



REPORT

Report Date: May 04, 2020
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Meeting Date: May 12, 2020
[Submit comments to Council](#)

TO: Vancouver City Council

FROM: Director of Finance

SUBJECT: Report Back on Review of Fairness and Effectiveness of the Empty Homes Tax

RECOMMENDATIONS

- A. THAT Council approve the extension of the date by which a notice of complaint for late property status declarations may be filed, from December 31 of the year in which the vacancy tax is due to the following year on the first business day in July (hereto referred as the 'late filing due date').
- B. THAT Council approve the acceptance of notices of complaint for late property status declarations for the 2017 and 2018 vacancy tax reference periods until December 31, 2020.
- C. THAT Council receive for information a report from EY on the evaluation of the Empty Homes Tax program and the options assessment with respect to late declarations in the Appendix.
- D. THAT Council instruct the Director of Legal Services to draft and present to Council any by-law amendments required to implement Recommendations A and B.

REPORT SUMMARY

On November 27, 2019, Council approved a motion directing staff to report back to Council with 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.

This report outlines the options and recommendations to address late declarations made in good faith for the 2019 and future vacancy tax reference periods, as well as for the historical 2017 and 2018 vacancy tax reference periods.

The recommended timeline to report back to Council with the required by-law amendments for any approved recommendations resulting from this report is fall 2020.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

On November 16, 2016, Council approved and enacted the Vacancy Tax By-law to levy a tax on empty and under-utilized class 1 residential properties within the City of Vancouver. The first tax year was 2017.

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

On October 30, 2018, Council enacted By-law No. 12287 to further amend the Vacancy Tax By-law in order to provide clarifications to existing exemptions following the commencement of the first year of declaration, audit and compliance work.

On March 12, 2019, Council enacted By-law No. 12396 to further amend the Vacancy Tax By-law to existing exemptions following the substantial completion of the first year of declaration, audit and compliance work.

On January 21, 2020, Council enacted By-law No. 12628 to further amend the Vacancy Tax By-law to increase the tax rate, a new exemption, and notice period for complaints and reviews, including an amendment to state that the Vacancy Tax Review Officer may only consider the submission of late filed notices of complaint regarding vacancy tax notices, including late declarations up until December 31 of the year in which the tax is due.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT

Empty Homes Tax Overview/Background

The Empty Home Tax (“EHT”) or “Vacancy Tax” is a tax levied on empty and under-utilized class 1 residential properties in the City of Vancouver. Homes or land determined or deemed to be vacant are subject to a tax of 1% (increasing to 1.25% for the 2020 vacancy reference period) of the property’s assessed taxable value. The EHT is applied annually, with the first tax year having begun January 1, 2017, and is the first tax of its kind in North America. Most 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 eight 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
- To prevent additional properties from becoming vacant

Net revenues from the EHT may only be used for the purposes of initiatives respecting affordable housing. Available EHT funds have been either allocated by Council or will be allocated through upcoming Council reports or the 2020 Budget. Further description of specific funding allocations is available in the 2018 EHT Annual Report.

On November 27, 2019, Council approved a motion directing staff to report back to Council with 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.

Current By-Law

In accordance with Vacancy Tax By-Law No. 11674 (“the by-law”), properties were deemed vacant for 2017 and 2018 if the City did not receive property status declarations by the declaration deadline. The City’s process for accepting late declarations is under the complaints and review section of the by-law whereby an owner could submit a notice of complaint to the Vacancy Tax Review Officer (“VTRO”) on the grounds that the owner made an error. According to section 6.3 of the by-law, the deadline to file a notice of complaint to dispute the tax is the 10th business day of April of the year in which it is due and payable unless otherwise extended at the discretion of the VTRO, except that no extension will be granted beyond December 31st of the year in which the tax is due and payable. The VTRO has used her discretion to universally grant an extension to file a late notice of complaint for late declarations until December 31st of the year in which the tax is due and payable.

Deadlines and consequences of missing deadlines were discussed during the initial drafting of the by-law. A group of subject matter experts and Ernst & Young, both engaged in the development stage of the by-law, suggested that penalties for failure to declare needed to be at least as high as the tax, otherwise there are strong incentives for property owners to simply ignore the tax. The *Vancouver Charter* specifically authorizes Council, in the by-law, to deem properties vacant and taxable for failure to declare and failure to provide information and evidence to the collector of taxes (i.e. through the audit process).

