Report Back on Review of Fairness and Effectiveness of Empty Homes Tax (EHT)

COUNCIL MEETING May 12, 2020
Agenda

• Council Direction
• Background and Context
• 2019 and Future Years
  – Options and analysis
  – Staff Recommendations
• 2017 and 2018 Historical Years
  – Options and analysis
  – Staff Recommendations
• EY Consultation
Council Direction

• THAT Council direct staff to further explore and report back on options with respect to **late declarations made in good faith after the normal deadlines** to initiate an appeal and/or hear complaints and reviews have passed
Background and Context
The EHT is a 1%* tax on vacant properties.

The goals of the EHT are to:

1. Shift vacant properties to being rented out or otherwise occupied by a long-term resident
2. Prevent additional properties from becoming vacant

Revenue from EHT is used for affordable housing initiatives

*increasing to 1.25% for the 2020 vacancy reference period
Key trends from 2 years of EHT data (2017 and 2018)

**Trend 1: Reduction in vacant and exempt properties from 2017 to 2018**
- 6,245 properties were vacant or exempt in 2018, 21% reduction from 2017
- Of these, 1,989 properties were vacant; a 22% reduction from 2017

**Trend 2: Increase in declared tenanted properties from 2017 to 2018**
- Net increase of 3,332 properties declared as tenanted from 2017 to 2018; this includes a net increase of 2,277 tenanted condominiums

*2019 trends will be reported in the 2019 EHT Annual Report, December 2020*
EHT Impacts

CMHC reported 5,920 condo units were added to the long-term secondary rental market between 2018 and 2019 – a 21% increase from 2018.

(CMHC Rental Market Report 2019)

CMHC notes measures like EHT, new short term rental regulations, and the BC Speculation and Vacancy Tax are likely drivers of this trend

The 2019 primary rental vacancy rate increased slightly from 2018, from 0.8% to 1.0%
High declaration rate

- High declaration rate for both 2017 and 2018, with small ratio of undeclared properties. There will continue to be undeclared properties for 2019 and future years but expect to be at or lower than the number for 2018 with increased program awareness.
What is the issue/problem?

- The current policy and by-law does not allow for late declarations after the late declaration deadline and these properties (whether vacant or not) are deemed vacant.

- The City has received requests to submit late declarations from property owners who have stated that they were either occupied or exempt but have been assessed the full amount of the vacancy tax.

- As per Council Direction, Staff has reviewed options to address both the future (2019 onwards) and historical (2017 and 2018) undeclared properties.
Late Declaration (Notice of Complaint) Process

Submit Notice of Complaint

Property owner makes a late declaration by submitting a Notice of Complaint by the late declaration due date

Review Notice of Complaint

Vacancy Tax Review Officer makes a determination based on evidence provided by property owners to support the declaration status filed

Submit Review Request

If Notice of Complaint is not accepted, property owner has 90 days from the Notice of Complaint determination date to make a Review Request.
Using 2017 as an example – the **late declaration deadline was December 31, 2018**. After this deadline, **763 properties remain undeclared** and under the current policy/by-law, deemed vacant, and they are not able to submit a late declaration.

**Significant outreach / communication to the undeclared properties**

- Nov 2017
  - Declaration period open for 2017 tax year

- Mar 2018
  - Declaration deadline for 2017 tax year (extended from Feb 2018 for 1st year of declarations)
  - Late declaration period opens
  - Vacancy tax bills issued
  - By-law fines levied for failure to declare

- April 2018
  - Vacancy tax due
  - Late payment penalty levied

- Dec 2018
  - 2017 late declaration period closes
  - Unpaid vacancy tax accounts rolled to property tax
  - By-law fines levied for failure to declare

- Now
  - ~60% of the properties “deemed vacant” declared as “occupied” for 2018
  - > 100 of those deemed vacant have requested to make late declarations
Undeclared (Deemed Vacant):
Why haven’t they declared?

