

ONTARIO'S SMALL BUSINESS PROPERTY SUBCLASS: CONSIDERATIONS FOR MUNICIPALITIES

SEPTEMBER, 2021



MUNICIPAL
PROPERTY
ASSESSMENT
CORPORATION



Ontario's Municipal Revenue Specialists



Contents

Executive Summary

1. Introduction

- 1.1 Purpose
- 1.2 Background
- 1.3 Methodology

2. Municipal Guide to Using the Small Business Property Subclass

- 2.1 Policy Drivers
- 2.2 Considerations in Defining Small Business
- 2.3 Identifying Small Businesses for Subclass Eligibility
- 2.4 Relationship between Policy Drivers and Defining Subclass Eligibility
- 2.5 Funding the Subclass
- 2.6 Small Business Tenants versus Property Owners
- 2.7 Different Types of Municipalities

3. Process for Establishing a Small Business Property Subclass

4. Ongoing Administrative Considerations

- 4.1 Confirming Continued Eligibility of Properties
- 4.2 Adding new properties eligible for subclass
- 4.3 Requests for Reconsideration
- 4.4 Appeals
- 4.5 Annual timelines

List of Appendices:

- 1. MPAC Working Group Members
- 2. Glossary of Terms
- 3. Regulations
- 4. Interpretation Bulletin

Executive Summary

This report was developed by a **Municipal Working Group** that includes the Municipal Property Assessment Corporation (MPAC), municipalities, municipal associations, and select industry associations. The purpose of the report is to provide Ontario municipalities with guidance for using the optional small business property subclass, which was announced in the 2020 Ontario Budget, with details provided via later amendments to O. Reg 282/98 under the *Assessment Act*, O. Reg 73/03 under the *Municipal Act, 2001* and O. Reg 121/07 under the *City of Toronto Act, 2006*.

The report offers an objective summary of different policy directions for small businesses that may be relevant to a municipality's consideration of this optional subclass. It provides guidance on defining "small business" based on local policy goals and outlines key process considerations and administrative requirements for use of the subclass. The report is not intended to advocate for the use of the subclass.

"The report on the **small business subclass** is a thoughtful discussion of the issues, decision points and implementation considerations faced by municipalities considering whether to implement a small business property tax subclass. The report reflects input received from the Small Business Class municipal working group, which included participation from municipalities of all sizes and many municipal and business associations.

The report clearly lays out the potential methods that can be used to **define a small business class** to achieve a municipality's stated policy objectives, and identifies many of the implementation decisions required to enable the adoption of the small business subclass. The Ontario Municipal Tax and Revenue Association (OMTRA) is pleased to have had the opportunity to participate as part of the municipal working group, and to provide commentary and our endorsement of the report."

Casey Brendon

President

Ontario Municipal Tax and Revenue Association



1 Introduction

This report includes the insights and perspectives of the Municipal Working Group (Working Group) convened by MPAC. The Working Group membership is a collaboration of interested parties including municipalities, municipal associations (Municipal Finance Officers' Association [MFOA], Ontario Municipal Tax and Revenue Association [OMTRA], Association of Municipalities of Ontario [AMO]) and industry associations (Toronto Association of Business Improvement Areas [TABIA] and the Ontario Business Improvement Area Association [OBIAA]).

The insights and perspectives expressed do not necessarily reflect MPAC policy. The intent of this report is to provide Ontario municipalities with guidance when considering the implementation of the optional small business property subclass and is not intended to provide legal advice. Municipalities are encouraged to seek advice through their legal counsel.

The applicable law prevails where there is conflict between the information contained herein and the current law.

1.1 Purpose

The purpose of this report is to provide Ontario municipalities with guidance for using the small business property subclass (the subclass) in their jurisdictions. As detailed in Section 1.2 below, the legislative framework for using the subclass is provided by amendments to O. Reg 282/98 under the *Assessment Act*, O. Reg 73/03 under the *Municipal Act*, 2001 and O. Reg 121/07 under the *City of Toronto Act*, 2006 (the Regulations). The guidelines provided in this report are intended to supplement the Regulations. In the event of any contradictory or unclear information, the Regulations prevail.

THE REPORT OUTLINES:

- An objective summary of different policy directions for small businesses that may be relevant to a municipality's context.
- Guidance on defining "small business" based on local policy goals for the purposes of inclusion in the subclass and on identifying the properties eligible for inclusion in the subclass.
- Key process considerations and administrative requirements for use of the subclass.

The report does not advocate for the use of the subclass. In fact, it is anticipated that most municipalities will find that the subclass is not needed since their small businesses are not experiencing property tax issues relative to large commercial and industrial properties. Six general policy drivers that may warrant differentiating properties including small businesses from other commercial and/or industrial properties by using the subclass are suggested. These are intended to illustrate potentially relevant policy contexts rather than an exhaustive list.

1.2 Background

The subclass was announced in the 2020 Ontario Budget. Its purpose is to provide municipalities with the flexibility to target property tax relief to eligible small businesses. Amendments to O. Reg 282/98 under the *Assessment Act*, O. Reg 73/03 under the *Municipal Act*, 2001 and O. Reg 121/07 under the *City of Toronto Act*, 2006, which implement the subclass, were filed on May 7, 2021. The Regulations are included in Appendix 3.

HIGHLIGHTS

- The subclass tax reduction can be applied to the commercial and/or industrial class municipal tax rate.
- The Province will consider matching the municipal property tax reductions with education property tax reductions. To be considered for the education tax reduction, municipalities must notify the Minister of Finance of their intent to adopt the subclass and conduct consultations with stakeholders.

- All commercial and industrial properties are eligible for inclusion in the subclass except for properties that are or would be classified in the large industrial property class or the parking lot and vacant land property class. Within those parameters, municipalities can define the eligibility criteria that best reflect their local priorities and needs.
- Municipalities that choose to implement the subclass are required to pass a municipal by-law. In two-tiered municipalities, the by-law must be passed by the upper-tier municipality.
- Municipalities may specify that the subclass only applies to a portion of the municipality. They can also establish different requirements for the subclass in different portions of the municipality.
- Municipalities have the option of requiring that property owners meet the eligibility criteria as set out in the by-law and submit an application in order for their property to be included in the subclass. These are considered by the Program Administrator (see below).
- Properties approved for inclusion in the subclass must be available in a publicly accessible list.
- A process must be established for property owners to request reconsideration of the decision.
- Municipalities opting to use the subclass must appoint a Program Administrator and an Appellate Authority. These people should be municipal employees. Two-tier municipalities can opt to appoint employees of the lower-tier municipalities to which the by-law applies instead of their own employees.
- The Program Administrator is responsible for providing MPAC with a list of the properties, or portions of properties, that are approved for inclusion in the subclass for a taxation year and for making the list available electronically for public inspection.
- The Appellate Authority is responsible for hearing any appeals of the Program Administrator's eligibility decisions.

The Ministry of Finance issued an Interpretation Bulletin in May 2021. It is included in Appendix 4.

HIGHLIGHTS

- Municipalities can set the amount of subclass tax reduction up to 35% of the municipal rate for the property class.
- Municipalities requesting the education match, must provide written notice to the Ministry of Finance of their decision to adopt the subclass and must show that they have consulted with stakeholders. Submissions must be made prior to March 31st of the applicable tax year.
- As part of the process of developing their by-law, municipalities are strongly encouraged to consult with their local business stakeholders and other interested parties even if they are not requesting the education match.

- Municipalities may choose to include a clause in their by-laws requiring landlords to pass on the tax reduction to their tenants as a condition of eligibility for the subclass.
- Municipalities must establish a process for identifying properties and portions of properties eligible for inclusion in the subclass. This can be an application-based process and/or a criteria-based determination process not requiring individual applications by property owners. They may also use both a criteria-based determination process and an application process. (See Section 2.3 below.)
- The tax reduction provided to properties in the subclass can be funded by (i) absorbing the cost through a levy decrease, (ii) funding it broadly across all property classes, or (iii) funding it within the commercial and/or industrial property class through the adoption of revenue neutral tax ratios.

1.3 Methodology

To develop this report, MPAC formed a Municipal Working Group that included a diverse group of Ontario municipalities, as well as the Municipal Finance Officers' Association (MFOA), Ontario Municipal Tax and Revenue Association (OMTRA), Association of Municipalities of Ontario (AMO), the Toronto Association of Business Improvement Areas (TABIA) and the Ontario Business Improvement Area Association (OBIAA). The members are listed in Appendix 1. The insights of the Municipal Working Group have been reflected in this report.

MPAC also distributed an on-line survey to 678 Finance and Economic Development staff in Ontario's 444 municipalities to gather their feedback. The questions included their current intention to explore using the subclass, the policies they hoped to achieve, how they were considering identifying eligible properties and any concerns or comments. One hundred thirty-five people (20%) from 113 different municipalities (25.4%) responded to the survey.

“The Small Business Subclass report provides significant guidance for municipalities who are considering implementing the Small Business Subclass. It should prove to be a very useful tool in defining small businesses and identifying appropriate properties, as well as assisting in the development of local policies.”

Donna Herridge

Executive Director

Municipal Finance Officers' Association of Ontario



2 Municipal Guide to Using the Small Business Property Subclass

2.1 Policy Drivers

A variety of financial and economic development tools are already available to nurture small business development and support their survival. The subclass adds to this toolbox. Its use should be considered within the broader context of each municipality's characteristics and policy objectives and the combination of tools that best addresses local issues and goals.

