CITY OF VANCOUVER

COUNCIL REPORT

Report Date:	May 1, 2023
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Meeting Date:	May 10, 2023

Submit comments to Council

TO: Standing Committee on City Finance and Services

FROM: Director of Finance

SUBJECT: REPORT BACK – Increasing the Empty Homes Tax to Five Percent and Improving Compliance

Recommendations

A. THAT Council approve a reduction in the Empty Homes Tax rate of 5% to 3% for the 2023 vacancy reference year.

B. THAT Council approve an amendment to the exemption in Section 3.2(a)(i) in the Vacancy Tax By-law to provide an exemption from the vacancy tax if a building permit was issued within the vacancy reference year, and that this amendment be effective starting in the 2022 vacancy reference year.

C. THAT Council approve an amendment to the exemption in Section 3.2(b) and (c) in the Vacancy Tax By-law to provide an exemption from the vacancy tax if a development permit, rezoning enquiry, rezoning application, or policy enquiry has been submitted to the City of Vancouver within the vacancy reference year, and that this amendment be effective starting in the 2022 vacancy reference year.

D. THAT Council approve an amendment to the exemption in Section 3.4 in the Vacancy Tax By-law to:

   i. Provide a one-time exemption for the 2023 vacancy reference year for properties with strata rental restrictions, if the property was previously declared or determined exempt under Section 3.4 of the By-law for the 2022 vacancy reference year, and

   ii. Terminate this exemption starting in the 2024 vacancy reference year to align with the provincial legislative enactment in November 2022 to prohibit strata rental restrictions.

E. THAT Council approve a new exemption for vacant new inventory that is unsold for each vacancy reference year after the occupancy permit has been obtained, until it is sold or occupied.

F. THAT Council approve a new exemption where a property that is not able to be occupied due to a hazardous condition or disaster for at least six months of the year that the event occurred, and the year following.

G. THAT Council approve a new exemption for properties being used as a secondary residence closer to medical treatment, with the requirement of a written certification from a medical practitioner for each declaration year.

H. THAT Council approve an amendment to the By-law to allow owners to file a late property status declaration after the late declaration deadline (2nd business day of July in the year following the year of the initial declaration deadline), and the owner must provide evidence to support the declaration status in order for the vacancy tax levy to be reversed from their vacancy or property tax account.

I. THAT Council approve a late declaration penalty to be charged to owners wanting to file a late property status declaration after the late declaration deadline of 5%, calculated as a percentage of the vacancy tax levy. The penalty may be waived in specific circumstances for hardship.

J. That the Director of Legal Services bring forward for enactment the By-law amendments in accordance with Recommendations A through I.

Considerations

A. THAT Council consider directing staff to report back on a graduated tax rate scheme for longer-term (repeat) vacant properties, where properties vacant for a single year would start at a lower rate, and the rate would increase if the property was vacant for multiple consecutive years.

B. THAT Council may consider an alternative to Recommendation E; to approve a new exemption for vacant new inventory that is unsold only in the year of completion, plus the subsequent year.

Purpose and Executive Summary

The purpose of this report is to seek Council approval of recommendations and considerations to improve the fairness and effectiveness of the Empty Homes Tax (EHT).

This report outlines the results of the review on the fairness and effectiveness of EHT, which included consultation with key stakeholders, housing experts, external consultant (EY), and City staff. The EHT program has been in effect for six years and staff continues to observe trends in the number and rate of empty properties that are in line with the original objectives of the EHT. Staff have identified 9 recommended amendments to the Vacancy Tax By-law (the "By-law"), based on the consultation feedback and data/trends observed over the initial six years of the tax, to improve the fairness and effectiveness of the EHT and to enhance alignment with the BC Speculation and Vacancy Tax exemptions, including:

- Adjusting the EHT rate back to 3% for the 2023 vacancy reference year.

- Amendments to existing exemptions: renovation/redevelopment and strata rental restriction.

- Additional exemptions: uninhabitable properties, vacant new properties, and residences occupied for medical treatment purposes.

- Extending the deadline to allow owners who have failed to make a declaration by the late declaration deadline to make a declaration, upon payment of a late filing penalty.

Council Authority/Previous Decisions

On April 27, 2022, Council approved a motion to increase the EHT from 3% to 5% for the 2023 vacancy tax reference year, and directed staff to report back on how the EHT exemptions might be altered to improve fairness so that those with legitimate reasons for vacancy, and/or having a second property, are not penalized.

Previously, the tax was increased from the initial 1% to 1.25% for the 2020 vacancy tax reference year, and then subsequently to 3% for the 2022 vacancy reference year.

City Manager's Comments

The City Manager concurs with the foregoing recommendations.

Context and Background

The EHT or "Vacancy Tax" is levied on empty and under-utilized class 1 residential properties in the City of Vancouver. Properties determined or deemed vacant are subject to 3% tax in 2022 and increased to 5% tax of a property's assessed value in 2023.

The EHT is applied annually, with the first vacancy tax reference year in 2017. The majority of the residential properties are not subject to the tax, including homes that are principal residences or rented out for at least six months of the year; or homes that are eligible for one of nine current exemptions as set out in the By-law.

The core objectives of the EHT are:

- To return empty or under-utilized properties to use as long-term homes for people who live and work in Vancouver; and

- To prevent additional properties from becoming empty.

Since the inception of the tax, amendments to the By-law have been made regularly to ensure the core objectives of the EHT are met and considered for fairness.

Net revenues from the EHT may only be used for the purposes of initiatives respecting affordable housing, and $115.3 million cumulatively up to November 1, 2022 were allocated for these initiatives.

