



## ADMINISTRATIVE REPORT

Report Date: August 31, 2018  
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Meeting Date: September 19, 2018

TO: Standing Committee on City Finance and Services  
FROM: Director of Finance  
SUBJECT: Amendments to Vacancy Tax By-law No. 11674

### **RECOMMENDATION**

THAT Council approve the amendments to the Vacancy Tax By-law as described in this report and instruct the Director of Legal Services to bring forward for enactment a by-law to amend the Vacancy Tax By-law generally as set out in Appendix A.

### **REPORT SUMMARY**

Council approved the Empty Homes Tax (EHT) program and enacted the Vacancy Tax By-law on November 16, 2016. Since the by-law was enacted, staff have implemented the EHT program, reviewed the first year of declarations and commenced the audit and compliance program. As a result of this work, staff have identified minor by-law amendments for Council's consideration which will provide clarification and will assist in streamlining implementation of the EHT program in subsequent years. This report provides the rationale for each of the recommended amendments. In accordance with the by-law, the first annual report on the amount of money raised by the EHT and how such monies were or are intended to be used will be reported to Council and posted on the City website by December 1, 2018.

### **COUNCIL AUTHORITY/PREVIOUS DECISIONS**

Part XXX (Sections 615-622) of the *Vancouver Charter* provides authority for Council to, by by-law, impose an annual vacancy tax.

On November 16, 2016 Council approved Vacancy Tax By-law No. 11674 to levy a tax on empty and under-utilized class 1 residential properties within the city of Vancouver.

On July 11, 2017, Council enacted By-Law No. 11855 to amend the Vacancy Tax By-law following program design and public feedback.

## **CITY MANAGER'S/GENERAL MANAGER'S COMMENTS**

The City Manager recommends approval of the foregoing.

### **REPORT**

#### ***Background/Context***

The EHT is a tax on empty and under-utilized class 1 residential properties in the city of Vancouver. The overarching goal of the EHT is to increase the number of homes being made available for rent given the low rental vacancy rate in Vancouver. Homes that are determined or deemed to be empty are subject to a tax of 1% of the property's taxable assessed value.

Staff have been through the first year of implementation of the tax, and audit activities are now underway. Current projected 2017 EHT revenue is \$30 million, which will cover the one-time implementation costs (\$7.5 million) and first-year (2018) operating costs (\$2.5 million). In accordance with Section 616(4) of the Vancouver Charter the remaining revenue can only be used for the purposes of initiatives respecting affordable housing. On June 20, 2018, Council approved allocation of \$8 million (representing collected revenue to date less costs) to affordable housing initiatives, including \$3.5 million to contribute to purchase buildings and/or provide assistance toward improved living conditions in private SRO housing; \$4.175 million to support creation and renewal of affordable non-profit and co-op housing; \$175,000 to support vulnerable renters; and \$150,000 to fund new initiatives including skills, asset management, and peer support training for residents of supportive housing and matching underutilized homes with renters seeking housing. Further information regarding the EHT audits, annual revenues and planned expenditures will be included in the Vacancy Tax Annual Report, which will be posted to the City website by December 1, 2018.

Through the initial year of implementation and audit of the by-law, staff have identified the need for minor by-law amendments to clarify the by-law and to ensure consistent interpretation of the by-law for property owners. Reports to Council in September and November of 2016 detailed the careful consideration given to the impact of the EHT on second home property owners, and weighed the impact of the tax on second home owners against the effectiveness of the tax and the enforceability of the program.

Staff will continue to review certain exemptions and may propose additional amendments in 2019. It is too early in the program to determine whether the tax rate of 1% is effective in achieving the desired policy outcome, however staff will continue to review this as additional market and audit data becomes available at the end of 2018 or early 2019. Staff will also be continuously monitoring the Provincial Speculation Tax and changes to the Residential Tenancy Act for alignment with EHT and for potential impact to the Vancouver rental market.

