Minutes - Executive Policy Committee – July 19, 2006

Minute No. 543
Report - Standing Committee on Fiscal Issues - July 11, 2006

Item No. 1 **Amendment to the Simplified Entertainment Funding By-law No. 125/2006**
File FL-6

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Committee on Fiscal Issues and submits the following to Council:

1. That the Simplified Entertainment Funding By-law No. 125/2006 be amended by changing the definition of "cinema" to clarify that the By-law will not apply to films and movies shown in non-profit cinemas.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

Moved by Councillor O'Shaughnessy,
That the recommendation of the Standing Committee on Fiscal Issues be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION

On July 11, 2006, the Standing Committee on Fiscal Issues concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

REPORT

RE: Amendment to the Simplified Entertainment Funding By-law No. 125/2006

FOR SUBMISSION TO: Standing Committee on Fiscal Issues

ORIGINAL REPORT SIGNED BY: Acting Chief Financial Officer

REPORT DATE: June 29, 2006

RECOMMENDATION(S):

That Council approve an amendment to clarify the Simplified Entertainment Funding By-law No. 125/2006 by changing the definition of "cinema" so that the By-law will not apply to films and movies shown in non-profit cinemas.

Report Summary

Key Issue(s):

- The current Simplified Entertainment Funding By-law (the 'By-law') defines cinema as meaning "*any place* in which members of the public are able to view a film or motion picture". As such, the By-law applies to any physical location where the public views a film or motion picture.

- As a result, the tax applies to all cinemas in which admission of $5.00 or more is charged, regardless of whether the venue is operated by a non-profit organization. This includes venues such as the Berney Theatre, Pantages Playhouse Theatre, Winnipeg Art Gallery, Winnipeg Convention Centre, etc.

- The Administration has been requested to consider options to ensure that only for-profit cinemas are taxable under the By-law. The objective is to have charitable and/or non-profit venues exempt from having to collect the tax from patrons.

- In order to achieve this objective, the Administration recommends that the By-law be amended to define cinema as "any premises in respect of which a business has been assessed for the purposes of business tax and in which films or motion pictures are displayed to members of the public for a fee or charge."

- The business tax already draws a distinction between for-profit enterprises and non-profit enterprises. By tying the application of the Entertainment Funding Tax By-law to the business tax, the proposed definition does not increase 'red-tape' in the entertainment funding tax process.

- It is important to note that the recommended By-law amendment only exempts non-profit cinemas, not the organization presenting a film event in the cinema. If, for example, a charitable organization holding a film festival utilizes a cinema that is subject to the business tax, the sales of tickets to the film shown at that cinema are subject to the tax.

Implications of the Recommendation(s):

General Implications

	None
	For the organization overall and/or for other departments
X	**For the community and/or organizations external to the City**
	Involves a multi-year contract

Comment(s): The recommended By-law amendment would create two categories of cinemas. Cinemas which are operated for profit (and are therefore subject to the business tax) would also be subject to the entertainment funding tax, whereas non-profit cinemas (which are not subject to business tax) would not.

Policy Implications

X	**No**
	Yes

Comment(s):

Regulatory Implications

	None
X	**Eliminates or reduces regulatory impact**
	Proposes regulatory impact

Comment(s): The proposed By-law amendment will result in fewer venues meeting the definition of a cinema.

Environmental Implications:

X	**No**
	Yes

Comment(s):

Human Resources Implications:

X	**No**
	Yes

Comment(s):

Financial implications

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s): If the recommended changes are approved, there will be a minor impact on the entertainment funding tax revenue as fewer venues will meet the definition of a cinema and therefore not be subject to the tax. This amount is unquantifiable as the number and value of tickets sold in these cinemas is unknown.

Report

REASON FOR THE REPORT:

Council approval is required to amend the Simplified Entertainment Funding By-law No. 125/2006.

HISTORY:

The Red Tape Commission Recommendation No. 7 was as follows:

> *Radically simplify the Entertainment Funding By-law (better known as the Entertainment Tax).*

The recommendation further noted that any new By-law amending or replacing the *Entertainment Funding By-law* should eliminate the cumbersome mechanism required to exempt local content, and instead have the tax apply to any venue hosting a performance with a ticket price of $5.00 or more for the following venues:

- Entertainment facilities with a seating capacity of 5,000 seats or larger; and
- Cinemas of all sizes.