Discussion

Review of Tax Rate

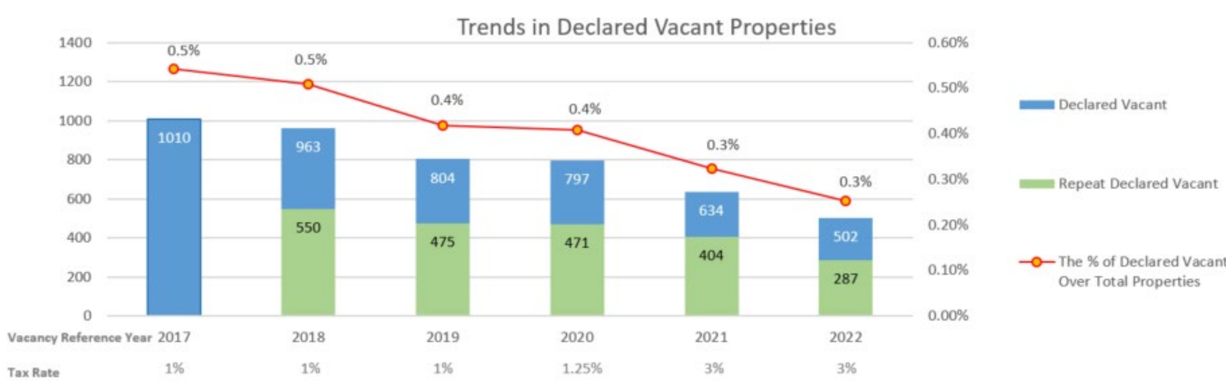
The April 2022 Council motion directed staff to explore how increases to the EHT rate could increase the rental stock, impact the risk of tax evasion, and/or introduce unintended consequences.

Since the inception of EHT, Council has increased the rate 3 times from the initial rate of 1% to 1.25% in 2020, to 3% in 2021, and the latest increase to 5% for 2023. In 2018, the Province introduced the BC Speculation and Vacancy Tax (SVT), which also applies to property owners in Vancouver.

Staff worked with academic experts and EY to understand the impact of the increase in the EHT rate from 1.25% to 3% for the 2021 and 2022 vacancy reference years. Despite the audits for the 2021 and 2022 years are still ongoing hence the data on these years is not yet fully conclusive, a few key findings are presented:

- Decrease in the trend of properties declared as vacant in 2021 and 2022 under the 3% tax rate:
  - approximately 160 fewer properties were declared vacant between 2020 and 2021, a 20% decline,
  - approximately 130 fewer properties were declared vacant between 2021 and 2022, a further 20% decline.
- Decrease in the trend of number of long-term declared vacant properties.
- Although the 3% tax may have had an impact on the reduction of vacant properties, the significant and unprecedented COVID-19 pandemic may also be a major contributing factor in the decreasing trend in vacant properties in these years. CMHC reported unprecedented rental vacancy rates during the COVID-19 pandemic, with an upper threshold of 2.6% in 2020, followed by decreases to 1.2% in 2021 and to 0.9% in 2022.

The following table includes properties that have been declared vacant for at least 2 consecutive years (See Appendix A for trends in properties that have been vacant for more than two consecutive years.)



EY analysis suggests that further increases to the EHT rate beyond 3% could potentially lead to more owners converting their properties from vacant to occupied, rather than paying an increasingly high tax. However, they also suggest that large increases to the rate could cause a spike in false declarations and concurrent need for audit resources. EY and academics suggested that a graduated rate, with a lower rate on shorter-term vacant properties and a higher rate on longer-term vacant properties, could address some of these administrative and compliance challenges, and also mitigate potential unintended consequences that could lead a property to be vacant for a shorter period of time (e.g. owner unable to sell property for one year due to market conditions).

An executive summary of EY's analysis is available in Appendix D. A summary of feedback from academic experts and stakeholders is available in Appendix E.

Options for EHT Rate [Recommendation A]

The significant tax rate increase from 3% to 5% effective in 2023 may possibly support further conversion of additional homes from empty to occupied. It can also result in a higher risk of tax evasion and consequently, requiring more resources for performing compliance work and increased impact of unintended consequences.

Based on the analysis from EY and academic and stakeholder engagement, staff have evaluated the following potential changes to the EHT rate:

1) Decrease tax rate to 3% for the 2023 vacancy reference year (back to the same level as 2021 and 2022). This will allow a longer term observation of whether the decrease of vacant property trend sustains without the impact of the COVID-19 pandemic.

   A rate at 3% vs 5% may reduce potential revenue available for affordable housing initiatives, however, this needs to be balanced with fairness and the core objectives of EHT. A higher rate would also require additional audit/compliance resources to address the risk of evasion.

2) Explore a graduated EHT rate scheme for longer-term (repeat) vacant properties, where properties vacant for a single year would start a lower rate, and the rate would increase as the property remains vacant for multiple consecutive years.

   A higher rate on longer-term vacant properties may encourage additional conversion of these properties to being occupied. While there will be some initial resources required to implement and communicate a new rate system, a graduated rate may reduce the impact of unintended consequences by directly targeting repeat vacant properties.

Staff recommends that Council approve a reduction in the tax rate to 3% effective for the 2023 vacancy reference year (consistent with 2022).

In addition, Council may consider directing staff to perform additional analysis and efforts to develop a graduated tax rate option for longer-term vacant properties for future vacancy reference years.

Amendments to Exemptions in the Vacancy Tax By-law

Section 3.2 – Property undergoing redevelopment or major renovations [Recommendation B & C]

Currently, the By-law provides an exemption to properties undergoing renovations or redevelopment in the year of permit issuance or enquiry/application submission, where the property has been unoccupied for six months of the vacancy reference year. Application of this exemption depends on whether the property is improved with dwelling units:

- If the residential property is improved with a dwelling unit (existing building on property), a building permit must have been issued by July 1st of the vacancy reference year in order to qualify for this exemption.

- If the residential property is unimproved with dwelling units (vacant land) or is a heritage property, a complete rezoning enquiry or application, development permit, or heritage alteration permit must have been submitted and under review by the City by July 1st of the vacancy reference year in order to qualify for this exemption.

Staff have identified scenarios where owners may be subject to the tax due to delays in the timing of their permit submission that are beyond the owner's control. To mitigate this unintended consequence, staff recommend Council approve the removal of the July 1st date requirement in the exemption. Further, as the July 1st date requirement was only added as an amendment to the By-law to clarify the intention of the exemption on February 8, 2022, staff recommend this be applied starting in the 2022 vacancy reference year.

Note: approval of this recommendation to amend Section 3.2 would render the exemption in Section 3.9 – Combined period of redevelopment or renovation and occupation by a tenant to be redundant as the owner would be eligible for an exemption under Section 3.2 if a building permit was issued in the vacancy reference year.

Section 3.4 – Rental restriction or prohibition [Recommendation D]

Currently, the By-law provides an exemption for strata properties where, prior to the enactment of the EHT on November 16, 2016, the by-laws of the strata either prohibited rentals altogether, or restricted the number of strata units that could be rented.

