REPORT OF THE

STANDING COMMITTEE ON FISCAL ISSUES

DATED APRIL 4, 2000

On motion of Councillor Clement, Clause 1 of the Report of the Standing Committee on Fiscal Issues, dated April 4, 2000, was considered.

Moved by Councillor Clement,
That the Consent Agenda, Clause 1, be adopted.

Carried.

The Arts and Cultural Funding By-law
Files FL-6 (Vol. 21) and FG-3 (Vol. 40)

684 - 1. On November 10, 1999, the Cultural Policy Review was referred by Executive Policy Committee to the Standing Committee on Fiscal Issues and the Standing Policy Committee on Protection and Community Services in order for the Chairs to consult and report back to Executive Policy Committee.

Moreover, on December 8, 1999, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services that recommendation 5. of its report dated November 29, 1999, be referred to the Standing Committee on Fiscal Issues for financial consideration, namely:

> *'5. That the City:*
> *a. Replace the existing 10% Amusement Tax on admissions of $5 or more with a Cinema Seat Tax of 10%.*
> *b. Re-allocate the monies designated for the New Homeowner's Tax Credit to arts and culture funding.'*
>
> *And that the Standing Committee on Fiscal Issues explore the possibilities of including Arts funding as a line item or through mill rate support."*

The Standing Committee on Fiscal Issues considered and received as information the matters referred to it by the Executive Policy Committee and submits the following as to the administering and collecting of funds for arts and cultural purposes.

The Amusement Tax By-law No. 3107/81 (the "by-law") has endured a difficult history. Originally the by-law was introduced to impose a tax on amusements held by persons other than what could globally be described as "not-for-profit" and/or charitable organizations (per Section 7 of By-law No. 3107/81). However, the wording of the by-law at times resulted in "for-profit" productions being run under the auspices of "not-for-profit" organizations.

As a result, a decision was made in 1993 to expand the scope of the by-law in order to capture virtually all amusements, regardless of the character of the organization putting on the performance. However, to off-set that increase in scope, the 1993 amendments also provided a system allowing organizations to seek exemptions from having to collect and remit the Amusement Tax.

The 1993 amendments created difficulties such that recommendations 5.1 and 5.2 of the Buchwald Report, titled "Into The 21st Century: Arts and Culture in Winnipeg: Report of The City of Winnipeg Cultural Policy Review Panel", recommended:

- *ideally, the City should abolish the Amusement Tax; or*

- *if necessary to retain this source of income, the 1993 amendments to the Amusement Tax By-law should be repealed, the pre-1993 by-law restored, [with modifications]*

Abolishing the Amusement Tax will result in a $1.8 million revenue loss for the City, but presents no other issues of significance from an administrative perspective.

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Repealing the 1993 amendments to the Amusement Tax By-law, and restoring the pre-1993 by-law, with modifications, necessitates a more detailed discussion.

The existing Amusement Tax By-law has been amended numerous times since originally being enacted in 1981, such that it is far more practical to being anew.

As such, "The Arts and Cultural Funding By-law" as proposed, is intended to address both the concerns with the existing by-law, and the shortcomings of the pre-1993 by-law. Changes from the existing by-law include:

a) New By-law Cast in Terms of "Listing"

The new by-law parallels the existing by-law in terms of having a by-law which captures virtually all amusements, but then provides criteria that, if met, enables an organization to have their amusement deemed by Council to fall outside the scope of the tax. This is done by "listing" the amusement, or place of amusement, rather than providing "exemptions".

The advantage of this process is that Council can list specific amusements (i.e. an individual perfor-mance on a single evening) or amusements for a specified period of time, or on a permanent basis.

The permanent listings are intended to capture repeat amusements, such as the annual season of performances of an organization like the Manitoba Theatre Centre, which are currently required to come before Council every year for an exemption. Under the new by-law, Council could list them permanently, which would mean they would not have to repeatedly seek Council approval for exemptions. The safeguards to prevent abuse of permanent exemptions are described below, in Section c).

b) Scope of Organizations Able to Be Listed Has Been Broadened

Under the existing by-law an ongoing problem has been that organizations, which have not been traditionally regarded as "for-profit" by the community, have had their amusements subject to the tax. This has included church groups and plays and performances staged by high schools and other educational institutions.