The Municipal Working Group identified six potential policy drivers for municipalities where the subclass may align with municipalities' planning or economic development goals. The Survey of Municipalities (the Survey) indicated that all six are of interest to at least a few municipalities. The percentage of Survey respondents who are considering the subclass or are unsure about using it is provided for each one.¹ The policy drivers are not mutually exclusive or exhaustive. Some municipalities are interested in achieving several of them:

1. Nurture local small business development in one or more sectors of the economy.
2. Support Downtown and Main Street.
3. Nurture the development of Innovation Districts, Creativity Zones or Business Parks.
4. Support Business Improvement Areas (BIAs).
5. Mitigate the impact of shifts in property values between districts for small businesses.
6. Mitigate the impact of widespread revenue losses due to circumstances beyond businesses' control.

¹ Thirty-five Survey respondents (26%) indicated that they did not intend to implement the subclass and did not answer the questions about the policy objectives they were interested in achieving by using it. They are not included in the calculation of the percentages provided below. The adjusted base is 100 respondents who are considering the subclass or are unsure about using it.

POLICY APPROACH 1

NURTURE LOCAL SMALL BUSINESS DEVELOPMENT IN ONE OR MORE SECTORS OF THE ECONOMY

Providing property tax relief by using the subclass is a tool that municipalities can consider using to support small businesses. Property tax is a significant fixed cost, sometimes equalling or exceeding rental levels. It's important to note that this reduction is only a percentage of total property taxes.

The Survey indicated fairly widespread interest in providing broad support to small businesses throughout the municipality (58% of the respondents considering the subclass²), while 9% are considering making the support sector specific, all targeting small retailers and some also including arts/culture, manufacturing and commercial offices. Open ended comments included interest in supporting small business development and entrepreneurship to diversify the local economy.

POLICY APPROACH 2

SUPPORT DOWNTOWN AND MAIN STREETS

Small business support often is synergistic with policies encouraging the revitalization and sustainability of geographic business districts within municipalities. Small commercial businesses tend to predominate in traditional downtowns and main streets; areas that play important community identity, heritage and city-building roles in communities. Eleven per cent of the Survey respondents considering the subclass indicated that downtown or main street support was a policy driver.

POLICY APPROACH 3

NURTURE THE DEVELOPMENT OF INNOVATION DISTRICTS, CREATIVITY ZONES OR BUSINESS PARKS

Another example where the tax class may have applicability is to support the clustering of small commercial and industrial businesses and entrepreneurs in “innovation districts” and “creativity zones”. Clustering enables small businesses to build synergies and business-to-business connections among themselves. The zones are sometimes associated with revitalizing industrial and port areas. Five per cent of the Survey respondents considering the subclass are interested in targeting “innovation zones”, while 6% are interested in targeting their Central Business Districts.

² As explained in Footnote 2, the base for this percentage and those that follow is the 100 respondents who either are considering the subclass or are unsure about implementing it.

POLICY APPROACH 4

SUPPORT BUSINESS IMPROVEMENT AREAS (BIAS)

The BIA program has shown itself to be an extremely effective self-help tool enabling both commercial and industrial business communities to come together and collectively invest in improvements to municipally owned property as well as promotional and business development activities that strengthen the business district. They fund the investment through a special levy paid by all commercial and industrial property owners within a specific geographic area.

Many of their activities also benefit the municipality at large, including local residents and other businesses. Examples include festivals, public entertainment, sidewalk amenities and beautification, developing public squares and parkettes, marketing programs that attract more people to the community, etc. Yet the businesses in BIAs pay the total cost, often resulting in their total taxes being significantly higher than property taxes paid by comparable businesses in other districts. The subclass could be used to partially compensate businesses in BIAs for their additional investment. Eleven per cent of the Survey respondents considering the subclass are interested in targeting BIAs.

POLICY APPROACH 5

MITIGATE THE IMPACT OF SHIFTS IN PROPERTY VALUES BETWEEN DISTRICTS FOR SMALL BUSINESSES

When a property's Current Value Assessment (CVA) increases greater than the average for its tax class, the property owner may experience an increase in property taxes above a general tax levy increase. The increase often is passed through to the business tenants operating in the property. (See Section 2.6 below.) This can result in tax shifts between different parts of a municipality.

Examples of situations when shifts in property values between districts may occur include:

- In "Growth Areas", where residential or commercial intensification is permitted by the municipality, CVA may increase based on the value increase associated with the redevelopment of properties to higher densities. Property owners and their business tenants may experience increased property taxes as a result.

30% of the Survey respondents considering the subclass indicated that mitigating the impact of high CVA increases on small business was relevant.

- Upgraded infrastructure in a district may lead to higher than average market appreciation leading to higher increases in property values during a reassessment relative to other business areas in the community.

POLICY APPROACH 6

MITIGATE THE IMPACT OF WIDESPREAD REVENUE LOSSES DUE TO CIRCUMSTANCES BEYOND BUSINESSES' CONTROL

Property tax is a significant fixed cost for most businesses. Therefore, revenue decreases can cause previously sustainable property tax amounts to become less affordable. Small businesses are more vulnerable than larger corporations since they often have limited access to financing or to corporate cash reserves. The subclass may be a helpful tool for supporting small businesses through such crises, especially when the impact is expected to last for several years.

The most recent and dramatic example of widespread business revenue reductions for some business types was caused by COVID-19 in 2020 and 2021. Many businesses providing “non-essential” goods and services were required to close or significantly reduce their operations to contain the spread of the pandemic. Impacts for some types of businesses and districts are expected to extend into 2022 and beyond – especially in sectors and areas dependent on tourism or on employment concentrations where there may be widespread continuation of remote working.

Widespread business support has been provided by the federal and provincial governments as well as by many individual municipalities. Specific to property tax stability, the Province continued to use the 2016 CVA for the 2020 and 2021 property tax years and reduced the business education tax (BET) rate to a maximum of 0.88% throughout the province³. The subclass provides an additional tool.

6% of the Survey respondents considering the subclass indicated that providing post-COVID-19 relief to impacted small businesses was a policy driver, while 1% (one person) added that their municipality was interested in providing assistance to small businesses impacted by major road construction.

³ Previously BET rates were variable with businesses in some municipalities paying 1.25%. Reducing all high BET rates to 0.88% resulted in a \$450 million reduction for businesses.

Extended construction projects, where businesses are impacted by road and sidewalk closures or other significant disruptions, are another example. Municipalities could consider using the subclass to provide property tax relief to small businesses located in districts impacted by multi-year road reconstruction or other major construction projects.

2.2 Considerations in Defining Small Business

The subclass was established to provide municipalities with the flexibility to support small businesses through property tax relief. However, there isn't widespread consensus on how "small business" should be defined or identified.

Some considerations and definitions in use by Canadian organizations are summarized below to assist municipalities in thinking about how "small business" should best be defined in view of their policy drivers. Five key considerations are:

- 1.** Ownership Model
- 2.** Total Revenues
- 3.** Number of Employees
- 4.** Number of Locations that the business operates in
- 5.** The Amount of Floor Space occupied

OWNERSHIP MODEL

The terms "independent business" and "small business" often are used interchangeably. The key defining characteristic of an independent business is that the decision-making authority is vested in the local owner(s) and not subject to conditions dictated remotely. Independent businesses can be sole proprietorships, partnerships or incorporated entities.

Franchisees are sometimes considered small businesses since the operator of each location has a degree of operational autonomy and assumes a high degree of the risk and the benefit associated with the business's success. Purchasing a franchise license often provides an easier entry into business formation and self-employment than initiating an unproven business concept with no access to corporate support.

TOTAL REVENUES

The Canadian Revenue Agency (CRA) uses \$500,000 in annual income as the threshold for eligibility for the Small Business Tax Deduction. Eligible businesses must also be Canadian-based (incorporated under the federal Canada Business Corporations Act or similar provincial legislation). This ensures that major businesses headquartered in other countries with limited operations in Canada do not qualify.

NUMBER OF EMPLOYEES

Statistics Canada defines a small business as having fewer than 100 employees. It also collects and publishes data for “micro-businesses” that have fewer than five employees.

Operationally, there is a wide range in the number of employees that different types of businesses have on their payroll. Whether employees are part time, full time or seasonal also impacts total employment numbers.

This notwithstanding, some municipalities may find it useful to include an employment criterion within narrow sectors (e.g. restaurants, retail stores, etc.) and in combination with other criteria. The employee threshold should reflect the local conditions.

NUMBER OF LOCATIONS

Statistics Canada defines an independent business as having a maximum of three locations operating in Canada in the same industry class under the same legal ownership. A limited number of locations better enables the business owner to play a major role in each of their operations.

AMOUNT OF FLOOR SPACE OCCUPIED

The amount of floor space occupied varies widely, depending on the type of activity. Some businesses operating from small offices have multi-million dollar operations and employ hundreds of remote workers. Businesses selling, storing and assembling or fabricating bulky goods require large amounts of floor space regardless of their operating model, revenue or number of employees. Within specific sectors and districts, smaller spaces may be more accessible to start-up businesses because of their lower total rental costs. However, smaller spaces also frequently house locations for large corporations. These considerations notwithstanding, some municipalities may find a floor space criterion useful within narrow sectors and districts and in combination with other criteria. The floor space threshold selected should reflect the local conditions.