On November 24, 2022, the province enacted legislation (Bill 44, the *Building and Strata Statutes Amendment Act)* to prohibit rental restrictions in strata buildings.

With the prohibition of rental restrictions in strata by-laws, the EHT exemption is no longer applicable. However, staff recognize that the prohibition of rental restrictions occurred in late 2022, and owners of these properties require time to either occupy the property, perform renovations, or sell the property.

Staff recommend Council approve the following amendment to:

- Provide a one-time exemption for the 2023 vacancy reference year, if the property was previously declared or determined exempt under Section 3.4 of the By-law for the 2022 vacancy reference year,

- End the application of this exemption starting in the 2024 vacancy reference year.

<u>New Exemptions in the Vacancy Tax By-law</u>

Vacant New Inventory [Recommendation E]

The development community, including the Urban Development Institute, have raised concerns about the impact of the EHT on vacant new inventory, noting the higher EHT rate in combination with existing carrying costs has significantly increased costs and risk to developers when holding units for sale after receiving occupancy permits. Under the current By-law, if a newly constructed unit has not yet been sold to an end-user, the unit may be exempt for 6-18 months depending on the date the occupancy permit was received (via the exemption in Section 3.2), or the property transfer exemption in Section 3.5 when it is sold. However, properties that remain vacant beyond this period are subject to the EHT.

Previous Councils' direction has been to include these units in line with the goal that vacant properties should be occupied or taxed. Staff have not previously recommended an exemption for vacant new inventory because of this direction, and due to the relatively low incidence of units remaining unsold in Vancouver's typically strong housing market. UDI has indicated that recent increases in interest rates have slowed property sales, creating a higher likelihood of developers having unsold units at completion and greater challenges selling even with incentive practices. They also note that it is typically not feasible for a developer to rent out vacant new inventory before it is sold to an end user, because units can no longer be marketed as a new property and the developer would be subject to GST. UDI has indicated that continued application of the EHT to unsold units in combination with market uncertainty poses a significant financial risk to development that could impact the delivery of new housing supply, and have advocated for the exemption of this category and to be implemented retroactively for 2022.

Early declaration data for 2022 suggests that there has been an increase in vacant new inventory being charged EHT, which is consistent with the recent change in market conditions due to rising interest rates.

Staff recommend Council to approve a new exemption for vacant new inventory for each vacancy reference year until it is sold to the end user:

- The risk that the property would remain vacant for an extended period of time after completion is low under normal market conditions.
- This exemption is consistent with the Provincial SVT, which provides the same exemption.
- The exemption is relatively simple to administer as the exemption would expire once the unit transfers to a new owner. If the property remains vacant after the transfer, the new owner would be subject to EHT.

Alternatively, Council may consider providing the exemption for vacant new inventory only in the year of completion, plus the subsequent year:

- A time limit may encourage faster sale of units in some circumstances.
- Aligns with EHT practice in other exemptions of structuring exemptions with time limits.
- Additional complexity involved in administering exemption to verify completion date plus exemption year(s) available.

Uninhabitable Properties [Recommendation F]

Currently, there is no exemption for uninhabitable properties, unless property owners meet the exemption requirements in Section 3.2 of the By-law for renovation and redevelopment. Depending on the nature and/or timing of the work, the exemption in Section 3.2 may not be applicable (e.g. lengthy period of time for insurance claim).

There may be instances where a property cannot be occupied due to circumstances beyond the reasonable control of the owner, resulting in the property being subject to the vacancy tax. Such examples include hazardous conditions such as structural defect or damage, poisonous substance leak or any other condition that is hazardous to the health or safety of the occupants, or a disaster such as an earthquake, fire, flood, landslide or other natural disaster or dangerous event.

Staff recommend Council approve a new EHT exemption where due to a hazardous condition or disaster, a property cannot be occupied for at least six months of the year. This exemption would be applicable in the year of the event or circumstance, and the year following to allow for adequate time to return the property to an occupiable condition.

The new exemption would support the intent of the By-law to return the vacant uninhabitable property to the long-term housing inventory, and would also be aligned with the BC SVT, which has a similar exemption.

Where an owner were to make this declaration, and the property is selected for audit, the owner would be required to demonstrate they are actively performing the necessary work to return the property to an occupiable condition (e.g. insurance claims, repairs in progress, permit planning etc.)

Secondary Residence closer to medical treatment [Recommendation G]

Council directed staff to report back on how the EHT exemptions might be altered to improve fairness so that those with legitimate reasons for vacancy, and/or having a second property, are not penalized.

Staff heard through engagement that one reason a property may be vacant for more than six months of the year, is because it is being utilized as a secondary property that is periodically occupied by the owner, the owner's spouse or child to receive medical treatment required for their health, and the treatment facility is closer to the property than their principal residence (outside of Greater Vancouver).

Staff further note that many of the regional-serving medical treatment facilities are located within Greater Vancouver, and that it may be impractical for those requiring medical treatment to rent or reside in a hotel during the period of treatment.

Staff recommend Council approve a new EHT exemption for secondary residences closer to medical treatment. This exemption would require a written certification from a medical practitioner for each declaration year. This new exemption would also be aligned with the BC SVT.

Late Declarations

Late Declaration Deadline [Recommendation H]

Where an owner has not made a property status declaration by the initial declaration deadline of the 2nd business day of February, the property is deemed to be vacant, and the vacancy tax is levied. If a late property status declaration is made by the 2nd business day of July in the year following the year of the initial declaration deadline (late declaration deadline), the vacancy tax may be reversed.

Property owners who do not make a declaration by the late declaration deadline remain subject to the vacancy tax levy, and the By-law currently does not allow the City to accept a declaration beyond this date.

In 2020, a one-time extension was approved by Council to allow owners who had not made declaration for 2017 and 2018 to make a declaration by December 31, 2020. Following this approval, 467 late declarations were received, and 91% of those properties were determined to be occupied or exempt. Currently, there still remains ~300 to 400 properties undeclared for each vacancy reference year from 2017 to 2020 (Appendix A).

Staff have continued to receive requests from owners to make late property status declarations, who have stated their property should not be subject to the EHT because it was either occupied or eligible for an exemption.

Staff note there may be undeclared properties which may not be vacant, but have been deemed vacant due to non-declaration. With an average assessed property value of $1.7M in the City of Vancouver, an owner who has failed to make a declaration would be subject to a vacancy tax levy of $85,000, even if they were not vacant.

