



April 3, 2018

Honorable Members of the Milwaukee Common Council:

Common Council file number 171142 directed the Commissioner of Assessment and the Commissioner of City Development to develop a plan to increase the number of tax exempt property owners who enter into voluntary payment in lieu of taxes (PILOT) agreements.

Representatives of the Commissioners' respective departments met on various occasions along with representatives of the Mayor's Office, the Budget Office, and the City Clerk to review data, collect information from other cities, and review current procedures, history, and best practices. The work of that ad hoc group provided important perspective for this report.

In summary, we offer the following recommendations:

- Establish a presence on the City's website that promotes voluntary payment-in-lieu-of-taxes agreements.
- Review, and, as appropriate, revise the material developed under City Ordinance 307-7, "Fair Share Payment in Lieu of Taxes Program" to increase voluntary PILOT agreements.
- Review the frequency of contact with the owners of tax exempt property to remind them of the opportunity to participate in PILOT agreements.
- Convene a working group that includes representatives of City government and large tax exempt property owners to explore the advantages of establishing PILOT agreements.
- Establish a mechanism for ensuring that City-imposed deed restrictions, those that prohibit application for exempt status and/or mandating PILOT payments, are enforced if and when the property owner seeks exempt status.
- Call attention to exempt property owners who enter into and fulfill their annual PILOT commitments with public announcements, awards, or celebrations.
- Extend the opportunity to participate in "Fair Share" agreements to residents of tax exempt properties in situations in which the exempt property owner does not participate.

When selling a City owned commercial property, The Department of City Development prohibits future tax exempt status for that property. Deed restrictions are used to prohibit the owner from applying for exempt status. In some other cases, the department elicits PILOT agreements from tax exempt property owners in situations where those owners seek something of substantial value from City government or its related agencies. Such PILOT agreements might be the result of a sale of City-owned property for tax exempt use or from bonding handled through the Redevelopment Authority. Similarly, the Department records a Payment in Lieu of Taxes Agreement with the Register of Deeds when the City participates in a large development of property for taxable use. Those agreements require a PILOT in the event any portion of the property seeks and receives tax exempt status.

As Common Council committee members discussed during consideration of Common Council file number 171142, a number of other cities have exceeded Milwaukee's PILOT revenue totals. While municipalities



have different circumstances when it comes to legislative authority, tradition, and compliance, it is clear there are some lessons Milwaukee can take from the experience of other cities.

It is worth noting tax exempt property owners in Milwaukee paid an estimated \$13-million in fees for specific municipal services in 2017. Milwaukee also receives a Municipal Services Payment from State government that it provides “in recognition of critical services directly provided to state facilities”. In 2018, that payment is \$2.4-million. There is no similar payment for tax exempt Federal facilities.

The Assessor’s Office has consistently followed the requirements of the “Fair Share Payment in Lieu of Taxes Program” (City Ordinance section 307-7, Exhibit A). However, no exempt property owners have entered into PILOT agreements based on the contacts made through that program.

Additionally, the Assessor’s Office has examined its review of use, occupancy, and ownership of tax exempt properties to ensure that exempt properties are entitled to continued exemption. While this will not increase the number of PILOT agreements, it does have the potential to increase the municipality’s tax base. The Assessor’s Office observations on this aspect are included as Exhibit B.

Recommendations and Discussion

Recommendation #1

Establish a presence on the City’s website that promotes voluntary payment-in-lieu-of-taxes agreements.

Informal contacts suggest some tax exempt property owners are not fully aware of the option they have to voluntarily contribute to the cost of providing City services through a PILOT. City departments appear to be in compliance with the requirements of the ordinance entitled “Fair Share Payment in Lieu of Taxes Program.” However, that only requires written notification to exempt property owners at specifically designated times. This recommendation endorses a simple and easy to use web presence on the City’s site that provides information and instruction on why and how to enter into a PILOT. The ad hoc group’s contact with the City of Boston reinforced the importance of a robust city website presence to promote PILOT agreements.

Recommendation #2

Review, and, as appropriate, revise the material developed under City Ordinance 307-7, “Fair Share Payment in Lieu of Taxes Program” to increase voluntary PILOT agreements.