The key deadlines in the by-law and how they have been enforced by staff using the limited discretion under the by-law are as follows:

	By-law deadline	How enforced?
Declaration	2 nd business day in February	2 nd business day in February
Late declaration	Not specifically referenced	Treated the same as a Notice of Complaint
Notice of Complaint – late declaration	10 th business day in April of the year in which the EHT is due	Extended at discretion of Vacancy Tax Review Officer, in most cases only up to December 31 of following year.
Notice of Complaint – determined vacant after audit	90 days from date of issue of the supplementary EHT bill	Extended at discretion of Vacancy Tax Review Officer, but discretion ends one year from the date of the supplementary EHT bill.
Request for External Review	90 days from deemed receipt of Vacancy Tax Review Officer determination	After 90 days, the Vacancy Tax Review Panel does not have discretion to accept a late request.

Challenges and Issues

Property owners who did not declare by the deadline were deemed vacant and charged the full amount of the tax. Several property owners contacted the City after the deadline indicating that while they did not declare on time, they should not have been levied the tax as they occupied the property or their property was tenanted for residential purposes. The by-law as it is written does not allow the property owner to dispute the tax once all the deadlines have passed. The City received the following reasons for not making a declaration on time: did not receive their mail; tenant did not forward their mail; citizen did not update their address with BC Assessment.

The *Vancouver Charter* requires the by-law to establish requirements respecting notices to registered owners and the by-law is clear that 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 and it is difficult to make an exemption for the property owners who did not declare when we have not made exceptions for any other group in the past.

Staff also encountered challenges in deciding which declarations to continue to accept. For example, some property owners were not receiving mail for a particular property because of an out of date address and did not declare for that property. However, they did declare on other Vancouver properties they also own evidencing that they were aware of the EHT. Others were advised by the City to update their address with BC Assessment on multiple occasions and declined to do so for reasons unknown to the City.

EHT is a tax on property; accordingly, it is the responsibility of the taxpayer to update their address with BC Assessment.

The practice of having specific deadlines that do not have extensions is not unique to the EHT. Staff noted that there are other City and provincial deadlines that are strictly enforced with no option for extension or appeal:

- The deadline to make payment for the City's advance and main property taxes are due the 2nd business day of February and July. Payments not made by the dates are subject to a 5% penalty.
- The deadline to file a complaint to the Property Assessment Review Panel for property assessments is January 31. There is no further recourse.

While property owners who failed to declare were not the intended targets of EHT, it was intentional that the consequences for failure to declare were equivalent to the tax.

Summary of Work Performed

Council requested Staff to review the options with respect to late declarations made in good faith after the normal deadlines to initiate an appeal and/or hear complaints and reviews. To address Council request, staff have performed a review that included workshops and the gathering of information on the population of property owners who did not make an Empty Homes Tax Declaration by the deadlines in the Vacancy Tax By-Law 11674. The work performed has helped to identify options with respect to addressing the undeclared population.

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 has prepared a report with commentary on the options. EY's report has been attached as an appendix to this report.

Strategic Analysis

This Council report provides the following information and analysis:

- A. Review of the 2017 and 2018 undeclared properties and key metrics
- B. Options to address late declarations on a going forward basis (2019 and future vacancy tax reference periods)
- C. Options to address late declarations retrospectively for the 2017 and 2018 vacancy tax reference periods.

The options analysis considered four key impact areas:

- 1) Fairness and intent of the tax, in that there are undeclared properties which may not be vacant that have been deemed vacant. Levying the vacancy tax on properties that are not vacant does not align with the intent of the tax, however is in line with the by-law and the need for a penalty aligned to the tax to incent filing of declarations.
- 2) Revenue certainty in terms of when and how much revenue can be allocated to affordable housing initiatives as any extensions to the property status declaration due dates will delay allocation of revenue and reduce certainty of the revenue amount.

- 3) Implementation and operational impacts and costs of each option including audit effectiveness as the options provided will result in an increase in the volume of notices of complaints for late property status declarations and the ability to effectively audit or provide accurate documentation and evidence.
- 4) Declaration rate in terms of the ability to maintain the existing high declaration rates.

A. Review of the 2017 and 2018 Undeclared Properties and Metrics

There are 763 and 458 undeclared properties for the 2017 and 2018 vacancy tax reference periods, respectively. Although the declaration rates for both 2017 (99.6%) and 2018 (99.8%) are very high, it is expected there will continue to be a small percentage of undeclared properties for 2019 and future years. It is anticipated that the percentage of undeclared properties will be at or lower than the rate for 2018 with increased program awareness.

Of the 2017 undeclared cohort of 763, the City received at least 123 late declaration requests (~16%) from property owners with reasons noting for not declaring timely. Of those 123 late declaration requests, a small percentage (<10%) of the undeclared property owners did not make a declaration due to extenuating circumstances (e.g. medical and death). The majority of the undeclared property owners (~90%) did not make a declaration due to communications from the City not being received (e.g. different mailing address) or they were unaware that a declaration was required.