Staff will also continue to monitor primary and secondary rental market indicators as provided by the Canada Mortgage Housing Corporation (CMHC) in the fall of each year. CMHC reported a slight increase in the primary rental market vacancy rate for the City and region from October 2016 to October 2017, from 0.8% to 0.9% for the City of Vancouver and from 0.7% to 0.9% for the region.<sup>1</sup> Staff will report on updated rental vacancy rates and additional rental market indicators when the 2018 CMHC Rental Market Report is released in the fall of this year.

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<sup>1</sup> CMHC Rental Market Report, Vancouver CMA 2017

## ***Strategic Analysis***

Through the first year of implementation and compliance work, staff have identified a number of minor amendments to the by-law for Council's consideration (see Appendix A) in order to ensure consistency in interpretation and understanding of the intent of the by-law as well as clarity in definitions of terms. Unless otherwise noted, the amendments are effective immediately on enactment.

## **Recommended Amendments to the Vacancy Tax By-law**

### **Amendment to the owner in care exemption**

The Vacancy Tax By-law currently provides an exemption if a property has been unoccupied for more than 180 days during the applicable tax year because the occupier, tenant or subtenant is undergoing medical care or residing in a hospital or long term care facility; the exemption is only allowed for a maximum of two consecutive reference periods. This exemption was intended for cases where a previously occupied property became unoccupied due to the owner or occupier moving to a care facility in order to allow time for the property owner to find an alternative use for the property.

In 2017, this exemption was claimed in 170 cases. Some claims made by property owners seeking an exemption for second homes on the basis that one of the occupants required some medical treatment during the year were not consistent with the intent of the by-law and were not accepted. Staff recommend that the by-law be amended to clarify that the property must have previously been the principal residence of an owner or occupied for residential purposes by a tenant or subtenant in order for the exemption to apply and that the exemption is only applicable if all occupants cannot live there because they are residing in a care facility. The exemption will continue to be available to owners who left their home unoccupied and changed their principal residence to a care facility because they were required to reside in a hospital, long term or supportive care facility and have not yet been able to make arrangements to rent or sell the home. It would also apply to owners who rented out their homes but the home has not been occupied by the tenant for more than 180 days because the tenant was required to reside in a hospital, long term or supportive care facility, as originally intended in the by-law as approved by Council.

### **Amendment to the rental restriction or prohibition exemption**

The Vacancy Tax By-law currently provides an exemption if a property has been unoccupied for more than 180 days because the property is a strata unit and the strata by-laws prohibit or restrict rentals, as long as the prohibition was in place prior to enactment of the Vacancy Tax By-Law. This exemption was claimed in 563 cases. The purpose of this exemption is to provide relief to property owners who are unable to rent out their units due to pre-existing strata restrictions, which was a significant concern received from existing homeowners during public consultation for the EHT in 2016. The reason for requiring the strata by-law to be in place prior to enactment of the Vacancy Tax By-law was to prevent strata corporations from passing by-laws to restrict or prohibit rentals to avoid the EHT. This would have defeated the goal of the EHT which was to encourage more owners to rent units.

Some strata's allow rental of a certain number of units and manage the process through a waitlist. The by-law does not currently require a property owner claiming the exemption to be on the waitlist and as a result potentially allows property owners to leave their strata properties

empty with no intention to rent them out even if there is an opening on the waitlist. Staff recommend that the by-law be amended to require owners to submit evidence that they were unable to rent the residential property during the vacancy reference period due to this restriction.

Staff have also received enquiries from the public on whether the exemption would apply if a pre-existing strata by-law was amended to reduce the maximum allowable number of permitted strata rentals. This is contrary to the intent of the language in the by-law but it appears that more clarity is required. If this were allowed, a strata restriction allowing for example, 24 permitted strata rentals could be amended to allow only one in future years and meet the requirements of the exemption. Staff recommend that the by-law be amended to exclude from this exemption any pre-November 16, 2016 strata rental restriction by-laws which reduced the number of allowable rental units after November 16, 2016.