Based on the **late declaration requests** received and documented for the **2017 vacancy tax year**, the following were the **reasons categories** for not declaring:

<table>
<thead>
<tr>
<th>Reason</th>
<th>%</th>
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<tbody>
<tr>
<td>Communication Not Received (e.g. different mailing address)</td>
<td>63%</td>
</tr>
<tr>
<td>Confused (e.g. unaware that a declaration was required)</td>
<td>29%</td>
</tr>
<tr>
<td>Major Life Event (e.g. medical issues)</td>
<td>8%</td>
</tr>
</tbody>
</table>

100%
Undeclared (Deemed Vacant): Why haven’t they declared?

As noted on the previous slide, many of those that we have heard from that did not declare may have an out of date address on the real property tax roll:

- The by-law is clear that EHT and other tax statements be mailed to the address on the real property tax roll.
- As with property taxes, it is the homeowner’s responsibility to keep their address up to date with BC Assessment.
- This requirement has always been consistently enforced by the City staff in many other situations where penalties are applied.
Options to Consider (2019 and Future Tax Years)

- Options to address the issue(s)
- Impacts (pros & cons) of each option
Options to address late declarations for 2019 and future reference years

<table>
<thead>
<tr>
<th>Options</th>
<th>Details</th>
</tr>
</thead>
</table>
| Extend Declaration Deadline | • **Extend** late declaration deadline from December 31 to the **main Property Tax payment due date** in following year to further improve declaration rate.  
| Conditional Acceptance    | • **Conditionally accept late declarations** after filing deadlines.  
  • Develop **criteria to accept** late declarations (e.g. medical)  
  • **Review Officer decides whether to extend**, with an option to appeal to Review Panel  
  • Conditional acceptance **to end in the year of tax sale** (e.g. for 2019 tax year, until July 2023)  
  • Additional **by-law fine or penalty** to incent timely filing |

(Appendix 2 for comparison summary table)
Extend the current late declaration deadline from December 31 to the main Property Tax payment due date.

**Why do this?**

- The undeclared population generally **notice they are undeclared after their vacancy tax has rolled to property tax** and appears on main property tax bill usually issued in May.

**What is the potential impact?**

- **Improved fairness / better alignment with the intent of the tax** due to reduction in the number of undeclared properties that are deemed vacant and levied the vacancy tax that may not actually vacant.

- **Slight improvement to declaration rate** due to the increased timeframe to make a declaration.
Why do this?

- Under current by-law, Review Officer does not have discretion to accept any Notice of Complaint after the late declaration deadline, even for those with major life events (e.g. medical issue).

What is the potential impact?

- Improved fairness / better alignment with the intent of the tax due to small reduction in the number of undeclared properties that are deemed vacant and levied the vacancy tax that may not actually be vacant.
- Auditability may be reduced as time lapses; more difficult for owners to obtain evidence to support their declaration.
- Reduction and/or delay in revenue available for allocation to affordable housing initiatives.
- Criteria for discretion are difficult to establish which can give rise to legal challenges.
Recommendation
(2019 and Future Tax Years)
**Recommendation**

<table>
<thead>
<tr>
<th>Staff recommend the following:</th>
<th>Rationale</th>
</tr>
</thead>
</table>
| For 2019 and later vacancy tax years: | - Property owners see the levied vacancy tax rolled onto their property tax notice.  
- Aligns with fairness/intent of tax to tax only vacant properties  
- Reduction in the number of undeclared properties |

**Extend the current late declaration deadline** from December 31 to the first business day in July of the following year.
Options to Consider (2017 & 2018 Historical Tax Years)

- Options to address the issue(s)
- Impacts (pros & cons) of each option
Options to address late declarations for past years - 2017 and 2018 reporting years

<table>
<thead>
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<tbody>
<tr>
<td>Extend deadline</td>
<td>• <strong>Extend deadline</strong> for all late declarations for 2017 and 2018 until December 31, 2020.</td>
</tr>
<tr>
<td>Conditional Acceptance</td>
<td>• “<strong>Conditionally</strong> accept” late declarations for 2017 and 2018 until first potential tax sale year (2021 and 2022).</td>
</tr>
<tr>
<td></td>
<td>same as noted for Conditional Acceptance option identified for 2019 and future reference years.</td>
</tr>
</tbody>
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(see Appendix 3 for comparison summary table)
Options Analysis – Extend Deadline


Why do this?