For properties undeclared in 2017, Staff reviewed their declaration statuses for the subsequent 2018 vacancy tax reference period. 58% of the 2017 undeclared properties were declared occupied in the 2018 vacancy tax reference period. While this data does not indicate that these properties were also occupied in 2017, there may be instances where properties that have been deemed vacant and assessed the tax were not actually vacant, or may have been eligible for an exemption, which is inconsistent with the intent of the EHT to tax “vacant” properties.

B. Options for the 2019 and future vacancy tax reference periods

1. Extend the late filing due date for property status declaration

Properties that do not submit a late declaration by December 31st of the year the tax is due and payable, are deemed vacant and assessed the full amount of the vacancy tax.

Based on the majority feedback of those whom contacted the City contesting their undeclared 2017 vacancy status, those individuals stated that they were made aware of the assessed vacancy tax after seeing the tax levied on their main property tax bill. This is a result of the tax administrative process on outstanding vacancy tax balances for undeclared properties being rolled to property taxes in January in the following year. The vacancy tax balances will then appear on the main property tax billing in the following May.

Since the intent of the tax is to deter properties from being “vacant”; therefore, deeming properties vacant and not providing an opportunity for the property owners to make a late declaration may be perceived as unfair. To improve fairness and alignment with the intent of the tax but to balance that objective with continued high declaration rates, timely response, and audit effectiveness, **Staff recommends extending the late filing due date for property**

status declarations from December 31st of the year in which the tax is due and payable to the following year on the 1st business day of July.

Extending the late declaration deadline would result in a reduction in the number of undeclared properties that are deemed vacant that may not actually be vacant, which better aligns with the intent of the tax and improves fairness without compromising the current overall effectiveness of the program. In addition, there would be a slight improvement to the declaration rate due to an increase timeframe to make a declaration.

The main operational impact would be an increase in the number of late declarations made via notice of complaint that would require review by the VTRO, and potentially the external review panel if not accepted by the VTRO.

2. Conditional acceptance of late declarations after late filing due date

Less than 10% of the undeclared property owners that contacted the City indicated that they were unable to make a declaration due to a major life event (e.g. significant medical conditions).

Under the current by-law, the VTRO does not have the discretion to accept any notice of complaint for undeclared properties after December 31st of the year the tax is due and payable, regardless of the reason for lack of declaration. These property owners have stated that their properties were not vacant but they were unable or were unaware they had to make a declaration due to their specific situation.

With conditional acceptance, these property owners could submit a request to the VTRO to consider accepting the late declaration because the reason they did not submit a declaration by the deadline was due to circumstances outside of their control. Allowing this specific population of property owners to make a late declaration could further reduce the number of undeclared properties that were deemed vacant which may not actually be vacant. An additional fine could be administered.

Conditional acceptance (providing a 3rd chance to file) could be considered beyond the late filing due date (a 2nd chance to file) up until the year of tax sale (i.e. for 2019 vacancy tax reference period, until 2023). This would provide an opportunity for property owners who have been deemed vacant and have an outstanding vacancy tax balance to provide evidence that they were not vacant for up to 4 years, and prior to a potential sale of their home due to their overdue property tax account.

There are a number of challenges with adopting a conditional acceptance decision framework including:

- The conditional acceptance scheme would give the VTRO increased discretion to allow late declarations in some circumstances. Any increase in this type of discretion will increase the number of legal challenges to the exercise of that discretion, as criteria for discretion are difficult to establish.
- Delaying the revenue available for allocation to affordable housing initiatives as only amounts that have been actually collected and are not likely to be refunded, can be allocated.

- As time passes, the auditability of a property decreases as it may be difficult to provide evidence to support their property status from up to 4 years prior.

Staff consulted with EY and had extensive conversations regarding the CRA's programs and their conditional acceptance and penalty schemes. Based on a review of the differences between the CRA and the City's deadlines, it was noted that the CRA has a single reporting deadline, whereas the City has an initial declaration deadline and an extended deadline for the filing of late property status declarations with communication outreach to the affected property owners between the first and second filing due dates. Another difference is that CRA tax liabilities follow the individual for life whereas the vacancy tax liability is tied to the property. Owners may change over-time on a property and therefore tighter declaration deadlines help ensure greater connection tied between assessed vacancy taxes to the rightful owners.

Considering the high declaration rates that filed timely in 2017 (99.6%) and 2018 (99.8%), a general slight reduction in vacancy from 2017 (1.4%) to 2018 (1.1%)¹, and the reasons from the late declaration requests; the current EHT framework is relatively effective. In conjunction with the extension of the late filing due date recommended to Council, **Staff does not recommend providing an additional third deadline on a conditional basis for filing a late property status declaration.**

Recommendation summary for 2019 and future vacancy tax reference periods

Based on the above analysis, staff recommends making changes to the deadlines to improve fairness and alignment with the intent of the tax. Staff recommends by-law amendments to: Extend the date in which the Vacancy Tax Review Officer may consider a submission of a notice of complaint for late property status declarations from December 31 of the year in which the vacancy tax is due to the following year on the first business day in July.