With the new by-law being scoped so as to exclude "charitable organizations", a term which has been defined to include religious organizations and educational institutions, this problem has been alleviated.

Additionally, amusements that were held for fund raising purposes were taxable in all but the rarest of cases. This was perceived by many to be an unintended consequence of the by-law, particularly in regard to performances held to raise funds for charitable purposes, or to assist individuals who faced enormous and unexpected expenses (such as medical treatments outside the country).

As a result, the new by-law provides Council latitude in listing these types of events as well, and thereby allows for them to fall outside the scope of the tax.

The changes outlined in Sections a) and b) bring the new by-law back into a form comparable to the pre-1993 by-law. However, in an effort to prevent some of the perceived abuses which occurred under the pre-1993 by-law, The Arts and Cultural Funding By-law includes:

c) Criteria For Listing Has Been Tightened

Character of the Organization Eligible for Listing Has Been Revised:

For an organization to be eligible for listing, it must have membership criteria such that membership is open to the public, or an identifiable group, for no, or minimal, consideration. "Identifiable group" has been defined as meaning a section of the public distinguished by age, ancestry, nationality, gender, ethnic background, religion or belief.

These provisions have been included to ensure that organizations listed are open to members of the public, and as a result, members of the community have the opportunity to influence both the operation of the amusement, and the use of the proceeds from the amusement.

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Amusements must be "Directly Held" by the Listed Organization:

This provision has been included in an effort to address one of the most serious concerns with the pre-1993 by-law, being the perception that organizations which were legitimately "not-for-profit", and therefore not subject to the tax, were seen by some as being used as fronts by "for-profit" operators. This enabled the "for-profit" operators to escape the scope of the tax.

The concept of "directly held" encompasses within it a number of provisions intended to reduce the prospect of this happening:

- the listed organization must be liable for payment of all expenses relating to the performance of the amusement;

- the amusement must be in keeping with the character of the organization;

- the listed organization must be responsible for the organizing, producing, staging, managing and promoting of the performance of the amusement and must either utilize its own employees, members, or other volunteers, who receive minimal remuneration, or, where individuals are contracted to perform these functions, those contracts are subject to specific provisions designed to limit the amount paid.

Limited Local Content Has Been Defined:

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. Generally, amusements with limited local content are not eligible for listing.

Role of the Corporate Finance Department:

In order to prevent abuse, The Arts and Cultural Funding By-law requires a strong, ongoing monitoring role for the Corporate Finance Department. This includes:

- requiring organizations to list on their tickets that amusements are not subject to The Arts and Cultural Funding By-law tax; but,

- permitting only those organizations who first obtain, from the Director of Corporate Finance, written authorization to include that statement on their tickets. (This is done through the organization filing a statutory declaration containing prescribed information);

- permitting the Director of Corporate Finance to prescribe the date by which organizations must submit their applications. This provides the potential for a greater degree of flexibility then what is experienced now;

- after the performance, the Director of Corporate Finance is able to request a completed financial statement, containing prescribed information, and at the end of the organization's fiscal year, have the organization file an audited financial statement;

- additionally, Corporate Finance will develop a systematic monitoring program, including spot audit, of all listed organizations to ensure continuing compliance with the provisions of the by-law.

Enforcement Streamlined:

- The new by-law makes it an offence for an organization to print on their tickets that an event is listed, without first having obtained the authorization of the Director of Corporate Finance. As a result, enforcement efforts are anticipated to be streamlined, as the evidence of the lack of authorization will be easily obtainable.

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d) Winnipeg Arts Advisory Council No Longer Involved in Administration of the by-law

The Arts and Cultural Funding By-law has removed the existing role of the Winnipeg Arts Advisory Council (WAAC), which is presently to review and make recommendations regarding exemptions.

All reference to the WAAC has been removed from The Arts and Cultural Funding By-law.

It should be noted that the ongoing role of the WAAC is currently being addressed by the Standing Policy Committee on Protection and Community Services.