Materials presented to tax exempt property owners fully comply with the requirements established in ordinance. This recommendation invites a review of those materials to make sure the City is making a strong and appealing case for PILOT participation.

Recommendation #3

Review the frequency of contact with the owners of tax exempt property to remind them of the opportunity to participate in PILOT agreements.

The “Fair Share Payment in Lieu of Taxes Program” (City Ordinance section 307-7) specifies the required contact the Commissioner of Assessment must have with tax exempt property owners. Following the initial contact, many years could elapse before the opportunity to participate in a PILOT agreement is presented to the property owner again. This recommendation asks the Commissioner to consider reasonable follow up schedules to remind exempt property owners of PILOT opportunities.

Recommendation #4

Convene a working group that includes representatives of City government and large tax exempt property owners to explore the advantages of establishing PILOT agreements.

If the City is to realize an increase in the number of PILOT agreements, it is essential to understand what factors might motivate tax exempt owners to participate. This recommendation encourages a formal and frank discussion between the City and potential PILOT participants. Other cities that have succeeded in increasing or sustaining PILOT agreements have used collaborative approaches.

Recommendation #5

Establish a mechanism for ensuring that City-imposed deed restrictions, those that prohibit application for exempt status and/or mandating PILOT payments, are enforced if and when the property owner seeks exempt status.

On occasion there have been situations in which a property owner has sought a status change in violation of a deed restriction. To ensure compliance with established deed restrictions, this recommendation encourages the Assessor's Office to check the sales history for property owned by an organization seeking exemption from property taxes. If either the City of Milwaukee or Redevelopment Authority appears in the chain of title, the Assessor's Office can check further to determine whether a deed restriction exists that would require payment of property taxes or PILOTs.

Recommendation #6

Call attention to exempt property owners who enter into and fulfill their annual PILOT commitments with public announcements, awards, or celebrations.

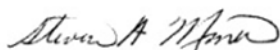
This recommendation asks City officials to formally honor exempt property owners who participate in Fair Share agreements. In addition to recognizing good citizenship, such honors would implicitly call out those exempt property owners who do not participate. In its work to encourage PILOTs, Boston has developed an approach that credits both payments and other "community benefits" exempt property owner provides to that city, and those community benefits are recognized in addition to monetary contributions.

Recommendation #7

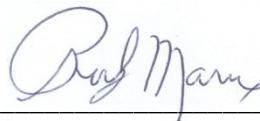
Extend the opportunity to participate in "Fair Share" agreements to residents of tax exempt properties in situations in which the exempt property owner does not participate.

Based on anecdotal information, residents of some tax exempt properties may volunteer to make the equivalent of a PILOT. The City should explore appropriate methods for reaching out to such residents to invite participation.

We welcome the opportunity to continue discussions with the Common Council and others on how best to increase the number of PILOT agreements in Milwaukee.



Steve Miner
Assessment Commissioner



Rocky Marcoux
Commissioner, Dept. of City Development

Report on Increasing PILOT Agreements

Exhibit A

City Ordinance, Chapter 307-7

307-7. Fair Share Payment in Lieu of Taxes Program.

1. PURPOSE. There is created a fair share payment in lieu of taxes program in which the city seeks voluntary payments from owners of tax-exempt properties in recognition of the services those properties receive from the city. Payments received through this program are intended to diversify the city's revenue sources, compensate the city for lost revenues resulting from the large and growing portion of the city's land area that is tax-exempt, and reduce the subsidy of service provision to tax-exempt properties by owners of taxable properties. By creating this program, the city seeks to generate the additional revenues needed to maintain the high level of services it provides to residents, businesses and visitors, even during times of limited financial resources and challenging city budgets.

2. DEFINITIONS. In this section:

a. "Commissioner" means the commissioner of assessments.

b. "Owner" means a tax-exempt organization or institution that owns or intends to acquire real property in the city of Milwaukee.

c. "PILOT" means a fair share payment in lieu of taxes.

3. ADMINISTRATIVE AUTHORITY.

The commissioner of assessments is authorized and directed to carry out the program established in this section, with assistance to be provided by other city departments as noted.

