusement on its behalf;
- (e) a projected financial statement, on a form prescribed by the Director of Corporate Finance, which shall contain a projected statement of revenues and expenditures, including:
 - (i) details on all remuneration to be paid to any person in relation to the performance of the amusement;

- (ii) where any part of the revenue from the amusement or the event(s) was, or is, to be paid to a promoter, proprietor, member, officer or director, a breakdown of such payments;
- (iii) where the net proceeds from the amusement are to be deposited, and a statement of how those proceeds are intended to be used,
- (f) except in the case of a new organization, the last annual financial statement in an audited form, if available;
- (g) the date of the fiscal year end of the organization;
- (h) for a charity, the charity's registration number, name and address as recorded with Revenue Canada; and
- (i) such further information as the Director of Corporate Finance may reasonably request to verify that the amusement complies with the intent of this by-law.

Time for filing prescribed by the Director of Corporate Finance

7 The Director of Corporate Finance may prescribe the number of days prior to the sale of tickets by which applications for listings must be filed.

Listings determined by Council

8 Upon consideration of the recommendation of the Director of Corporate Finance as to whether or not the application meets the principles and intent of the by-law, the Standing Committee on Fiscal Issues may recommend to Council that an amusement or place of amusement be listed in Schedule "A".