



ADMINISTRATIVE REPORT

Report Date: October 6, 2017
Contact: Esther Lee
Contact No.: 604.873.7080
RTS No.: 12228
VanRIMS No.: 08-2000-20
Meeting Date: October 31, 2017

TO: Vancouver City Council
FROM: General Manager Finance, Risk and Supply Chain Management
SUBJECT: Penalty for Failure to Declare Property Status

RECOMMENDATION

- A. THAT Council approve a \$250 penalty to be imposed on property owners who do not comply with the mandatory requirement to complete an annual property status declaration for the purposes of assessing vacancy tax.
- B. THAT Council instruct the Director of Legal Services to bring forward for enactment amendments to the By-law Notice Enforcement By-law generally in accordance with Appendix A in order to facilitate the administration of the Vacancy Tax By-law.
- C. THAT Council approve the revised Screening Officer Policy set out in Appendix B to become effective upon enactment of the by-law referred to in Recommendation B.

REPORT SUMMARY

This report proposes amendments to the By-law Notice Enforcement By-law to establish penalties and procedures for the enforcement of the Vacancy Tax By-law which requires owners of Class 1 residential property to complete an annual property status declaration.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

On November 4, 2010 Council enacted the By-Law Notice Enforcement By-Law and adopted the Screening Officer Policy. This established an alternative system to the court-based model to enforce violations of parking related by-laws.

On November 16, 2016 Council approved the Vacancy Tax By-law (No. 11674) to impose a tax on vacant Class 1 Residential properties in the City of Vancouver.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Manager of Finance Risk and Supply Chain Management concurs with the recommendations.

REPORT

Background/Context

The By-law Notice Enforcement By-law establishes a method of by-law enforcement. The by-law forum is simple and effective and is presided over by provincially selected adjudicators. The City has successfully used the by-law forum to enforce parking by-law matters since February 2011. Many other local governments in BC use the by-law forum to enforce their by-laws.

In November 2016, to address the housing crisis in the Vancouver, Council enacted the Vacancy Tax By-law to increase the supply of rental housing for people who live and work in the City. The Vacancy Tax By-law establishes the basis on which a vacancy tax is imposed, administered and collected, as well as a process to review complaints. Section 5.2 of the Vacancy Tax By-law requires owners of residential property to submit an annual property status declaration:

5.2 A registered owner of residential property must submit a completed annual property status declaration to the City on or before the 2nd business day in February of each year.

2017 will be the first year the vacancy tax, also known as the Empty Home Tax (EHT), will be in effect. Instructions on how to make a property status declaration will be mailed with the Advance Tax Notices in November 2017. A property status declaration must be submitted by February 2, 2018 otherwise the property will be deemed vacant and be subject to the EHT. A failure to submit a property status declaration is an offence under the Vacancy Tax By-law so the City can also prosecute for fines which would be imposed by the court and would range from \$250 to a maximum of \$10,000 per day of the continuing offence. This would be in addition to the penalty imposed by the By-law Notice Enforcement By-law.

To encourage timely compliance with the Vacancy Tax By-law, it is recommended that a penalty of \$250 will be applied for not filing a declaration by the required deadline. Proposed amendments to the By-law Notice Enforcement By-law is attached in Appendix A and includes provision for a \$125 discount for early payment and a \$125 surcharge for late payment as well as the appointment of screening officers. Proposed amendments to the Screening Officer Policy to add screening officers for the Vacancy Tax By-law disputes is attached in Appendix B.

The administration and collection of the penalty will follow the existing by-law adjudication process. Property owners may dispute the penalty and request to have their by-law notice be reviewed by a screening officer and an adjudicator. The adjudication fee is \$25 and is payable if the by-law contravention is upheld.

Strategic Analysis

Failure to make a property status declaration by the deadline will result in a property being deemed vacant, and subject to the EHT. However, upon receipt of the tax notice, a homeowner may submit a notice of complaint, together with information and evidence to support and establish their property status. The goal is to encourage owners to submit the property status declaration as required and not rely on the complaint process. A \$250 penalty for failing to file a property status declaration will encourage greater compliance and reduce the administrative effort of the complaint process.

Implications/Related Issues/Risk (if applicable)

Financial

As the EHT program is in its initial year, it is difficult to forecast public behaviour and compliance; as such the expected level of incremental revenues related to the By-law fine is uncertain. Incremental costs for the EHT program By-law Adjudication activities will be brought forward as part of the 2018 EHT operating budget and will be offset to some extent by any future By-law fine revenue.

Legal

The Local Government By-law Notice Enforcement Act authorizes Council to enforce the Vacancy Tax By-law through the by-law forum.

CONCLUSION

Staff recommend amendments to the By-law Notice Enforcement By-law in order to facilitate the administration of the Vacancy Tax.

* * * * *

BY-LAW NO.