4. PROCEDURE. a. **Initiation.** The procedure described in this subsection shall be initiated by the commissioner whenever the commissioner receives a new application for property tax exemption or whenever the department of city development notifies the commissioner that an owner has demonstrated its intent to expand, improve, replace or acquire a facility, as evidenced by an application for a building permit, certificate of occupancy, zoning change, special use permit or variance.

b. **Communication With Tax-Exempt Owner.** The commissioner shall contact the owner regarding the possibility of a voluntary agreement to make payments in lieu of taxes to the city. As part of this communication, the commissioner shall provide the owner with a New PILOT project

profile form" on which the owner is asked to provide the information about the tax-exempt institution and its existing and proposed facilities that is necessary for development of a PILOT.

c. **Submission Requirements.** The commissioner shall ask the owner to submit both the new PILOT project profile form and the master plan for the project.

d. **Discussion Between City and Owner Representatives.** Once the owner submits the new PILOT project profile form and a project master plan showing both existing and proposed facilities, the commissioner shall discuss the formulation of a PILOT agreement and the amount of the annual payment with the owner.

e. **Guidelines for Establishing PILOT Amount.** The PILOT amount shall be based on the value of the entire tax-exempt property, including both existing facilities and new construction, and the amount of tax revenue the city forgoes because of the tax-exempt status of the property. In establishing the PILOT amount, the commissioner shall employ the following guidelines, while recognizing that each institution and property has unique characteristics that may make adjustments necessary:

e-1. **Value.** The commissioner shall estimate the value of the entire tax-exempt property, including both existing facilities and new construction, using standard appraisal methodologies that the commissioner deems most appropriate.

e-2. **Calculation of PILOT Amount.** The suggested PILOT amount shall be calculated by multiplying the value of the owner's property by the city's current tax rate and dividing by 1,000. The tax rates of other local taxing jurisdictions, including but not limited to Milwaukee county, Milwaukee public schools, Milwaukee area technical college and Milwaukee metropolitan sewerage district, shall not be included when performing this calculation.

f. **PILOT Agreement.** Once the owner has agreed in principle to make a PILOT, the commissioner shall draft a PILOT agreement between the city and the owner. If the owner's tax-exempt property contains multiple buildings or facilities and the owner anticipates multiple alterations to these buildings or facilities, the agreement may take the form of a comprehensive agreement that applies to all buildings and facilities on the property. The provisions of a PILOT agreement may include, but shall not be limited to, the following:

f-1. The parties agree that the city will provide the owner's property with public services typically funded by the property tax, such as fire

and police protection, street maintenance and street lighting.

f-2. The owner of the tax-exempt property understands that it may still be subject to special assessments, special charges, special taxes or fees charged by the city pursuant to the city's statutory authority.

f-3. The owner agrees to pay an annual PILOT for the tax-exempt property. The method of calculating the PILOT shall be specified, as shall the technique for annually adjusting the PILOT for inflation.

f-4. The owner shall pay the entire PILOT on or before January 31 of the year following the tax year for which the PILOT was calculated. Alternatively, the owner may pay one-tenth of the PILOT on or before January 31, with another one-tenth being paid in each of the following 9 months.

f-5. The city may use the PILOT revenues for whatever purposes it deems appropriate.

f-6. The owner shall make a good-faith effort to satisfy its PILOT obligations. In the event of non-payment or partial payment, the city shall not place a tax lien on the property. Nor shall the tax-exempt status of the owner's property be affected by the owner's non-payment or partial payment of the PILOT.

f-7. The city reserves the right to grant or deny the owner's application for tax-exempt status, pursuant to s. 70.11, Wis. Stats. If the city grants tax-exempt status, the city may review, reconsider and, if necessary, alter that tax-exempt status each January. If part or all of the property does not qualify for tax-exempt status, the impact on the PILOT shall be specified.

f-8. The agreement shall be for a period of 5 years. It shall be automatically terminated upon the loss of tax-exempt status by the owner's property. The agreement may also be terminated if either party gives the other party 30 days written notice of termination. Upon termination, the owner shall remain liable for any outstanding PILOT payments due and payable under the agreement.

f-9. The owner shall agree to allow the city to inspect its property upon reasonable written request and to allow the city to inspect documents that are relevant to exemption and valuation determinations.