C. Options for the historical 2017 and 2018 tax years

1. Extend the late filing due date for property status declaration

As noted earlier in the report, the EHT became effective with the 2017 tax reference year. It was a new tax, the first of its kind in North America. The penalty for failure to declare by the filing due dates was equal to the tax value. The high penalty was set to encourage property owners to declare and to do so in a timely manner within the reasonable filing time frame provided by the City. Without a penalty equal to the tax, owners of vacant properties would be motivated to simply not declare. The timeliness of the filing requirements by the property owners are a paramount to the effectiveness of the tax program design. Overall, the successful implementation of the tax is suggested by the very high declaration rates in the first and second year of the tax (99.6% for 2017 and 99.8% for 2018).

Despite the extensive communication outreach performed by staff via multiple communication channels including advertisements, phone calls, mail correspondence and emails to reach the undeclared property owners prior to the late declaration deadline, there remains a very small percentage (0.4% in 2017 and 0.2% in 2018) of property owners whom did not file or missed

¹ *From published 2018 Empty Homes Tax Annual Report

their declaration deadlines and complaint filing deadlines, and were levied the tax. For those taxpayers whose properties were in fact vacant, the tax was appropriately levied. However, there is a small subset of property owners whom were levied the full EHT and may be able to provide evidence indicating their properties were not vacant (either occupied or exempt) after the late declaration deadline. Consideration could be given to re-opening the declaration period for these properties specifically for 2017 and 2018 tax reference years.

There are several drawbacks when considering an extension filing for 2017 and 2018 tax reference years. These variables include:

- Potential perception of unfairness to those property owners who did meet all the deadlines,
- Taxpayers may no longer have the evidence to support their declaration including tenancy evidence,
- Incremental administrative costs to communicate, process and audit the requests (further details available under the Financial section of the report),
- Difficulty in reaching all affected taxpayers given the lapsed time, and
- May not absolve the tax for those who cannot provide sufficient evidence to prove the properties were not vacant or exempt during those periods.

Further to the drawbacks outlined above, a significant portion of the levied taxes collected from undeclared property owners have been allocated to affordable housing initiatives. This option may result in a reduction and delay in the revenue available for affordable housing initiatives. Taxes of \$14.1 million were levied on 2017 and 2018 undeclared properties of which \$7.2 million² have been collected and allocated. For properties that submit a late declaration and are determined to not be vacant, the City will need to issue refunds for the amounts paid.

To contrast the above drawbacks, if no additional opportunity is provided for the property owners to make a late declaration in good faith, it may be perceived as unfair, especially given this is a new tax. In particular, the feedback from many of the late requests indicated that the property owners were made aware of the levied vacancy tax when the tax appeared on their main property tax bill. As staff are recommending a change to the deadline for future years to allow property owners to see the vacancy tax levied on their main property tax bill, it may be appropriate to provide a one-time extension of the prior years' the late declaration deadline to provide an opportunity for good faith declaration. We also anticipate a reduction in legal activities and costs by ~\$20K associated with 2017 and 2018 tax reference years.

Based on the analysis above, there are both pros and cons to extending the late filing for 2017 and 2018. In recognizing that it was a new tax, **staff recommends a one-time deadline extension to December 31, 2020 for 2017 and 2018 tax reference year as an amnesty of**

² *A further break-down on deemed vacancy taxes levied and collected for 2017 and 2018 tax reference years are as follows:

- 2017: \$8.7M tax was levied and \$6.4M collected- 74% collection
- 2018: \$5.5M tax was levied and \$0.8M was collected – 15% collection

Of the \$7.2M in taxes collected on deemed vacant properties, \$1.4M of that collection represents properties that were undeclared in both 2017 and 2018; indicating a high likelihood that those properties were vacant.

the deadlines for the first two “transitional” years of the vacancy tax. Staff anticipates the administration of the change to be manageable and will not compromise the overall effectiveness of the EHT program.

2. Conditional acceptance of late declarations after late filing due date

This option would follow the same process and analysis as noted above under the section of conditional acceptance for the 2019 and future years

Less than 10% of the 2017 undeclared property owners whom contacted the City indicated that they were unable to make a declaration due to a major life event (e.g. significant medical conditions).

For the same reasons noted above, Staff do not recommend conditional acceptance of late property status declarations for 2017 and 2018 and instead have proposed a one-time extension due date to December 31, 2020.