2.3 Identifying Small Businesses for Subclass Eligibility

Municipalities are responsible for developing their own eligibility criteria to determine which properties qualify for inclusion in the subclass. All commercial and industrial properties (except properties that are or would be classified in the large industrial property class or the parking lot and vacant land property class, or vacant and excess land), are eligible for inclusion in the subclass.

Municipalities can choose to apply the subclass to eligible properties throughout the entire municipality or to specific portion(s) of the municipality and may establish different requirements for the subclass in different portions of the municipality.

Municipalities may opt to establish a criteria-based approach to identify property where the Subclass will apply. They also have the option of requiring that property owners submit an application for the property to be approved for inclusion in the subclass. They can choose to use either approach, or both.

Some considerations associated with the pre-determined criteria-based approach, geographically targeted approach, and application-based approach are outlined below.

PRE-DETERMINED CRITERIA-BASED APPROACH

Pre-determining property eligibility has clear advantages in reducing the administrative costs associated with using the subclass. However, it limits the eligibility criteria to data elements available to municipalities, either from MPAC or from municipal sources and research. Twenty-five per cent of the Survey respondents considering the subclass indicated that they intended to use the Pre-determined Criteria-based Approach and 12% are considering a hybrid of the Pre-determined Approach supplemented with applications.

The following table describes the potential applicability of data elements available from MPAC. It is provided as a general guide for municipalities and should be considered in conjunction with other data points and/or land-use considerations specific to the municipality. Specific situations with properties and the way they've been coded or nuances in the municipality's policy objectives may alter the comments offered. Municipalities are encouraged to test the approach they're considering in consultation with MPAC before they frame their by-laws.

Applicability of Data Elements Available from MPAC in Determining Small Business Property Subclass Eligibility

DATA POINT	APPROACH	LIMITATIONS	EXAMPLES
Tax Class (RTC and RTQ)	<ul style="list-style-type: none"> Subclass can be applied to commercial and industrial tax classes: C (commercial), X (commercial – new construction), I (Industrial) and J (Industrial - new construction). RTQ should be T (fully taxable). A new code “RTQ 8” will be used to identify properties in the subclass. 	<ul style="list-style-type: none"> May be difficult to administer if only a portion of the property qualifies for the small business subclass, e.g. tenant(s). Properties can have only one RTQ code. Therefore, properties currently coded as Small-Scale On-Farm Businesses, Creative Co-Locations and for Payments in Lieu of Tax (PIL) cannot also be included in the subclass. Their existing RTQ would need to be changed to RTQ 8 or cannot be changed as it would replace the PIL RTQ. 	<ul style="list-style-type: none"> If a municipality has a property that was coded CP (Commercial PIL fully taxable) on their list of eligible properties, MPAC would effectively remove the PIL coding and recode as C8.
Site Area	<ul style="list-style-type: none"> Property site area is readily available. Might be useful in combination with other factors. Municipality should evaluate applicability and cut-off within the specific context of the types of businesses it wants to target and typical site areas of properties they occupy. If used, the threshold ideally should be the largest of similar properties to maintain equity. 	<ul style="list-style-type: none"> On multi-tenant properties, site area is not allocated to individual tenants. Small businesses may occupy large sites (e.g. marinas, RV campgrounds). 	<ul style="list-style-type: none"> If municipal research were to show that shopping centres with sites smaller than five acres are dominated by small businesses, a five-acre site area maximum could be a useful threshold for subclass eligibility.
Total Floor Area	<ul style="list-style-type: none"> Property floor area is readily available. Depending on the valuation method used, the size is either exterior gross floor area (direct comparison approach) or gross leasable area (income approach). One or the other figure is provided without identifying which one. In commercial and industrial condominiums, each unit has its own roll number with floor space. In mixed use structures, the total commercial floor space is provided. Might be useful in combination with other data elements. Municipality should evaluate applicability and threshold figure within the specific context of the types of businesses it wants to target. The threshold figure ideally should be the largest of similar properties to maintain equity. Consideration could be given to having a maximum building structure size to capture the majority of targeted small businesses and permit applications from small businesses located in larger buildings. 	<ul style="list-style-type: none"> Figure is not broken down by floor or tenant except in the case of mixed-use structures or condominiums. Small businesses may occupy large structures, especially in multi-tenant structures. 	<ul style="list-style-type: none"> If all large retail stores in a municipality are corporate chains, properties coded retail might be included up to a maximum 30,000 sq. ft. floor area (for example).

DATA POINT	APPROACH	LIMITATIONS	EXAMPLES
Property Code	<ul style="list-style-type: none"> Detailed property codes are used by MPAC for administrative purposes, such as identifying comparable properties for valuation. They often capture both the type of activity taking place and some structural characteristics to describe property use (e.g. 436 – Freestanding large retail store, national chain, generally greater than 30,000 sq. ft.). Vacant properties are coded according to the most recent use that occupied the space and by how the property is likely to be described for selling purposes. Municipalities are advised against being exclusively reliant on property codes because of the limitations. However, municipalities may find them helpful in combination with other data elements (see examples). Consideration could be given to verbally describing the property types to be included and excluded in the by-law and then using the codes as an initial pre-identification of eligible properties. Properties whose use met the verbal description, but which were coded differently, could be added through the municipalities' Request for Reconsideration process for small business. 	<ul style="list-style-type: none"> MPAC places an emphasis on capturing factors likely to impact property sale valuation. Not every type of business has its own property code (e.g. gyms, commercial schools, and dry cleaners, do not). Some properties could fit more than one code description and the choice has a subjective element. Updates are triggered when new information is provided to MPAC. MPAC focuses on changes to values, classification and tax liability. It is important to recognize that there are some situations where MPAC is not provided up-to-date information. MPAC could be applying out-of-date information. For example, a single family detached home (PC 301) is now used solely as a hair salon; the property value and classification will not be updated unless MPAC is made aware of the change. 	<ul style="list-style-type: none"> In commercial areas, property codes could be used to exclude national chain restaurants (includes franchises), freestanding banks and financial institutions, national chain large retail stores, big box shopping centres. In the Industrial, Institutional and Special series of codes, it might be possible to identify most types of activities the municipality wishes to include from the property codes (e.g. mini-warehouse, industrial mall, industrial condominium, funeral home, etc.).
Structure Code	<ul style="list-style-type: none"> MPAC uses the detailed structure codes as internal valuation. Widespread reliance on structure codes is not recommended. Their use in combination with property codes and other data elements may be warranted in specific situations to exclude properties coded as being eligible for the subclass but in use for purposes other than small business. 	<ul style="list-style-type: none"> Structure codes can be interchangeable. Structure codes are not used for valuation purposes, they are used for identification purposes so may not be reliable for small business identification. Structure codes identify and reflect the design features of any primary and secondary structure and not the activity of a property's current use. Building height also comes into play on some properties as a structure code is given to every height of a building, if a building has an area with a height of 12', 15' and 18'. Three structure codes will exist and may give the impression that 3 different structures exist but that may not be the case. 	<ul style="list-style-type: none"> Properties used for billboards or communication towers could be excluded by using structure codes. Over 200 Structure codes exist and can sometimes only describe part of a building. For example; a car dealership would have a structure code for the showroom and another for the service garage. Many combinations exist making this variable complicated and adds a level of risk.

DATA POINT	APPROACH	LIMITATIONS	EXAMPLES
Current Value Assessment (CVA)	<ul style="list-style-type: none"> • CVA can be used to identify low-valued properties. There may be a correlation between low-valued properties and concentrations of small businesses in some municipalities or districts. • If tax affordability for small business is a policy driver, looking at CVA per sq. ft. might be instructive in identifying neighbourhoods or properties where property tax levels are above average and are threatening small business sustainability. • If CVA or CVA per sq. ft. thresholds are used for defining eligibility for the subclass, municipalities should set thresholds to include groups of similar properties to minimize the likelihood of appeals by properties slightly above the threshold. 	<ul style="list-style-type: none"> • Correlation between low valued properties and small business locations is unlikely to be exact. • Larger municipalities with diverse districts and property values may want to set different thresholds in different areas (e.g. downtown Toronto versus a suburban commercial artery). • Successful assessment appeals may impact subclass eligibility mid-year. • The thresholds would need to be re-visited every four years when assessments are updated 	<ul style="list-style-type: none"> • Calculate CVA/total floor area for properties. Set an “affordability threshold” – for example 25% above the mean – and include properties above that level in subclass.
Change in CVA	<ul style="list-style-type: none"> • If CVA is increasing at a rapid rate in certain districts or properties, the subclass can be used to reduce the impact on small businesses by lowering the tax rate. • If used, the municipality's policy should address the impact on properties previously included in the subclass but which are now experiencing a lower rate of CVA increase. • Pairing the current rate of increase with a consideration of affordability (CVA per sq. ft.) might be an effective approach, since properties' CVA per sq. ft. may still be above average because of previous increases. 	<ul style="list-style-type: none"> • The analysis would need to be repeated every four years when assessments are updated. • Successful assessment appeals may impact subclass eligibility mid-year 	<ul style="list-style-type: none"> • Thresholds could be set based the rate of inflation, average rate of commercial or industrial rent increase or average increase in CVA throughout the municipality.

The information available from MPAC does not address most of the considerations in defining small businesses that are summarized in **Section 2.2** – specifically ownership model, revenues, number of employees or number of locations. Municipalities with detailed business directories may collect some of this information. Where this is the case, municipalities could use it to identify their small businesses and map them to the properties where they're located. Municipal business licensing information may also be helpful.