f-10. The agreement shall be considered void from the date of its execution if the owner does not become the holder of legal title to the property by December 31 of the first tax year to which the PILOT would apply or if the commissioner determines that the property is not tax-exempt.

f-11. If the agreement is not terminated prior to the date that is 5 years after the date of execution of the agreement, the agreement is automatically renewed for another 5-year period, with the same terms and conditions as the original agreement unless either party notifies the other of a request to change those terms and conditions.

g. Execution of Agreement. The PILOT agreement shall be executed when the owner of the tax-exempt property, the commissioner, the comptroller, the mayor, the city clerk and the city attorney have signed the document that has been drafted pursuant to par. f. In addition, common council approval shall be required for any PILOT agreement in which the initial annual payment is at least \$100,000.

5. FAIR SHARE PROGRAM AWARENESS CAMPAIGN. The commissioner shall develop, implement and continuously maintain a campaign to create awareness of the fair share payment in lieu of taxes program among both property owners requesting exemption from property taxes and current owners of tax-exempt properties.

6. IMPACT OF PROGRAM PARTICIPATION ON TAX-EXEMPT STATUS. The decision of the owner of a tax-exempt property to participate or not participate in the fair share payment in lieu of taxes program shall have no effect on the property's tax-exempt status.

7. PAYMENTS RECEIVED. The comptroller shall treat all PILOT payments received by the city as general fund revenues.

Report on Increasing PILOT Agreements

Exhibit B

Assessor's Office Observations on Eligibility Review
for Tax Exempt Properties

Assessor's Office Observations on Eligibility Review for Tax Exempt Properties

Taxing jurisdictions do have the ability and obligation to determine property tax exemption eligibility and the fair and equitable distribution of property taxes.

In Wisconsin, municipalities can and should regularly and carefully review existing property tax exemptions in order to ensure that each exempt property and property owner continue to be entitled to an exemption, or not. Due, in part, to budgetary constraints, the Assessor's Office has placed more emphasis on the valuation of assessable property and focused less on those properties that were granted property tax exempt status.

In the way of background, from the Wis. Stat. 70.11 introduction, "The property described in this section is exempted from general property taxesif it was exempt for the previous year and its *use, occupancy or ownership* did not change in a way that makes it taxable;...". The review to changes pertaining to use, occupancy and ownership of exempt properties and their owners needed updating with regard to the Milwaukee Assessor's Office.

As it pertains to ownership changes, the Assessor's Office administrative staff is notified by Chicago Title through deeds and transfer returns of these conveyances. Also, various departments as well the Housing Authority and Redevelopment Authority routinely will notify the Assessor's Office of ownership changes via a "conveyance letter" or some form of correspondence indicating that a previously exempt parcel had sold. Procedurally, the administrative staff would then notify management to initiate status changes for these properties. Hence, the process of changing the status of these particular properties from exempt to assessable was routine and generally infallible. However, those properties where notification of ownership change was not obvious and straight-forward would occasionally result in the status remaining exempt when it should have changed to assessable.

As a result of an occasional oversight of a status change, the Assessor's office has recently made some changes so as to minimize the potential for error. First, the administrative staff processing sales and ownership changes were and will continue to be trained to recognize exempt property transactions and then to notify management of the transactions. Second, our Business Systems Administrator will routinely / annually generate a spreadsheet of exempt properties that had sold in the preceding year in order to review and ensure that appropriate status changes occur as a result of ownership changes. Third, appraisers will be notified to investigate these transactions so as to not only determine their validity but also to preliminarily determine whether or not the buyer may be entitled to remain property tax exempt or have a status change take place. The appraisers will be responsible to remind buyers of the obligation to file their Property Tax Exemption Request by the statutory deadline if they feel they would qualify to be property tax exempt.

Among other things, one of the general requirements of an organization seeking property tax exemption status is evidence of non-profit status. And, more often than not, owners provide this evidence with their Property Tax Exemption Request in the form a letter from the Internal Revenue Service showing them to be a 501(C)(3) or non-profit organization. While infrequent, these organizations can lose their 501(C)(3) status by not complying with obligations necessary to maintain their non-profit status. In the past, the Assessor's office has not consistently reviewed the ownership status of currently exempt organizations. However, the IRS does allow interested parties to review the tax exempt status of organizations through their website. These search queries are a simple and effective way to determine which property owners have potentially lost their tax exempt status.

