

MEMORANDUM

November 14, 2018

TO: Mayor and Council

CC: Sadhu Johnston, City Manager
Paul Mochrie, Deputy City Manager
Lynda Graves, Administration Services Manager, City Manager's Office
Sandra Singh, General Manager, Arts, Culture and Community Services
Kaye Krishna, General Manager, Development, Building and Licensing
Francie Connell, Director of Legal Services
Rena Kendall-Craden, Civic Engagement and Communications Director
Katrina Leckovic, City Clerk
Neil Monckton, Chief of Staff, Mayor's Office
Anita Zaenker, Chief of Staff, Mayor's Office
Alvin Singh, Communications Director, Mayor's Office

FROM: Gil Kelley
General Manager, Planning, Urban Design and Sustainability

SUBJECT: Motion on Protecting Tenants from Renovictions and Aggressive Buy-Outs

Background and Context:

A growing population and economy, shifting housing preferences toward rental, and limited new supply of new purpose-built rental housing in recent decades have contributed to an extremely tight rental market in Vancouver. At 0.9 per cent, Vancouver's rental vacancy rate is among the lowest in Canada¹ - a situation that has driven increased competition for housing among renters and a significant increase in average rents in recent years. The Canada Mortgage Housing Corporation reports a 23 per cent increase in average rents across all unit types in the City of Vancouver between 2012 and 2017.²

Even as the City has approved the highest level of new purpose-built rental housing in decades, a significant share of Vancouver renters still rely on the city's older stock of purpose-built rental apartments for stable, affordable homes that allow them to access employment and education and connect with their communities. However, over half (52 per cent) of this stock was constructed between fifty and seventy years ago and is facing increased need for retrofits and upgrades in order to meet modern structural, seismic, energy, and accessibility standards.

¹ CMHC Rental Market Report 2017

² CMHC

Ensuring a safe, resilient rental stock and expanding the supply of rental housing are both key priorities for the City; however, the trade-offs are significant. In the context of today's high rents and extremely low rental vacancy, displacement can mean serious challenges for renter households who relied on affordable rents in their existing units in order to stay in the City. Many renters – particularly seniors, families, and people earning lower incomes – find they are unable to find a suitable replacement home when they are displaced. At the same time, we hear from landlords who report that they face challenges financing major repairs and retrofits with existing rental revenue, and that the RTA provides only limited opportunity to raise rents for emergency repairs.

Protections for Renters – City and Provincial Jurisdiction

In British Columbia the jurisdiction over residential tenancies has been retained by the Provincial government. Pursuant to this jurisdiction the Province has enacted the Residential Tenancy Act (the “RTA”). The RTA governs all residential tenancies in British Columbia and creates the Residential Tenancy Branch (“RTB”) whose role is to advise tenants and landlords on their rights under the RTA and provide a dispute resolution mechanism for landlord/tenant disputes. Under the RTA the RTB has exclusive jurisdiction over all residential tenancy disputes in British Columbia.

The RTA sets the basic terms for all residential tenancies and sets out the specific rights and responsibilities for both tenants and landlords, including:

- Rent increases;
- Condition inspections; and
- Ending a tenancy

With respect to the ending of tenancies for renovations or demolition the RTA sets out the requirements that all landlords must satisfy before issuing a notice to terminate tenancy for the purposes of renovating or demolishing the building. The landlord must:

- have all necessary permits for the proposed work;
- intend to undertake the proposed work in a timely manner; and
- be able to demonstrate that unit must be vacant to carry out the proposed work

Any disputes as to the whether the landlord has satisfied the above requirements are settled via arbitration at the RTB. Whether or not a tenancy may continue during the course of renovations even if the unit is not occupiable for a period of time is an issue which will depend on the facts of each individual case. In appropriate circumstances an RTB arbitrator may decide that a tenancy continues during major renovations even if the tenant cannot occupy the unit. There is little guidance in either the case law or the RTA as to exactly what circumstances might result in a tenancy continuing during major renovations.

The City of Vancouver has authority to regulate the development of lands and the construction of buildings within the City. Pursuant to that authority the City issues development permits (“DP”) under the Zoning and Development Bylaw and building permits under the Building Bylaw (“BP”).

There are legal limits on the types of conditions that can be placed on both a Development Permit and a Building Permit:

- DP Conditions must relate to the form and use of the development; and
- BP Conditions must relate to the construction and code compliance of the building

Pursuant to the City's authority to regulate the development of lands the City has created the Tenant Relocation and Protection Policy (TRPP). The TRPP requires DP applicants to provide Tenant Relocation Plans (TRP), intended to protect renters by mitigating the impacts of displacement resulting from redevelopment activity. The TRP acts as a supplement to the RTA:

- The TRP is imposed as a condition of DP issuance.
- The TRP cannot be imposed on a BP as there is no argument that tenant relocation is related to the construction of the building.