The critical rationale for having a declaration deadline is to support the compliance activities and provide revenue certainty with respect to the funds available to be allocated to affordable housing initiatives. An allowance for potential refunds would be required if owners were allowed to make a late declaration past the existing late declaration deadline.

Staff recommends Council approve an amendment to the By-law to allow owners to file a late property status declaration after the late declaration deadline, where the owner must provide evidence to support the declaration status in order for the vacancy tax levy to be reversed from their vacancy or property tax account.

Late Declaration Penalty [Recommendation I]

Currently, owners are subject to a $250 By-law fine for failing to make a property status declaration by the initial declaration deadline of the 2nd business day of February. There is no additional fine or penalty charged to owners who want to file a late property status declaration up until the late declaration deadline.

If Council were to allow late declarations to be received after the late declaration deadline, staff recommend the introduction of a late declaration "penalty" to be charged to owners who want to make a declaration in order to have the vacancy tax levy reversed.

Staff recommend this penalty to deter owners from submitting late property status declarations where they were not occupied for at least six months of the vacancy reference year or eligible for an exemption.

Staff recommends Council approve a late declaration penalty to be charged to owners wanting to file a late property status declaration after the late declaration deadline of 5%, calculated as a percentage of the vacancy tax levy. The penalty may be waived in specific circumstances for hardship.

Financial Implications

Given most of the recommendations are providing more exemptions, there will be a financial impact to the EHT program. The goal of these exemptions is to address potential inequities and unintended consequences and staff considers the amendments are balanced by fairness and alignment with the core objectives of the EHT.

We have provided a high-level estimate of the impact of the amendments; however, it cannot be fully quantified as the behavior of owners may change.

Recommendation	Financial Impact	Estimated $ Change (+/-)
A) Tax Rate	The behavioral change due to higher tax rate at 5% is unknown. At the existing 3% tax rate, the consulted academics believe the vacancy profile was heavily influenced by the pandemic. Additionally, the tax is applied on the property's annual assessed value and fluctuations of the assessed value will have an impact on the tax revenue.	Unknown
B & C) Renovation / Redevelopment	Estimated impact based on the # of properties in most recent data that would have been eligible for this exemption.	-$6M
D) Rental Restriction	Anticipate majority of the units to be occupied or tenanted with the removal of the rental restriction.	Nominal
E) Vacant Unsold Inventory	Estimated impact based on the average # of new properties owned by developers declared vacant based on most recent data.	-$3M
F) Uninhabitable Properties	Anticipate to be immaterial based cases reviewed.	Nominal
G) Medical Purposes	Estimated impact based on declaration data from SVT for this exemption.	-$1M
H) Late Declaration	See table in Appendix A.	-$4M

Legal Implications

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 C, and would apply immediately unless otherwise noted.

Staff recommends all amendments to be effective for the 2023 vacancy reference period, with the exception of the amendments to Section 3.2 of the By-law (Recommendations B and C), which would be effective for the 2022 vacancy reference period and future years.

Should Council decide to proceed with approving the recommendations to amend the Vacancy tax By-law, the Director of Legal Services will bring forward for enactment the applicable By-law amendments that reflect Council's decision.

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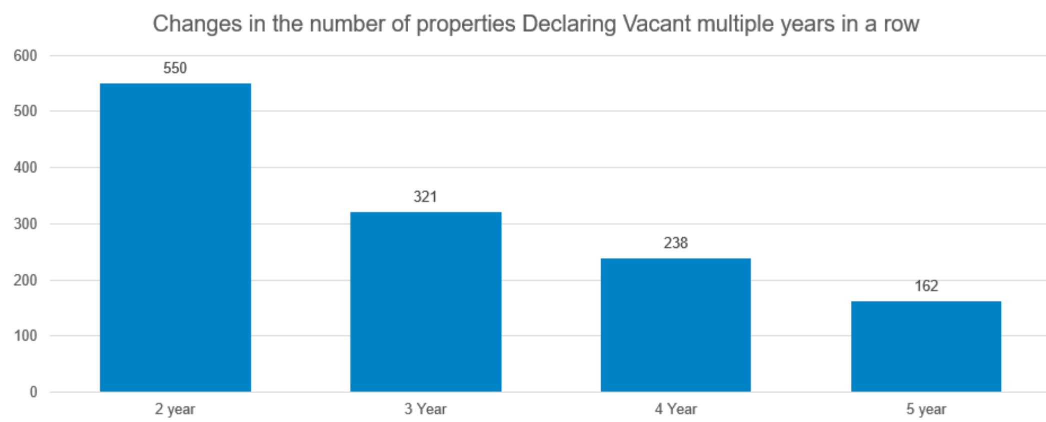
APPENDIX A
Additional Charts and Tables

1) Repeat Declared Vacant Properties

The following chart illustrates the number of properties that declared as vacant for consecutive vacancy reference years up to and including the 2021 vacancy reference year (e.g. there are 162 properties that have declared as vacant for 5 consecutive vacancy years.



2) Undeclared Properties

The following table shows the number of properties that remain undeclared for the 2017 to 2020 vacancy reference, where the late declaration deadlines have now passed. For 2021 and 2022, owners currently have until July 5, 2023 and July 5, 2024 respectively to file a late declaration.

The original deadlines to make late declarations for the 2017 and 2018 vacancy reference years were December 31, 2018 and December 31, 2019, respectively. In May 2020, Council approved a one-time extension for late declarations not submitted by the original 2018 and 2019 deadlines to December 31, 2020. In addition, the late declaration deadline was extended from December 31st of the year of the initial declaration deadline to the 2nd business day of July in the year following the initial declaration deadline.

Based on the number of late declarations received by the extended deadlines, and the number of additional requests staff have received subsequent to those deadlines, staff would consider it reasonable to estimate that 25% of undeclared properties would make late declaration for an estimated impact of $4.3M (net of 5% late declaration penalty), assuming they are able to support the property was occupied or eligible for an exemption.

Year	# of Folios	$ Levy
2017	435	$ 4,784,525
2018	307	$ 3,570,519
2019	328	$ 4,371,694
2020	340	$ 5,213,317
Total	**1,410**	**$ 17,940,055**

APPENDIX B
Other Report Back Items

C. THAT staff be directed to report back to council regarding:

How the Empty Homes Tax might be used to reduce the large number of short-term rental properties.