It may be possible for municipalities to add questions to the surveys and business licensing processes they currently undertake to better identify small businesses in the future. There are third party business directories available that can assist in such initiatives, although considerable data cleaning and supplementary survey work probably would be needed to attain an acceptable level of reliability for the determination of property tax class eligibility.

GEOGRAPHICALLY-TARGETED APPROACH

Municipalities have the option of defining geographic areas within which the subclass will apply. The geographic approach can be combined with using the data elements available from MPAC (as summarized in the table on pages 15-17) or in other municipal data sets such as a business directory. It also can be combined with an application process for eligible small businesses located outside of the defined geographic area(s). Seventeen per cent of the Survey respondents considering the subclass indicated they were considering geographic targeting.

Zoning and Official Plan designations, BIA boundaries, Community Improvement Area boundaries and rights-of-way undergoing multi-year construction projects are examples of geographic areas that may be relevant to the subclass. Geographical targeting also may be a straightforward approach to defining eligibility when small businesses are clustered in specific areas.

APPLICATION-BASED APPROACH

If municipalities wish to target small businesses by their operational characteristics and don't have a business directory or business licensing system that includes the needed information for the targeted businesses, an application-based approach may be necessary to achieve the desired policy goals. This would enable small business operations to be more specifically targeted but would require more extensive administrative procedures.

When considering an application-based approach, it should be noted that small businesses often do not have the staff resources or access to specialized professional services to navigate application processes. Therefore, small businesses and small property owners tend to be less inclined to apply for programs and benefits than larger corporations. Municipalities could consider accompanying their application processes with outreach and education campaigns to ensure that both the targeted small business tenants and associated property owners are aware of the available tax relief and how to apply for inclusion in the subclass. They also may offer application facilitation support in partnership with business organizations such as Chambers of Commerce or BIAs and other small business support programs and agencies.

A hybrid model may help reduce the administrative requirements of an application process while allowing the benefit of small business operational pre-identification. Properties with concentrations of the targeted small businesses could be pre-determined by geographic boundaries and/or property characteristics. Property owners with eligible small business located outside of the pre-determined properties could apply for inclusion.

Once an application for the inclusion of a property in the subclass has been approved, the municipality can opt to have the property remain in the subclass unless it is determined that it no longer meets the eligibility criteria. A simpler process could be used to audit properties – for example periodic visual inspection and/or a requirement for a confirmation email instead of a complete application each year. Options such as these would somewhat reduce the administrative requirements in future years.

Four per cent of Survey respondents considering the subclass indicated they were considering only using an application process. Twelve per cent are considering a hybrid model, using both an application and pre-determined characteristics that automatically result in properties being included in the subclass.

The Regulations require that applications be made by property owners. Property owners would need to identify the proportion of their properties that are used by small businesses meeting the defined criteria. They may be motivated to apply for inclusion to retain and support their small business tenants. Considerations related to property owners and small business tenants are explored in more detail in Section 2.6 below.

2.4 Relationship between Policy Drivers and Defining Subclass Eligibility

The following table illustrates how pre-determined criteria and application processes might be used to define properties eligible for the subclass for each of the major policy drivers discussed in Section 2.1. It is intended for illustrative purposes.

Municipalities may be interested in more than one of the policy drivers and may well develop their own unique combinations of pre-determined criteria and application processes that are relevant to their specific characteristics and the information they have available.

“ In partnership and collaboration with the many members of the working group, the creation of the report will no doubt provide added **value and insight to the municipal community** in their work on the Small Business Subclass.”

Kay Matthews

Executive Director

Ontario Business Improvement Area Association

POLICY DRIVER: NURTURE SMALL BUSINESS DEVELOPMENT	
PRE-DETERMINED CRITERIA	APPLICATION
<ul style="list-style-type: none"> • Property characteristics and geographic areas where small businesses are clustered. • However, non-targeted businesses located in these properties and areas would also be included. 	<ul style="list-style-type: none"> • Enables municipalities to specifically target small business operations meeting the defined criteria while excluding other businesses. • Consider using in combination with pre-determined criteria to reach targeted small businesses outside of pre-determined properties and areas.

POLICY DRIVER: SUPPORT DOWNTOWNS AND MAIN STREETS	
PRE-DETERMINED CRITERIA	APPLICATION
<ul style="list-style-type: none"> • Can be geographically defined. • Would include all businesses instead of just small businesses. However, municipalities may choose to permit this as an incentive for large businesses to locate in the area and support its overall vitality. • Alternatively, a municipality may opt to use property characteristics such as property codes, site area and building floor space thresholds to exclude some large businesses. 	<ul style="list-style-type: none"> • Enables municipalities to specifically target small business operations in downtowns and main streets while excluding other businesses.

POLICY DRIVER: NURTURE INNOVATION DISTRICTS, CREATIVITY ZONES, BUSINESS PARKS	
PRE-DETERMINED CRITERIA	APPLICATION
<ul style="list-style-type: none"> • Can be geographically defined. • Would include all businesses instead of just small businesses. However, municipalities may choose to permit this as an incentive for large businesses to locate in the area and support its overall vitality. • Alternatively, a municipality may opt to use property characteristics such as property codes, site area and building floor space thresholds to exclude some large businesses. 	<ul style="list-style-type: none"> • Enables municipalities to specifically target small business operations in the designated districts while excluding other businesses.

POLICY DRIVER: SUPPORT BIAs	
PRE-DETERMINED CRITERIA	APPLICATION
<ul style="list-style-type: none"> • Can be geographically defined. • Would include all businesses instead of just small businesses. However, a municipality may choose to permit this since all businesses in BIAs contribute to the levy. • Alternatively, a municipality may opt to use property characteristics such as property codes, site area and building floor space thresholds to exclude some large businesses. 	<ul style="list-style-type: none"> • Enables municipalities to specifically target small business operations in the designated districts while excluding other businesses.

POLICY DRIVER: MITIGATE IMPACT OF CVA SHIFTS BETWEEN DISTRICTS	
PRE-DETERMINED CRITERIA	APPLICATION
<ul style="list-style-type: none"> • Properties that have experienced above average CVA increases can be pre-determined. • Areas at risk of future above average CVA increases could be estimated from the Official Plan (OP) designations, real estate trends, infrastructure investment, etc. and pre-emptively included in subclass to mitigate impact on business. • Areas at risk of future CVA decreases can be estimated from market trends and vacancy rates and pre-emptive action taken to mitigate impact on small businesses in other districts within the same tax class. • Would include all businesses in designated areas and properties instead of just small businesses. • Alternatively, a municipality may opt to include property characteristics such as property codes, site area and building floor space thresholds to exclude some large businesses. 	<ul style="list-style-type: none"> • Enables municipalities to specifically target small business operations in the designated districts while excluding other businesses.

POLICY DRIVER: MITIGATE IMPACT OF BUSINESS REVENUE DECREASES	
PRE-DETERMINED CRITERIA	APPLICATION
<ul style="list-style-type: none"> • Geographic areas experiencing revenue loss due to protracted construction projects can be pre-determined. • Would include all businesses in the designated areas instead of just small businesses. • Alternatively, a municipality may opt to use property characteristics such as property codes, site area and building floor space thresholds can be used to exclude some large businesses. • A municipality may choose to use similar criteria as suggested for nurturing small business during periods of widespread revenue decreases (such as were experienced during the COVID-19 pandemic). 	<ul style="list-style-type: none"> • Enables municipalities to specifically target small business operations in the designated districts while excluding other businesses.

2.5 Funding the Subclass

Providing small business properties with reduced taxes requires that municipalities either reduce the total tax levy or achieve revenue neutrality by increasing the tax rate for other property classes. They have the option of funding the small business subclass within the commercial/industrial property class through the adoption of revenue neutral tax ratios, as per section 9 in O. Reg 385/98 under the *Municipal Act*, 2001 and section 2 in O. Reg 121/07 under the *City of Toronto Act*. Alternatively, they can fund it broadly across all property classes.

Each municipality will need to negotiate the balance between providing tax relief substantive enough to achieve its policy goals for small businesses and not increasing tax levels for other properties to the extent that new problems are created. Key considerations include:

- The categories of property owners benefiting from having a strong, sustainable small business sector.
- Tax competitiveness with other municipalities impacting the ability to attract and retain “footloose” businesses.
- Avoiding a sudden and substantive tax increase for other properties.

Municipalities are encouraged to model the impact of different scenarios to inform their decisions. MPAC resources are available to assist. Consultation with interested parties is encouraged and is mandatory for the Province to consider matching the municipality’s tax relief with education property tax reductions to provide further support for small businesses.

The Province has indicated that any provincial reductions in the tax rate for small businesses will be made up by other provincial revenue sources and not passed through to the municipalities.

2.6 Small Business Tenants versus Property Owners

The subclass is intended to support small businesses, not specifically property owners.

Municipalities can require that landlords pass the tax reduction through to their tenants as a condition of eligibility in the subclass in their by-laws. Doing so would enable municipalities to remove properties from the subclass if tenants notify them that they are not receiving the reduction.

Many commercial and industrial tenants have leases whereby they are directly responsible for paying property taxes on the portion of the building they occupy (triple net leases and often double net and net leases and modified gross leases⁴). In these cases, the pass-through of the small business tax reduction is easier to identify.

⁴ See Glossary in Appendix 2 for definitions of these types of leases.