Recommendation summary for 2017 and 2018

Based on the above analysis, Staff recommends making changes to the deadlines to improve fairness and alignment with the intent of the tax. ***Staff recommends extending the deadline for late declarations for the 2017 and 2018 vacancy tax reference periods until December 31, 2020 on an exception basis recognizing the newness of the tax.***

Financial Implications

An estimation of the costs of the various options discussed in this report are shown below. It is noted that these are not necessarily all “incremental costs” as a portion or all of the internal staffing workload may potentially be absorbed by the existing staffing levels.

Option	Estimated Cost
Extend deadline to Property Tax Due Date	\$20K annually
Conditional acceptance (not recommended)	\$5K+ annually
Extend deadline for 2017 and 2018	\$100K one-time cost

The table only includes the staffing and external review panel costs to process late declarations and application of the conditional acceptance criteria. This does not include other one-time costs to communicate the selected option(s) to property owners and technology costs. Conditional acceptance of late property status declarations would likely result in increased legal costs due to the potential for legal challenges of the application of the conditional criteria.

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 and would apply immediately unless otherwise noted.

CONCLUSION

To address the late declarations made in good faith after the normal deadlines have passed, staff has identified and analyzed a number of options and have made recommendations for Council's approval. Staff recommends that Council approve the proposed recommendations and instruct the Director of Legal Services to prepare an amending by-law to bring forward for enactment.

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City of Vancouver

Consulting Services for the Empty
Homes Tax Program - Phase 4
(Options with respect to late
declarations)

EY Commentary

April 2020

Executive Summary

The City of Vancouver's Empty Homes Tax (EHT), as periodically amended (by minor bylaw amendments in June 2017, September 2018 and February 2019), has now been in effect for over two years.

Vancouver City Council has directed City Staff to further explore options with respect to late declarations made in good faith after the normal deadlines have passed to initiate an appeal or hear complaints.

City Staff engaged the services of EY to provide leading practice advice and assistance in conducting the review and in formulating the options that will be presented to Council.

A range of options to address late declarations on a going-forward basis (2019 and future calendar years) have been identified and evaluated. City Staff is presenting two options to Council for consideration: (1) extend the late filing due date for property status declarations; (2) conditionally accept late declarations after the late filing due date (with or without an additional by-law fine).

Options have also been identified to retrospectively address late-filed declarations for 2017 and 2018. Staff is sending two options to Council for its consideration in that regard: (1) extend the late filing due date for property status declarations until December 31, 2020; and (2) conditionally accept late declarations for 2017 and 2018 until the first potential tax sale year (2021 and 2022, respectively).

Any criteria to conditionally accept late declarations should reflect circumstances outside the property owner's direct control. Criteria used by the Canada Revenue Agency (CRA) to waive or cancel penalties and interest on late-filed tax returns are identified here that could serve as a model, including examples of "extraordinary circumstances" used by the CRA.

If late-filed declarations are accepted, they could be subject to a penalty regime that includes a fine sufficient to discourage noncompliance with filing deadlines. A fine that is a percentage of tax owing could be seen as both "fairer" and more effective in that regard than a flat-rate fine.

City of Vancouver Empty Homes Tax

Phase 4 – Retrospective

Introduction and context

The City of Vancouver's Empty Homes Tax (EHT), as periodically amended with minor changes in the bylaw, has now been in effect for over two years.

Vancouver City Council has directed City Staff to further explore options with respect to late declarations made in good faith after the normal deadlines have passed to initiate an appeal or hear complaints.

City Staff engaged the services of EY to provide best practice advice and assistance in conducting the review and in formulating the options that will be presented to Council.

Nature and scope of the problem

One indicator of the successful implementation of the EHT is that the declaration rate was extremely high in the first two years of operation (99.6% for 2017 and 99.8% for 2018). That said, a relatively small percentage of property owners missed their relevant late declaration deadlines and, accordingly, their properties were deemed vacant so the full amount of the EHT was assessed. Their complaint filing deadlines to appeal this action also expired.

For owners whose properties were in fact vacant, this result is appropriate. However, an unintended consequence of this deeming provision is that a small number of non-declarers now find themselves liable for the full EHT when they can provide evidence indicating their properties were not vacant (either occupied or exempt). This result can be seen as unfair and it was never the City's intention that this should happen.

In a prior engagement, EY had recommended the deeming provision as a prudent measure to ensure an adequate incentive to declare on time and also because the Province was not prepared to amend the Vancouver Charter to grant authority to the City to levy a significant non-declaration penalty as a deterrent, similar to the authority it granted for the failure to pay penalty.¹

Finding a way to address and rectify this situation is the basis for the Council's direction to City Staff. The issues to be addressed in the report to Council include the following three where advice is being sought from EY:

1. Identification of options beyond the status quo that Council can consider adopting to remediate the current adverse consequences of late declarations;

¹ See the Vancouver Charter, Part XXX, section 618:
http://www.bclaws.ca/civix/document/id/complete/statreg/vanch_31#partXXX

2. Development of criteria to use to determine if a late declaration should be accepted, including reference to other relevant tax programs; and
3. Development of an appropriate penalty regime to ensure continued high compliance with the declaration process and payment of the EHT, including reference to other relevant tax programs.