In several situations, property owners were declaring multiple properties within the same building under the strata restriction exemption. This has allowed some owners (e.g. development corporations or individuals owning multiple strata units) to leave units empty and avoid the EHT. Staff recommend that the by-law be amended to restrict this exemption to only one unit per owner. As this amendment further restricts the exemption and is not simply a clarification, staff recommend this change be effective for the 2020 reference year to provide sufficient notice to property owners.

### **Amendment to the occupancy for full time work exemption**

The Vacancy Tax By-law currently provides an exemption for a property that was not the principal residence of a registered owner if it was occupied by a registered owner for a minimum of 180 days because the owner worked in Vancouver. The intent of this exemption was to allow full time workers in the City to keep a second home in the City because they maintained a principal residence that was too far away to travel daily for full time employment. This exemption was claimed by 196 property owners in 2017. Through the audit work it became clear amendments are required to increase understanding and ensure consistency in the application of the exemption.

In some situations the property owner was able to provide evidence of full time work within the city of Vancouver but it was noted that their principal residence was located within Greater Vancouver (i.e. West Vancouver, Burnaby, etc.). In some situations, their principal residence was located in the city of Vancouver itself. In this case, property owners could have multiple properties within Greater Vancouver and have their empty Vancouver property exempt under the by-law which is not consistent with the intent of the by-law. In addition, the by-law refers to work in “the City”, which is defined in the Vancouver Charter as “City of Vancouver” and this unfairly precludes individuals who work nearby (for example, UBC or Burnaby) from claiming this exemption.

Staff recommend the by-law be amended to clarify that the exemption only applies to those with a principal residence outside Greater Vancouver who are coming to work in Greater Vancouver. For the purposes of the by-law, Greater Vancouver is to be defined as follows: Village of Anmore, Village of Belcarra, City of Burnaby, City of Coquitlam, City of Delta, City of Langley, Township of Langley, Village of Lion’s Bay, City of Maple Ridge, City of New Westminister, City of North Vancouver, District of North Vancouver, City of Pitt Meadows, City of Port Coquitlam, City of Port Moody, City of Richmond, City of Surrey, Tsawwassen First Nation, City of Vancouver, District of West Vancouver, City of White Rock, University Endowment Lands , and University of British Columbia.

The exemption has also been claimed by many individuals who are using a class 1 residential property solely as an office space as opposed to using the property for residential purposes. BC Assessment has confirmed that properties that are used as office spaces should be in class 6 business. In order to clarify that homeowners must appropriately class their properties and pay the correct amount of property tax, staff recommend an amendment to the by-law clarifying that properties must be used for residential purposes in order to claim the work exemption.

The word “work” in the bylaw has been interpreted extremely broadly such that many self-employed individuals or those with part-time volunteer work which does not require physical presence in the City have attempted to claim this exemption which was not the intent of the exemption. Staff recommend that the exemption be changed to refer to full-time employment requiring a physical presence in Greater Vancouver.

### **Amendment to the court order exemption**

The Vacancy Tax By-law currently provides an exemption for a property that was unoccupied for more than 180 days solely because a court order, court proceeding or order of a governmental authority prohibits its occupancy. This exemption was claimed in 34 cases. In many instances, owners claimed this exemption using very dated court orders or orders of governmental authorities (sometimes more than 10 years old) and the owners have taken no action to remedy the situation. Staff recommend an amendment to clarify that appropriate action to permit occupancy must be diligently pursued without unnecessary delay and in accordance with stated timelines in the court order or order of the governmental authority.