This is not the case for tenants on gross leases, whereby they pay the landlord a lump sum that covers rent plus other expenses including property tax. Small property owners are most likely to use gross leases whereas property management companies and larger commercial property owners tend to use triple net leases.

Municipalities' consultation processes could include gathering information about the prevalence of gross lease arrangements in the types of commercial and industrial properties they are considering for inclusion in the subclass. Where gross leases are used, an outreach to tenants in properties included in the subclass may be the most effective strategy for ensuring that they receive the tax reduction. If the landlord refuses to pass the reduction through, small businesses could notify the municipality and the property could be removed from the subclass.

2.7 Different Types of Municipalities

Ontario municipalities have an enormous variety of characteristics and population sizes. They include rural areas with scattered homes and farms, villages, suburban and exurban regions, cities and the City of Toronto, which is Canada's largest metropolis with a population of about 3 million. Half of the Survey respondents represent rural municipalities and 35% are from municipalities with populations less than 10,000.

It is anticipated that the subclass won't be relevant to the majority of municipalities. This was confirmed by the Survey responses. Only 9% of respondents indicated that their municipalities currently intend to implement the subclass and 65% were unsure. Twenty-Six per cent of respondents indicated that they did not intend to implement the subclass. Most of these were from rural municipalities and municipalities with fewer than 5,000 residents.

Single-tier, lower-tier and upper-tier municipalities have different options and responsibilities for using the subclass. Single-tier municipalities can act independently.

In two-tier municipalities, the by-law must be passed by the upper-tier municipality. The Program Administrator and Appellate Authority can either be upper-tier municipal employees or lower-tier municipal employees appointed by the upper-tier municipality. (See Section 4 for more detail about the Program Administrator and Appellate Authority roles and responsibilities.)

LOWER-TIER MUNICIPALITIES

Lower-tier municipalities interested in using the subclass need to work in concert with their respective upper tier-municipalities to approve the required by-laws. The Survey results suggest that at least three lower-tier municipalities currently are interested in implementing the subclass and that an additional 44 are unsure at this point. Thirty-three lower-tier municipalities indicated that they currently don't intend to implement the subclass.

UPPER-TIER MUNICIPALITIES

At least two upper-tier municipalities currently are interested in implementing the subclass and several more are unsure. No respondents from upper-tier municipalities indicated that they don't intend to implement the subclass.

Respondents from upper-tier municipalities were asked which of the following three approaches they were considering. Eight of the seventeen answered:

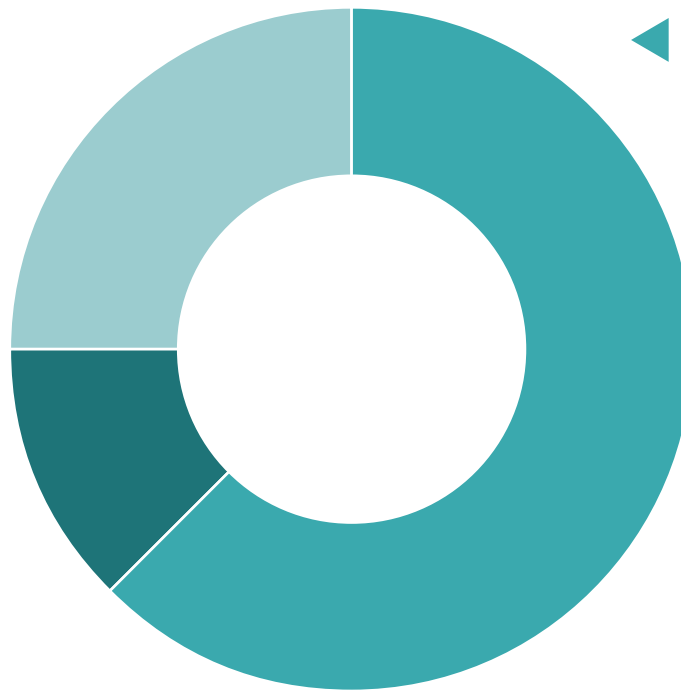
- 62.5% said they favoured a uniform approach across the region.
- 12.5% said they favoured a uniform approach to defining property class eligibility but would permit lower-tier municipalities to opt out.
- 25% said they planned to let each lower-tier municipality decide and would recommend by-laws to their Councils in accordance with their wishes.

25% ▶

planned to let each lower-tier municipality decide and would recommend by-laws to their Councils in accordance with their wishes.

12.5% ▶

favoured a uniform approach to defining property class eligibility but would permit lower-tier municipalities to opt out.



◀ **62.5%**

favoured a uniform approach across the region.



3 Process for Establishing a Small Business Property Subclass

As summarized below, there are 10 main steps in the process to establish the subclass. More detail and technical requirements are available in the Regulations and the Interpretation Bulletin in Appendices 3 and 4.

STEP ONE: ESTABLISH POLICY FRAMEWORK

- Articulate the problem to be addressed by the subclass. Use existing information and/or undertake additional consultation and research to answer key questions. The following considerations are relevant:
 - Consider small business characteristics, trends and issues within the overall context of the municipality's commercial and/or industrial business structure. Refer to Sections 2.1 and 2.2 of this report for guidance.
 - Consider the need to provide additional support to small businesses and whether there are subcategories of particular interest (e.g. commercial and/or industrial; the differentiating characteristics between small businesses needing support and other businesses).
 - Articulate key policy drivers and consider whether the subclass is the best tool to achieve them.
- Refine policy drivers to be achieved by using the subclass and small business characteristics to be targeted.

- In two-tiered municipalities, it is recommended that both upper- and lower-tier municipalities participate in establishing policy framework (or in deciding that subclass is not relevant).

STEP TWO: ESTABLISH SUBCLASS ELIGIBILITY CRITERIA

- Relate desired policy drivers and characteristics of small businesses to be targeted to property characteristics and geographic areas. Refer to Section 2.3 of the report for guidance.
- Look at geographic clustering and correlation between targeted businesses and property characteristics.
- Consider the extent to which policy drivers can be achieved by defining eligibility through pre-determined criteria (property-based and/or geographic).
- Consider the pros and cons of using an application-based process either alone or in combination with pre-determined eligibility.
- In two-tiered municipalities, consider whether the same approach should be used throughout the region for greater simplicity and consistency or if there are strong reasons for a different approach in some lower-tier municipalities (e.g. due to differences in business characteristics and issues between towns and rural areas).

STEP THREE: MODEL IMPACT OF ONE OR MORE SCENARIOS

- Estimate the number of properties likely to be included in the subclass and the share of the assessed value for the tax class they include.
- Estimate the total amount of municipal tax relief that is associated with desired discount rate(s) up to a maximum of 35% (as set out in the Regulation).
- Consider options for reducing the total levy and/or increasing the tax rate for other properties. Refer to Section 2.5 of the report for guidance.
- In two-tiered municipalities, it is recommended that both upper- and lower-tier municipalities be involved in the modelling process.

STEP FOUR: CONSULT WITH STAKEHOLDERS

- Consultation should include small businesses as well as the broader business community and residents. The issues small businesses face and their need for property tax relief should be discussed as well as the options under consideration for determining subclass eligibility and potential impact on the tax rate and tax amounts for other types of properties.
- Municipalities may opt to also consult at an earlier stage of the process.
- Municipalities that have previously consulted with and researched their small business communities and their need for tax relief may be in a position to define their policy framework and eligibility criteria without additional consultation. They can opt to introduce the subclass to provide tax relief for the municipal property

tax without additional consultation, potentially enabling them to implement the subclass sooner. Consultation can then be undertaken, the subclass modified if required and the Minister of Finance requested to match the municipal tax reduction with an education tax reduction in a later year.

- In two-tiered municipalities, the upper-tier municipality is responsible for ensuring that consultation has been undertaken throughout its jurisdiction. However, it is recommended that lower-tier municipalities also be involved in the process.

STEP FIVE: PASS MUNICIPAL BY-LAW

- The subclass is brought into effect by the single-tier or upper-tier municipal council passing a by-law opting to have the subclass apply to defined property classes and to the entire municipality or defined portions of the municipality. The by-law should describe the eligibility criteria to be met by a pre-determined eligibility process and/or application process.
- Consider including in the by-law that properties remain in the subclass until the municipality determines they are no longer eligible and advises MPAC to remove them.
- Consider including the process to be used to confirm continued eligibility. For example, specify an annual notification process requiring property owners to confirm their continued eligibility and inviting the owners of properties not included – but which meet the eligibility criteria – to request their inclusion through whatever process the municipality is using.
- Consider specifying that the final assessment roll for the previous year will be used to determine eligible properties to simplify in-year administration.
- Consider whether properties with RTQ codes for Small-Scale On-Farm Businesses (7), Creative Enterprise Facility (9), and Payments in Lieu of Tax should be included in the subclass. If so, their current RTQ codes will either be replaced or cannot be removed depending on whether the property has already been designated for an optional property class or PIL.
- The by-law can require property owners to pass the tax deduction through to their tenants as a condition of eligibility for the subclass. Doing so enables the municipality to remove the property from the subclass if it is notified that the pass-through has not happened.

STEP SIX: APPOINT PROGRAM ADMINISTRATOR AND APPELLATE AUTHORITY

- The single-tier or upper-tier municipal council is required to appoint a Program Administrator and Appellate Authority.
- The Program Administrator is responsible for determining which properties meet the defined criteria and therefore are eligible for inclusion in the subclass, for making the list available for public inspection and for providing the list to MPAC. If there is an application process, the Program Administrator is responsible for approving or denying applications. The Program Administrator also is required to establish a process whereby an owner can make a request for reconsideration.