Should this change in the role of the WAAC be implemented, Council will also be required to review and revise its policies for Cultural Grants Administered by the Standing Policy Committee on Protection and Community Services (C302) and Exemptions from Amusement Tax (C392).

e) Standing Committee on Fiscal Issues and Corporate Finance Department Assume New Responsibilities

The Standing Committee on Fiscal Issues has been given responsibility for reviewing applications for listing and making recommendations to Council, based on evaluations conducted and recommendations provided by the Corporate Finance Department.

This change will allow for a clarification of roles between the Standing Policy Committee on Protection and Community Services and Standing Committee on Fiscal Issues:

- the Standing Committee on Fiscal Issues and Corporate Finance Department will be responsible for recommending listings, and thereby have responsibility for administering and collecting the funds for arts and cultural purposes;

- the Standing Policy Committee on Protection and Community Services will maintain responsibility for the allocation of such funds, working in conjunction with the WAAC. As indicated earlier, this process is under separate review.

f) Impacts on the Corporate Finance Department

The time required by Corporate Finance to review and recommend “listings” is difficult to predict, but up to two hours per event is expected to be incurred in interpreting the by-law, evaluating the amusement, and providing recommendations to the Standing Committee on Fiscal Issues. In 1999, 111 amusement tax applications were received that incorporated 275 events. This translates into almost ten working days per month, including the time required to attend and present recommenda-tions to the Committee monthly. In addition to this supplementary responsibility and workload is the time required to effectively monitor and spot audit all listed organizations.

It is important to note that under the proposed new by-law, the number of events applying for exemption will not decrease substantially. Certain organizations may be given indefinite, blanket exemptions, allowing them to host events without continually applying for listing, but it is reasonable to anticipate this will mostly be in regard to the larger organizations (i.e. MTC, WSO, RWB, etc.), For others who do not consistently stage amusements on an annual basis, they will still be required to make application for listing.

g) Statistics (volume and dollar value of listing) Will No Longer Be Possible

As listed organizations and/or events will not automatically be required to submit financial statements, the present financial information available on annual dollar exemptions will no longer be subject to calculation. Thus, compilation information on the number of events that have been granted exemptions and the dollar value associated with those exemptions, which have been frequently requested, will be unavailable.

However, one of the benefits of The Arts and Cultural Funding By-law will be the corresponding decrease in the bureaucratic financial reporting system presently experienced by arts and cultural groups.

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h) Policy Change - Socials

Recently, the question of whether or not the existing amusement tax applies to socials has been raised. While the wording of the existing by-law may be uncertain in this regard, it has always been understood that socials, which did not provide live entertainment, were not to be considered taxable. This was due to the fact that traditional socials are private events, not open to the public, nor are they advertised as being open to the public.

In order to provide certainty, The Arts and Cultural Funding By-law has included a provision excluding socials.

TRANSITION

Transition provisions for moving from the existing Amusement Tax By-law to the new Arts and Cultural Funding By-law will also have to be addressed. Making the new by-law effective January 1, 2001, will provide an opportunity for Council to consider listings of amusements, and thereby enabling organizations to sell tickets for events in early 2001 without collecting the tax. It will also give Council the time required to review the role of the WAAC, and review and revise related policies, as required.

FINANCIAL IMPACT

As stated, the primary financial impact of The Arts and Cultural Funding By-law is that the scope of amusements subject to the tax has been reduced (i.e. church and educational institutions can now be listed, whereas before it was difficult, if not impossible, for them to be exempted). By eliminating the tax dollars received on these types of events, the projected financial impact to the General Revenue Fund is as follows:

	2000	2001	2002
Amusement Tax By-law Revenue Budget/Projection (City Portion – Tax Supported)	$1,800,000.00	$1,850,000.00	$1,900,000.00
Winnipeg Enterprise Corporation (WEC)	1,100,000.00	1,100,000.00	1,100,000.00
Total Amusement Tax Revenue Budget/Projection	2,900,000.00	2,950,000.00	3,000,000.00
The Arts and Cultural Funding By-law (Tax-Supported Revenue Projection)	n/a	$1,710,000.00	$1,735,000.00
Effect on Revenue	n/a	($140,000.00)	($165,000.00)*

* Projected to continue for 2003 – 2005 as indicated in the Financial Impact Analysis.

