

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

COUNCIL MEETING May 12, 2020



- **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**

- 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

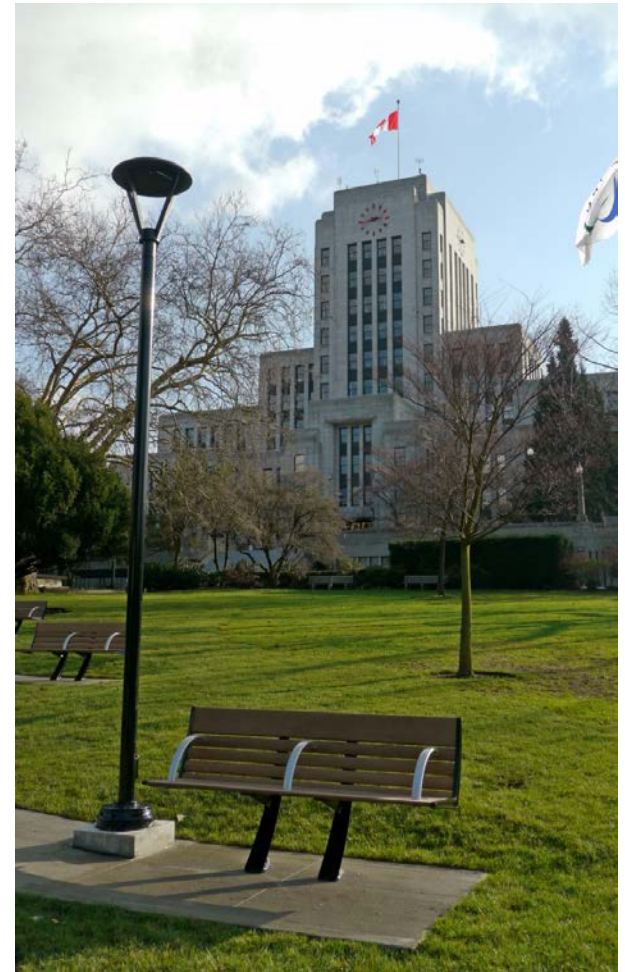
Purpose of EHT

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

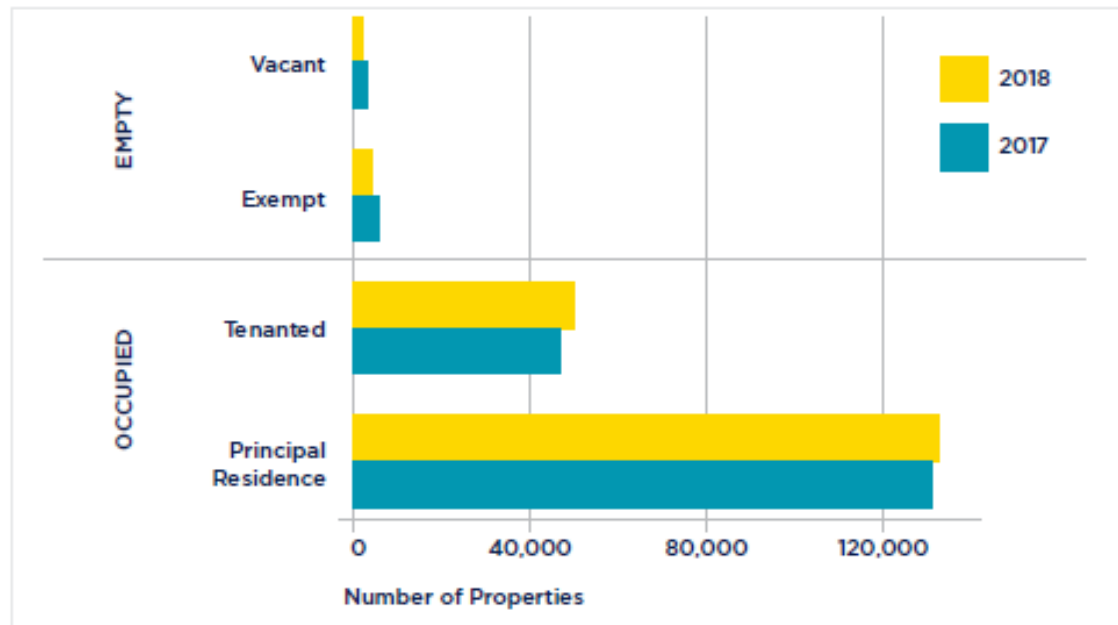
Key trends from 2 years of EHT data (2017 and 2018)