### **Minor amendments to clarify the by-law**

Staff have been closely monitoring enquiries from the public and issues that have arisen during the first year of audit and recommend the following minor changes to provide clarity:

<b>Section</b>	<b>Topic Area</b>	<b>Recommended Amendment</b>
1.2	“principal residence”	Clarify that an individual can only have one principal residence
1.2	“residential property”	Remove duplication of the term “residential property” and reference to “phased development parcels”
	“tax year”	Change to “means the calendar year in which the vacancy tax is imposed”
1.2	“vacancy reference period”	Change to “means the calendar year prior to the then applicable tax year”
2.2	Unoccupied property	Change “occupied” to “occupied for residential purposes”
2.3	Vacant property	Change from 180 days to six months
3.1	Property forming part of estate	Change from 180 days to six months
3.2	Property undergoing redevelopment	Change from 180 days to six months
3.3	Property of owner in care	Change from 180 days to six months
3.4	Rental restriction	Change from 180 days to six months
3.5	Transfer of property	Change transferred to one hundred percent of the legal interest

3.6	Occupancy for full-time work	Change “occupied” to “occupied for residential purposes”
3.7	Court order	Change from 180 days to six months
3.8	Limited use	Change from 180 days to six months
4.4	Deemed receipt	Add the words “or instructions to make the property status declaration”
4.10	Power to request particulars	Replace “property tax declaration form” with “property status declaration”
5.4	Providing information or evidence	Clarify that the Review Officer has the same authority as Collector of Taxes
6.3	Deadline to submit complaint	Change to 34 days
6.4(e)	Notice of complaint	Remove address requirement
6.8	Mail to address from BC Assessment	The vacancy tax review officer must advise the registered owner of the determination by mailing a copy of the determination to the registered owner at the address appearing on the real property tax roll.
6.11	Deadline to submit review request	Change to 34 days
6.12(e)	Review request	Remove address requirement
6.12(g) and (h)	Review request	Remove subsections

### ***Implications/Related Issues/Risk***

#### ***Legal***

Part XXX (Sections 615-622) of the *Vancouver Charter* provides authority for Council to, by by-law, impose an annual vacancy tax. Council may amend the by-law at its sole discretion at any time. These amendments would come into force upon enactment of the amending by-law, a draft of which is attached as Appendix A, and would apply immediately unless otherwise noted.

### ***CONCLUSION***

Since the enactment of the Vacancy Tax By-law in November 2016, the EHT project team has been working on implementation and audit of the EHT program. Through the program audit work, the team has identified a number of amendments to the by-law for Council’s consideration. Staff recommend that Council approve the proposed amendments and instruct the Director of Legal Services to prepare an amending by-law to bring forward for enactment.

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BY-LAW NO. \_\_\_\_\_

**A By-law to amend the Vacancy Tax By-law No. 11674**

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

1. This By-law amends the indicated provisions of the Vacancy Tax By-law No. 11674.
2. In section 1.2, Council:
  - a. inserts the following new definition in correct alphabetical order:

““Greater Vancouver” means the Village of Anmore, Village of Belcarra, City of Burnaby, City of Coquitlam, City of Delta, City of Langley, Township of Langley, Village of Lion’s Bay, City of Maple Ridge, City of New Westminster, City of North Vancouver, District of North Vancouver, City of Pitt Meadows, City of Port Coquitlam, City of Port Moody, City of Richmond, City of Surrey, Tsawwassen First Nation, City of Vancouver, District of West Vancouver, City of White Rock, University Endowment Lands, and University of British Columbia;”;
  - b. adds the following words to the end of the definition of “principal residence”:

“and, for the purposes of this by-law, a person may only have one principal residence”;
  - c. strikes out the following from the definition of “residential property”:
    - (i) the duplicate words ““residential property”,”, and
    - (ii) the words “phased development parcels or”;
  - d. strikes out the definition of “tax year” and substitutes the following:

““tax year” means the calendar year in which the vacancy tax is imposed;” and
  - e. strikes out the definition of “vacancy reference period” and substitutes the following:

““vacancy reference period” means the calendar year prior to the then applicable tax year;”.
3. In subsection 2.2(b), Council adds the words “for residential purposes” after “occupied by a tenant or subtenant”.
4. In sections 2.3, 3.1, 3.2, 3.3, 3.4, 3.7 and 3.8, Council strikes out the words “180 days” and substitutes “six months”.
5. In section 3.3, Council strikes out the words “because the occupier or tenant or subtenant is undergoing medical care or is” and substitutes “because all occupiers who were

previously occupying the residential property as a principal residence or all tenants or subtenants who were previously occupying the residential property for residential purposes are”.