- The Appellate Authority is responsible hearing appeals about whether or not properties should be included in the subclass. The Appellate Authority does not hear appeals of assessed value, which will continue to be directed to the Assessment Review Board.
- The ongoing responsibilities of the Program Administrator and Appellate Authority are summarized in Section 4 of the report below.
- The Program Administrator and Appellate Authority should be different employees of the municipality. Upper-tier municipalities can appoint employees of lower-tier municipalities to which the By-law applies to undertake these roles within their jurisdictions.

STEP SEVEN: IDENTIFY PROPERTIES INCLUDED IN SUBCLASS

- The Program Administrator applies the pre-determined criteria and/or implements an application process as set out in the municipal By-law.
- Properties are to be identified on a publicly accessible registry. The following information should be included but is not limited to:
 - Assessment Roll Number
 - Property Address
 - Unit Number(s)
(if only some portions of the property are included in the subclass)
 - Floor Space included
(if only some portions of the property are included in the subclass)
- The registry is to be established by single-tier or upper-tier municipalities.

STEP EIGHT: PROVIDE MPAC WITH LIST OF PROPERTIES IN SUBCLASS

- The list to be provided by single-tier or upper-tier municipalities.
- List should include:
 - 19-Digit Assessment Roll Number
 - Municipal Street Number
 - Municipal Street Name
 - Qualifying Reality Tax Class & Reality Tax Qualifier (RTC/RTQ)
- A copy of the by-law or by-law number should also be provided

STEP NINE: REQUEST MINISTER OF FINANCE TO MATCH MUNICIPAL TAX REDUCTION WITH EDUCATION TAX REDUCTION

- Request to be made by municipalities
- Submission should include:
 - By-law adopting the subclass.
 - Overview of program requirements.
 - Estimated total municipal tax relief to small businesses.
 - Confirmation of consultation with business community.

- Submissions should be sent directly to the Minister of Finance, with a copy to info.propertytax@ontario.ca, prior to March 31 for the applicable taxation year.
- The Minister will review each submission and determine whether to match the municipal reductions on a case-by-case basis.

STEP TEN: ADDING PROPERTIES IN THE SUBCLASS TO THE ASSESSMENT ROLL

- A new RTQ code 8 will be used to identify properties in the subclass. Therefore, properties that make Payments in Lieu of Tax, or are already coded in another subclass such as Creative Enterprise Facilities or Small-Scale On-Farm Businesses, may not be eligible.
- MPAC will be able to make a bulk upload to the subclass for properties where the total assessment (CT, XT, IT and JT portions) is included. A manual process will be used for properties where exceptions are identified and only a portion of the property's assessment is to be included in the subclass.

Approximate Timelines for 2022 Implementation (exact dates may change from year to year and will be confirmed annually)

- **October 4, 2021:** deadline for MPAC to receive list of subclass properties to include changes in year-end Assessment Roll (finalized by MPAC December 14, 2021).
- **December 14, 2021:** deadline for MPAC to receive list of subclass properties to include them in Post Roll Amended Notices (PRANs). Notices will be delivered to municipalities in March 2022.
- **After December 14, 2021:** MPAC will include properties added to the subclass by Property Assessment Change Notices (PACNs), which are issued monthly to municipalities from May to November. This makes them eligible for a Supplementary Assessment.

“This report and its insights go a long way to providing some fundamental information and technical interpretations for municipalities to move toward in building and **re-building strong and vibrant small business** and by extension local economies. There is no better time than the present to move forward on this quest.”

John Kiru

Executive Director

Toronto Association of Business Improvement Areas (TABIA)



4 Ongoing Administrative Considerations

4.1 Confirming Continued Eligibility of Properties

The Program Administrator is responsible for confirming the continued eligibility of properties included in the subclass.

The Program Administrator is permitted to conduct an audit including a physical inspection of properties and/or requiring that documents verifying the continued eligibility of the property be submitted. The municipality's by-law should include the process to be followed.

Properties determined to be no longer eligible for the subclass are removed retroactive to the beginning of the taxation year or the date the property stopped meeting the conditions for inclusion in the subclass, whichever is later.

4.2 Adding new properties eligible for subclass

Municipalities using an application-based process may wish to invite new applications each year.

As described in Section 4.1, any new properties meeting the pre-determined eligibility criteria should be added to the subclass.

The Program Administer should update the property listings and registry each year and provide MPAC with the revised list (as summarized in Steps 7 and 8 above).

4.3 Requests for Reconsideration

As summarized in Step 6 above, the Program Administrator is required to establish a process through which property owners can request reconsideration of their property's eligibility for inclusion in the subclass. The request must be made within 90 days after the Program Administrator makes the list of properties approved for inclusion available, or for application-based processes within 90 days after the Program Administrator gives notice of their determination. The Program Administrator is required to provide the property owner with the results of the reconsideration within 90 days after the request is made.

4.4 Appeals

Any person can appeal the Program Administrator's decisions about the inclusion of properties in the subclass to the Appellate Authority. Property owners are first required to submit a Request for Reconsideration before they can file an appeal with the Appellate Authority. The deadline for doing so is 90 days after the Program Administrator has given notice of the decision.

The Appellate Authority is required to hold a hearing to determine if the property should have been approved for inclusion in the subclass. The hearing can be held orally or in writing.

4.5 Annual timelines

Year-End Update: Municipalities looking to add properties to the subclass for the following tax year should have their final list and approved by-law to MPAC by the first week of October. This will ensure that MPAC has sufficient time to upload properties prior to Year-End cut-off.

In Year Changes: Any properties submitted on a list for the subclass that were received after year-end cut-off and prior to the roll delivery will be prioritized for PRANs for the beginning of the following year. All efforts will be made to add those properties to the Q1 PRAN extracts to enable municipalities to include them in their budget process for the taxation year. PRAN extracts occur monthly from January to December.

Subsequently, any new properties/lists received in year from municipalities will be subject to PACNs as an alternative. PACN extracts occur monthly from April to October.

MPAC will only use Special Amended Notices (SAN) where a property or properties has been identified by the municipality as qualifying for the subclass and it's beyond the timeline in which a PRAN or PACN is no longer a viable option. SAN extracts occur March to December of the calendar year.

Appendix 1: Working Group Members:

ORGANIZATION	MEMBER
Association of Municipalities in Ontario (AMO)	Craig Reid , Sr. Advisor
Municipal Finance Officers' Association (MFOA)	Heather Brown , Manager of Accounting and Corporate Services
Municipal Property Assessment Corporation (MPAC)	Brian Gordon , Regional Manager, Municipal and Stakeholder Relations Michelle Lindquist , Regional Manager, Municipal and Stakeholder Relations
Ontario BIA Association (OBIAA)	Kay Matthews , Executive Director
Ontario Municipal Tax and Revenue Association (OMTRA)	Casey Brendon , President; also representing City of Toronto Revenue Services (Director)
Ontario Municipal Tax and Revenue Association (OMTRA)	Krista O'Brien ; also representing City of Ottawa, Tax Billing & Control (Program Manager)
Ontario Municipal Tax and Revenue Association (OMTRA)	Maureen Zabiuk , Board Member; also representing City of Vaughan, Property Tax & Assessment (Manager)
Toronto Association of BIAs (TABIA)	John Kiru , Executive Director
MUNICIPAL REPRESENTATIVES	
City of Barrie	Grace Marsh , Revenue and Property Tax (Manager)
City of Mississauga	Connie Mesih , Revenue & Material (Director)
City of Oshawa	Kim Villeneuve , Taxation Services (Manager)
City of Sault St. Marie	Lisa Petrocco , Taxation (Manager)
County of Bruce	Edward Henley , Corporate Services (Director)
Halton Region	Christine Carrington , Economic Development (Manager)
Halton Region	Kavita McBain , Corporate Budgets & Tax Policy (Manager)
Halton Region	Melric Roche , Corporate Budgets & Tax Revenue (Acting Manager)
Region of Durham	Dana Howes , Sr. Economist
Region of Peel	Maggie Wang , Financial Policy & Development Finance (Manager)
Region of Waterloo	Craig Dyer , Commissioner of Corporate Services / Chief Financial Officer
Region of Waterloo	Matthew Chandy , Economic Development (Manager)
Region of York	Bonny Tam , Tax (Manager)
Region of York	Jonathan Wheatle , Economic Strategy (Director)
Town of Milton	Steven Radenic , Assessment Base Management (Supervisor)
Town of St. Marys	Andre Morin , Director of Finance / Treasurer

Appendix 2: Glossary of Terms

Business Improvement Area (BIA) – An association of local business people and commercial property owners and tenants that work in partnership to organize, finance, and carry out physical improvements and promote economic development in their district.

COMMERCIAL LEASE TYPES

Gross Lease The tenant pays a single amount to the landlord that covers base rent and all incidental expenses.

Modified Gross Lease The tenant pays base rent and shares specified incidental expenses with the landlord. These may or may not include property tax.

Net Lease The tenant typically pays for one incidental expense directly. In a single net lease, the tenant usually pays the base rent plus property taxes (though in some cases, they might pay for insurance or utilities instead). The landlord pays all other expenses.

Double Net Lease The tenant usually pays the base rent plus two incidentals—for example, property taxes and insurance. The landlord covers all other expenses.

