



CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 10-276

TO: Mayor and Members of Council

FROM: Denis Leger, Commissioner, Transportation, Properties and Emergency Services

RESOURCE STAFF: Pat Carrol, Manager, Taxation & Revenue
Alan McLeod, Senior Legal Counsel, Legal Services

DATE OF MEETING: September 7, 2010

SUBJECT: Municipal Capital Facility - K-Rock Centre

EXECUTIVE SUMMARY:

As part of a province-wide review, the Municipal Property Assessment Corporation (MPAC) reviewed agreements at the K-Rock Centre and determined that some or all of the property will be liable to taxation in the commercial property class unless a Municipal Capital Facilities Agreement is executed confirming that the facility is used for the cultural, recreational or tourist purposes of the municipality and is for public use.

A review of the license agreement by MPAC's Legal and Policy Support Services has now resulted in their deeming that the Premises licensed to the Kingston Frontenacs Hockey Club is deemed to be a taxable tenancy. Other areas within the facility such as the administrative offices of SMG Canada, the sports shop and the restaurant may also receive the same interpretation. In discussion with MPAC and in accordance with the experiences of other municipalities, staff have agreed to proceed seeking exemption from property taxation that a Municipal Capital Facility Agreement by-law would provide.

This report is to present a Municipal Capital Facility by-law to exempt the K-Rock Centre from taxation. It is estimated that the property taxes for the entire facility that may be levied if not exempted, would be approximately \$1.5M, calculated on the current assessed value of \$35.651M, returned on the assessment roll as exempt for 2010.

RECOMMENDATION:

THAT Council pass the resolution required by clause 6(1)(b) of Ont. Reg. 603/06 confirming that the K-Rock Centre is a facility entirely occupied which has and will be used for the cultural, recreational or tourist purposes of the municipality and that it is operated for public use.

- and further -

THAT a by-law as required by section 110(6) of the Municipal Act, 2001 be presented and given three readings by Council reiterating the requirements of 6(1)(b) of Ont. Reg. 603/06 and therefore exempting the property to which the municipal capital facility agreement applies from taxation for municipal and school purposes;

- and further -

THAT the Clerk be directed to give written notice of the by-law to the Minister of Education and the Municipal Property Assessment Corporation (MPAC) as required by section 110(8).

- and further –

THAT Council direct staff to negotiate and the Mayor and Clerk to execute a Municipal Capital Facilities Agreement as well as any other required documents with SMG Canada and any other party necessary confirming that the K-Rock Centre is being and has been entirely operated as a municipal facility for cultural, recreational and tourist purposes in accordance with the requirements of *Municipal Act, 2001* section 110 and Ontario Regulation 603/06.

AUTHORIZING SIGNATURES:

<p>ORIGINAL SIGNED BY COMMISSIONER</p> <p>Denis Leger, Commissioner of Transportation, Properties & Emergency Services</p>
<p>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</p> <p>Gerard Hunt, Chief Administrative Officer</p>

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Cynthia Beach, <i>Sustainability and Growth</i>	N/R
Terry Willing, <i>Community Services</i>	N/R
Denis Leger, <i>Transportation, Properties & Emergency Services</i>	N/R
Jim Keech, <i>President and CEO, Utilities Kingston</i>	N/R

(N/R indicates consultation not required)

OPTIONS/DISCUSSION:

The City of Kingston has a number of Municipal Capital Facility Agreements providing preferential tax treatment and/or other financial benefits in relation to facilities related to municipal purposes such as the administration of the municipal government as well as social housing. It has come to the attention of staff, through discussions with the Municipal Property Assessment Corporation (MPAC) and other municipalities, that sports and entertainment centres such as the K-Rock Centre may now be deemed to be classified in a property tax class by MPAC where Municipal Capital Facilities Agreements are not in force. In response, municipalities such as Oshawa have entered into Municipal Capital Facility Agreements in relation to the sports and entertainment centres to ensure continuation of their tax-free status. It is estimated that the property taxes for the entire facility, that may be levied if not exempted, would be approximately \$1.5M, calculated on the current assessed value of \$35.651M, returned on the assessment roll as exempt for 2010.

Municipal Capital Facility Agreements are provided for under the *Municipal Act, 2001*. Pursuant to Ontario Regulation 603/06, in addition to designating facilities related to municipal purposes such as the administration of the municipal government as well as social housing, municipalities may designate certain facilities as Municipal Capital Facilities under agreements in order to receive distinct tax treatment or other forms of financial support. The purpose of the Regulation is to allow municipalities to exempt from all or part of the taxes levied for municipal and school purposes. Municipal purposes are defined under the regulation to include municipal facilities used for cultural, recreational or tourist purposes. Ont. Reg. 603/06 was brought into force pursuant to the authority of section 110(6) of the *Municipal Act, 2001* which states:

Despite any Act, the council of a municipality may exempt from all or part of the taxes levied for municipal and school purposes land or a portion of it on which municipal capital facilities are or will be located that,

- (a) is the subject of an agreement under subsection (1);*
- (b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1);*
- and*
- (c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality.*