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.**

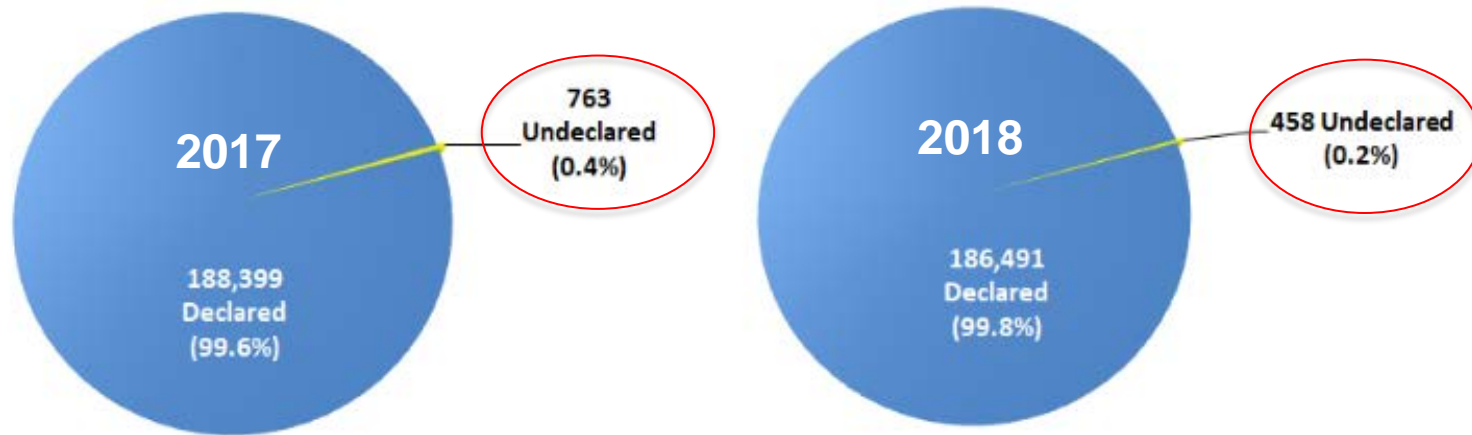
(CMHC Rental Market Report 2019)