Currently, the EHT, in order for a property to be considered occupied by a tenant for at least six months of the vacancy reference period, individual tenancies must be for periods of at least 30 days. As such, if a property has not been tenanted for at least six months, for periods of 30 consecutive days or more, it will be subject to the vacancy tax.

The EHT department works with the City's Short-term Rental (STR) Compliance department to address any risk indicators identified during the compliance process, and discuss any issues that may be relevant for each department, including identifying on a case by case basis, properties which may be not compliant with the By-law. Where evidence supports a property is being used as a short-term rental (< 30 day rentals), the property will be subject to the vacancy tax.

How the Empty Homes Tax will be affected by the new federal anti-flipping measures that tax profits from properties sold within 12 months of a purchase.

The new federal Residential Property Flipping Rule, introduced in Budget 2022, is intended to ensure the profits from flipping residential real estate are subject to full taxation and are not eligible for capital gains treatment or the principle residence exemption. This rule may help speculative demand in the housing market by effectively increasing the tax cost and thereby reducing the profits realized from such speculation.

Staff do not consider there to be any specific impacts on the EHT; however, reducing the level of speculative demand aligns with the objectives of EHT to maintain the long-term rental housing stock. In addition, a reduction in property transfers will decrease the number of properties eligible for the property transfer exemption.

That Council direct staff to bring forward more information for Council to consider related to the possibility and impacts of exempting land owned by MST from the Empty Homes Tax.

Staff have reviewed the EHT declaration data, and note that to date, no MST properties have been levied the EHT. At this time, Staff do not consider an MST exemption is required. However, as additional MST developments are in progress, staff will continue to monitor the possibility of introducing an MST exemption in the future.

APPENDIX C
DRAFT By-law to amend the Vacancy Tax By-law No. 11674 regarding the tax rate and miscellaneous amendments

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 adds the following new definitions in the correct alphabetical order:

(a) " "disaster" means:

(a) an earthquake;

(b) a fire;

(c) a flood;

(d) a landslide;

(e) a spill or leakage of oil, gas or another poisonous or dangerous substance; or

(f) any other natural disaster or dangerous event;";

(b) " "hazardous condition" means:

(a) a structural component of the residential property, including the foundation, external walls, interior supporting walls, floors and staircases, is defective or damaged;

(b) oil, gas or another poisonous or dangerous substance is present in the residential property; or

(c) any other condition relating to the residence that is hazardous to the health or safety of its occupants;"; and

(c) " "medical reason" means participation in a course of treatment:

(a) that, in the opinion of a medical practitioner, is required for the health of the individual; and

(b) that is impractical for the individual to obtain in reasonably close proximity to the individual's principal residence;".

3. In section 2.4, Council:

(a) in subsection (b), strikes out ";" and substitutes "; and";

(b) in subsection (c), strikes out "for the 2021 and 2022 vacancy reference periods; and" and substitutes "for the 2021 vacancy reference period and any subsequent vacancy reference periods."; and

(c) strikes out subsection (d).

4. In section 3.2(a)(i), (b)(i), (c)(i), and (c)(i)(A), Council strikes out "by July 1 of" and substitutes "in".

5. In section 3.4, Council:

(a) adds "for vacancy reference periods up to and including the 2023 vacancy reference period," after "A vacancy tax is not payable under this by-law for a parcel of property"; and

(b) in subsection (c), strikes out "." and substitutes ","; and

(c) adds below subsection (c), justified beneath the opening language of section 3.4, the following:

"or, in the case of the 2023 vacancy reference period, if the residential property was previously declared or determined exempt under this section for the 2022 vacancy reference period.".

6. Council strikes out section 3.9.

7. Council adds the following new sections in the correct numerical order:

"**Vacant new inventory**

3.9 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period and:

(a) the residential property is part of a residential development of 5 or more residential properties;

(b) the residential property has been newly constructed;

(c) the residential property has not been occupied for residential purposes since it was constructed;

(d) the residential property is offered to the public for sale in the vacancy reference period; and

(e) the registered owner of the residential property was a developer of the residential property.

Hazardous or damaged residential property

3.10 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because:

(a) the residential property became uninhabitable because:

(i) it is substantially damaged or destroyed by a disaster, or

(ii) it is in a hazardous condition; and

(b) the disaster or hazardous condition was caused by circumstances beyond the reasonable control of a registered owner of the residential property,

except that this exemption shall not be allowed for more than two consecutive vacancy reference periods.

Secondary residence for medical reasons

3.11 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 periodically occupied by the registered owner, their spouse or child for a medical reason, except that in order to claim an exemption under this section, the registered owner must file a document that is completed by a medical practitioner, and must be filed using a form as prescribed by the City of Vancouver.".

8. In section 6.3, Council strikes out ", except for the 2017 and 2018 vacancy reference periods where an extension may be granted until December 31st, 2020" and substitutes "unless the penalty in section 6.4 is paid".

9. Council renumbers sections 6.4 through 6.15 as sections 6.5 through 6.16, respectively.

10. Council adds a new section 6.4 as follows:

"**Penalty to file a property status declaration after the deadline**

6.4 A penalty of 5% of the vacancy tax levy will be due and payable where a registered owner is granted an extension to file a property status declaration after the second business day of July of the year after the year in which the tax is due and payable, except that a vacancy tax review officer may make a determination to waive the penalty in cases where the registered owner is unable to submit a complaint on or before the second business day of July due to hardship, including any of the following:

(a) natural or human-made disasters such as flood or fire;

(b) a serious illness or accident; or

(c) serious emotional or mental distress.".

11. In section 6.7, Council strikes out "section 6.3, 6.4 or 6.5" wherever it appears, including the heading, and substitutes "section 6.3, 6.5 or 6.6".

12. In section 6.14, Council strikes out "section 6.12" wherever it appears, including the heading, and substitutes "section 6.13".

13. In section 6.15, Council strikes out "Section 6.12" and substitutes "section 6.13".

14. In section 1.2, in the definition of "notice of complaint", Council strikes out "section 6.4" and substitutes "section 6.5".

15. 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.