- Provides a relaxation of the deadlines and requirements for the first two “transitional” years to recognize it was a “new” tax.
- ~100 undeclared owners for 2017 deemed vacant have contacted the City stating they were occupied / exempt. The majority of these owners have stated they did not make a declaration due to different mailing address or lack of awareness of the tax.

What is the potential impact?

- Improved fairness / better alignment with the intent of the tax due to reduction in the number of undeclared properties that are deemed vacant and levied the vacancy tax that may not actually be vacant.
- Reduction and/or delay in revenue available for allocation to affordable housing initiatives – $14.2M were levied on deemed vacant properties and revenue could potentially be reversed if this exception process is approved. $7.2M has been collected so far and allocated to housing related projects.
- Operationally, there will be an increase in the number of Notices of Complaint for undeclared properties. Resources will be required to communicate (via letters, emails, phone calls) to the undeclared 2017 and 2018 population as well as process and audit those declarations.
- Auditability may be reduced as time lapses; more difficult for owners to obtain evidence to support their declaration.
Options Analysis – Conditional Acceptance

Conditionally accept late declarations for 2017 and 2018 based on specific criteria for extraordinary circumstances. **Same as option for 2019 forward**

**Why do this?**

- **Under current by-law, Review Officer does not have discretion** to accept any Notice of Complaint after the late declaration deadline, even for those with major life events (e.g. medical issue or death).

**What is the potential impact?**

- **Reduction and/or delay in revenue** available for allocation to affordable housing initiatives—$14.2M were levied on deemed vacant properties and revenue could potentially be reversed if this exception process is approved. $7.2M has been collected so far and allocated to housing related projects.
- **Improved fairness / better alignment with the intent of the tax** due to small reduction in the number of undeclared properties that are deemed vacant and levied the vacancy tax that may not actually be vacant.
- **Auditability** may be reduced as time lapses; more difficult for owners to obtain evidence to support their declaration.
- **Criteria for discretion** are difficult to establish which can give rise to legal challenges.
Recommendation
(2017 and 2018 Tax Years)
**Recommendation**

<table>
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<tr>
<th>Staff recommend the following:</th>
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<tbody>
<tr>
<td><strong>For the 2017 and 2018 vacancy tax years:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Accept late declarations</strong> for 2017 and 2018 until December 31, 2020.</td>
<td>- Allows for a relaxation of the deadlines for the initial two</td>
</tr>
<tr>
<td></td>
<td>“transitional” years of the “new” tax</td>
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<tr>
<td></td>
<td>- Aligns with fairness/intent of tax to tax only vacant properties</td>
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<td></td>
<td>- Feedback / data indicates that some of the undeclared</td>
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<td></td>
<td>properties that have been deemed vacant are “not vacant”</td>
</tr>
</tbody>
</table>
EY Consultation
Summary of Work Performed with EY

Staff engaged the services of **Ernst & Young (‘EY’)** to provide leading practice advice and assistance in conducting the review and in formulating the options.

- EY indicated that there are no direct comparable tax scheme nationally or limited data globally.
- Refer to Canada Revenue Agency’s (CRA) conditional criteria and penalty scheme
- **Key differences** noted between the CRA and the City:

<table>
<thead>
<tr>
<th></th>
<th>CRA Income Tax</th>
<th>City Vacancy Tax</th>
</tr>
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<tbody>
<tr>
<td><strong>Reporting deadline</strong></td>
<td>Single reporting deadline</td>
<td>Multiple reporting deadlines; initial declaration &amp; late declaration</td>
</tr>
<tr>
<td><strong>Reporting window</strong></td>
<td>4 months (from end of taxation year)</td>
<td>13 months - current December late declaration deadline (from opening of declaration period to December 31st) 20 months - proposed extended deadline (from opening of declaration period to 1st business day of July)</td>
</tr>
<tr>
<td><strong>Tax ownership</strong></td>
<td>Follows individuals for life</td>
<td>Follows property even though ownership may change over-time</td>
</tr>
</tbody>
</table>
In making the recommendations to Council, Staff has considered the EY Report commentary, information from the 2017 and 2018 years, and has analysed the pros and cons of the various options.
Questions?