Procedurally, going forward it is anticipated that the review of non-profit status can be accomplished through interns.

An obligation of most exempt organizations under 70.11 is the requirement to file the Tax Exemption Report every even numbered year. This one page report asks the filer to respond to inquiries about: The purpose of the property and under which statute the property qualifies as exempt; the filer's opinion of the estimated fair market value of the property; whether or not the property had been leased over the preceding two years and if so, a description of the leased portion, the percentage leased, the lessee and how the leased payment is used; and finally whether or not any unrelated trade or business income is reported under sections 511 to 515 of the Internal Revenue Code. The Assessor's Office will ask the Wisconsin Department of Revenue to amend the form to include a question of whether or not the property has any vacant or unutilized space. Vacant property not used for the purpose for which the exemption was originally granted is no longer entitled to an exemption. Owners of exempt property tend to not voluntarily disclose that their exempt properties are no longer used for an exempt purpose. Moreover, the discovery of assessable property in its entirety or in part is aided by the use of State mandated reporting requirements. Until recently, the Assessor's Office had not made adequate use of this tool to discover assessable property. With revisions to the report, we may have the ability to discover more assessable property.

Under Wis. Stat. 70.11(4a), properties owned by benevolent, non-profit organizations used as low-income housing can also be exempt. In order to qualify for this particular exemption the residents in a low-income housing project may not exceed the Department of Housing and Urban Development, county low-income thresholds. In order to maintain an exemption under the statute, owners are required to annually file the Wisconsin Department of Revenue, Property Owner's Certificate of Occupancy with the assessor. This is a self-reporting document used to show the extent to which tenants qualify as low income. In the recent past, the extent to which the Assessor's Office has reviewed the Certification of Occupancy can be characterized as cursory, at best. That is, the Assessor's Office has taken the property owner at their word that the document they have provided is accurate. The statute does allow for the assessor to require of the owner supplementary information to prove that the organization would qualify as exempt as described in the POCO form. The Milwaukee Assessor's office has not taken the steps to request proof of qualification however, going forward, we will use this tool to ensure that those units that do not qualify are entered on the assessment roll.

Not unlike assessable properties, exempt properties can and will, over time, change occupancy. Of course, a newly leased property could maintain its exempt status so long as the tenant met all the conditions and qualifications as if it owned the property and the lessor uses the all of the leasehold income for maintenance and / or construction debt of the leased property. In the past, the change in occupancy in an exempt property was of low priority for appraisers to review. Recently, the Assessor's Office has started to make procedural changes to include having a designated appraiser from each of the sections review occupancy changes pertaining to currently exempt properties both to establish qualifications of the tenant and to determine use of the leasehold income. While the changes are still a work in process, appraisers are now aware that changes to occupancy are a greater priority and defining those appraisers who will specialize in that review is a step in the right direction.

In Wisconsin, all general property is assessable unless specifically exempted by law. For many years, discussion of the repeal of personal property tax has been debated. In 2017, Wisconsin Act 59,

effective January 1, 2018, exempted machinery, tools and patterns and property reported on Schedule C of the Statement of Personal Property. Not long ago, computers used in business became exempt. And, while the State is currently reimbursing taxing jurisdictions for older personal property now exempt, it appears that the shift of personal property tax to real property tax will continue especially since several other Midwestern states have exempted their personal property all together. As a result, where the Milwaukee Assessor's Office has the discretion to choose the classification of property we will reclassify currently classified personal property to real property. That is, buildings on leased land, such as airport hangars, a few parking lots and salt domes along with cellular towers no longer valued by the Department of Revenue, will be reclassified and valued as real property so as to avoid the possibility of exemption for property currently classified as personal property.

In summary, the Assessor's Office will reemphasize the review of use, occupancy and ownership as it pertains to those properties currently exempted from taxation. This will be accomplished through additional exemption training to the staff in addition to the implementation of procedural and policy changes. The workload should be equitably distributed to the respective neighborhood appraisers.