On March 22, 2006, Council adopted the new Simplified Entertainment Funding By-law No. 125/2006 wherein the Red Tape Commission recommendation was implemented with an effective date of April 1, 2006.

DISCUSSION:

The primary purpose of the Simplified Entertainment Funding By-law (the 'By-law') was to make the entertainment funding tax applicable to only (i) cinemas and (ii) entertainment facilities with a total fixed seating capacity of 5,000 persons or more. Amusements held at all other venues were exempted from the tax.

The entertainment funding tax remains a consumption-based tax where the tax is paid by the purchaser of a ticket to a taxable amusement. The venue is required to collect and remit the tax to the City.

The new By-law removed all requirements for exemption application and listing (identified as 'red tape' by the Red Tape Commission) and the associated approvals of exemptions by way of By-law amendments through the Standing Committee on Fiscal Issues, Executive Policy Committee and Council.

The new By-law defines "cinema" broadly to mean 'any place in which members of the

public are able to view a film or motion picture'. As a result, the By-law applies to cinemas of all sizes and types. It draws no distinction between non-profit and for-profit cinemas.

The new By-law has the effect of making all cinemas – even those operated by non-profit organizations - subject to the tax. As a result, people attending films or movies shown in venues such as the Berney Theatre, Pantages Playhouse Theatre, Winnipeg Art Gallery, Winnipeg Convention Centre, etc. would currently have to pay the tax whenever the admission fee is $5.00 or more.

The Administration has been requested to consider options to ensure that only for-profit cinemas are taxable under the By-law. The objective is to have non-profit venues exempt from the tax.

When the possible options for achieving this objective were considered by the Administration, one of the guiding principles was to maintain the simplicity of the new By-law and to avoid the re-introduction of any form of 'red-tape'. This eliminated any options that involved an exemption application process. As a result, the possibility of granting exemptions from the By-law to groups or organizations presenting films or movies, as opposed to the venue in which the film or movie is being shown, was rejected.

After considering several options, the Administration is recommending the By-law be amended to define "cinema" as "any premises in respect of which a business has been assessed for the purposes of business tax and in which films or motion pictures are displayed to members of the public for a fee or charge".

This approach was chosen because:

- The business tax already draws a distinction between for-profit businesses and non-profit activities. (The test for the imposition of business tax is whether the business is carried on for the preponderant purpose of earning a profit.)
- The business tax test for determining when an enterprise is non-profit is relatively clear, well-established in law and generally seen as a reasonable way of identifying non-profit enterprises.
- Because the business tax already distinguishes between for-profit and non-profit cinemas, this approach means no additional red tape or significant administration costs – if the cinema is on the business tax roll, then it meets the proposed definition of a "cinema" and its ticket sales (of $5.00 or more) are subject to the tax. Conversely, if the cinema is not on the roll, its ticket sales are not subject to the tax.

For purposes of illustration, this approach would exempt the Berney Theatre, Pantages Playhouse Theatre, Winnipeg Art Gallery, Winnipeg Convention Centre, Cinemateque, and the Concert Hall from the operation of the By-law but would continue to require

venues such as the Silver City complexes, the Towne Cinema, the Globe Theatre, etc. to collect the entertainment funding tax from patrons.

It is important to note that the recommended By-law amendment only applies to the cinema venue, not the organization presenting a film or movie in the cinema. If, for example, a charitable organization presents a film in a cinema that is assessed for business tax, the sales of tickets to the films shown at that cinema would be subject to the tax.

Financial Impact Statement Date: June 27, 2006

COMMENTS: If the recommended changes are approved, there will be a minor impact on the entertainment funding tax revenue as fewer venues will meet the definition of a cinema and therefore not be subject to the tax. This amount is unquantifiable as the number and value of tickets sold in these cinemas is unknown.

Carrie Erickson
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Corporate Services, Legal Services

External Consultation With:

THIS REPORT SUBMITTED BY:

Department: Corporate Finance Department
Division: Taxation & Revenue
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