EY commentary and advice follows under each of these three issues directed to City Staff.

EY Commentary

1. Identification of options

A range of options to address late declarations on a going-forward basis (2019 and future calendar years) was identified and analyzed by City Staff. Two options are being sent to City Council for its consideration including:

Option 1 – Deadline extension

The current unconditional late declaration deadline is extended from December 31 to the main Property Tax payment due date in July giving time to submit a declaration after the tax notice with the EHT added goes out (in May).

Option 2 – Conditional acceptance (with or without an additional by-law fine)

A process is developed to conditionally accept late declarations after the stated deadlines have passed using criteria to accept some late declarations (e.g. for circumstances beyond the property owner's control). The Vacancy Tax Review Officer (VTRO) would decide whether to accept the late declaration. The property owner could appeal an adverse decision by the VTRO to the Review Panel. Properties accepted could be subject to an additional by-law fine of up to \$500 (maximum allowable amount).

City Staff also gave its consideration to options that would retrospectively address late-filed declarations for 2017 and 2018, the first two years that the EHT was in effect. Two options are being sent to City Council for its consideration:

Option 1 – Deadline extension

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

Option 2 – Conditional acceptance

"Conditionally accept" late declarations for 2017 and 2018 until first potential tax sale year (2021 and 2022, respectively).

2. Criteria to conditionally accept late declarations

The task of developing criteria to determine whether to conditionally accept late declarations would normally involve at least some reliance on the results of a literature search of other comparable tax programs with similar objectives and characteristics to gain insights from their experience. However, while this avenue was explored, it could not be exploited here because Vancouver's EHT has few direct comparables.² Those that do exist have not been analysed or evaluated to the same degree as Vancouver's tax.

² See Policy Brief: Discouraging High-End Vacant Properties, Institute for Policy Studies, June 2018 <https://inequality.org/wp-content/uploads/2018/06/Brief-VacantPropertyTax.pdf>. Melbourne, Australia, for example, implemented a vacant residential lands tax in 2018 that is similar to Vancouver's EHT, but it had not been evaluated at time of writing. See <https://www.sro.vic.gov.au/vacantfaq>. Toronto is considering an EHT, but no decision has been taken. <https://www.toronto.ca/city-government/budget-finance/city-finance/property-tax-policy/>

Any criteria to conditionally accept late declarations should generally reflect circumstances that are outside the property owner's direct control.

While not a direct comparable, criteria that are used by the CRA to decide whether to waive penalty and interest amounts for a late-filed Income Tax Return could serve as a relevant example here because this income tax offence is closely analogous to a failure to submit a Property Tax Declaration.³

The CRA's Taxpayer Relief Program⁴ (TRP) applies in a range of circumstances including failure to file a return on time, file an election on time, make a payment that is owing, or complying with other tax obligations. The Minister of National Revenue may grant relief from penalty or interest when the following types of situations prevent a taxpayer from meeting their tax obligations:

- extraordinary circumstances;
- actions of the CRA;
- inability to pay or financial hardship;
- other circumstances

"Extraordinary circumstances" include, but are not limited to:

- natural or human-made disasters, such as a flood or fire;
- civil disturbances or disruptions in services, such as a postal strike;
- serious illness or accident; and
- serious emotional or mental distress, such as death in the immediate family.

"Actions of the CRA" include:

- processing delays that result in taxpayers not being informed, within a reasonable time, that an amount was owing;
- errors in CRA material which led a taxpayer to file a return or make a payment based on incorrect information;
- incorrect information provided to a taxpayer by the CRA;
- errors in processing;
- delays in providing information, resulting in taxpayers not being able to meet their tax obligations in a timely manner; and
- undue delays in resolving an objection or an appeal, or in completing an audit.

³ Under subsection 220(3) of the federal Income Tax Act (ITA), the Minister of National Revenue may extend the time for making a return, but in the absence of such an extension, a late-filing penalty applies, as well as interest for any unpaid balance.

⁴ For details on the Taxpayer Relief Program see the CRA's Information Circular IC07-1R1: <https://www.canada.ca/content/dam/cra-arc/formspubs/pub/ic07-1/ic07-1r1-17e.pdf>

“Inability to pay or financial hardship” only applies to the waiving or cancelling of accumulated interest amounts in whole or in part to enable taxpayers to pay their account in the following circumstances:

- when a collection has been suspended because of an inability to pay caused by the loss of employment and the taxpayer is experiencing financial hardship;
- when a taxpayer is unable to conclude a payment arrangement because the interest charges represent a significant portion of the payments; or
- when payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical help, transportation, or shelter.