The City built the K-Rock Centre as a community facility, fully owned and maintained by the municipality and managed by a third party manager, SMG Canada. The facility is the home of the Kingston Frontenacs Hockey Club which forms a cornerstone of the public's use of the facility for cultural, recreational or tourist purposes. The City's agreements with SMG Canada and the Frontenacs are not leases, and, as such, do not include provisions for payment of property taxes. It continues to be the City's intent that the facility is public space, owned by the city, and similar to all other property owned by the city, exempt from taxation. As such, the K-Rock Centre is owned by the municipality for the purpose of providing a municipal capital facility and is entirely occupied and used for a service that is defined as a municipality under section 2(1) of Ont. Reg. 603/06. That section currently provides the authority for 18 classes of municipal use including:

2. (1) For the purpose of exempting land from taxation under subsection 110 (6) of the Act, a municipality may enter into an agreement under subsection 110 (1) of the Act for the provision of the following classes of municipal capital facilities...

- 16. Municipal facilities used for cultural, recreational or tourist purposes.*

Under section 6 of the Regulation, certain restrictions are placed on the ability of a municipality to designate a facility as a Municipal facilities used for cultural, recreational or tourist purposes.

6. (1) For the purposes of sections 2 and 3, a municipality may enter into an agreement respecting municipal capital facilities described in paragraphs 16 and 17 of subsection 2 (1) only if,

(a) the municipality or another municipality or a public sector entity described in subsection (2) owns or agrees to purchase or will own on reversion of the property, the municipal capital facilities, including the land where they are situate; and

(b) the council has declared by resolution that the municipal capital facilities are for the purposes of the municipality and are for public use.

As a result, a municipality must have a sufficient ownership interest in the property, must declare by resolution that that it is a facility used for the cultural, recreational or tourist purposes of the municipality and that it is operated for public use. The conditions are all present in relation to the K-Rock Centre and support the recommended steps being taken to continue the facility's tax-free status.

It is imperative that the by-law be presented and given three readings at this meeting in order to negotiate and execute the agreement to avoid a taxable assessment being generated by MPAC in the upcoming supplementary assessment run this fall.

EXISTING POLICY/BY LAW:

N/A

NOTICE PROVISIONS:

N/A

ACCESSIBILITY CONSIDERATIONS:

N/A

FINANCIAL CONSIDERATIONS:

It is estimated that the property taxes for the entire facility, that may be levied if not exempted, would be approximately \$1.5M, calculated on the current assessed value of \$35.651M, returned on the assessment roll as exempt for 2010.

CONTACTS:

Pat Carrol, Manager, Taxation

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Alan McLeod, Senior Legal Counsel, Corporate Administrative Team

613-546-4291 ex. 1237

OTHER CITY OF KINGSTON STAFF CONSULTED:

N/A

EXHIBITS ATTACHED:

Exhibit A – draft bylaw pursuant to section 110(6) of the *Municipal Act, 2001*.

By-Law No.

A BY-LAW TO AUTHORIZE AN AGREEMENT FOR THE PROVISION OF A MUNICIPAL CAPITAL FACILITY AT 1 BARRACK STREET, KINGSTON

PASSED:

WHEREAS the City of Kingston owns the lands and facility at 1 Barrack Street, and described in Schedule "A" to this bylaw and known as the K-Rock Centre (hereinafter "the Facility");

WHEREAS the City of Kingston will at all times own the Facility;

WHEREAS the Council of the City of Kingston passed a resolution, as required by clause 6(1)(b) of Ont. Reg. 603/06, confirming that the Facility is a facility entirely occupied which has and will be used for the cultural, recreational or tourist purposes of the municipality and that it is operated for public use;

WHEREAS the City built the Facility as a community facility, fully owned and maintained by the municipality and managed by a third party manager, and home of the Kingston Frontenacs Hockey Club (or successor) which forms a cornerstone of the public's use of the facility for cultural, recreational or tourist purposes;

WHEREAS Section 110(6) of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended (hereinafter "the Act") requires that a by-law be enacted to exempt the property to which the municipal capital facility agreement applies from taxation for municipal and school purposes;

NOW THEREFORE the Council of the City of Kingston hereby enacts as follows:

1. Staff are directed to negotiate and the Mayor and Clerk are authorized to enter into any agreements and associated documents required as are authorized under section 110 of the *Municipal Act, 2001* for the management of and licensed use of the Facility.
2. Agreements must be in the form and approved by the Legal Director for the City of Kingston, and, every agreement must uphold the purposes of facility being used for the cultural, recreational or tourist purposes of the municipality.
3. The facility, or parts thereof, used under agreements as permitted under section 2, are exempt from taxation for municipal and school purposes.
4. This by-law shall come into force on the day that the by-law is enacted.

GIVEN ALL THREE READINGS AND PASSED , 2010.

CITY CLERK

MAYOR

SCHEDULE "A" to By-Law No. 2010-___

DESCRIPTION OF FACILITY

Plan OS Lot 2 to 5 Lot 16 to 19 Part Lot 1, 20 RP 13R6531 PART 1

Assessment Roll No. 1011030100014000000