Triple Net Lease The tenant typically pays the base rent, plus property taxes, building insurance and utilities, as well as other operating and maintenance costs. The landlord assumes no costs, other than those for structural repairs.

Community Innovation Area A geographic area where leading-edge anchor institutions and companies cluster and connect with start-ups, business incubators and accelerators. The area is also usually physically compact, transit-accessible, and technically wired and offers mixed-use housing, office, and retail.

Creativity Zone A geographic area in which the role of arts and culture is wholly integrated part of the local economy.

Current Value Assessment (CVA) The amount of money a property would realize if sold at arm's length by a willing seller to a willing buyer, as outlined in the Assessment Act as of the legislated valuation date.

Payments in Lieu of Taxes (PILT) Federal and provincial properties are exempt from property taxation and generally pay a PILT, which approximates the taxes that would be paid if the property was not exempt.

Post Roll Amended Notices (PRAN) Also known as an Amended Property Assessment Notice, it's a notice issued at any time during the taxation year to correct an error in the assessment or classification of a property that has resulted from incorrect factual information about the property.

Property Assessment Change Notice (PACN) A notice issued to a property owner during the year when there has been a change such as an addition, new construction or renovation or a change to a property's classification or tax exemption status.

Property Code An administrative tool used by MPAC to organize properties.

Realty Tax Class (RTC) A partition's tax classification is based on the legislation found in O. Reg. 282/98 and is used by taxing authorities in conjunction with the Tax Qualifier to determine the rate of taxation.

Realty Tax Qualifier (RTQ) A partition's tax qualifier is used by taxing authorities in conjunction with the Realty Tax Class to determine the rate of taxation.

Site Area The area of any land on which development is or is to be carried out.

Special Amended Property Assessment Notice (SAN) An amendment to the Roll for new legislative provisions that didn't previously exist (such as a new tax program).

Structure Code A property-specific code used by MPAC to identify and capture the design features of a structure.

Total Floor Area The sum total of the total areas of all floors in a building or structure whether at above or below grade measured between the exterior faces of the exterior walls of the building.

Appendix 3: Ontario Regulation 331/21

ONTARIO REGULATION 331/21

made under the

ASSESSMENT ACT

Made: May 6, 2021

Filed: May 7, 2021

Published on e-Laws: May 7, 2021

Printed in *The Ontario Gazette*: May 22, 2021

Amending O. Reg. 282/98

(GENERAL)

1. Ontario Regulation 282/98 is amended by adding the following Part:

PART III.0.2

SMALL BUSINESS SUBCLASS

APPLICATION AND DEFINITIONS

23.0.6 This Part applies with respect to the 2021 and subsequent taxation years.

23.0.7 In this Part,

“Appellate Authority” means,

- (a) in respect of a single-tier municipality that has passed a by-law described in subsection 23.0.8 (2), the employee of the municipality who is appointed by the municipality to hear appeals under section 23.0.12 in connection with the by-law, or
- (b) in respect of an upper-tier municipality that has passed a by-law described in subsection 23.0.8 (2),

- (i) the employee of the upper-tier municipality who is appointed by the municipality to hear appeals under section 23.0.12 in connection with that by-law, or

- (ii) the employee of a lower-tier municipality to which the by-law applies who is appointed by the upper-tier municipality to hear appeals under section 23.0.12 in connection with that by-law; (“autorité d’appel”)

“Program Administrator” means,

- (a) in respect of a single-tier municipality that has passed a by-law described in subsection 23.0.8 (2), the employee of the municipality who is appointed by the municipality to exercise the powers, duties and functions set out in this Part in connection with the by-law, or

- (b) in respect of an upper-tier municipality that has passed a by-law described in subsection 23.0.8 (2),

- (i) the employee of the upper-tier municipality who is appointed by the municipality to exercise the powers, duties and functions set out in this Part in connection with the by-law, or

(ii) the employee of a lower-tier municipality to which the by-law applies who is appointed by the upper-tier municipality to exercise the powers, duties and functions set out in this Part in connection with the by-law; (“administrateur du programme”)

SMALL BUSINESS SUBCLASS

23.0.8 (1) A small business subclass is prescribed for each of the following classes:

1. The commercial property class.
 2. The industrial property class.
 3. Any optional class that contains property that would otherwise be included in the commercial property class or the industrial property class, other than the parking lots and vacant land property class and the large industrial property class.
- (2) The small business subclass applies for a property class within a single-tier or upper-tier municipality only if the council of the single-tier or upper-tier municipality has passed a by-law that opts to have the subclass apply for that property class.
- (3) A by-law opting to have the subclass apply may specify that the subclass only applies to a portion of the municipality.
- (4) A by-law opting to have the subclass apply may establish different requirements for the subclass in different portions of the municipality.
- (5) The small business subclass consists of land which the Program Administrator has approved for inclusion in the subclass for the relevant taxation year in accordance with section 23.0.9 if the land has not subsequently ceased to be included in the subclass as a result of the application of this Part.
- (6) The Program Administrator shall,
- (a) provide the assessment corporation with a list of the properties, or portions of properties, that are approved for inclusion in the subclass for a taxation year; and
 - (b) make the list available for public inspection by electronic means.

INCLUSION IN SUBCLASS

23.0.9 (1) The Program Administrator shall approve land for inclusion in the small business subclass for a taxation year if the Program Administrator determines that the land,

- (a) is used by the owner or a tenant for a small business within the meaning of the by-law described in subsection 23.0.8 (2) that applies in respect of the municipality;
 - (b) would not be in the parking lots and vacant land property class if a by-law referred to in section 13 had been passed opting to have that class apply within the municipality;
 - (c) would not be in the large industrial property class if a by-law referred to in section 14 had been passed opting to have that class apply within the municipality;
 - (d) is not vacant land; and
 - (e) meets any additional eligibility requirements set out for the subclass in the by-law described in subsection 23.0.8 (2) that applies in respect of the municipality.
- (2) At any time after the Program Administrator determines that land should be included in the small business subclass, the Program Administrator may conduct an audit to verify that the land continues to meet the requirements set out in subsection

(1) and the owner must,

(a) allow a person selected by the Program Administrator to inspect the land and to inspect any documents relating to the eligibility of the land in order to verify whether the land continues to meet the requirements set out in subsection (1); and

(b) submit further information or documents as may be required by the Program Administrator in order to assist in the verification.

(3) If the Program Administrator determines that an owner of land included in the small business subclass has not complied with an audit conducted under subsection (2),

(a) the Program Administrator shall provide the owner of the land and the assessment corporation with notice of the determination; and

(b) the land shall cease to be included in the subclass retroactive to the beginning of the taxation year in which the determination was made.

(4) If the Program Administrator determines that land no longer meets the requirements set out in subsection (1),

(a) the Program Administrator shall provide the owner of the land and the assessment corporation with notice of the determination; and

(b) the land shall cease to be included in the subclass retroactive to the beginning of the taxation year or the date the land stopped meeting the conditions for inclusion in the subclass, whichever is later.

REQUIREMENT TO SUBMIT APPLICATION

23.0.10 (1) This section applies if a by-law opting to have the small business subclass apply in a municipality requires that an application be submitted to the Program Administrator in order for land to be approved for inclusion in the small business subclass for a taxation year.

(2) A by-law described in subsection (1) may provide that the owner of the land or the treasurer of a municipality may submit an application in respect of land in the municipality.

(3) The Program Administrator shall, after reviewing the application, approve the land for inclusion in the small business subclass if the Program Administrator determines that the land meets the requirements set out in subsection 23.0.9 (1).

(4) Despite any application requirement in a by-law described in subsection (1), the Program Administrator may approve land for inclusion in the small business subclass in the absence of an application if,

(a) the land was approved for inclusion in the subclass for the previous taxation year; and

(b) the Program Administrator determines that the land continues to meet the requirements set out in subsection 23.0.9 (1).

(5) The Program Administrator shall provide notice to the owner of the land of the determination whether or not to approve the land for inclusion in the small business subclass and, if the application to approve the land was submitted by the treasurer of the municipality, to the treasurer.

REQUESTS FOR RECONSIDERATION

23.0.11 (1) A request for reconsideration described in subsection (2) with respect to whether land is included in the small business subclass shall be made according to the procedure set out in this section instead of the procedure set out in section 39.1 of the Act.

(2) An owner of land may request that the Program Administrator reconsider,

(a) a determination made under subsection 23.0.9 (1) as to whether the land should be approved for inclusion in the small business subclass;

(b) a determination made under subsection 23.0.9 (3) as to whether the owner has complied with an audit; or

(c) a determination made under subsection 23.0.9 (4) as to whether the land meets the requirements set out in subsection (1) of that section.

(3) The following deadlines apply with respect to a request for reconsideration:

1. Subject to paragraph 2, for a determination made under subsection 23.0.9 (1), the request must be made within 90 days after the Program Administrator makes the list of properties approved for inclusion in the subclass for the taxation year available for public inspection under subsection 23.0.8 (6).

2. If the municipal by-law requires an application be submitted to the Program Administrator in order for land to be approved for inclusion in the small business subclass for a taxation year, the request must be made within 90 days after the Program Administrator gives notice of the determination under subsection 23.0.10 (5).

3. For a determination under subsection 23.0.9 (3), the request must be made within 90 days after the Program Administrator gives notice of the determination.

4. For a determination made under subsection 23.0.9 (4), the request must be made within 90 days after the Program Administrator gives notice of the determination.

(4) The request must set out the basis for the owner's request and all relevant facts.