6. In section 3.4, Council:

- a. in subsection (a), adds the word “and” after “strata development;”
- b. strikes out subsections (b) and (c) and substitutes the following:

“(b) prior to November 16, 2016, the by-laws of the strata either:

- (i) prohibited rentals altogether, or
- (ii) restricted the number of strata units that could be rented and the maximum number of permitted strata rentals for the strata development has already been reached, provided that:

(A) the number of permitted strata rentals has not been decreased on or after November 16, 2016, and

(B) the registered owner is able to submit evidence that they were unable to rent the residential property during the vacancy reference period due to this restriction.”.

7. In section 3.4, Council:

- a. strikes out the word “and” from the end of section 3.4 (a);
- b. strikes out “.” at the end of section 3.4(b) and substitutes “; and”; and
- c. adds a new section 3.4(c) as follows:

“(c) provided that a registered owner may only claim this exemption for one strata unit.”

8. In section 3.5, Council strikes out the words “the title to the residential property was transferred” and substitutes “one hundred percent of the legal interest in the property was transferred”.

9. Council strikes out section 3.6 and substitutes the following:

**“Occupancy for full-time employment**

3.6 A vacancy tax is not payable under this by-law for a parcel of residential property if the principal residence of the registered owner during the vacancy reference period was outside of Greater Vancouver, but the residential property was occupied by the registered owner for residential purposes for a minimum aggregate of six months during the vacancy reference period because the registered owner was employed full-time and the nature of that employment required their physical presence in Greater Vancouver.”.



10. In Section 3.7, Council adds the words “, provided that the court proceedings or any conditions or requirements set out in any court order or order of a governmental authority are being diligently pursued without unnecessary delay by the registered owner and within any stated timelines” after the words “prohibits its occupancy”.
11. In section 4.4, Council adds the words “or instructions to make the property status declaration” after the words “property status declaration form”.
12. In section 4.10, Council strikes out the words “property tax declaration form” and substitutes “property status declaration”.
13. In section 5.4, Council:
  - a. in subsection (a), adds the words “or vacancy tax review officer” after the words “Collector of Taxes”;
  - b. in subsection (b), adds the words “or vacancy tax review officer” after the words “Collector of Taxes”; and
  - c. in subsection (c), adds the words “or vacancy tax review officer” after the words “Collector of Taxes”.
14. In subsection 6.3(b), Council strikes out the number “28” and substitutes “34”.
15. In section 6.4, Council strikes out subsection 6.4(e) and renumbers the remaining subsections accordingly;
16. In section 6.8, Council strikes out the words “at the address provided by the registered owner pursuant to section 6.4(e)” and substitutes “at the address appearing on the real property tax roll”.
17. In section 6.11, Council strikes out the number “21” and substitutes “34.”
18. In section 6.12, Council:
  - a. adds the word “and” after “;” in subsection (d);
  - b. strikes out subsection (e);
  - c. strikes out “;” at the end of subsection (f) and substitutes “.”;
  - d. strikes out subsection (g); and
  - e. strikes out subsection (h).
19. 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.
20. This By-law is to come into force and take effect on the date of its enactment, except that section 7 comes into force and takes effect on January 1, 2020.

ENACTED by Council this

day of

, 2018

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Mayor

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City Clerk

**EXPLANATION**

**Vacancy Tax By-law**

Enactment of this by-law will implement Council's resolution of \_\_\_\_\_, 2018 to amend the Vacancy Tax By-law.

Director of Legal Services  
, 2018