As the TRP is enforced as a condition of development permit issuance it is only required in circumstances where the proposed work requires a development permit. The TRP does not apply to building permits as tenancy issues are not related to the issuance of a building permit.

As the City's ability to impose a TRP is limited to circumstances where a landlord is seeking to do work that requires a development permit it is beyond the City's jurisdiction to expand the TRPP to all permits issued by the City. This limitation means that the City can only impose the TRPP on a limited number of rental properties that are subject to renovation or demolition.

The TRP cannot require that landlords offer tenants the opportunity to temporarily move out for the duration of the renovations without their leases ending or rent increasing as those leases are governed by the RTA and the City has no authority to impose additional requirements on those agreements.

Motion Recommendation B asks that the City devise methods to track all apartment buildings sold in Vancouver and immediately inform Vancouver tenants of their rights. The information on the sale of apartments is publicly available and could be tracked. However, at present the City is not in a position to advise tenants of their rights as this would constitute legal advice. If the City wishes to provide legal advice to members of the public on tenancy issues the City can create and fund an independent body that would then engage lawyers to provide that advice.

With respect to recommendation C in the Motion, the City is a creature of the *Vancouver Charter* and is only able to exercise jurisdiction within the specific powers allocated to it by the Provincial government in the *Vancouver Charter*. At present the City has no authority to regulate and publicly register private agreements such as tenant buyouts.

City Actions to Protect Renters and Rental Housing

The City of Vancouver leads the region in terms of policy measures to protect existing renters impacted by major renovations and redevelopment, as well as measures to protect and retain existing purpose-built rental housing. The City is also continuing to expand its activities to support renters, with a new Renter Support Team coming on-line that will enhance service to renters and advocates. Additional detail on these measures is summarized below:

- **The Rental Housing Stock Official Development Plan (RHS ODP)** requires one-for-one replacement of existing rental housing when new development is proposed in the City's major apartment zones – including certain RM, FM, and CD-1 zones. In most cases, the replacement requirement removes the financial incentive to redevelop rental properties, resulting in protection of the rental stock. Approximately 53,500 units of rental housing are protected under the RHS ODP, or 77 per cent of the total rental stock.
- **The Tenant Relocation and Protection Policy (TRPP)** requires additional compensation and assistance for renters being impacted by major renovations and redevelopment, including additional months' rent, compensation for moving expenses, and assistance with identifying alternate accommodations. The TRPP is intended to supplement RTA requirements.
- ***New* A Renter Support Team** is being developed with resources for dedicated City staff. Initial actions will include enhancing access to information about permit applications (e.g. recent removal of research fees, searchable online rental standards database); providing support to organizations delivering direct legal and RTA advice to tenants; and coordinating City services to prioritize responses to renter concerns.
- **Advocacy to Senior Government**, including federal and provincial governments, could also have a significant impact on renters. Current and future action to reform the Residential Tenancy Act will help to clarify renters' rights in BC. Potential action from the federal government to address affordability for renters could bring additional support to Vancouver tenants. The National Housing Strategy includes several measures to support renters, including the proposed Canada Housing Benefit (an income supplement program) and funding for local advocacy groups that support renters. Staff have also advocated to the Provincial and Federal government for tax incentives, financing, and grants to encourage upgrades to existing rental housing.

City Participation in the Provincial Rental Housing Task Force

In April 2018, the Premier appointed a Rental Housing Task Force to provide advice on measures to address protections for renters and rental housing providers throughout the province. The task force is led by Vancouver-West End MLA Spencer Chandra Herbert, along with MLAs Adam Olsen (Green Party) and Ronna-Rae Leonard (NDP).

City of Vancouver staff were key participants in the Province's Rental Housing Task Force launched by the Province earlier this year. During the Task Force consultation period this summer, Staff provided an in-person briefing as well a written submission, both focused on the issue of enhancing renter supports in the case of renovations as well as supports for renters in privately-owned low-income housing. Staff recommendations focused on four key areas:

- In the case of minor renovations that may not require renter displacement, ensuring clarity in the Notice to End Tenancy for renovations to prevent unnecessary evictions
- In the case of major renovations requiring temporary or permanent renter displacement, ensuring that the RTA prioritizes stable tenancies and provides adequate support for renters
- Supporting landlords with needed upgrades in existing rental housing
- Enhancing support for renters in low-income housing and SRO Hotels

The full City of Vancouver written submission to the Rental Housing Task Force is included as an appendix to this Memo.

The Provincial Rental Housing Task Force is facing many of the same issues as the City in terms of balancing renter protections with the need to ensure a safe, resilient rental stock in future years. Staff expect the report and recommendations from the Task Force to be forthcoming later this month. Staff are committed to working with the Task Force and the Residential Tenancy Branch on collaborative solutions moving forward.

Regards,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line that tapers to the right.

Gil Kelley, FAICP
General Manager, Planning, Urban Design and Sustainability
604.873.7456 | gil.kelley@vancouver.ca