16. This by-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2023

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Mayor

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City Clerk

City of Vancouver

EY Consulting Services for the Empty Homes Tax Program – Phase 6

Vacancy Tax Bylaw Policy Review: Issues and Advice

SUMMARY REPORT

April 2023

City of Vancouver Empty Homes Tax – Phase 6
Vacancy Tax Bylaw Policy Review: Issues and Advice

SUMMARY REPORT

Introduction and Context

On April 27, 2022, Vancouver City Council ("**City Council**") approved a motion to increase the Empty Homes Tax ("**EHT**") rate from 3% to 5% of assessed property value for the 2023 taxation year and directed staff to report back on how the EHT might be altered to improve fairness so that those with legitimate reasons for vacancy are not penalized.

In conducting its review, City Staff engaged the services of EY for advice and support in relation to the issues identified for examination in the policy review, all of which are covered in EY's main Phase 6 Report, submitted the City of Vancouver ("**City**") in April 2023.

This abbreviated Summary Report covers three of the issues and key findings contained in the more comprehensive Main Report:

1. Assessing the Impact of Increasing the EHT Tax Rate
    a. Impact of 3%
    b. Implications of increase to 5%
    c. Future rate increase options

2. Other Potential Bylaw Amendments to Improve Fairness
    a. Extending deadlines

3. Other Issues
    a. Broad exemption for second homes

The EHT has been in force for six years now and evidence from the experience to date has been encouraging. The tax has had the desired impacts in relation to its initial policy objectives, in both reducing the number of residential properties left vacant by their owners and in raising EHT revenues that have been allocated to improving or increasing affordable public housing in Vancouver. Significant tax rate increases introduce some uncertainty as to whether these two outcomes will be more or less successful.

1. Assessing the Impact of Increasing the Tax Rate

(a) Impact of an increase from 1.25% to 3%

From the time the EHT was implemented in 2017 until the 2019 vacancy reference year, the tax rate was maintained at the initial rate of 1% of assessed property value. For reference year 2020, the rate was increased to 1.25% of assessed value. This provided the first opportunity to observe any behavioural response to a tax rate increase using actual empirical evidence.

As discussed in EY's Phase 5 report, dated November 2021, several circumstances suggest caution about drawing any firm conclusions about the impact this increase appeared to have. For example, a rate increase from 1% to 1.25% is a 25% increase in the nominal tax rate (1.25 – 1.00)/1.00 x 100 = 25%). But average assessed property values actually declined in Vancouver in 2020 compared to 2019, so tax assessed on a given empty property would have fallen had the nominal rate not been increased, meaning the "effective tax rate" actually increased by only 8.4%, not this nominal 25%.

Following this initial rate increase, EHT revenue decreased slightly from $39.4 million in 2019 to $36.0 million in 2020.[1] The number of properties declared, determined and deemed vacant remained relatively stable, falling only marginally from 1,762 in 2019 to 1,755 in 2020.[2]

But it is difficult to ascertain whether the non-compliance rate changed from 2019 to 2020. A downward trend in properties declared vacant may be due in part to the impact the EHT is having in helping persuade owners to return their vacant properties to occupied status, but it is not possible to eliminate the alternative possibility that voluntary compliance by owners who honestly declare the occupancy status of their vacant properties may be decreasing.

A second opportunity to observe and measure the behavioural response to a tax rate increase occurred when the rate increased from 1.25% in 2020 to 3.0% in 2021. Not only was this a significant 140% increase in the "nominal tax rate"[3] in a single year, but the average assessed property value for all properties between the two reference periods increased by 14% and the average value for an empty home increased by 25.8%.[4] This means that the "effective tax rate" may have actually increased by somewhere between 174% and 200% over this one-year period.[5]

As reported in the 2022 EHT Annual Report, EHT revenue increased substantially following this rate increase from $26 million in 2020 to $67 million in 2021, and the number of empty homes decreased modestly by 357, from 1,755 in 2020 to 1,398 in 2021. It would be premature to draw any solid conclusions from this data since audit activity is still underway and other factors could have influenced their decisions, not just the rate increase.

(b) Potential implications of an increase to 5.00%

Residential property owners subject to the EHT face a more substantial rate increase from the 3% of assessed value in 2021 to 5% of assessed value in 2023. A fivefold rate increase in a tax based on a self-assessed declaration and whose integrity relies primarily on voluntary compliance might be expected to elicit a behavioural response that includes a spike in false declarations and a concurrent need for additional audit resources and activity. This in turn could result in an increase in downstream taxpayer complaints and legal disputes to resolve, consuming additional associated compliance and dispute resolution resources for both the City and taxpayers.

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[1] See Empty Homes Annual Report 2020 Vacancy Reference Year, "Revenue" table, page 4. Revenue fell partly because there were 360 tax reversals resulting from a one-time extension of declaration deadlines for the 2017 and 2018 vacancy reference years as well as an extension of the late declaration deadline starting in the 2019 declaration year.

[2] See Empty Homes Annual Report 2021 Vacancy Reference Year, "Property Status" table, page 2.

[3] Derived as (1.25% – 3.00%/1.25% x 100 = 140%).

[4] See the 2021 and 2020 EHT Annual Reports, Appendix 2, Detailed Data, Table for Indicator #6. The average assessed value of all properties increased from $1.49M in 2020 to $1.7M in 2021 (i.e., a 14% increase) and an empty property increased from $1.51M in 2020 to $1.9M in 2021 (i.e., a 25.8% increase).

[5] The tax on a property with the average assessed value for all Vancouver properties of $1.49M in 2020 and $1.7M in 2021 would have risen from $18,625 in 2020 to $51,000 in 2021 (a 174% increase). The tax on a property with an average assessed value for all empty properties of $1.51M in 2020 and $1.9M in 2021 would have risen from $18,875 in 2020 to $57,000 in 2021 (a 202% increase). It cannot be assumed that this was the same empty property since we are only dealing with averages here ignoring any possible changes in composition of the empty house total population.

Empirical evidence predicting the likely behavioural response to a major increase in the EHT rate does not exist. Instead, a purely conceptual framework and analysis to predict the likely impact in response to a large tax is set out in the Main EY Report. The general conclusions are provided here.

Other things equal, at relatively low tax rates most owners of empty properties are likely to pay the tax rather than return the property to occupancy, meaning more tax revenue will be collected from more owners by the City if it keeps rates relatively low, but the tradeoff is that fewer empty properties will be returned to the market.

At relatively high tax rates, the opposite may be true, meaning above a certain tax rate most owners of empty properties may opt to rent or sell instead of paying the tax. As a result, less tax revenue would be collected, but more empty homes will be released by their owners and put back on the market.