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



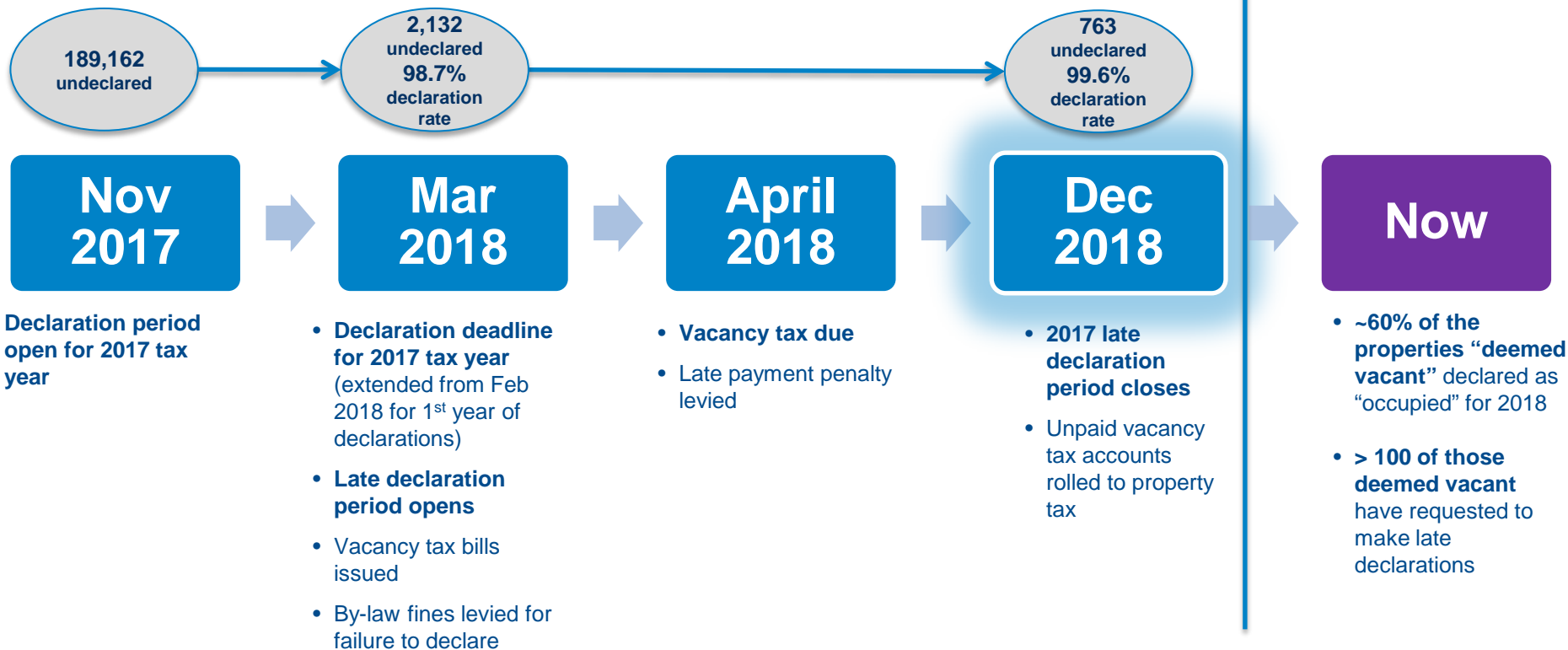
Submit Review Request

If Notice of Complaint is not accepted, property owner has 90 days from the Notice of Complaint determination date to make a Review Request.

Illustration of current declaration timeline

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 →



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**:

Reason	%
Communication Not Received (e.g. different mailing address)	63%
Confused (e.g. unaware that a declaration was required)	29%
Major Life Event (e.g. medical issues)	8%
	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

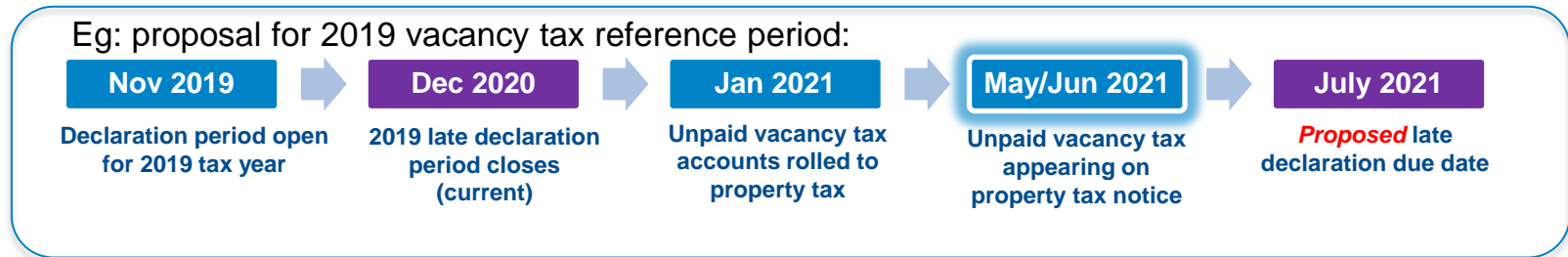
Options	Details
<p>Extend Declaration Deadline</p>	<ul style="list-style-type: none"> • Extend late declaration deadline from December 31 to the main Property Tax payment due date in following year to further improve declaration rate. Eg: 2019 vacancy reference period: late declaration deadline extended from December 2020 to July 2021.
<p>Conditional Acceptance</p>	<ul style="list-style-type: none"> • 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

Options Analysis – Extend Deadline

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.

Conditionally accept late declarations (with an additional by-law fine) after the deadlines have passed based on specific criteria for extraordinary circumstances.

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)

Staff recommend the following:	Rationale
<p>For 2019 and later vacancy tax years:</p> <p><u>Extend the current late declaration deadline</u> from December 31 to the first business day in July of the following year.</p>	<ul style="list-style-type: none">- 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

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

Options	Details
Extend deadline	<ul style="list-style-type: none">• Extend deadline for all late declarations for 2017 and 2018 until December 31, 2020.
Conditional Acceptance	<ul style="list-style-type: none">• “Conditionally” accept late declarations for 2017 and 2018 until first potential tax sale year (2021 and 2022). <p> same as noted for Conditional Acceptance option identified for 2019 and future reference years.</p>

(see Appendix 3 for comparison summary table)

Accept late declarations for 2017 and 2018 until December 31, 2020.

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.

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 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)

Staff recommend the following:

Rationale

For the 2017 and 2018 vacancy tax years:

Accept late declarations for 2017 and 2018 until December 31, 2020.

- Allows for a relaxation of the deadlines for the initial two “transitional” years of the “new” tax
- Aligns with fairness/intent of tax to tax only vacant properties
- Feedback / data indicates that some of the undeclared properties that have been deemed vacant are “not vacant”

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:

	CRA Income Tax	City Vacancy Tax
Reporting deadline	Single reporting deadline	Multiple reporting deadlines; initial declaration & late declaration
Reporting window	4 months (from end of taxation year)	13 months - current December late declaration deadline (from opening of declaration period to December 31 st) 20 months - proposed extended deadline (from opening of declaration period to 1 st business day of July)
Tax ownership	Follows individuals for life	Follows property even though ownership may change over-time

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?