A By-law to amend the
By-law Notice Enforcement By-law No. 10201
to allow for the enforcement of the Vacancy Tax By-law

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of By-law Notice Enforcement By-law No. 10201.
2. Council strikes section 7.3 of the By-law and inserts the following as a new section 7.3:

"Appointment of Screening Officers II

7.3 Council hereby designates all persons employed by the city as an Operations Supervisor - Parking Enforcement, Superintendent II - Parking Enforcement, and all Supervisors and Managers of Revenue Services as persons that may be appointed as a Screening Officer II, and hereby appoints them as a Screening Officer II."

3. Council strikes section 8 of the By-law and inserts the following as a new section 8:

"By-law enforcement officers

8. Council appoints:

(a) the Collector of Taxes, including all Managers and Supervisors in Revenue Services as by-law enforcement officers for the purposes of enforcing section 5.2 of the Vacancy Tax By-law; and

(b) parking enforcement officers and police officers for the purposes of enforcing all other by-law contraventions set out in Schedule A of this By-law."

4. Council inserts at the bottom of Schedule A to the By-law, Schedule A attached to this by-law.
5. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this by-law.
6. This by-law is to come into force and take effect on the date of enactment.

ENACTED by Council this ____ day of _____, 2017

Mayor

City Clerk

DESIGNATED BY-LAWS,
BY-LAW CONTRAVENTIONS AND PENALTIES

By-law and By-law Section	Description	A1 Penalty	A2 Discount	A3 Surcharge
Vacancy Tax By-law No. 11674				
5.2	Fail to file declaration	250	125	125

Screening Officer Policy
BY-LAW NOTICE ENFORCEMENT BY-LAW

The City of Vancouver has designated by-law contraventions that may be dealt with by By-law Notice and has established the positions of Screening Officer I and Screening Officer II under section 7.1 of the By-law Notice Enforcement By-law.

Under the authority of section 10 of the Local Government By-law Notice Enforcement Act (the "Act") a Screening Officer must review all disputed By-law Notices before adjudication and has the authority to cancel a By-law Notice in accordance with the Act.

Under section 10(2)(a) of the Act a screening officer is authorized to cancel a By-law Notice if, in the screening officer's opinion:

- i. the contravention did not occur as alleged;
- ii. the By-law Notice does not comply with section 4(4) of the Act; or
- iii. a ground for cancellation authorized by the local government is satisfied.

Any Screening Officer I and any Screening Officer II may cancel a motor vehicle related By-law Notice in accordance with sections 10(2)(a)(i) and 10(2)(a)(ii) of the Act.

Any Screening Officer II may cancel a Vacancy Tax related By-law Notice in accordance with sections 10(2)(a)(i) and 10(2)(a)(ii) of the Act.

This policy outlines when each category of Screening Officer can cancel a By-law Notice under section 10(2)(a)(iii) of the Act.

Motor Vehicle and Parking Enforcement

Screening Officer I and Screening Officer II

The City of Vancouver authorizes any Screening Officer I and any Screening Officer II to cancel a motor vehicle related By-law Notice if, in the screening officer's opinion:

- 1) The identity of the alleged offender cannot be proven because:
 - a) The By-law Notice was issued to the wrong person;
 - b) The vehicle involved in the By-law contravention had been stolen; or
 - c) The vehicle registration decal or vehicle licence plate of the vehicle involved in the contravention had been stolen.
- 2) The person who was issued the By-law Notice was authorized to take the
 - i) action as a result of an exception specified in a City of Vancouver by-law, or
 - ii) other enactment. For example,
 - a. The person was an exempt resident; or
 - b. The vehicle named in the By-law Notice was exempt.
- 3) The adjudicator is not likely to be satisfied that the contravention alleged in the By-law Notice occurred as alleged because the evidence is not adequate to prove a contravention on a balance of probabilities.

- 4) A duplicate By-law Notice was inadvertently issued for the same
 - i) contravention and the same incident, but this authority to cancel a By-law
 - ii) Notice does not apply to a By-law Notice issued for a continuing
 - iii) contravention occurring on successive days.

Screening Officer II

The City of Vancouver also authorizes any Screening Officer II to cancel motor vehicle related By-law Notices if, in the screening officer's opinion:

1. The alleged contravention of the by-law was necessary for the preservation of health and safety.
2. It is not in the public interest to proceed to an adjudication of the By-law Notice.

Vacancy Tax

Screening Officer II

The City of Vancouver authorizes any Screening Officer II to cancel a By-law Notice concerning section 5.2 of the Vacancy Tax By-law if, in the screening officer's opinion:

- 1) The contravention cannot be proven because:
 - a. The By-law Notice was issued to the wrong person;
 - b. The alleged offender was never sent a notice that they were required to make a declaration;
 - c. The City made an error in recording the declaration receipt; or
 - d. The folio was not subject to a requirement for the owner to declare.
- 2) The adjudicator is not likely to be satisfied that the contravention alleged in the By-law Notice occurred as alleged because the evidence is not adequate to prove a contravention on a balance of probabilities.
- 3) A duplicate By-law Notice was inadvertently issued for the same contravention and the same incident.
- 4) It is not in the public interest to proceed to an adjudication of the By-law Notice.