Non-compliance may be expected to rise as the tax rate increases. To the extent that there is undetected non-compliance, meaning some empty homes are falsely declared as actually being occupied, the amount of revenue collected will fall and the number of truly occupied units will be less than the number declared to be occupied.

Factoring this into the general conclusions, above, it might be expected that at low tax rates the impact of any non-compliance will clearly be put more risk on revenue collected because most taxpayers would rather pay the tax than give up their empty homes, meaning any taxpayer who successfully submits a false declaration that is not ultimately detected and overturned by the City reduces the EHT revenue that the City would otherwise collect.

At “moderate” tax rates, successful non-compliance by taxpayers who are subject to the tax will most likely result in some fairly equal combination of reduced tax revenue and fewer empty homes returned to the market.

At higher tax rates (including the currently-approved 5% rate) successful non-compliance by taxpayers will likely result primarily in a reduction of empty homes returned to the market rather than a reduction in tax revenue that would otherwise be collected.

It should be stressed that these conclusions are predicated on the assumptions stated in the conceptual analysis. While they are indicative of what may happen as a result of a significant tax increase in a real-world scenario, they should not be interpreted as firm predictions of what will actually happen. Any change in the underlying behavioural change assumptions across the entire taxpayer population will have a significant impact on the results.

(c) Future rate increase options and implications

The foregoing conclusions, while not definitive, suggest that the City Council would be wise to exercise caution before deciding to set any future higher tax rates until it has more experience and gathered more empirical evidence on the impact rate increases have on compliance (and possibly revisit the already enacted rate increase from 3% to 5% in 2023).

Tax Rate Alternatives

Instead of either proceeding with the 5% EHT rate or maintaining the 3% rate, several intermediate options exist, two of which are set out below as examples.

(i) A Series of Incremental Rate Increases

One option mentioned briefly in EY’s Phase 5 Report is to implement a series of incremental rate increases over a period of several years, rather than one large rate increase in a single year. This option would offer the benefit of gaining more empirical evidence on the actual behavioural response to the tax increases and it would also reduce the risk of unanticipated adverse impacts, particularly increased rates of non-compliance.[6] It also would provide more advance notice to owners of empty properties, allowing them to plan and make any necessary repairs or arrangements for the rental or sale of their empty homes.

Rather than fully increasing the rate from 3% to 5% in 2023, this same 2 percentage point increase in the tax rate could instead be spread over several years; for example, 3.5% in 2023; 4.0% in 2024; 4.5% in 2025; and 5.0% in 2026. This time path could be shortened or lengthened depending on the results observed in a given year.

(ii) Tiered Rate Increases

Another option that could be further explored would be to implement tiered rate increases on some but not all of the population of empty home taxpayers or the population of empty homes. This option could have several variants that key on different characteristics of the empty homeowner or the empty home itself.

One variant is to incrementally rachet up the tax rate each year that a given property is declared vacant. As an example, the rate could be 3% the first year that a property is declared vacant; 4% if the same property is declared vacant for a second year; 5% the third year, and so on. This stepped-rate approach has the advantage of targeting owners who are particularly resistant to returning their empty properties to the occupied market while using a "lighter touch" for owners whose property has only become vacant recently and who may decide to return it to the occupied market. Consideration would have to be made to incorporate the allowance for additional time before the stepped rate would apply (in cases where ownership of the property changes, for example).

Another variant of this approach could be to apply a tiered rate to empty properties according to their assessed value. As an example, empty properties above a certain assessed value could be taxed at a higher rate in a similar manner as for individual income taxes, where the marginal tax rate increases at higher threshold levels of taxable income (otherwise known as "progressive tax rates").

These tax rates could be adjusted in relative terms over time depending on current or changing circumstances and conditions in the housing market. This tiered rate structure and any variants would need to be examined from a legal perspective to ensure that the City has the authority to apply the EHT in this way and withstand any legal challenges.

2. Other Potential Bylaw Amendments to Improve Fairness

(a) Extending Deadlines

One EHT policy lever available to City Staff to address fairness in certain circumstances would be the extension of declaration or late declaration deadlines for the tax.

Currently, the EHT is deemed to apply in circumstances where the initial declaration deadline is missed. If a property status declaration is made by the late declaration deadline (the 2nd business day of July following the initial declaration deadline), the vacancy tax may be reversed.

Owners of occupied property infrequently miss both the initial and the late declaration deadline, but when this happens it can have dire consequences, especially where owners have solvency issues or cash flow problems (e.g., some are "asset rich, but cash poor", such as some senior citizens who own their homes but are on fixed incomes). These rare situations may give rise to the perception of unfairness since the intention of the tax was never to punish owners who occupy their properties, but may be negligent in complying with filing deadline rules. In extreme cases, it could lead to a tax sale and loss of the property.

A possible remedy could be to substitute a lower monetary penalty in lieu of the full deemed vacancy tax and also possibly provide discretion concerning the quantum of the penalty under a range of different facts and circumstances.

3. Other Issues

[6] As the EY Phase 5 Report mentions, we know anecdotally from experience with other taxes that staged increases can have a smaller impact on consumer avoidance behaviour than sudden large increases that result in price "shocks" to the taxpayer. For this reason, it has become more common to see specific taxes indexed to the rate of inflation and adjusted more frequently as opposed to periodic, substantial increases. Federal excise duty increases on tobacco products are an example.

(a) Broad exemption for second homes

Providing a broad exemption for second homes is an idea that has periodically been floated by proponents. There is really no clear policy rationale for creating a broad exemption with few if any conditions attached that would limit its scope. Such an exemption would drastically reduce the tax base and thereby impair the ability of the tax to contribute effectively to the policy objective that it was intended to achieve when the tax was implemented; i.e., to help return empty and under-utilized properties to the market as long-term rental homes for people who live and work in Vancouver as part of the Vancouver Housing Strategy.

A better course for the City to continue navigating is to periodically examine and review experience with the existing exemptions and tailor them to changing market conditions. For any taxable situations that emerge and are judged to be unfair, an existing exemption can be adjusted accordingly, or a new one can be created.

Conclusions

This Summary Report urges caution in increasing the EHT rate too quickly or providing a broad exemption for second homes without more experience and evidence on the impact on compliance. At the same time, it offers support for proceeding with an extension of the late declaration deadline and substituting a deterrent monetary penalty in lieu of the entire deemed EHT to improve fairness in anticipation of any rate increases that may follow.