“Inability to pay” may have relevance for failure to pay the EHT, but it is not a relief category that is relevant to late-filed declarations.

“Other circumstances” is identified as a category eligible for relief, but undefined in the CRA’s guidance. This is because the CRA has been given considerable legislative latitude in determining the scope of taxpayer relief (including acceptance of late-filed returns, and in so doing waiving late filing penalties).⁵ The courts view these criteria as administrative aids, but not something that narrows the CRA’s authority to grant relief. That said, the Tax Court of Canada has sided with the Agency in cases where taxpayers have challenged the CRA’s administrative decisions to deny requests for additional extensions of time beyond those set out in legislation (for example, for filing an objection beyond the one-year extended deadline⁶).

In terms of the CRA’s approach to administering the taxpayer relief provisions, there are “first and second reviews”. These are both conducted at the local Tax Services Office (TSO) level; the first review being done by a delegated official and the second by an

⁵ As IC07-1R1 states, “The legislation does not identify specific situations for which the minister has the authority to waive or cancel penalties and interest. The guidelines in this part of the information circular are not binding in law. They do not give the minister’s delegate the authority to deny a request and exclude it from proper consideration simply because the taxpayer’s circumstances do not meet a guideline described in Part II of this information circular.”

⁶ Taxpayers have 90 days to object to an assessment after it has been served on them, but if they miss this deadline and have not filed a Notice of Objection by that time they can ask the Chief of Appeals to extend the deadline. The process and the criteria to be considered are set out in subsection 166.1(7) of the Income Tax Act, as follows:

- (7) No application shall be granted under this section unless
- (a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and
 - (b) the taxpayer demonstrates that
 - (i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, the taxpayer
 - (A) was unable to act or to instruct another to act in the taxpayer’s name, or
 - (B) had a bona fide intention to object to the assessment or make the request,
 - (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and
 - (iii) the application was made as soon as circumstances permitted.

independent delegated official or a TSO Committee. In that sense, it is analogous to the City of Vancouver's Vacancy Tax Review Officer (VTRO) and the Review Panel.⁷

The City of Vancouver could devise similar, if somewhat more simplified, criteria for conditionally deciding whether to accept late declarations based on circumstances outside the owner's control. These might include the same "extraordinary circumstances" as those examples listed by the CRA. But they might exclude "actions of the City of Vancouver" given that we know the City's guidance is "tried and tested" and the extremely high compliance rate for on-time declarations demonstrates that it is timely and accurate.

3. Penalty regime to ensure compliance with the EHT

The CRA's late-filing penalty is purely a function of tax owing, and for that reason it provides no incentive to file on time (or file at all for that matter) if the taxpayer is not in a taxable position. This is obviously not analogous to a property owner's obligations for the City of Vancouver's Property Tax where (in the absence of the deeming provision) a declaration is necessary to determine whether the EHT is applicable or not.

The CRA's late-filing penalty for an individual income tax return is:

- 5% of your balance owing, plus
- 1% of your balance owing for each month the return is late, up to a maximum of 12 months⁸

If the taxpayer has already been charged the late-filing penalty in any of the three preceding tax years, the penalty increases to:

- 10% of the balance owing, plus
- 2% of the balance owing for each month the return is late, up to a maximum of 20 months⁹

These two additional features mean that: (1) there is an added financial penalty beyond the accrued interest amount for further delays in payment and (2) ensure that the penalty amount increases for repeat offenders.

Should it have the requisite legal authority to do so, the City of Vancouver might want to take such an approach into consideration when deciding the applicable penalty amount in similar circumstances here. However, it is understood that the current maximum bylaw fine amount is \$500, so this does not appear to be feasible at the present time.

⁷ If after the second review the taxpayer disagrees with the decision and feels that the CRA's discretion was not properly exercised, the taxpayer can further apply for a "judicial review" of the decision by the Federal Court.

⁸ See ITA, subsection 162(1).

⁹ See ITA, subsection 162(2).

Should the City of Vancouver decide at some future date to approach the Province of British Columbia seeking an amendment to the Vancouver Charter, it could request authority to levy similar penalty amounts.

The penalty could be based on a percentage of vacancy tax owing. This would have the advantage of ensuring that the quantum of penalty is proportional to the quantum of unpaid tax. The percentage could be set as high as necessary to ensure that the revenue raised is both sufficient to act as a deterrent to not declaring and sufficient to offset in part the tax revenue in dispute that is suspended from being allocated to public housing projects pending resolution of a decision around the late filed declaration.