(5) The Program Administrator shall consider the request and, for this purpose, may request further information from the owner.

(6) The Program Administrator shall provide the owner with the results of the reconsideration within 90 days after the day the request is made.

(7) If the Program Administrator determines that land should have been approved for inclusion in the subclass, or that it should not have ceased to be included in the subclass, the Program Administrator shall,

(a) give notice of the determination to the clerk of the municipality;

(b) update the list described in subsection 23.0.8 (6);

(c) provide the updated list to the assessment corporation; and

(d) make the updated list available for public inspection by electronic means.

(8) After receiving notice of the Program Administrator's determination, the clerk of the municipality shall alter the tax roll accordingly and taxes shall be levied in accordance with the amended roll.

APPEALS

23.0.12 (1) An appeal with respect to whether land is included in the small business subclass shall be made according to the procedure set out in this section instead of the procedure set out in section 40 of the Act.

(2) A person who would be entitled to appeal the classification of a property under section 40 of the Act but for the application of subsection (1) may instead appeal the following decisions to the Appellate Authority:

1. A determination of the Program Administrator under subsection 23.0.9 (1) as to whether land should be approved for inclusion in the small business subclass.

2. A determination of the Program Administrator under subsection 23.0.9 (3) as to whether an owner has complied with an audit.

3. A determination of the Program Administrator under subsection 23.0.9 (4) as to whether land meets the requirements set out in subsection (1) of that section.

(3) Subject to subsection (4), no appeal to the Appellate Authority may be made by a person who is entitled to make a request for reconsideration under section 23.0.11 in respect of the land if the person has not made the request within the time limit set out in subsection (3) of that section.

(4) If, in the opinion of the Appellate Authority, there are extenuating circumstances explaining why a request for reconsideration in respect of the land was not made within the time limit set out in subsection 23.0.11 (3), the Appellate Authority may, on an application submitted by the person within 180 days after the applicable deadline in that subsection, extend the deadline for making a request under that subsection.

(5) The deadline for appealing a determination of the Program Administrator to the Appellate Authority is 90 days after the Program Administrator has given notice of the decision to the owner of the land or provided the owner of the land with the results of a reconsideration, whichever is applicable.

(6) The Appellate Authority shall hold a hearing to determine whether the land should have been approved for inclusion in the subclass or should not have ceased to be included in the subclass.

(7) The hearing may be held orally or in writing at the discretion of the Appellate Authority.

(8) The following persons are parties to the appeal:

1. All persons appealing and all persons whose assessment is the subject of the appeal.

2. The Program Administrator.

(9) Subsections 40 (2), (3.1), (9), (14), (15), (22) and (28) of the Act apply, with necessary modifications, to an appeal to the Appellate Authority under this section.

(10) Upon determining the issue, the Appellate Authority shall give the parties, the assessment corporation, the Assessment Review Board and the clerk of the municipality a copy of the decision.

(11) If the Appellate Authority determines that the land should have been approved for inclusion in the subclass, or that it should not have ceased to be included in the subclass, the Appellate Authority shall direct the Program Administrator to approve the property for inclusion in the subclass.

(12) After receiving notice of the Appellate Authority's determination,

(a) the clerk of the municipality shall alter the tax roll accordingly and taxes shall be levied in accordance with the amended roll;

(b) the Program Administrator shall,

(i) update the list described in subsection 23.0.8 (6),

(ii) provide the updated list to the assessment corporation, and

(iii) make the updated list available for public inspection by electronic means.

(13) The Appellate Authority may state a case under section 43 of the Act with respect to the matters set out in subsection (2).

Commencement

3. This Regulation is deemed to have come into force on January 1, 2021.

Made by: Peter Bethlenfalvy
Minister of Finance

Date made: May 6, 2021

Appendix 4: New Optional Small Business Property Subclass – May 2021



Ministry of Finance

NEW OPTIONAL SMALL BUSINESS PROPERTY SUBCLASS May 2021

As announced in the *2020 Ontario Budget*, the Province is providing municipalities with the flexibility to target property tax relief to eligible small businesses through the adoption of a new optional small business property subclass. Amendments to O. Reg. 282/98 under the *Assessment Act*, O. Reg. 73/03 under the *Municipal Act*, 2001 and O. Reg. 121/07 under the *City of Toronto Act*, 2006 were filed on May 7, 2021, which implement the subclass.

This bulletin provides municipalities with an overview of implementation details, including requirements for municipal by-laws, administration of the subclass and provincial matching of municipal property tax reductions with education property tax reductions.

IMPLEMENTATION

Municipal By-Law

Municipalities that choose to implement the optional small business property subclass are required to pass a municipal by-law providing the following:

- The decision to adopt the subclass
 - In two-tiered municipalities, the upper-tier municipality must pass a by-law to adopt the subclass.
- The subclass tax reduction to be applied to the commercial and/or industrial class municipal tax rate
 - The reduction can be set up to 35% of the municipal rate for the property class.
- Requirements that the property must meet to be included in the subclass
 - Municipalities have a variety of priorities that may influence the definition of “small business” and, as such, are in the best position to define eligibility criteria that reflect their local priorities and needs.
 - Note that all commercial and industrial properties (except properties that are or would be classified in the large industrial property class or the parking lot and vacant land property class, or vacant or excess land), are eligible to be included in the new small business property subclass.

- Appointment of a Program Administrator to administer the program, including approving properties for inclusion in the subclass, notifying property owners of decisions and reviewing requests for reconsideration related to a property's eligibility for inclusion in the subclass
- Appointment of an Appellate Authority to hear any appeals of the Program Administrator's eligibility decisions

Municipalities may also choose to require in municipal by-law that landlords pass the tax reduction to tenants as a condition of eligibility in the subclass.

As part of the process of developing a small business property subclass by-law, municipalities are strongly encouraged to consult with their local business stakeholders and other interested parties.

Program Administration

Municipalities are responsible for establishing detailed eligibility criteria for the optional small business subclass. This would require the municipality to develop and administer a process to identify or approve eligible properties for inclusion in this subclass.

Through the appointment of a Program Administrator, municipal staff would identify qualifying properties classified in the commercial or industrial property classes, or both, that meet the eligibility criteria. This could be done either through an application-based process or through a criteria-based determination process. Properties approved for inclusion in the subclass by the Program Administrator must be listed in a publicly accessible registry (details of the registry requirements are found in the Municipal Checklist below). The Program Administrator would also be required to establish a process where an owner may make a request for reconsideration.

Municipalities can utilize the Ontario Property Tax Analysis (OPTA) system to build scenarios and model tax impacts of adopting the small business subclass.

Municipalities are required to notify the Municipal Property Assessment Corporation (MPAC) of the properties included in the subclass, such that MPAC can classify the property within the small business property subclass for taxation purposes.

Municipalities will also be responsible for monitoring ongoing eligibility, updating the registry of eligible properties and notifying MPAC when properties become eligible or ineligible for the subclass as a result of a municipal determination.

Municipalities are also required to appoint an Appellate Authority to hear appeals about whether or not the property should be included in the subclass.

Appeals of assessed value would continue to be directed to the Assessment Review Board.

Funding the Subclass

Consistent with other property subclasses, municipalities can fund the small business subclass either by absorbing the cost through a levy decrease or by funding it broadly across all property classes.

Municipalities also have the option of funding the small business subclass within the commercial and/or industrial property class through the adoption of revenue neutral tax ratios, as per section 9 in O. Reg 385/98 under the Municipal Act, 2001 and section 2.2 in O. Reg. 121/07 under the City of Toronto Act, 2006.

The adoption of the subclass, including how the tax reduction is funded, is a municipal decision. As with other tax rate decisions, municipalities are responsible for understanding the potential tax impact on affected taxpayers. Municipalities are strongly encouraged to consult with their local business stakeholders and other interested parties prior to finalizing their decision-making.

Provincial Matching of Tax Reductions

As announced in the 2020 Budget, the Province will consider matching municipal property tax reductions with education property tax reductions to provide further support for small businesses. To qualify:

- Municipalities would notify the Minister of Finance of the decision to adopt the subclass and submit a municipal by-law outlining the program requirements as well as estimated total municipal tax relief to small businesses.
- Municipalities would conduct consultations with business stakeholders regarding the small business property subclass.
- The Minister would review each submission and determine whether to match municipal reductions on a case-by-case basis.

Submissions to the Minister of Finance can be sent directly to the Minister, with a copy to info.propertytax@ontario.ca, prior to March 31 for the applicable taxation year.

Hon. Peter Bethlenfalvy

Minister of Finance, and President of the Treasury Board
Frost Building South, 7th Floor
7 Queen's Park Cres.
Toronto, ON M7A 1Y7
Minister.fin@ontario.ca

Regulations

Regulations implementing the small business property subclass are available on the Government of Ontario's e-laws website at www.ontario.ca/laws. These include:

- O. Reg. 282/98 under the Assessment Act is amended by O. Reg. 331/21 establishing the optional small business property subclass
- O. Reg. 73/03 under the Municipal Act, 2001 is amended by O. Reg. 332/21 setting the municipal reduction factor for the optional small business property subclass
- O. Reg. 121/07 under the City of Toronto Act, 2006 is amended by O. Reg. 333/21 setting the municipal reduction factor for the optional small business property subclass

FURTHER INFORMATION

Municipalities with any questions regarding the optional small business property subclass may contact the Ministry of Finance at info.propertytax@ontario.ca.