APPENDIX E
Empty Homes Tax 2022-2023 Policy Review Consultation Summary

Summary of Consultation Process

The consultation process for the Empty Homes Tax 2022-2023 policy review took place from September 2022 to March 2023. Staff consulted stakeholder groups on key review topics including the tax rate, exemptions, and compliance. Stakeholders included housing policy experts from local academic institutions independent consultants; individual property owners impacted by the tax; and representatives from the development industry. Feedback was gathered through workshops, meetings, surveys, and written correspondence.

Group	Engagement Format
Housing Policy Experts	• 1 Workshop + Individual Meetings
Vancouver property owners impacted by tax	• Workshops • Review of issues and complaints
Condo Home Owners Association	• Meeting
UDI	• 2 Workshops

Feedback from engagement during the review was supplemented with findings from previous public engagement in 2016-2018.

Results from Previous Public Engagement

May 2016 Talk Vancouver Survey on Options for an Empty Homes Tax[1]

- The vast majority of survey respondents (91% or 14,244 respondents) agreed or strongly agreed that the number of empty homes in Vancouver is a problem.
- A little over half of respondents (59% or 9,130 respondents) disagreed or strongly disagreed that it is the right of a property owner to keep their property empty.
- The majority of respondents (63% or 9,931 respondents) thought that a home should be left empty for a maximum of 6 months before being subject to higher property taxes and becoming ineligible for the tax credit. Almost a third of respondents believe this length of time should be 12 months.
- Less than half of respondents (42% or 6,566 respondents) agreed that higher taxes on empty homes should not be applied to seniors, veterans or persons with disabilities.

October 2016 Talk Vancouver Survey on Emerging Approach to an Empty Homes Tax[2]

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[1] See Appendix B of Report – Policy and Regulatory Steps for Reducing Empty Housing

[2] See Appendix B of Report – Approach for Taxing Empty Homes: 2016 Nov 06

- The majority of respondents agreed or strongly agreed that the City is heading in the right direction with the approach to EHT (63% overall, 81% of renters, and 56% of owners).

- Less than half of respondents agreed that there should be an exemption for second homes that are used occasionally or moderately (less than six months).

Summary of Feedback from Additional Engagement (September 2022 to March 2023)

Initiative	**Summary of Feedback**
Academic/Expert Stakeholders	Tax Rate - Participants were hesitant to conclude that the observed decline in vacant declarations in 2021 was exclusively due to the higher EHT rate. Participants felt that COVID-19 was still a major variable in 2021. They also noted that it may be difficult to observe the full impact of the higher rate with just one year of data, and suggested that Staff continue to monitor 2022 declarations as they come in. - Participants noted that further increases to the EHT rate could further incentivize owners of vacant properties to sell or rent. There were some cautions about a risk of greater evasion at higher rates. - Participants noted that a lower tax rate would likely result in higher levels of vacant properties and lower tax revenue compared to the current rate. Some participants suggested that a lower tax rate combined with a graduated rate on longer-term properties could be a way to balance the goals of EHT with fairness for owners with properties that are vacant for a short period. Proposed Exemptions - Most participants believe that a general or even broader exemption for property owners of second homes would be out of line with the goals of EHT. - Several participants noted that the application of EHT to new, unsold inventory increases risk for lenders and developers, especially during a market downturn; others suggested that developers are incentivized to sell units once they are constructed and that the presence or absence of EHT would not substantially change this - Participants agreed that the current structure of the renovation exemption is challenging in light of potential permitting delays that are outside the control of the property owner.

	- Several participants supported EHT application to vacant land to accelerate development, and also flagged that there are very few vacant land parcels at risk of taxation.
UDI Workshops	Tax Rate - The higher EHT rate has exacerbated pre-existing concerns about application of EHT to unsold new inventory and vacant land. While these were issues in the context of lower EHT rates, the higher rate has significantly increased the cost and risk associated EHT for new development. Proposed Exemptions - UDI would like to see an exemption for unsold new inventory that parallels the Provincial Speculation and Vacancy Tax, and are less supportive of the proposed idea of a time-limited exemption. UDI states that the current application of EHT on unsold new inventory adds substantial risk to developers creating new housing. They note that developers are already motivated to sell new inventory once it is completed and take measures to incentivize buyers to purchase units that have been on the market for a longer period, however certain types of units (larger family-size units, townhouse units, etc) may take longer to sell, especially during a market downturn. - There continue to be concerns from UDI about the application of EHT to vacant unimproved land. UDI would like to see a parallel exemption to the BC Speculation and Vacancy Tax, which exempts builders if they are carrying out an eligible building activity and is generally more permissive than EHT. - UDI is generally supportive of the proposed new exemption for uninhabitable properties and the changes to the renovation/redevelopment exemption for vacant land and existing properties. - UDI proposes that any new exemptions (i.e for unsold inventory) be applied retroactively to units subject to taxation for the 2022 tax year.
Unjust Tax Coalition	Tax Rate - A 3-5% tax rate is challenging for seniors who are looking to maintain a second property in Vancouver that they use for their own purposes and do not rent out. Some Unjust Tax Coalition members have been keeping their second properties and paying the tax; however, they note that rising rates are increasingly challenging to keep up with. Many are choosing to permanently rent out their units or sell. A small percentage of owners intending to sell their second home plan to rent out a unit themselves in order to maintain a presence in Vancouver. - The Unjust Tax Coalition suggests reducing the EHT rate to reduce the burden on owners of secondary residences.

	Ideas for Exemptions - The Unjust Tax Coalition proposes a new allowance for one additional home beyond a principal residence for owners with 'bona fide first-degree extended families in Vancouver.' - The UTC also suggests reducing the rental tenure requirement to 4 months instead of 6 months. Other Issues - Some Unjust Tax coalition members are Canadians or other North Americans who own second properties in Vancouver (non-principal residences) that they maintain to visit the City, see family, etc. Due to the frequency and nature of their use of the property – often for a cumulative length of time of less than 6 months – many members are challenged to rent out their units to satisfy the requirements to be tenanted under EHT.
Condo Home Owners Association	- Support for EHT at a higher tax rate to discourage properties being held empty. - Support for city phasing out current exemption for empty units with strata rental restrictions, with adequate notice for owners who need to come into compliance with EHT.