That said, as Table 1 below (using data from the 2017 tax year) demonstrates, this percentage would have to be relatively high in comparison with a flat rate bylaw penalty that the City could introduce under Option 3. A 5% penalty, for example, would raise only marginally more revenue than a \$500 bylaw fine would raise, assuming the size of assessed values for late declared properties in 2017. However, as Table 2 illustrates, an *ad valorem* penalty would have a “fairness” or “equity” advantage over any flat rate penalty.

Table 1
Assuming 100% of 2017 deemed vacant made a late declaration

2017 VT billed for deemed vacant	\$8,666,156
5% penalty of VT billed	\$ 433,308
By-law fine (763 x \$500)	\$ 381,500

Table 2

Assessed Value	1% VT	5% Penalty
\$ 5,000,000	\$ 50,000	\$ 2,500
\$ 4,000,000	\$ 40,000	\$ 2,000
\$ 3,000,000	\$ 30,000	\$ 1,500
\$ 2,000,000	\$ 20,000	\$ 1,000
\$ 1,000,000	\$ 10,000	\$ 500
\$ 500,000	\$ 5,000	\$ 250

Although the issue at hand and this related commentary are only concerned with late-filed property tax declarations, making comparisons with CRA penalties for late-filed income tax returns directly relevant here, the CRA also has authority to levy a penalty for repeated failure to report income. This could be considered analogous to failure to file an accurate property tax declaration, and so it may be worth noting the CRA penalty as set out below for future reference in case the City wishes to seek authority to assess a similar tiered fine at some future date.

If a taxpayer fails to report an amount on their current return and they also failed to report an amount on their return for the previous three tax years, they may have to pay a federal and provincial or territorial repeated failure to report income penalty. When the

unreported income is \$500 or more for a given tax year, it is considered a failure to report income. The federal and provincial or territorial penalties are each equal to the lesser of:

- 10% of the amount you failed to report on your return for 2019
- 50% of the difference between the understated tax (and/or overstated credits) related to the amount you failed to report and the amount of tax withheld related to the amount you failed to report

If a taxpayer voluntarily tells the CRA about an amount he or she failed to report (and does so before the CRA is aware and has initiated any enforcement action), the CRA may waive these penalties through its Voluntary Disclosures Program (VDP).¹⁰

¹⁰ For more information on the VDP, see [Voluntary Disclosures Program](#).

Appendix A

Circumstances that may warrant relief

Extraordinary circumstances

Penalties or interest may be cancelled or waived in whole or in part when they result from circumstances beyond a taxpayer's control. Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying with a tax obligation include, but are not limited to, the following examples:

- natural or human-made disasters, such as a flood or fire;
- civil disturbances or disruptions in services, such as a postal strike;
- serious illness or accident; and
- serious emotional or mental distress, such as death in the immediate family.

Actions of the Canada Revenue Agency (CRA)

The CRA may also cancel or waive penalties or interest when they result primarily from CRA actions, including:

- processing delays that result in taxpayers not being informed, within a reasonable time, that an amount was owing;
- errors in CRA material which led a taxpayer to file a return or make a payment based on incorrect information;
- incorrect information provided to a taxpayer by the CRA;
- errors in processing;
- delays in providing information, resulting in taxpayers not being able to meet their tax obligations in a timely manner; and
- undue delays in resolving an objection or an appeal, or in completing an audit.

Inability to pay or financial hardship

The CRA may, in circumstances where there is a confirmed inability to pay amounts owing, consider waiving or cancelling interest in whole or in part to enable taxpayers to pay their account. For example, this could occur when:

- a collection has been suspended because of an inability to pay caused by the loss of employment and the taxpayer is experiencing financial hardship;
- a taxpayer is unable to conclude a payment arrangement because the interest charges represent a significant portion of the payments; or
- payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical help, transportation, or shelter; consideration may be given to cancelling all or part of the total accumulated interest.

Consideration would not generally be given to cancelling a penalty based on an inability to pay or financial hardship unless an extraordinary circumstance prevented compliance, or an exceptional situation existed. For example, when a business is experiencing extreme financial difficulty and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees, and the welfare of the community as a whole, consideration may be given to providing relief of the penalties.

For requests to cancel or waive interest or penalties based on an inability to pay or financial hardship, the CRA requires full financial disclosure from taxpayers, including a statement of income, expenses, assets, and liabilities. To help individual taxpayers provide full financial disclosure, please see [Statement of Income and Expenses and Assets and Liabilities for Individuals](#). For businesses, please see [Determining a business' financial situation](#) for information about the supporting documentation to submit with a request for relief.

Other circumstances

The CRA may also grant relief if a taxpayer's circumstances do not fall within the situations described above.

Source: <https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/cancel-waive-penalties-interest/circumstances-that-may-warrant-relief.html>