The Arts and Cultural Funding By-law is anticipated to generate less revenue than the current Amusement Tax By-law by approximately $140,000.00 in 2001 and $165,000.00 in 2002. This represents the financial impact to the Tax-Supported projected budgets in 2001 and 2002. A financial impact statement detailing the sources and categories of amusement tax has been prepared, a copy of which is on file in the office of the City Clerk.

Council's policy for Cultural Grants Administered by the Standing Policy Committee on Protection and Community Services (C302) states that:

"*Revenues generated from the collection of an amusement tax shall be allocated to grant funding, any variance between amusement tax revenues generated and the guaranteed minimum amount for arts funding to be offset by other general revenues.*

Excess revenues, if any, generated from the collection of amusement tax shall be set aside in a reserve account for the next year's global allocation of funding. While maintaining the guaranteed minimum [$1,974,552.00], any excess revenues in 1995, or in a subsequent year, shall be allocated to any accumulated shortfall in previous years."

As a result of this Policy, in combination with the fact that the present Amusement Tax By-law has not generated the guaranteed minimum, the General Revenue Fund has always been relied upon for supplemental funding.

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Assuming that the guaranteed minimum remains at $1.9 million, the level of this supplemental funding will increase as follows:

	1999 Actual	2000 Projected Amusement Tax By-law	2001 Projected Arts and Cultural By-law	2002 Projected Arts and Cultural By-law
Annual Global Arts Allocation	$1,974,552.00	$1,974,552.00	$1,974,552.00	$1,974,552.00
Arts and Cultural Funding By-law Tax-Supported Revenue Projection	1,750,092.00	1,800,000.00	1,710,000.00	1,735,000.00
Shortfall to the General Revenue Fund	($224,460.00)	($174,552.00)	($264,552.00)	($239,552.00)

The Standing Committee on Fiscal Issues recommends:

I. That the existing Amusement Tax By-law No. 3107/81 be repealed.

II. That Council adopt the proposed new Arts and Cultural Funding By-law, to come into force and effect January 1, 2001.

III. That the Proper Officers of the City do all things necessary to effect the intent of the foregoing, including the execution of any documents related thereto.

Copy of attachment referred to in the above clause is on file in the office of the City Clerk.

On April 19, 2000, May 10, 2000 and May 17, 2000, the Executive Policy Committee laid the matter over.

In amendment,

The Executive Policy Committee concurs in Recommendation Nos. I and III of the Standing Committee on Fiscal Issues and recommends that Recommendation II. be deleted and substituted by the following:

II. That the City Solicitor/Manager of Legal Services be directed to prepare a new "Entertainment Funding By-law" based on the draft by-law identified as Appendix "A" and further amended by Appendix "B".

Adopted by consent.

REPORT OF THE

STANDING COMMITTEE ON FISCAL ISSUES

DATED JUNE 13, 2000

On motion of Councillor Clement, Clause 1, of the Report of the Standing Committee on Fiscal Issues, dated June 13 2000, was considered.

Festival Initiatives in the Downtown Area
Files FL-6 (Vol. 21) and FG-3 (Vol. 40)

685 - ***Note: Clause 1 has been referred back by the Executive Policy Committee to the Standing Committee on Fiscal Issues for further review.***

Referred back by the Executive Policy Committee to the Standing Committee on Fiscal Issues for further review

STANDING COMMITTEE ON FISCAL ISSUES

QUESTION PERIOD

686 - Councillor Golden questioned if the intent of the Entertainment Funding By-law was to not charge amusement tax on socials to which Councillor Clement indicated that the intent was not to tax social tickets for wedding socials.

Councillor Golden questioned if amusement tax would be charged on tickets for fund raising dinner/dances put on by associations such as Big Brothers.

Councillor Clement stated it was his belief that if a non-profit association was having a fund raising dinner, they would not be charged the tax. He noted that there were groups fund raising for profit and that they were not non-profit organizations. He advised that there would be a mechanism when a group makes application to find out at that time if they would be charged the tax.